

THE COMPETITION TRIBUNAL

IN THE MATTER OF an application by the Director of Investigation and Research under Section 75 of the *Competition Act*, RSC 1985, c. C-34, as amended;

AND IN THE MATTER OF a refusal to supply automotive parts for export by Chrysler Canada Ltd. to Richard Brunet;

BETWEEN:

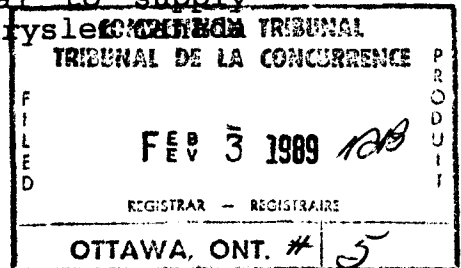
THE DIRECTOR OF INVESTIGATION AND RESEARCH

Applicant

- and -

CHRYSLER CANADA LTD.

Respondent



RESPONSE OF CHRYSLER CANADA LTD.

A. STATEMENT OF GROUNDS ON WHICH THE APPLICATION IS OPPOSED

The Respondent Chrysler Canada Ltd. ("Chrysler") opposes this application on the following grounds:

1. The business of R. Brunet Company ("Brunet") has not been substantially affected, nor has Brunet been precluded from carrying on business, by any actions which Chrysler may have taken.
2. The products referred to in the Notice of Application (the "products") are available to Brunet in the market.
3. The products are available to Brunet on the usual trade terms.
4. There is sufficient competition among suppliers in the market in relation to the products within the meaning of section 75 of the *Competition Act*, RSC 1985, c. C-34 (the "Act").
5. Brunet has not been willing and able to meet the usual trade terms of alternative suppliers of the products.

6. The products are not in ample supply within the meaning of section 75 of the Act.

7. In the alternative to the foregoing, in the event that Chrysler is found to have refused to deal with Brunet within the meaning of section 75 of the *Competition Act*, RSC 1985, c. C-34 (the "Act"), which is not admitted but is expressly denied, such refusal was as a result of an agreement between Chrysler and the Chrysler Corporation ("parent") with respect to the division of the market for the sale of the product.

B. MATERIAL FACTS ON WHICH CHRYSLER RELIES

Grounds 1 and 2:

8. The business of Brunet is the purchase and export of automotive parts, including the products in the international market.

9. The products continue to be available to Brunet, in unlimited quantities, for purchase from the parent.

10. Brunet has refused to deal to any significant degree with the parent.

11. Any decline in the business of Brunet, which decline is not admitted but is expressly denied, is as a result of a number of factors unrelated to any actions taken by Chrysler, including but not limited to a general decline in the world market for the purchase of automotive parts in general, and the product in particular, changes in currency exchange rates, changes in interest rates and increased competition from other manufacturers and suppliers.

12. In the alternative, in the event that there has been any decline in the business of Brunet, which is not admitted but is expressly denied, such decline is as a result of Brunet's failure to purchase sufficient product from the parent.

Grounds 3 and 5:

13. The products are available to Brunet from the parent on the same trade terms as are available to any other purchaser for export purposes.

14. There is no significant difference in the trade terms offered by the parent and those of Chrysler.

15. Brunet has been unwilling to purchase the product from the parent on the parent's usual trade terms.

Ground 7:

16. Chrysler is a wholly-owned subsidiary of the parent, and are affiliated corporations within the meaning of the Act.

17. By an agreement dated May 15, 1980 between Chrysler and the parent, Chrysler granted to the parent the exclusive right to purchase parts manufactured in Canada for resale throughout the world. Chrysler further agreed not to export, or knowingly supply for export, products of either Canadian or U.S. manufacture without the written consent of the parent. In addition, Chrysler undertook to ensure that its distributors and dealers would not export, or supply for export, products sold to them by Chrysler.

18. Brunet's business is the purchase and export of automotive parts, including the products, from Canada.

C. POSITION OF THE RESPONDENT WITH RESPECT TO THE GROUNDS AND MATERIAL FACTS IN THE NOTICE OF APPLICATION

19. The Respondent denies paragraphs 4, 5, 6(a), 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the grounds and material facts set out in the Notice of Application.

20. The Respondent admits paragraph 1 of the grounds and material facts set out in the Notice of Application.

21. With respect to paragraph 2 of the grounds and material facts set out in the Notice of Application, the Respondent admits that it is a company incorporated under the laws of Canada with its head office in the City of Windsor, in the Province of Ontario. Chrysler further admits that Mr. Moe Closs is president of Chrysler and that the vice-president in charge of parts, service and technical programs is Mr. C.R. Burnett. The Respondent states that Chrysler is wholly owned by Chrysler Motor Corporation, which is in turn wholly owned by the Chrysler Corporation, which corporation is referred to herein as the "parent". The Respondent admits that the parent has its head office in Detroit, Michigan, in the United States of America.

22. With respect to paragraph 3 of the grounds and material facts set out in the Notice of Application, the Respondent admits that

Brunet carries on business from premises at 360 James Street West, Suite 918, Montreal, Quebec, that he is the sole proprietor under the registered trade name of R. Brunet Company, and that Brunet's line of business is the purchase and export of automotive parts, including, *inter alia*, the product, to markets outside of North America. The Respondent denies, however, that Brunet's business has been affected by the Respondent's activities.

23. The Respondent admits paragraph 6(b) and 6(d) of the grounds and material facts set out in the Notice of Application. With respect to paragraph 6(c), the Respondent denies that the customers for component parts are mainly assemblers and other volume purchasers.

24. With respect to paragraph 14 of the grounds and material facts set out in the Notice of Application, Chrysler denies that Brunet's principal area of activity is in the supply of Chrysler service parts to foreign dealers and distributors of Chrysler products. Chrysler states that parts supplied to Brunet came from various sources, including the parent, and were delivered to Brunet's agent, Livingston Industries.

D. ADDRESS FOR SERVICE

25. Service on the Respondent of any documents in connection with this proceeding may be effected on Perley-Robertson, Panet, Hill & McDougall, Barristers & Solicitors, 99 Bank Street, Ottawa, Ontario, K1P 6C1, to the attention of Thomas A. McDougall, Q.C.

E. RELIEF SOUGHT BY THE RESPONDENT

26. The Respondent submits that this application be dismissed in its entirety.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Ottawa this 2nd day of February, 1989.

**Perley-Robertson, Panet,
Hill & McDougall**
Barristers & Solicitors
99 Bank Street
Ottawa, Ontario
K1P 6C1

Per: _____

Counsel for the Respondent