

THE COMPETITION TRIBUNAL

File No.: CT2004007

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

AND IN THE MATTER OF an Application by Robinson Motorcycle Limited
for relief pursuant to sections 75 and 104 of the *Competition Act*.

BETWEEN:

ROBINSON MOTORCYCLE LIMITED

Applicant

- and -

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

Respondent

**APPLICATION FOR INTERIM RELIEF PURSUANT TO SECTION 104
OF THE COMPETITION ACT**

August 19, 2004

DUCHARME FOX LLP
Barristers and Solicitors
800 University Avenue West
Windsor, ON N9A 5R9

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED	AUG 20 2004 <i>JS</i>
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OTTAWA, ON	# 9

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Applicant

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DEELEY HARLEY-DAVIDSON CANADA**

Respondent

**APPLICATION FOR INTERIM RELIEF PURSUANT TO SECTION 104
OF THE COMPETITION ACT**

TAKE NOTICE THAT:

1. The Applicant, Robinson Motorcycle Limited, hereby applies to the Competition Tribunal pursuant to section 104 of the *Competition Act*, R.S. 1985, c. C-34, as amended (the "Act"), for an Interim Order that the Respondent, Fred Deeley Imports Ltd. carrying on business as Deeley Harley-Davidson Canada, accept the Applicant as a customer of Harley Davidson products on the usual trade terms, forthwith upon issuance of said Order.

2. The person against whom an Order is sought is the Respondent, Fred Deeley Imports Limited. Its address is:

830 Edgeley Boulevard
Concord, Ontario
Canada, L4K 4X1

3. The Applicant requests that this application proceed in English.

4. The Applicant requests that documents be filed in paper form.

5. The Applicant will rely on the Statement of Grounds and Material Facts attached hereto and on the Affidavit of Kim Van Deven, duly sworn on August 18, 2004, and such further and other material as counsel may advise and the Tribunal may permit.

DATED at Windsor, Ontario, this 19th day of August, 2004.

STATEMENT OF GROUNDS AND MATERIAL FACTS

The Parties

1. The Applicant, Robinson Motorcycle Limited ("RML"), is a corporation, incorporated under the laws of the Province of Ontario. RML is engaged in the business of selling *inter alia* Harley-Davidson ("H-D") products including motorcycles, parts, accessories, apparel, and other H-D merchandise at its H-D dealership store located in Wheatley, Ontario. RML is the only H-D dealer in the Wheatley area and has been an authorized H-D dealer for 27 years.

2. The Respondent, Fred Deeley Imports Limited, carrying on business as Deeley Harley-Davidson Canada ("FDI") is a corporation incorporated in the Province of British Columbia and is established as Ontario company no. 305708, with its principal Ontario place of business in Concord, Ontario. FDI is the exclusive distributor of H-D products in Canada, which are provided through a national network of H-D dealers, of which RML is one. There are no other suppliers of H-D products in Canada. Accordingly, H-D products cannot be obtained from any supplier other than through FDI.

Developing the Market in RML's Area for H-D Products

3. In 1977, RML became an authorized H-D dealership store selling and promoting H-D products in Wheatley, Ontario. RML was established in 1958 by Jim and Bev

Robinson and began selling H-D motorcycles in the early 1960's. FDI sold H-D products to RML on a wholesale basis and RML marketed and resold H-D products on a retail basis to its customers. Through this arrangement, RML continuously developed the retail market for H-D products throughout its market area for the past 27 years as an official dealer and for an additional 10 to 15 years before that as a motorcycle retailer.

4. In 1990, RML began to sell H-D products exclusively to the exclusion of all other motorcycles. This was done at the suggestion of FDI. RML has operated its retail premises from lands situated immediately adjacent to the Robinson family home. Over the years, RML has continually invested in its business and has upgraded the premises to ensure that it was in compliance with FDI's dealer requirements. RML maintained and invested in its store and its H-D dealership business in reliance upon and consistent with the expectations and representations of FDI that the parties were mutually committed to a long-term H-D dealer/distributor relationship.

5. RML invested its efforts and significant amounts of money for development and maintenance of the dealership store, building its H-D dealership business using FDI recommended store configuration and merchandise displays, and purchasing additional marketing displays and other H-D paraphernalia to comply with the numerous programs, standards, and requirements set out by FDI. As part of the continuing stipulations of FDI, RML displayed the H-D logo on its store front and situated H-D paraphernalia in and around the dealership to maximize customer exposure to H-D products. RML was also required, at its expense, to attend ongoing training seminars and to send staff members

annually for training programs to learn the H-D way of business. It did so as part of its ongoing "partnership" with FDI as a H-D dealer.

6. RML sold other motorcycles in the early years of its operation. By the time it became an official H-D dealer, the majority of its sales were comprised of H-D product. In 1990, at FDI's suggestion, RML eliminated all other brands from its product lines. Thus, H-D products represent 100% of RML's sales. The H-D product is in a far higher price bracket with very different appearance and performance features than any other motorcycle. H-D is one of a kind without equal. The brand name has a unique and unparalleled attraction that transcends the actual product. H-D is not merely a brand name – it is a lifestyle. There is no substitute for H-D.

7. RML is located in close proximity to and surrounded by towns such as Harrow Leamington, Blenheim, Essex, Tilbury and the many villages and rural communities located in between and beyond. Over the course of its 27 plus years as a H-D dealer, RML developed significant good will and a substantial market for H-D products in and around Wheatley stretching throughout southwestern Ontario (collectively referred to as the "Area").

8. The volume of H-D products sold by RML has increased year over year and during its most recent fiscal year, RML sold approximately 85-90 new H-D motorcycles.

RML's sales of H-D new and used motorcycles and all products by dollar value for the

past four years are reflective of its successful efforts to develop the market and good will for H-D products, as shown in the following summary:

Year	Motorcycle Sales	Gross Sales
2000	\$1,179,513.00	\$1,518,188.00
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2002	\$2,284,503.00	\$2,786,546.00
2003	\$2,772,679.00	\$3,391,653.00

FDI's Refusal to Deal

9. RML became a franchise operator selling H-D products in 1977. At that time, other than a letter confirming RML's status as an H-D dealer and a commitment to "a long term mutually profitable and pleasant association", the arrangement was essentially verbal. The verbal arrangement continued thereafter for many years and RML continued to operate as an H-D franchise operator.

10. Beginning in 1994, FDI, for the first time, presented dealer agreements for RML to sign, which it did. In June of 1999, FDI submitted a new form of Dealer Agreement to RML for execution, renamed "Retailer Agreement". The substance of the Retailer Agreement remained similar to the previous Dealer Agreements signed over the preceding 5 years. These agreements were not negotiated between the parties, but were contracts of adhesion, the terms of which were stipulated by FDI. The various dealer agreements stipulated FDI's approval for many material aspects of RML's dealership business. Each Dealer Agreement or renewal contained a stated time duration and FDI's invariable practice was to renew or extend the agreement each time, either by a brief

extension agreement or by submitting a new dealer agreement for signature. Indeed, upon the expiry of the 1994 and 1996 agreements, RML continued to operate as a H-D franchise operator even though no further agreements were signed after the expiry of those agreements.

11. The June 1999 Dealer Agreement had a stated term to July 31, 2001. Jim Robinson signed the Dealer Agreement on June 14, 1999 only after verbal and written assurances were given to the effect that the agreement was for the benefit of all and that FDI could be "trusted" based on the long standing relationship between the parties.

12. Consistent with past practice as the end of the term approached, the Dealer Agreement was extended by a written "Retailer Extension Agreement" dated July 31, 2001, which extended the Retailer Agreement to July 31, 2004.

13. Until recently, RML enjoyed an excellent relationship with FDI. This changed when FDI learned that one of the dealer-principals of RML, Kim Van Deven, participated with other H-D dealers in the establishment of the H-D Dealers' Association for Ontario (the "Association") in or around the summer of 2001. The purpose of the Association was to pursue the collective interests and concerns of H-D dealers across Ontario in order to promote the H-D brand, explore areas of mutual profitability, and to generally function as a channel which would allow H-D dealers to have some voice with FDI in respect of their business issues and in particular, the terms of the standard form Dealer Agreement stipulated by FDI.

14. FDI disapproved of the formation of the Association and in September of 2001, it expressed its disapproval to Kim Van Deven, the founding Treasurer of the organization stating that: "The fundamentals around creating a legal entity to better represent the interests of Ontario is somewhat disappointing" and that FDI believed "this type of association would not be necessary". FDI did not, however, mention anything about discontinuing its relationship with RML and the parties continued on in reliance on the mutual expectation and understanding of their continuing "partnership" in selling and developing RML's market Area for H-D products.

15. During the period following FDI's renewal of the Dealer Agreement, RML continued to invest its efforts and resources in the business, marketing H-D products in its Area. This required RML sustained expenditure and reinvestment of profits in continuing to maintain and expand its marketing of H-D products. FDI encouraged this spending in order to ensure ongoing development of the market for H-D products in RML's Area.

16. By a letter dated January 16th, 2004 FDI advised that it would not offer RML an "extension" of the Retailer Agreement or a "new retail contract". No reason was given. When pressed for an explanation, FDI's representative stated only that the reason was that RML had been too successful. FDI alleged that RML sold H-D products beyond a restrictive geographical territory. FDI had never before sought to impose any territorial restrictions on RML. After further objection and inquiry by RML through counsel, FDI

advised through its counsel that FDI's "market studies have demonstrated that there is no natural market for H-D products" in the proposed newly defined restrictive area. FDI was clear and categorical that it would not supply RML with any H-D products after July 31, 2004 and that its decision was final.

Substantial Detrimental Effect

17. The overall effect of the termination of RML's H-D dealership by FDI will be devastating upon it. If FDI fails to supply RML with H-D products, RML will be precluded from continuing with its business due to its inability to obtain H-D products to sell. Not only will RML lose its ability to sell H-D motorcycles, it will also lose its service and warranty work which comprise a significant part of its business. There is simply no replacement product that is equivalent to H-D.

18. RML has developed much of the good will for H-D products in the Area through its efforts and investment in marketing H-D products. This good will built by RML is not transferable by RML to another product line because RML invested it in H-D products as part of FDI's marketing strategy to build strong H-D brand loyalty among its customers, and to build interest and brand awareness. RML is now synonymous with H-D in its area.

19. H-D products are largely unaffected by possible substitutes in the Area because non-H-D products do not carry the mystique developed as a unique attribute of the H-D

image. H-D products are viewed by customers as “entirely different products”. Once RML has recruited a customer to the H-D product, generally they are not interested in switching. Non-H-D products have been unable to break into the H-D product market because they are significantly different products operating in a significantly different market, appealing to a different clientele. There is no equivalent substitute for the mystique and image of H-D products.

20. H-D products have produced a clientele that cannot be persuaded to purchase other brands. RML was instrumental in forming Ontario’s first “HOG” chapter (Harley-Davidson Owners’ Group). HOG aficionados are so utterly devoted to the product that they literally build their lives around owning a H-D motorcycle. Annual HOG events throughout Canada and the United States routinely include weddings at H-D dealer locations. No other brand of motorcycle produces this type of following and loyalty.

21. The devotion and effort expended by RML to the H-D marketing strategy is also illustrated by the incidence of repeat sales of H-D products to customers, since many of its existing customers have successively purchased new H-D products from it. This is consistent with the mission statement in FDI’s written and oral dealer training programs that RML should make its H-D customers, “customers for life”.

22. The effect of FDI’s failure to supply H-D products to RML in these circumstances will deal a staggering and fatal blow to its business. It will also result in FDI appropriating at no cost for its own use and benefit a windfall gain resulting from the

substantial investment and development of the market and good will for H-D products established by RML in the Area. RML will lose all of its H-D customers as well as 100% of its sales revenue. RML simply cannot survive if FDI is permitted to cut off supply.

23. If RML is unable to obtain adequate supplies of H-D products after August 27, 2004, when the new season of H-D products will be available, its sales for the upcoming season will be significantly prejudicially affected. Indeed, rumours have been circulating among RML's customers already causing untold harm and uncertainty.

24. FDI's refusal to deal will result in RML being unable to fulfill its ongoing business obligations and relationships, which will negatively impact its customers and irreparably harm its customer relationships and its business. RML's business has already been substantially adversely affected over the past two months. RML attributes this drop in sales directly to customer uncertainty resulting from FDI's disclosure that it will no longer supply RML after August 27, 2004.

25. If H-D products are no longer sold and serviced in Wheatley, RML's customers will be forced to travel to other H-D dealers a great distance away. The effect of FDI's refusal to deal with RML not only will have an adverse effect on competition in the market, since the termination of RML as a H-D dealer will result in reduced competition; it will also adversely affect RML's customers. Literally hundreds of customers have delivered emails expressing concern about their ability to have their H-D products serviced and maintained. RML has been selling extended warranty programs for several

years and has put its reputation behind the warranty. The inability to obtain H-D parts will preclude the performance of the warranty work that RML has contracted to perform.

26. FDI is the exclusive supplier of H-D products in the Area and its H-D products occupy a dominant position in the marketplace. RML would be substantially affected due to its inability to obtain adequate or indeed, any supplies, of H-D products anywhere in the market since there are no other suppliers of H-D products in Canada.

27. RML has consistently met FDI's usual trade terms over the past 27 years as a H-D dealer, and it is willing and able to continually meet the usual trade terms of FDI.

28. H-D products are in ample supply through FDI.

29. RML has continuously, competently and diligently maintained prominent and professional H-D representation and product promotion with the highest level of dedication and support as was required by FDI for over 27 years. RML's results and efforts have been recognized by FDI on many occasions, as reflected in the positive results achieved by it with respect to its representation of the H-D product, as well as comments received from customers.

RML's Need for Interim Relief Pending Hearing of Application

30. Leave was granted pursuant to section 103.1 of the Act on July 19, 2004 by Order Justice Simpson. Although the Respondent has filed an appeal of that Order it is primarily technical in nature. It is therefore submitted that there is a serious question to be tried in these proceedings under section 75 of the Act.

31. RML will suffer irreparable harm if interim relief is not granted pending hearing of this Application since its business will no longer be commercially viable and it will lose its H-D customers. Should interim relief be granted, FDI will suffer no harm since it will continue to benefit from RML's efforts selling H-D products during this period. The issuance of an Order against FDI to supply RML will merely preserve the status quo pending the determination of RML's Application to the Competition Tribunal. On the balance of convenience, the failure to grant interim relief pending hearing of the Application will cause substantially greater harm to RML than it would to FDI, since RML's business and reputation as a H-D retailer will be substantially destroyed with its customers after August 27, 2004, if RML has no H-D products to sell and it is unable to service its existing customers.

32. In February 2004, FDI offered a temporary extension of the existing agreement to October 31, 2004. The letter, however, was drafted in terms of a contract that RML believed would extinguish its right of action against FDI arising from its termination of RML's Retailer Agreement if it was accepted. The letter was not signed back by RML

for this reason. Nevertheless, the proposal by FDI for an extension shows that there is no material prejudice to FDI if an interim order is made requiring FDI to supply RML, pending determination of this Application.

33. RML undertakes to abide by any order that may be made against it as a result of its interim relief requested, being granted.

BASIS FOR APPLICATION PURSUANT TO S.104

34. In this application, RML seeks an interim order pursuant to section 104 of the Act, which provides:

104. (1) Where an application has been made for an order under this Part, other than an interim order under section 100 or 103.3, the Tribunal, on application by the Commissioner or a person who has made an application under section 75 or 77, may issue such interim order as it considers appropriate, having regard to the principles ordinarily considered by superior courts when granting interlocutory or injunctive relief.

(2) An interim order issued under subsection (1) shall be on such terms, and shall have effect for such period of time, as the Tribunal considers necessary and sufficient to meet the circumstances of the case.

(3) Where an interim order issued under subsection (1) on application by the Commissioner is in effect, the Commissioner shall proceed as expeditiously as possible to complete proceedings under this Part arising out of the conduct in respect of which the order was issued.

35. In *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 334, the Supreme Court of Canada articulated the three-part test in an application for

interlocutory relief referred to in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110, which reads as follows:

“Metropolitan Stores adopted a three-stage test for courts to apply when considering an application for either a stay or an interlocutory injunction. First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.”

36. In *London (City) v. Talbot Square Ltd.* (1978), 22 O.R. (2d) 21, the Ontario Divisional Court determined that interlocutory injunctions are granted with a view to preserving the status quo.

37. The evidence on this Application demonstrates:

(a) Since leave has been granted pursuant to section 103.1 of the Act, there is a serious question to be tried in these proceedings under section 75 of the Act;

(b) RML will suffer irreparable harm if the application for interim relief were refused in that its sales will be eliminated and the good will developed by it for the past 27 years will be lost;

(c) FDI will suffer no harm as it will continue to benefit from RML's efforts to sell H-D products; and

(d) The issuance of an Order against FDI to supply RML will merely preserve the status quo pending the determination of its Application.

38. RML relies upon the Affidavits of Kim Van Deven filed in support of its earlier Application for leave and in support of this Application for Interim Relief.

39. The actions of FDI in refusing to deal with RML, fall within the scope of activity prescribed by Section 75 of the Act and amount to a practice which is subject to an Order under that section in that the Tribunal may issue such order against FDI to accept RML as a customer on the usual trade terms.

DATED at Windsor, Ontario, this 19th day of August, 2004.

DUCHARME FOX, LLP
Barristers & Solicitors
800 University Avenue West
Windsor, Ontario
N9A 5R9

DAVID M. McNEVIN
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Solicitors for the Applicant

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Ottawa, ON K1P 5B4
Telephone number: (613) 957-7851
Facsimile number: (613) 952-1123

AND TO: **Sheridan Scott**
Commissioner of Competition
Competition Bureau
50 Victoria Street
K1A 0C9
Telephone number: (819) 997-3301
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AND TO: **Fred Deeley Imports Ltd.**
c.o.b. Deeley Harley-Davidson Canada
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Concord, Ontario

AND TO: **R. Seumas M. Woods**
Blake, Cassels & Graydon LLP
Barristers & Solicitors
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199 Bay Street
Toronto, Ontario
M5L 1A9

Telephone number: (416) 863-2400
Facsimile number: (416) 863-2653

Solicitors for the Respondent

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Respondent

AFFIDAVIT OF KIM VAN DEVEN

(Sworn August 18, 2004)

I, **KIM VAN DEVEN**, of the Town of Wheatley, in the Province of
Ontario, MAKE OATH AND SAY:

1. I am the President of Robinson Motorcycle Limited ("RML"), the Applicant herein, and as such have knowledge of the matters to which I hereinafter depose. In instances where I have acquired information from third parties, I verily believe that information to be true.

Purpose of Affidavit:

2. I make this affidavit in support of an Application pursuant to section 104 of the *Competition Act*, R.S. 1985, c. C-34, as amended (the "Act"), for an Interim Order that the Respondent, Fred Deeley Imports Ltd. carrying on business as Deeley Harley-Davidson Canada, accept the Applicant as a customer of Harley Davidson products on the usual trade terms, forthwith.

Overview and Parties:

3. RML is a corporation, incorporated under the laws of the Province of Ontario. RML is engaged in the business of selling *inter alia* Harley-Davidson ("H-D") products including motorcycles, parts, accessories, apparel, and other H-D merchandise at its H-D dealership store located in Wheatley, Ontario. RML is the only H-D dealer in the Wheatley area and has been an authorized H-D dealer for 27 years.

4. The Respondent, Fred Deeley Imports Ltd., carrying on business as Deeley Harley-Davidson Canada ("FDI") is a corporation incorporated in the Province of British Columbia and is established as Ontario company no. 305708, with its principal Ontario place of business in Concord, Ontario. FDI is the exclusive distributor of H-D products in Canada, which are provided through a national network of H-D dealers, of which RML is one. There are no other suppliers of H-D products in Canada. Accordingly, H-D products cannot be obtained from any supplier other than through FDI.

5. RML was established in 1958 by my father and mother, Jim and Bev Robinson. By the early 1960's, RML began selling H-D motorcycles together with other brands. Initially, RML sold only used bikes, however, by the late 1960's it was also acquiring and selling new H-D motorcycles.

6. My father was a motorcycle racing enthusiast and was in fact the Canadian motorcycle racing champion in 1977 riding on a H-D motorcycle. By 1977, my father became a franchise operator through FDI which itself had only then been established as the Canadian distributor. Sadly, my father passed away on August 15, 2003. As one of the dealer principals approved by FDI, I together with my mother and my brother (who is not a dealer principal) have every intention of continuing the family business and have made every effort to do so.

7. On January 15, 2004 I was shocked to learn that FDI did not intend to renew RML's Retailer Agreement and tersely refused to enter into any further agreements to sell H-D product to RML. Despite repeated requests to reconsider their position, FDI has made it clear in no uncertain terms that it will not sell H-D products to RML after August 27, 2004. For this reason, I am left with no alternative other than to seek relief from the Competition Tribunal in the hopes that an order will be made directing FDI to continue to supply RML pending the outcome of RML's Application to the Tribunal.

Developing the Market in RML's Area for H-D Products

8. In 1977, RML became an authorized H-D dealership store selling and promoting H-D products in Wheatley, Ontario. FDI approached my dad in 1976 in an effort to persuade him to become an official H-D dealer. In this regard, FDI wrote to my dad on March 1, 1976 outlining the requirements to become a H-D franchise operator. At that time FDI stated, in part, that:

“In a brief recap then Jim, the franchise requirements would involve an order for seven units, a basic parts and tool order and the H.D. sign. I am firmly convinced that a favourable reply from you will result in a long term mutually profitable and pleasant association, I hope you are of the same opinion, and I look forward to receiving a favourable response.”

A true copy of the said letter is attached hereto and marked as Exhibit “A”.

9. In 1977, the arrangement was formalized and on February 17, 1977, FDI wrote to my dad to confirm his status as a H-D dealer. A true copy of this correspondence is attached hereto and marked as Exhibit “B”.

10. From 1977 to the present date, FDI sold H-D products to RML on a wholesale basis and RML would then market and resell H-D products on a retail basis to its customers. Through this arrangement, RML continuously developed the retail market for H-D products throughout its market area for the past 27 years as an official dealer and for an additional 10 to 15 years before that as a motorcycle retailer.

11. In 1990, RML began to sell H-D products exclusively to the exclusion of all other motorcycles. This was done at the suggestion of FDI. RML has operated its retail premises from lands situated immediately adjacent to my parent's family home. Over the years, RML has continually invested in its business and has upgraded the premises to ensure that it was in compliance with FDI's dealer requirements. RML maintained and invested in its store and its H-D dealership business in reliance upon and consistent with the expectations and representations of FDI that the parties were mutually committed to a long-term H-D dealer/distributor relationship.

12. Over the years, RML made significant investments both in time and dollars for the development and maintenance of the dealership store, building its H-D dealership business using FDI recommended store configuration and merchandise displays, and purchasing additional marketing displays and other H-D paraphernalia to comply with the numerous programs, standards, and requirements set out by FDI. As part of the continuing stipulations of FDI, RML displayed the H-D logo on its store front and situated H-D paraphernalia in and around the dealership to maximize customer exposure to H-D products. RML was also required, at its expense, to attend ongoing training seminars and to send staff members annually for training programs to learn the H-D way of business. It did so as part of its ongoing "partnership" with FDI as a H-D dealer.

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Thus, H-D products represent 100% of RML's sales. The H-D product is in a far higher price bracket with very different appearance and performance features than any other motorcycle. H-D is one of a kind without equal. The brand name has a unique and unparalleled attraction, sound and feel that transcends the actual product. H-D is not merely a brand name – it is both a legend and a lifestyle. There is no substitute for H-D.

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FDI's Refusal to Deal

17. RML became a franchise operator selling H-D products in 1977. At that time, other than a letter confirming RML's status as an H-D dealer and a commitment to "a long term mutually profitable and pleasant association", the arrangement was essentially verbal. The verbal arrangement continued thereafter for many years and RML continued to operate as an H-D franchise operator.

18. Beginning in 1994, FDI presented dealer agreements or renewal or extension agreements for RML to sign, which it did. In June of 1999, FDI submitted a new form of Dealer Agreement to RML for execution, renamed "Retailer Agreement". The substance of the Retailer Agreement remained similar to the previous Dealer Agreements signed over the preceding 5 years. These agreements were not negotiated between the parties - the terms were stipulated by FDI. The various dealer agreements stipulated FDI's approval for many material aspects of RML's dealership business. Each Dealer Agreement or renewal contained a stated time duration and FDI's invariable practice was to renew or extend the agreement each time, either by a brief extension agreement or by submitting a new dealer agreement for signature. Indeed, upon the expiry of the 1994 and 1996 agreements, RML continued to operate as a H-D franchise operator even though no further agreements were signed after the expiry of those agreements.

19. The June 1999 Dealer Agreement had a stated term to July 31, 2001. My father, Jim Robinson, signed the Dealer Agreement on June 14, 1999 only after verbal and

written assurances were given to RML to the effect that the agreement was for the benefit of all and that FDI could be "trusted" based on the long standing relationship between the parties. In fact, FDI committed this position to writing by delivering a letter confirming the substance of these representations on May 4, 1999, before my dad agreed to sign the Retailer Agreement. A true copy of this correspondence is attached hereto and marked as Exhibit "C".

20. My father advised me that but for the assurances and representations from FDI to the effect that we could "trust" them based on our long standing relationship and that they were merely trying to "maximize value" for our mutual benefit, he would never have signed the Retailer Agreement.

21. Consistent with past practice, as the end of the term approached, the Retailer Agreement was extended by a written "Retailer Extension Agreement" dated July 31, 2001, which extended the Retailer Agreement to July 31, 2004.

22. Until recently, RML had enjoyed an excellent relationship with FDI. This changed when FDI learned that I, an approved dealer-principal of RML, had participated with other H-D dealers in the establishment of the H-D Dealers' Association for Ontario (the "Association") in or around the summer of 2001. The purpose of the Association was to pursue the collective interests and concerns of H-D dealers across Ontario in order to promote the H-D brand, explore areas of mutual profitability, and to generally function as a channel which would allow H-D dealers to have some voice with FDI in respect of

their business issues and in particular, the terms of the standard form Dealer Agreement stipulated by FDI.

23. FDI disapproved of the formation of the Association and in September of 2001, it expressed its disapproval to me as the founding Treasurer of the organization. FDI did not, however, mention anything about discontinuing its relationship with RML and we continued on in reliance on the mutual expectation and understanding of our continuing "partnership" in selling and developing RML's market Area for H-D products.

24. During the period following FDI's renewal of the Dealer Agreement, RML continued to make investments in the business and marketing H-D products in our Area. This required sustained expenditures by RML and reinvestment of our profits in continuing to maintain and expand our marketing of H-D products. FDI encouraged this spending in order to ensure ongoing development of the market for H-D products in RML's Area.

25. On January 15th, 2004, I together with my brother Randy, my mother Bev and my husband Gerry were asked to attend a dinner meeting with two representatives of FDI.

At the outset of the meeting, we were told that FDI had completed some "market studies". We were shown a map with boundary lines drawn restrictively around the location of our dealership. To this point in time, none of the agreements signed by RML and FDI had any boundary restrictions and RML was under no obligation to restrict its sales to any specific geographic area.

26. Notwithstanding the fact that RML was under no obligation to restrict its sales to any particular territory, we were told that if the proposed boundaries identified in the market study were adopted and we were restricted to selling H-D products within the proposed territory, we would not have a sufficient population of H-D customers to sustain our business. Even though FDI had no authority to impose the proposed boundary restrictions or to restrict us in selling H-D product anywhere in the province of Ontario, we were told that we were being cancelled as a dealer because of an apparent lack of a viable market in the proposed restrictive territory. We were told that many of our past sales were made in areas beyond the proposed restrictive territory.

27. My husband, brother, mother and I were in complete disbelief and shock. We were being told that we had been too successful and were being let go because of it. This made absolutely no sense to any of us.

28. By a letter dated January 16th, 2004 FDI advised that it would not offer RML an "extension" of the Retailer Agreement or a "new retail contract". No reason was given in the letter a true copy of which is attached hereto and marked as Exhibit "D". When pressed for an explanation, FDI's representative repeated what had been said at the dinner meeting and advised that the only reason was that RML had been too successful and had sold H-D products beyond what FDI sought, for the first time, to establish as a restrictive geographical territory. After further objection and inquiry by RML through counsel, FDI advised through its counsel that FDI's "market studies have demonstrated that there is no

natural market for H-D products” in the proposed newly defined restrictive area. FDI was clear and categorical that it would not supply RML with any H-D products after July 31, 2004 and that its decision was final. Product availability for parts and accessories (excluding motorcycles) has been extended until August 27, 2004 on a without prejudice basis.

Substantial Detrimental Effect

29. The overall effect of the termination of RML’s H-D dealership by FDI will be devastating upon us. It will completely wipe out and destroy our business as we have no other product to sell other the H-D product. For the last 14 years, we have dedicated 100% of our effort in developing a market for H-D products and accessories. If FDI fails to supply RML with H-D products, RML will be precluded from continuing with its business due to its inability to obtain H-D products to sell. Not only will RML lose its ability to sell H-D motorcycles, it will also lose its service and warranty work which comprise a significant part of our business. There is simply no replacement product that is equivalent to H-D.

30. RML has developed much of the good will for H-D products in the Area through our efforts and investment in marketing H-D products. This good will built by RML is not transferable by RML to another product line because RML invested it in H-D products as part of FDI’s marketing strategy to build strong H-D brand loyalty among its

customers, and to build interest and brand awareness. RML is now synonymous with H-D in our Area.

31. H-D products are largely unaffected by possible substitutes in the Area because non-H-D products do not carry the mystique developed as a unique attribute of the H-D image. H-D products are viewed by customers as "entirely different products". Once RML has recruited a customer to the H-D product, generally they are not interested in switching. A significant portion of our business is from existing H-D owners who are looking to trade in their old bike and get a new one. Non-H-D products have been unable to break into the H-D product market because they are significantly different products operating in a significantly different market, appealing to a different clientele. There is no equivalent substitute for the mystique and image of H-D products.

32. H-D products have produced a clientele that cannot be persuaded to purchase other brands. RML was instrumental in forming Ontario's first "HOG" chapter (Harley-Davidson Owners' Group). HOG aficionados are so utterly devoted to the product that they literally build their lives around owning a H-D motorcycle. Annual HOG events throughout Canada and the United States routinely include weddings at H-D dealer locations. We have even hosted a wedding in front of our dealership in response to a request from one of our customers. No other brand of motorcycle produces this type of following and loyalty.

33. The devotion and effort expended by RML to the H-D marketing strategy is also illustrated by the incidence of repeat sales of H-D products to customers, since many of our existing customers have successively purchased new H-D products from us. This is consistent with the mission statement in FDI's written and oral dealer training programs that RML should make its H-D customers, "customers for life".

34. The effect of FDI's failure to supply H-D products to RML in these circumstances will deal a staggering and fatal blow to our business. It will also result in FDI appropriating at no cost for its own use and benefit a windfall gain resulting from the substantial investment and development of the market and good will for H-D products established by RML in our Area. RML will lose all of its H-D customers as well as 100% of its sales revenue. RML simply cannot survive if FDI is permitted to cut off supply.

35. If RML is unable to obtain adequate supplies of H-D products after August 27, 2004, as the new season of H-D products are already available, its sales for the upcoming season will be significantly prejudicially affected. Indeed, rumours have been circulating among our customers for several months causing us untold harm and uncertainty.

36. FDI's refusal to deal will result in RML being unable to fulfill its ongoing business obligations and relationships, which will negatively impact its customers and irreparably harm its customer relationships and its business. RML's business has already been adversely affected over the past two months. RML attributes this adverse effect

directly to customer uncertainty resulting from FDI's disclosure that it will no longer supply RML after August 27, 2004.

37. If H-D products are no longer sold and serviced in Wheatley, RML's customers will be forced to travel to other H-D dealers a great distance away. The effect of FDI's refusal to deal with RML not only will have an adverse effect on competition in the market, since the termination of RML as a H-D dealer will result in reduced competition; it will also adversely affect RML's customers directly. Literally hundreds of customers have delivered emails expressing concern about their ability to have their H-D products serviced and maintained. RML has been selling extended warranty programs for several years and has put its reputation behind the warranty. The inability to obtain H-D parts will preclude the performance of the warranty work that RML has contracted to perform.

38. FDI is the exclusive supplier of H-D products in the Area and its H-D products occupy a dominant position in the marketplace. RML would be substantially affected due to its inability to obtain adequate or indeed, any supplies of H-D products anywhere in the market since there are no other suppliers of H-D products in Canada.

39. RML has consistently met FDI's usual trade terms over the past 27 years as a H-D dealer, and it is willing and able to continually meet the usual trade terms of FDI. Moreover, and perhaps ironically, RML has consistently received excellent performance evaluations and has consistently met and/or exceeded its sales quota. Attached hereto and marked as Exhibit "E" is RML's "Interim Report Card" from FDI for the period

August 2003 to June 2004. In the report, we are commended for providing “spectacular” service to our customers and serving as a “benchmark to which other retailers strive to be like.” Further, attached hereto and marked as Exhibit “F” is a letter from DFI dated May 31, 2004 congratulating RML for reaching its sales targets. In the letter, our District Manager indicates that it is “our pleasure to recognize your achievements”.

40. H-D products are in ample supply through FDI. On many occasions over the last couple of years, RML has taken extra inventory from other dealers in southwestern Ontario who are unable to sell their allotment of H-D motorcycles.

41. RML has continuously, competently and diligently maintained prominent and professional H-D representation and product promotion with the highest level of dedication and support as was required by FDI for over 27 years. RML’s results and efforts have been recognized by FDI on many occasions, as reflected in the positive results achieved by it with respect to its representation of the H-D product, as well as comments received from customers. A recent customer survey is attached hereto and marked as Exhibit “G” indicating that RML provided “exceptional” service in every category.

RML’s Need for Interim Relief:

42. Leave was granted pursuant to section 103.1 of the Act on July 19, 2004 by Order Justice Simpson. Although FDI has filed an appeal of that Order it is primarily technical

in nature as I understand it relating to a request for the delivery of reasons. I therefore believe that there is a serious question to be tried in these proceedings under section 75 of the Act.

43. RML will suffer irreparable harm if interim relief is not granted pending hearing of this Application since its business will no longer be commercially viable and it will lose its H-D customers. Should interim relief be granted, FDI will suffer no harm since it will continue to benefit from RML's efforts selling H-D products during this period. The issuance of an Order against FDI to supply RML will merely preserve the status quo pending the determination of RML's Application to the Competition Tribunal. On the balance of convenience, the failure to grant interim relief pending hearing of the Application will cause substantially greater harm to RML than it would to FDI, since RML's business and reputation as a H-D retailer will be substantially destroyed with its customers after August 27, 2004, if RML has no H-D products to sell and it is unable to service its existing customers.

44. In February 2004, FDI offered a temporary extension of the existing agreement, excluding 2005 product, to October 31, 2004. The letter, however, was drafted in terms of a contract that RML believed would extinguish its right of action against FDI arising from its termination of RML's Retailer Agreement if it was accepted. A true copy of the letter is attached hereto and marked as Exhibit "H". The letter was not signed back by RML since we did not wish to give up any rights. Nevertheless, the proposal by FDI for

an extension shows that there is no material prejudice to FDI if an interim order is made requiring FDI to supply RML, pending determination of this Application.

45. RML hereby undertakes to abide by any order that may be made against it as a result of its interim relief requested, being granted.

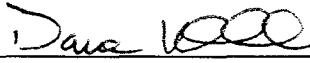
46. I make this affidavit in support of an Application for an interim injunction and for no other or improper purpose.

SWORN BEFORE ME at the
City of Windsor
in the County of Essex,
this 18TH day of August, 2004

Dave McDevine
Commissioner for taking affidavits

)
)
)
)
)
Kim Van Deven
KIM VAN DEVEN

THIS IS EXHIBIT " A " TO THE
AFFIDAVIT OF KIM VAN DEVEN
SWORN BEFORE ME
THIS 18TH DAY OF AUGUST, 2004.



Commissioner for Taking Affidavits



fred deeley imports ltd

KIM'S COPIES (5)

HEAD OFFICE: 804 RIVER ROAD, RICHMOND, B.C., CANADA V6X 1X7 - TELEPHONE (604) 273-9677 - TELEX 04-508700
EASTERN REGIONAL OFFICE: 55 PENN DR., WESTON, ONT., CANADA M9L 2A6 - TELEPHONE (416) 741-5445 - TELEX 06-965729

March 1st, 1976.

Robinson's Motorcycles Sales,
Wheatley, Ontario.

Att : Mr. Jim Robinson,

Dear Jim;

I would like to take just a moment more of your time to reiterate some of the basic information I left with you on Saturday and perhaps fill in an item or two that I may have omitted.

As you know Fred Deeley Imports head office is based in Richmond B.C., however the operational headquarters are in Toronto or more specifically Weston. That is to say that all vehicle, parts and service requirements are handled through the Weston office. The Vancouver office is primarily an administrative office.

In so far as the Harley-Davidson dealer franchise requirements are concerned they are as follows: We request that the dealer carry at all times a representative line of the product. In this instance we are speaking strictly about motorcycles, The number of units is determined in relation to the marketing area that the dealer would service. In your situation it would be seven units, broken down into three twins and four lightweights (ie) 1- FLH 1- FX or FXF 1- XLH or XLCH 1- SS or SX 250 1- SS or SX 175 and 2- SS or SX 125 . The only reason for the two 125 units is that they come two to a crate. Payment for motorcycles is a cheque with order situation. I have mentioned that we are connected with Borg-Warner, but this is of no interest to you. Units are warehoused in Weston five minutes from our office.

In relation to parts, our 10,000 sq building is primarily composed of parts and accessory stock, with an estimated dollar value of \$ 1.5 M.

Cont'd on P. 2 -



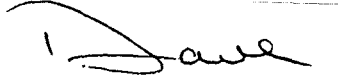
The average parts discount is in the region of forty percent (40%). This of course fluctuates with individual items. We also have a pretty complete line of Harley-Davidson accessory items including clothing, motorcycle items and dealer aids. As an initial stocking order for a new dealer we suggest a \$2000.00 order which would include oil. An illuminated sign is another requirement that would fit in this area.

Finally with regard to service aspects we request that the dealer have on hand all the basic special tools necessary to service the product. This would involve an expenditure of approximately \$ 250.00. As I stated at the time of my visit your existing facilities more than adequately meet the normal requirements of showroom, parts and service areas necessary to function as a franchised dealer.

In a brief recap then Jim, the franchise requirements would involve an order for seven units, a basic parts and tool order and the M.D. sign. I am firmly convinced that a favourable reply from you will result in a long term mutually profitable and pleasant association, I hope you are of the same opinion, and I look forward to receiving a favourable response.


In closing I would like to thank you for your time and hospitality extended to me on Saturday. I sincerely enjoyed the visit and the opportunity to meet with you and your family.

Sincerely,


Dave Lloyd,
District Manager.

DL/pl

THIS IS EXHIBIT " B " TO THE
AFFIDAVIT OF KIM VAN DEVEN
SWORN BEFORE ME
THIS 18TH DAY OF AUGUST, 2004.



Commissioner for Taking Affidavits

(56)

fred deeley imports ltd

EXCLUSIVE CANADIAN DISTRIBUTOR

HEAD OFFICE: 1226 VULCAN WAY, RICHMOND, B.C., CANADA V6V 1J8 TELEPHONE (604) 273-9677 TELEX 04-355583
EASTERN REGIONAL OFFICE: 55 PENN DR., WESTON, ONT., CANADA M9L 2A6 TEL.: (416) 741-5445 TELEX 06-965729

February 15, 1977.

Mr. Jim Robinson,
Robinson Motorcycle Sales and Service,
Highway no. 3,
R.R. 1,
Wheatley, Ontario.

Dear Jim:

Congratulations! - sure good to talk to you and know that you are now ready to proceed as a Harley dealer - Dave Lloyd will contact you accordingly in the next few days.

I have made reservations for you in Montreal at the Holiday Inn Place Dupuis, 1415 St. Hubert St., (514-842-4881) for next Wednesday, February 23rd to Sunday 27th. It could take as long as 9 or 10 hours to drive to Montreal from Wheatley, so it would be best to plan for an early start and go straight to the Velodrome in the east end of the city to off load your machines.

You will take Highway 401 to the Quebec border and then it becomes known as no. 20. Keep going - don't turn off at Dorion - stay on no.20 to no.540 and no.40 - then straight into town on the Metropolitan Expressway - keep going east on the Metropolitan and turn off to the right on to VIAU St. going south - VIAU is the interchange after PIE IX - go straight down VIAU and immediately after you pass Sherbrooke St. you will see the Velodrome and the Olympic Stadium on your right. Drive in and ask directions to the underground garage for the Velodrome - I will send passes to you beforehand.

Ask for the Harley-Davidson Quebec District Manager, Guy Duhaime and/or myself. One of us will be waiting for you.

THIS IS EXHIBIT " C " TO THE
AFFIDAVIT OF KIM VAN DEVEN
SWORN BEFORE ME
THIS 18TH DAY OF AUGUST, 2004.

Dave Moore

Commissioner for Taking Affidavits

Fred Deeley Imports Ltd.

Exclusive Harley-Davidson Distributor/Distributeur Exclusif.

7



May 4, 1999

To: **All Retailers**

Re: **Retailer Agreement Follow-up**

During the last few weeks we have had lots of dialogue with many of you on the new Retailer Agreement. I think those discussions were healthy and productive. They helped provide clarity to some of the new sections and, ultimately, created an opportunity for FDI to explain the rationale for certain sections and language. As a result of that input we have made some revisions to the first version of the agreement and we will be redistributing a 'black lined' version (highlighting changes), together with execution copies for your signature. For those of you who may have already sent in the original version we will be contacting you to get a new version signed. Everyone will eventually sign the same agreement.

The Retailer Agreement is required in order to ensure that the value of the Harley-Davidson brand is protected and the investment you have made in your business is maximized. Like all agreements these need to be entered into in conjunction with a level of trust between the parties. I hope, given our track record and the relationship that we have developed with you, that we can now all move forward with confidence.



As you are aware, there are certain provisions of the Retailer Agreement which refer to FDI's policies (such as service school and multiple ownership). In this regard, we will circulate to you shortly correspondence outlining FDI's current policies on these matters.

In connection with the revised Retailer Agreement, please note the following:

- A new section on store hours was included to try and ensure that customer needs are being satisfied. Local markets and customers will determine what specific hours/days of operation are needed to meet this requirement.



VERY IMPORTANT



- The 'right of first refusal' remains in the agreement. It is necessary to ensure that the network is protected in conjunction with the transfer or sale of a business. Note that this provision can be overcome by obtaining FDI's prior written consent of potential candidates. We strongly advise that all Retailers undertake some form of succession planning which can be reviewed with (and pre-approved by) FDI to provide for orderly transitions.
- Disputes amongst partners remains in the event that it adversely affects the business. While there are performance provisions elsewhere this section provides for clear action to protect the goodwill associated with the brand and Harley-Davidson properties.

Deeley's can buy dealer

Thanks again for all your comments and input.

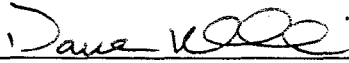
Sincerely,

FRED DEELEY IMPORTS LTD.

Per:

Buzz Green
General Manager

THIS IS EXHIBIT " D " TO THE
AFFIDAVIT OF KIM VAN DEVEN
SWORN BEFORE ME
THIS 18TH DAY OF AUGUST, 2004.


Commissioner for Taking Affidavits

9

Fred Deeley Imports Ltd.
Exclusive Harley-Davidson Distributor/Distributeur Exclusif

January 16, 2004

Beverley Robinson
Robinson Motorcycle Ltd.
RR#1
Wheatley, Ontario
N0P 2P0



Dear Beverley:

Re: Retailer Agreement with Fred Deeley Imports Ltd.

As you are aware, your Retailer Agreement executed on June 14, 1999, which was subsequently extended by the Retailer Extension Agreement dated July 31, 2001 (collectively referenced hereinafter as the "Retailer Agreement"), will expire on July 31, 2004.

As a courtesy to you, and further to discussions held with you on this matter, we take this opportunity to inform you that we will not be offering you either a new retail contract or an extension of the existing one, upon the expiry of the Retailer Agreement on July 31, 2004. Additionally, for further clarification, all rights granted under the Retailer Agreement to use the Harley-Davidson trademarks and trade names will concurrently end upon expiry of the Retailer Agreement.

If you have any questions or comments in regard to the foregoing, I invite you to contact me at 604-273-5421.

Yours truly,
FRED DEELEY IMPORTS LTD.
Per:


Malcolm H. Hunter
Chief Operating Officer

MHH/ja

cc: Judy Chan - Blake, Cassels & Graydon LLP.
Michel Marchand - Fred Deeley Imports Ltd.



THIS IS EXHIBIT " E " TO THE
AFFIDAVIT OF KIM VAN DEVEN
SWORN BEFORE ME
THIS 18TH DAY OF AUGUST, 2004.



Commissioner for Taking Affidavits



**Deeley Harley-Davidson Canada
Customer Satisfaction**

**Retailer Sales and Service Survey
Interim Report Card**

August 03 – June 04

DEELEY

Robinson Motorcycle



**Planning, Research and Management Services
7501 Keele St Suite 300
Concord, ON L4K 1Y2**

DEELEY

Striving for Service Excellence



July 2004

Dear Harley-Davidson Retailer:

Due to time and space constraints at this year's New Model Announcement Meeting in San Diego, there will not be a CSI contingent on hand to distribute and discuss your annual CSI sales and service reports, as well as your KPI reports.

IER, in conjunction with Deeley Harley-Davidson Canada, have decided to develop, distribute and discuss your CSI reports (as well as your KPI documents) in August. This was done for two reasons. First, we understand that you and your staff have a limited amount of time at these annual meetings, as such we wanted to remove any CSI strain from your busy schedules. Second, we want to ensure that all the MY2004 has been collected prior to developing reports to ensure there is no discrepancy between the CSI scores and the TDA scores. We know how important it is to your business operations to have a sense of "how you are doing", so please find enclosed an "Interim Report CSI Report Card" for MY04 to date for sixteen key sales and services questions from the CSI surveys.

Do not hesitate to call Tara Hunter or myself if you would like to schedule a conference call or meeting to review your KPI or CSI results after the New Model Announcement Meeting. Where possible, both Tara Hunter and myself can be available for face-to-face meetings to review your results and discuss any other customer service matters including "in-house" personalized customer service training for your staff.

Other new items to the CSI program for MY2005 to watch out for include: customer service training manual and computer-based CSI training for your staff; Buell service survey; on-line CSI surveys; seminar presentation (topic to be determined) at the World Series Training, tailored in-store customer service training, revisions to the CSI surveys, and better incentives will be offered to increase survey response rates

If you have any questions, concerns or comments with respect to the revised CSI timetable, or the CSI program please contact Tara Hunter (905) 660-3500 (tarahunter@deeley.com) or myself 1-800-661-8437 x230 (jpittari@dpra.com).

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Joe Pittari', is written over a horizontal line.

Joe Pittari
Senior Associate
IER

**Retailer CSI - Sales/Service Profile
MY04 – Aug03 to date**

Robinson Motorcycles

	<u>Retail Store Year to Date</u>	<u>Retail Store Previous Year</u>	<u>National Year to Date</u>
<i>Sales (One Month – based on 30 responses)</i>			
1. Concern for my Satisfaction (% exceptional/very good)	100.0	100.0	84.5
2. Overall sales performance (% exceptional/very good)	100.0	100.0	87.8
3. Overall retail store rating (% exceptional/very good)	100.0	97.8	87.8
4. Retail store personnel (% exceptional/very good)	96.7	97.8	84.8
5. Recommend selling retailer (% extremely/very likely)	100.0	95.6	90.3
6. Overall sales experience (% extremely/very satisfied)	96.7	95.6	89.9
7. Overall H-D experience (% extremely/very satisfied)	96.7	93.3	94.2
8. Purchase again from same retailer (% extremely/very likely)	96.7	91.1	84.5
<i>Service (Eighteen Months – based on 28 responses)</i>			
1. Courtesy/Attitude of Service staff (% exceptional/very good)	92.9	100.0	81.8
2. Overall rating of service advisor (% exceptional/very good)	92.9	100.0	79.8
3. Retailer service capabilities (% exceptional/very good)	92.9	89.5	73.4
4. Overall retail store rating (% exceptional/very good)	92.9	89.5	77.2
5. Recommend servicing retailer (% extremely/very likely)	100.0	100.0	89.4
6. Quality of service/repair work (% extremely/very satisfied)	96.4	89.5	83.7
7. Overall H-D experience (% extremely/very satisfied)	82.1	89.5	92.6
8. Purchase from servicing retailer (% extremely/very likely)	90.9	89.5	73.3

Comments: Kim, you and your staff continue to provide spectacular service to your customers. You continue to be a benchmark to which other retailers strive to be like. Keep up the amazing work! Marked sales satisfaction improvement from last year's already great numbers. Keep up the great customer relations – the numbers really reflect your effort!

THIS IS EXHIBIT " F " TO THE
AFFIDAVIT OF KIM VAN DEVEN
SWORN BEFORE ME
THIS 18TH DAY OF AUGUST, 2004.

James W. O'Connell

Commissioner for Taking Affidavits

DEELEY
HARLEY-DAVIDSON.
CANADA

830 Edgeley Blvd. t: 905.660.3500
Concord, Ontario f: 905.660.3372
Canada L4K 4X1 harleycanada.com

13500 Verdun Place t: 604.273.5421
Richmond, B.C. f: 604.273.2029
Canada V6V 1V2 harleycanada.com



May 31, 2004

50056
Robinson Harley-Davidson
R.R. #1, 2469 Talbot Trail
Wheatley, ON
N0P 2P0

Dear Bev Robinson,

Congratulations! It is our pleasure to recognize your achievements in reaching your goal for the third quarter P&A objectives for the Model Year 2004.

Attached please find your Q3 Incentive cheque totaling \$ 865.89.

Incentive: \$ 809.24
GST/HST: \$56.65
Total: \$ 865.89

Your business is genuinely appreciated and we would like to thank you for your continued support and commitment.

Sincerely,

DEELEY HARLEY-DAVIDSON CANADA
Per

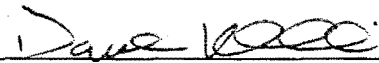
Michel Marchand

Michel Marchand
District Manager

CC: Nancy Mallard, Michel Villeneuve, Jody Farr



THIS IS EXHIBIT " G " TO THE
AFFIDAVIT OF KIM VAN DEVEN
SWORN BEFORE ME
THIS 18TH DAY OF AUGUST, 2004.



Commissioner for Taking Affidavits



ABE FRIESEN
 52 KILDEER RD RR#4
 LEAMINGTON, ON
 N8H 3V7
 5HD1BHY164Y032654
 2004 FXST 50040 20040403

121

1-Month Sales Survey

NEW MOTORCYCLE BUYER SALES SURVEY

We would like to know about your experiences with your new Harley-Davidson® motorcycle that you recently purchased. Please base your answers on your experience with that motorcycle only.

1.	Is this the first motorcycle you have ever owned? <input type="checkbox"/> Yes (If yes, go to Question 3) <input checked="" type="checkbox"/> No (If no, go to Question 2)					
2.	Is this the first Harley-Davidson® motorcycle you have ever owned? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
3.	Including the Retail Store where you bought your new motorcycle, how many different Harley-Davidson Retailers did you visit or contact while shopping? <input type="checkbox"/> One <input checked="" type="checkbox"/> Two <input type="checkbox"/> Three <input type="checkbox"/> Four <input type="checkbox"/> Five <input type="checkbox"/> More than Five					
4.	About how many kilometers is it from your home or place of employment (whichever is closer) to the Retail Store where you bought your new Harley-Davidson motorcycle? <input checked="" type="checkbox"/> 0-25 kms <input type="checkbox"/> 26-50 kms <input type="checkbox"/> 51-75 kms <input type="checkbox"/> 76-100 kms <input type="checkbox"/> 101-120 kms <input type="checkbox"/> > 120 kms					
5.	Have you bought any other motorcycles from this Retailer prior to your latest purchase? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
6.	Please comment on the salesperson that sold you your new Harley-Davidson on each of the following attributes? (Please ✓ one box for each option)					
		Exceptional	Very Good	Good	Fair	Poor
	Friendly and likable	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Treated me with respect	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Appreciated my business	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Went out of his/her way to help me	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Made me feel welcome and comfortable	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Understood my needs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Concern for my satisfaction	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Harley-Davidson product knowledge	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Harley-Davidson warranty knowledge	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Competitive product knowledge	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Knowledge of Harley-Davidson Owners Group®	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Handling of the purchasing and financing	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Informative	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Commitment to Harley-Davidson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Overall sales performance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

When your new Harley-Davidson was delivered, were the following activities listed below done to your satisfaction?

	Extremely Satisfied	Very Satisfied	Somewhat Satisfied	Somewhat Dissatisfied	Very Dissatisfied
Delivered on the promised date and time	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Delivered with the features you ordered	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Delivered clean and free of any damage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Explanation of Owner's Manual	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Explanation of the terms of the warranty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Explanation of the operating controls	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Explanation of the maintenance schedule	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Instructions about the "break-in" period and initial service requirements	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Information on finance and insurance	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Introduction to service and parts personnel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Explanation of H.O.G. membership benefits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please rate the Retail Store where you bought your new Harley-Davidson on the items listed below.

	Exceptional	Very Good	Good	Fair	Poor
Overall Retail Store rating	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Retailer service capabilities	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Retailer-sponsored rides/events	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Retailer-sponsored H.O.G. [®] Chapter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Availability of H-D [®] MotorClothes [™]	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Availability of H-D Screamin' Eagle [®] products	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Availability of H-D Genuine Motor Parts & Accessories [™]	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Convenient hours of operation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fulfillment of commitments made during sale	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cleanliness of Retail Store	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Attractiveness of displays	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall layout of Retail Store	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Retail Store personnel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Based on your sales experience, how likely would you be to recommend the retailer to a relative or friend?

<input checked="" type="checkbox"/> Extremely Likely	<input type="checkbox"/> Very Likely	<input type="checkbox"/> Somewhat Likely	<input type="checkbox"/> Somewhat Unlikely	<input type="checkbox"/> Very Unlikely
↓	↓	↓	↓	↓
(Go to Question 10)			(Go to Question 9b)	

If no, why would you not recommend a friend or relative to the Retailer where you purchased your new Harley-Davidson?

Regarding your new Harley-Davidson, how satisfied have you been with the following?

(Please ✓ one box for each option)

	Extremely Satisfied	Very Satisfied	Somewhat Satisfied	Somewhat Dissatisfied	Very Dissatisfied
The overall performance of your new motorcycle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The mechanical reliability of your new motorcycle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The overall appearance of your new motorcycle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Your overall sales experience	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Your overall Harley-Davidson ownership experience	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

18.

In an effort to ensure your comments are received by the appropriate parties, please check the statement that is most appropriate.

- I do not mind if Harley-Davidson and my Retailer receive my completed survey with my name for their information.
- I do not mind if Harley-Davidson and my Retailer receive my completed survey for their information. Please do not provide my name.
- Please provide Harley-Davidson and my Retailer with my name, as I require a response.
- Please do not give my completed survey or my name to Harley-Davidson or my Retailer.

19.

Please use the space below to provide any additional comments or questions you have about Deeley Harley-Davidson Canada® Products, Services or Retailers.

About Deeley Harley-Davidson cancelling Robinson Motorcycle as a Harley dealership. I can't believe you would cancel them after all these years because they take customers from other dealers. Nobody is forcing these people to go to Robinson's, it is their choice and that's the way it should be. I have yet to hear someone say that they've had a good experience at Thunder Road.

THANK YOU FOR YOUR COOPERATION. WE WISH YOU A SAFE AND HAPPY RIDING SEASON!
IER • Planning Research and Management Services 7501 Keele Street, Suite 300, Concord, Ontario, L4K 1Y2

THIS IS EXHIBIT " H " TO THE
AFFIDAVIT OF KIM VAN DEVEN
SWORN BEFORE ME
THIS 18TH DAY OF AUGUST, 2004.



Commissioner for Taking Affidavits

10

DEELEY

CANADA

830 Edgeley Blvd. t: 905.660.3500
Concord, Ontario f: 905.660.3372
Canada L4K 4X1 harleycanada.com

13500 Verdun Place t: 604.273.5421
Richmond, B.C. f: 604.273.2029
Canada V6V 1V2 harleycanada.com



February 12, 2004

Beverley Robinson
Robinson Motorcycle Ltd.
RR#1
Wheatley, ON NOP 2P0

Dear Beverley:

Re: Extension to the Retailer Agreement with Fred Deeley Imports Ltd.

This is further to our letter dated January 16, 2004 notifying you of our decision not to offer you a new retail contract or to extend the existing one upon its expiry on July 31, 2004.

Further to our meeting in January this year at the Winter Dealer Meeting in Orlando, FL, after giving consideration to our past business relationship, as a gesture of good faith, we are prepared to offer you an extension of the existing agreement to **October 31, 2004**, to allow you to finish this year's riding season. The terms and conditions of the extended agreement will remain unchanged. However, take note that such extension expressly excludes the right and access to any and all 2005 Harley-Davidson products or participation in any Deeley or Harley-Davidson 2005 retailer programs.

This is our only and final offer of an extension of the existing retail agreement. Your signature to this letter where indicated below and the return of 2 signed originals to my attention by March 5, 2004 is evidence of your acceptance of this offer. Failing receipt of the signed letter from you by the date set out herein, we will proceed on the assumption that you have declined our offer and the existing Retailer Agreement will expire on July 31, 2004 as previously stated.

If you have any questions or comments in regard to the foregoing, I invite you to contact me at 604-273-5421.

Yours truly,
FRED DEELEY IMPORTS LTD.

Per:

Malcolm H. Hunter
Chief Operating Officer

MHH/ja

cc: Judy Chan - Blake, Cassels & Graydon LLP.
Scott Jewell - Fred Deeley Imports Ltd.

ACKNOWLEDGED AND AGREED
THIS ___ day of _____ 2004.

ROBINSON MOTORCYCLE LTD.

Per: _____
Beverley Robinson, President



ROBINSON MOTORCYCLE LIMITED

Applicant

v. FRED DEELEY IMPORTS LTD. cob as
DEELEY HARLEY-DAVIDSON CANADA

Respondents

File no. CT2004007

THE COMPETITION TRIBUNAL

APPLICATION FOR INTERIM RELIEF
PURSUANT TO SECTION 104
OF THE COMPETITION ACT

DUCHARME FOX, LLP
Barristers and Solicitors
800 University Avenue West
Windsor ON N9A 5R9

DAVID M. McNEVIN
Tel: (519) 259-1812
Fax: (519) 259-1830
LSUC # 39776H

SOLICITORS FOR THE APPLICANT