

THE COMPETITION TRIBUNAL

CT-2004-009

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 sections 75, 103.1 and 104 of the *Competition Act*.

BETWEEN:

QUINLAN'S OF HUNTSVILLE INC.

Applicant

- and -

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

F I L E D	COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE		P R O D U I T
	AUG ADUT	20 2004	
REGISTRAR -- REGISTRAIRE		OTTAWA, ONT, 10015	

Respondent

SUPPLEMENTAL AFFIDAVIT OF JIM QUINLAN,
SWORN AUGUST 20, 2004

August 24, 2004

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SUPPLEMENTAL AFFIDAVIT OF JIM QUINLAN

sworn August 20, 2004

I, **JIM QUINLAN**, President of the Applicant, Quinlan's of Huntsville Inc. ("Quinlans")
in the Province of Ontario, **MAKE OATH AND SAY:**

1. I swear this Affidavit in reply to the Fred Deeley Imports Limited ("FDI") response to Quinlans' application for interim relief, and as a supplemental to my Affidavit sworn on June 26, 2004 in support of Quinlans' application to the Competition Tribunal (the "Tribunal") pursuant to section 104 of the *Competition Act*.

Adequate supply of H-D Motorcycles in Ontario

2. On a yearly basis, FDI sets the number of H-D motorcycles its dealers are required to purchase. Such allocations do not exist for H-D products other than for H-D motorcycles. The supply of H-D motorcycles to Quinlans for sale in its market area has remained relatively constant over the past few years. Attached hereto as Exhibit "A" is a copy of Quinlans' Motorcycle Allocation statistics for the past five model years.

3. Quinlans has consistently sold the motorcycles provided to it by FDI for its market area. From time to time, Quinlans has obtained further H-D motorcycles from FDI or other dealers beyond FDI's allocation to fill orders from customers.

4. While Quinlans has been successful in selling its allocation in recent years, this has not been the case for many dealers across Ontario who, in the past 2 years have experienced widespread carryover resulting from an oversupply of H-D products, with many 2003 and 2004 model year H-D motorcycles still unsold in inventory. The supply of H-D motorcycles has increased so substantially recently, that by end of the 2004 model year at July 31, 2004, approximately 20% of all 2004 model year H-D motorcycles remained unsold in H-D dealer showrooms across the province. In other instances, some H-D dealers were encouraged by FDI to take additional H-D motorcycle allocations beyond the number they believed they could sell, with the result that those dealers are presently carrying a greater inventory of unsold H-D motorcycles than ever before. I

have personally spoken with the H-D dealers at Kingston, Toronto, Windsor, Sarnia, Oshawa, Fenwick, Owen Sound and Thunder Bay who have confirmed to me that they have new 2004 motorcycles unsold in their inventory, and dealers in Kingston, Toronto and Sarnia who have new unsold 2003 model year H-D motorcycles on their showroom floors. The 2005 model year motorcycles are currently being received by dealers across Ontario.

5. FDI does not buy back excess H-D motorcycles it has allocated to its dealers. H-D dealers alone bear the consequences associated with their unsold H-D motorcycles. In the past few months, many H-D dealers have requested and subsequently received reductions from FDI in respect of their 2005 H-D model year motorcycle allotments. For instance, the H-D dealerships located in Richmond Hill, Mississauga and Kingston have all requested and received reduced allocations from FDI. Furthermore, the H-D Dealers Association for Ontario has recently put forth a proposal permitting H-D dealers to pool their H-D motorcycles and make them available for sale to other H-D dealers, in order to better deal with the problem of oversupply.

6. There is no harm, difficulty or expense in having FDI supply H-D motorcycles to Quinlans on an interim basis pending a determination of the merits of Quinlans' application under section 75 of the Act. Not only are H-D dealer motorcycle allocations constantly modified on an ongoing basis as a result of changing economic conditions or other factors facing H-D dealers, but there is currently excess supply of H-D products in

Ontario as demonstrated by the unsold 2003 and 2004 model year inventories currently on H-D showroom floors across the province.

FDI's Refusal to Supply and Destruction of Quinlan's Customer Relationships

7. At paragraphs 13 and 14 of his affidavit of August 16, 2004, Bremner Green states that FDI has "continued to supply Quinlan's with warranty and service parts and accessories" and "parts and accessories". This statement is not true. Since this Tribunal made its order on August 4, 2004 granting Quinlans leave to bring an application under section 75 of the Act, FDI has refused to supply Quinlans, and has substantially failed to fill Quinlans' orders for H-D parts and accessories. FDI has also undertaken actions to send Quinlans' customers to other H-D dealers.

8. In early August, 2004 Quinlans was contacted by its customer, Don Ford, to perform warranty repair services on his 2004 FLHT Electra Glide Standard H-D motorcycle, which he recently purchased from Quinlans. Mr. Ford resides in Huntsville, two kilometers from our dealership store.

9. Stan Belford, a long-standing customer and director of the H-D Owner's Group - Nippising Chapter sponsored by Quinlans since inception, contacted Quinlans in early August to order parts he needed installed for his H-D motorcycle. Mr. Belford lives in Calandar, Ontario, which is south of North Bay and about one-hour traveling time from

Huntsville. He has purchased a total of three H-D motorcycles from Quinlans over the years.

10. I am advised by our parts manager, Debbie Payne, and do verily believe that she prepared an order for these and other H-D parts and transmitted it to FDI. The orders included the particular parts and accessories required for Mr. Ford's warranty work, and Mr. Belford's part order. Parts orders are normally delivered to us the next day after placing the order. When FDI failed to fill any of our orders including these most recent orders, Debbie contacted FDI's parts desk on or about August 11, 2004 to try to get FDI to send the parts so we could do the warranty repairs and other work ordered by our customers. FDI's parts employee Cheryl, with whom Debbie spoke, would not agree to supply any of our parts orders and told Debbie only that she "should speak to Jim Quinlan". Attached hereto as Exhibit "B" and Exhibit "C" are copies of Quinlans Order Status printouts dated August 6, 2004 and August 9, 2004, respectively.

11. After Debbie Payne's telephone call to FDI, we informed our customers that we could not fulfill our obligations to them because FDI would not supply Quinlans with the parts. In frustration, Don Ford contacted FDI directly to determine why his warranty service could not be performed at Quinlans, and why FDI would not provide the required parts to perform his warranty repairs. Mr. Ford has advised me and I do verily believe that he was instructed to bring his H-D motorcycle to the H-D dealership in Barrie, Ontario for service, rather than to Quinlans. Barrie is located approximately 125 kilometers from Huntsville, or approximately 1 ¼ hours away from this customer.

12. In the case of Stan Belford, he too contacted FDI regarding their refusal to fill our order for parts for installation on his H-D motorcycle. Mr. Belford has advised and I do verily believe that John Kerr of FDI directed him to go to the H-D dealer in Barrie, Ontario, which is approximately 2 ¼ hours from Calendar where Mr. Belford lives. Mr. Belford refused and stated that he wished to deal with Quinlans. Mr. Kerr advised Mr. Belford that FDI would not supply the parts to Quinlans. They discussed Mr. Belford taking his motorcycle to the H-D dealer in Lively, Ontario, which is just west of Sudbury approximately 1.5 hours away from Calendar where Mr. Belford lives. As an inducement for Mr. Belford to take his H-D motorcycle to the dealer in Lively, Mr. Kerr stated that FDI would give him the part he required and install it for him free of charge. Stan Belford has been a steadfast customer of Quinlans for over 15 years and has bought 3 H-D motorcycles from us. To date, Mr. Belford has not proceeded with the work.

13. Two days ago, on August 18, 2004, in sheer exasperation, I spoke to Angelo Donoso, head of FDI's warranty and service department, about the extreme difficulty Quinlan's and its customers are suffering because of FDI refusing to supply us. Mr. Donoso would not give me any commitment whatsoever to supply us. However this morning we received the first delivery of parts from FDI since the Order of this Tribunal granting leave on August 4, 2004, when FDI stopped all shipments to us. The shipment sent today is for \$401.70 worth of parts and is only a fraction of the outstanding parts orders we have placed which remain outstanding.

H-D Products by Product Class

14. The statistics quoted by Mr. Green in paragraphs 8 and 9 of his July 21, 2004 affidavit are somewhat misleading because they fail to distinguish the sales of motorcycles having an engine displacement above 951 cubic centimeters, which is the core H-D market and the market in which H-D is effectively dominant. At paragraph 8 of his affidavit, Mr. Green characterizes the "heavyweight" motorcycle market as having an engine displacement of 651 cubic centimeters or more. At paragraph 9 of that same affidavit, Mr. Green states that the market share of "Street 651 cc+" motorcycles during the eight-month period between September 2003 and May 2004 was 35.7% in Ontario. The statistics quoted by Mr. Green fail to recognize the real market in which H-D motorcycles compete. It is like comparing sales of all cars larger than compacts as one homogeneous market, when the actual market of interest is all large V-8 cars. The Japanese and European motorcycle manufacturers concentrate on the market segment up to 951 cubic centimeter engines (principally in the 750 cc category) where they occupy the predominance of the market; whereas H-D motorcycles are overwhelmingly concentrated on the market segment consisting of over 951 cc "Large Engine Motorcycles" and principally in the over 1100 cc category. Of 12 different manufacturers marketing motorcycles in this category, H-D motorcycles alone account for 46% of all sales in this category in Ontario.

15. Quinlans' total allotment of H-D motorcycles for the 2004 model year consisted of 111 units. Of this allocation, 85% or 94 of the units shipped to Quinlans consisted of

H-D Large Engine Motorcycles. The overwhelming percentage of our H-D motorcycle sales are and always have been in the Large Engine Motorcycle category. This class of motorcycles also constitutes the overwhelming majority of sales of H-D motorcycles both nationally and provincially.

16. The remaining 15% or 17 units shipped to Quinlans for the 2004 model year were of the H-D Sportster variety, which is a low power “street bike” with an engine displacement of 883 cubic centimeters, commonly referred to by H-D dealers as “Small Engine Motorbikes” (being motorcycles with an engine displacement of 951 cubic centimeters or less). H-D distributes very few motorcycle units in the Small Engine Motorbike category.

17. According to data provided by the Motorcycle and Moped Industry Council (“MMIC”), motorcycles with an engine displacement of 951 cubic centimeters or more represent 88% of all H-D motorcycles sold in Ontario. Furthermore, H-D motorcycle represent 46% of all sales in this category. The balance of Large Engine Motorcycles sold in Ontario are spread among 11 other motorcycle manufacturers, principally Japanese and European manufacturers. The Large Engine Motorcycles of other manufacturers are generally viewed as ‘knock offs’ or imitations of the H-D product and are generally far less expensive than the comparable H-D product. When the enormous price difference between H-D products and those of other manufacturers is considered, FDI’s market share of 46% of the sales of Large Engine Motorcycles in Ontario indicates the unique and overwhelming market position of H-D in this market.

Allocation of H-D parts and accessories

18. The majority of H-D parts and accessories purchased and resold by H-D dealers are classified as “core” merchandise products, which are ordered from FDI by its dealers on an as needed basis. Such products are neither allocated by FDI to individual H-D dealers nor are they in short supply. H-D dealers purchase whatever H-D parts and accessories they want and in whatever quantities they desire. H-D dealers are not contractually obligated to buy a predetermined amount of “core” merchandise products; although FDI sometimes sets targets it would like its dealers to achieve. If, in fact, a predetermined specified allocation exists as Mr. Green contends in paragraph 7 of his affidavit of August 16, 2004, then it would be counterintuitive for FDI to set Trev Deeley Award criteria to reward H-D dealers who exceed FDI’s suggested H-D product sales objectives, which is in fact what FDI does. Since H-D part and accessory orders have customarily been filled on an “as needed” basis, there is no lack of adequacy of supply of these products, which represents the majority of H-D parts and accessories.

19. H-D dealers are similarly not obliged to purchase “seasonal” or “future buy” merchandise. Such H-D merchandise is specialty clothing and constitutes an insignificant component of H-D dealer sales. Many H-D dealers purchase considerably less than the recommended quantities because FDI does not allow its H-D dealers to cancel H-D “future buy” product orders once they are put through the system. H-D dealers are also reluctant to purchase “future buy” H-D merchandise because they are not

shipped by FDI to its dealers in a timely fashion. For example, Quinlans ordered a “future buy” product for a customer some time ago, and the product arrived approximately one-year after the order was entered. Nonetheless, Quinlans was required to take that piece of merchandise. In any event, this “future buy”, or “seasonal” merchandise, as Mr. Green calls it, represents less than 1.5% of Quinlans’ total H-D product sales over the past year. Given that the ordering time for this merchandise is over for the current year, such merchandise is not in issue as it is clear from FDI’s catalogue that it is only available to be ordered at the H-D trade show.

FDI’s Termination of the H-D Diagnostic Technician

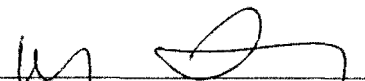
20. In my telephone conversation with Angelo Donoso on August 17, 2004, referred to in paragraph 13 above, he informed me that Quinlans’ H-D Diagnostic Technician would be turned off as of August 31, 2004, and that our login password to access product and customer information through H-D headquarters in Milwaukee would terminate as of that date.

21. On August 11, 2004, Quinlans received an Order Status report indicating that the service fee Quinlans pays for use of the H-D Diagnostic Technician had been cancelled by FDI. Attached hereto as Exhibit “D” is a copy of Quinlans’ Order Status printout dated August 11, 2004.

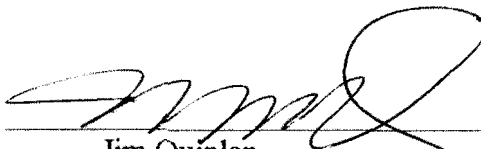
22. FDI's actions has damaged Quinlans' business. We are unable to service our customers because FDI has failed to supply us with H-D products. FDI is enticing and encouraging our customers to deal with other H-D dealers. Further, FDI is about to cut us off from use of the Diagnostic Technician needed to perform service on H-D motorcycles. This is causing us irreparable harm in our business and in our customer relations, and will continue to do so unless FDI is required to supply us.

23. I make this Affidavit in support of an application for an interim order that FDI be required to accept Quinlans as a customer for the supply of H-D products pursuant to section 104 of the Act, until a decision on the merits regarding Quinlans' application can be rendered by the Tribunal.

SWORN before me at the Town of)
Huntsville in the Province of Ontario this)
20th day of August, 2004)
)
)



Commissioner for Taking Affidavits, etc.
William J. Lynch
BARRISTER ETC.



Jim Quinlan

EXHIBIT A

MMAM 2004

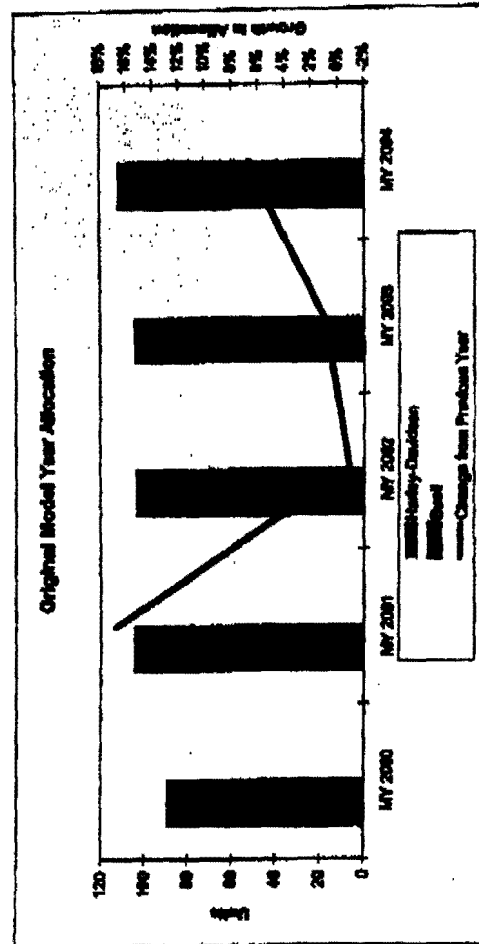
Motorcycle Allocation

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Quinlan's of Huntsville Inc.

Allocated Units

Model	Harley-Davidson	Ducati	Total Units	Change from Previous Year
MY 2000	89	0	89	
MY 2001	104	0	104	17%
MY 2002	103	0	103	-1%
MY 2003	104	0	104	1%
MY 2004	111	0	111	7%



- Notes:
- Model Years 2000, 2001 and 2002 all include CVO, Police and Shrine Units
 - Model Year 2003 includes V-Rods and reflects the Normalized 12 month year
 - Model Year 2004 includes V-Rod and the mini-phase

Order Status

Order #: 102717

Order Date: 8/6/04

Retailer Order#: (U) RECAL 0113

Order Type: C2

Account: 550002 Quinlan's of Huntsville Inc.

Line					Order Qty	Sold By	Pkg Qty	B.O. Qty	Canc. Qty	Unit Price	Extended	Tax
<u>Line#</u>	<u>Type</u>	<u>Item ID</u>	<u>Description</u>		<u>Qty</u>	<u>By</u>	<u>Qty</u>	<u>Qty</u>	<u>Qty</u>	<u>Price</u>	<u>Extended</u>	<u>Tax</u>
1.000	N	94281	RECALL CIRCUIT BREAKER1HD1FFW122Y603 Last Status: 620 Sales Journal/Update		-1	EA		0	0	\$3.22	(\$3.22)	
2.000	N	94281	RECALL CIRCUIT BREAKER1HD1FCW1X1Y635 Last Status: 620 Sales Journal/Update		-1	EA		0	0	\$3.22	(\$3.22)	
3.000	N	94281	RECALL CIRCUIT BREAKER1HD1FFW14XY605 Last Status: 620 Sales Journal/Update		-1	EA		0	0	\$3.22	(\$3.22)	
4.000	N	94281	RECALL CIRCUIT BREAKER1HD1FFW172Y643 Last Status: 620 Sales Journal/Update		-1	EA		0	0	\$3.22	(\$3.22)	
5.000	N	94281	RECALL CIRCUIT BREAKER1HD1FFW1X2Y625 Last Status: 620 Sales Journal/Update		-1	EA		0	0	\$3.22	(\$3.22)	
6.000	N	94281	RECALL CIRCUIT BREAKER5HD1FCW4X3Y634 Last Status: 620 Sales Journal/Update		-1	EA		0	0	\$3.22	(\$3.22)	
7.000	N	94281	RECALL CIRCUIT BREAKER5HD1FCW423Y605 Last Status: 620 Sales Journal/Update		-1	EA		0	0	\$3.22	(\$3.22)	
8.000	N	94281	RECALL CIRCUIT BREAKER5HD1FCW153Y635 Last Status: 620 Sales Journal/Update		-1	EA		0	0	\$3.22	(\$3.22)	

Line Count: 8

Order Value: (\$25.76)

EXHIBIT

B

DEELEY
 HARLEY-DAVIDSON.
 CANADA

Order Status

Order Date: 8/6/04

Order #: 102633
 Retailer Order#: 08/06/04

Order Type: S2

Account: 550002 Quinlan's of Huntsville Inc.

Line	Order	Sold	Pkg	B.O.	Canc.	Unit	Extended	Tax
Line#	Type	Qty	By	Qty	Qty	Price		
1.000	S 75012-82D	1	EA	1	0	\$46.99	\$0.00	
	KIT,GAUGE, OIL PRESSURE Last Status: 900 Backorder in S/O Entry							
2.000	S 52513-94	1	EA	0	0	\$55.05	\$55.05	
	MINI RAIL BACKREST PAD Last Status: 550 Pack Confirm							
3.000	S 52527-01	1	EA	0	0	\$22.97	\$22.97	
	KIT,MINI BACKREST,STAMPED Last Status: 550 Pack Confirm							
4.000	S 53118-98	1	EA	0	0	\$122.34	\$122.34	
	TOUR PAK MTNG KIT Last Status: 550 Pack Confirm							
5.000	S 76250-98	1	EA	0	0	\$35.19	\$35.19	
	ANTENNA MAST CB FLHTCU-I Last Status: 550 Pack Confirm							
6.000	S 74439-00	1	EA	0	0	\$116.69	\$116.69	
	OIL AND AIR TEMP GAUGE KIT Last Status: 550 Pack Confirm							
7.000	S 45017-93	1	EA	0	0	\$32.06	\$32.06	
	CLUTCH LEVER Last Status: 550 Pack Confirm							
8.000	S 38666-00	1	EA	0	0	\$35.14	\$35.14	
	CLUTCH CABLE KIT, FXST/S/FLSTS/FXD/X Last Status: 550 Pack Confirm							
9.000	S 38608-96	1	EA	0	0	\$17.45	\$17.45	
	CLUTCH LEVER BRACKET Last Status: 550 Pack Confirm							
10.000	S 99100-98VM/3636	1	EA	0	0	\$32.53	\$32.53	
	MCJEAN-TRAD,BLU,MNS Last Status: 550 Pack Confirm							
11.000	S 99101-98VM/3636	1	EA	1	0	\$32.53	\$0.00	
	MCJEAN-TRAD,BLK,MNS Last Status: 900 Backorder in S/O Entry							

Line Count: 11

Order Value: \$469.42



Order Status

Order #: 102849
 Retailer Order#: 08/09/04
 Order Type: S2
 Account: 550002 Quinlan's of Huntsville Inc.

Order Date: 8/9/04

Line#	Type	Item ID	Description	Order Qty	Sold By	Pkg Qty	B.O. Qty	Canc. Qty	Unit Price	Extended	Tax
1.000	S	9969	CLAMP Last Status: 520 Enter Sales Order	3	EA		0	0	\$1.13	\$3.39	
2.000	S	54630-03A	AIR PUMP KIT, SHOCK ABSORBER Last Status: 520 Enter Sales Order	1	EA		0	0	\$43.31	\$43.31	
3.000	S	31522-00B	MICRO RELAY, SPDT, W/DIODE Last Status: 520 Enter Sales Order	1	EA		0	0	\$4.63	\$4.63	
4.000	S	761	BLACK HOLE CAP, .406 DIA(5 PER PK) Last Status: 520 Enter Sales Order	1	PK	5	0	0	\$11.00	\$11.00	
5.000	S	58516-97	KIT, SERVICE WINDSHIELD RIGIDSTD CLR Last Status: 900 Backorder in S/O Entry	1	EA		1	0	\$146.34	\$0.00	
6.000	S	16480-92A	SCREW, CYLINDER HEAD, CHROME(4 PER PK) Last Status: 520 Enter Sales Order	1	PK	4	0	0	\$14.56	\$14.56	
7.000	S	97208-01VM/000M	GLV-BASIC SKINS GAUNTLET Last Status: 900 Backorder in S/O Entry	1	EA		1	0	\$40.04	\$0.00	
8.000	S	97208-01VM/000L	GLV-BASIC SKINS GAUNTLET Last Status: 520 Enter Sales Order	3	EA		0	0	\$40.04	\$120.12	
9.000	S	97208-01VM/002L	GLV-BASIC SKINS GAUNTLET Last Status: 520 Enter Sales Order	2	EA		0	0	\$40.04	\$80.08	
9.001	S	97208-01VM/002L	GLV-BASIC SKINS GAUNTLET Last Status: 900 Backorder in S/O Entry	1	EA		1	0	\$40.04	\$0.00	
10.000	S	97208-01VM/022L	GLV-BASIC SKINS GAUNTLET Last Status: 520 Enter Sales Order	1	EA		0	0	\$40.04	\$40.04	
11.000	S	99554-04V	BELT BUCKLE-EVOLUTION Last Status: 520 Enter Sales Order	2	EA		0	0	\$22.52	\$45.04	
12.000	S	97441-00V	WLT-B&S,FLIPFOLD,BLK Last Status: 900 Backorder in S/O Entry	2	EA		2	0	\$26.69	\$0.00	
13.000	S	99581-04V	KNIT CAP-FLAME Last Status: 520 Enter Sales Order	6	EA		0	0	\$18.35	\$110.10	
14.000	S	99580-04V	KNIT CAP-H-D STRIPE Last Status: 520 Enter Sales Order	6	EA		0	0	\$15.01	\$90.06	

Line Count: 15

Order Value: \$562.33

EXHIBIT C

DEELEY
HARLEY-DAVIDSON.
CANADA

Order Status

Order #: 103189

Order Date: 8/11/04

Retailer Order#: DT ANNUAL FEE

Order Type: S2

Account: 550002 Quinlan's of Huntsville Inc.

Line

<u>Line#</u>	<u>Type</u>	<u>Item ID</u>	<u>Description</u>	<u>Order Qty</u>	<u>Sold Qty</u>	<u>Pkg By</u>	<u>B.O. Qty</u>	<u>Canc. Qty</u>	<u>Unit Price</u>	<u>Extended</u>	<u>Tax</u>
1.000	Z	DT-ANNUALFEE	ANNUAL FEE FOR DIGITAL TECH Last Status: 980 Canceled in Order Entry	1		EA	0	1	\$850.00	\$0.00	

Line Count: 1

Order Value: \$0.00

EXHIBIT D

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 sections 75, 103.1 and 104 of the *Competition Act*.

BETWEEN:

Quinlan's of Huntsville Inc. (Applicant) -and- Fred Deeley Imports Ltd. carrying on business as Deeley Harley-Davidson Canada (Respondent)

THE COMPETITION TRIBUNAL

**SUPPLEMENTAL AFFIDAVIT OF JIM
QUINLAN, SWORN AUGUST 20, 2004**

RUETER SCARGALL BENNETT LLP

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Solicitors for the Applicant.

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LSUC # 17089A

Lawyer: Andy Chan
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