

File No. CT-2004-007

COMPETITION TRIBUNAL

BETWEEN:

ROBINSON MOTORCYCLE LIMITED

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED	ACC AGUT 31 2004
	REGISTRAR — REGISTRARE
OTTAWA, ONT. 10011	
Applicant	

- and -

FRED DEELEY IMPORTS LTD.

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 Robinson Motorcycle Limited (“Robinson”) 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) Robinson has failed to establish that it cannot obtain other brands of motorcycles, motorcycle parts & accessories and clothing in the marketplace;
- (d) 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. Robinson’s agreement with Deeley has expired. Deeley has elected not to renew it for another term;

- (e) any inability on the part of Robinson 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
- (f) the area previously served by Robinson 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 Robinson'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, 8, 21 22 and 25 of Robinson's Statement of Grounds and Material Facts.
- 3. Deeley disagrees with the facts alleged in paragraphs 3, 4, 9, 10, 12, 13, 16, 17, 18, 19, 20, 24, 26, and 27 of Robinson's Statement of Grounds and Material Facts.
- 4. Deeley has no knowledge of the allegations contained in paragraphs 5, 6, 11, 14, 15 and 23 of the Applicant'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 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 Robinson Motorcycle Limited

10. By letter dated January 16, 2004, Deeley informed Robinson that Deeley would not be entering into a new retailer agreement with Robinson 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 Robinson. 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, Robinson had no right to a new agreement or an extension of its existing agreement.

The Motorcycle Market in Canada and Ontario is Very Competitive.

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

15. 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.

16. 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 was approximately 35.7% of sales in this category.

17. 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.

18. 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.

19. 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.

20. 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.

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

The Highly Competitive Ontario Motorcycle Marketplace is Well-Serviced and Highly Competitive

22. Harley-Davidson dealers in Windsor, Chatham (both of which are only approximately 70 kilometres from Wheatley, where Robinson is located, and are only approximately 90 kilometres apart), and in Sarnia, London, Hamilton, amongst other locations in Ontario already compete with one another in the area currently serviced by Robinson. Additionally, Ontario consumers are also served by Harley-Davidson dealers in the U.S.

23. The distance from the area currently served by Robinson to the Harley-Davidson dealers in Windsor, Chatham, Sarnia, London, Hamilton, amongst other locations in Ontario 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.

24. 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 Robinson.

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

26. In short, the area formerly served by Robinson 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.

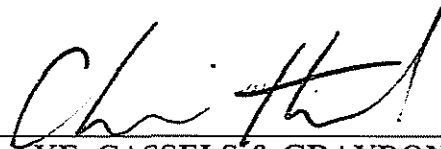
27. Further, this area is and will continue to be well served by independent vendors of parts & accessories and apparel, as well as by independent service providers.

28. The Respondent will rely on the affidavit of Bremner J. Green, sworn on July 21, 2004 and previously filed with the Competition Tribunal.

29. The Respondent requests that the Application proceed in English.

30. The Respondent requests that the documents be filed in paper form.

Dated at Toronto, in the Province of Ontario, this 30th day of August, 2004.



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ROBINSON MOTORCYCLE LIMITED and **FRED DEELEY IMPORTS LTD.**
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