

Competition Tribunal File No: CT-2008-002

Competition Tribunal

BETWEEN:

John Guy Annable

Applicant

AND

Capital Sports and Entertainment Inc.

Respondent

NOTICE OF APPLICATION FOR LEAVE

(Application for an order pursuant to Section 103.1 of the Competition Act.)

1. **TAKE NOTICE THAT** the Applicant, John Guy Annable will make an application to the Competition Tribunal pursuant to section 103.1 of the Competition Act R.S.C 1985, c. C-34 (the Competition Act) seeking leave to bring an application for an Order under Subsection 77(1) of the Competition Act.
2. **AND TAKE NOTICE THAT** if leave is granted, the applicant will seek an Interim Order requiring the respondent to immediately desist from the practice of limiting or extinguishing the ability of a customer to purchase a single event contract without the additional requirement for contracting other event purchases that are tied by the seller as a prerequisite to the primary contract not requested at point of sale by the customer.
3. **AND TAKE NOTICE THAT** proposes that the within application be heard in the English language at Ottawa, Ontario.
4. **AND TAKE NOTICE THAT** the applicant proposes that the documents be filed in electronic form.
5. **AND TAKE NOTICE THAT** the persons whom the order for granting of leave is sought is the respondent. The Respondents registered address for service is:

Capital Sports and Entertainment Inc.
1000 PALLADIUM DRIVE
OTTAWA, ONTARIO
K2V 1A5

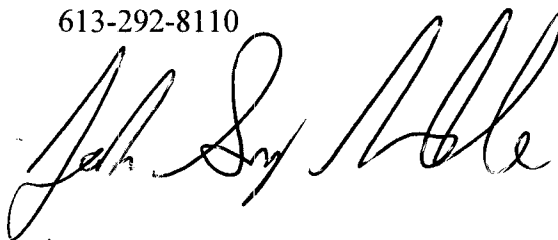
6. THE STATEMENT FOR GROUNDS AND MATERIAL FACTS set out in the Statement of Grounds and Material Facts as attached as schedule "A" to this Notice of Application for Leave.

Dated at Ottawa, Ontario, This 13th day of March 2008,

John Guy Annable
3 Hobbs Avenue
Ottawa, Ontario
Canada
K2H-6W7

Guy.annable@sympatico.ca
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Sworn and
Witnessed by
J. J. Rose
Commissioner of Oath
for the Competition Tribunal



Schedule "A"

Referring to the Ottawa Citizen February 7th 2008 Page C2 of the publication.

<http://www.canada.com/ottawacitizen/columnists/story.html?id=39cd244d-52bc-4b5f-9689-88451299af39>

Ticket policy frustrates Sens fans

Hugh Adami, The Ottawa Citizen

Published: Thursday, February 07, 2008

There seems to be little anyone can do to stop the Senators from refusing to sell tickets to some "premium" games unless they agree to also purchase tickets to games featuring teams that most fans would agree are dogs.

Just the other day, Guy Annable and his two friends thought they might just have caught the Senators in a practice that would contravene the federal government's Competition Act.

A section of the act deals with what is known as "tied selling" -- described as "any practice whereby a supplier of a product, as a condition of supplying the product (the "tying" product) to a customer, requires that customer to ... acquire any other product from the supplier or the supplier's nominee."

Isn't this exactly what the Senators are doing with one of their ticket-marketing schemes, Annable suggested after submitting a complaint to the Competition Bureau.

Fans wanting to buy tickets to Senators games against the Montreal Canadiens on Saturday, Pittsburgh Penguins on March 1 or Toronto Maple Leafs on March 22, are being told they have to buy an equal number of tickets to either tonight's match against the lowly Florida Panthers or next Tuesday's game against the Buffalo Sabres. (To add insult to injury, the Montreal, Toronto and Pittsburgh tickets are being sold at higher prices because of the popularity of those teams, while the Florida and Buffalo tickets are going at regular cost. The total charge for a ticket to both games varies, depending primarily on where the seat is located, but one in the lower bowl near a faceoff circle would cost about \$378 to include the Leafs' game, \$350 for the Habs combination and \$330 for the Penguins.)

Annable said one of his worries with the ticket-marketing plan was that it could lead the club to package even more games in the future.

The practice, according to the complaint filed with the Competition Bureau, "diminishes and eliminates a purchasers' right to purchase one contract for one event at a stated price."

But perhaps even more important, at least for lower-income fans across the city, is that this one-for-two "deal" could make it more difficult or even impossible for them to buy Senators tickets, especially if the club eventually expands the practice in the hope of filling Scotiabank Place for all games that might be a hard sell.

The Consumers' Association of Canada (CAC) is upset with the club.

Bruce Cran, CAC president, expressed his disdain yesterday for the ticket-marketing scheme, which he said is clearly tied selling.

Said Cran: "If (what the Senators are doing) isn't illegal, then it should be." Peggy Ireland, who sits on the association's board of directors added: "(The association) strongly condemns any company or organization that skirts the line in order to abuse or misuse consumers What the Senators are doing is abusing their monopoly."

However, Chris Busuttil, an assistant deputy commissioner with the Competition Bureau in Ottawa, and Andrew Roman, a Toronto lawyer and an expert in competition law, don't see the issue at all the way Cran and Ireland do.

Said Busuttil: The Competition Act "really deals with activities that a company would engage in, directed at a competitor, that would result in some substantial lessening or prevention of competition."

Clearly, that's not the case involving the Senators' ticket-marketing scheme as the team enjoys monopoly status in Ottawa and doesn't have to compete for business as it has exclusive rights as an NHL team.

A situation where tied selling might apply could be that of a gasoline company monopoly forcing customers to buy oil from it in order to buy gas. Roman, the Toronto lawyer, said companies in the business of only selling oil would obviously become a victim of the gasoline company's tied selling, and thus the gas company would be contravening the Competition Act.

"There isn't anything like that (in the Senators' situation)," said Roman. "It's not like they control all the basketball, hockey and baseball (and say): 'If you want to get hockey tickets, you also have to buy baseball and basketball tickets.' But even then, there would have to be another competitor (in Ottawa) who was hurt by it. ... (But) the only one in the (NHL) hockey game market in Ottawa is the Senators.

"You could argue theoretically that the Ottawa Senators are a form of entertainment ... that you do in your recreational time. So if you don't want to go to a Senators game and they're charging too much ... then you can go to a baseball game, go to a movie."

Said the Competition Bureau's Busuttil: "Obviously, if consumers are dissatisfied with what the Senators are offering, they should be taking it up with the Senators, as is their right as consumers, and they should be vigilant about it. But there is really nothing we can do under the Competition Act.

"(The Senators are) a company trying to do the best they can, marketing their tickets in a way they feel will maximize revenue -- that's what they're in business for," said Busuttil.

"One of the first principles of competition law in this country is that companies have the right to bring their products to market in any way they see fit, and charge the prices they see fit, and let the market determine at the end of the day if that's a viable strategy or not."

Added Roman: "When people are annoyed at something, they immediately look for a legal handle to pull ... and they're often surprised there isn't (one). Your choice is not to buy or stay away from it, or protest and hope they're listening to your protest."

Still, the CAC's Cran thinks the Competition Bureau stance is a cop-out and is putting too much emphasis on the meaning of competition and not enough on tied selling. "This is about tied selling ... I just don't understand (the bureau's) reasoning."

Said Ireland: The club "should go back ... and reconsider this policy, which is not in the best interests of consumers."

Meanwhile, Annable, who was informed yesterday by the Citizen of the bureau's position, was clearly disappointed.

"We're not questioning (the competition aspect)," said Annable.

"We're questioning tie-selling and the fact that they're hiding it under a shroud of a monopoly.

"(Approaching the Competition Bureau) was just a shot," he added.

"The Senators do a lot for this city, but I think they're offside on this one."

TO: Capital Sports and Entertainment Inc.
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AND TO :The Registrar
Competition Tribunal
Thomas D'Arcy McGee Building
600-90 Sparks St.
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AND TO: Ms. Sheridan Scott
Commissioner of Competition
Competition Bureau
50 Victoria St.
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