

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 Swenson Inc. for an order pursuant to section 103.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, granting leave to make an application under section 75 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

BETWEEN:

SWENSON INC.

Applicant
(Respondent on the Motion)

- and -

TRADER CORPORATION

Respondent
(Moving Party)

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

FILED / PRODUIT
August 1, 2008
CT- 2008-007

Chantal Fortin for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

0013

NOTICE OF MOTION

(Pursuant to Rule 5 of the *Competition Tribunal Rules*
and Rule 369 of the *Federal Courts Rules*)

TAKE NOTICE THAT THE RESPONDENT, Trader Corporation ("Trader"), will make a motion to the Court, on consent, in writing under Rule 5 of the *Competition Tribunal Rules* and Rule 369 of the *Federal Courts Rules*.

THE MOTION IS FOR:

- (a) an order in the form attached as Schedule "A" granting the Respondent an extension of time to file its response pursuant to Rule 119 of the *Competition Tribunal Rules*; and
- (b) such further and other relief as to this Honourable Court seems just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. The Applicant (Swenson Inc.), which has consented to this motion to extend time, has brought an application to the Competition Tribunal pursuant to section 103.1 of the *Competition Act*, R.S.C. 1985, c. C-34 (the “Act”) seeking leave to bring an application for an order under subsection 75(1) of the Act directing the Respondent Trader to supply advertising space in its publications on usual trade terms (the “Application”).
2. Swenson Inc. filed its Notice of Application and the Affidavit of Darold Swenson on July 16, 2008.
3. On July 24, 2008, the Competition Tribunal (the “Tribunal”) confirmed that it can hear Swenson Inc.’s application for leave to make an application under subsection 75(1) of the Act.
4. The Tribunal’s Notice was served on Trader on Thursday, July 24, 2008.
5. On Monday, July 28, 2008, counsel for Trader wrote to counsel for Swenson Inc. advising that they intend to cross-examine Mr. Swenson on his affidavit sworn on July 10, 2008, and indicating availability to do so in Winnipeg (where Swenson Inc.’s counsel is located) on any date in the week of July 28 or on August 5 or 6, 2008.
6. Mr. Swenson is currently on a recreational vehicle (“RV”) trip through Alaska and is not expected to return until early or mid September. Counsel for the parties have discussed tentative cross-examination dates of September 22, 23 or 29, to be confirmed with Mr. Swenson, who is not currently within reliable telephone range.
7. Pursuant to Rule 119 of the *Competition Tribunal Rules*, the Respondent has 15 days from the date it received the Tribunal’s Notice to respond to the Application; the time limit is thus currently August 8, 2008 – well before Mr. Swenson is available for cross-examination.
8. Pursuant to Rule 5 of the *Competition Tribunal Rules*, the time limits prescribed by the Rules may only be extended by an order or a direction of a judicial member.

The Extension of Time

9. Trader intends to contest Swenson Inc.'s Application, which is demonstrated by its intention to cross-examine Mr. Swenson.

10. Counsel for Trader have acted promptly since being served with the Notice on July 24 and made themselves available to cross-examine Mr. Swenson in Winnipeg immediately thereafter.

11. No prejudice to Swenson Inc. would arise from the delay, which will not be lengthy given Trader's timely notice of its intention to cross-examine and which arises from Swenson Inc.'s own affiant's unavailability.

12. There is a reasonable explanation for the delay. Trader requires additional time to conduct the cross-examination and obtain a copy of the transcript, so that it may rely upon that cross-examination in its response. Trader was available to cross-examine Mr. Swenson within the time limit for its response, but he was not available.

13. Rule 5 of the *Competition Tribunal Rules* and Rules 3, 8, 83 and 369 of the *Federal Courts Rules*.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Affidavit of Kathryn Lester sworn August 1, 2008 and exhibit thereto;
and
- (b) such further and other material as counsel may advise and this Honourable Court may permit.

August 1, 2008

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SWENSON INC.
Applicant

and

TRADER CORPORATION
Respondent

Competition Tribunal File No: CT-2008-007

COMPETITION TRIBUNAL

NOTICE OF MOTION

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SCHEDULE "A"

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BETWEEN:

SWENSON INC.

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TRADER CORPORATION

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ORDER

THIS MOTION made by the Respondent, Trader Corporation ("Trader"), for an order extending the time to file its response pursuant to Rule 119 of the *Competition Tribunal Rules* to within ten days of receiving the transcript of the cross-examination of Darold Swenson on his affidavit sworn July 10, 2008.

UPON READING the motion record of Trader;

AND UPON being satisfied that the Order requested should be granted;

1. THIS COURT ORDERS that the deadline for filing Trader's response in this matter pursuant to Rule 119 of the *Competition Tribunal Rules* is extended to within ten days of receiving the transcript of the cross-examination of Darold Swenson on his affidavit.

SWENSON INC.
Applicant

and

TRADER CORPORATION
Respondent

CT-2008-007

COMPETITION TRIBUNAL

O R D E R

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