



Ministère de la Justice
Canada

Department of Justice
Canada

Cote de sécurité – Security classification

PROTÉGÉ B – PROTECTED B

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December 4, 2017

The Honourable Jocelyne Gagné
Competition Tribunal
Thomas D’Arcy McGee Building
90 Sparks Street, Suite 600
Ottawa, ON
K1P 5B4

Dear Justice Gagné:

Re: Commissioner of Competition v. Hudson’s Bay Company, Tribunal File No. CT-2017-008

I write with the consent of counsel for Hudson’s Bay Company (“HBC”) further to the hearing of the motion before Your Honour last Friday. As Your Honour requested at the conclusion of the hearing, the parties have engaged in some discussion about the scope of supplemental document production.

HBC has indicated that it will be producing to the Commissioner the following documents by December 13, 2017:

- Sleep Sets Compliance Grids for February 2015 through January 2017 (two documents). These documents are the annual tracking documents used by HBC’s sleep sets “buyer” to track the number of days (and which days) each sleep set collection is offered at regular and promotional prices. They also indicate HBC’s promotion schedule for sleep sets. These documents fall within category D of the Commissioner’s chart attached as Annex A to his Memorandum of Fact and Law on the motion.
- Compliance Manual (one document). This document has been updated since February 2015 and will be produced. It applies to sleep sets as well as to other products. It falls within categories D and F of the Commissioner’s chart.

OTTAWA, ONT.
 REGISTREUR / REGISTRAR
 Bienne Zagonoff / pour
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- National flyers advertising “End of Line” sleep sets during the period February 2015 through the date of the Notice of Application. These documents respond to Category E of the Commissioner’s Annex A chart.

The Commissioner’s position is that the foregoing supplementary document production is insufficient and he therefore asks that Your Honour rule on the motion and grant the relief he requests, as set out in Annex A of his Memorandum of Fact and Law. Should production be ordered as requested, the Commissioner asks that HBC be required to deliver its Supplemental Affidavit of Documents and productions no later than January 1, 2018 and the Scheduling Order be amended so that Examinations for Discovery would be conducted between February 26th and March 9th. As indicated, the Commissioner asks that the order provide that HBC’s Response be struck should HBC fail to make production within the period the Tribunal orders.

HBC’s position is that the foregoing supplementary production is sufficient in light of the pleadings and matters in issue. However, if Your Honour grants the relief requested by the Commissioner as to the scope of the supplementary production (which both parties agree would entail an eDiscovery process) then HBC requests that it be given 3 months in which to complete the exercise and make production. HBC recognizes that this would have a knock-on effect on the Scheduling Order but believes the time frame suggested by the Commissioner is simply impossible to meet. HBC also reiterates its submissions from the hearing of the motion on Friday with respect to the Commissioner’s requested relief of the striking of HBC’s Response.

Yours very truly,



Derek Leschinsky

- c. Alex Gay, Katherine Rydel (*Department of Justice*)
Eliot Kolers, Mark Walli, William Wu (Stikeman Elliott LLP, lawyers for HBC)