



Reference: *Commissioner of Competition v. Imperial Brush Co. Ltd. and Kel Kem Ltd. (c.o.b. as Imperial Manufacturing Group)*, 2007 Comp.Trib. 25

File No.: CT-2006-010

Registry Document No.: 0086

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 Imperial Brush Co. Ltd. and Kel Kem Ltd. (c.o.b. as Imperial Manufacturing Group);

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

Imperial Brush Co. Ltd. and Kel Kem Ltd.
(c. o. b. as Imperial Manufacturing Group)
(respondents)



Decided on the basis of the written record

Presiding Judicial Member: Phelan J.

Date of order: August 10, 2007

Order signed by: Mr. Justice M. Phelan

**ORDER SETTING OUT A SCHEDULE FOR THE ARGUMENT PHASE OF THE
CONSTITUTIONAL CHALLENGE**

- [1] FURTHER TO the application filed by the Commissioner of Competition (the “Applicant”) pursuant to section 74.1 of the *Competition Act*, R.S.C. 1985, c. C-34;
- [2] AND FURTHER TO the Notice of Constitutional Question filed by the Respondents challenging the validity of paragraph 74.01(1)(b) of the *Competition Act*;
- [3] AND FURTHER TO the Order of July 5, 2007, directing the parties to propose a schedule for the argument phase of the Notice of Constitutional Question;
- [4] AND FURTHER TO the letter from counsel for the Applicant, dated July 6, 2007, setting out an agreed schedule for the argument phase;
- [5] AND FURTHER TO the request made by counsel for the Applicant on July 13, 2007, that three days be set aside for the hearing of argument, including argument regarding the constitutional challenge;
- [6] AND FURTHER TO the letter from counsel for the Respondents, dated August 3, 2007;
- [7] AND WHEREAS the Respondents have filed on July 23, 2007, a memorandum of argument regarding the constitutional challenge in which they assert that paragraph 74.01(1)(b) infringes their right of freedom of expression guaranteed under subsection 2(b) of the *Canadian Charter of Rights and Freedoms* (the “Charter”);
- [8] AND WHEREAS the Applicant has filed a responding memorandum of argument and supporting material on August 7, 2007, in which she concedes that paragraph 74.01(1)(b) infringes subsection 2(b) of the Charter but submits that it is a demonstrably justifiable provision under section 1 of the Charter;

THE TRIBUNAL ORDERS THAT:

- [9] The Respondents shall file on or before August 20, 2007, a memorandum of argument and supporting material, if any, with respect to the Applicant’s submission that the infringement is a reasonable limit that is demonstrably justified under section 1 of the Charter.
- [10] Cross-examinations on any affidavits shall take place from August 20 to August 31, 2007.
- [11] The Applicant and the Respondents shall file final memoranda of argument with respect to the constitutional challenge as well as the merits of the application, with books of authorities, on or before Friday, August 31, 2007.

[12] The hearing of argument, including argument concerning the constitutional question, shall commence on Wednesday, September 5, 2007, at 9:30 a.m. in Ottawa at the Tribunal Hearing Room, and shall conclude on or before Friday, September 7, 2007.

DATED at Ottawa, this 10th day of August, 2007.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Michael L. Phelan

COUNSEL:

For the applicant

Commissioner of Competition

William Miller
Roger Nassrallah
Stéphane Lilkoff

For the respondents

Imperial Brush Co.Ltd. and Kel Kem Ltd (carrying on business as Imperial
Manufacturing Group)

Daniel M. Campbell
Joseph Burke