

File No. CT-2004-009

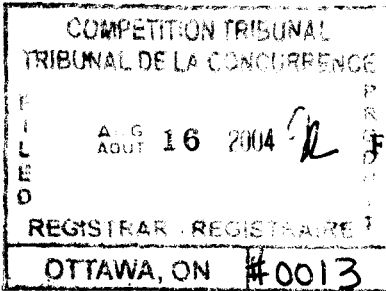
**COMPETITION TRIBUNAL**

**BETWEEN:**

**QUINLAN'S OF HUNTSVILLE INC.**

Applicant

- and -



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

Respondent

**AFFIDAVIT OF BREMNER J. GREEN**  
(sworn August 16, 2004)

I, *Bremner J. Green*, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the General Manager of Fred Deeley Imports Ltd. ("Deeley") and, accordingly, I have personal knowledge of the matters set out below, except where stated to be based on information and belief, in which case I believe such statements to be true.

2. This affidavit is sworn in support of Deeley's response and opposition to Quinlan's of Huntsville Inc.'s ("Quinlan's") application for an Interim Order, and is supplementary to my affidavit of July 21, 2004, which was originally sworn in relation to Quinlan's application for leave to commence a section 75 application under section 103.1 of the *Competition Act*, and which is also relied upon in these proceedings.

**Fred Deeley Imports Ltd.**

3. Deeley is the exclusive distributor of Harley-Davidson motorcycles and related products in Canada.

4. Deeley conducts all of its sales in Canada through independently-owned dealerships with whom it has entered into retailer agreements. Deeley's entire business model is based around its

- 2 -

relationship with, and the distribution of Harley-Davidson products through, a carefully organized network of independently-owned dealerships.

5. Deeley does not sell Harley-Davidson products directly to customers, nor does it sell or provide Harley-Davidson products to entities with whom it has not entered into a Retailer Agreement. Further, the standard Retailer Agreements prohibits sales to third parties for resale.

6. Deeley has designed its network of Harley-Davidson dealerships in order to ensure customers are properly supplied and serviced. This ensures that Harley-Davidson customers are well served, and the high-quality Harley-Davidson brand name is preserved. All modifications to Deeley's dealership network are designed to further these objectives.

7. In light of this rationalized distribution network, Deeley determines the manner in which Harley-Davidson products will be distributed on a long-term, and not an *ad hoc*, basis. This is particularly so given the fact that Harley-Davidson motorcycles are manufactured with long production lead times, and therefore must be allocated throughout the distribution network in the manner described in more detail below.

#### **Current Status of Deeley's relationship with Quinlan's**

8. In the normal course of its business, Deeley distributes Harley-Davidson products exclusively through retail dealerships located across Canada.

9. By letter dated December 9, 2003, Deeley informed Quinlan's that Deeley would not be entering into a new retailer agreement with Quinlan's once the current retailer agreement runs out on July 31, 2004.

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

11. For valid business reasons, Deeley has decided not to enter into a new retailer agreement with Quinlan's. Deeley's decision in this regard is completely unrelated to Mr. Quinlan's involvement with the Ontario Dealers' Association.

- 3 -

12. Deeley's Retailer Agreement with Quinlan's expired on July 31, 2004. Accordingly, Deeley has ceased to supply Quinlan's with any new or used Harley-Davidson Motorcycles, MotorClothes, General Merchandise or Collectibles. With the expiry of Quinlan's Retailer Agreement, Deeley would not, in the normal course of business, continue to supply Quinlan's with Harley-Davidson products, Harley-Davidson motorcycles, in particular. As such, since the decision made last year not to enter into a Retailer Agreement with Quinlan's, Deeley has not provided for the allocation of Harley-Davidson products to Quinlan's in its business plan.

13. Deeley has, however, continued to supply Quinlan's with warranty and service parts and accessories that are required to ensure the safe operation of a customer's Harley-Davidson motorcycle in accordance with factory repair and service recommendations.

14. Deeley has continued to provide Quinlan's with such parts and accessories solely to protect the reputation of the Harley-Davidson brand and Harley-Davidson products among customers.

15. Accordingly, to ensure that customers receive quality service and that Deeley is operating in a commercially reasonable manner, it is essential that Deeley be able to determine appropriate dealership criteria and have the right to rationalize its dealership network in a manner that it believes is in the best interest of customers. To do this in a commercially efficient manner, Deeley must be able to organize its dealership network by design, as opposed to on an *ad-hoc* basis.

**Deeley's Decision not to enter into a Retailer Agreement with Quinlan's**

16. Deeley's business plan no longer contemplates providing Harley-Davidson products to Quinlan's. Deeley made this decision on the basis of reasonable business considerations and best business practices, in the interests of both the company and its customers. This business conclusion was reached in late 2003, and was communicated to Quinlan's by letter dated December 9, 2003, which informed Quinlan's that Deeley would not be offering a new retailer agreement upon the expiry of the current one.

- 4 -

**Harm to Deeley if it Must Supply Quinlan's**

17. Issuing Quinlan's with the interim order it has requested would cause Deeley a number of serious problems.
18. If a mandatory injunction is granted by the Tribunal, and Deeley is required to provide Harley-Davidson products to Quinlan's, Deeley will be seriously harmed. The continued supply of Harley-Davidson products to Quinlan's will be on an *ad hoc* basis, outside the parameters of Deeley's current business model and product allocation plan.
19. Such activities will severely constrain Deeley's ability to act in accordance with best business practices and may result in having to maintain an inefficient dealership network, which will ultimately have an adverse impact on both dealers and customers.
20. Given that Deeley determined that it would not enter into a Retailer Agreement with Quinlan's last year, Quinlan's has not been allocated any new motorcycles for the upcoming year.
21. All Harley-Davidson motorcycles are built with long production lead times. Deeley orders motorcycles on an annual basis and then distributes the motorcycles it receives from Harley-Davidson throughout its network of dealerships on an allocation basis.
22. Deeley's order planning process for a given model-year of Harley-Davidson motorcycles commences approximately twelve months before they are produced. In March of each calendar year, based on consultations with regional sales staff and its dealers, Deeley locks-in the number and type of motorcycles that will be required for the upcoming model-year and confirms its order with Harley-Davidson in the United States. Once Deeley's order is placed, its ability to obtain additional motorcycles is very limited.
23. Over the course of the year, depending on circumstances and customer demand, motorcycles may be transferred from one dealership to another. Such determinations are made on the basis of customer demand.
24. Accordingly, if the Tribunal orders Deeley to continue to supply motorcycles to Quinlan's, it will be exceedingly difficult for Deeley to do so. If Deeley cannot obtain additional motorcycles from Harley-Davidson, Deeley will have to reduce the quantity of motorcycles that

- 5 -

it has already committed to its dealerships. This will not only harm Deeley, but will harm other independent dealerships as well.

25. To the extent that Deeley modifies the allocation of motorcycles among its dealers, it generally does so for valid business reasons, namely moving motorcycles to the dealerships where they are most likely to sell. Such reallocations of motorcycles are designed to benefit both dealerships and customers. Conversely any Order compelling Deeley to supply Quinlan's will negatively impact on both dealerships and customers.

26. Thus, to the extent that having to continue to supply Quinlan's requires Deeley to allocate motorcycles from locations where there is high demand, to Quinlan's, customers in those other locations will be adversely affected.

27. In addition, if an Interim Order is issued it will be difficult, if not impossible, for Deeley to provide Quinlan's with many of the general merchandising products that are carried by other Harley-Davidson dealerships.

28. The reason for this is because, approximately forty percent of the general merchandise carried by Harley-Davidson dealerships in Canada is seasonal merchandise special ordered, by the individual dealerships themselves, at one of the two dealer shows that are held by Harley-Davidson each year. This merchandise can only be ordered at these shows. Because Quinlan's was given notice in December 2003 that its retailer agreement would not be renewed, Quinlan's was not invited to and did not place orders at the dealer shows held in January and July of this year.

29. Finally, given the expense and complexities that Deeley will face if it is ordered to supply Harley-Davidson products to Quinlan's, both Deeley and Quinlan's will likely be required to seek further directions from the Tribunal with respect to their ongoing business relationship, possibly on a contested basis.

#### **The Impact of Quinlan's Delay**

30. Quinlan's has known since December 2003 that its retailer agreement was to expire as of July 31, 2004.

Quinlan's delay in seeking interim relief directly resulted in Deeley making its motorcycle and general merchandise purchase decisions, as well as those relating to its allocation of motorcycles among its dealerships, on the basis that Quinlan's is no longer a Harley-Davidson dealer.

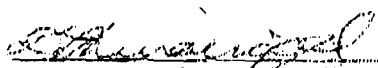
31. Quinlan's is familiar with the manner in which Deeley procures and allocates motorcycles and general merchandise. Accordingly, I believe Quinlan's is aware of the difficulty and expense of forcing Deeley to modify the allocation of its limited supply of motorcycles and general merchandise at this late stage.


32. Similarly, Quinlan's is familiar with the fact that much of the general merchandise carried by Harley-Davidson dealerships must be ordered by the dealership itself at the dealer shows referred to above. Accordingly, I believe Quinlan's is aware that Deeley's power to supply Quinlan's in this regard is limited.

33. In short, if Deeley is ordered to supply Quinlan's on an interim basis, any motorcycles to be provided to Quinlan's will have to be taken from those already allocated to dealers. This will result in considerable inconvenience to Deeley and will harm its relationship with its remaining dealers and customers.

34. I swear this affidavit in support of Deeley's response to Quinlan's application for an Interim Order under section 104 of the *Competition Act*.

SWORN BEFORE ME, on August 16, 2004, at Concord, Ontario

  
Commissioner for Taking Affidavits

  
Bremner J. Green

**DILAN YOLANEN TREBAGRAM**  
A Commissioner, C.S.A. Province of  
Ontario, until a further order  
Signed April 28, 2007.

**QUINLAN'S OF HUNTSVILLE INC.**

Applicant

and

**FRED DEELEY IMPORTS LTD.**

Carrying on business as **DEELEY**

**HARLEY-DAVIDSON CANADA**

Respondent

File No: CT-2004-009

**COMPETITION TRIBUNAL**

**AFFIDAVIT OF BREMNER J. GREEN**

(Sworn August 16, 2004)

**BLAKE, CASSELS & GRAYDON LLP**

Box 25, Commerce Court West

Toronto, Ontario M5L 1A9

**R. Seumas M. Woods** LSUC #301691

Tel: (416) 863-3876

**Christopher Hersh** LSUC #43080N

Tel: (416) 863-3056

**Matthew Horner** LSUC #47163B

Tel: (416) 863-2356

Fax: (416) 863-2653

Solicitors for the Respondent, Fred Deeley  
Imports Ltd.

AUG. 16. 2004 4:54PM

NO. 3030 P. 9