COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

FILED / PRODUIT
Date: January 31, 2024
CT- CT-2023-003

Annie Ruhlmann for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT. # 45

CT-2023-003

THE COMPETITION TRUBINAL

IN THE MATTER OF an application by the Commissioner of Competition for an order pursuant to sections 74.01 and 74.1 of the Competition Act, RSC 1985, c C-34.

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

– and –

CINEPLEX INC.

Respondent

WITNESS STATEMENT OF ADAM ZIMMERMAN

I, Adam Zimmerman, a Senior Competition Law Officer with the Competition Bureau (the "**Bureau**"), of the City of Ottawa in the Province of Ontario, make this witness statement in support of the Commissioner of Competition's (the "**Commissioner**") application for an order under sections 74.01 and 74.1 of the *Competition Act,* R.S.C., C-34 (the "**Act**") and AFFIRM AS FOLLOWS:

INTRODUCTION

1. The Commissioner is an officer appointed by the Governor in Council under section 7 of the Act and is responsible for the administration and enforcement of the Act. I am an authorized representative of the Commissioner for the purpose of these proceedings.

2. I have been employed by the Bureau since December 2001. I initially joined the Bureau as a Competition Law Officer in the (former) Mergers Branch and in the fall of 2002, I transferred to the (former) Fair Business Practices Branch, which is now known as the Deceptive Marketing Practices Directorate ("**DMPD**").

3. From January 2017 until April 2018, I served as an Acting Senior Competition Law Officer until I was appointed as a Senior Competition Law Officer in May 2018. While I remained a Bureau employee, I was seconded to the Office of the Privacy Commissioner of Canada, where I served as a Senior Advisor in the PIPEDA Compliance Directorate from November 2019 until March 2022. I returned to the Bureau and the DMPD in April 2022, and I am presently a Senior Competition Law Officer.

4. Since joining the DMPD, I have investigated a number of enforcement matters under Part VII.1 of the Act (Deceptive Marketing Practices reviewable matters). I am currently the leader of a team who conducted an investigation into the marketing practices of Cineplex Inc. ("**Cineplex**") which led to the Commissioner's Notice of Application (the "**Application**").

5. Defined terms in this witness statement have the meaning ascribed to them in the Commissioner's Application and Reply.

CINEPLEX

6. The Commissioner has filed an Application against Cineplex which was incorporated under the Ontario *Business Corporations Act* on October 15, 2010, with its registered head office located at 1303 Yonge Street, Toronto, Ontario, Canada, M4T 2Y9. Attached as Exhibit A to my affidavit, is Cineplex's corporate 'Profile Report' from the Ontario Ministry of Government and Consumer Services.

THE CONSUMER PURCHASE EXPERIENCE

7. On January 4, 2024, I recorded six videos showing a purchase or simulated purchase of Movie Tickets on Cineplex's Website and in the App. Those videos are attached to my affidavit as Exhibits B – G.

8. Attached as Exhibit B to my witness statement, is a recording showing my purchase of two General Admit and two Child (3 – 13) tickets for that day's 7:05 p.m. showing of Night Swim at the Cineplex Odeon South Keys Cinemas, located at 2214 Bank Street, Ottawa, Ontario (the "**South Keys Theatre**"), through the Website using my Bureau Cineplex account (that is the Cineplex account I created using my Bureau email address).

9. Using Camtasia 2022, I recorded the purchase as it was displayed on the 24 inch external monitor attached to my HP EliteBook 830 G5 laptop, running Windows 10 Enterprise. During the recording, I only scrolled down enough to ensure that the links and buttons that I was looking for were fully displayed on screen. In other words, I only scrolled as far down as was absolutely necessary to complete my purchase.

10. Attached as Exhibit C to my witness statement, is a recording showing the purchase process I followed to buy the same set of Movie Tickets using the same laptop and external monitor, with identical software configurations, as described in paragraphs 8 and 9 above. In this video, I

stopped short of completing the purchase of the Movie Tickets. The other difference is that for each step in the purchase process, I scrolled to the bottom of each webpage.

11. Attached as Exhibit D to my witness statement, is a recording simulating the purchase process I followed on the mobile Website (accessed through a mobile device) for the same set of Movie Tickets described in paragraph 8 above. The recording was taken using the screen recording functionality built into my Samsung Galaxy S23, which has a 6.1 inch screen and is running Android version 14 and One UI version 6. As with Exhibit B, I only scrolled down enough to ensure that the links and buttons that I was looking for were fully displayed on screen.

12. Attached as Exhibit E to my witness statement, is a recording simulating the purchase process I followed on the mobile Website for the same set of Movie Tickets described in paragraph 8 above. The recording was taken using the same Samsung Galaxy S23, with identical software configurations, as described in paragraph 11 above. As with Exhibit C, in this video for each step in the purchase process I scrolled to the bottom of each webpage.

13. Attached as Exhibit F to my witness statement, is a recording simulating the purchase process I followed in the App for the same set of Movie Tickets described in paragraph 8 above. Once again, the recording was taken using the same Samsung Galaxy S23, with identical software configurations, as described in paragraph 11 above. As with Exhibit B, I only scrolled down enough to ensure that the links and buttons that I was looking for were fully displayed on screen.

14. Attached as Exhibit G to my witness statement, is a recording simulating the purchase process I followed in the App for the same set of Movie Tickets described in paragraph 8 above. Once again, the recording was taken using the same Samsung Galaxy S23, with identical software

configurations, as described in paragraph 11 above. As with Exhibit C, in this video for each step in the purchase process I scrolled to the bottom of each page in the App.

CINEPLEX'S ONLINE BOOKING FEE FAQ AND ONLINE TICKETING PAGES

15. During the purchase processes I followed in Exhibits B – G, Cineplex does not disclose that consumers can avoid the Online Booking Fee by purchasing Movie Tickets at the theatre. Cineplex does reference this fact on the Cineplex Online Ticketing Booking Fees FAQ page (available in both French and English) and the Cineplex Online Ticketing Booking Fees page (only available in English). All three webpages can only be found on Cineplex's separate Help Center located at Cineplex.service-now.com/gsc and not Cineplex.com.

16. Attached as Exhibit H to my witness statement, is a recording that shows how to access the English Cineplex Online Ticketing Booking Fees FAQ page from Cineplex's home page, Cineplex.com. The recording was taken using the same laptop and external monitor, with identical software configurations, as described in paragraph 9 above.

17. Attached as Exhibit I to my witness statement, is a recording that shows how to access the Cineplex Online Ticketing Booking Fees page from Cineplex's home page, Cineplex.com. Once again, the recording was taken using the same laptop and external monitor, with identical software configurations, as described in paragraph 9 above.

18. Attached as Exhibit J to my witness statement, is a recording that shows that consumers have to abandon the Tickets page during the purchase process in order to access the Cineplex Online Ticketing Booking Fees FAQ page and the Cineplex Online Ticketing Booking Fees page. Once again, the recording was taken using the same laptop and external

monitor, with identical software configurations, as described in paragraph 9 above.

19. Consumers are not able to access either of the Cineplex Online Ticketing Bookings Fees FAQ or the Cineplex Online Ticketing Booking Fees information pages from the App. While the App includes a link to Cineplex's Help Center, which is only accessible at the bottom of the My Account page in the App, accessing that link requires switching from the App to a browser installed on a consumer's mobile device. If the consumer agrees to switch applications, they will be taken to the mobile version of Cineplex's Help Center located at Cineplex.service-now.com/gsc.

CINEPLEX'S IN-THEATRE REPRESENTATIONS

20. On December 20, 2022, I conducted in-theatre monitoring at several movie theatres in Ottawa, Ontario and Gatineau, Quebec. Examples of some of the pictures I took of the in-theatre signage promoting the Website and/or the App are attached to my witness statement as Exhibits K – S.

21. Attached as Exhibit K to my witness statement, is a picture of the front exterior awning of the Scotiabank Theatre Ottawa, located at 2385 City Park Drive, Ottawa, Ontario (the "**Scotiabank Theatre**").

22. Attached as Exhibit L to my witness statement, is a picture of a sign in the arcade at the Scotiabank Theatre.

23. Attached as Exhibit M to my witness statement, is a picture of a sign near the washrooms at the South Keys Theatre.

24. Attached as Exhibit N to my witness statement, is a picture of a self-serve kiosk with a digital sign near the front entrance inside the South Keys Theatre.

25. Attached as Exhibit O to my witness statement, is another picture of a self-serve kiosk with a different digital sign near the front entrance inside the South Keys Theatre.

26. Attached as Exhibit P to my witness statement, is a picture of an exterior sign near the entrance to the Cineplex Odeon Barrhaven Cinemas, located at 131 Riocan Avenue, Barrhaven, Ontario (the "**Barrhaven Theatre**").

27. Attached as Exhibit Q to my witness statement, is a picture of a self-serve kiosk with a digital sign in the lobby of the Barrhaven Theatre.

28. Attached as Exhibit R to my witness statement, is another picture of a self-serve kiosk with a different digital sign in the lobby of the Barrhaven Theatre.

29. Attached as Exhibit S to my witness statement, is a picture of a digital display above the concession stand at the Barrhaven Theatre.

THE BOX OFFICE IN-THEATRE

30. I conducted similar in-theatre monitoring on June 16, 2023. Over the course of both rounds of in-theatre monitoring (December 2022 and June 2023) I visited all six Cineplex movie theatres in Ottawa and Gatineau – Cinéma Starcité Gatineau, Cineplex Cinemas Lansdowne and VIP, Cineplex Cinemas Ottawa, Cineplex Odeon Barrhaven Cinemas, Cineplex Odeon South Keys Cinema, and the Scotiabank Theatre Ottawa. None of those theatres had a traditional box office, that is a dedicated space to purchase Movie Tickets from a Cineplex employee.

31. Instead the spaces were either vacant with no point of sale terminals or lined with self-serve kiosks, and consumers could interact with employees at the concession stand if they did not want to use a self-serve kiosk. Only the Cineplex Cinemas Lansdowne and VIP theatre differed from this basic

layout. As this theatre does not have a concession stand that is accessible from the lobby, consumers could interact with a Cineplex employee at the arcade instead of the concession stand.

32. Attached as Exhibit T to my witness statement, is a picture I took on June 22, 2023, of a sign between the self-serve kiosks and the concession stand in the lobby of the Scotiabank Theatre informing consumers of the status of the box office.

CINEPLEX TRACKS CONSUMER'S ONLINE PURCHASES

33. To view Movie Ticket prices and to purchase Movie Tickets through the Website or App, consumers must first create and activate a Cineplex account. To do so, consumers must provide Cineplex with their first and last name, their email address and their phone number.

34. Both the Website and App allow consumers, with a Cineplex account, to "[v]iew your Cineplex order history. Access your transaction history for Tickets, Digital Movies, Summer Movie Escape and Gift Cards". As illustrated in Exhibit U, attached to my witness statement, Cineplex has a record of all of the Movie Ticket purchases associated with my personal Cineplex account (that is the Cineplex account I created using my personal email address) dating back to August 2018. Among the information contained in the Order History is the exact date and time the Movie Tickets were purchased, the type and number of Movie Tickets purchased, and the corresponding booking ID for those purchases. The App screen captures in Exhibit U were taken on September 28, 2023, using my Samsung Galaxy S23, which has a 6.1 inch screen and was running Android version 13 and One UI version 5.

SCENE+ AND THE ONLINE BOOKING FEE

35. I am a Scene+ member and I have linked my Scene+ account to my personal Cineplex account. On January 1, 2024, I used the App to purchase tickets to see that day's 3:30 pm showing of *Aquaman and the Lost Kingdom* at the South Keys Theatre using my personal Cineplex account.

36. Attached as Exhibit V to my witness statement, is a screen capture of the pop-up dialogue box that appeared on screen after I clicked on the Online Booking Fee info button (the blue "ⓘ" icon) at the bottom of the Tickets page during the purchase described in paragraph 35 above. The screen capture was taken using the same Samsung Galaxy S23, with identical software configurations, as described in paragraph 11 above.

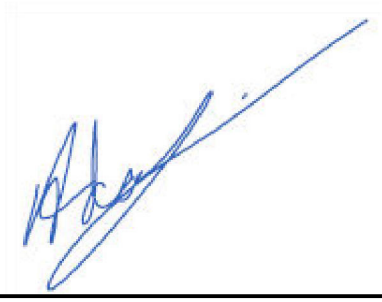
BUREAU GUIDANCE ON DRIP PRICING POST AMENDMENTS

37. On September 8, 2022, the Bureau held an English information session on the June 2022 amendments to the Act (the "**Amendments**"). A second French information was held on September 9, 2022. A copy of the English presentation is attached as Exhibit W to my witness statement.

38. On April 17, 2023, the Bureau published Volume 6 of the Deceptive Marketing Practices Digest (the "**Digest**"). Among other enforcement guidance, Volume 6 of the Digest includes an article titled "*Update on drip pricing*". A copy of Volume 6 of the Digest is attached to my witness statement as Exhibit X.

Affirmed remotely by Adam Zimmerman stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O.Reg. 461/20, Administering Oath or Declaration Remotely.

Competition Bureau Canada / Bureau de la concurrence Canada
STEFANIA MELANIA SAWKA
A COMMISSIONER, ETC.
PROVINCE OF ONTARIO
FOR THE GOVERNMENT OF CANADA
DEPARTMENT OF INDUSTRY
EXPIRES: DECEMBER 25, 2025



Commissioner for Taking Affidavits

Adam Zimmerman

This is Exhibit “A” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits

Transaction Number: APP-A10053381962
Report Generated on October 18, 2022, 11:23

Ontario

Ministry of Government and Consumer Services

Profile Report

CINEPLEX INC. as of October 18, 2022

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	CINEPLEX INC.
Ontario Corporation Number (OCN)	2260253
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	October 15, 2010
Registered or Head Office Address	1303 Yonge Street, Toronto, Ontario, Canada, M4T 2Y9

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Transaction Number: APP-A10053381962
Report Generated on October 18, 2022, 11:23

Active Director(s)

Minimum Number of Directors	1
Maximum Number of Directors	20

Name	Jordan BANKS
Address for Service	1303 Yonge Street, 300, Toronto, Ontario, Canada, M4T 2Y9
Resident Canadian	Yes
Date Began	May 14, 2013

Name	Robert BRUCE
Address for Service	1303 Yonge Street, 300, Toronto, Ontario, Canada, M4T 2Y9
Resident Canadian	Yes
Date Began	January 01, 2011

Name	Joan DEA
Address for Service	1303 Yonge Street, 300, Toronto, Ontario, Canada, M4T 2Y9
Resident Canadian	No
Date Began	January 01, 2011

Name	Janice FUKAKUSA
Address for Service	1303 Yonge Street, 300, Toronto, Ontario, Canada, M4T 2Y9
Resident Canadian	Yes
Date Began	May 17, 2017

Name	Donna HAYES
Address for Service	1303 Yonge Street, 300, Toronto, Ontario, Canada, M4T 2Y9
Resident Canadian	Yes
Date Began	November 07, 2016

Name	Ellis JACOB
Address for Service	1303 Yonge Street, 300, Toronto, Ontario, Canada, M4T 2Y9
Resident Canadian	Yes
Date Began	October 15, 2010

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Director/Registrar
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Name	Sarabjit MARWAH
Address for Service	1303 Yonge Street, 300, Toronto, Ontario, Canada, M4T 2Y9
Resident Canadian	Yes
Date Began	January 01, 2011

Name	Nadir MOHAMED
Address for Service	1303 Yonge Street, 300, Toronto, Ontario, Canada, M4T 2Y9
Resident Canadian	Yes
Date Began	May 17, 2017

Name	Phyllis YAFFE
Address for Service	1303 Yonge Street, Toronto, Ontario, Canada, M4T 2Y9
Resident Canadian	Yes
Date Began	June 29, 2020

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Director/Registrar
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Active Officer(s)

Name	Ellis JACOB
Position	Chief Executive Officer
Address for Service	1303 Yonge Street, 300, Toronto, Ontario, Canada, M4T 2Y9
Date Began	October 15, 2010

Name	Ellis JACOB
Position	President
Address for Service	1303 Yonge Street, 300, Toronto, Ontario, Canada, M4T 2Y9
Date Began	October 15, 2010

Name	Dan MCGRATH
Position	Other (untitled)
Address for Service	1303 Yonge Street, 300, Toronto, Ontario, Canada, M4T 2Y9
Date Began	October 15, 2010

Name	Gordon NELSON
Position	Chief Financial Officer
Address for Service	1303 Yonge Street, 300, Toronto, Ontario, Canada, M4T 2Y9
Date Began	October 15, 2010

Name	Thomas SANTRAM
Position	Other (untitled)
Address for Service	1303 Yonge Street, Toronto, Ontario, Canada, M4T 2Y9
Date Began	March 01, 2022

Certified a true copy of the record of the Ministry of Government and Consumer Services.
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Corporate Name History

Name	CINEPLEX INC.
Effective Date	October 15, 2010

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Director/Registrar

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Active Business Names

Name	CINEPLEX CINEMAS COURTNEY PARK
Business Identification Number (BIN)	250230943
Registration Date	March 09, 2015
Expiry Date	March 07, 2025
Name	CINEPLEX CINEMAS WINSTON CHURCHILL & VIP
Business Identification Number (BIN)	291331890
Registration Date	December 18, 2019
Expiry Date	December 17, 2024
Name	CINEPLEX CINEMAS YONGE-DUNDAS AND VIP
Business Identification Number (BIN)	280040023
Registration Date	January 11, 2018
Expiry Date	January 10, 2023

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Director/Registrar

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Expired or Cancelled Business Names

Name	CINEPLEX CINEMAS YONGE-DUNDAS
Business Identification Number (BIN)	240458869
Status	Inactive - Expired
Registration Date	May 08, 2014
Expired Date	May 07, 2019

Name	CINEPLEX CINEMAS WINSTON CHURCHILL
Business Identification Number (BIN)	250230935
Status	Inactive - Expired
Registration Date	March 09, 2015
Expired Date	March 08, 2020

Name	CINEPLEX CINEMAS YONGE-DUNDAS
Business Identification Number (BIN)	240448837
Status	Inactive - Expired
Registration Date	May 06, 2014
Expired Date	May 05, 2019

Name	CINEPLEX ODEON WINSTON CHURCHILL CINEMAS
Business Identification Number (BIN)	240458851
Status	Inactive - Expired
Registration Date	May 08, 2014
Expired Date	May 07, 2019

Name	CINEPLEX ODEON COURTNEY PARK CINEMAS
Business Identification Number (BIN)	240458844
Status	Inactive - Cancelled
Registration Date	May 08, 2014
Cancelled Date	January 16, 2015

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V. Quintanilla W.

Director/Registrar

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Transaction Number: APP-A10053381962
Report Generated on October 18, 2022, 11:23

Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: Thomas SANTRAM	May 05, 2022
Annual Return - 2019 PAF: GORD NELSON - DIRECTOR	May 23, 2021
Annual Return - 2018 PAF: GORD NELSON - DIRECTOR	May 23, 2021
Annual Return - 2017 PAF: GORD NELSON - DIRECTOR	May 23, 2021
Annual Return - 2020 PAF: GORD NELSON - DIRECTOR	February 28, 2021
CIA - Notice of Change PAF: ANNE FITZGERALD - OFFICER	November 17, 2020
CIA - Notice of Change PAF: ANNE FITZGERALD - OFFICER	August 20, 2020
Annual Return - 2019 PAF: GORD NELSON - DIRECTOR	June 07, 2020
CIA - Notice of Change PAF: ANNE FITZGERALD - OFFICER	May 19, 2020
Annual Return - 2018 PAF: GORD NELSON - DIRECTOR	July 21, 2019
Annual Return - 2017 PAF: GORD NELSON - DIRECTOR	July 22, 2018
Annual Return - 2016 PAF: GORD NELSON - DIRECTOR	July 18, 2017
CIA - Notice of Change PAF: ANNE FITZGERALD - DIRECTOR	May 19, 2017

Certified a true copy of the record of the Ministry of Government and Consumer Services.
V. Quintanilla W.
Director/Registrar
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CIA - Notice of Change PAF: ANNE FITZGERALD - OFFICER	November 14, 2016
Annual Return - 2015 PAF: GORD NELSON - DIRECTOR	July 17, 2016
Annual Return - 2014 PAF: GORD NELSON - DIRECTOR	July 18, 2015
Annual Return - 2013 PAF: GORD NELSON - DIRECTOR	July 18, 2014
CIA - Notice of Change PAF: ANNE FITZGERALD - DIRECTOR	August 20, 2013
Annual Return - 2012 PAF: GORD NELSON - DIRECTOR	July 13, 2013
Annual Return - 2011 PAF: GORD NELSON - DIRECTOR	July 14, 2012
Annual Return - 2010 PAF: GORD NELSON - DIRECTOR	August 20, 2011
Annual Return - 2010 PAF: GORD NELSON - DIRECTOR	August 06, 2011
CIA - Initial Return PAF: ELLIS JACOB - DIRECTOR	January 12, 2011
BCA – Articles of Arrangement	January 01, 2011
CIA - Initial Return PAF: ELLIS JACOB - DIRECTOR	November 29, 2010
BCA - Articles of Incorporation	October 15, 2010

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Government and Consumer Services.

V. Quintanilla W.

Director/Registrar

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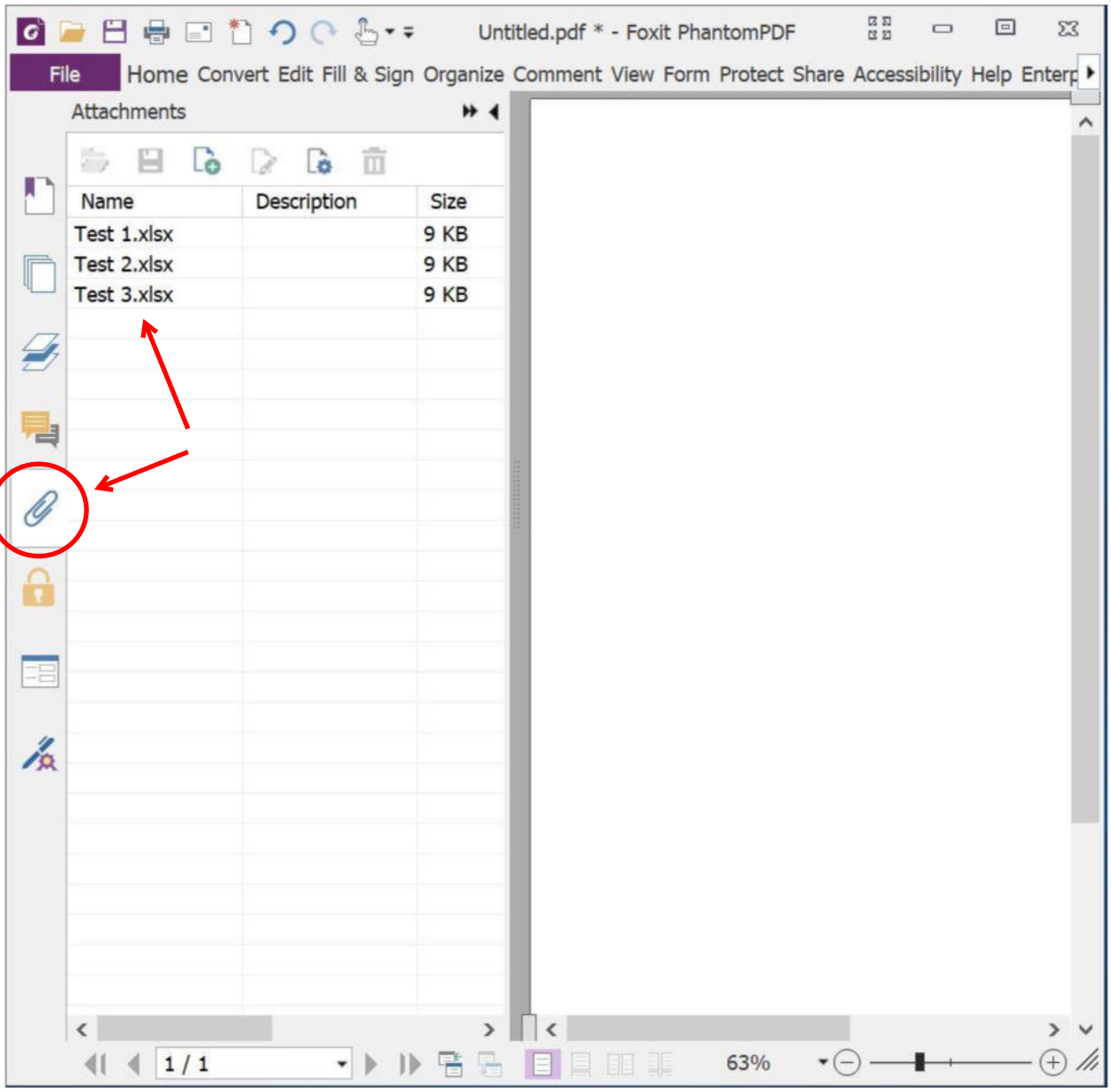
This is Exhibit “B” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits

Please see attachment
"Exhibit B - 2024-01-04 - Website no scrolling & purchase capture"

Step 1 - Click paperclip on left hand side
Step 2 - Double click attachment to open



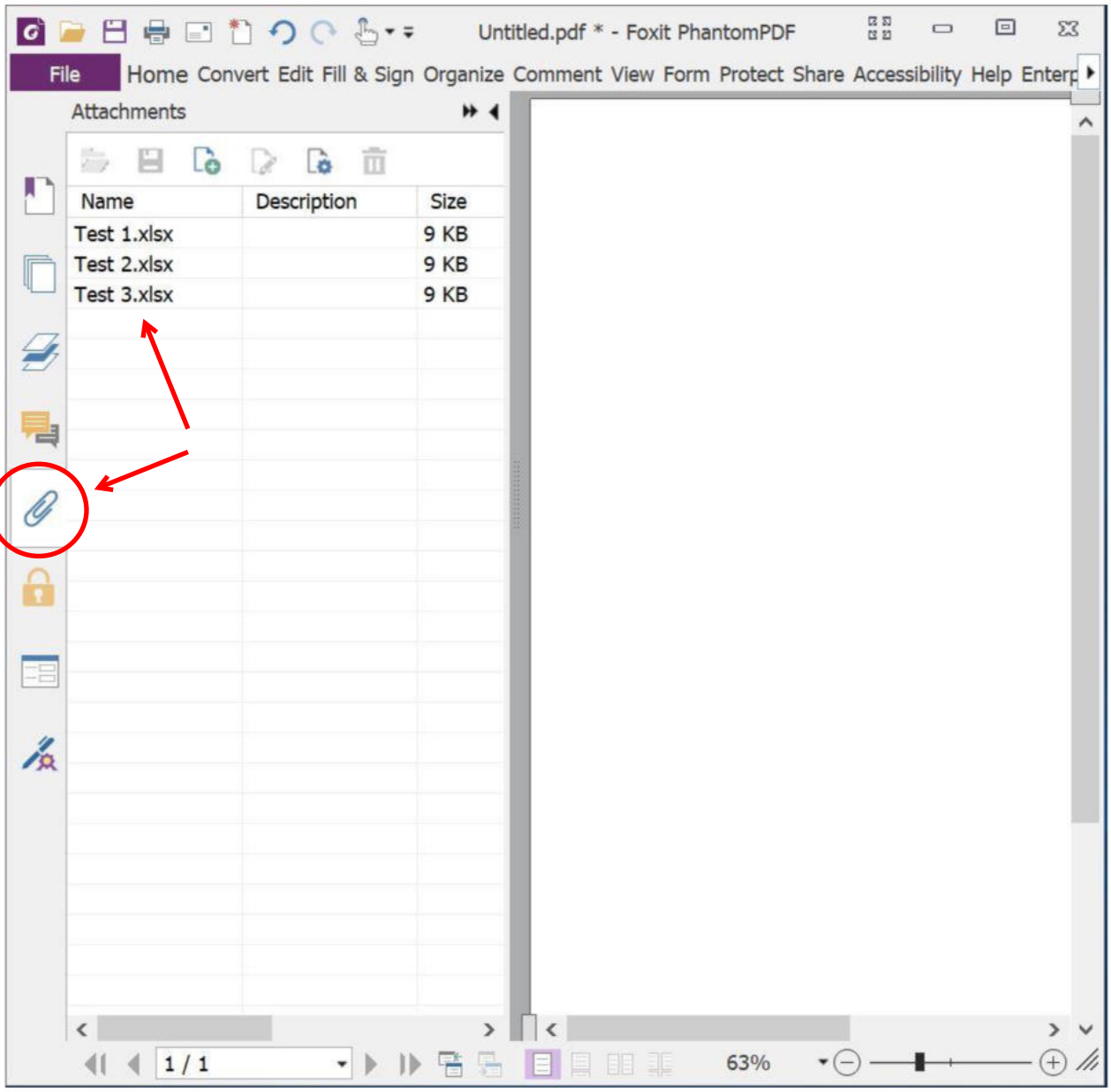
This is Exhibit “C” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.



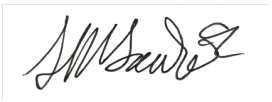
Commissioner for Taking Affidavits

Please see attachment "Exhibit C - 2024-01-04 - Website with scrolling & simulated purchase"

Step 1 - Click paperclip on left hand side
Step 2 - Double click attachment to open



This is Exhibit “D” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.

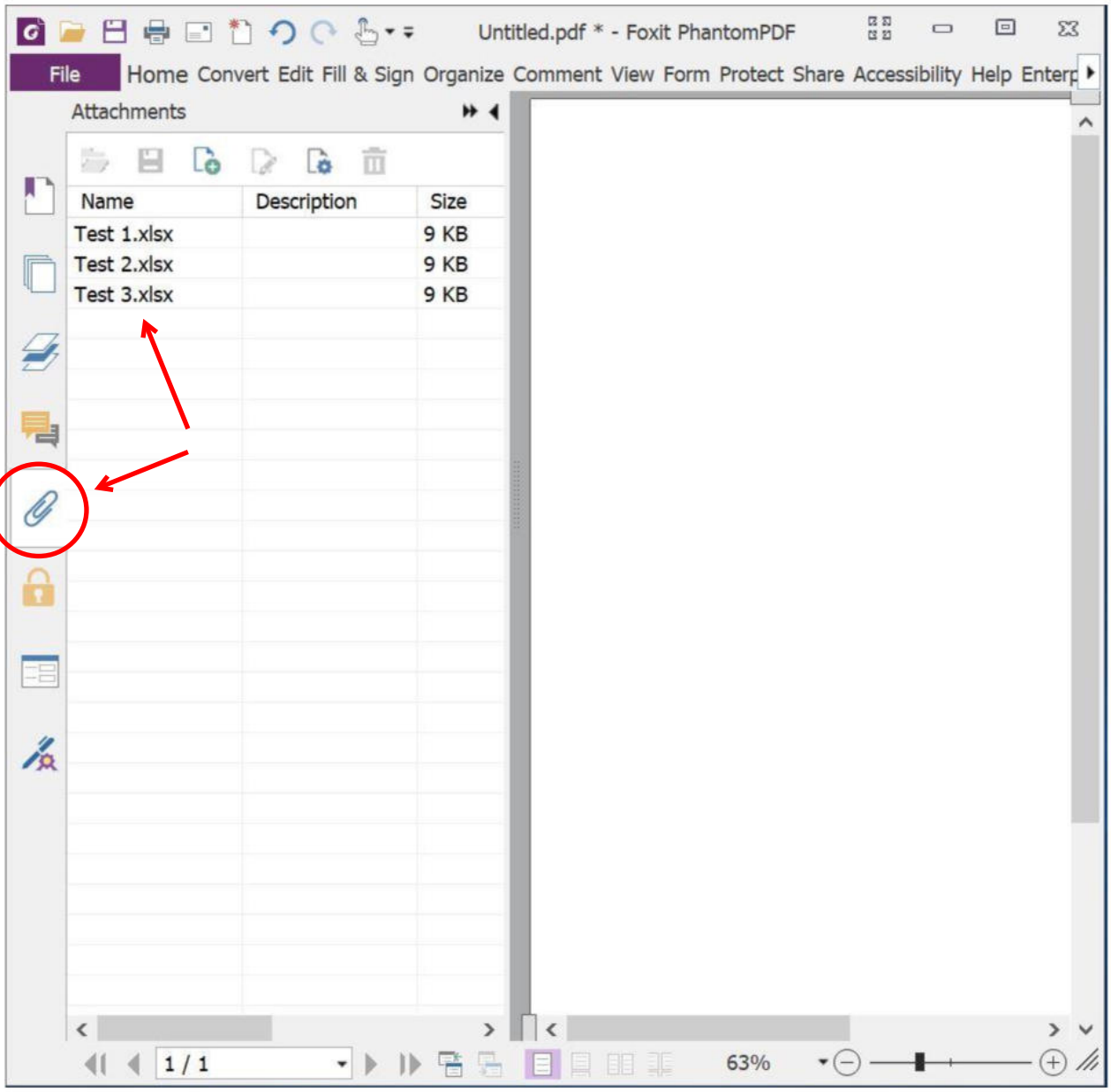




Commissioner for Taking Affidavits

Please see attachment "Exhibit D - 2024-01-04 – Mobile Website No Scrolling & Simulated Purchase.mp4"

Step 1 - Click paperclip on left hand side
Step 2 - Double click attachment to open



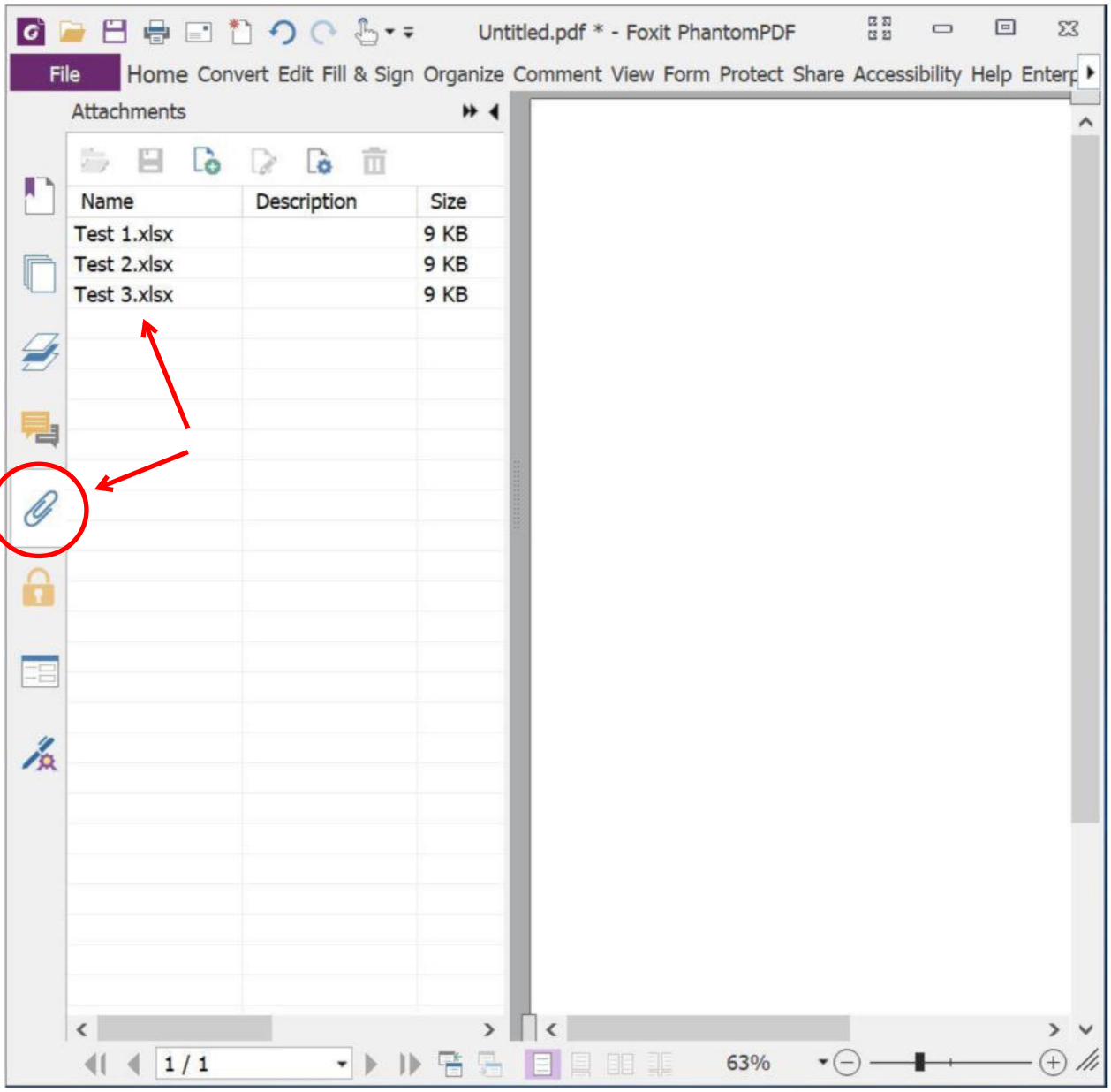
This is Exhibit “E” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits

Please see attachment
"Exhibit E - 2024-01-04 – Mobile Website with Scrolling & Simulated Purchase.mp4"

Step 1 - Click paperclip on left hand side
Step 2 - Double click attachment to open



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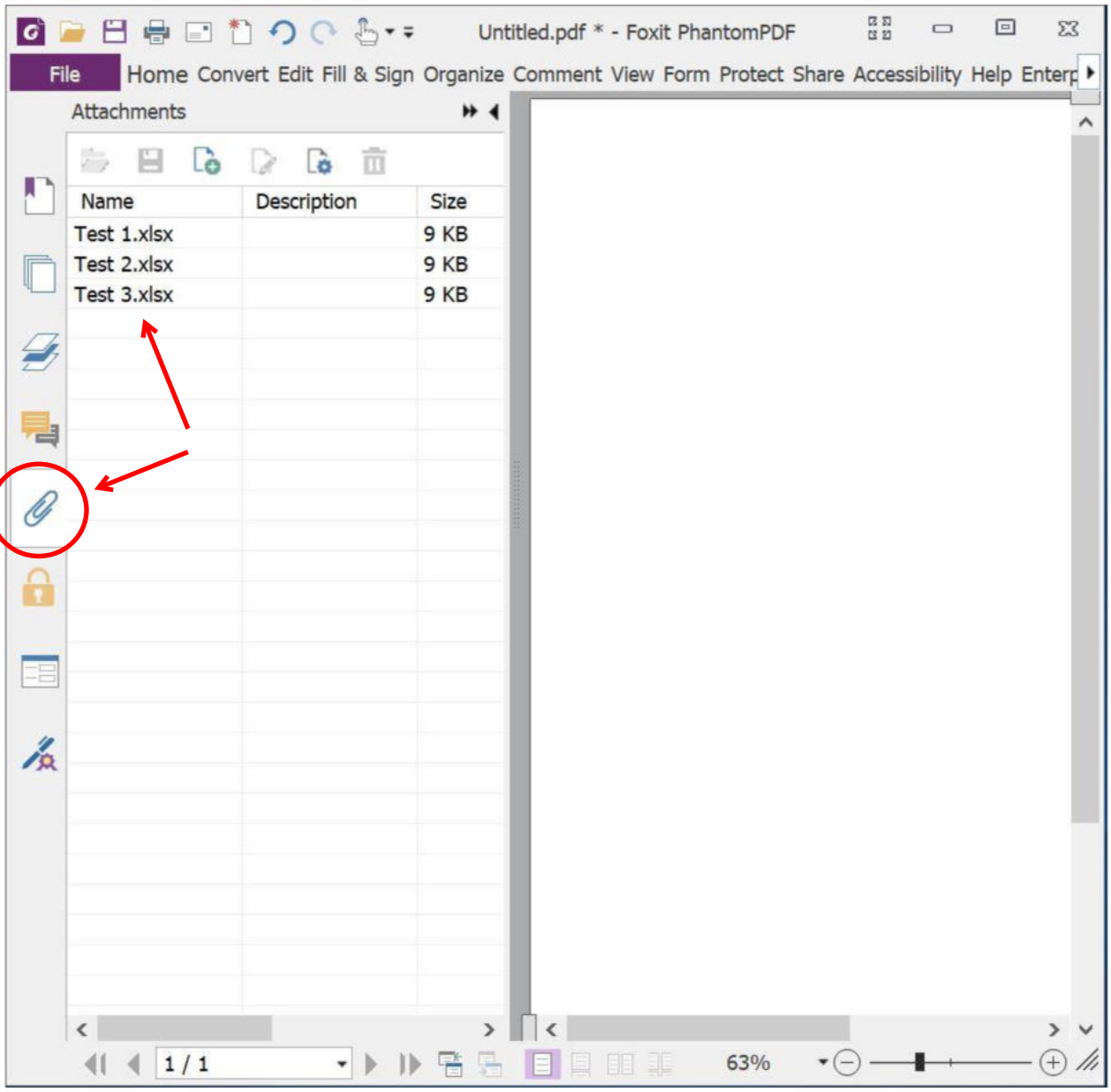
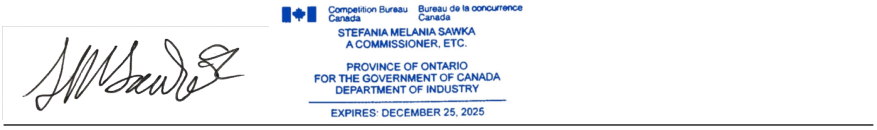
Commissioner for Taking Affidavits

Please see attachment "Exhibit F - 2024-01-04 – App No Scrolling & Simulated Purchase.mp4"

Step 1 - Click paperclip on left hand side
Step 2 - Double click attachment to open



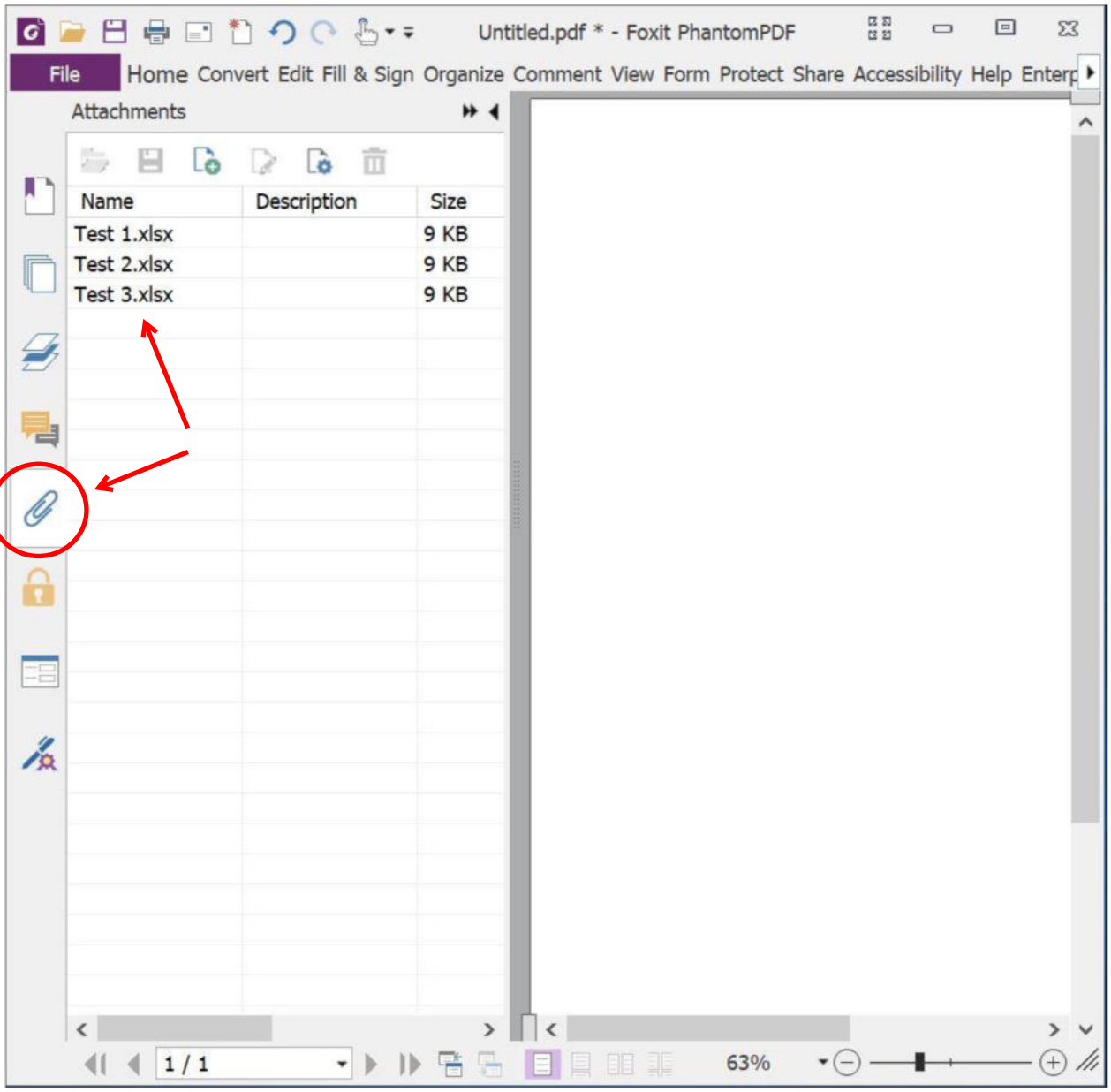
This is Exhibit “G” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits

Please see attachment "Exhibit G - 2024-01-04 – App with Scrolling & Simulated Purchase.mp4"

Step 1 - Click paperclip on left hand side
Step 2 - Double click attachment to open



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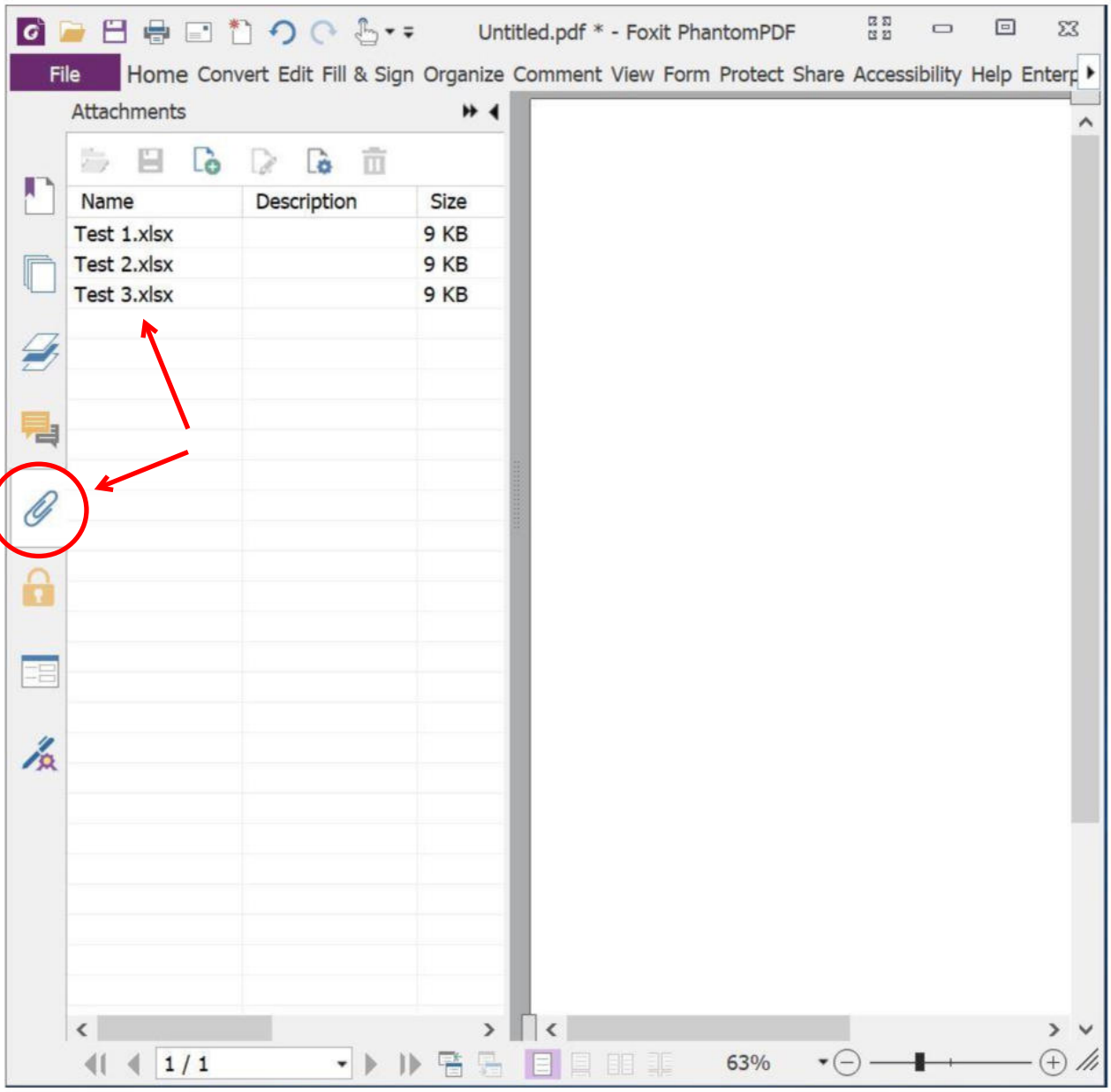
Commissioner for Taking Affidavits

Please see attachment
"Exhibit H - 2024-01-04 – Accessing the OBF FAQs from Cineplex's home page.mp4"

Step 1 - Click paperclip on left hand side
Step 2 - Double click attachment to open



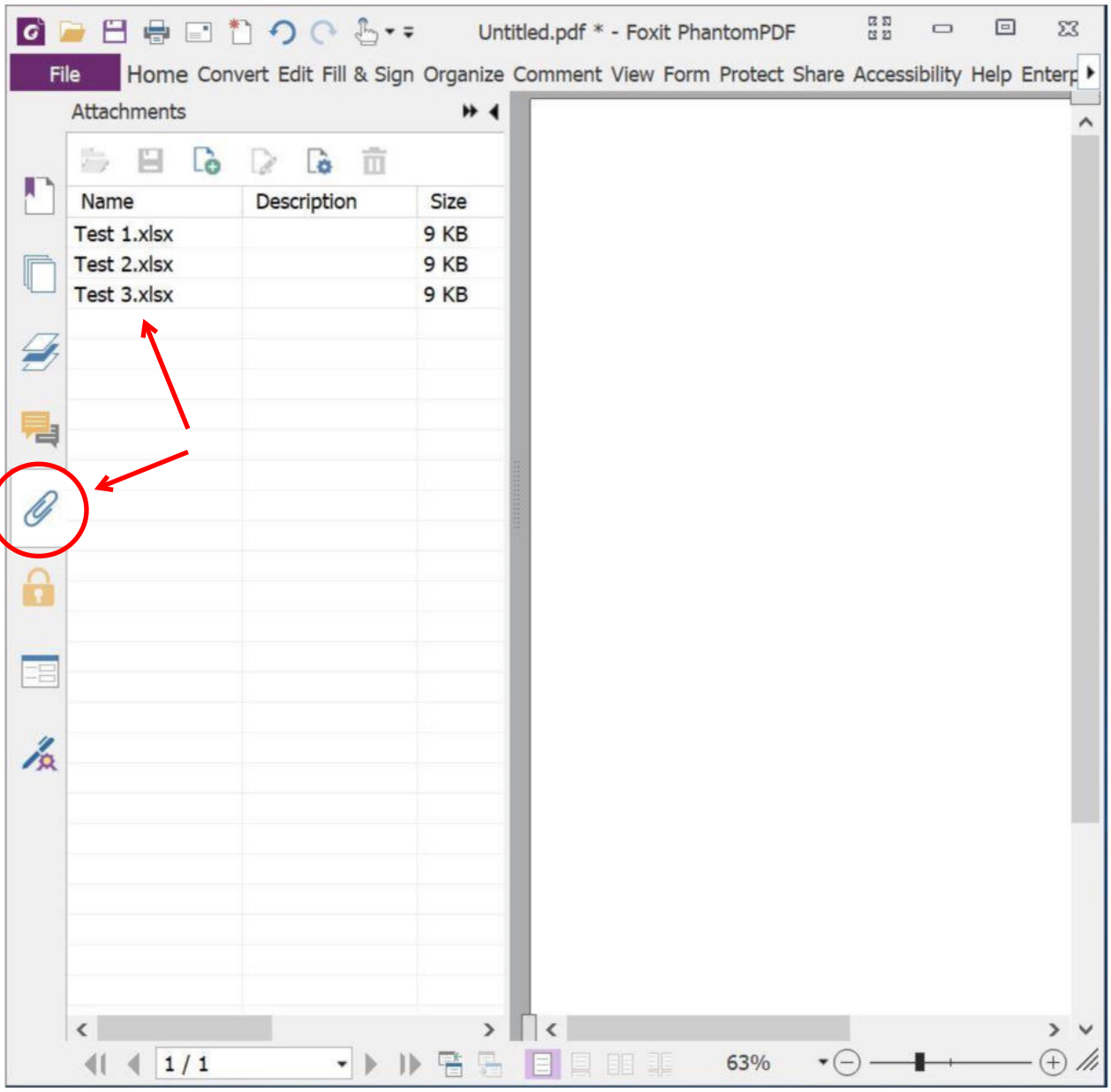
This is Exhibit “I” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits

Please see attachment
"Exhibit I - 2024-01-04 – Accessing OBF Info Page from Cineplex's home page.mp4"

Step 1 - Click paperclip on left hand side
Step 2 - Double click attachment to open



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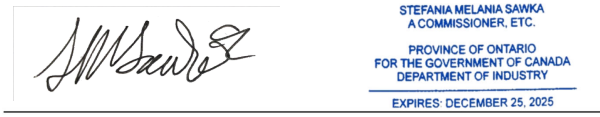
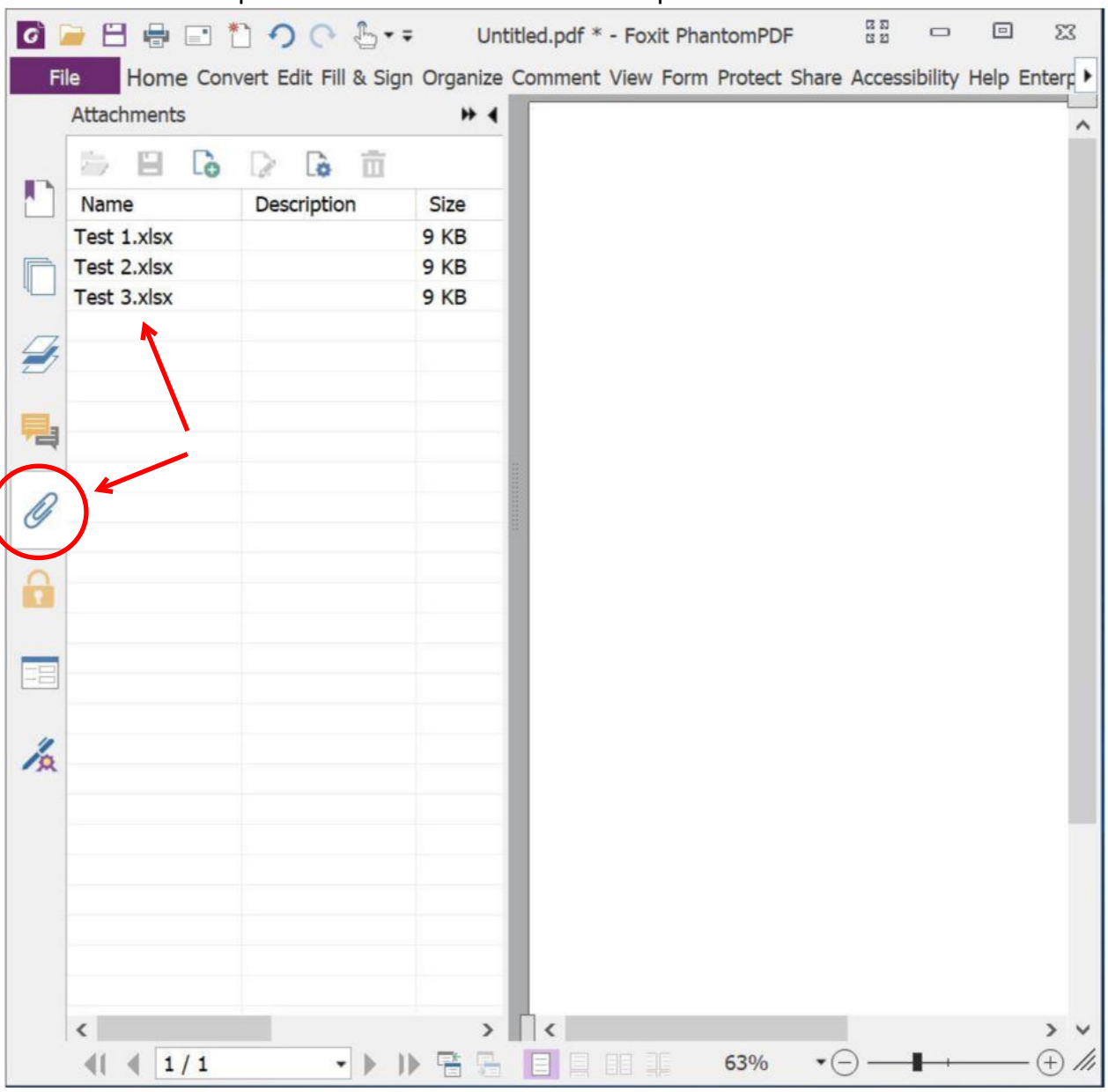


Commissioner for Taking Affidavits

Please see attachment "Exhibit J - 2024-01-04 – Accessing the OBF FAQ page and Info Page from the TICKETS page.mp4"

Step 1 - Click paperclip on left hand side
Step 2 - Double click attachment to open



This is Exhibit “K” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits


IMAX
IE
RS
IT
CINEPLEX.COM
DOWNLOAD THE CINEPLEX APP
TICKETS ON THE GO

This is Exhibit “L” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.



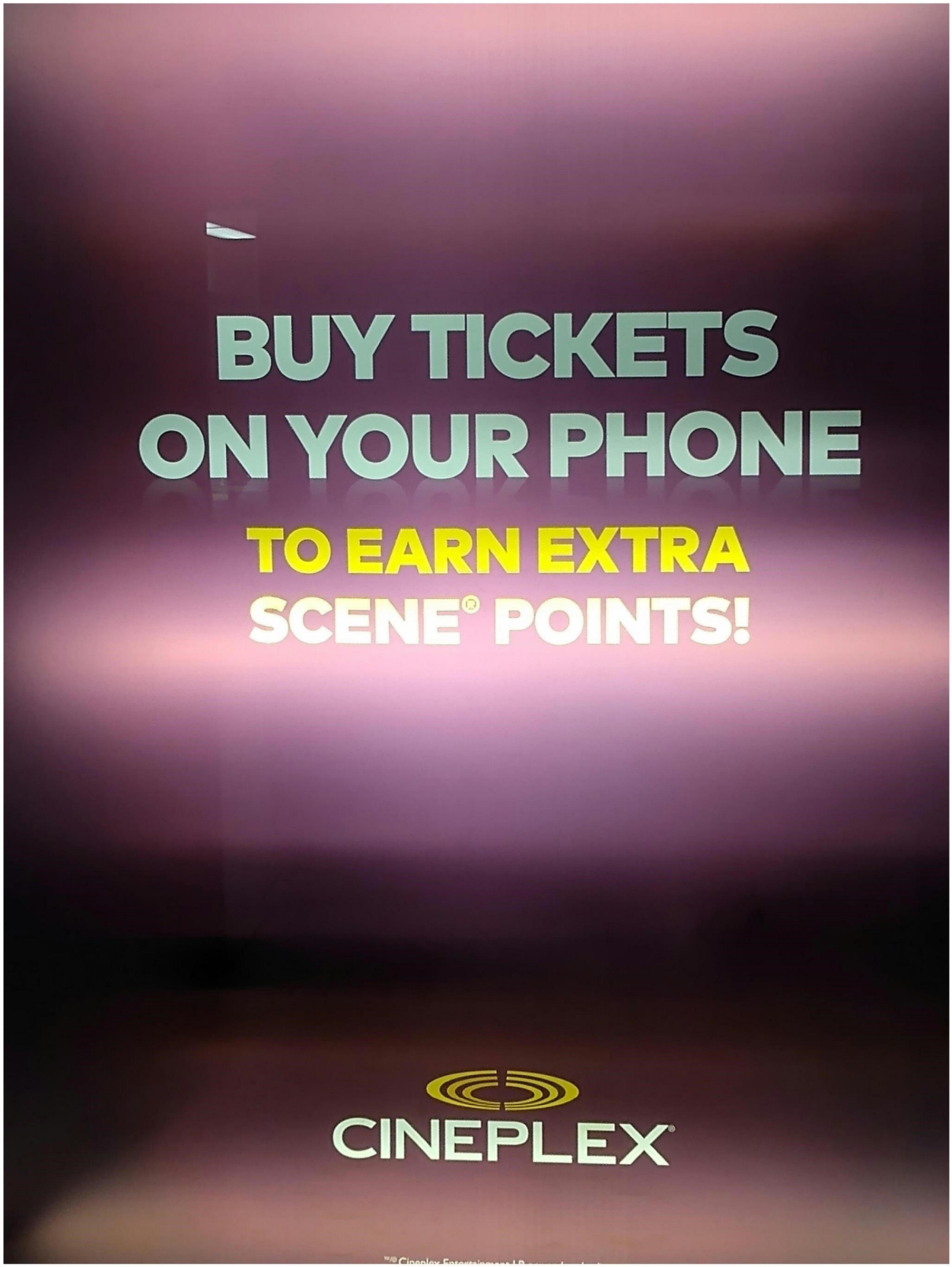
Commissioner for Taking Affidavits


CONTACTLESS
TICKETING
Buy tickets at Cineplex.com
or on the Cineplex app for
contactless purchase.
CINEPLEX

This is Exhibit “M” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits


BUY TICKETS
ON YOUR PHONE
TO EARN EXTRA
SCENE® POINTS!
CINEPLEX®

This is Exhibit “N” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits


ADMIT ONE
Your phone is now your ticket.
Download on the App Store
GET IT ON Google Play
4
ACTION MOVIES MADE SWEETER
CINEPLEX
SNACKS
CINEPLEX
Movie
& Drink
Language

This is Exhibit “O” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.



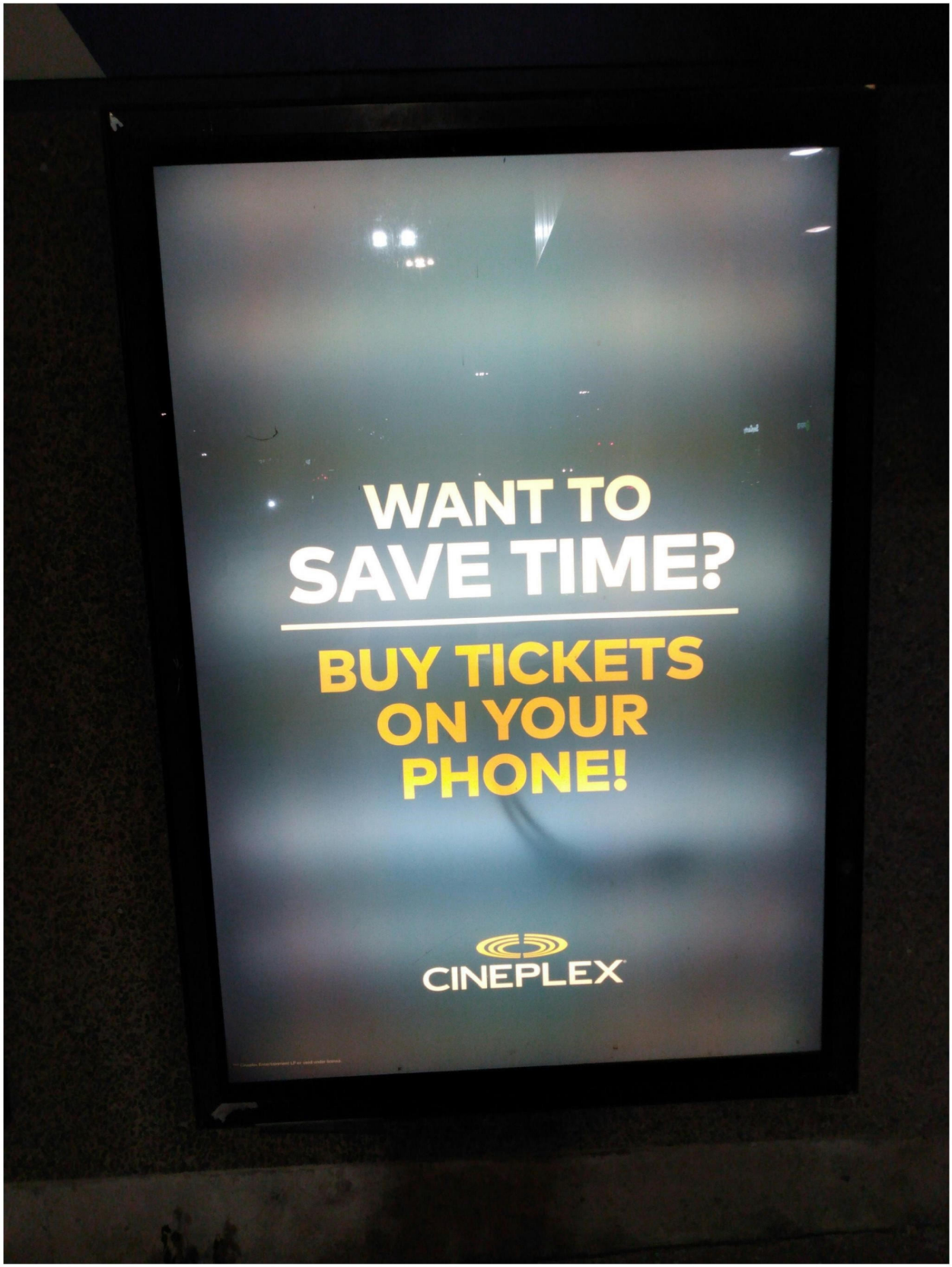
Commissioner for Taking Affidavits


CONTACTLESS
TICKETING
Buy tickets at Cineplex.com
or on the Cineplex app
CINEPLEX
4
SNACKS
ACTION MOVIES MADE SWEETER
CINEPLEX
NATELY DELIVERING
EXCEPTIONAL
AINMENT EXPERIENCE.
CINEPLEX
Movie
& Drink
Language

This is Exhibit “P” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits


WANT TO
SAVE TIME?
BUY TICKETS
ON YOUR
PHONE!
CINEPLEX

This is Exhibit “Q” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.



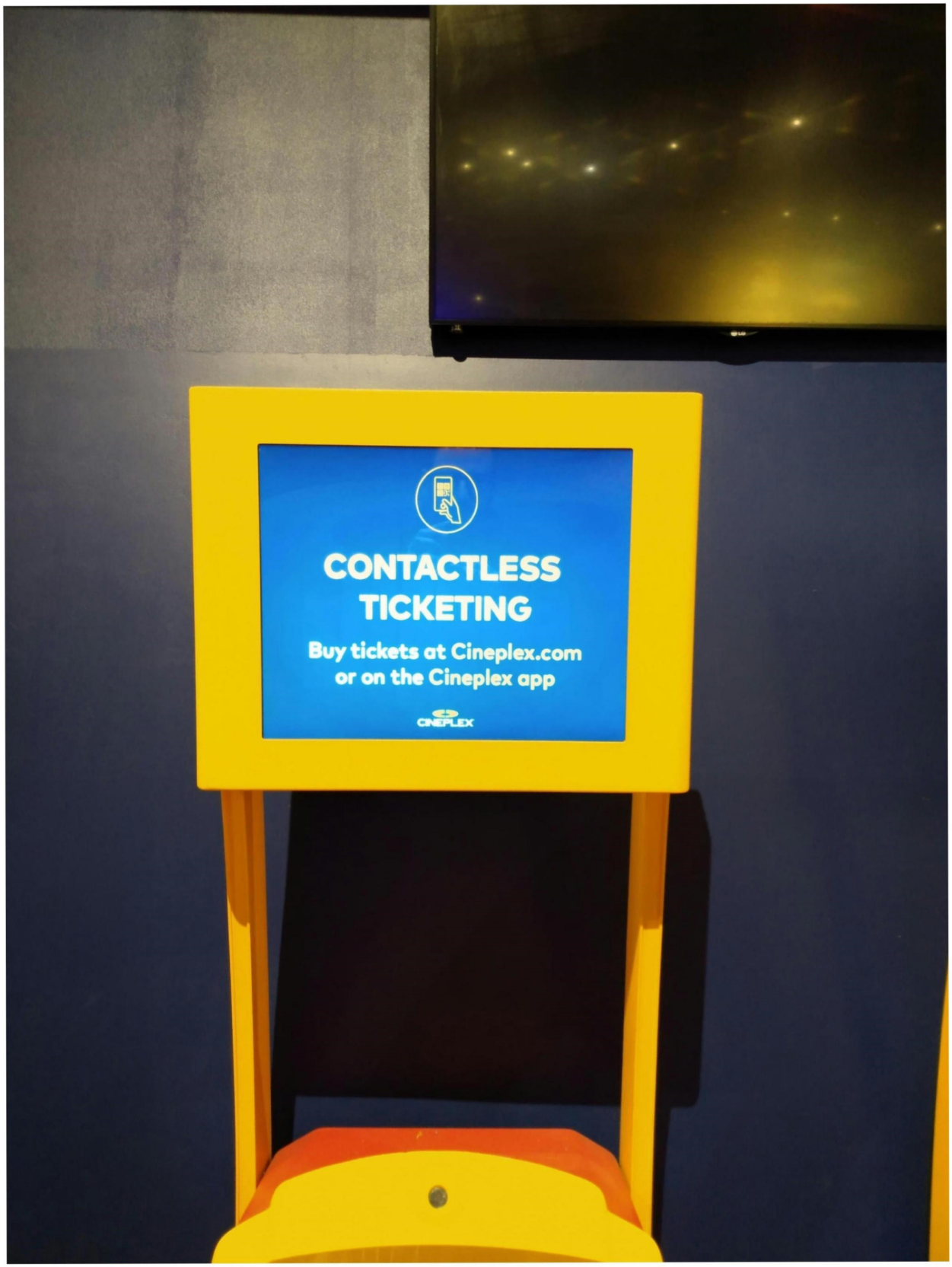
Commissioner for Taking Affidavits


10:00
AVATAR: THE WAY OF WATER
9:00 | 9:30
AVATAR: THE WAY OF WATER
7:15
IT'S NOW
7:34
ADMIT ONE
PG
Your phone is now your ticket.
Download on the App Store
GET IT ON Google Play

This is Exhibit “R” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.



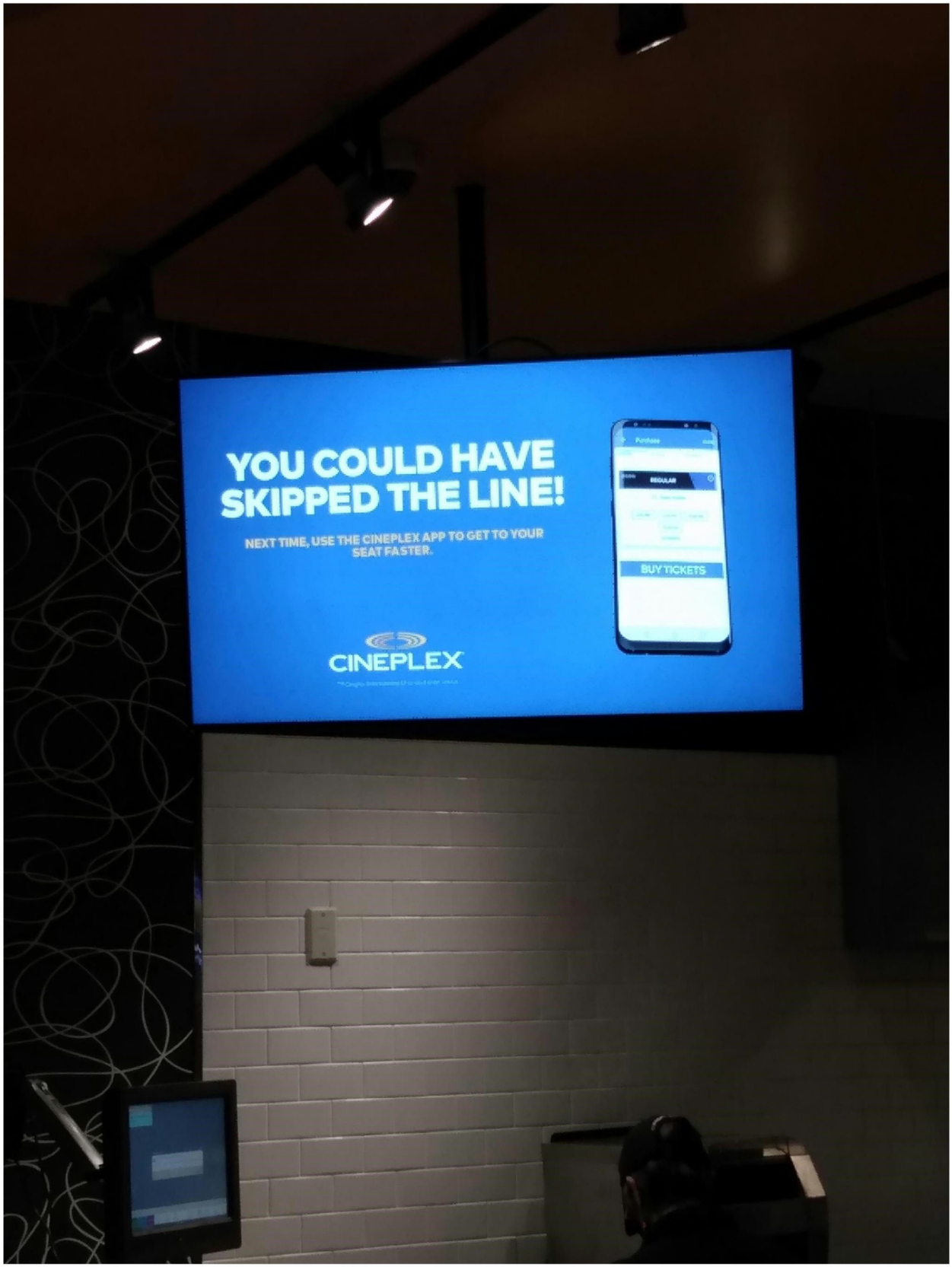
Commissioner for Taking Affidavits


CONTACTLESS
TICKETING
Buy tickets at Cineplex.com
or on the Cineplex app
CINEPLEX

This is Exhibit “S” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits


YOU COULD HAVE SKIPPED THE LINE!
NEXT TIME, USE THE CINEPLEX APP TO GET TO YOUR SEAT FASTER.
CINEPLEX
BUY TICKETS

This is Exhibit “T” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits


BOX OFFICE IS CLOSED
For contactless purchase, buy tickets at Cineplex.com or through the Cineplex app.
If you require staff assistance, please proceed to Concessions.
CINEPLEX

This is Exhibit “U” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits

1:40 89%

My Orders CLOSE

Order History

View your Cineplex order history. Access your transaction history for Tickets, Digitial Movies, Summer Movie Escape and Gift Cards.

Filter your Order History

Filter By Order Type

MOVIE TICKETS

Filter By Year

2023 & COMING

Purchased on: Sep 10, 2023, 02:30 PM
Booking ID: WFQQF5R



Blue Beetle

Cineplex Cinemas Ottawa

Sep 10, 2023 | 3:20 PM

Aud 04

1 X BOGO2023 ,seat(s):G-13

1 X General Admit ,seat(s):G-12

1 X General Admit ,seat(s):G-11

RATED:

1:40 89%

My Orders CLOSE

Order History

View your Cineplex order history. Access your transaction history for Tickets, Digitial Movies, Summer Movie Escape and Gift Cards.

Filter your Order History

Filter By Order Type

MOVIE TICKETS

Filter By Year

2018

Purchased on: Dec 30, 2018, 03:42 PM
Booking ID: WRXFPCQ



Mary Poppins Returns

Cineplex Odeon South Keys Cinemas

Dec 30, 2018 | 4:00 PM

Aud 05

1 X General Admit ,seat(s):I-12

1 X Child (3-13) ,seat(s):I-14

1 X General Admit ,seat(s):I-11

1 X Child (3-13) ,seat(s):I-13

1:40 89%

My Orders

CLOSE



Cinemas

Dec 30, 2018 | 4:00 PM

Aud 05

1 X General Admit ,seat(s):I-12

1 X Child (3-13) ,seat(s):I-14

1 X General Admit ,seat(s):I-11

1 X Child (3-13) ,seat(s):I-13

RATED:

Purchased on: Aug 14, 2018, 03:29 PM
Booking ID: WJ6D3MC



Mission: Impossible Fallout

Cineplex Odeon South Keys Cinemas

Aug 14, 2018 | 6:30 PM

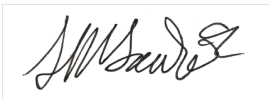
Aud 07

1 X CPX TUESDAY M ,seat(s):I-9

1 X CPX TUESDAY M ,seat(s):I-8

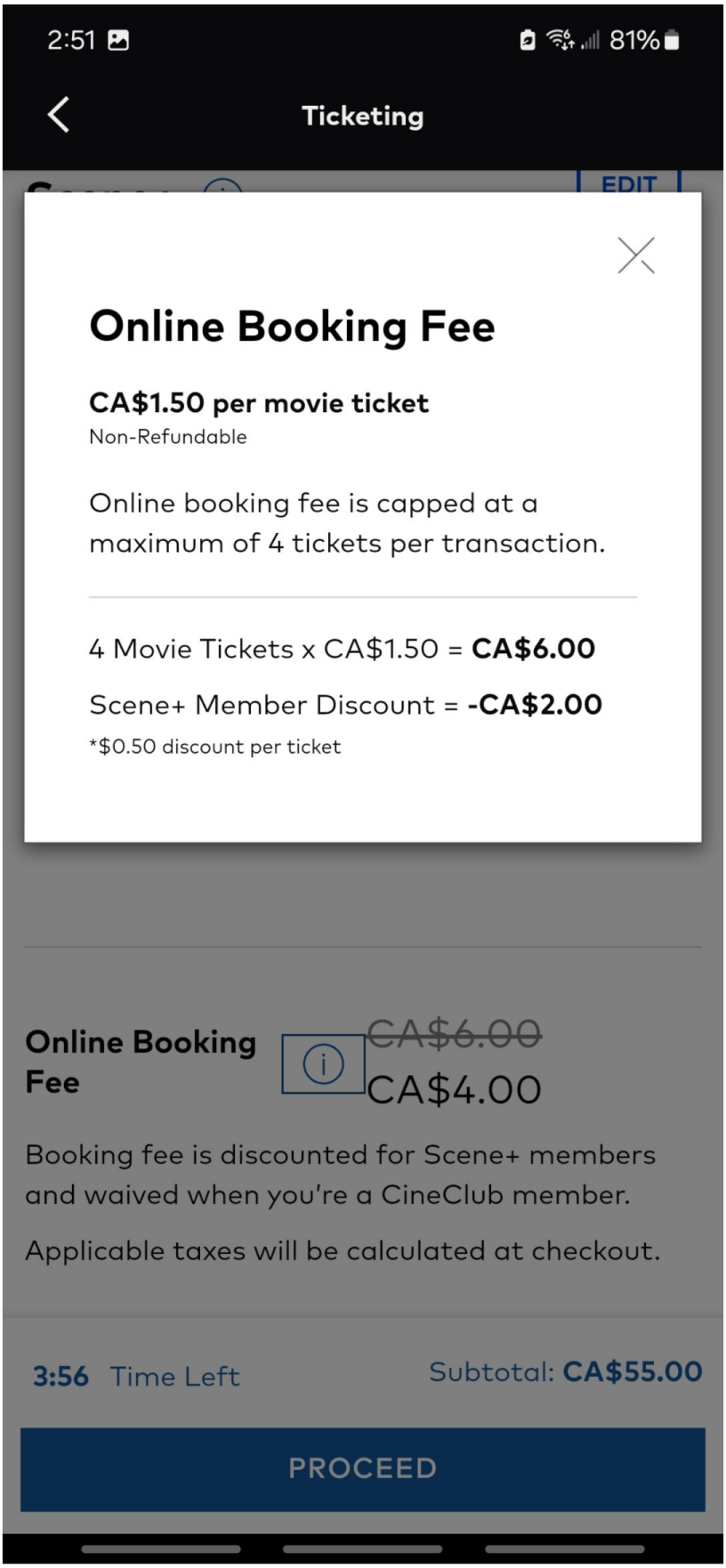
RATED:

This is Exhibit “V” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.





Commissioner for Taking Affidavits


2:51
81%
Ticketing
EDIT
Online Booking Fee
CA$1.50 per movie ticket
Non-Refundable
Online booking fee is capped at a maximum of 4 tickets per transaction.
4 Movie Tickets x CA$1.50 = CA$6.00
Scene+ Member Discount = -CA$2.00
*$0.50 discount per ticket
Online Booking Fee
CA$6.00
CA$4.00
Booking fee is discounted for Scene+ members and waived when you're a CineClub member.
Applicable taxes will be calculated at checkout.
3:56 Time Left
Subtotal: CA$55.00
PROCEED

This is Exhibit “W” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits

Competition Bureau Canada | Bureau de la concurrence Canada

Canada



Competition Act Amendments

Information Session – September 8, 2022

The Competition Bureau: An Overview

- The Competition Bureau (Bureau) is an independent law enforcement agency that protects and promotes competition for the benefit of Canadian consumers and businesses.
- The Bureau is headed by the Commissioner of Competition, who is responsible for the administration and enforcement of the *Competition Act* (Act).
- Other important parties in Canadian competition law:
  - The Competition Tribunal (Tribunal) and the courts
  - The Department of Innovation, Science and Economic Development
  - The Parliament of Canada



The Competition Act: An Overview

- The *Competition Act* is federal legislation and Canada's only competition law statute.
- The Act contains both criminal and civil provisions that are aimed at preventing anti-competitive practices.
- The Act's purpose is to maintain and encourage competition in Canada.



The Act's Amendment Process to Date

- Budget 2022 announced the Government's intention to:
  - Introduce legislative amendments to the Act as a preliminary phase; and
  - Consult broadly on the role and functioning of the Act.
- The initial amendments were announced April 27, 2022, in Bill C-19, *Budget Implementation Act, 2022, No. 1*.
- Most amendments came into force June 23, 2022.



Information Session: The Roadmap

- The Bureau's *Guide to the 2022 amendments to the Competition Act* provides an overview of the most important changes to the law.

- Today's roadmap includes:
  - Fines and AMPs;
  - Wage-fixing and no-poaching;
  - Drip pricing;
  - Competitive impact factors;
  - Abuse of dominance and "anti-competitive acts";
  - Private access;
  - Evidence-gathering powers; and
  - Merger review notification requirements.



Fines and AMPs



Section 45: Cartel Fines

- **Cartel** (or "**collusion**"): Criminal agreements between competitors to fix prices, restrict supply or allocate markets.
- **Subsection 45(2)**: Previous $25M fine maximum removed, and fine amounts will now be at the "**discretion of the court**".
- The amendment will not come into force until **June 23, 2023**.



PART VII.1: Deceptive Marketing AMPs

- **Deceptive Marketing:** Includes advertising or promoting something in a materially false or misleading way.
- **Subparagraphs 74.1(1)(c)(i) and (ii)**: New maximum Administrative Monetary Penalties (AMPs) for deceptive marketing practices.
- **For Individuals**: Previous AMP maximum of $750,000 removed, and the maximum penalty is now the greater of,
  - **$750,000** (and $1M for each subsequent violation); and
  - "**three times the value of the benefit derived** from the deceptive conduct", if that amount can be reasonably determined.
- **For Corporations**: Previous AMP maximum of $10M removed, and the maximum penalty is now the greater of,
  - **$10M** (and $15M for each subsequent violation); and
  - "**three times the value of the derived** from the deceptive conduct" or, if that amount cannot be reasonably determined, **3% of the annual worldwide gross revenues.**



Section 79: Abuse of Dominance AMPs

- **Abuse of Dominance:** When a dominant business (or group of businesses) engages in an activity that stops or substantially reduces competition in a market.

- **Subsection 79**: New maximum AMPs for abuse of dominance.

- Previous AMP maximum of $10M ($15M for subsequent violations) removed, and the maximum penalty is now the greater of,
  - **$10M** ($15M for each subsequent violation); and
  - "**three times the value of the benefit derived** from the anti-competitive practice " or, if that amount cannot be reasonably determined, **3% of annual worldwide gross revenues**.

Wage-fixing and No-poaching



Section 45: Wage-fixing and No-poaching

- **Subsection 45(1.1)**: Addition of "**wage-fixing**" and "**no-poaching**" provisions to the criminal conspiracy provisions. Specifically,
  - "Every person who is an employer commits an offence who, with another employer who is not affiliated with that person, conspires, agrees or arranges
    a) to **fix, maintain, decrease or control salaries**, wages or terms and conditions of employment (*i.e.*, "wage-fixing"); or
    b) to **not solicit or hire** each other's employees *(i.e.*, "no-poaching")."
- The penalty includes a maximum of 14 years imprisonment; a fine in the "discretion of the court"; or both.
- The amendments will not come into force until **June 23, 2023**.

Drip Pricing



Sections 52 and 74.01: Drip Pricing

- **Drip Pricing**: Offering a product or service at a price that is unattainable because consumers must also pay additional non-government-imposed charges or fees to buy the product or service.
- **Past Cases**: Despite not being explicitly mentioned in the Act, the Commissioner has successfully taken enforcement action against this practice.
- **Subsections 52(1.3) and 74.01(1.1)**: Added to confirm, for greater certainty, the making of a price representation that is not attainable due to fixed obligatory charges or fees is false or misleading under the civil and criminal false or misleading representation provisions.
  - **Exception**: "unless the obligatory charges or fees represent only an amount imposed by or under an **Act of Parliament or the legislature of a province**" (e.g., sales taxes).

Competitive Impact Factors



Sections 90.1 and 93: Competitive Impact Factors

- **Sections 90.1 and 93**: The amendments expand the current non-exhaustive lists of factors considered when assessing the competitive impact of mergers, abuse of dominance and competitor collaborations.

- For competitor collaborations (s. 90.1) and mergers (s. 93), the new factors are:
  a) "**Network effects**" as another example of a barrier to entry in a market;
  b) The possible **entrenchment of leading incumbents' market position**; and
  c) Effects on both price competition and non-price competition, such as quality, choice or consumer privacy.



Section 79: Competitive Impact Factors

- **Section 79**: The new factors for abuse of dominance are:
  a) Effects on barriers to entry, such as **network effects**;
  b) Effects on both **price competition and non-price competition**, such as quality, choice or consumer privacy;
  c) The **nature and extent of change and innovation** in the relevant market; and
  d) Any other factor that is relevant to competition in the market that is or would be affected by the practice.



Anti-competitive Acts



Section 78: Anti-competitive Acts

- **Section 78**: Contains a non-exhaustive list of "**anti-competitive acts**" that the Tribunal may consider in applying the s. 79 (abuse of dominance) test.
- The amendments revise s. 78 in two ways:
  a) First, clarifies that an "anti-competitive act" is one that is intended to have a predatory, exclusionary, or disciplinary negative impact on a competitor, **or to have an adverse effect on competition**; and
  b) Second, adds a new example: "a selective or discriminatory response to an actual or potential competitor for the purpose of impeding or preventing the competitor's entry into, or expansion in, a market or eliminating the competitor from a market."



Private Access



Sections 79 and 103.1: Private Access

- **Private Access**: Private parties who are directly affected by the conduct of another party may apply to the Tribunal for some civilly reviewable provisions of the Act. Specifically,
  a) Refusal to deal;
  b) Price maintenance; and
  c) Exclusive dealing, tied selling and market restriction.
- The amendments change s. 103.1 to add private access for **abuse of dominance cases** (section 79).



Pre-merger Notification



Part IX: Pre-merger Notification

- **Notifiable Transaction**: In certain cases, Part IX of the Act requires parties to a proposed merger transaction to notify the Bureau prior to closing and a review is conducted.

- The amendments modify Part IX in several ways, including:

  a) **Section 113.1**: Requires transactions to be notified if they are "designed to avoid" notification; and

  b) **Subsections 108(3) and 108(4)**: Clarifying that certain days are "holidays" for the purpose of computation of time, and that submissions made after 5 p.m. Eastern Time will be deemed received the following business day.

Information Gathering



Section 11: Information Gathering

- **Section 11**: Allows the Commissioner to apply for court orders to gather information from market participants.
- The amendments change s. 11 in two ways:
  - **a) Revises subsection 11(2).**
  - **b) Adds subsection 11(5).**



Next Steps



Next Steps

- Forthcoming work:
  1. **Publication Updates**: Additional changes to the Bureau's public guidance documents; and
  2. **Phase II consultation**: The Government committed to "broad consultations" regarding the "role and functioning" of the Act.



Thank you!

Questions and Answers



Forthcoming Guidance

- Forthcoming guidance will include:
  1. Wage-fixing and No-poach: Stand-alone guidance
  2. Drip pricing: Updated existing guidance
  3. Abuse of Dominance Guidelines: Significant revisions



Wage-Fixing and No-poaching

1. How does the Bureau intend to enforce the wage-fixing and no-poaching provision?
2. How will the wage-fixing and no-poaching provision interact with the "ancillary restraints defence"?
3. Will the wage-fixing and no-poaching provision apply retroactively? Or will there be a "grandfather" exception?
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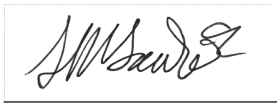
This is Exhibit “X” to the Affidavit of Adam Zimmerman, affirmed remotely and stated as being located in the city of Gatineau, in the province of Quebec, before me in the city of Toronto, on January 8, 2024, in accordance with O. Reg. 461/20, Administering Oath or Declaration Remotely.





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The Deceptive Marketing Practices Digest — Volume 6

Bulletin

April 17, 2023

Introduction

This edition of *Deceptive Marketing Practices Digest* looks at three topics:

1. the use of scarcity cues, that is, claims that an offering has limited availability
2. drip pricing, which involves advertising a low price only to add on fees or mandatory charges so that the actual price is higher
3. the Competition Bureau's recent presidency of the International Consumer Protection and Enforcement Network, an organization of consumer protection authorities, which showed the importance of international cooperation in a digital economy

Consumers shopping online are faced with more choices than ever before, and even more information to navigate and process when making purchasing decisions. Unfortunately, some businesses take advantage of this complexity to confuse consumers, making it harder for them to make informed decisions. Such businesses make online representations, or claims, to mislead consumers into making choices that may not be in their best interests, or even what they intended.

Scarcity cues tell consumers when an offering — be it a price, a product or a service — is in short supply. When these claims are true, they can provide consumers important information so that they don't miss out on a deal. When untrue, they can mislead consumers into making purchases they might not have otherwise made, or rushing them into purchases without considering competitive offers.

Drip pricing, already discussed in volumes 1 and 5 of *Deceptive Marketing Practices Digest*, is the practice of advertising an attractive price only to then add additional mandatory charges so that the product is not actually available to purchase at the advertised price. Recent amendments to the *Competition Act* confirm the deceptive nature of drip pricing, and have increased the penalties for misleading advertising. We remind businesses about the importance of advertising the true price of products and services, and reiterate our determination to end this deceptive marketing practice.

This volume also briefly reviews the Bureau's recent **presidency of the International Consumer Protection and Enforcement Network** (ICPEN), an organization of consumer protection authorities first featured in Volume 3 of the Digest. Our presidency began in the first year of the pandemic, making it the first fully virtual ICPEN presidency and challenging us to find innovative ways to continue ICPEN's important work.

The Competition Bureau, together with law enforcement agencies around the world, is taking a hard look at the increasingly sophisticated techniques businesses use online to manipulate consumer choice in the digital economy. Businesses should know that we will take action when they use these practices to mislead or deceive consumers.

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Fake scarcity cues online

The urgency is fake, but the deception is real

You're shopping online and a product catches your eye. But what's this? A pop-up informs you there are only two left! Worse yet, 15 people are looking at the very same item right now! Your heart starts to race, you know you need to act fast if you don't want to miss out on this deal. You rush to enter your credit card details and experience a sense of relief when the purchase is complete.

This scenario plays out daily for consumers in the digital economy, and it is an example of the power and influence of what are called "scarcity cues" online. Scarcity cues are representations, or claims, that suggest low availability of a product or service, effectively signaling to consumers that they must act fast before the offer is gone. Such claims can induce consumers to make an impulsive or relatively uninformed decision to quickly grab a great deal before someone else beats them to it.

Businesses can also add so-called social proof tactics to the mix, using various methods to let consumers know that other consumers like or want the same product. Social proof can be used to suggest there is high demand for a product and/or that the product is highly attractive or desirable. The sense of urgency is compounded when a consumer believes a product is both scarce and in high demand.

Examples of scarcity cues

Businesses use scarcity cues to let consumers know when the supply of a product or an offer is limited in some way. Some common examples of online scarcity cues include:

- claims that only a small amount of stock is left
- claims that certain prices are available for only a limited time so consumers should "hurry" or "act fast"
- claims that a certain percentage of stock has already been purchased (for example, 80% of available reservations are taken)
- countdown timers that tick toward a time where the product or limited time offer will no longer be available
- countdown timers indicating that consumers have a limited time to complete a purchase or another rival consumer will gain access to the item that is in the consumer's cart
- pop-ups or other claims of how many other people are currently viewing or are interested in the same product

When the information is true, the limited availability of a product, service or price can be valuable information for a consumer. However, false or misleading scarcity cues can make consumers rush into a decision they would not have otherwise made. That's when the Bureau becomes concerned.

Scarcity cues capitalize on human nature

Basic human nature often drives our decision-making. That means we don't always make choices that are in our best interests, especially when we do not have complete information, or if we are making decisions under pressure or time constraints. Behavioural economists call some of these tendencies "behavioural biases" or "cognitive biases."

Businesses have long been aware of these biases and how to leverage them

Businesses have long been aware

through advertising. In fact, they spend a lot of time and money discovering the most effective way to push consumers' buttons. Unfortunately, businesses can cross the line from persuasion to outright deception when they use false or misleading claims, including fake scarcity cues online, to exploit these biases.

Businesses have long been aware of these biases and how to leverage them through advertising. In fact, they spend a lot of time and money discovering the most effective way to push consumers' buttons.

How do these biases apply to our earlier online shopping scenario?

First, if you haven't done much shopping around, you won't know if it's a great deal or not. Second, while you have been told that 15 other people are considering it, you already have it in your virtual basket. If you take a few moments to check out the offerings of competitors, you might lose out. The item in your basket has in a sense increased in value simply because you have it in hand, and others appear to want it. You don't want to risk losing it, even though there could be other deals out there that are at least comparable, if not better. So you complete the purchase without comparison shopping.

On the web, businesses can take scarcity cues to the next level

Advertisers have used scarcity cues for a long time, but in the online marketplace, scarcity cues and related social proofing are everywhere, and in many different forms. Furthermore, they can be easily automated and coded into websites and shopping platforms through various plug-ins and algorithms.

For example, certain third-party providers offer plug-ins that display remaining inventory to consumers on popular online retailing websites. However, the Bureau has discovered that some of these inventory counters are not actually linked to inventory levels. Instead, they are programmed to generate random or arbitrary numbers, and in no way provide actual or accurate information about the stock of the product. Put simply, fake scarcity cues can easily be automated in the online marketplace.

Scarcity cues and the *Competition Act*

The wording of the misleading advertising and deceptive marketing practices provisions of the *Competition Act* ensures that businesses and advertisers have all the freedom they need to be creative and innovative when marketing their products and services. However, in attempting to inform and persuade consumers, advertisers must be truthful and not deceptive.

When it comes to scarcity cues, businesses can certainly warn consumers that a product or service is somehow limited or stock is running low, but they should not do this if the information is not true. They should not mislead consumers with false or misleading claims about the limited availability of a product or service, or a specific price or other deal.

Furthermore, the general impression of any scarcity cue must be carefully scrutinized to ensure that no aspect of the claim is misleading. Consider an example where a hotel or online travel accommodation platform claims that there are only five rooms left at the consumer's preferred hotel on the consumer's desired travel dates, and 10 people are interested in those same rooms right now. What they might leave out is that those 10 people are looking to book that hotel for completely different days, perhaps for dates that are weeks or months away from the date the consumer is interested in. In this scenario, even if the claim about the number of rooms is true, the general impression that they are about to be booked up by others is false or misleading.

Why is it important for businesses to be truthful when making scarcity claims online? It is important because claims about the limited availability of a product, service or price have a material impact on consumers' purchasing decisions. The Bureau considers that a claim is material if it could cause consumers to take actions, such as making purchasing decisions they may not otherwise have made.

Persuasion should not rely on deception

Scarcity cues can affect consumer behaviour. That's why companies must advertise offers as being time limited, or products being in short supply and/or in high demand only when this is actually the case. When it comes to false or

misleading scarcity cues, businesses may find that "playing hard to get" invites Bureau scrutiny and, ultimately, is a losing game.

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Update on drip pricing

The ambush of hidden fees

It can be frustrating to decide to buy something because it's a good price, only to find at the virtual checkout that additional fees were tacked on, and you have to pay more than what was advertised. This practice — offering something for sale at a price that is unattainable because of additional mandatory charges — is called drip pricing. Additional fees are "dripped" onto the originally advertised price during the online purchase process. Consumers use the advertised price when comparing similar offerings and making purchase decisions, and if that price is false, it can lead to misinformed decisions by consumers and unfair outcomes for honest competitors.

Recent amendments to the *Competition Act* include new provisions that underline Parliament's determination to target misleading drip pricing practices. These amendments have now passed into law, making it a good time to revisit the subject of drip pricing.

Past Bureau efforts on drip pricing

The Bureau has been taking action against the practice of drip pricing for many years. In fact, Volume 1 of the *Deceptive Marketing Practices Digest* described drip pricing as a growing problem in the digital economy, and pointed out that a significant body of research shows that hiding or obscuring costs significantly affects consumers' ability to make well-informed decisions.

2015: Car rental industry

The Bureau first took enforcement action on drip pricing in Canada's car rental industry starting in 2015. The Bureau concluded that certain market participants were making claims that created the general impression that consumers could rent vehicles and related products at prices that were not in fact attainable because consumers were required to pay additional non-optional fees. These efforts culminated in four consent agreements that were discussed in Volume 5 of the *Deceptive Marketing Practices Digest* in Changing the status quo for car rental pricing practices: ensuring that the prices you see are the prices you pay. Under the terms of these consent agreements, the businesses were each prohibited from making any representations that create the materially false or misleading impression that consumers can rent vehicles and related products at prices that are not in fact attainable because of additional non-optional fees.

2017: Online sporting and entertainment ticketing

The Bureau also took enforcement action to address drip pricing by online sporting and entertainment ticket companies. In 2017, the Bureau publicly called on sporting and entertainment ticket vendors to review their marketing practices and display the real price of tickets up front. Some companies were offering low prices to attract consumers, only to then add mandatory fees or charges later in the purchasing process, so that the real price of the tickets was much higher. Unexpected fees were often added later in the transaction, when buyers had already picked out their seats.

> Advertisers have been invited for years to avoid making claims that create the materially false or misleading impression that consumers can purchase products at prices that are not in fact attainable because of additional non-optional fees.

The Bureau followed with investigations into the pricing practices of Ticketmaster and StubHub, culminating in consent agreements and penalties of $4.5 million and $1.3 million respectively. In the consent agreements, the Bureau concluded that the companies advertised prices for tickets that, in fact, were not attainable because they charged consumers non-optional fees. These included "service fees," "transactional fees," "fulfillment fees" and "delivery fees," in addition to the prices initially advertised. The Bureau further concluded that the way the ticket prices were advertised created the

prices initially advertised. The Bureau further concluded that the way the ticket prices were advertised created the general impression that consumers could purchase tickets for less than what the companies actually charged, because consumers were required to pay the additional non-optional fees that were added later in the purchasing process. The consent agreements contained prohibitions that were similar to those found in the car rental agency cases.

Advertisers have been invited for years to heed the Bureau's position, articulated in all of these consent agreements, that they should avoid making any representations, or claims, that create the materially false or misleading impression that consumers can purchase products at prices that are not in fact attainable because of additional non-optional fees.

Recent amendments to the *Competition Act*

Earlier this year, Parliament passed into law a number of amendments to the Act that included two new subsections, 52 (1.3) and 74.01(1.1) that specifically address drip pricing. These new subsections confirm, for the purpose of enforcing sections 52 and 74.01 of the Act, that the making of a claim of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation under the Act.

With these new provisions now in effect, the Bureau no longer needs to prove the deceptive nature of drip pricing when pursuing a case under the false or misleading representations provisions of the Act. Not only do the amendments make enforcement of the Act more efficient by not requiring the Bureau to establish that drip pricing is a false or misleading practice in each case, but they also improve transparency for online advertisers.

The amendments exclude charges or fees that represent only an amount imposed by or under an Act of Parliament or the legislature of a province. This tacitly acknowledges that in Canada, consumers are accustomed to paying taxes on many products in addition to the price represented, and are therefore unlikely to be misled if these taxes are not included in price claims.

Fixed and variable fees

The new provisions prohibit the dripping of mandatory fixed additional charges or fees. But what about fees or other charges that are variable, in that the amount varies depending on certain factors? While the new provisions do not address variable fees, it is crucial for businesses to remember that if the general impression conveyed by a price claim is false or misleading in a material respect due to the existence of variable fees, the conduct would still raise issues under the Act.

For example, if the general impression conveyed is that the advertised price is the total cost of a product (exclusive of taxes), when in fact the advertiser will supply the product only if the consumer pays certain additional variable but mandatory fees, then liability may arise under sections 52 or 74.01 of the Act. This could also raise issues under section 74.05 of the Act, which prohibits the sale of products above the advertised price.

Essentially, the obligation to avoid making false or misleading price claims, whether that involves variable fees or any other price-related misrepresentation, remains unchanged. Businesses are therefore encouraged to always carefully examine their pricing claims to ensure that they do not convey a false or misleading impression about the cost of a product, or supply a product at a price higher than the advertised price.

Furthermore, businesses need to be careful to ensure they don't convey a false or misleading impression about the nature of any fees or charges, for example, by implying that a fee is a government-imposed tax on consumers when in fact the fee is just part of the cost of doing business.

Integrity in the digital marketplace

Prices are almost always a key, or material, factor in consumer decision-making. Ensuring honest and informative price advertising is important to prevent consumer harm, and to promote competition and discourage a race to the bottom among online competitors. Practices like drip pricing erode consumer trust in e-commerce and undermine its competitive potential. The new provisions explicitly recognize the corrosive effects of these practices. The Commissioner welcomes the clarity that the new provisions offer, and will continue to prioritize enforcement actions attacking drip pricing as part of his ongoing efforts to promote and maintain the integrity of the digital marketplace.

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Reflections on the Bureau's recent ICPEN presidency

International cooperation in extraordinary times

There is no question that the COVID-19 pandemic brought unprecedented challenges and profound change, forcing the world to rapidly adapt to evolving circumstances. In this time of uncertainty, the Bureau served as President of the International Consumer Protection and Enforcement Network (ICPEN). While the pandemic has receded and the torch has since been passed to other nations to lead the work of ICPEN, we want to pause and reflect on our experiences during that extraordinary time.

As first discussed in Volume 3 of the Digest, ICPEN is a global network of law enforcement and consumer protection agencies from over 65 countries. Its mandate is to coordinate and cooperate on consumer protection enforcement matters, to share information and intelligence on consumer protection trends and risks, and to share best practices.

The Bureau's one-year term as ICPEN President began on July 1, 2020, at a time when all of us were just starting to adapt to the realities of remote work. In fact, our presidency was the first fully virtual tenure in ICPEN's history. Despite this challenge, we explored new ways to come together and used technology in innovative ways. We advanced the issues that matter not only to Canadians, but also to consumers around the world.

Building consumer trust in a changing marketplace

The motto of our presidency was "Building Consumer Trust in a Changing Marketplace." Indeed, while the market has been shifting online for a number of years, the rate of innovation and change during the pandemic was unprecedented. With consumers facing new borderless challenges and vulnerabilities, the need to keep up, for us as government agencies, was stronger than ever.

Our digitally focused program of work addressed:

- misleading and fraudulent marketing activities related to COVID-19, and global best practices regarding remote investigative and consumer protection work
- artificial intelligence as an investigative tool, and how businesses may use it to mislead consumers
- enforcement challenges, data privacy concerns and third-party responsibility associated with digital platforms
- misleading activities exploiting consumer concern about the environment
- online consumer behaviour and the cognitive biases that leave consumers vulnerable to deceptive conduct in the digital economy

> Our international partnerships are an important component of our efforts to address emerging problems in a rapidly changing, increasingly digital economy. When borders disappear, enforcement challenges increase. It makes little sense to work alone when a problem, stamped out in one region, pops up in another the next day. Borderless problems demand borderless solutions.
>
> *Deceptive Marketing Practices Digest, Volume 3*

Some public accomplishments

Despite the challenges, we continued to achieve many important goals together. Here are just a few of ICPEN's recent accomplishments during our presidency.

ICPEN internet sweep: Misleading green claims

Consumer preferences have been shifting toward greener, cleaner products and services, even if it means paying a

premium. However, when companies make misleading or unsubstantiated claims about the "greenness" of their products, sometimes referred to as "greenwashing," consumers pay more for no reason, and the environment is likely no better off. Not only that, truly green competitors also lose out on a potential customer and the consumer misses out on the environmentally friendly product they really wanted all along. ICPEN members wanted to know just how pervasive this problem is, and we decided to find out.

In Volume 3, we highlighted ICPEN's annual internet sweeps, where Network members and their partners around the world conduct coordinated examinations of the internet and other forms of electronic communication to uncover potentially misleading or deceptive online conduct. In 2020, Canada participated in a sweep of domestic and international websites across a range of sectors, including fashion, cosmetics and food, to examine claims about the environmental impact of their products or services. Nearly half of the websites appeared to be using tactics and/or making claims that could be considered misleading. These included:

- claims about environmental attributes that are not properly substantiated by adequate and proper testing, such as claims regarding the biodegradability of a product
- false or misleading third-party endorsements, such as the use of "eco-friendly approved" logos, stamps and labels that are not, in fact, associated with an accredited organization
- other false or misleading claims, such as a claim that a product is eco-friendly when in fact, it contains chemicals known to be damaging to the environment or is made using processes that emit high levels of pollution

Greenwashing is a significant global issue, and ICPEN members are now armed with new insights and information to help detect and deter businesses from exploiting consumers' concerns about the environment.

Fraud Prevention Month: Sustainable consumption

Misleading green claims were also the theme of 2021 ICPEN Fraud Prevention Month, a series of education campaigns that ICPEN members run for a month every year under a common theme but focusing on an issue relevant to each individual participating agency. ICPEN participants implement various activities aimed at educating consumers and businesses about how to identify and protect themselves from fraudulent or deceptive practices.

During the Canadian presidency, the Fraud Prevention Month Campaign on Misleading Environmental Claims was launched on World Consumer Rights Day, March 15, 2021, coinciding with the Bureau's own annual Fraud Prevention Month campaign. ICPEN members collaborated to educate consumers worldwide about green advertising and marketing claims with a goal to spread awareness about misleading environmental claims, and to ensure that consumers have the accurate information they need to make informed purchasing decisions.

Joint action regarding App Store and Google Play privacy policies

During the pandemic, consumers relied more than ever on technology for social connection and communication, commerce and entertainment. This technology dependence made consumers even more vulnerable to misleading practices involving their personal information. Data collection and privacy issues have been and continue to be important considerations for today's consumers who interact daily with multiple apps that access a user's personal data. It is important that users are not misled about when, why and how their data is collected online.

Accordingly, ICPEN members led a successful joint enforcement action against two of the largest tech companies of our time, Apple and Google. The UK's Competition and Markets Authority, the Netherlands' Authority for Consumers and Markets, and the Norwegian Consumer Authority took a leading role in the international effort to improve information available on the use of personal data by apps available in Apple's App Store and in Google Play.

The intervention of 27 ICPEN members led to Apple's June 2020 announcement of a new section added to each app's product page in the App Store. The section contains key information about the data the app collects and an accessible summary of the most important information from the privacy policy. In late May 2021, Google committed to make similar changes. This joint initiative highlights the importance of international collaboration to ensure consumers are safeguarded when they are spending an increasing amount of time online daily, interacting with multiple apps that access their personal data.

access their personal data.

Strength in numbers

In Volume 3, we said that "when it comes to combatting deceptive online marketing practices, there is strength in numbers." As President of ICPEN, we experienced the truth of this first hand, with our international partners continuing to fully engage in our cooperative efforts despite the pandemic challenges. The numbers speak volumes. In November 2020, the Bureau hosted a fully virtual ICPEN event that was attended by over 300 participants from over 45 nations. A subsequent virtual event in June 2021 was attended by representatives from over 40 nations. These events saw the international community come together to share experiences, learn from each other and continue the important dialogue central to the Network's success.

In February 2021, we hosted the first fully virtual Best Practices Workshop Webinar series. Webinar topics over the course of the month included Misleading Environmental Claims, Enforcement on Digital Platforms, Enforcement of Consumer Data Privacy, and Consumer and Business Education. The purpose of the sessions was to provide working-level officers with hands-on, practical training that could be easily incorporated into daily work. Although the ICPEN Best Practices Workshops are typically offered in person, a benefit of these virtual sessions was that more officers from agencies around the world could participate and benefit from the knowledge and experience of other ICPEN members.

There is no question that the continued support, enthusiasm and engagement of our international partners was integral to the success of our presidency.

Moving forward

In a time characterized by a sense of isolation, we developed a new appreciation for connection. Through our involvement in international networks like ICPEN, we can accomplish more for consumers than we ever could individually.

As ICPEN President, we strove to be transparent in communicating to the world about ICPEN's work and accomplishments. We fostered diversity by encouraging those with a variety of backgrounds, experiences and skills to participate in the network, and we cultivated collaboration with other global organizations to address the issues that matter most and to better serve consumers worldwide.

Looking forward, we know that ICPEN and its membership will continue to build on the accomplishments and lessons learned in this unforeseen and challenging time. Empowered by our connections to others, we have proven that together we can nimbly respond to novel challenges and rapidly evolving marketplace issues impacting consumers around the globe.

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Date modified: 2023-04-17

CT-2023-003

THE COMPETITION TRUBINAL

IN THE MATTER OF an application by the Commissioner of Competition for an order pursuant to sections 74.01 and 74.1 of the Competition Act, RSC 1985, c C-34.

BETWEEN:

COMMISSIONER OF COMPETITION
Applicant

– and –

CINEPLEX INC.
Respondent

WITNESS STATEMENT OF ADAM ZIMMERMAN

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