

CT-2005-012

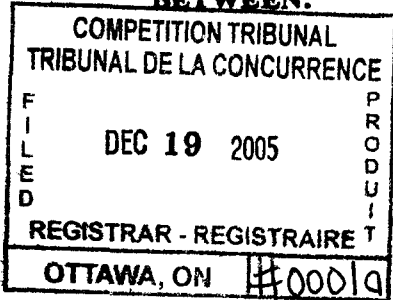
THE COMPETITION TRIBUNAL

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 subparagraphs 10(1)(b)(ii) and (iii) of the *Competition Act* into certain deceptive marketing practices of Cory Grattan and Tracey Grattan;

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-

CORY GRATTAN AND TRACEY GRATTAN

Respondents

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 subsections 52(1) and 74.01(1)(a) and 74.01(1)(b);

AND WHEREAS the Respondents, Cory Grattan and Tracey Grattan, are individuals residing in the province of New Brunswick;

AND WHEREAS the Respondents promote and/or sell a variety of products and services including the Fuel Saver Pro through various means including over the Internet;

AND WHEREAS on September 26, 2005, the Commissioner commenced an inquiry (the "Inquiry") pursuant to section 10 of the Act into certain alleged deceptive marketing practices of Cory Grattan, notably the sale and promotion of an alleged fuel saving device, the Fuel Saver Pro;

AND WHEREAS on October 30, 2005, the Inquiry was amended to include Tracey Grattan;

AND WHEREAS the Commissioner has concluded, and the Respondents acknowledge, that from at least January 1, 2002 and continuing to May 31, 2004, the exact dates being unknown, the Respondents directly or indirectly, made or caused to be made, representations "the Representations" to the public through bulk unsolicited email messages ("SPAM") for the purposes of promoting an alleged fuel saving device, the Fuel Saver Pro, which were false or misleading in a material respect, thereby engaging in reviewable conduct contrary to subsections 74.01(1)(a) and 74.01(1)(b) of the Act;

AND WHEREAS the Representations were in the form of statements regarding the performance and/or efficacy of the Fuel Saver Pro that gave the general impression that the use of the product would significantly increase fuel efficiency and reduce emissions;

AND WHEREAS the Commissioner believes that these general impressions are materially false and/or misleading, that the Fuel Saver Pro does not increase fuel efficiency nor reduce emissions, and that the representations which were in the form of a statement of the performance and the efficacy of the products were not based on adequate and proper tests;

AND WHEREAS the Commissioner has concluded and the Respondents acknowledge that they have engaged in reviewable conduct within the meaning of paragraph 74.01(1)(a) ("false or misleading representations") and paragraph 74.01(1)(b) ("statements of performance not based on adequate and proper test");

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

AND WHEREAS the Respondents are committed to compliance with the Act generally, and the deceptive marketing practices provisions (Part VII.1) specifically;

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

AND WHEREAS the Commissioner and the Respondents 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 Inquiry into certain alleged deceptive marketing practices of the Respondents, 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 the Respondents and the Commissioner of Competition;
 - c. "Commissioner" means the Commissioner of Competition, appointed pursuant to section 7 of the Act, and her/his authorised representatives;
 - d. "Parties" means the Commissioner of Competition and the Respondents;
 - e. "Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity;
 - f. "Products" means any goods or services supplied, sold or promoted by the Respondents;
 - g. "Related Person" means any of the Respondents, their Affiliates, any present or future person under the control of the Respondents and their Affiliates;
 - h. "Respondents" means Cory Grattan and Tracey Grattan; and
 - i. "Tribunal" means the Competition Tribunal established by the *Competition Tribunal Act Canada*, R.S.C. 1985, c. 19 (2nd Supp.), as amended.

II. Application

2. The provisions of the Agreement shall apply to:
 - a) the Respondents, all corporations, partnerships or persons under legal or contractual obligation of all or any of the Respondents or who, in connection with the marketing or sale of the Fuel Saver Pro, act for, on behalf of or in concert with all or any of the Respondents, including the directors, officers and employees of the Respondents, their respective successors and assigns, and other persons including agents, representatives and associates of all or any of the Respondents; and
 - b) the Commissioner.

A. NO FALSE OR MISLEADING STATEMENTS

3. In the marketing of products and services, including via the Internet and by email, the Respondents shall comply with the Misleading Advertising and Deceptive Marketing Practices provisions of the Act, which provide:

"52(1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect."

"74.01 (1) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

(a) makes a representation to the public that is false or misleading in a material respect;

(b) makes a representation to the public in the form of a statement, warranty, or guarantee of the performance, efficacy or length of life of a product that is not based on adequate and proper test thereof, the proof of which lies on the person making the representation"

4. Neither the Respondents nor any Related Person shall make, cause to be made, or permit to be made on their behalf, any representation whatsoever in Canada or available to consumers in Canada by any means whatsoever, including via Internet and email, which is false or misleading in a material respect.
5. Neither the Respondents nor any Related Person shall make, cause to be made, or permit to be made on their behalf, any representation whatsoever in Canada or available to consumers in Canada by any means whatsoever, including via Internet and email, in the form of a statement, warranty, or guarantee of the performance, efficacy or length of life of a product that is not based on adequate and proper tests. When making such representations, the Respondents shall obtain proof of adequate and proper testing prior to making the representations. Copies of these tests shall be provided to the Commissioner by the Respondents to be reviewed by the Commissioner in order to determine whether the tests are adequate and proper.

B. ADMINISTRATIVE MONETARY PENALTY

6. The Respondents shall pay an administrative monetary penalty in the amount of \$5000.00 dollars.

C. FORM OF PAYMENT

7. The payment referred to in paragraph 6 above shall be made forthwith, and no later than the point of registration of the Agreement and shall be in certified funds, cashier cheque or by wire transfer.

D. COMPLIANCE PROGRAM

8. The Respondents shall conduct their business in a manner consistent with the Commissioner's Information Bulletin on "Corporate Compliance Programs" published on the Competition Bureau's web site at www.cb-bc.gc.ca
9. Thirty days following the registration of this Agreement, the Respondents shall provide a written report to the Competition Bureau advising in detail the steps taken by the Respondents to ensure that they have complied and are complying with this Agreement.
10. Upon written request of the Deputy Commissioner of Competition, Fair Business Practices Branch, the Respondents shall submit a written report on 30 days notice, with respect to any aspect of this Agreement.

E. FAILURE TO COMPLY

11. A failure to comply with the terms of this Agreement by the Respondents, their Affiliates or any Related Person shall be deemed to be a breach of this Agreement by the Respondents.

F. TERM OF AGREEMENT

12. Unless otherwise specified, this Agreement shall be binding upon the Respondents and any Related Person as defined herein for a period of ten (10) years following the date of registration of this Agreement.

III. Notices

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

(a) The Commissioner

**Raymond Pierce
Deputy Commissioner of Competition
Fair Business Practices Branch
Competition Bureau
Place du Portage, Phase 1, 50 Victoria Street
Gatineau (QC) K1A 0C9**

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

With copies to:

**William Miller
General Counsel
Department of Justice
Competition Law Division
Competition Bureau
Place du Portage, Phase 1, 50 Victoria Street
Gatineau (QC) K1A 0C9**

**Telephone: (819) 953-3903
Facsimile: (819) 953-9267**

**Lorne Ptack
Counsel
Department of Justice
Competition Law Division
Competition Bureau
Place du Portage, Phase 1, 50 Victoria Street
Gatineau (QC) K1A 0C9**

**Telephone: (819) 956-6891
Facsimile: (819) 953-9267**

(b) The Respondents

**Cory Grattan and Tracey Grattan
63 Tanya Avenue
Douglas, NB, E3A 9R7**

IV. General

14. The Agreement shall be governed by and interpreted in accordance with the laws of Canada applicable therein.
15. The parties acknowledge and agree that this agreement is subject to the provisions of section 74.13 of the Act but specifically agree that no application shall be brought thereunder with respect to paragraphs 3, 4, 5 or 6 hereof.

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

DATED at Fredericton, in the Province of New Brunswick this 16th day of December, 2005.

"Cory Grattan"

Cory Grattan

DATED at Fredericton, in the Province of New Brunswick this 16th day of December, 2005.

"Tracey Grattan"

Tracey Grattan

DATED at Gatineau, in the Province of Quebec this 19th day of December, 2005.

"Raymond Pierce"

Raymond Pierce

Deputy Commissioner of Competition