CT-2023-003

THE COMPETITION TRIBUNAL

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

AND IN THE MATTER OF an application by the Commissioner of Competition for an order pursuant to section 74.1 of the *Competition Act* and subsection 74.01(1.1) of the *Competition Act*;

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

– and –

CINEPLEX INC.

Respondent

**AFFIDAVIT OF JAY ECKERT
(AFFIRMED JANUARY 5, 2024)**

---

1. My name is Jay Eckert. I am the founder and creative director at Parachute Design Group Inc. I earned my graphic design diploma after completing the three-year program at Seneca Polytechnic (formerly Seneca College). In 2007, I became a Registered Graphic Designer by completing the required testing, portfolio interview and world experience required by The Association of Graphic Designer (CGD) designation from The Association of Design Professionals of Canada.
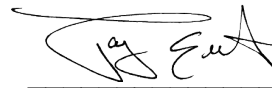
2. I have been asked by the Commissioner of Competition to provide my opinion and analysis relating to the Commissioner's Notice of Application against Cineplex Inc.

3. I attached as Exhibit "A" to this affidavit my report setting out my opinion.

4. I attached as Exhibit "B" to this affidavit my Acknowledgement of Expert Witness.

Affirmed remotely by Jay Eckert)
stated as being located in the City of)
Toronto in the Province of Ontario, before)
me at the City Of Ottawa in the Province of)
Ontario on January 5, 2024 in accordance)
with O. Reg. 431/20, Administering Oath)
or Declaration Remotely)
)
)
)
)
_____)   _____
Commissioner for Taking Affidavits)   Jay Eckert
)
)
)
)

This is Exhibit "A" to the affidavit of Jay Eckert,
affirmed remotely and stated as being located
in the city of Toronto in the province of Ontario,
before me in the city of Ottawa in the province of Ontario,
on January 5, 2024, in accordance with
O. Reg 431/20, Administering Oath or Declaration Remotely.

Commissioner of Competition v. Cineplex Inc. (CT-2023-003)

Expert Report by Jay Eckert, RGD, CGD

January 5, 2024

Background and Experience

1. My name is Jay Eckert. I am the founder and creative director at Parachute Design Group Inc. I earned my graphic design diploma after completing the three-year program at Seneca Polytechnic (formerly Seneca College). In 2007, I became a Registered Graphic Designer by completing the required testing, portfolio interview and work experience required by The Association of Registered Graphic Designers of Ontario (RGD). In 2021, I received my Certified Graphic Designer (CGD) designation from The Association of Design Professionals of Canada.

2. For 21 years, I have worked with organizations and brands across North America and Europe to create award-winning websites and application interfaces through my design consultancy, Parachute Design Group Inc., and various web design agencies early on in my career.

3. Under my guidance, Parachute Design Group Inc. has received several awards and commendations over the years, most recently including the Top Web Designers in Canada 2023 by *Clutch*[1], a Gold *2023 Canadian Marketing Award*[2] (for our work *Bennett Jones LLP Centennial Celebration Website*) and ranked as

---

[1] Top Web Designers in Canada 2023, *Clutch – Agencies that Deliver*:
    https://clutch.co/ca/web-designers/leaders-matrix
[2] Gold 2023 *Canadian Marketing Award* (Business):
    https://thecma.ca/get-involved/cma-awards/2023-winners

one of the 15 Best Digital Marketing Companies in Canada in 2022[3] by *The Tech Blog* Digital Marketing. Many of my thought leadership articles on user experience and website design are featured in various digital publications.[4] In 2021 I was featured in *Swagger Magazine's Self-Made Men* Cover Story and Featurette to share my story as a design leader in North America's web design industry.[5]

4. My web design consultancy works with many notable brands across Canada and the United States, including the Juno Awards, Go RVing Canada, Coke Canada, Flo, McMillan LLP, Bennett Jones LLP and the Government of Ontario. Our partnership with clients includes branding, website design and development and ongoing design and technical support to ensure their digital marketing goals are met as technology and audience behaviour evolves.

5. As Creative Director at Parachute Design Group Inc. I lead website design projects from conception through final deployment and ongoing analysis of website performance and conversion rate optimization to provide continued modifications and adaptations to the websites to improve user experience and overall performance. My core areas of expertise, include:

    a. *Discovery and Strategy*: I lead the Discovery Phase of all website design and development projects to explore and analyze website analytics and competitive analysis to understand user behaviours, technologies and expectations when using our clients' websites and related digital marketing assets.

---

[3] 15 Best Digital Marketing Companies in Canada in 2022, *The Tech Blog*: https://www.thetechblog.org/digital-marketing-companies-in-canada/

[4] Featured in *Top Interactive Agencies:* https://www.topinteractiveagencies.com/digital/agency/founders-ceos/jay-eckert-we-are-situated-in-one-of-the-fastest-growing-ai-and-technology-markets/, *Best Startup Canada – The Canadian Startup Magazine:* https://beststartup.ca/jay-eckert-beautiful-hand-crafted-website-design-and-branding-for-companies-around-the-world/.

[5] Self Made, *Swagger Magazine 2021*: https://www.swaggermagazine.com/home/selfmade/jayeckert/

b. *User Experience Design (UX Design):* also known as wireframing, is the process of designing low-fidelity blueprints to establish information architecture on a web page. More simply put, UX Design is a method of determining which information the web user will see and when they will see specific information in their journey throughout the website to optimize conversions.

c. *Conversion Rate Optimization (CRO):* Conversion rate optimization is the practice of increasing the percentage of users who perform a desired action on a website. Desired actions can include purchasing a product, clicking 'add to cart,' signing up for a service, filling out a form, or clicking on a link. Using a combination of user analytics data, design fundamentals and UX Design best practices, my role in guiding the conversion rate optimization process focuses on presenting a conceptual design or modifying an existing interface design to increase the number of conversions.

d. *User Interface Design (UI Design):* is the process that designers use to build high-fidelity interfaces for software or computerized devices, including websites and mobile applications. The UI Design process relies on the information architecture and UX Design developed in the strategy phase of a project to inform the final interface design that web or application users will see and interact with on the website or mobile application.

6. I also manage the website design and development teams to monitor quality assurance while coordinating client communications and general project management.

Assignment

7. I have been asked to answer the following questions:

   a. Question 1: Explain your area of expertise, and what role this area of expertise has when it comes to developing commercial websites or mobile applications such as those used by Cineplex.

   b. Question 2: In your opinion, what and how would a website or mobile application like those used by Cineplex know about the size of a consumer's screen when displaying content for each consumer.

   c. Question 3: Provide your opinion on how websites are generally designed so as to take into account consumer's screen sizes when deciding the layout of web pages, such as the "Tickets Page" of Cineplex.com and Cineplex Mobile.

   d. Question 4: Explain the concept of above and below the fold, and how it factors into decisions for web designers when designing the user experience on websites such as Cineplex.com and Cineplex Mobile. In answering, please explain the concepts of call-to-action (including their placement), scrolling, and conversions.

   e. Question 5: Provide your opinion on whether the website design on the Cineplex.com and Cineplex Mobile "Tickets Page" encourages consumers to scroll down below the fold?

   f. Question 6: Provide your opinion on whether it is technically possible to initially display the price of a movie ticket with the price of the Online Booking Fee (OBF) included when the OBF is capped at a maximum of

four movie tickets per transaction before any movie tickets are added to the basket. If so, how would you design this?

g. Question 7: Beyond including the OBF in the price of a movie ticket, what else could have been done from a website design perspective to enhance the awareness of the existence and amount of the OBF?

h. Question 8: Is the countdown timer on the "Tickets" page technically necessary?

8. I have attached my letter of instructions as Appendix A.

9. I was provided with the transcripts from the examination for discovery of Cineplex's representative Daniel McGrath along with the Cineplex documents referenced and exhibits to the examination, answers to undertakings and answers to follow up questions.

The Role of Analytics in User Experience Design

10. Various tools and applications are available to capture analytics across digital platforms, including websites and mobile applications. Commonly used platforms include Google Analytics and Plausible, while more advanced analytics platforms such as Adobe Analytics are available.

11. Analytics are a vital tool for user experience designers to make informed decisions about user behaviour, user technology and screen dimensions (also known as viewport) and where to place information within each page or screen to communicate most effectively within the web page or application interface. Analytics refers to the collection, measurement, analysis, and reporting of important data about website and mobile application visitors and their interactions with the website or application. To study a group of users for a

website or application, the designer will examine the audience, which is defined as a collection of all previous visitors to the web page or application.

12. For UX designers and web designers, website analytics are crucial for several reasons:

    a. *Understanding User Behaviour:* Analytics provide insights into how users navigate the website or application. Designers can see which pages are most popular, where users tend to drop off, or which elements they interact with the most. This information helps in understanding user behaviour patterns and where to place important information within the page architecture.

    b. *Identifying Pain Points:* By analyzing user interactions, designers can pinpoint areas where users might face difficulties or encounter obstacles. For instance, if a significant number of users drop off at a particular stage of a checkout process, it indicates a potential issue that needs to be addressed in the design or messaging on a specific page. Using analytics data, designers can make informed decisions to improve the overall user experience and how a page or screen communicates with the viewer. Designers may adjust the page layout, content, or functionality of the website or application to better align with user preferences and behaviours. For example, if analytics show that a certain feature is rarely used, designers might consider removing it to declutter the interface.

    c. *Responsive Design:* Analytics also reveal the devices and technologies users employ to access the site – whether on a desktop, mobile phone, or tablet, and which browsers or operating systems they use. This information is vital to inform designers in creating responsive designs that cater to various devices and screen sizes. This data is the designer's most important metric available to understand audience behaviour and technical

limitations or expectations. This data includes various metrics such as user's geographical location, the pages they visit, the time they spend on each page, the actions they take (clicks, downloads, or form submissions), and the screen dimensions or viewport measurement of the devices or browsers they use to access the website or application.

d. *Content Strategy:* Knowing which pages or content users engage with the most assists in shaping content strategy. Designers can prioritize or rework content based on what users find most valuable, ensuring the most critical information is easily accessible.

13. In essence, website analytics serve as a compass for UX and web designers, guiding them to make data-driven decisions that enhance the user experience, streamline navigation, and optimize the design for placement of content and information to meet the audience's needs, preferences and expectations.

UX Strategy and Web Page Design

14. A web page in its simplest form is a digital space on the internet, similar to a page in a book or a piece of paper. However, instead of being a physical object, it's something intangible you can see and interact with on your computer, mobile phone, or tablet screen. When web designers consider creating a web page that will work well on different devices ranging from large format displays to laptop computer screens or smaller mobile phone screens, they utilize the concept of "responsive design." Responsive design is a methodology that allows the web designer to create a consistent interface design and user experience that will adapt in real-time to the screen size and dimensions of the device the user loads the web page on. The fundamental principle of responsive design is to plan for and control what the web user sees on any device they use to access to the website.

15. To achieve a responsive design, modern web pages are built in a such a way that relies on special coding to make the user interface flexible. In concept, it's a bit like a rubber band that stretches or shrinks depending on the screen size. Pictures, text, and other media on the page can change their size and layout in real-time to ensure they fit neatly, no matter how big or small the screen is.

16. To understand responsive design, you may visit a website on your laptop and resize the web browser. You will notice that the web page components and general layout will adjust their position on the screen and even scale up or down in size to accommodate the change in browser dimensions. If you open the same website on your mobile phone you will notice that everything you see on your laptop rearranges itself to fit neatly within the smaller mobile phone screen. Text might get a bit smaller, or pictures might stack on top of each other instead of sitting side by side. This format adjustment makes it easier for the viewer to read and navigate the site without zooming in and out or scrolling sideways.

17. The flexibility and freedom that responsive design provides to web designers allows them to utilize the entire screen, edge-to-edge, and top-to-bottom to make data-driven decisions on how to structure information on the page for any screen size or device.

Discovery and Analytics Research

18. When a web designer undertakes a new design for a website, the first step in the web design process is analyzing the analytics data to collect important information about the people that have used the existing website to understand their behaviours and technologies they used to access the website.

19. Understanding user behaviour allows the designer to make educated decisions about navigational design and establish information hierarchy based on users interests and navigational patterns evident in the analytics. Understanding the

technology used by the audience to visit the website is equally important in designing the user experience as these metrics provide clear insight as to which screen dimensions or screen resolutions are most commonly used to access the website. Using the largest common audience metrics will dictate the primary screen resolution the web designer focuses their design strategy on. This strategy will focus on where content is placed within each page of the website to ensure that the most important information is visible to the most viewers without requiring the user to perform additional actions after the page has loaded, including scrolling or clicking to open additional content.

The UX Design Process

20. Once the web designer understands their audience's behaviours and the technology used to access the current website, the designer will create a site map to plan out the navigation within the new website. The site map will serve as a map to indicate where each page within the website will live within the navigational flow and how pages will be linked together.

21. Next, the web or UX designer will design a complete set of wireframes. The wireframes serve as a blueprint for each unique page type within the website. The purpose of the wireframing exercise is to carefully plan out the information architecture of each web page and determine where all information and calls-to-action will be displayed in a specific location for the viewer.

22. *Call to action (CTA)* is a marketing term for any design to prompt an immediate response or encourage immediate action, usually resulting in the generation of a sales lead or sale of a product or service. A CTA most often refers to the use of words or buttons that are incorporated into advertising materials or web pages, which compel the audience to act in a specific way.

23. The decisions made during this phase of the website design project are crucial as they lay the foundation for how the website will communicate with all visitors, what information they will see, and what actions they will be prompted to take to convert.

24. It is important to note that the UX Design process is iterative during the strategy phase of any web design or mobile application interface design project as the designer and website owner review and discuss possible layouts, information architecture and placement of CTAs to effectively communicate with the intended audience or encourage the user to perform specific actions on each page. This iterative process continues after the deployment of the website or mobile application as analytics and user data are collected to provide the designer and website owner insights into activities, behaviours and interests of the audience. This information is used to make periodic adjustments to the design, layout or organization of elements within the web page or application interface to continually improve user experience or increase conversions.

The Page Fold

25. The term 'above the fold' has been around for a long time. The concept of the page fold originates from the early days of publishing newspapers.[6] Newspapers were printed on large sheets of paper and folded in half when displayed on newsstands. Above the fold refers to the content that appeared on the top half of the newspaper's front page that was still visible after it was folded and stacked on display. This real estate was the most valuable to marketers as people could easily see this content before picking the newspaper up and unfolding it. The same applies in digital marketing and website design today.

---

[6] Optimization Glossary: Above the Fold, *Optimizely*:
    https://www.optimizely.com/optimization-glossary/above-the-fold/

26. This principle has evolved due to the transition from paper to online marketing and web design. Because web pages do not fold the way newspapers do, the fold line refers to the point at the bottom edge of the screen where the web browser cuts off the content and requires users to scroll to view the rest of the page content. Everything after that scroll point is considered 'below the fold.'

27. No matter what screen size or device type is used, online marketing best practices suggest that anything of primary importance is placed in that first viewable area of the web page before the user has to scroll down to reveal more information. Understanding the user's screen dimensions and designing the website or application interface for the largest common screen resolution of the total audience captured in the website analytics serves this core marketing principle.

28. The Nielsen Norman Group, world leaders in research-based user experience, have conducted numerous studies on the effect of the page fold dating back to 2010. The research indicates that what appears at the top of the page versus what is hidden below the fold will always influence the user experience – regardless of screen size. When users fail to see information of value, they stop scrolling. In usability testing, the occasional user does a "lay of the land" scroll to get a sense of what's on a page before engaging, but this behaviour is far from standard. Users scroll when there is a reason to.

29. The fold matters because scrolling is an extra action that users must take to access content. Like waiting for a page to load, clicking through an image slideshow, or opening an expandable design element to reveal more information, scrolling adds an extra step that users must take to accomplish their goal.

30. Empirical data supports the page fold theory. In The Nielsen Norman Group's study, researchers observed countless users' behaviours in qualitative usability studies impacted by the fold – often for the worse, because websites didn't

prioritize above-the-fold content appropriately. Users stopped scrolling before finding the information they needed and, in some instances, didn't realize that there was more information available below the fold.[7]

31. The research group also uncovered quantitative evidence in an analysis of 57,453 eye-tracking fixations.[8] They found a dramatic drop-off in user attention at the position of the page fold. Elements above the fold were seen more than elements below the fold. The 100 pixels just above the fold were viewed 102% more than the 100 pixels just below the fold. When this evidence is applied to the Cineplex.com "Tickets Page", the 100 pixels just above the fold feature the floating ribbon with the countdown timer and primary call to action button in the form of a blue button with white text "PROCEED".

Designing for User Behaviour

32. Understanding how web users in North America consume content on a webpage or application user interface is a fundamental principle of user experience design. It informs layout decisions and placement of important information within the interface. The universally accepted principles behind this methodology dictate that people do not read web pages. Instead, they scan them. Scanning means users only stop to read when something catches their eye. Designers rely on these basic user experience fundamentals to control where the user looks on the web page and to provide direction to the user to clarify the action the website owner wants them to take next.

---

[7] In some instances, studies have shown that placing a CTA above the fold does not result in a noticeable difference in conversion rate compared to a CTA placed below the fold. These instances include situations where a user is seeking detailed information about a specific subject or is researching a product or service before making a decision to purchase. These instances are typically business-to-business transactions and feature an interface design approach that purposefully leads the user's eye below the fold to encourage them to scroll. These scenarios are not relevant to the consumer experience offered by the Cineplex website and mobile application: "Above the Fold" and Its Role in Modern Web Design, *Parachute Design Group Inc.* – https://parachutedesign.ca/blog/above-the-fold/

[8] The Fold Manifesto: Why the Page Fold Still Matters, *The Nielsen Norman Group*: https://www.nngroup.com/articles/page-fold-manifesto/

33. There are two primary information design configurations for web pages. The first is called the "*F Pattern,*" which presents information in a long-format or article style with key information placed in locations throughout the page in the general shape of a capital "F". These pages are designed to accommodate lengthy content and to encourage the user to scan left to right while scrolling down the page as North Americans read regular text.

34. The second design configuration is called the "*Z Pattern,*" which is used for conversion pages that serve the single purpose of converting users into customers, such as the Tickets Page on the Cineplex.com website and mobile application. Conversion pages are designed to quickly move the user from initial page load to making a selection and advancing to the next step the website owner wants them to take in the sales funnel. The Tickets Page on Cineplex.com is a perfect example of a conversion page designed to provide information about movie times and experiential options available to users and then funnel users into the checkout process. See Figure 1 below for a reference of the Z Pattern concept used on the Tickets Page from Cineplex.com.

35. Figure 1 – The Z Pattern concept used in the Ticket Page on Cineplex.com.[9]

---

[9] Figure 1 screenshot captured December 21, 2023 on Mac Studio Display using Safari Web Browser.
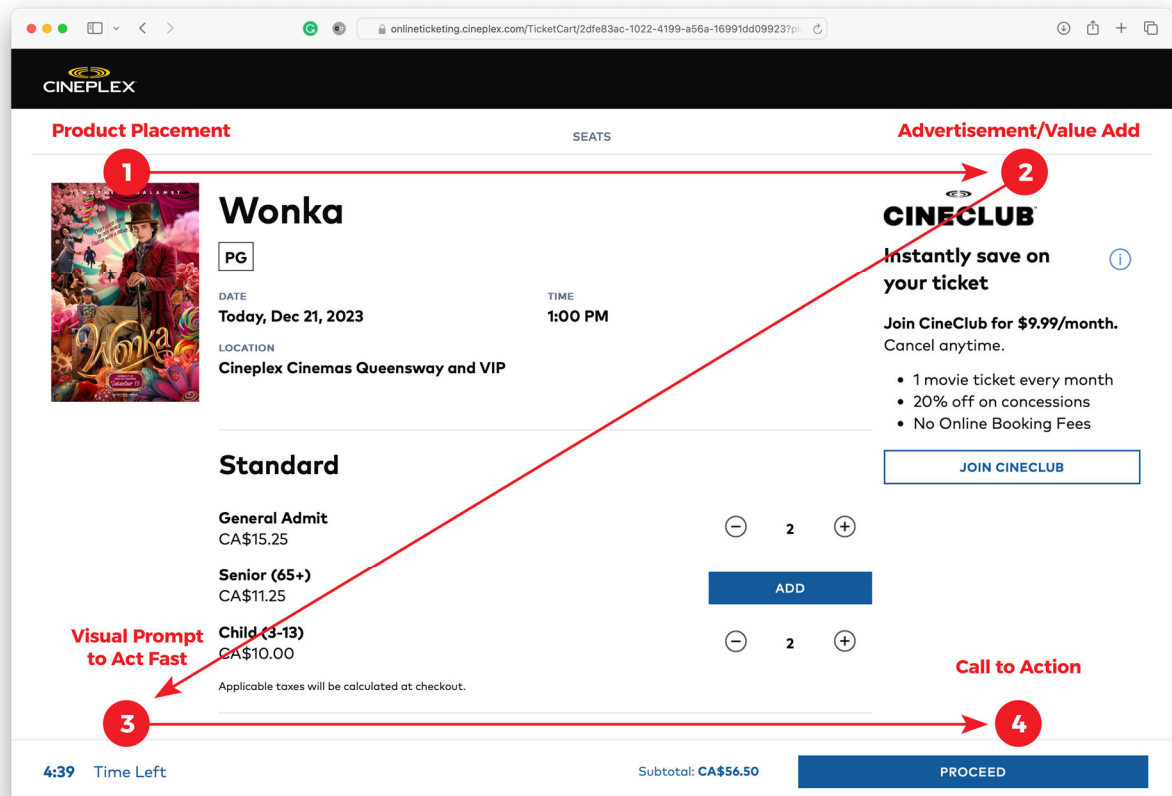
a. *Point #1.* The starting point of user's journey usually focuses on the product or service offering subject to the conversion or sale.

b. *Point #2.* The place that the website owner wants the user to see first along the top of the Z Pattern. As the user's eye will naturally follow the top line of the Z the goal is to place a secondary CTA or important information for the user here, often used to upsell or add more value to the offering.

c. *Middle of the page.* This area is used to offer content or information that is required for the conversion or to help influence the user's, but will not distract them from continuing to scan along the Z Pattern.

d. *Point #3.* The purpose of Point #3 in the Z Pattern is to guide users to the final call to action at Point #4. This location is often used to offer additional information

to convince users to convert at Point #4. In this case, Cineplex.com uses a timer that creates a sense of urgency for the user to continue into the sales funnel.

e. Point #4 is the conversion point where the user is asked to take the next step and continue in the sales funnel. The visual line from left to right between Point 3 and Point 4 can often contain content that pushes the user's attention to the corner. On the Tickets Page on Cineplex.com the Subtotal is displayed before the call to action. Point #4 is the most valuable real estate on the screen and the optimal position to place the primary call to action.

36. Conversion pages are usually the most important pages in a website and are carefully designed to optimize conversions, whether the goal is to increase leads, or drive sales through the website. Understanding the user's screen dimensions in these scenarios is paramount to the overall success of the web page design to place the call to action in the optimal position on the user's screen above the page fold.

37. To ensure the user sees the primary call to action above the fold, Cineplex.com uses a floating ribbon along the bottom edge of the browser to ensure the timer and primary call to action are always in view. This approach introduces two notable issues that impact the user's experience by obscuring other content on the web page related to understanding the additional fees associated with purchasing tickets online, referred to as the Online Booking Fee. The first is the creation of a false floor. The second is discouraging the user from scrolling down the page by implementing a timer and floating call to action button above the fold.

The False Floor Problem

38. The False Floor user experience issue happens when the design of a web page above the page fold creates the illusion of completeness, which can interfere with

scrolling. When the primary call to action is also included above the fold, it encourages users to convert without scrolling down the page any further.[10] Implementing the floating ribbon at the bottom of the web page that adapts to the user's screen dimensions introduces three issues.

    a. The floating ribbon increases the amount of content hidden below the page fold by covering up an additional 80 pixels of screen real estate.

    b. Including of a timer creates a sense of urgency for the user to select tickets and click on the Proceed button as quickly as possible before time runs out, discouraging users from taking the time to scroll down the page.

    c. The placement of the primary call to action, the "PROCEED" button above the page fold, discourages scrolling as users can select their tickets and convert without having to scroll down.
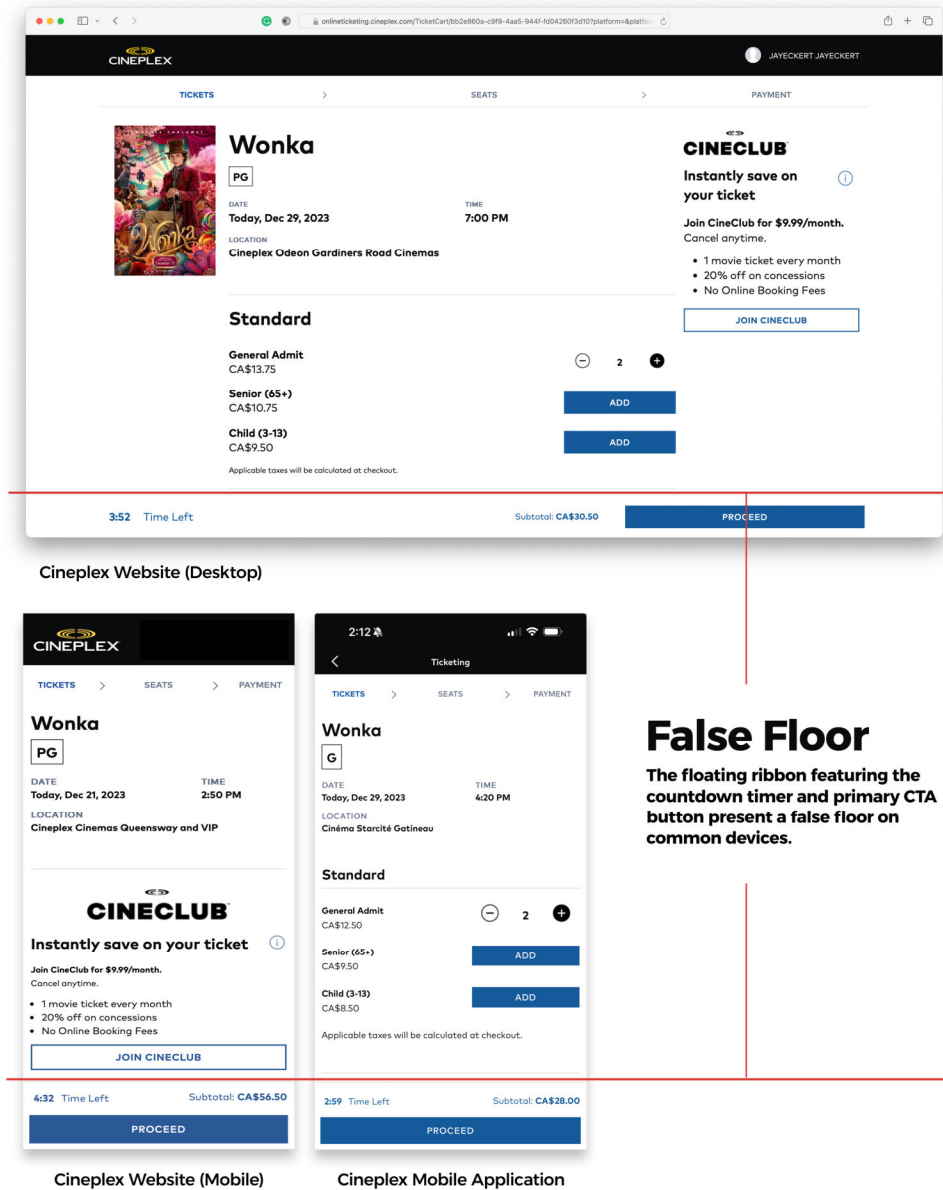
39. The False Floor problem may be created by the floating ribbon at the bottom of the user's screen. It is evident in both the desktop web page, the mobile version of the web page and in the Cineplex Mobile Application, as shown in Figure 2 using the most common mobile viewport of 360 pixels by 800 pixels and most common desktop viewport height of 1,080 pixels.[11]

---

[10] The Illusion of Completeness, *The Nielsen Norman Group:*
https://www.nngroup.com/articles/illusion-of-completeness/
[11] What is the Ideal Screen Resolution for Responsive Design?, *Browserstack*:
https://www.browserstack.com/guide/ideal-screen-sizes-for-responsive-design

40. Figure 2 – The False Floor problem on the Cineplex Tickets Page.[12]

Cineplex Website (Desktop)

False Floor

The floating ribbon featuring the countdown timer and primary CTA button present a false floor on common devices.

Cineplex Website (Mobile)   Cineplex Mobile Application

---

[12] Figure 2 captured December 21 and 29, 2023 at most common mobile viewport (360px by 800px) using Safari and the Cineplex Mobile Application for iOS and most common desktop viewport height of 1,080 pixels using Safari for Mac OS.
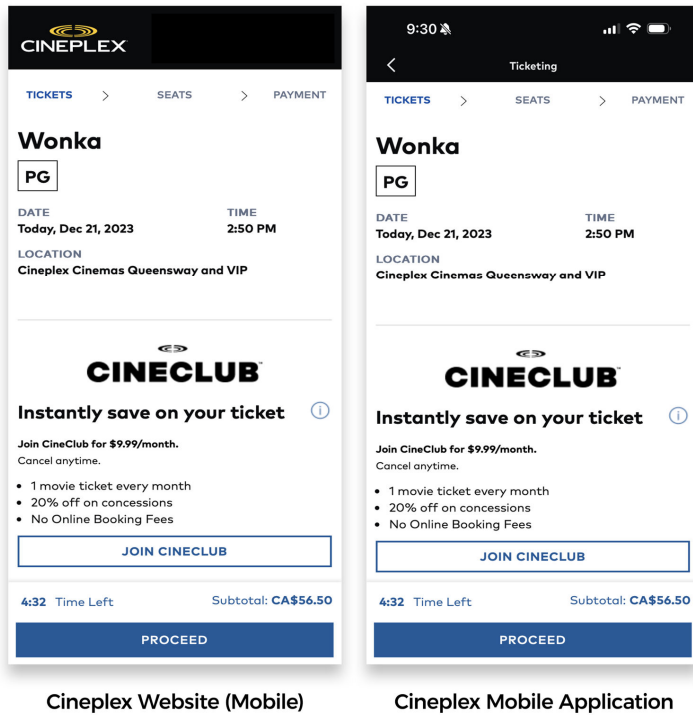
False Floor

The floating ribbon featuring the countdown timer and primary CTA button present a false floor on common devices.

Cineplex Website (Mobile)   Cineplex Mobile Application

Standard Screen Dimensions and Resolutions

41. As illustrated in the Discovery Phase of the web design process, understanding user behaviour and screen dimensions is paramount to making informed decisions about content placement within a web page design. The use of analytics data, for example from Adobe Analytics[13] provides clarity for designers as to which screen dimensions all visitors to the Cineplex.com website and mobile application use to view the Tickets Page. In the rare event that this data is unavailable to the designer, for example, when standard analytics applications are not monitoring the website, it is a best practice to rely on globally accepted standards provided by the StatCounter Global Stats, which publishes standard screen dimensions for public reference and allows users to refine data research by day, week, month or year. Widely-used website quality assurance testing

---

[13] Adobe Analytics is utilized by Cineplex as stated at Examination for Discovery of Mr. McGrath, page 287, line 1

platforms, such as BrowserStack rely on StatCounter Global Stats to provide real-time screen resolution metrics based on more than 5 billion page views per month across more than 1.5 million websites.[14]

42. Browser dimensions usually increase incrementally over time as technology evolves. Using the most recently published statistics from November 2023, designers will note that 69.33% of all users on the World Wide Web use a maximum screen resolution with a fixed height of up to 1,080 pixels or smaller, while 2.97% of web users have a maximum resolution of 1,440 pixels or smaller with the remaining 28.13% undetermined.[15]

43. Referencing Figure 3 below, we can see the placement of the Online Booking Fee on the Tickets Page of Cineplex.com is well beyond what common web browsers can display above the page fold, positioned 1,330 pixels below the top of the browser.

44. Browser toolbars (the application bar at the top of the browser that includes the address bar and other buttons) vary in height from 80 to 120 pixels on average, depending on user configurations. When the browser toolbar and the floating ribbon that contains the countdown timer and primary CTA button at the bottom of the browser are factored into determine the page fold the Online Booking Fee could be displayed up to 1,450 pixels from the top of the user's screen and would only be visible to the user if they chose to ignore the timer and floating call to action button and scroll down to the very bottom of the page.
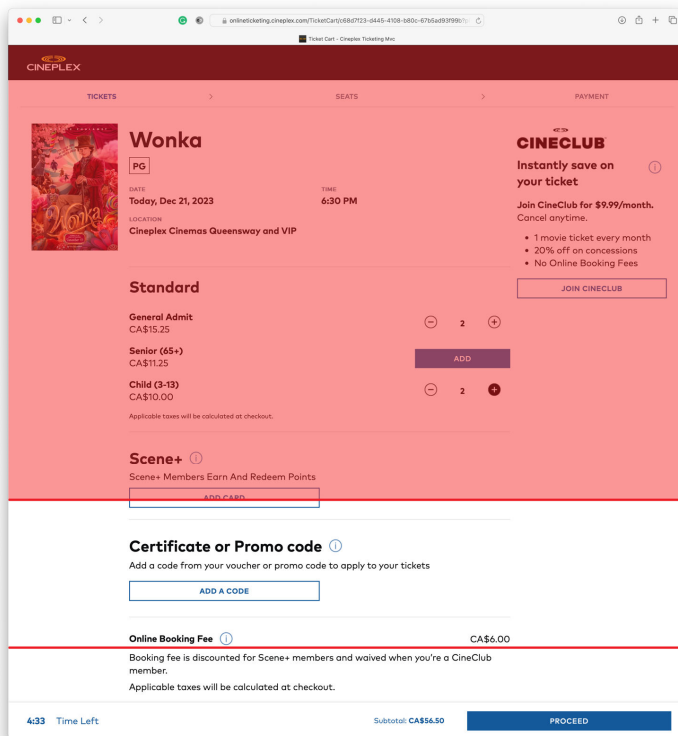
---

[14] StatCounter Global Stats Fact Sheet:
https://gs.statcounter.com/factsheet#:~:text=Our%20stats%20are%20based%20on,with%20a%20larger%20sample%20size.
[15] StatCounter Global Stats screen resolution data as of November 2023:
https://gs.statcounter.com/screen-resolution-stats/desktop/worldwide/#monthly-202211-202311-bar

45. Figure 3 – Common Screen Resolutions in November 2023 as published by StatCounter Global Stats overlayed on the Cineplex.com Tickets Page.[16]

On the mobile application and mobile version of the website, the OBF is located even further down the page at a depth of 1,188 pixels which is beyond the maximum viewable area of contemporary mobile phones without requiring the user to scroll down.

46. Figure 4 – Common Mobile Screen Resolutions in November 2023 published by StatCounter Global Stats[17] overlayed on the Cineplex Mobile Application Tickets Page.[18]

---

[16] Figure 3 screenshot captured December 21, 2023 on Mac Studio Display using Safari Web Browser.
[17] StatCounter Global Stats mobile screen resolution data as of November 2023:
https://gs.statcounter.com/screen-resolution-stats/mobile/worldwide#monthly-202211-202311-bar
[18] Figure 4 screenshot captured December 29, 2023 on Cineplex iOS Application.
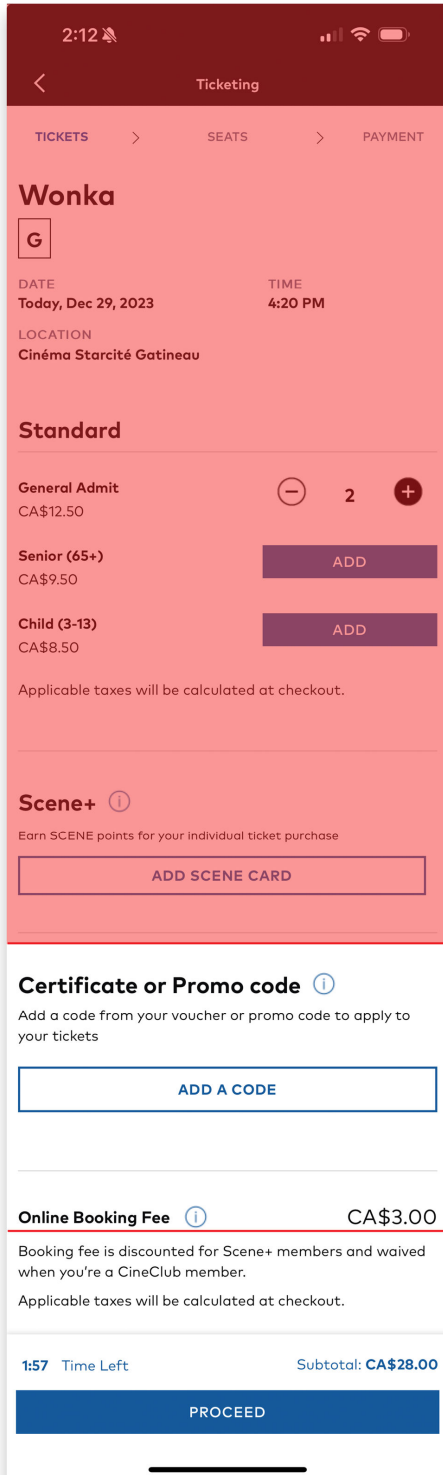
Common Mobile Screen Resolutions & Page Fold in 2023

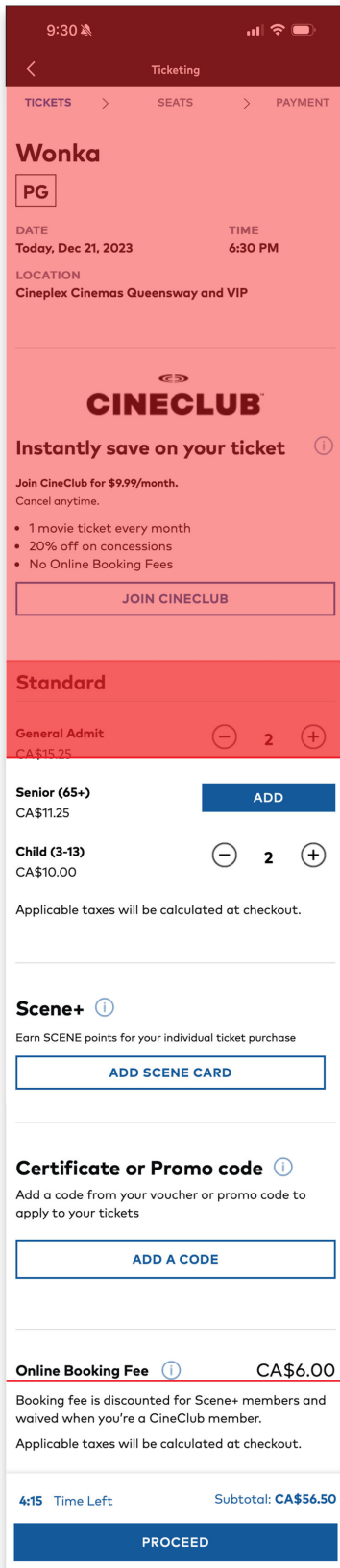**As published November 2023 by StatCounter Global Stats.**

63.23% of Mobile Viewers

Page fold shown at 926 pixels – maximum viewable area for the most commonly used mobile devices as of November 2023.

1,188 pixels

The Online Booking fee notice is placed 1,188 pixels from the top of the page.

Common Mobile Screen Resolutions & Page Fold in 2023

As published October 2023 by Browserstack

*Indicates floating ribbon creating a False Floor by obscuring information.

11.1% of Mobile Devices

Page fold at 800 pixels – maximum viewable area for the most commonly used mobile devices in 2023.

1,535 pixels

The Online Booking fee notice is placed 1,535 pixels from the top of the page.

The following text appears within the mobile screen mockup:

9:30

Ticketing

TICKETS   >   SEATS   >   PAYMENT

Wonka

PG

DATE
Today, Dec 21, 2023

TIME
6:30 PM

LOCATION
Cineplex Cinemas Queensway and VIP

CINECLUB

Instantly save on your ticket

Join CineClub for $9.99/month.
Cancel anytime.

- 1 movie ticket every month
- 20% off on concessions
- No Online Booking Fees

JOIN CINECLUB

Standard

Senior General Admit   — 2 +
CA$15.25

Senior (65+)
CA$11.25   ADD

Child (3-13)
CA$10.00   — 2 +

Applicable taxes will be calculated at checkout.

Scene+ ⓘ

Earn SCENE points for your individual ticket purchase

ADD SCENE CARD

Certificate or Promo code ⓘ

Add a code from your voucher or promo code to apply to your tickets

ADD A CODE

Online Booking Fee ⓘ   CA$6.00

Booking fee is discounted for Scene+ members and waived when you're a CineClub member.

Applicable taxes will be calculated at checkout.

4:15 Time Left   Subtotal: **CA$56.50**

PROCEED

User Attention and Scrolling Behaviour Studies

47. The Nielsen Norman Group conducted two comparative studies on how contemporary web users consume web page content and how often users scroll down to view more on a page. The research group first conducted a study in 2010, which showed that 80% of users viewing time was spent above the page fold.[19] A follow-up study was conducted in 2018 after the invention of responsive design and significantly larger monitors' capability of displaying websites and applications at much higher resolutions. The 2018 study revealed that users spent about 57% of their page-viewing time above the fold. 74% of the viewing time was spent in the first two screenfuls up to 2,160 pixels deep.[20] The results of both studies concluded that the pattern of a sharp decrease in attention below the page fold remained the same in 2018 as in 2010.

48. The design of the Cineplex.com Tickets page, which features a floating ribbon at the bottom including a countdown timer and a primary call to action button, creates a false floor on both the website and the mobile applications. The layout places important information regarding the additional fees charged for booking online below the maximum screen depth limitations of nearly all contemporary technologies. It is my opinion that the Cineplex.com Tickets page does not encourage users to scroll down below the fold. The floating ribbon is designed so that users can convert without scrolling down the page to uncover additional information.

---

[19] Scrolling and Attention (Original Study), *The Nielsen Norman Group:*
   https://www.nngroup.com/articles/scrolling-and-attention-original-research/
[20] Scrolling and Attention, *The Nielsen Norman Group*:
   https://www.nngroup.com/articles/scrolling-and-attention/

Alternative Options to Display the Online Booking Fee

49. I have been asked whether it is technically possible to initially display the price of a movie ticket with the price of the Online Booking Fee (OBF) included when the OBF is capped at a maximum of four movie tickets per transaction before any movie tickets are added to the basket.

50. It is my opinion that it is technically possible to initially display the price of a movie ticket with the price of the OBF included when the OBF is capped at a maximum of four movie tickets per transaction before any movie tickets are added to the cart.

51. It is technically possible to develop logistical code within the Tickets Page to present the first 4 tickets to the user at a price that includes the OBF and then offer subsequent tickets at a discounted price that does not include the OBF. This method of discounting product is commonplace in e-commerce websites and applications and could be considered a "bulk discount," where a parameter is defined in the web page source code to count products added to the cart and then discount additional products once a specific volume is reached.

52. Aside from including the OBF in the price of a movie ticket, there are alternative design approaches that could be considered to enhance the awareness of the existence of the OBF

The Countdown Timer

53. I have been asked if the countdown timer on the "Tickets" page is technically necessary. After reading the discovery testimony, Cineplex Inc., COO, Daniel McGrath states that the Tickets Page does not reserve seat inventory until the user clicks on the primary call to action button labelled "PROCEED," which

advances the user to the next page.[21] The Tickets page should, therefore become idle once it finishes loading and is not actively communicating with the ticket reservation system at this point in the online purchasing process.

54. When a web page is described as "idle," it means that the page is not communicating with external or third-party sources to move, share or request information. All processes that happen within the idle page are contained within the page source (or source code) and do not require intervention or additional information from another source, such as the ticketing inventory system.

55. There are two common methods to measure product inventory in the e-commerce process. The first is to check product inventory when the product selection page is requested by the browser (this means when the web page is first loading) and then limit the volume of product displayed for the user. The second method, is to check the product inventory once the user entered the final checkout process and is no longer adding products to their cart.

56. The ticket select buttons that allow the user to choose the admission type and volume of tickets that they wish to purchase do not require information to be collected or sent to an external application or database at this point in the user journey. This function is self-contained within the Tickets Page. The selection information is then transferred to the next page in the sales funnel when the user clicks on the "PROCEED" button. As Mr. McGrath states in the discovery testimony, the website then references the seat inventory based on the ticket parameters the user defined in the previous step.

57. Consequently, it is my opinion that the Tickets Page does not require a countdown timer for the purpose of temporarily holding seat inventory for the user.

---

[21] Examination for Discovery of Mr. McGrath, page 303, lines 9-12

58. Alternative methods of communicating time-sensitive actions include displaying a temporary pop-up window if the user is idle for more than the desired amount of time or simply stating in plain language within the page content that the user has a limited amount of time to complete their selection and move forward to reserve seats on the next page or the web page will reset, or time out.

	Ministère de la Justice Canada	Department of Justice Canada		
	Bureau de la concurrence Services juridiques	Competition Bureau Legal Services		
	Place du Portage, Tour I 22e étage 50 rue Victoria Gatineau QC K1A 0C9	Place du Portage, Phase I 22nd Floor 50 Victoria Street Gatineau QC K1A 0C9	Téléphone/Telephone (647) 625-6782	Télécopieur/Fax (819) 953-9267

VIA EMAIL

November 29, 2023

Jay Eckert
Parachute Design Group Inc.
jay@parachutedesign.ca

Dear Mr. Eckert,

> ### *Re: Commissioner of Competition v. Cineplex Inc.* (CT-2023-003) – Expert Report

You have been retained to provide your expert opinion and analysis on the issues set out in the letter below. We anticipate that your opinions and analysis may be used in the above referenced application. Your opinions and analysis in the form of an expert report must be filed with the Competition Tribunal no later than January 8, 2024.

Specifically, we ask that you answer the following questions:

Question No. 1: Explain your area of expertise, and what role this area of expertise has when it comes to developing commercial websites or mobile applications such as those used by Cineplex.

Question No. 2: In your opinion, what and how would a website or mobile application like those used by Cineplex know about the size of a consumer's screen when displaying content for each consumer.

Question No. 3: Provide your opinion on how websites are generally designed so as to take into account consumer's screen sizes when deciding the layout of web pages, such as the "Tickets Page" of Cineplex.com and Cineplex Mobile.

Question No. 4: Explain the concept of above and below the fold, and how it factors into decisions for web designers when designing the user experience on websites such as Cineplex.com and Cineplex Mobile. In answering, please explain the concepts of call-to-action (including their placement), scrolling, and conversions.

Question No. 5: Provide your opinion on whether the website design on the Cineplex.com and Cineplex Mobile "Tickets Page" encourages consumers to scroll down below the fold?

Question No. 6: Provide your opinion on whether it is technically possible to initially display the price of a movie ticket with the price of the Online Booking Fee (OBF) included when the OBF is capped at a maximum of four movie tickets per transaction before any movie tickets are added to the basket. If so, how would you design this?

Question No. 7: Beyond including the OBF in the price of a movie ticket, what else could have been done from a website design perspective to enhance the awareness of the existence and amount of the OBF?

Question No. 8: Is the countdown timer on the "Tickets" page technically necessary?

Best regards,

Jonathan Hood
Senior Counsel
Department of Justice
Competition Bureau Legal Services

_____

This is Exhibit "B" to the affidavit of Jay Eckert,
affirmed remotely and stated as being located
in the city of Toronto in the province of Ontario
before me in the city of Ottawa in the province of Ontario,
on January 5, 2024, in accordance with
O. Reg 431/20, Administering Oath or Declaration Remotely.

CT-2023-003

THE COMPETITION TRIBUNAL

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

AND IN THE MATTER OF an application by the Commissioner of Competition for an order pursuant to section 74.1 of the *Competition Act* and subsection 74.01(1.1) of the *Competition Act*;

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

– and –

CINEPLEX INC.

Respondent

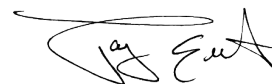### ACKNOWLEDGEMENT OF EXPERT WITNESS

I, Jay Eckert, acknowledge that I will comply with the Competition Tribunal's code of conduct for expert witnesses which is describe below:

1. An expert witness who provides a report for use as evidence has duty to assist the Tribunal impartially on matters relevant to his or her area of expertise.
2. This duty overrides any duty to a party to the proceeding, including to person retaining the expert witness. An expert is to be independent and objective. An expert is not an advocate for a party.

January 5, 2024
_____
Date

_____
Jay Eckert

CT-2023-003

THE COMPETITION TRIBUNAL

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

AND IN THE MATTER OF an application by the Commissioner of Competition for an order pursuant to section 74.1 of the *Competition Act* and subsection 74.01(1.1) of the *Competition Act*;

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

– and –

CINEPLEX INC.

Respondent

AFFIDAVIT OF JAY ECKERT
(AFFIRMED JANUARY 5, 2024)