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ARTICLE

Intellectual Property Weekly Abstracts Bulletin — Week Of September 11, 2017

Competition Decision

Evidence of the effect of alleged restrictive trade practices held insufficient to support allegations before the Competition Tribunal
CarGurus, Inc. v. Trader Corporation, 2017 FCA 181

CarGurus unsuccessfully appealed a decision of the Competition Tribunal refusing their leave to bring an application relating to the restrictive trade practices of refusal to deal, price maintenance and exclusive dealing (*CarGurus, Inc. v. Trader Corporation*, 2016 CACT 15).

The history of this proceeding relates to the sale of vehicles in a digital world. The Court noted that there are approximately 10 businesses in Canada offering a Digital Marketplace for vehicles. The Digital Marketplaces typically include vehicle listings with the make, model, year, Vehicle Information Number, mileage and price, as well as photographs of the vehicles.

The Respondent, Trader, runs the website www.autotrader.ca, and also offers services where an employee will go to a dealer to take photos and gather the information for a listing. These listings can be made available to other Digital Marketplaces through a licencing process.

Trader had earlier commenced a copyright proceeding seeking a declaration of infringement against CarGurus for at least 150,000 photographs. That proceeding was found to be successful (*Trader v. CarGurus*, 2017 ONSC 1841).

After removing over one million photographs obtained from crawling dealer websites, CarGurus responded by bringing the below application before the Competition Tribunal, alleging anticompetitive conduct, including refusing to licence Trader's Vehicle Listings to CarGurus on the usual trade terms, instructing third parties not to deal with CarGurus, and improperly asserting copyright.

On the evidence before the Competition Tribunal, it concluded that it could not reasonably believe that CarGurus may be directly and substantially affected in its business by Trader's conduct. The Tribunal also did not find that CarGurus was directly affected by the alleged reviewable conduct of Trader.

On review, the Court generally found that CarGurus was seeking to reargue the facts of the case, and the Court declined to do so. When the Court did discuss the evidence, it found the evidence wanting. As a result, the Court did not find an issue was raised that would justify interfering with the Tribunal's decision, and the appeal was dismissed.

Industry Update

The Government of Canada has published the Regulations pursuant to the *Canada-European Comprehensive Economic and Trade Agreement Implementation Act*, indicating they will come into effect on September 21, 2017.


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