

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended.

AND IN THE MATTER OF an Application by Quinlan's of Huntsville Inc. for relief pursuant to section 75, 103.1 and 104 of the *Competition Act*.

BETWEEN:

QUINLAN'S OF HUNTSVILLE INC.

- and -

**FRED DEELEY IMPORTS LTD.
carrying on business as
DEELEY HARLEY-DAVIDSON CANADA**

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE		
F I L E D	A P P L I C A N T 2004	P R O D U I T
REGISTRAR — REGISTRAIRE		
OTTAWA, ONT.		10021

Respondent

**RESPONSE TO AN APPLICATION PURSUANT
TO SECTION 75 OF THE *COMPETITION ACT***

Introduction

1. Fred Deeley Imports Limited (“Deeley”) opposes the Application pursuant to section 75 of the *Competition Act* (the “Act”) (the “Application”) of Quinlan's of Huntsville Inc. (“Quinlan's”) on the following grounds:

- (a) Harley-Davidson motorcycles, parts & accessories, clothing and related products do not individually or collectively constitute a “market” for the purposes of section 75 of the Act;
- (b) Harley-Davidson motorcycles, related parts & accessories and clothing do not occupy a position in the marketplace such that they constitute a “separate product” for the purposes of section 75(2) of the Act;
- (c) Quinlan's has failed to establish that it cannot obtain other brands of motorcycles, motorcycle parts & accessories and clothing in the marketplace;

- (d) Deeley's decision not to renew Quinlan's retailer agreement will not substantially affect Quinlan's business;
- (e) Deeley distributes Harley-Davidson products solely through its network of authorized dealerships under the terms of written retailer agreements, which are for a specific term of years. Quinlan's agreement with Deeley has expired. Deeley has elected not to renew it for another term;
- (f) any inability on the part of Quinlan's to obtain adequate supplies of product in the marketplace is a result of Deeley's decision to rationalize its dealership network to better promote the Harley-Davidson brand and better serve consumers; and
- (g) the area previously served by Quinlan's is adequately served by several other Harley-Davidson dealerships, as well as by other dealers of competing brands of motorcycles, parts & accessories, clothing and related products such that Deeley's decision not to renew Quinlan's retailer agreement will not have an adverse effect on competition for these items in the marketplace.

Material Facts relied upon

2. Deeley accepts, for the purposes of these proceedings, the facts contained in paragraphs 1, 2, 25 and 26 of Quinlan's Statement of Grounds and Material Facts.
3. Deeley disagrees with the facts alleged in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, and 27 of Quinlan's Statement of Grounds and Material Facts.
4. Deeley has no knowledge of the allegations contained in paragraphs 22 and 29 of the Quinlan's Statement of Grounds and Material Facts.

Deeley Distributes Harley-Davidson Motorcycles, Parts & Accessories and Clothing Through a Rationalized Dealership Network

5. Deeley is the exclusive distributor of Harley-Davidson motorcycles, parts & accessories, clothing and related products in Canada. As the exclusive distributor for these items, Deeley's goal is to promote the Harley-Davidson brand and serve consumers in what it believes is the

most effective manner. Integral to these goals is the ability to establish and modify its dealership network in a rational and efficient manner.

6. Deeley conducts all of its sales in Canada through independently-owned dealerships with whom it has entered into retailer agreements. Deeley's entire business model is based around its relationship with, and the distribution of Harley-Davidson products through, a carefully organized network of independently-owned dealerships.

7. Deeley does not sell Harley-Davidson products directly to consumers, nor does it sell or provide Harley-Davidson products to businesses with whom it has not entered into a retailer agreement.

8. Deeley has designed its network of Harley-Davidson dealerships to ensure consumers are properly supplied and serviced in an efficient manner. This ensures that Harley-Davidson customers are well served and the high-quality Harley-Davidson brand is properly promoted. All modifications to Deeley's dealership network are designed to further these objectives.

9. In this regard, Deeley determines and must have the ability to determine the manner in which it believes Harley-Davidson products are best promoted and distributed and Harley-Davidson customers are best served on a long-term, and not an *ad hoc*, basis. This is particularly so given (i) the high degree of competition from competing manufacturers of motorcycles, parts & accessories, clothing and related products and (ii) the fact that Harley-Davidson motorcycles are manufactured with long production lead times, and are allocated throughout the distribution network on an annual basis.

Relationship with Quinlan's of Huntsville Inc.

10. By letter dated January 16, 2004, Deeley informed Quinlan's that Deeley would not be entering into a new retailer agreement with Quinlan's once the current retailer agreement expired on July 31, 2004.

11. Deeley's business plan no longer contemplates providing Harley-Davidson motorcycles, parts & accessories, clothing and related products to Quinlan's. Deeley made this decision on the

basis of reasonable business considerations and what it believes are in the best interests of both the company, the Harley-Davidson brand and consumers.

12. Deeley's decision was not a result of a lack of competition in the marketplace. In fact, the need to maintain an efficient dealership network is a direct result of the high level of competition in the motorcycle marketplace in Canada.

13. Deeley has no obligation to enter into a new retailer agreement or to extend a retailer agreement following the expiry of a dealer's existing retailer agreement. Under its final retailer agreement, Quinlan's had no right to a new agreement or an extension of its existing agreement.

14. Deeley's decision not to enter into a new retailer agreement with Quinlan's was made for valid business reasons and was completely unrelated to Quinlan's involvement with the Harley-Davidson Dealer's Association for Ontario.

No Substantial Impact on Quinlan's Business

15. In addition to sales of Harley-Davidson products, Quinlan's is also an authorized Honda dealership that sells Honda motorcycles, all-terrain vehicles, parts & accessories, clothing and related products.

16. Quinlan's also sells and service used motorcycles of all brands, as well as sells other used recreational vehicles, including boats. Previously, Quinlan's also sold snowmobiles.

17. There is every reason to believe that Quinlan's could easily become a dealer for one or more competing brands of motorcycles, parts & accessories, clothing and related products and/or a dealer of other types of recreational vehicles.

The Motorcycle Market in Canada and Ontario is Very Competitive.

18. The motorcycle market in both Canada and North America is highly competitive.

19. The motorcycle market in North America, including Canada, comprises many competing brands. Honda, Suzuki, Kawasaki, Yamaha, BMW, Ducati, Polaris, Aprilia and Triumph all

compete vigorously with Harley-Davidson for sales of motorcycles and related products throughout Canada.

20. In Canada, in the category of "street" motorcycles (comprising motorcycles having an engine displacement of 651 cubic centimetres or more), sales of Harley-Davidson motorcycles between September 2003 and May 2004 was approximately 30.9% of category sales. During the same period, sales of Harley-Davidson motorcycles were approximately 35.7% of sales in this category.

21. Since the early 1990s, Harley-Davidson's share of the Canadian motorcycle sales in the category of "street" motorcycles with an engine displacement greater than 651 cubic centimetres has declined from 55.6% in 1991 to 30.9% for the current riding season.

22. Due to the highly competitive nature of the Canadian motorcycle market, Deeley constantly monitors and tracks the sales of competing brands of motorcycles. The purpose of this exercise is to allow Deeley to compare the sales of Harley-Davidson motorcycles with those of competing brands. Deeley uses this information as the basis for creating its business plans and to develop its strategy to compete with other brands of motorcycles; including making changes to its dealership network.

23. In addition to competing with competing motorcycle manufacturers for the sale of motorcycles, Harley-Davidson competes with both other motorcycle manufacturers and third-party manufacturers sale of motorcycle parts & accessories, clothing and related products.

24. With respect to motorcycle parts & accessories, Harley-Davidson's many competitors in this highly competitive field include: Custom Chrome, Cobra, SuperTrapp, K&N, S&S, STD, Progressive, Corbin Kuryakyn, Avon, Performance Machine and Drag Specialties, amongst others.

25. In the similarly highly competitive clothing market, Harley-Davidson clothing competes with Bristol, Wolf, Joe Rocket, Gericke, FIRSTGEAR and Indian, amongst others.

The Ontario Marketplace is Well-Serviced and Highly Competitive

26. Harley-Davidson dealers in Barrie, Lively, Owen Sound, Peterborough, Pembroke, Ottawa, Richmond Hill and Toronto amongst other locations in Ontario already compete with one another in the area currently serviced by Quinlan's.

27. The distance from the area currently served by Quinlan's to the Harley-Davidson dealers in Barrie, Lively, Owen Sound, Peterborough, Pembroke, Ottawa, Richmond Hill, and Toronto, amongst other locations in Ontario and the U.S. is well within the acceptable travel distance for consumers of Harley-Davidson products. The same is true for retailers of competing items and service providers.

28. Additionally, Ontario consumers are also served by Harley-Davidson dealers in the U.S. This is especially so given that Quinlan's (in contravention of its former retailer agreement) has historically sold (either directly or indirectly) several Harley-Davidson motorcycles every into the U.S.

29. Accordingly, these remaining Harley-Davidson dealerships will continue to provide a full range of sales and service choices to consumers in the area previously serviced by Quinlan's.

30. In addition to the Harley-Davidson dealers who can service Quinlan's existing customers, the area currently served by Quinlan's is well served by dealers of competing brands of motorcycles, most, if not all of whom, also sell parts, accessories, clothing and service motorcycles.

31. In short, the area formerly served by Quinlan's is well served and remains highly competitive; with consumers having access to a wide range of competing suppliers of motorcycles, parts & accessories and service at competitive prices.

32. Further, this area is and will continue to be well served by independent vendors of parts & accessories and apparel, as well as by independent service providers.

33. The Respondent will rely on the affidavits of Bremner J. Green, sworn on July 21, 2004 and August 16, 2004 and previously filed with the Competition Tribunal.

34. The Respondent requests that the Application proceed in English.
35. The Respondent requests that the documents be filed in paper form.

Dated at Toronto, in the Province of Ontario, this 7th day of September, 2004.

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QUINLAN'S OF HUNTSVILLE INC
Applicant

and

FRED DEELEY IMPORTS LTD.
Respondent

File No: CT-2004-007

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