



Reference: *The Commissioner of Competition v. Brent Marsall et al.*, 2010 Comp. Trib. 18
File No.: CT-2010-006
Registry Document No.: 0025

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

AND IN THE MATTER OF an inquiry pursuant to subparagraph 10(1)(b)(ii) of the *Competition Act* relating to the marketing practices of Brent Marsall (also known as Brent Marshall), also doing business in Alberta as Dynasty Spas and Games Room, Rochelle Marsall (also known as Rochelle Marshall), Dynasty Spas Inc., also doing business as EcoSmart Spas, and 1232466 Alberta Ltd., also doing business as Dynasty Spas;

AND IN THE MATTER OF an Application by the Commissioner of Competition for an order pursuant to section 74.1 of the *Competition Act*.

B E T W E E N:

The Commissioner of Competition
(applicant)

and

**Brent Marsall (also known as Brent Marshall),
also doing business in Alberta as Dynasty Spas
and Games Room, Rochelle Marsall
(also known as Rochelle Marshall),
Dynasty Spas Inc., also doing business as EcoSmart Spas,
and 1232466 Alberta Ltd., also doing business as Dynasty Spas**
(respondents)



Date of case management conference: 20101215
Before Judicial Member: Simpson J. (Chairperson)
Date of Order: December 20, 2010
Order signed by: Madam Justice S. J. Simpson

SCHEDULING ORDER

[1] **FURTHER TO** the application filed by the Commissioner of Competition (the “Commissioner”) pursuant to section 74.1 of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

[2] **AND FURTHER TO** the Tribunal’s Direction Regarding a Case Management Teleconference dated December 8, 2010;

[3] **AND FURTHER TO** the discussion held with counsel for the Commissioner and for the Respondents, during the case management teleconference on December 15, 2010, about a timetable for the disposition of the application;

THE TRIBUNAL ORDERS THAT:

[4] The schedule for pre-hearing procedures shall be as follows:

- (a) Affidavits of documents together with copies of the documents shall be served by all parties on or before Friday, January 28, 2011.
- (b) Counsel for the Commissioner shall have a maximum of three days to conduct oral examinations for discovery of Brent and Rochelle Marsall; the examinations are to take place in one session.
- (c) A representative of the Commissioner shall be examined for a maximum of three days by counsel for the Respondents. They may divide the time as they see fit. The examination is to take place in one session.
- (d) All examinations for discovery shall be completed on or before Friday, March 11, 2011.
- (e) The parties are to advise the Tribunal Registry of the dates set aside for the examinations for discovery.
- (f) Any undertakings shall be answered on or before Friday, March 25, 2011.
- (g) No follow-up examination for discovery will be permitted. Any questions arising from answers to undertakings will be posed in writing on or before Friday, April 1, 2011. The questions are to be answered in writing on or before Friday, April 8, 2011.
- (h) On or before Tuesday, March 15, 2011, the Respondents are to inform the Commissioner in writing about whether they have retained any experts and, if so, the issues the experts are working on.
- (i) Expert reports, if any, will be served and provided to the Tribunal on or before Friday, April 15, 2011.
- (j) Responding expert reports, if any, will be served and provided to the Tribunal on or before Friday, April 29, 2011.

- (k) Reply experts reports, if any, will be served and provided to the Tribunal on or before Friday, May 6, 2011.
- (l) The expert reports are to include a signed copy of the “Acknowledgement of Expert Witness” form (copy attached).
- (m) The Commissioner’s lay witness statements and the list of documents she intends to rely on at the hearing will be served and provided to the Tribunal on or before Friday, April 15, 2011.
- (n) The Respondents’ lay witness statements and the list of documents they intend to rely on at the hearing will be served and provided to the Tribunal on or before Friday, April 29, 2011.
- (o) The Commissioner’s reply lay witness statements and the list of additional reply documents she intends to rely on at the hearing will be served and provided to the Tribunal on or before Friday, May 6, 2011.

[5] The evidentiary portion of the hearing which is to include evidence about administrative monetary penalties, will be held as follows:

Tuesday, May 24, - Friday, May 27, 2011	First week of hearing (4 days)
Monday, May 30- Thursday, June 2, 2011	Second week of hearing (4 days)
Monday, June 13 – Thursday, June 16, 2011	Third week of hearing (4 days)

[6] Oral argument will be made in the week of June 20, 2011.

[7] The hearing will proceed as an electronic hearing.

[8] The hearing will proceed using chess clock timing (see the Tribunal’s website for a description of the procedure). The parties will advise the Tribunal Registry, on or before Friday, May 13, 2011, of their agreement about the division of the total hearing time between them for the purposes of the chess clock proceeding.

DATED at Ottawa, this 20th day of December, 2010.

SIGNED on behalf of the Tribunal by the Chairperson.

(s) Sandra J. Simpson

ACKNOWLEDGEMENT OF EXPERT WITNESS

I, *(name of expert)*, acknowledge that I will comply with the Competition Tribunal's code of conduct for expert witnesses which is described below:

1. An expert witness who provides a report for use as evidence has a duty to assist the Tribunal impartially on matters relevant to his or her area of expertise.
2. This duty overrides any duty to a party to the proceeding, including the person retaining the expert witness. An expert is to be independent and objective. An expert is not an advocate for a party.

(Date)

(Signature of expert witness)

COUNSEL:

For the applicant

The Commissioner of Competition

Nikiforos Iatrou

For the respondents

Brent Marsall (also known as Brent Marshall), also doing business in Alberta as Dynasty Spas and Games Room

Dynasty Spas Inc., also doing business as EcoSmart Spas, and
1232466 Alberta Ltd., also doing business as Dynasty Spas

Mark Morrison

Michael A. Dixon

Rochelle Marsall (also known as Rochelle Marshall)

Craig Steele