

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 inquiry commenced pursuant to section 10 of the *Competition Act* into certain alleged deceptive marketing practices of Curry’s Art Store Limited from February of 2005 to July of 2008;

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

BETWEEN:

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE REGISTERED / ENREGISTRÉ FILED / PRODUIT March 31, 2009 CT-2009-002 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 1

THE COMMISSIONER OF COMPETITION

Applicant

-and-

CURRY’S ART STORE LIMITED

Respondent

CONSENT AGREEMENT

WHEREAS the Commissioner of Competition (the “Commissioner”) is head of the Competition Bureau (the “Bureau) and is responsible for the administration and the enforcement of the *Competition Act* (the “Act”) including subsections 74.01 (1), 74.01 (2) and 74.01 (3);

AND WHEREAS Curry’s Art Store Limited (hereinafter “Curry’s”) is a company which is incorporated under the laws of Ontario and operates art supply stores in the Province of Ontario under the name of Curry’s;

AND WHEREAS on February 8, 2005, the Commissioner commenced an inquiry (the “Inquiry”) pursuant to section 10 of the Act into certain alleged deceptive marketing practices of Curry’s, notably misrepresentations in respect of the ordinary selling prices for Curry’s-branded products and for those of other suppliers;

AND WHEREAS the Commissioner has reason to believe that Curry’s representations to the

public, from February of 2005 to July of 2008, may have been misleading in a material respect regarding the level of savings that could be realized by purchasers of their art supply products and may have been misleading regarding the ordinary selling prices for products that Curry's sold in its stores, contrary to paragraph 74.01 (1)(a) and subsections 74.01 (2) and 74.01 (3) of the *Act*, in that Curry's compared their selling prices to list prices which were not being charged by Curry's or other retailers of art supplies, which may have misled consumers into believing that art supplies were regularly sold at list prices;

AND UPON CONSIDERING THAT the Commissioner and the Respondent have reached an agreement which resolves, as of the date of the registration of this Consent Agreement (the "Agreement"), all of the Commissioner's concerns regarding Curry's advertising practices and the aforementioned provisions of the *Act*;

AND IT BEING UNDERSTOOD that nothing in this Agreement will be taken as an admission by Curry's now or in the future of any facts, submissions, legal arguments for any other purposes, nor will it derogate from any rights or defences of Curry's under the *Act* or otherwise;

AND WHEREAS Curry's is committed to compliance with the *Act* generally, and the deceptive marketing practices provisions (Part VII.1 of the *Act*) specifically;

AND WHEREAS the Commissioner and Curry's are satisfied that this matter can be resolved with the registration of this Agreement;

AND WHEREAS the Commissioner and Curry's agree that upon the signing of this Agreement, the Parties shall file the Agreement with the Competition Tribunal for immediate registration;

AND WHEREAS the Commissioner and Curry's understand that upon registration this Agreement shall be enforceable pursuant to section 74.12 of the *Act*.

NOW THEREFORE in order to resolve the Commissioner's Inquiry into certain instances of alleged deceptive marketing practices of Curry's, the Parties hereby agree as follows.

1. The preamble forms part of the Agreement.

I. Interpretation

2. For the purpose of the Agreement, the following definitions shall apply:
 - a. **"Affiliate"** shall have the meaning ascribed to it in the *Act*;
 - b. **"Curry's"** means Curry's Art Stores Limited, a company incorporated under the laws of Ontario and operating retail art supply stores under the name Curry's, or any subsidiary corporation of Curry's within the meaning of subsection 2(3) of

the *Act*;

- c. **“Curry’s Senior Management”** means the current and future executive business managers and corporate officers of Curry’s;
- d. **“Curry’s Store Managers”** means the current and future on-site store managers of each retail location of Curry’s;
- e. **“Parties”** means the Commissioner of Competition and Curry’s;
- f. **“Related Person”** means the Respondent, any present or future affiliate and any present or future person under the control of the Respondent; and
- g. **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act Canada*, R.S.C. 1985, c. 19 (2nd Supp.), as amended.

II. Application

- 3. The provisions of the Agreement shall apply to:
 - a. Curry’s and its subsidiaries, affiliates and successors; and
 - b. the Commissioner.

A. NO DECEPTIVE MARKETING PRACTICES

- 4. Curry’s shall comply with the Deceptive Marketing Practices provisions found in Part VII. 1 of the *Act* and, in particular, paragraph 74.01 (1)(a) and subsections 74.01 (2) and 74.01 (3).
- 5. Curry’s shall not make, cause to be made, or permit to be made on its behalf, any representation whatsoever in Canada or available to consumers in Canada by any means whatsoever, including via the Internet, which is false or misleading in a material respect with respect to the pricing of products sold in its stores, including, but without limiting the generality of the foregoing, any representation that is false or misleading in a material respect relating to the ordinary selling prices of products offered for sale by Curry’s.

B. FORM AND MANNER OF ADVERTISING

- 6. Curry’s and any Related Person shall ensure that all representations they make in promoting the supply or use of a product or in promoting a business interest conform to sections 52 and 74.01 of the *Act*.

C. ADMINISTRATIVE MONETARY PENALTY

7. Curry's shall pay an administrative monetary penalty in the amount of \$60,000.00 Cdn.

D. FORM OF PAYMENT

8. The payment referred to in paragraph 7 above shall be made forthwith, and no later than the date of registration of this Agreement and shall be in certified funds, cashier cheque or by wire transfer.

E. CORRECTIVE NOTICE

9. Curry's shall publish and display a corrective notice (the "Notice") as set out in Appendix "A" of this Agreement in accordance with the terms and conditions set out in Appendices "B" through "D" of this Agreement.
10. Curry's shall, upon publication or display, confirm in writing to the Commissioner that the Notice was published or displayed as provided in paragraph 9 of the Agreement. In addition to the written confirmation, Curry's shall provide tear-sheets of the Notice from each publication referred to in Appendix "B" of the Agreement within two (2) weeks of publication thereof.

F. CORPORATE COMPLIANCE PROGRAM

11. Curry's shall establish, and thereafter maintain, a Corporate Compliance Program ("Compliance Program"), the goal of which will be to promote the compliance of Curry's personnel with the *Act* generally, and, more specifically, with the provisions of Part VI of the *Act*, which include section 52, and with the provisions of Part VII.1 of the *Act*, which include section 74.01. 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 Bureau's web site at www.cb-bc.gc.ca. Within ninety (90) days of the registration of this Agreement Curry's shall submit a draft of the Compliance Program to the Bureau for review.
12. Curry's Senior Management shall fully support and enforce the Compliance Program and shall take an active and visible role in its establishment and maintenance.
13. Curry's Senior Management shall acknowledge their commitment to the Compliance Program via commitment letters as provided in Appendix "E" of this Agreement.
14. Curry's will hold and conduct an information session to be attended by all of Curry's Senior Management and Store Managers in which the Compliance Program will be presented and explained.

15. The Commissioner or an authorized representative shall, on an annual basis, be entitled to require Curry's to provide a written report concerning its Compliance Program and implementation. Any such report shall be submitted under oath or affirmation of an officer of Curry's with thirty (30) days of the request being made.

G. COPIES OF THE AGREEMENT

16. Within thirty (30) days of the registration of this Agreement with the Competition Tribunal, Curry's will provide a copy of this Consent Agreement to all of its Senior Management and Store Managers.
17. Within forty (40) days of the registration of this Agreement with the Competition Tribunal, Curry's shall provide a list to the Bureau of the Curry's Senior Management and Store Managers who received a copy of the Consent Agreement pursuant to paragraph 16.

H. FAILURE TO COMPLY

18. A failure to comply with the terms of this Agreement by Curry's or Curry's Senior Management shall be deemed to be a breach of this Agreement by Curry's and may result in the commencement of proceedings pursuant to the *Act*.

I. TERM OF AGREEMENT

19. Unless otherwise specified, this Agreement shall be binding upon the Respondent for a period of ten (10) years following the date of registration of this Agreement.

J. NOTICE OF CHANGES TO CORPORATION

20. Curry's and Curry's Senior Management must ensure that the Bureau is informed of any changes in the company that may affect compliance with this Agreement, including, but not limited to, dissolution, bankruptcy, change(s) in name(s), sale or merger. In the event there is a sale of the business, this Agreement shall accompany the sale and remain in force with the new owners unless and until the Agreement is rescinded or varied upon application pursuant to section 74.13 of the *Act*.

III. Notices

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

(a) The Commissioner

Melanie L. Aitken
Interim Commissioner of Competition
Competition Bureau Canada
Place du Portage, Phase 1
50 Victoria Street
Gatineau, Québec, K1A 0C9
Facsimile: (819) 953-5013

With copies to:

Director
Competition Bureau Legal Services
Justice Canada
Place du Portage, Phase I
50 Victoria Street
Gatineau, Quebec, K1A 0C9

(b) Curry's

Rodney Gage Ghent
2485 Tedlo Street
Mississauga, Ontario, L5A 4A8
Facsimile: (905) 272-0778

With copies to:

Kenneth Jull
Baker & McKenzie LLP
181 Bay Street, P.O. Box 874
Toronto, Ontario, M5J 2T3

IV. General

22. This 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 Ontario 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 Curry's to rescind or vary any of the provisions of the Agreement in the event of a change of circumstances or otherwise pursuant to section 74.13 of the *Act* or with respect to any issue concerning the Agreement with exception of the matters contained in paragraphs 7 through 10.
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 Curry's, either 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 an order is made by the Tribunal varying or rescinding the terms of the Agreement pursuant to section 74.13 of the *Act*, Curry's or the Commissioner shall each have the right to terminate the Agreement by written notice to the other parties hereto given within ninety (90) days of the date on which such order is made.

The undersigned hereby agree to the registration of this Consent Agreement.

DATED at Mississauga, in the Province of Ontario this 26th day of March 2009.

Original signed by Rodney Ghent

Rodney Ghent
President
Curry's Art Store Limited

DATED at Gatineau, in the Province of Quebec this 30th day of March 2009.

Original signed by Andrea Rosen

Andrea Rosen
Deputy Commissioner of Competition
Fair Business Practices Branch
Competition Bureau Canada

Appendix “A”

NOTICE BY CURRY’S ART STORE LIMITED REGARDING ADVERTISED PRICES

The Competition Bureau (the “Bureau”) has informed Curry’s Art Store Limited (“Curry’s”) that price advertising for art supplies it sold, which contained representations of “manufacturer’s suggested retail prices” or “list prices”, have raised concerns under the civil ordinary price provisions of the *Competition Act*. Those provisions seek to ensure that when products are advertised using comparative prices, consumers are not misled with regard to the savings that they are actually able to realize through the purchase of the products. The Bureau believes that the price advertising of Curry’s may have misled consumers into believing that art supplies were regularly sold at “list prices”.

Curry’s does not admit to any conduct contrary to the *Competition Act*. Curry’s was unaware of and did not have compliance systems in place concerning Ordinary Price Claims as outlined in subsections 74.01 (2) and 74.01 (3) of the *Act* and, upon being notified of same, Curry’s immediately commenced implementing a corporate compliance program. However, in recognition of both the Bureau’s concerns and the importance of providing accurate information to consumers, the Bureau and Curry’s have filed a Consent Agreement with the Competition Tribunal which addresses the Bureau’s concerns. The Agreement shall remain in effect for 10 years. Pursuant to the Agreement, Curry’s shall, among other things,:

- * publish this Corrective Notice in two Ontario publications, in its retail stores, on its Web site and in its Holiday Gift Guide 2008;
- * ensure that all of its future price advertising complies with the *Competition Act*;
- * develop and implement a corporate compliance program designed to ensure compliance with the *Competition Act*; and
- * pay an administrative monetary penalty.

The Consent Agreement can be found on the Competition Tribunal’s web site at www.ct-tc.gc.ca. For additional information, consult the Competition Bureau Canada’s web site at www.cb-bc.gc.ca.

Appendix “B”

The publications in which Curry’s is to publish the Notice identified in Appendix “A” of the Agreement are the following:

The Eye Weekly	Toronto
Now Magazine	Toronto

1. Curry’s shall commence publication of the Notice within 30 days of the registration of the Agreement.
2. Curry’s shall publish the Notice, as set out in Appendix “A” of the Agreement, in each of the publications named above for a period of four (4) consecutive weeks. Curry’s shall use its best efforts to obtain publication space in accordance with the following:
 - within the first 10 pages of the publication.
3. The Notice shall appear in a space no less than 6 inches by 4.5 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 16-point bold font unembellished print.
5. The text of the Notice shall appear in 10-point font unembellished print in the newspapers named above.
6. Curry’s shall also publish the Notice in its Holiday Gift Guide 2008 subject to the following requirements:
 - the title of the Notice, as set out in Appendix “A” of this Agreement, shall be capitalized and shall appear in 14.5-point bold font unembellished print; and
 - the text of the Notice shall appear in 9.5-point font unembellished print.

Appendix “C”

1. Curry’s is to publish the Notice, as it appears in Appendix “A” of the Agreement, on the following web site: <http://www.currys.com>
2. Publication of the Notice on the web site shall occur within five (5) days of the registration of the Agreement.
3. The Notice shall remain on the web site for a period of 42 days.
4. The Notice shall be accessible through a link on the menu-bar of the website homepage entitled “Notice”.
5. The Notice shall have a link to the Competition Tribunal web site at www.ct-tc.gc.ca and to the Competition Bureau Canada web site at www.cb-bc.gc.ca.
6. The Notice shall take up a full screen size of the linked page.
7. The title of the Notice, as set out in Appendix “A” of the Agreement, shall be capitalized and appear in no less than 18 pixels.
8. The text of the Notice shall appear in no less than 12 pixels.

Appendix “D”

1. Curry’s shall display the Notice, as set out in Appendix “A” of the Agreement, for a period of six (6) weeks in all of the nine (9) retail stores which they operate.
2. Display of the notice shall begin within 30 days of the registration of the Agreement.
3. The Notice shall be displayed in plain view at the store entrances or in a conspicuous location near the store entrances. In addition, if feasible, the Notice shall be displayed at the cash registers counter areas in a manner that is legible and visible to all customers.
4. The Notice shall be no less than 8 ½ inches by 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 16-point bold font unembellished print.
6. The text of the Notice shall appear in 12-point font unembellished print.

Appendix “E”

Curry’s letterhead

DATE

CONFIDENTIAL

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

Dear Ms. Aitken:

Re: Commitment to Establish and Maintain a Compliance Program

Further to paragraph 13 of the Consent Agreement between the Commissioner of Competition and Curry’s Art Store Limited (“Curry’s”), registered before the Competition Tribunal on [date], I hereby commit to the successful implementation of Curry’s Corporate Compliance Program, which is designed to promote compliance with the *Competition Act* generally and the deceptive marketing practices provisions specifically, which include the ordinary selling price provisions contained in subsections 74.01 (2) and 74.01 (3). I will take an active and visible role in the establishment and maintenance of the Corporate Compliance Program.

Yours truly,