

THE COMPETITION TRIBUNAL

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

AND IN THE MATTER of an investigation in relation to certain alleged deceptive marketing practices of Elkhorn Ranch & Resort Ltd., Ian Sarna and Gary Buckley pursuant to the *Competition Act*;

AND IN THE MATTER of the filing and registration of a Consent Agreement pursuant to section 74.12 of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE
REGISTERED / ENREGISTRÉ
FILED / PRODUIT
CT-2009-18
November 23, 2009

-and-

Jos LaRose for / pour
REGISTRAR / REGISTRAIRE

ELKHORN RANCH & RESORT LTD.

Respondent

OTTAWA, ONT

#0001

CONSENT AGREEMENT

WHEREAS the Commissioner of Competition (the “Commissioner”) is head of the Competition Bureau and is responsible for the administration and the enforcement of the *Competition Act* (the “Act”), including s.74.06 regarding promotional contests and s.74.01 regarding misrepresentations to the public;

AND WHEREAS Elkhorn Ranch & Resort Ltd. (“Elkhorn”) is a private company in the business of selling time shares for properties in Manitoba, British Columbia and Alberta and includes the following subsidiaries: Elkhorn Vacations; Elkhorn Vacations for Life – Manitoba; Elkhorn Ranch and Conference Centre; Elkhorn Resort Spa & Conference Centre; Elkhorn Resort; and Elkhorn Ranch & Spa – Alberta.

AND WHEREAS Ian Sarna and Gary Buckley are Directors of Elkhorn Ranch & Resort Ltd.;

AND WHEREAS in 2007, the Commissioner commenced an investigation (the “Investigation”) into certain alleged deceptive marketing practices of the Respondent, notably the alleged deceptive marketing practices regarding promotional contests and misrepresentations to the public;

AND WHEREAS in 2006, and again in 2007, Elkhorn ran contests in which contestants were asked to fill out a ballot listing the person's name, address, age, income, marital status and occupation for the chance to win a grand prize. Eligible contestants were married, over 25 years old, were employed or retired and had a household income of \$50,000.00 per year; also eligible were single women over 25 years old with a household income of \$45,000.00 per year. Contestants were also required to answer a skill-testing question. The large print in the promotional material and ballots advertised the grand prize as an automobile or a cash prize of \$15,000.00. However, in contrast to the large-print representation, the fine print indicated that the grand prize was not an automobile but a one-year lease (2006) or a two-year lease (2007) of an automobile for which the contestant was required to pay a security deposit and pledge to return the automobile in "immaculate condition";

AND WHEREAS the 'Details of Participation' published each year by Elkhorn stated that "This advertising material is being used for the purpose of soliciting sales of memberships in a members only club." Certain contestants were then contacted by Elkhorn by telephone and told that they had won a prize, which was either the "grand prize" or one of the following bonus prizes:

2006	2007
A Sony home theatre entertainment centre, valued at \$5,999.00	A Sony home theatre entertainment centre, valued at \$5,999.00
A seven (7) day cruise aboard Princess Cruise Lines for two (2) passengers, valued at \$4,999.00	A seven (7) day cruise aboard Princess Cruise Lines for two (2) passengers, valued at \$4,999.00
A weekend at Elkhorn Resort, The Lodges at Canmore for up to four (4) guests, valued at \$1,950.00	Banff/Canmore or Clear Lake Resort seven (7) night getaway for up to four (4) guests, valued at up to \$1,400.00
Compact digital video camcorder, 3.1 megapixel, valued at \$295.00	Compact digital video camcorder, 3.1 megapixel, valued at \$295.00
	Restaurant gift certificate to the Elkhorn Resort Clear Lake, Manitoba, valued at \$75.00

Contestants were told over the phone that they would be issued a key that, when turned in a lock, would reveal if they had won the grand prize. The key was accompanied by a code which revealed which bonus prize they had won. However, in order to qualify to turn the key, the contestant had to agree to attend a 90-minute presentation about one of the Elkhorn resorts in Alberta or Manitoba, before the close date of the draw. The contestant was not told which bonus prize they had won until they attended a presentation. Although the promotional flyer indicated that there was no obligation to do anything in order to claim a prize, the flyer did not disclose how recipients of a key would be able to claim a prize if they did not attend the information session;

AND WHEREAS the Commissioner's Investigation has revealed the following in respect of Elkhorn's 2006 and 2007 contests:

- a. The number of entry ballots was not disclosed;
- b. The odds of winning by entering a ballot were not disclosed;
- c. The number of keys or bonus codes distributed was not disclosed;
- d. The odds of winning by obtaining a winning key or bonus code for a bonus prize were not disclosed;
- e. The number and value of prizes were not disclosed; and
- f. The close date and draw dates of the contests were not disclosed.

AND WHEREAS the Commissioner's Investigation has revealed the following in respect of Elkhorn's 2006 and 2007 contests:

- a. Contestants who were provided a key and attended a presentation were in effect entitled to enter the contest twice, by turning their key in the lock, they were given a second chance to win the grand prize. That contestants were not informed that some of them would be selected to have a second opportunity to win the grand prize, resulted in a breach of s.74.06(c) of the Act; and
- b. The selection of the final prize had many steps, any one of which had the potential to be manipulated. As a result, a random process was not demonstrated in the selection of the limited number of participants who receive keys, resulting in a breach of s.74.06(c) of the Act.

AND WHEREAS the Commissioner's Investigation has revealed the following in respect of Elkhorn's 2006 and 2007 contests:

- a. The promotion of a car as a grand prize in the 2006 and 2007 contests was false or misleading, contrary to s.74.01(1)(a). The large print of the promotional material stated that the grand prize was an automobile, or \$15,000. The smaller print on the ballots and on the promotional flyer indicated that the grand prize was a one-year lease (2006) or a two-year lease (2007) of an automobile, for which the contestant was required to remit a security deposit refundable only if the automobile was returned in "immaculate condition". The general impression left with the consumer was that they were entering a contest for the prize of an automobile, not the lease of an automobile.

This impression was material to a consumer's decision to enter the contest and to attend a 90-minute sales presentation.

AND WHEREAS the Commissioner has concluded that, from 2006 and continuing until at least January 2008, the Respondent has breached sections 74.01 and 74.06 of the Act;

AND WHEREAS the Parties are satisfied that this matter can be resolved with the registration of this Consent Agreement (the "Agreement");

AND WHEREAS the Respondent is committed to compliance with the Act generally, and the deceptive marketing practices provisions (Part VII.1 of the Act) in particular;

AND WHEREAS the Commissioner and the Respondent agree that, upon the signing of this Consent Agreement, the Parties shall file this agreement with the Competition Tribunal for immediate registration;

AND WHEREAS the Commissioner and the Respondent understand that, upon registration, this Consent Agreement shall be enforceable as if it were an order rendered by the Competition Tribunal pursuant to section 74.12 of the Act;

NOW THEREFORE in order to resolve the Commissioner's Investigation into certain alleged deceptive marketing practices of the Respondent, the Parties hereby agree as follows:

I. Interpretation

1. For the purpose of the Agreement, the following definitions shall apply:
 - a. "**Affiliate**" shall have the meaning ascribed to it in the Act;
 - b. "**Agreement**" means this Consent Agreement entered into by Elkhorn Ranch & Resort Ltd. and the Commissioner of Competition;
 - c. "**Commissioner**" means the Commissioner of Competition, appointed pursuant to section 7 of the Act, and her authorized representatives;
 - d. "**Elkhorn Ranch & Resort Ltd.**" means Elkhorn Ranch & Resort Ltd., a company incorporated under the laws of Manitoba and any subsidiary corporation of Elkhorn Ranch & Resort Ltd. within the meaning of subsection 2(3) of the Act;
 - e. "**Elkhorn Ranch & Resort Ltd. Personnel**" means all current and future Elkhorn Ranch & Resort Ltd. Senior Management and all other employees who are materially involved in the formulation and/or the implementation of advertising, marketing, or pricing policies;

- f. **"Elkhorn Ranch & Resort Ltd. Senior Management"** means the current and future: Owner or Co-Owner of Elkhorn Ranch & Resort Ltd., the Director, the Operating Manager, the Marketing Manager and any other person responsible for promotional contests, or the overall operations of Elkhorn Ranch & Resort Ltd.;
- g. **"Parties"** mean the Commissioner of Competition and the Respondent;
- h. **"Person"** means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity;
- i. **"Products"** mean any goods or services supplied or sold by Elkhorn Ranch & Resort Ltd.;
- j. **"Related Person"** means any of Elkhorn Ranch & Resort Ltd., its Affiliates, any present or future person under the control of Elkhorn Ranch & Resort Ltd. and/or that person's Affiliates;
- k. **"Respondent"** means Elkhorn Ranch & Resort Ltd.;
- l. **"Tribunal"** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.), as amended.

II. Application

- 2. The provisions of the Agreement shall apply to:
 - a. Elkhorn Ranch & Resort Ltd., its Affiliates, successors and assigns, Elkhorn Ranch & Resorts Ltd. Personnel, including all persons who act for, on behalf of or in concert with Elkhorn Ranch & Resorts Ltd., including agents, representatives and associates of Elkhorn Ranch & Resorts Ltd.;
 - b. Mr. Ian Sarna and Mr. Gary Buckley, both directors of Elkhorn Ranch & Resort Ltd.; and
 - c. the Commissioner.

A. PROHIBITED MARKETING PRACTICES

- 3. Elkhorn Ranch & Resort Ltd. and Elkhorn Ranch & Resort Ltd. Personnel shall comply with the Act and shall be prohibited from engaging in deceptive marketing practices

generally under s.74.01 or in particular with respect to promotional contests under s.74.06, by making, or causing to be made, or permitting to be made on their behalf, any false or misleading representations whatsoever in Canada, or available to consumers in Canada, by any means whatsoever, including via Internet.

4. Without limiting the generality of the foregoing, the Respondent and any Related Person shall specifically be prohibited from:

(a) continuing promotional contests that are in violation of the Act;

(b) making, or causing to be made, advertising representations of promotional contests that meet any one or more of the following criteria:

- i. do not fairly or adequately disclose age and income requirements;
- ii. do not award all contest prizes;
- iii. do not determine winners on the basis of skill or as the result of a random draw;
- iv. do not indicate a set closing date;
- v. have more than one correct mathematical response;
- vi. do not have the contest rules accompany the ballots at the point of entry to the contest;
- vii. do not include relevant and complete information; and
- viii. do not indicate the true value and benefit(s) regarding the prizes.

B. CORPORATE MONETARY PENALTY

5. Elkhorn Ranch & Resort Ltd. shall pay an administrative monetary penalty in the amount of one hundred and fifty thousand dollars (\$150,000) payable to the Receiver General for Canada.

C. COSTS

6. Elkhorn Ranch & Resort Ltd. shall fully indemnify the Competition Bureau, via the Receiver General for Canada, for certain of the costs and disbursements incurred during the course of its investigation into this matter, in the amount of twenty thousand dollars (\$20,000).

D. FORM OF PAYMENT

7. The payments referred to in paragraphs 5 and 6 above shall be made forthwith upon signing the Agreement.

E. CORRECTIVE NOTICE

8. The Respondent shall publish a corrective notice (the "Notice") as set out in Appendix "A" of the Agreement in accordance with the terms and conditions set out in Appendices "B" through "D" of the Agreement.
9. The Respondent shall, upon publication, confirm in writing to the Commissioner that the Notice was published as provided in Appendix "A" of the Agreement. In addition to the written confirmation, the Respondent shall provide tear-sheets of the Notice to the Commissioner from each publication referred to in Appendix "B" of the Agreement within thirty (30) days of publication thereof.

F. CORPORATE COMPLIANCE PROGRAM

10. Within thirty (30) days of the registration of this Agreement, the Respondent shall establish, and thereafter maintain, a Corporate Compliance Program (the "Compliance Program"), the goal of which will be to promote compliance by Elkhorn Ranch & Resort Ltd. Personnel with the Act generally, and specifically, without limiting the generality of the foregoing, with the misrepresentations to the public and promotional contest provisions of subsections 74.01 and 74.06 of the Act (Part VII.1). The Compliance Program shall be framed and implemented in a manner consistent with the Commissioner's Information Bulletin on "Corporate Compliance Programs", published on the Competition Bureau's website at www.cb-bc.gc.ca.
11. Elkhorn Ranch & Resort Ltd. Senior Management, including Ian Sarna and Gary Buckley, shall fully support and enforce the Compliance Program and shall take an active and visible role in its establishment and maintenance.
12. Elkhorn Ranch & Resort Ltd. Senior Management, including Ian Sarna and Gary Buckley, shall acknowledge their commitment to the Compliance Program via commitment letters as provided in Appendix "E" of the Agreement.
13. The Compliance Program shall include:
- a. the designation of a Corporate Compliance Officer within 15 days of the execution of the Agreement;
 - b. a written Corporate Compliance Policy (the "Compliance Policy") that will include, among other things:

- i. a statement by Elkhorn Ranch & Resort Ltd. Senior Management, including Ian Sarna and Gary Buckley, emphasizing Elkhorn's commitment to the policies and procedures contained therein;
 - ii. a reference to the purpose of the Act, a general description of the Act, as well as a description of those provisions of the Act that are most relevant to the Elkhorn Ranch & Resort Ltd. business, including the enforcement, penalty and remedy provisions;
 - iii. clear examples to illustrate as examples the specific practices that are prohibited, so that Elkhorn Ranch & Resort Ltd. Personnel at all levels can easily understand the potential application of the Act to their own duties;
 - iv. a practical code of conduct that identifies activities that are illegal or open to question;
 - v. a statement outlining the consequences of breaching corporate policies;
 - vi. procedures that detail exactly what an employee should do when concerns arise out of certain situations, or when possible violations of the Act are suspected; and
 - vii. training sessions to ensure that all persons to whom this Agreement applies understand the terms of this Agreement and the Compliance Policy.
- c. the distribution of the Compliance Policy to Elkhorn Ranch & Resort Ltd. Personnel;
 - d. the placement of the Compliance Policy on the Elkhorn Ranch & Resort Ltd. Intranet network;
 - e. the development of and delivery to Elkhorn Ranch & Resort Ltd. Personnel of a mandatory Compliance Program/Compliance Policy education session;
 - f. the development and delivery of an annual refresher Compliance Program/ Compliance Policy education session for Elkhorn Ranch & Resort Ltd. Personnel going forward; and
 - g. the annual acknowledgment, in writing, by Elkhorn Ranch & Resort Ltd. Personnel of their awareness and comprehension of the Compliance Program and Compliance Policy as provided in Appendix "F" of the Agreement.

14. The Commissioner or her authorized representative shall, on an annual basis, be entitled to require the Respondent to provide a written report on its annual review of Elkhorn Ranch & Resort Ltd.'s Compliance Program and Compliance Policy and implementation. Any such report shall be submitted under oath or affirmation by an officer of Elkhorn Ranch & Resort Ltd. within thirty (30) days of the request being made.
15. For the purpose of determining or securing compliance with this Agreement, subject to any valid claim to a legally recognized privilege, and upon written request, the Respondent shall permit any duly authorized representative of the Commissioner:
 - a. upon a minimum of three (3) days notice to Elkhorn Ranch & Resort Ltd., access during office hours of Elkhorn Ranch & Resort Ltd. to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession of or under control of Elkhorn Ranch & Resort Ltd. relating to compliance with this Agreement; and
 - b. upon a minimum of three (3) days notice to Elkhorn Ranch & Resort Ltd., and without restraint or interference from Elkhorn Ranch & Resort Ltd., to interview directors, officers or employees of Elkhorn Ranch & Resort Ltd. on matters relating to compliance with this Agreement.
16. The Commissioner or her authorized representative may also request that the Respondent facilitate access to education sessions conducted by Elkhorn Ranch & Resort Ltd.
17. The Respondent shall submit to the Commissioner the Compliance Program and Compliance Policy more fully described in paragraph 13 above, within thirty (30) days of the execution of this Agreement.

G. FAILURE TO COMPLY

18. A failure to comply with the terms of this Agreement by Mr. Ian Sarna, Mr. Gary Buckley and/or Elkhorn Ranch & Resort Ltd., and/or Company Corporate Officers, Directors, Senior Management, Employees, Personnel, its Affiliates, or any Related Person shall be deemed to be a breach of this Agreement, and may result in the commencement of criminal or civil proceedings pursuant to the Act.

H. COPIES OF THE AGREEMENT

19. Elkhorn Ranch & Resort Ltd., and any entity for which they (collectively or individually) have *de facto* or *de jure* control, shall provide a copy of the Agreement in its entirety to all current and future Elkhorn Ranch & Resort Ltd. Senior Management, within thirty (30) days of the execution of the Agreement. Further, within thirty (30) days of the execution of the Agreement, and in any event upon commencing employment with

Elkhorn Ranch & Resort Ltd., Elkhorn Ranch & Resort Ltd. shall secure from each such person identified above a signed and dated statement acknowledging that he or she has read and understood the Agreement and subsections relevant to s.74.01 and s.74.06 of the Act.

I. TERM OF AGREEMENT

20. Unless otherwise specified, this Agreement shall be binding upon the Elkhorn Ranch & Resort Ltd. and any Related Person as defined herein for a period of five (5) years following the date of registration of this Agreement.

III. Notices

21. Notices pursuant to the Agreement shall be given to the Parties at the following addresses or facsimile numbers:

(a) The Deputy Commissioner

Andrea Rosen
Deputy Commissioner of Competition
Competition Bureau
Place du Portage, Phase 1, 50 Victoria Street
Gatineau, Quebec K1A 0C9

Telephone: (819) 997-1231
Facsimile: (819) 953-4792

With copies to:

Jeff Richstone
Director and Senior General Counsel
Josephine A.L. Palumbo
Senior Litigation Counsel
Department of Justice
Competition Law Division
Competition Bureau
Place du Portage, Phase 1, 50 Victoria Street
Gatineau, Quebec K1A 0C9

Telephone: (819) 953-3884
Facsimile: (819) 953-9267

(b) The Respondent

Martin S. Minuk
Aikins, Macaulay & Thorvaldson LLP
30th Floor Commodity Exchange Tower
360 Main Street
Winnipeg, Manitoba
R3C 4G1

IV. General

22. The Agreement may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same Agreement.
23. The Agreement shall be governed by and interpreted in accordance with the laws of the Province of Manitoba and the federal laws of Canada applicable therein.
24. For greater certainty, the Tribunal shall retain jurisdiction for the purpose of any application by the Commissioner or the Respondent to rescind or vary any of the provisions of the Agreement pursuant to section 74.13 of the Act, or with respect to any issue concerning the Agreement with the exception of matters contained in paragraphs 5 through 9 above.
25. In the event of a dispute as to the interpretation or application of the Agreement, including any decision by the Commissioner pursuant to the Agreement or breach of the Agreement by the Respondent, any of the Parties shall be at liberty to apply to the Tribunal for an order interpreting any of the provisions of the Agreement.
26. In the event that the Tribunal varies, in a material respect, the substantive terms of the Agreement pursuant to section 74.13 of the Act, with the exception of matters contained in paragraphs 5 through 9 cited in this agreement in Parts B through E, which the parties agree is not subject to variation under section 74.13 of the Act, the Commissioner or the Respondent, shall each have the right to terminate the Agreement by written notice to the

other parties hereto given within 14 days of the date on which such order is made. For greater certainty in such circumstances, the Commissioner is at liberty to bring a proceeding against, among others, the Respondents named in this Consent Agreement.

The undersigned hereby agree to the registration of this Agreement.

DATED at Winnipeg, in the Province of Manitoba this 19th day of November, 2009.

"Ian Sarna"
Ian Sarna

DATED at Winnipeg, in the Province of Manitoba this 19th day of November, 2009.

"Gary Buckley"
Gary Buckley

DATED at Winnipeg, in the Province of Manitoba this 19th day of November, 2009.

"Elkhorn Ranch & Resort Ltd."
Duly authorized representative
Elkhorn Ranch & Resort Ltd.

DATED at Gatineau, in the Province of Quebec this 20th day of November, 2009.

"Andrea Rosen"
Andrea Rosen
Deputy Commissioner of Competition

Appendix "A"

For newspapers and the Elkhorn Ranch & Resort Ltd. corporate website, the Notice should read as follows:

NOTICE RE: Elkhorn Ranch & Resort Ltd.

The Competition Bureau (the "Bureau") has informed Elkhorn Ranch & Resort Ltd. that certain of its promotional contests and related marketing activities have raised concerns under the Deceptive Marketing Practices provisions of the *Competition Act* (the "Act"). The Bureau has concluded that Elkhorn Ranch & Resort Ltd. ran contests in 2006 and 2007 that were not based on skill or the result of a random draw, and that promotional materials related to these contests were false or misleading.

In recognition of both the Bureau's concerns and the importance of providing accurate information to consumers, Elkhorn Ranch & Resort Ltd. and the Bureau have filed a Consent Agreement (the "Agreement") with the Competition Tribunal that addresses the Bureau's concerns. Pursuant to the Agreement, Elkhorn Ranch & Resort Ltd. shall, among other things:

- ensure that Elkhorn Ranch & Resort Ltd. will amend its promotional contests and related marketing activities to comply with the Act;
- develop and implement a corporate compliance program designed to ensure compliance with the Act; and
- pay an administrative monetary penalty of \$150,000.00 along with certain of the Bureau's costs for its investigation, in the amount of \$20,000.00.

The Consent Agreement can be found on the Competition Tribunal's website at www.ct-tc.gc.ca. For additional information, please consult the Competition Bureau's website at www.cb-bc.gc.ca.

Appendix "B"

Elkhorn Ranch & Resort Ltd. is to publish the Notice identified in Appendix "A" of the Agreement in the following publications:

<u>Newspaper</u>	<u>Location</u>
The Edmonton Journal	Alberta
The Winnipeg Free Press	Manitoba
The Globe and Mail	National

1. Elkhorn Ranch & Resort Ltd. shall commence publishing of the Notice within thirty (30) days of the registration of the Agreement;
2. Elkhorn Ranch & Resort Ltd. shall publish the Notice as set out in Appendix "A" of the Agreement in the Saturday editions of each of the newspapers named above for a period of four (4) consecutive weeks. Elkhorn Ranch & Resort Ltd. shall make every effort to obtain publication space in the following order of priority:
 - within the first three (3) pages of the cover section;
 - within the first three (3) pages of the Travel/Real Estate/Lifestyle section;
3. The Notice shall appear in a space no less than 4 inches x 5.5 inches in size when published in the newspapers named above;
4. The title of the Notice as set out in Appendix "A" of the Agreement shall be capitalized and shall appear in 14-point bold font unembellished print; and
5. The text of the Notice shall appear in 10-point font unembellished print in the newspapers named above.

Appendix "C"

1. Elkhorn Ranch & Resort Ltd. is to publish the Notice, as it appears in Appendix "A" of the Agreement, on each of the following websites:

www.elkhornvacations.ca, www.elkhornresort.mb.ca,

2. Publication of the Notice on the websites shall occur within thirty (30) days of the registration of the Agreement;
3. The Notice shall remain on the websites for a period of one hundred and twenty (120) consecutive days;
4. The Notice shall be accessible through a link on the menu-bar of each website homepage entitled 'Notice';
5. The Notice shall have a link to the Competition Tribunal website at www.ct-tc.gc.ca and the Competition Bureau website at www.cb-bc.gc.ca;
6. The Notice shall take up a full screen size of the linked page;
7. The text of the Notice shall appear in no less than 10-point font unembellished print; and
8. The title of the Notice, as set out in Appendix "A" of the Agreement, shall be capitalized and appear in no less than 14-point bold font unembellished print.

Appendix "D"

A notice is to be displayed in the business operations of the company, as follows:

1. Elkhorn Ranch & Resort Ltd. shall display the Notice, as set out in Appendix "A" of the Agreement, for a period of twelve (12) consecutive weeks in all of the lobbies of each of its resorts;
2. Display of the notice shall begin within thirty (30) days of the registration of the Agreement;
3. The Notice shall be displayed in plain view at the business entrances or in a conspicuous location near the business entrances where it can be seen by all persons entering the premises. In addition, the Notice shall be displayed at the lobby in a manner that is legible and visible to all customers;
4. The Notice shall be no smaller than 8.5 inches x 11 inches in size;
5. The title of the Notice, as set out in Appendix "A" of the Agreement, shall be capitalized and shall appear in 20-point bold font unembellished print; and
6. The text of the Notice shall appear in 14-point font unembellished print.

Appendix "E"

[Corporate Company Letterhead]

[date], 2009

CONFIDENTIAL

Melanie L. Aitken
Commissioner of Competition
Competition Bureau Canada
Place du Portage I
50 Victoria Street
Gatineau, Quebec K1A 0C9

Dear Ms. Aitken:

RE: Commitment to Establishment and Maintenance of Compliance Programs

Further to paragraph 17 of the Consent Agreement between the Commissioner of Competition (the "Commissioner") and Elkhorn Ranch & Resort Ltd., registered before the Competition Tribunal on [date], I hereby commit to the successful implementation of Elkhorn Ranch & Resorts Ltd.'s Corporate Compliance Program and Compliance Policy designed to promote compliance with the *Competition Act*, R.S.C. 1985, c. C-34 (as amended) (the "Act") generally, and the Misrepresentations to the Public and Promotional Contests provisions (Part VII. 1) and s.74.01 and s.74.06 in particular, and will take an active and visible role in their establishment and maintenance.

Sincerely,

Ian Sarna (Director)
Elkhorn Ranch & Resort Ltd.

Gary Buckley (Director)
Elkhorn Ranch & Resort Ltd.

cc. Jeff Richstone, Director and Senior General Counsel, Department of Justice
Josephine Palumbo, Senior Litigation Counsel, Department of Justice

Appendix "F"

I, _____ of the City of _____, am employed by Elkhorn Ranch & Resort Ltd. in the capacity of _____. In this capacity, I am materially involved in the formulation and/or the implementation of Elkhorn Ranch & Resort Ltd. marketing, including the promotion of its contests. I acknowledge that I am subject to, and am required to comply with, Elkhorn Ranch & Resort Ltd.'s Corporate Compliance Program and Elkhorn Ranch & Resort Ltd.'s Compliance Policy with respect to the *Competition Act*, R.S.C. 1985 c. C-34 (as amended) (the "Act").

This is to advise that:

- (a) I have read and understand Elkhorn Ranch & Resort Ltd.'s Compliance Program, the goal of which is to promote compliance with the Act generally, and subsections 74.01 and 74.06 in particular; and
- (b) I have read and understand Elkhorn Ranch & Resort Ltd.'s Compliance Policy with respect to the Act.

Date: ___ / ___ / ___

Signature: _____

THE COMPETITION TRIBUNAL

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

AND IN THE MATTER of an investigation in relation
to certain alleged deceptive marketing practices of
Elkhorn Ranch & Resort Ltd., Ian Sarna and Gary
Buckley pursuant to the *Competition Act*;

AND IN THE MATTER of the filing and registration of
a Consent Agreement pursuant to section 74.12 of the
Competition Act.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

-and-

ELKHORN RANCH & RESORT LTD.

Respondent

CONSENT AGREEMENT

JOSEPHINE A.L. PALUMBO
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