

File No. CI - 2006 - 010

## The Competition Tribunal

**In the matter of** *The Competition Act*, R.S., 1985, c. C-34;

**And in the matter of** an inquiry pursuant to subsection 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)

*Between:*

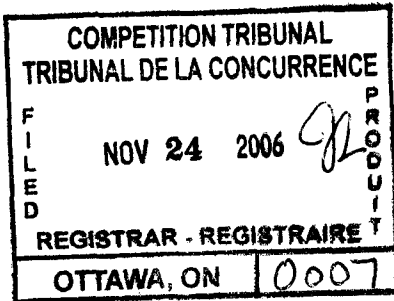
**The Commissioner of Competition**

*Applicant*

- and -

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

*Respondents*



### Response of Imperial Brush Co. Ltd. and Kel Kem Ltd.

1. The Respondents file this Response to the Notice of Application of the Commissioner filed September 11, 2006 in accordance with the Tribunal's Order dated November 9, 2006 extending the time for serving and filing.
2. The Respondent, Imperial Brush Co. Ltd. ("Imperial Brush"), is incorporated under the laws of New Brunswick and has its head office and principal place of business at 40 Industrial Park Street, Richibucto, New Brunswick. It is principally engaged in the manufacturing and sale of brushes for sweeping of chimneys. It also sold the product known as the Supersweep™ Chimney Cleaning Log.
3. The Respondent, Kel Kem Ltd. ("Kel Kem"), is incorporated under the laws of Ontario and has its head office and principal place of business at 2430 Winston Park Drive,

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Oakville, Ontario. It manufactures and distributes the products identified as Kel Kem Chimney Creosote Cleaner and Kem Kem Creosote Conditioner.

4. While the companies are described as members of the Imperial Manufacturing Group, they carry on business independently. No partnership exists between them. Kel Kem is a wholly-owned subsidiary of Imperial brush.

### **The Products**

#### **SUPERSWEEP™ Chimney Cleaning Log**

5. The SUPERSWEEP™ Chimney Cleaning Log (the "Supersweep Log") is no longer manufactured or distributed. Imperial Brush acknowledges that representations were made on the packaging of the Supersweep Log as follows:
  - (a) The name of the product -- Chimney Cleaning Log -- represented that the product, when used in accordance with instructions, performed a cleaning function in a chimney;
  - (b) When used in accordance with instructions, the Supersweep Log would help prevent chimney fires;
  - (c) When used in accordance with instructions, the Supersweep Log would help eliminate dangerous creosote.

Those representations are fair representations of the performance and efficacy of the product, and are based on adequate and proper tests.

6. The packaging of the Supersweep Log also included the following representations:

"The SUPERSWEEP™ Chimney Cleaning Log can be of benefit in a proper chimney-cleaning program. It is not intended as a substitute for inspection and cleaning by a properly qualified professional."

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7. When taken together, the general impression conveyed by these representations are a fair description of the performance and efficacy of the product, and are based on adequate and proper tests.
8. The Supersweep Log consists of compressed hardwood sawdust and shavings, to which chemical substances have been added. The chemical substances are the active ingredients which perform the cleaning function. These substances can be – and are – used separately. The log is merely a delivery mechanism for the chemical substances. These substances have been in use for many years and their effectiveness has been described in technical literature.
9. The adequate and proper tests of the Supersweep Log referred to in the preceding paragraphs include:
  - (a) Controlled tests performed by Imperial Brush under the supervision of independent engineers and consultants; and
  - (b) Experience of Imperial Brush, its consultants, and persons involved in the cleaning and maintenance of chimneys over many years.

#### **Kel Kem Chimney Creosote Cleaner**

10. Kel Kem Chimney Creosote Cleaner (“Creosote Cleaner”) is a liquid product. Kel Kem acknowledges that representations on the package are as follows:
  - (a) The product name, Chimney Creosote Cleaner, represents that the product, when used as instructed, has the effect of removing creosote from chimneys;
  - (b) The product has the effect of reducing the hard, glazed form of creosote, causing it to be burned and reduced to an ash;
  - (c) The product is non-corrosive, in that it does not cause corrosion of the stove or chimney;

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- (d) The product is non-combustible, in that, when used as instructed (or when sprayed on an open fire), it does not ignite rather, the solvents evaporate and the manganese salt is carried by the hot flue gasses to the chimney where it reacts with the creosote.

Those representations are a fair representation of the performance and efficacy of the product, and are based on adequate and proper tests.

11. The packaging of Creosote Cleaner also included the following statement immediately following the statement that the product reduces creosote to ash:

"... reduces hard or glazed creosote to an ash when used as directed. For a clean, safe chimney, remove residue by brushing."

and below that on the label:

"NOTE: Chimney Creosote Cleaner nor any other chemical can eliminate the need for a brushing. Professional brushing is required at least once a year, and more often under severe buildup conditions."

12. When taken together, the general impression conveyed by these representations are a fair description of the performance and efficacy of the product, and are based on adequate and proper tests.
13. The Creosote Cleaner consists of a solution of manganese salts in water and isopropyl alcohol. The manganese salts (specifically manganese nitrate) are the active ingredients which perform the cleaning function. The water and alcohol are merely a solvent to operate as a delivery mechanism for the manganese salts. Manganese has been in use for many years for this purpose and its effectiveness has been described in technical literature.

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14. The adequate and proper tests of the Creosote Cleaner referred to in the preceding paragraphs include:
- (a) Controlled tests performed by Imperial Brush under the supervision of independent engineers and consultants; and
  - (b) Experience of Imperial Brush, its consultants, and persons involved in the cleaning and maintenance of chimneys over many years.

#### **Kel Kem Creosote Conditioner**

15. Kel Kem Creosote Conditioner is a powder product intended to be directly added to a fire.
16. Kel Kem acknowledges that representations made on the packaging of the Creosote Conditioner include:
- (a) The product name, Creosote Conditioner, indicating that it conditions, or has an impact on, creosote;
  - (b) The product can inhibit the rate of creosote build up;
  - (c) The product reacts with chimney deposits to reduce their adhesiveness (thus permitting them to be brushed out);
  - (d) The product is non-corrosive, in that it does not cause corrosion of the stove or chimney;
  - (e) The product is non-toxic, in that in use it does not release or cause the release of any substances which are hazardous to human or animal health.

Those representations are a fair representation of the performance and efficacy of the product, and are based on adequate and proper tests.

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17. The packaging of Creosote Conditioner also included the following statements (including the statement with respect to :
- “Imperial Kel Kem Chimney Conditioner aids chimney cleanliness when used regularly between professional brushings. It can inhibit the rate of creosote buildup and reacts with most chimney deposits to reduce their adhesiveness. Removal of creosote and deposits reduces the chance of a dangerous chimney fire. ...”
18. When taken together, the general impression conveyed by these representations are a fair description of the performance and efficacy of the product, and are based on adequate and proper tests.
19. The Creosote Conditioner consists of a mixture of TSP and Bentonite Clay. These interact with the creosote and convert the sticky, semi-liquid form to a brushable form. They also restrict the build-up of creosote in chimneys. These substances has been in use for many years for this purpose and their effectiveness has been described in technical literature.
20. The adequate and proper tests of the Creosote Conditioner referred to in the preceding paragraphs include:
- (a) Controlled tests performed by Imperial Brush under the supervision of independent engineers and consultants; and
  - (b) Experience of Imperial Brush, its consultants, and persons involved in the cleaning and maintenance of chimneys over many years.
21. These substances have been in use for many years and their effectiveness has been described in technical literature.
22. The respondents, Imperial Brush Co. Ltd. and Kel Kem Ltd., ask that the application be dismissed.

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**Due Diligence**

23. The principal business of Imperial Brush is the manufacture and distribution of wire brushes for cleaning chimneys. In late 2002, Imperial Brush acquired Kel Kem, which was in the business of manufacturing and distributing chemical products for cleaning of wood-burning appliances and chimneys, including the Crocote Cleaner, the Creosote Conditioner, and the chemical substances which were the active ingredient in the Supersweep Log. In acquiring Kel Kem and in making the representations with respect to the performance and efficacy of the products, Imperial Brush and the new management of Kel Kem relied on the advice of Mr Abe Kelly, a founder and former owner of Kel Kem and a person with extensive knowledge and practical experience with respect to these products. The respondents Imperial Brush and Kel Kem have exercised due diligence to prevent reviewable conduct from occurring.

**Procedural matters**

24. The Respondents, Imperial Brush Co. Ltd. and Kel Kem Ltd. request that the proceeding be conducted in the English language.
25. The Respondents, Imperial Brush Co. Ltd and Kel Kem Ltd., request that the hearing of this application be held in the City of Moncton, New Brunswick.

Dated at Halifax, Nova Scotia, November 24, 2006.



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