

FILED / PRODUIT
February 12, 2007
CT- 2006-010

Chantal Fortin for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

0029

CT-2006-10

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

REPLY OF THE COMMISSIONER OF COMPETITION
(Rule 6)

- 1) The Applicant generally repeats her allegations as set out in her Notice of Application, as amended, and denies the allegations as set out in the Amended Response, the whole except as specifically dealt with herein;
- 2) The Applicant admits paragraphs 1, 2, 3 and 4 of the Amended Response;

“SuperSweep Log”

- 3) The Applicant generally denies as constituting adequate and proper testing about the performance and efficacy of the SuperSweep Log the alleged tests referred to at paragraphs 8 and 9 of the Amended Response;
- 4) In particular, the alleged personal and hearsay knowledge of Mr. Kelly about the efficacy of the ingredients used in the SuperSweep Log do not qualify as independent, adequate and proper testing of the performance and efficacy of the product;

- 5) The Applicant also pleads that the alleged scientific literature provided by the Respondents refer to other products than the SuperSweep Log and these other products are not used in the same conditions than the latter;
- 6) The Applicant further denies as adequate and proper testing the alleged tests conducted by the Respondents in December 2003 and in January 2004, as mentioned at paragraph 9 of the Amended Response, and generally pleads that these lacked control and were rudimentary, that no precise description of the protocol used is reported to allow for independent review and that they were not independent;
- 7) With respect to the alleged testing done in March and May (sic) 2004, as mentioned at paragraph 9 of the Amended Response, the Applicant generally pleads that determinant experimental data is not reported to allow independent peer review, in particular with respect to the nature of the equipment used and their set up, the temperatures during the testing and the type of the material burned in the control stove;

“Imperial Log”

- 8) Insofar as the Respondent pleads at paragraphs 5A, 8 and 9 in its Amended Response that the Imperial Log is similar in form and function to the SuperSweep Log and that the tests conducted for the SuperSweep Log also apply to the Imperial Log, the Applicant therefore reiterates her above allegations and denies that the performance tests alleged for the Imperial Log were adequate and proper;

Kel Kem’s Chimney Creosote Cleaner (“Creosote Cleaner”)

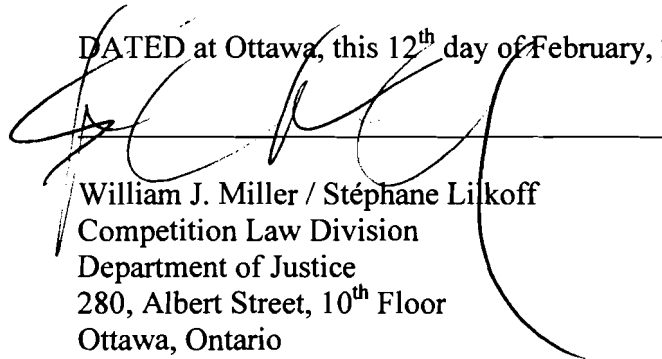
- 9) The Applicant generally denies as constituting adequate and proper testing about the performance and efficacy of the Creosote Cleaner the alleged tests referred to at paragraph 14 of the Amended Response;
- 10) In particular, the Applicant submits that the alleged personal and hearsay knowledge of Mr. Kelly referred to at paragraph 14 of the Amended Response about the efficacy of the Creosote Cleaner do not qualify as independent, adequate and proper testing of the performance and efficacy of the product;
- 11) Further, with respect to the alleged performance tests conducted in 2005 referred to at paragraph 14 of the Amended Response, the Applicant generally pleads that they lacked control, and that all relevant testing data is not reported to allow for independent peer review;

Kel Kem Creosote Conditioner (“Creosote Conditioner”)

- 12) The Applicant generally denies as constituting adequate and proper testing about the performance and efficacy of the Creosote Conditioner the alleged tests referred to at paragraph 20 of the Amended Response;
- 13) In particular, the Applicant submits that the alleged personal and hearsay knowledge of Mr. Kelly referred to at paragraph 20 of the Amended Response about the efficacy of the Creosote Conditioner do not qualify as independent, adequate and proper testing of the performance and efficacy of the product;
- 14) Further, with respect to the alleged performance tests conducted in 2005 referred to at paragraph 20 of the Amended Response, the Applicant generally pleads that no definitive inference can be made about the performance and efficacy of the product from the reported data, and that all relevant testing data is not reported to allow for independent peer review;
- 15) The Commissioner therefore joins issue with the Respondents upon their Amended Response and otherwise puts them to the strict proof thereof.

All of which is respectfully submitted.

DATED at Ottawa, this 12th day of February, 2006.



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