

THE COMPETITION TRIBUNAL
File No.: CT-2004-007
Registry Document No.: 0002



BETWEEN:

ROBINSON MOTORCYCLE LIMITED

Applicant

AND

FRED DEELEY IMPORTS LTD.

Respondent

APPLICATION PURSUANT TO SECTION 75 OF THE *COMPETITION ACT*

TAKE NOTICE THAT:

1. The Applicant, Robinson Motorcycle Limited ("Robinson Motorcycle"), is applying to the Competition Tribunal pursuant to Section 75 of the *Competition Act*, R.S. 1985, c 19 (2nd supp.), as amended (the "Act").
2. The person against whom the Order is sought is the Respondent, Fred Deeley Imports Ltd. ("Deeley"). Its address is,

Fred Deeley Imports Ltd.
830 Edgeley Blvd.
Concord, Ontario
L4K 4X1
1-905-660-3500
1-905-660-3372 (fax)

3. The Applicant will rely on the Statement of Grounds and Material Facts attached hereto.
4. The Applicant seeks an Order directing the Respondent, Deeley, to continue to deal with Robinson Motorcycle as a dealer of Harley-Davidson products on the usual trade terms.
5. The Applicant will seek direction from the Competition Tribunal for the expeditious hearing of this Application.
6. The Applicant requests that the Application proceed in English.
7. The Applicant requests that documents be filed in paper form.

Dated at Windsor, in the Province of Ontario and Southwest Region of Ontario
this 17th day of June, 2004.

MYRON W. SHULGAN, Q.C.
WILSON WALKER LLP
Barristers and Solicitors
300-443 Ouellette Avenue
Windsor, Ontario
N9A 6R4
1-519-977-1555
1-519-977-1565 (fax)
Solicitors for the Applicant

Address for Service:

**TO: The Registrar
 The Competition Tribunal
 The Thomas D'Arcy McGee Building
 600-90 Sparks Street
 Ottawa, Ontario
 K1P 5B4
 1-613-957-7851
 1-613-952-1123 (fax)**

**AND TO: Mr. Gaston Jorre
 Commissioner of Competition, Acting
 Industry Canada
 50 Victoria Street
 Gatineau, Quebec
 K1A 0C9
 1-819-997-3301
 1-819-953-5013 (fax)**

**AND TO: Fred Deeley Imports Ltd.
 830 Edgeley Blvd.
 Concord, Ontario
 L4K 4X1
 1-905-660-3500
 1-905-660-3372 (fax)**

The Applicant's address for service is as follows:

**c/o Myron W. Shulgan, Q.C.
 Wilson Walker LLP
 Barristers and Solicitors
 300-443 Ouellette Avenue
 Windsor, Ontario
 N9A 6R4
 1-519-977-1555
 1-519-977-1565 (fax)**

STATEMENT OF GROUNDS AND MATERIAL FACTS

MATERIAL FACTS

The Parties:

1. The Applicant, Robinson Motorcycle, is a duly constituted Ontario corporation. It has its head office in Wheatley, Ontario.
2. The Respondent, Deeley, is a duly constituted British Columbia and Ontario corporation. Its principal place of business in Ontario is located at 830 Edgeley Blvd., Concord, Ontario L4K 4X1.

Description of the Industry:

3. A retail motorcycle sales and service business will generally sell particular makes of motorcycles, being either Harley-Davidson, Honda, Suzuki, Kawasaki and/or BMW and will provide service, parts and accessories to cater to the particular make of motorcycle.

4. The Harley-Davidson motorcycle is a unique high quality motorcycle catered to motorcycle enthusiasts of all ages and professions.

Robinson Motorcycle:

5. Robinson Motorcycle was established in 1958 and has operated since that time as a family business by the Robinson family as a motorcycle retail and service store serving primarily the County of Essex and County of Kent (“the Area”). It sells high quality motorcycles and accessories.

6. The products and prices that Robinson Motorcycle offers to its customers, the service it provides and its reputation, which has been built on a long standing goodwill, have contributed to the success of Robinson Motorcycle.

Fred Deeley Imports Ltd.:

7. Deeley is a corporation registered to do business in British Columbia and Ontario. Deeley is an exclusive distributor of Harley-Davidson motorcycles in Canada. The Harley-Davidson reputation and the quality of its motorcycles have permitted Harley Davidson to expand to a broad range of accessories and apparel.

8. Any motorcycle dealer wishing to obtain Harley-Davidson products in Canada must obtain them through Deeley directly.

Deeley's Refusal to Deal:

9. In 1977, Robinson Motorcycle, then a well established motorcycle retail and service store, secured a dealer franchise from Deeley.

10. Over the course of 27 years, Robinson Motorcycle developed a significant market for the Harley-Davidson products in the Area. In fact, because the Harley-Davidson products comprise a significant portion of Robinson Motorcycle sales and as a result of strong suggestions from Deeley, Robinson Motorcycle became an exclusive dealer of Harley-Davidson products in 1990. In other words, Robinson Motorcycle stopped selling other brands of motorcycles and dealt exclusively with Harley-Davidson products.

11. Robinson Motorcycle has continuously displayed the Harley-Davidson logo on its storefront, staff uniforms, and stationary.

12. Robinson Motorcycle kept its account with Deeley throughout their relationship current. Robinson Motorcycle was always able to meet all usual trade terms with Deeley. As a result, Robinson Motorcycle and Deeley have enjoyed a long and prosperous relationship. Robinson Motorcycle has always remained loyal to the Harley-Davidson product and is in fact responsible for introducing the Harley-Davidson motorcycle into the Area and promoting its growth.

13. Robinson Motorcycle has developed a significant market for the Harley-Davidson product in the Area. In the 1970s and 1980s, it also carried and sold, from time to time, new Triumph, Honda, BMW, Yamaha, Suzuki and Kawasaki motorcycles. Because the Harley-Davidson product comprised a significant portion of Robinson Motorcycle's sales and by strong encouragement from Deeley, Robinson Motorcycle became an exclusive dealer of Harley Davidson products. Robinson Motorcycle, therefore, discontinued carrying other brands of motorcycles for retail.

14. Presently, the sale of Harley-Davidson motorcycles and products represent substantially all of the sales enjoyed by Robinson Motorcycle. Sales enjoyed by Robinson Motorcycle that are not related to the sales of Harley Davidson motorcycles, parts or accessories are earned from the service and labour on Harley Davidson motorcycles.

15. Throughout the years of selling and servicing Harley-Davidson products, Robinson Motorcycle continuously and diligently maintained prominent Harley-Davidson representation and product promotion. Robinson Motorcycle has advertised the products using local radio advertisements, local newspapers, area billboards and displays the Harley- Davidson logo in its storefront and on its stationary. Robinson Motorcycle also sponsors motorcycle events such as demo ride programs and HOG chapter fundraising events.

16. Until early 2004, Robinson Motorcycle enjoyed a good relationship with Deeley.

17. On or about January 16, 2004, Robinson Motorcycle received notice from Deeley that Deeley would no longer supply Robinson Motorcycle with Harley-Davidson motorcycles or parts effective July 31, 2004. Deeley was terminating the right of Robinson Motorcycle to act as a Harley-Davidson dealer.

Effect on Applicant's Business:

18. Deeley's decision to terminate Robinson Motorcycle's Dealer Agreement will result in the closure of Robinson Motorcycle's business. Its business for the past many years has been restricted to that of an exclusive Harley-Davidson dealer at the behest of Deeley. Approximately 95% of its revenues are derived from the Harley-Davidson line of products.

19. Robinson Motorcycle will not be able to replace the loss of Harley-Davidson products with those of a competitor. The manufacturers it formerly represented such as Suzuki, Honda, Kawasaki and BMW have by now entered into dealership agreements with competitors of Robinson Motorcycle.

20. Consequently, Robinson Motorcycle will be unable to find a replacement for the loss of the Harley-Davidson products.

Effect on Public

21. There have been three major Harley-Davidson dealers in Essex and Kent County:

- (a) Thunder Road Motorcycle in Windsor, Ontario (Essex County);
- (b) Robinson Motorcycle in Wheatley, Ontario (Essex County); and
- (c) D&M Cycle in Chatham, Ontario (Kent County).

22. Deeley allocates a certain number of units of Harley-Davidson motorcycles to its dealers. Robinson Motorcycle has always sold the full compliment of Harley-Davidson motorcycles allotted to it. Some of its customers of course, as noted above, originated in Windsor and Chatham.

23. Robinson Motorcycle believes that it has secured customers from areas serviced by its competitors because Robinson Motorcycle offers products at highly competitive prices and because it offers better service than provided by its competitors.

24. There is no shortage of supply of Harley-Davidson products. Therefore, there is no justifiable basis to terminate the Distribution Agreement of Robinson Motorcycle other than to eliminate a dealership who competes with the dealerships operated by

Thunder Road in Windsor, Ontario and D&M Cycle in Chatham, Ontario. That obviously will have a detrimental impact on the public.

Basis for Application Pursuant to Section 75:

25. Robinson Motorcycle seeks an Order pursuant to Section 75 of the Act which states as follows:

- “(1) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that:*
- (a) a person is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms,*
 - (b) the person referred to in paragraph (a) is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market,*
 - (c) the person referred to in paragraph (a) is willing and able to meet the usual trade terms of the supplier or suppliers of the product,*
 - (d) the product is in ample supply, and*
 - (e) the refusal to deal is having or is likely to have an adverse effect on competition in a market,*

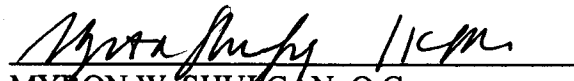
the Tribunal may order that one or more suppliers of the product in the market accept the person as a customer within a specified time on usual trade terms unless, within the specified time, in the case of an article, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.”

26. The circumstances required for the Tribunal to make an Order under Section 75 are unequivocally established on the evidence before the Tribunal:

- (a) Robinson Motorcycle is substantially affected in its business and will be precluded from carrying on business as a result of its inability to obtain adequate supplies of Harley-Davidson products anywhere in the market,
- (b) Robinson Motorcycle is unable to obtain adequate supplies of Harley-Davidson products because of Deeley's refusal to deal and refusal to allow others to deal with it,
- (c) Robinson Motorcycle is willing and able and has for the past seventeen (17) years met the usual trade terms of Deeley, the sole supplier of Harley-Davidson products,
- (d) Deeley remains in ample supply of Harley-Davidson products and has merely chosen without cause to refuse to deal to Robinson Motorcycle, and
- (e) Deeley's refusal to deal with Robinson Motorcycle will have an adverse effect on competition in the market.

27. The actions of Deeley in refusing to deal with Robinson Motorcycle require the Competition Tribunal to make an Order under section 75 of the Act.

Dated at Windsor, in the Province of Ontario and Southwest Region of Ontario
this 17th day of June, 2004.


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