

CANADIAN TRANSPORTATION AGENCY

B E T W E E N :

GÁBOR LUKÁCS

Applicant

- and -

PORTER AIRLINES INC.

Respondent

REQUEST TO FILE RESPONSE TO APPLICANT'S REQUEST TO COMPEL

September 22, 2015

Respondent:

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A. Relief sought

1. The Respondent, Porter Airlines Inc. (**Porter**), requests leave of the Canadian Transportation Agency (the **Agency**) to file a response to the Applicant's Request to Compel Answers and Productions dated September 21, 2015 (the **Request to Compel**).
2. If leave is granted, Porter will file its response within two (2) business days of the Agency's order.
3. Porter makes this request pursuant to s. 27(1) of the *Canadian Transportation Agency Rules*.

B. Summary of facts

4. On August 10, 2015, the Applicant commenced an Application seeking findings that (a) Porter published false and/misleading information on its website, and (b) Porter applied terms and conditions not set out in its tariffs and/or failed to apply the terms and conditions set out in its tariffs. On the basis of these allegations, the Applicant requested the imposition of corrective measures.
5. Porter filed its Answer to the Application on September 3, 2015. Porter's position, as set out in the Answer, is that (a) the Application is moot given steps taken by Porter to address the issues raised in the Application, and (b) in any event, the Application is without merit and should be dismissed.

6. On September 10, 2015, the Applicant filed a Notice of Written Questions and Production of Documents (the **Notice**). The Notice requested answers to 31 questions, including requests for the production of a number of documents and telephone recordings.
7. Porter filed its response to the Notice on September 18, 2015. Porter took the position that the Notice was excessive and the admissions sought were inappropriate and/or irrelevant. Porter answered the few questions that were relevant, and objected to the remaining questions as irrelevant and unnecessary to determine the Application.
8. The Applicant subsequently filed the Request to Compel.

C. Argument in support of Porter's request

9. The Request to Compel expands upon the Application and raises new issues and arguments regarding the relevance of the information sought by the Applicant.
10. The Request to Compel introduces new issues by:
 - (a) making a new argument regarding the appropriate test to establish the relevance of evidence before the Agency;
 - (b) making an expanded argument as to the interpretation and relevance of the *Income Tax Act* and Porter's alleged breach of that statute;
 - (c) redefining the allegations made in the original Application, which was that Porter paid no compensation for delayed baggage expenses, to now instead allege that inadequate compensation was paid. The Applicant uses this as the basis for seeking all data relating to passengers, delayed bags and compensation between February 19, 2013 and August 6, 2015;
 - (d) introducing new material to support the alleged relevance of Google search data;
 - (e) making additional arguments and introducing new evidence to dispute the truthfulness of Porter's evidence generally;
 - (f) making additional arguments regarding the relevance of the personal information of Porter Agents Darryl and Britney; and

- (g) making additional arguments as to the necessity of the Application, namely through alleging that Porter's actions were purely motivated by the Application.
11. In the interests of fairness, Porter should have the opportunity to fully respond to the Applicant's new allegations. Porter will suffer prejudice in the determination of the Application if it is not permitted to provide a response.
12. Moreover, it will be of assistance to the Agency to have the benefit of Porter's full position and argument on the issues raised by the Request to Compel.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of September, 2015.

Norton Rose Fulbright Canada LLP.
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Lawyers for the Respondent