

Competition Tribunal File No: CT-2013-007

The Competition Tribunal

In the matter of an Application by Safa Enterprises Inc.

doing business as My Convenience Store

for an order pursuant to Section 103.1

of the Competition Act, RSC 1985 c. C-34, as amended

granting leave to bring an application pursuant to

Section 76 of the Competition Act

BETWEEN:

Safa Enterprises Inc.

Applicant

AND:

Imperial Tobacco Company Limited.

Respondent

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED / PRODUIT	
CT-2013-007	
September 19, 2013	
Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 4

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION

I, RAINA K. ADNAN of 11957 96A Avenue, Surrey BC V3V 2A5, MAKE OATH AND SAY AS FOLLOWS:

1. I am the sole Shareholder/Director of the Applicant Safa Enterprises Inc. ("SEI") carrying on business as My Convenience Store.
2. Being the sole Shareholder/Director of the Applicant I have authorized my husband Adnan Mustafa to act on Applicant's behalf if the leave granted to bring an Application before Competition Tribunal.

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3. Applicant Safa Enterprises Inc. ("SEI") is a small family business establishment that happened to be a corporation.
4. I, my husband Adnan Mustafa and Applicant do not have funds to retain a legal counsel. We are unable to get any loan from banks or personal sources to retain a legal counsel.
5. Attached are the Financial Statements for the fiscal year ending December 31, 2012 of the Applicant to reflect the financial position of the business.

Exhibit A (Financial Statements for the period ending 2012-12-31)

6. Attached Exhibit "A" reflects the financial position of the Applicant; the retained earnings are in deficit of \$86,933.75 for the fiscal period ending December 31, 2012.
7. Due to shareholders in Exhibit "A" is comprised of mostly borrowed capital from banks and other personal sources.
8. My husband Adnan Mustafa is responsible for managing the Applicant's business and has complete knowledge of the situation that will be brought before Competition Tribunal.
9. My husband works 16-18 hours every day and always stressed out about the business as we are unable to meet our financial needs due to discriminating policy adopted by the Respondent Imperial Tobacco Company Limited "ITCO".
10. I am worried if something happens to my husband due to the stress he is facing to run the business, I will not be able to take care of the business, my husband and my 3.5 years old daughter in such a unfavorable circumstances created by discriminating behavior of ITCO towards Applicant's business.
11. My husband has already gone through hard times, due to colon cancer treatment and doctors are making him go through other tests, CT scan and Colonoscopy as they suspect that cancer might be relapsing.
12. Originally my husband's Colonoscopy was not due till June 2015. I believe it is all happening due to the stress he is going through since October 2012 when he found out about the discrimination policy adopted by the Respondent ITCO.
13. I will have all the medical records available for Competition Tribunal with the doctor's notes on his medical file to confirm my statement made under this Affidavit.
14. In the event Competition Tribunal rules in the favor of Respondent, Competition Tribunal will have all the assets owned by the Applicant to recover the cost of the Application.

15. In the event Competition Tribunal rules in favor of the Applicant, the Applicant would seek an opinion from the Tribunal if the conduct of the Respondent was/is criminal in nature.
16. I am disappointed about why we were allowed to open up a small family business if discrimination by ITCO against our small establishment is legal.
17. I will be more disappointed if we were not given an opportunity to bring our Application before the Competition Tribunal in presence of Section 76 of Competition Act which restricts discriminated policy adopted by the Respondent ITCO; just because we are a corporation and a corporation has to be represented by a legal counsel.
18. Mr. Thierry Schmidt, the Regional Sales Manager of ITCO has acknowledged and insisted to continue the discrimination policy against the Applicant in his letter dated January 17, 2013.

Exhibit B (Mr. Schmidt Letter dated Jan 17, 2013)

19. I am attending school to be an Early Childhood Educator, so that I can keep my daughter with me while I am working in the event my husband's cancer relapses causing us further financial crunch.
20. My husband is not a member of Law Society of British Columbia but have Background in business studies and capable of researching the Competition Tribunal Rules and Procedures necessary to ensure that the Tribunal hearing will be conducted in businesslike manner.
21. By bringing this Application, all we are trying to save our life savings invested in this business.
22. Therefore, I seek an order from Competition Tribunal for leave to represent the Applicant in proceedings by my husband Adnan Mustafa, rather than a solicitor, pursuant to Rule 120 of the Federal Rules of Court.

Dated at Vancouver, British Columbia, this 6th day of September, 2013.



Raina K. Adnan

Director/Shareholder

Safa Enterprises Inc.

Declared before me at
Vancouver, British Columbia
this 6th day of SEPT 2013.


Notary Public for the Province of
British Columbia

SAIRA KHAN

Notary Public

#213, 8334 - 128th Street
Surrey, BC V3W 4G2

Tel: 604-591-5824 Fax: 604-591-8273

saira@vannotary.com

GULZEIB AGHA.

PUBLIC ACCOUNTANTS

104 - 7945 132 STREET
SURREY BC, V3W 4N2
TELEPHONE: (778) 892-2560

This is Exhibit "A" to the
Affidavit/Declaration of RAINA K. ADNAN
Sworn/Declared before me at SURREY
BC this 6th day of Sep. 20 13

Saira Khan
Notary Public for the Province of
British Columbia

NOTICE TO READER

We have compiled the Balance Sheet of Safa Enterprises Inc. for the year ended December 31, 2012 and the Statement of Income and Expenses for the year then ended, from the information provided by management. We have not audited, reviewed or otherwise attempted to verify the accuracy or completeness of such information. Readers are cautioned that these statements may not be appropriate for their purposes.


Gulzeib Agha

August 16, 2013

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SAFA ENTERPRISES INC.

NOTES TO FINANCIAL STATEMENTS

FOR THE YEAR ENDED DECEMBER 31, 2012.

1. GENERAL INFORMATION

The accompanying statements reflect the revenue and expenditure for the period of twelve months from January 01, 2012 to December 31, 2012.

These financial statements reflect the assets, liabilities, revenues and expenses of and do not include any other assets, liabilities, revenues and expenses of the shareholders or the liability of the shareholders for taxes on the earnings of the company.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Operation

Financial statements have been prepared in accordance with generally accepted accounting principles.

Fixed Assets are recorded at cost.

Revenues and expenses are recorded on accrual basis.

3. CAPITAL ASSETS

Capital assets are depreciated on diminishing balance method at the following rates.

Furniture & equipment 20%-

<u>Assets</u>	<u>Cost</u>	<u>Accumulated Depreciation</u>	<u>Net Book Value</u>
Furniture & equipment	4,733	-	4,733

In the year of acquisition of an asset, one half of the above rates are applied.

4. FINANCIAL INSTRUMENTS

The company's financial instruments consist of cash, accounts receivable, accounts payable and long term debt. Unless otherwise noted, it is management's opinion that the company is not exposed to significant interest, currency or credit risks arising from these financial instruments. The fair values of these financial instruments approximate their carrying values, unless otherwise noted.

Gulzeib Agha

(These notes form an integral part of the Financial Statements)

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5. SHARE CAPITAL

Authorized:

10,000

Common shares

Without par value

Without special rights or
Restrictions attached

Issued and fully paid:

1,000 Common shares without par value at \$1.00 each

6. DUE TO SHAREHOLDERS

Loans from Shareholders are not interest-bearing and have no fixed terms of repayment.
These have been classified as non-current.

Gulzeib Agha

(These notes form an integral part of the Financial Statements)

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SAFA ENTERIRSES INC.

BALANCE SHEET

AS AT DECEMBER 31, 2012

(UNAUDITED)

LIABILITIES AND SHAREHOLDERS' EQUITY

	2012	2011
	\$	\$
CURRENT		
Bank overdraft	-	4,141.82
Accounts payable & accruals	13,488.59	8,997.18
Due to government agencies	-	471.46
Total Current Liabilities	<u>13,488.59</u>	<u>13,610.46</u>
Due to shareholders	249,898.67	155,668.31
CAPITAL		
Issued and Fully paid 1000 common shares @ 1.00 each	1,000.00	1,000.00
Retained Earnings	(86,933.75)	(52,453.95)
Shareholders' Equity	<u>(85,933.75)</u>	<u>(51,453.95)</u>
	<u>177,453.51</u>	<u>117,824.82</u>

APPROVED ON BEHALF OF THE BOARD

DIRECTOR

(see notice to reader)

The accompanying notes are an integral part of financial statements

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SAFA ENTERIRSES INC.
 BALANCE SHEET
 AS AT DECEMBER 31, 2012
 (UNAUDITED)

ASSETS

	2012	2011
	\$	\$
CURRENT		
Cash and bank	2,192.14	500.00
Accounts receivables	700.00	-
Due from govt. agencies	25,627.70	15,191.15
Prepaid deposits	11,300.00	6,500.00
Inventory	120,000.00	78,000.00
Total Current Assets	<u>159,819.84</u>	<u>100,191.15</u>
FIXED		
Furniture & equipment	4,733.67	4,733.67
Goodwill	12,500.00	12,500.00
Less accumulated depreciation	<u>-</u>	<u>-</u>
Total Fixed Assets	17,233.67	17,233.67
Organisation cost	400.00	400.00
	<u>177,453.51</u>	<u>117,824.82</u>

(see notice reader)

The accompanying notes are an integral part of the financial statements.

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SAFA ENTERIRSES INC.
STATEMENT OF RETAINED EARNINGS
FOR THE PERIOD ENDED DECEMBER 31, 2012
(UNAUDITED)

	2012	2011
	\$	\$
Balance at beginning of period	(52,453.95)	0
Net Income (Loss) for the period	(34,479.80)	(52,453.95)
Balance at the end of period	<u>(86,933.75)</u>	<u>(52,453.95)</u>

(see notice to reader)

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Safa Enterprises Inc.

STATEMENT OF INCOME

FOR THE YEAR ENDED DECEMBER 31, 2012

(UNAUDITED)

	2012	2011
	\$	\$
REVENUE		
Sales	324,079.83	198,227.84
Other	<u>11,668.79</u>	<u>3,954.00</u>
	335,748.62	202,181.84
 DIRECT COST		
Inventory-opening	78,000.00	-
Supplies	321,168.45	256,506.10
Inventory-Closing	(120,000.00)	<u>(78,000.00)</u>
Cost of goods sold	<u>279,168.45</u>	<u>178,506.10</u>
 GROSS MARGIN	56,580.17	23,675.74
 EXPENSES		
Accounting	2,000.00	2,000.00
Advertising and promotion	-	100.43
Automobile expenses	1,080.66	4,402.59
Bank charges & interest	3,979.70	3,378.05
Business licence and permits	287.00	281.00
Entertainment	184.73	503.27
Office supplies and sundry	662.57	431.75
Rent	57,957.14	43,035.71
Repairs & maintenance	1,149.11	3,577.30
Security	364.00	142.87
Telephone	4,514.27	3,618.11
Wages & benefits	12,880.79	8,658.61
TOTAL EXPENSES	<u>85,059.97</u>	<u>70,129.69</u>
 Net Income before management salary	<u>(28,479.80)</u>	<u>(46,453.95)</u>
 Management Salary	<u>6,000.00</u>	<u>6,000.00</u>
Net Income after management salary	<u>(34,479.80)</u>	<u>(52,453.95)</u>
 (see notice to reader)		

(The accompanying notes are an integral part of financial statements)

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IMPERIAL TOBACCO
COMPANY

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This is Exhibit " B " to the
Affidavit/Declaration of RAINA K. ADWAN
Sworn/Declared before me at SURREY
BC this 6th day of Sep. 20 13

Saira Khan
Notary Public for the Province of
British Columbia

1329 - 45th Avenue NE
Calgary, AB T2E 2P3
Canada
Tel. 1-403-717-8020
Fax 1-403-531-9589
Toll free 1-888-896-6910
www.imperialtobaccocanada.com

January 17, 2013

Without Prejudice

Safa Enterprises Inc.
dba My Convenience Store (ERP # 1060295)
c/o Mr. Adnan Mustafa, Manager*
450 West Hastings Street
Vancouver, BC
V6B 1L1

Dear Sir,

I am writing in response to the complaint you made recently to your Account Representative, Rob Laing, in relation with our expansion, preferred pricing program (the "PPP").

As you probably know, the main objective of this program is to ultimately offer lower retail prices to consumers on Imperial Tobacco products. The PPP is offered to selected retailers, comprised of both independent small businesses as well as corporate banners. It is legal to offer the PPP to some retailers, and not to all. We have attempted to select as many independent retailers as possible, keeping in mind that limited financial resources prevent us from offering the PPP to all customers.

Let me reassure you that we are, and continue to be, fully committed to all our customers, including those who are not participating in the PPP. We express our commitment to you and your business in various manners. First, by offering you a winning brand portfolio comprising high quality products and unique innovations. Our portfolio provides you with the leading brands that adult smokers are looking for. Our commitment to your business continues day in and day out through our DSS model, which ensures that your ITCO products are delivered to your store, hassle free and your ITCO Account representative is always available to help you with any issues that you may encounter. Finally, our commitment to your business is also to keep our prices as competitive as possible in each segment. In essence, our commitment to you is to offer popular and innovative brands, competitive prices and unique service through our DSS model.

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IMPERIAL TOBACCO
COMPANY

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I understand your disappointment from the fact that your outlet is not eligible to PPP. But you should not underestimate the benefits that you derive from your participation in our Low Segment Term Program ("LST Program"). Indeed, the LST Program provides you with substantial rebates (which are equivalent to the PPP rebates) on John Player Standard which is the number 1 selling brand in Canada. In addition, if you wish to obtain higher rebates on our products, we invite you to consider the option of adopting the PAD 0 days payment term. It would award you an additional rebate of \$0.45 per carton of Premium and \$0.35 per carton of Below Premium cigarettes. Please consult with your Account Representative (Rob Laing at 778-874-7823) or your District Manager (Vincent Chai at 604-366-5085) if you wish to learn more about this option.

Thank you and regards,

Thierry Schmidt
Regional Sales Manager

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