

THE COMPETITION TRIBUNAL

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER of a Consent Agreement pursuant to section 74.12 of the *Competition Act* with respect to certain deceptive marketing practices of the Respondent under paragraph 74.01(1)(b) of the *Competition Act*.

BETWEEN:

COMMISSIONER OF COMPETITION

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| COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE REGISTERED / ENREGISTRÉ FILED / PRODUIT December 21, 2015 CT-2015-013 Jos LaRose for / pour REGISTRAR / REGISTRAIRE | |
| OTTAWA, ONT | # 2 |

Applicant

-and-

SPORT MASKA INC.

Respondent

CONSENT AGREEMENT

WHEREAS the Commissioner of Competition (the “**Commissioner**”) is responsible for the administration and enforcement of the *Competition Act* (the “**Act**”);

AND WHEREAS the Respondent Sport Maska Inc., carrying on business as Reebok-CCM Hockey (“**Reebok-CCM**”), is a designer, manufacturer and marketer of hockey equipment, including hockey helmets;

AND WHEREAS the Respondent developed, manufactured and marketed the CCM Resistance hockey helmet (the “**Product**”), which is available throughout Canada;

AND WHEREAS current hockey helmet testing standards in Canada established by the Canadian Standards Association (“**CSA**”) are aimed at reducing the risk of catastrophic head injuries such as skull fractures, not at reducing the risk of non-catastrophic brain injuries such as concussions;

AND WHEREAS the Product is certified pursuant to those standards;

AND WHEREAS the Parties understand that CSA is considering the creation of a new standard to determine rotational shock absorbing capacity for hockey helmets;

AND WHEREAS the Parties are aware that, in recent years, there has been increased public concern about concussions in hockey;

AND WHEREAS experts state that concussions are mainly due to acceleration or deceleration of the brain caused by linear and rotational forces;

AND WHEREAS hockey helmets may not prevent concussions caused by these or other forces, and it remains unclear what role hockey helmets can play in protecting players from concussions;

AND WHEREAS since at least May 2014, the Respondent has promoted the Product to the public by making representations that the Commissioner has concluded create the general impression that the Product represents an innovative hockey helmet that dampens rotational accelerations caused by impacts to the head, managing stress and strain on brain tissue, thereby protecting players from brain injuries such as concussions (the “**Representations**”);

AND WHEREAS the Respondent has made the Representations in a variety of ways, including through the use of diagrams, illustrations, text and videos on its websites, namely, ccmhockey.com and reebokhockey.com, as well as text on the Product packaging and in certain point-of-sale materials provided to Authorized Retailers;

AND WHEREAS the Respondent has already ceased making the Representations through certain of the foregoing channels and pursuant to this Agreement has agreed to discontinue making the Representations to the extent they continue to be made by any means whatsoever (the “**Remaining Representations**”);

AND WHEREAS the Commissioner has concluded that the Representations are performance claims within the meaning of paragraph 74.01(1)(b) of the Act, and therefore must be supported by adequate and proper testing;

AND WHEREAS such testing must be reflective of the risk or harm that the product is designed to prevent or assist in preventing;

AND WHEREAS the Commissioner recognizes the fact that the Respondent is committed to investing in innovative technology and new and better products relating to the hockey helmet segment;

AND WHEREAS the Commissioner acknowledges the Respondent’s significant investment in research and development through its partnership with the University of Ottawa’s Neurotrauma Impact Science Laboratory (“**NISL**”) which allows testing of helmet technologies using a linear and rotational acceleration testing protocol;

AND WHEREAS the Respondent commissioned testing by NISL prior to the making of the Representations;

AND WHEREAS notwithstanding this significant research and testing on the Product, the Commissioner has concluded that the prior testing conducted by or on behalf of the Respondent was not adequate and proper to support the Representations in that it was not sufficient to establish that the Product offers protection to players from brain injuries such as concussions;

AND WHEREAS a relevant consideration for the Commissioner in his evaluation of the testing offered by the Respondent is the absence of an established injury threshold for concussions;

AND WHEREAS for the purposes of this Agreement only, including execution, registration, enforcement, variation and rescission, the Respondent does not contest the Commissioner's conclusions, but does not agree with these conclusions, and nothing in this Agreement shall be taken as an admission or acceptance by the Respondent of any facts, allegations or conclusions for any other purpose, nor shall it derogate from any rights or defences of the Respondent against third parties;

AND WHEREAS the Parties are satisfied that this matter can be resolved with the registration of this Consent Agreement which, upon registration, shall have the same force and effect as an order of the Competition Tribunal;

AND WHEREAS the Commissioner has agreed to more favourable terms in this Agreement than would otherwise be the case, in light of the Respondent's full cooperation with the Commissioner's inquiry;

NOW THEREFORE in order to resolve the Commissioner's concerns, the Parties hereby agree as follows:

I. INTERPRETATION

1. For the purpose of the Agreement, the following definitions shall apply:

- (a) “**Act**” means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;
- (b) “**Agreement**” means this Consent Agreement entered into by the Respondent and the Commissioner pursuant to section 74.12 of the Act;
- (c) “**Authorized Retailer**” means any retailer authorized by Reebok-CCM to sell the Product in Canada;
- (d) “**Commissioner**” means the Commissioner of Competition appointed pursuant to section 7 of the Act;
- (e) “**Parties**” means the Commissioner and the Respondent;
- (f) “**Product**” means the CCM Resistance hockey helmet;
- (g) “**Reebok-CCM**” means Sport Maska Inc., incorporated on March 4, 1998, which conducts its business through the trade name Reebok-CCM Hockey; and includes any present or future subsidiary of Reebok-CCM within the meaning of subsection 2(3) of the Act;
- (h) “**Respondent**” means Reebok-CCM;
- (i) “**Respondent's Personnel**” means all current and future senior management of the Respondent and all other employees of the Respondent who are materially involved in the formulation and/or implementation of advertising or

marketing policies with respect to the Product or any other ice hockey helmet designed, manufactured or marketed by the Respondents;

(j) “**Similar Products**” means any Reebok–CCM helmet that includes the Rotational Energy Dampening (R.E.D.) System, including the Respondent’s Fitlite helmets; and

(k) “**Tribunal**” means the Competition Tribunal.

II. COMPLIANCE WITH PARAGRAPH 74.01(1)(B) OF THE COMPETITION ACT

2. Within 15 days of executing this Agreement, the Respondent shall cease making the Representations with respect to the Product or Similar Products on its websites, namely ccmhockey.com and reebokhockey.com.
3. On or before January 31, 2016, the Respondent shall discontinue, take down, conceal or remove the Remaining Representations that it has made or is making to the public with respect to the Product or Similar Products, including all Representations displayed on the packaging for the Product and Similar Products that are within its own inventory, except as provided for in paragraph 4.
4. On or before January 31, 2016, for any Product or Similar Products that have the words “Rotational Energy Dampening System” or similar language embossed directly on the liner of the helmets that are within its own inventory, the Respondent shall not be required to conceal or remove the Representations, notwithstanding the requirements of paragraph 3, but shall instead enclose a paper insert inside the helmet that reads in large font in both official languages: “Notice to Consumers: The liner of this helmet refers to the Rotational Energy Dampening System. Please note that Reebok-CCM is not suggesting that this system offers players any protection from concussions caused by rotational forces, and it remains unclear what role hockey helmets can play in protecting players from concussions”. For greater certainty, no such insert is required where only the acronym R.E.D. is embossed on the liner of the helmets.
5. On or before January 31, 2016, the Respondent shall: (i) request Authorized Retailers to remove all Representations for the Product or Similar Products, including videos and point-of-sale materials, and obtain written confirmation within 10 days of such request that it has been complied with; (ii) take all reasonable measures to ensure that the sales staff of all Authorized Retailers are advised not to make the Representations; and (iii) in good faith and on a best efforts basis, remove and conceal all Representations displayed on the packaging for the Product offered for sale to the public by Authorized Retailers, and shall, on or before February 5, 2016, provide a report to the Commissioner’s authorized representative setting out the actions it took to comply with this paragraph (iii).
6. The Respondent shall not make or cause to be made any representations to the public that create the general impression that the Product or Similar Products designed, manufactured or marketed by the Respondent offers protection from brain injuries such as concussions, including but not limited to representations that create the general

impression that any such helmet can dampen rotational accelerations caused by impacts to the head, unless such representation is based on adequate and proper testing, as required by paragraph 74.01(1)(b) of the Act.

III. PAYMENTS

PAYMENT IN LIEU OF AN ADMINISTRATIVE MONETARY PENALTY

7. The Respondent shall make a donation of sports equipment and/or hockey apparel in the amount of \$95,000 in retail value per year in each of the five (5) years following the registration of the Agreement, for a total of \$475,000 in retail value, to either (i) a registered Canadian charity to be approved by the Commissioner dedicated to removing financial barriers so youth can participate in sports, or (ii) teams, associations or leagues for underprivileged children or youth Canadian hockey players to be approved by the Commissioner. Each yearly donation shall be made on or before the anniversary date of the registration of the Agreement. This amount will be in addition to any charitable donations previously committed to or planned by the Respondent.

COSTS

8. Within 10 days of the execution of this Agreement, the Respondent shall pay the Competition Bureau thirty thousand dollars (\$30,000) for costs and disbursements incurred during the course of its investigation into this matter.

IV. CORPORATE COMPLIANCE PROGRAM

9. Within 75 days of the registration of this Agreement, the Respondent shall enhance, and thereafter maintain, a Corporate Compliance Program (the “**Compliance Program**”), the goal of which will be to promote the compliance of the Respondent with the Act generally, and paragraph 74.01(1)(b) of the Act specifically. The Compliance Program shall be framed and implemented in a manner consistent with the Commissioner’s bulletin titled “**Corporate Compliance Programs**”, published on the Competition Bureau’s website at www.competitionbureau.gc.ca.

V. COMPLIANCE REPORTING AND MONITORING

10. The Respondent shall provide the Commissioner or the Commissioner's authorized representative:
 - (a) written confirmation that all Respondent's Personnel have received a copy of this Agreement, as required by paragraph 13, within 21 days after the registration of this Agreement; and
 - (b) written confirmation that a donation has been made to charities, teams, associations or leagues to be approved by the Commissioner, as required by paragraph 7, including an accounting of the donation, on the first five (5) anniversaries of the registration of this Agreement.

11. The Respondent shall provide to the Commissioner or the Commissioner's authorized representative, within 30 days following receipt of a written request from the Commissioner or his authorized representative, such information, in such form as the Commissioner requests, for the purposes of monitoring compliance with this Agreement.

VI. AGREEMENT TO COOPERATE

12. The Respondent agrees to the following:
 - (a) to provide complete, timely and ongoing reasonable cooperation, at the Respondent's own expense, with the Commissioner or the Commissioner's authorized representative in connection with any investigation into unsubstantiated claims related to rotational forces and/or concussions by other manufacturers of hockey equipment ("**Concussion Claims Investigation**");
 - (b) to provide disclosure to the Commissioner or the Commissioner's authorized representative in relation to any Concussions Claims Investigation, including but not limited to all non-privileged information and records in the Respondent's possession or control, wherever located, that in any manner relate to a Concussion Claims Investigation; and
 - (c) to make the Respondent's Personnel reasonably available to the Commissioner or the Commissioner's authorized representative for interviews, depositions and other occasions to provide evidence in relation to any Concussions Claims Investigation whether under oath or not.

VII. GENERAL

13. During the term of this Agreement, (i) the Respondent shall provide a copy of this Agreement to all Respondent's Personnel within 14 days after the date of registration of this Agreement, and (ii) all future Respondent's Personnel will be provided with a copy of this Agreement within 14 days after his or her commencement of employment. Within 14 days after being provided with a copy of this Agreement, the Respondent shall secure from each such person a signed and dated statement acknowledging that he or she read and understood this Agreement and paragraph 74.01(l)(b) of the Act.
14. Notices, reports and other communications required or permitted pursuant to any of the terms of this Agreement shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail, facsimile transmission or email to the Parties at the following addresses:

(a) The Commissioner

Commissioner of Competition
Competition Bureau
Place du Portage, Phase I
50 Victoria Street, 21st Floor
Gatineau, QC KIA OC9

Attention: Deputy Commissioner of Competition, (Deceptive Marketing Practices Directorate)

Facsimile: 819-953-4792

With a copy to:

Executive Director, Competition Bureau Legal Services
Competition Bureau Legal Services
Department of Justice
Place du Portage, Phase 1
50 Victoria Street, 22nd Floor
Gatineau, QC KIA 0C9

Facsimile: 819-953-9267

(b) The Respondent

Attention: General Manager
Sport Maska Inc.
3400 Raymond Lasnier
Montreal, H4R 3L3
Quebec, Canada

With a copy to:

Keith Wexelblatt
Director of Legal Affairs
Sport Maska Inc.
3400 Raymond Lasnier
Montreal, H4R 3L3
Quebec, Canada

and:

Dominic Thérien
McCarthy Tétrault LLP
Suite 2500, 1000 De La Gauchetière Street West
Montréal QC H3B 0A2

Facsimile: 514-875-6246
Email address: dtherien@mccarthy.ca

15. The recitals of this Agreement are integral to, and deemed to be a part of, this Agreement.
16. This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, and all of which taken together shall constitute one and the same instrument. In the event of any discrepancy between the English and French versions of this Agreement, the English version shall prevail.
17. The computation of time periods contemplated by this Agreement shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. 1-21. For the purpose of this Agreement, the definition of “holiday” in the *Interpretation Act* shall include Saturday. For purposes of determining time periods, the date of this Agreement is the last date on which it is executed by a Party.
18. The Parties consent to the immediate registration of this Agreement with the Tribunal.
19. Unless otherwise specified, this Agreement shall be binding upon the Respondent and the Respondent’s Personnel for a period of five (5) years following the date of registration of this Agreement.
20. In the event of a dispute as to the interpretation or application of this Agreement, any of the Parties shall be at liberty to apply to the Tribunal for an order or directions. The Parties agree that the Tribunal has jurisdiction to make such order as is required to give effect to this Agreement.

SPORT MASKA INC. (CARRYING ON BUSINESS AS REEBOK-CCM HOCKEY)

DATED at Montreal, in the Province of Quebec, this 17th day of December, 2015.

[Original signed by Philippe Dubé]

Name: Philippe Dubé

Title: President

COMMISSIONER OF COMPETITION

DATED at Gatineau, in the Province of Québec, this 17th day of December, 2015.

[Original signed by John Pecman]

Name: John Pecman

Title: Commissioner of Competition