

THE COMPETITION TRIBUNAL

IN THE MATTER OF THE *COMPETITION ACT*, R.S., 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 certain marketing practices of Sears Canada Inc.;

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

COMPETITION TRIBUNAL
TRIBUNAL DE LA CONCURRENCE

FILED / PRODUIT

September 10, 2004

CT-2002-004

Jos LaRose for / pour
REGISTRAR / REGISTRAIRE

-and-

SEARS CANADA INC.

Applicant

Respondent

OTTAWA, ONT

0155a

**COMMISSIONER OF COMPETITION:
SUBMISSION RE: DOCUMENTARY EVIDENCE**

Introduction

1. In accordance with the agreement of the parties, these submissions are filed by the Commissioner of Competition (the "Commissioner") in respect of the admission of documentary evidence for certain purposes.

2. As noted in the Commissioner's Written Final Argument, the Commissioner relies on documentary evidence in her argument. This documentary evidence falls into four categories:
- a. the business records provided to the Commissioner by Sears Canada Inc. ("Sears") in response to an order (the "Sears s. 11 Order") issued on October 17, 2000 under section 11 of the *Competition Act* (the "Act"), in connection with the Commissioner's inquiry in this matter (the "Sears Documents");
 - b. the business records provided to the Commissioner by Michelin North America (Canada) Inc. in response to a section 11 order (the "Michelin s. 11 Order") issued on October 17, 2000 (the "Michelin Documents");
 - c. the business records provided to the Commissioner by Bridgestone/Firestone Inc. in response to a section 11 order (the "Bridgestone s. 11 Order") issued on October 17, 2000 (the "Bridgestone Documents"); and
 - d. the written responses provided by Sears under oath in response to the Sears s. 11 Order (the "Sears Written Responses").

The documents placed on the record by the Commissioner and falling into each of these categories are listed in Appendix "A" to these submissions.

3. With the exception of the Sears Written Responses, all of the documents in issue are business records that were provided to the Commissioner. The Sears Written Responses were provided under oath to the Commissioner, and were signed by a Sears' witness in this proceeding.

4. In Written Final Argument, the Commissioner set out the basis for the admission of each of these categories of documents in the following terms:

12. The Commissioner submits that the Sears Documents fall under the following hearsay exceptions, and as such are admissible into evidence for the truth of their contents:

- a. section 69 of the Act;
- b. section 30 of the *Canada Evidence Act*;
- c. the common law doctrine of possession; and
- d. the common law exception to the hearsay rule, based on necessity and reliability.

13. The Commissioner submits that the Michelin and Bridgestone Documents fall under the following hearsay exceptions, and as such are admissible into evidence for the truth of their contents:

- a. section 30 of the *Canada Evidence Act*; and
- b. the common law exception to the hearsay rule, based on necessity and reliability.

14. The Commissioner submits that Sears' Written Responses are out-of-court admissions made by Sears, which is a recognized exception to the hearsay rule, and as such are admissible against Sears for the truth of their contents.

5. The Commissioner also submits that in proceedings before administrative tribunals, hearsay evidence is typically admitted, its weight being a matter left for the tribunal to determine.

6.346 In proceedings before most administrative tribunals and labour arbitration boards, hearsay evidence is freely admissible and its weight is a matter for the tribunal or board to decide, unless its receipt would amount to a denial of natural justice. So long as hearsay evidence is relevant, it can serve as the basis for the decision, whether or not it is supported by other evidence which would be admissible in a court of law.

Sopinka, J., S.W. Lederman, A.W. Bryant, *Law of Evidence in Canada* (Butterworths: Toronto, 1999), p. 308

6. It is also important to underscore that documentary evidence is hearsay, only if it is relied on for the truth of its contents. It follows that to the extent that the Commissioner relies on documents, not for the truth of their contents, but rather, for example, as evidence of a person's or Sears' belief, those documents are admissible for that purpose without need to satisfy one of the recognized hearsay exceptions or the requirements of the "principled approach" discussed below.

R v Smith, [1992] 2 S.C.R. 915 at paras. 19-20

R v Starr, 147 C.C.C. (3d) 449 at para 162 (S.C.C.)

7. Therefore, for example, the "Commodity Competitive Review" (p. 1482, Ex. CA30) sets out Mr. Keith's and by extension, Sears', beliefs regarding who Sears' primary competitors in the private label and national brand tire segments were and what pricing strategies they followed. Therefore, in addition to providing evidence regarding, for example, the "tire stores" pricing strategies; in terms of assessing good faith and the "mind of Sears", the Commodity Competitive Review provides clear and compelling evidence regarding Mr. Keith's/Sears' beliefs re Sears' competitors and their pricing strategies. Those beliefs, whether correct or not, informed Sears' view of its position within the market and drove Sears' pricing strategies and tactics *vis a vis* what it perceived to be its competition.

The Sears Documents

8. The Commissioner submits that the Sears Documents are admissible as “*prima facie* proof” pursuant to section 69 of the *Competition Act*. The Commissioner is also submits that the Sears Documents are admissible, for the truth of their contents, under section 30 of the *Canada Evidence Act*, the common law doctrine of possession, and the common law exception to the hearsay rule, based on reliability and necessity.

(i) **Section 69 of the Competition Act**

9. Section 69 of the *Competition Act* states:

69(1) In this section

“agent of a participant” means a person who by a record admitted in evidence under this section appears to be or is otherwise proven to be an officer, agent, servant, employee or representative or a participant;

“participant” means any person against whom proceedings have been instituted under this Act and in the case of a prosecution means any accused and any person who, although not an accused, is alleged in the charge or indictment to have been a co-conspirator or otherwise party or privy to the offence charged.

(2) In any proceedings before the Tribunal or in any prosecution or proceedings before a court under or pursuant to this Act,

(a) anything done, said or agreed on by an agent of a participant shall in the absence of evidence to the contrary, be deemed to have been done, said or agreed on, as the case may be, with the authority of that participant;

(b) a record written or received by an agent of a participant shall in the absence of evidence to the contrary, be deemed to have been written or received, as the case may be, with the authority of that participant; and

(c) a record proved to have been in the possession of a participant or on premises used or occupied by a participant or in the possession of an agent of a participant shall be admitted in evidence without further proof thereof and is *prima facie* proof

(i) that the participant had knowledge of the record and its contents,

(ii) that anything recorded in or by the record as having been done, said or

agreed on by any participant or by an agent of a participant was done, said or agreed on as recorded and, where anything is recorded in or by the record as having been done, said or agreed on by an agent of a participant, that it was done, said or agreed on with the authority of that participant, and

(iii) that the record, where it appears to have been written by any participant or by an agent of a participant, was so written and, where it appears to have been written by an agent of a participant, that it was written with the authority of that participant.

10. All of the elements of ss. 69(2) are met in this case. Specifically:
 - these are proceedings before the Tribunal pursuant to the Act;
 - Sears is a “participant” within the meaning of section 69;
 - the Sears Documents were provided by Sears to the Commissioner and hence were in the possession of Sears.

11. The Commissioner understands that Sears does not object to admission of the Sears Documents pursuant to section 69 of the *Competition Act*.

Tr. 4875, ln. 18 - 4876, ln. 20; 2531, ln. 3-11; 2533, ln. 12-19

12. The Commissioner submits that in applying section 69, the Tribunal must remain mindful of section 12 of the *Interpretation Act*, which states:

12. Every enactment shall be deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

Interpretation Act, R.S. 1985, c. I-21

13. It is “notorious” that the historical roots of section 69 lie in the conspiracy provisions contained in section 45 of the Act (and predecessor provisions of the *Combines*

Investigation Act). The section was enacted to overcome the difficulty of proof in conspiracy cases in discerning and establishing what was in the mind of the alleged conspirators.

Regina v. Canadian General Electric Company Ltd., , 34 C.C.C. (2d) 489 at 493

14. The purpose or object of section 69 in cases under section 45 of the Act is to assist the Crown in proving matters which typically are within the exclusive knowledge of the parties to a conspiracy. As the Court in *General Electric* stated:

To give the prosecution an opportunity to reach down into the hidden wells of evidence is the very purpose of s. 45. It does not deprive the accused of the right of rebutting the prima facie proof of the matters specified in the section. It does not create an offence. It simply states the manner in which the Crown may map its course.

Regina v. Canadian General Electric Company Ltd., *supra* at 493

15. The language of section 69 -- in particular, the words, "done, said or agreed" -- reflects its historical roots. However, section 69 applies to all proceedings under the Act, not just matters arising under section 45. The Commissioner submits that, in this case, especially insofar as it relates to the issue of good faith, Sears' internal marketing plans, analysis and strategies, like agreements between conspirators, are known only to Sears.
16. The Commissioner relies on the Sears Documents as *prima facie* proof of the matters set forth in paragraphs 69(2)(a) - (c), including proof that Sears said, did and agreed to the matters recorded in the Sears Documents.

17. Therefore, for example, Sears' 1999 Spring Review sets out, among other things, Sears' National Brand and Private Label strategies for those segments of the market (Ex CA30, p. 1483, 1484). The Commissioner submits that those documents are *prima facie* proof of Sears' approach to those segments of the tire market in 1999. Drilling down further, for example, Sears' tactics within its National Brand Strategy provide that Sears will index its "everyday pricing" to be within a percent range of the "equivalent national brand normal discounted price". Again, those words are *prima facie* proof that in 1999 it was Sears strategy for national brand tires to index its everyday pricing to be within a percentage range of the equivalent national brand normal discounted price.

(ii) Section 30 of the *Canada Evidence Act*

18. Section 30 of the *Canada Evidence Act* provides that "where oral evidence in respect of a matter would be admissible in a legal proceeding, a record made in the usual and ordinary course of business that contains information in respect of the matter is admissible in evidence under this section in the legal proceeding on production of the record."

19. The Sears Documents are records made in the usual and ordinary course of business that relate to matters that could be and were the subject of oral testimony in this proceeding.

20. Sears was given notice of the Commissioner's intention to produce and rely on the Sears Documents as each of the Sears Documents was listed in the Commissioner's Disclosure Statement and contained in the Joint Books of Documents that were prepared and filed by the parties.

21. In view of the foregoing, the Commissioner submits that the Sears Documents can be received by the Tribunal under s. 30 of the *Canada Evidence Act* for the proof of their contents.

(iii) Common Law Doctrine of Possession

22. The common law doctrine of possession has been described as follows:

18.68 In civil and criminal proceedings, a document found in the actual or constructive possession of an accused constitutes circumstantial evidence of knowledge of the content or connection with the document. The document is inadmissible to prove the truth of its contents unless the possessor has recognized, adopted or acted on it. ... Where documents are found on corporate premises and there is evidence of knowledge of their existence by a director, officer or employee acting in the course of employment, possession is circumstantial evidence imputing knowledge to the company of the content of the document. The documents may also be receivable to prove the truth of the contents if recognized, adopted or acted upon by a person authorized by the corporation.

The Law of Evidence in Canada, supra, at p. 1034 (emphasis added).

23. The Sears Documents were provided to the Commissioner by Sears in response to a section 11 order. It follows that Sears had possession of the documents and, given that it provided them to the Commissioner under compulsion of s. 11, Sears recognized and adopted the documents. For example, the Spring and Fall Automotive Reviews were produced by Sears pursuant to question 6 of Appendix “A” to the Sears s. 11 order which required Sears to:

Provide all records in effect, produced or created during the Relevant Period pertaining to Sears’ strategic directions, policies, plans and reports related to purchasing, marketing, sales promotion and pricing in respect of the sale of the Relevant Products.

CA R104, Appendix “A”, p. 2.

24. It is submitted that the Sears Documents fall squarely within the common law doctrine of possession and may therefore be received for the truth of their contents on that basis.

(iv) The Common Law Principled Hearsay Exception

25. In *R. v Khan* and *R. v Smith*, the Supreme Court of Canada articulated a common law hearsay exception that can be invoked if the evidence at issue meets certain standards of necessity and reliability.

This Court's decision in *Khan*, therefore, signalled an end to the old categorical approach to the admission of hearsay evidence. Hearsay evidence is now admissible on a principled basis, the governing principles being the reliability of the evidence, and its necessity.

R v. Smith, supra at para. 12;

R v Khan, [1990] 2 S.C.R. 531 at paras 18, 28, 29;

See also *R. v. Starr, supra* at paras 190-94; *R v B. (K.G.)*, [1993] 1 S.C.R. 740; *R v Finta*, [1994] 1 S.C.R. 710; *R v. U. (F.G.)*, [1995] 3 S.C.R. 764; *R v Hawkins*, [1996] 3 S.C.R. 1043

26. The Supreme Court of Canada has made it clear that the necessity criterion, for these purposes, must be applied flexibly. Necessity does not require that the proposed evidence is the only evidence available on the point. Nor does it require that the evidence be unavailable or impossible to present in other than hearsay form.

R v Smith, supra, at para 36;

R v Hawkins, supra at para. 68;

R v B. (K.G.), *supra* at para. 106

27. Furthermore, the necessity does not have to be great; it may only be “an expediency or convenience”. This consideration is particularly relevant to detailed business documents.

Lecoupe v Canada (Canadian Armed Forces, Chief of Defence Staff), [1994] FCJ No. 616 at para 20;

R v Wilcox, [2001] NSJ No. 85 at para. 75

28. The Supreme Court of Canada has also noted that very high circumstantial guarantees of reliability may offset the fact that only expediency or convenience militate in favour of granting the evidence.

R v B.(K.G.), *supra* at paras 106-108.

29. The reliability of business documents has also been recognized. As stated in *The Law of Evidence in Canada*:

6.147 The trustworthiness of business documents of business documents is based on the reliability placed on such records by the commercial world. It the absence of routineness, there exists the danger that the maker of the record may not be motivated to be accurate. It is the mercantile nature of the record which attracts trustworthiness, not just the fact that the document was prepared in the regular course of business.

The Law of Evidence, *supra*, at p. 222

30. The Commissioner submits that the Sears Documents meet the requirements of necessity and reliability.

31. In terms of necessity, many of the key documents, including the Spring and Fall Automotive Reviews (and individual documents contained therein), the competitive profiles and the buyers letter, were prepared by Stan Keith, who is deceased. Moreover,

the documents are business records in respect of which there are high guarantees of reliability (this issue is discussed further below). Finally, given the very substantial volume of information that the Sears Documents represent, there is “necessity” in terms of expedience and convenience, that they be admitted for the truth of their contents.

32. In terms of reliability, the Sears Documents are business documents, made in the ordinary course of business and their veracity has not been put into question. Moreover, given that certain of the key documents such as the Spring and Fall Automotive Reviews and the competitive profiles were prepared by Mr. Keith (an acknowledged expert in tires and the Canadian tire market) for purposes of making presentations to Sears’ CEO and executive committee and for purposes of developing Sears’ competitive market response, it is submitted that they are inherently reliable. In this regard, the Commissioner refers the Tribunal to Mr. Cathcart’s evidence regarding the possible outcomes of presentation to the CEO that was not favourably received.

Pub. Hr. Tr., Vol 16, 2597 (18) - 2598 (6)

The Michelin and Bridgestone Documents

33. The Commissioner submits that the Michelin and Bridgestone Documents are admissible in evidence for the truth of their contents under section 30 of the *Canada Evidence Act* and under the common law principled hearsay exception. These documents relate to matters that could have been and were the subject of oral testimony in the proceeding and Sears had clear notice that the Commissioner intended to produce these documents. The

Michelin and Bridgestone Documents also meet the requirements of necessity and reliability that underpin the principled common law hearsay exception. They are business documents that were provided to the Commissioner in response to the Michelin and Bridgestone s. 11 Orders.

34. In addition, the Michelin and Bridgestone Documents are in the form of sworn statements (and attachments thereto). Those statements were sworn by individuals, Mr. King and Mr. Merkley, who appeared and gave evidence under oath in this proceeding. If either party to this proceeding wished to challenge the veracity of any the propositions advanced in the statements made in the Michelin and Bridgestone Documents, it had ample opportunity to do so. As such, the dangers associated with hearsay and the mischief sought to be addressed by the hearsay rule are entirely absent in connection with the Michelin and Bridgestone Documents.

35. The Commissioner notes that Sears has also relied, in its argument, on the Michelin Documents and the Bridgestone Documents.

Sears Response, para. 21

36. The only objection raised by Sears in respect of the Michelin Documents and the Bridgestone Documents is to the admission of the letter of Bridgestone's in-house counsel, Miss Scarrow, that accompanied the Bridgestone/Firestone section 11 response.

Mr. W.W. McNamara: Okay. The next item is the business records provided by Bridgestone

Firestone in response to the Dubé Order, and the problem we have with that one is there is – in our view, there is an aspect of that response that is not before you and that is very much at issue here, and that is whether or not the associate brand product catalogues contained MSRP information.

The letter which accompanied the Bridgestone/Firestone response from their in-house counsel, Miss Scarrow, said that it did not. Mr. King's evidence was somewhat less un-ambivalent on that issue and we have never seen the catalogues because they were not part of the disclosure. So I do not want the letter as part of the Section 11 Response.

I am not accepting as unequivocally true and correct, the statement in that letter, that the catalogues did not contain the information. I have no way of – I'm not saying Miss Scarrow would intentionally misstate it or anything like that. I'm just saying, I don't know, I just absolutely don't know. The elements that she provided, in other words, the catalogues, we just don't have.

Tr. Vol. 20, p. 4877, ln. 9-21

37. The Commissioner understands that the letter from in-house counsel, that was referred to by counsel for Sears, is Exhibit CR-25. This letter was put into evidence by Sears. In the circumstances, the Commissioner is at a loss to understand Sears' objection to the admission of the document.

Tr. Vol. 7, p. 1151, ln. 2 - 1154, ln. 16

The Sears Written Responses

38. The Commissioner submits that the Sears Written Responses are admissible as out-of-court admissions by Sears.
39. The rationale for the admissibility of out-of-court admissions is discussed in *The Law of Evidence in Canada* in the following terms:

6.292 The main objection to hearsay evidence is that the declarant is not in court under oath and not subject to cross-examination. It is illogical to suggest that it is objectionable for the admission

to be received because there is no opportunity to cross-examine the declarant. If the party has made the statement, the party cannot argue that he or she has lost the opportunity of cross-examining himself or herself, nor complain about the lack of personal oath. Moreover, it is always open to that party to take the witness box and testify either that he or she never made that admission or to qualify it in some other way.

The Law of Evidence in Canada, supra, at pp. 286-287

40. The Commissioner notes that Sears has not objected to the admission of the Sears Written Responses. In this regard, counsel for Sears stated:

In terms of – I’m not sure whether Your Honour raised it but the written responses provided by Sears under oath to the Dubé Order, again, that is really a repeat in terms of documents. It also refers to two Affidavits by Mr. McMann (sic). There ultimately were two, so that we have no – they were tendered in evidence and obviously there was cross-examination on them and that is fine, we don’t have an issue with that.

Tr. Vol. 20, p. 4877, ln. 22 - 4878, ln. 4.

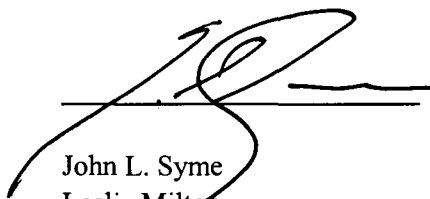
Conclusion

41. The Commissioner submits that:

- to the extent that any documents not relied on by the Commissioner for the truth of their contents, but rather as evidence, for example, of the beliefs of Sears, the issue of hearsay does not come into play;
- the Sears Documents are admissible as *prima facie* proof under section 69 of the Act; and
- the Sears Documents, the Michelin Documents, the Bridgestone Documents and the Sears Written Responses, are all properly admitted in this proceeding, for the truth of their contents.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Gatineau, Quebec, September 10, 2004.



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1. Business records provided to the Commissioner by Sears in response to a s.11 order:

- CA18 Chronological pre-print listing for 1999
- A19 Chronological listing of newspaper clippings for 1999
- A20 Other printed promotional materials
- A21 Chronological list of store events automotive participated
- A22 Proof of samples of corporate promotion in which Sears participated
- CA23 1999 Merchandise list, buyer's letter
- CA24 Pricing policy M-968 of Sears
- A29 Now Public Memorandum dated May 11, 1999 to All Vice-Presidents re; Competition Act Amendments - Regular Price Claims, Misleading Advertising and Deceptive marketing Practices, Deceptive Telemarketing and Whistleblowing
- CA30 Sears Automotive Reviews Spring and Fall 1999
- A31 Now Public Monthly Retail Marketing Planners (Jan. To Dec. 99) (12 doc's)
- CA32 Excerpts of Pocket Price Guides (Sears) - Spring 1999 & Fall 1999
- A33 BF Goodrich Plus - Line 36
- A34 Silverguard ultra(*sic*) IV - Line 68
- A35 Response RST Touring 2000 - Line 59
- CA36 Weatherwise - Line 58
- CA37 Roadhandler T Plus - Line 51
- CA38 Sample of retail Receipts Forecast 1999 Retail
- CA39 Sears Retail Annual 1998 and 1999 Gross Profit Estimate
- CA40 Tire Costs and Retail Pricing - Line 36; BF Goodrich Plus
- CA41 Tire Costs and Retail Pricing - Line 51: Roadhandler T Plus
- CA42 Tire Costs and Retail Pricing - Line 58: Weatherwise
- CA43 Tire Costs and Retail Pricing (Sears) - Line 59: Response RST Touring 2000
- CA44 Tire Costs and Retail Pricing (Sears) - Line 68: Silverguard Ultra IV
- CA45 Promotional Checkerboards January-December 1999 (same as CR130)
- CA46 Guidelines for Savings Claims (excerpts only)
- CA48 Buying Plans for each of the five Tires and one for all lines
- A49 Monthly Retail Marketing Planners for November and December 1998
- A69 Sears in-store tire ad leaflet
- A83 Sears In-store Tire Ad. Leaflet (English and French)

- CA138 2001 Automotive Review
- CA139 Spring 2002 Automotive Review
- CA141 Fall 2000 Automotive Review
- A153 Sears ad dated May 3 to May 24, 1999 (NADM 57)
- A154 Sears ad ending May 24, 1999 (NADM 175)
- A155 Sears ad effective May 13 to May 24, 1999 (NADM 185)
- A156 Sears ad ending May 24, 1999 (NADM 186)
- A157 French version of Sears ad ending May 24, 1999 (NADM 187)
- A158 Sears ad ending May 24, 1999 (NADM 190)
- A159 Sears ad ending May 24, 1999 (NADM 191)

2. Business records provided to the Commissioner by Michelin in response to a s. 11 order:

CA4 Merkley (Michelin) affidavit, Production of Records and Responses
CA111 Schedule A-4 of Exhibit CA4 being the Affidavit of Merkley (full tab 57 incl.
 CA36 & 37)

3. Business records provided to the Commissioner by Bridgestone/Firestone in response to a s.11 order:

CA5 Jim King affidavit (sworn April 24, 2001)
CA6 Exhibit B to King affidavit, compare national brands
CA7 Exhibit D to King affidavit, how list prices are established
CA8 Exhibit G to King affidavit, explains relationship of warranty to price

4. Written responses provided to the Commissioner by Sears under oath in response to the s. 11 order:

CA9 McMahon affidavit (sworn February 1, 2001)
CA10 Exhibit A McMahon affidavit, preprint circulation flyers
CA11 Exhibit B McMahon affidavit, newspapers circulation
A12 Exhibit H McMahon affidavit, 1999 table of regular prices for all seasonal tires
A13 Exhibit I McMahon affidavit, price structure 1999 multiple regular prices and 2
 for prices
A14 Exhibit N McMahon affidavit, 1999 prices structure normal promo prices Sears
CA15 Exhibit R McMahon affidavit, table of per line basis, net sales, gross profit \$ of
 July 98 / Dec 99
CA16 Exhibit T McMahon affidavit, gross sales on a monthly per line basis
A47 Affidavit of William McMahon, sworn November 29, 2001
CA140 Exh.(sic) Z of McMahon affidavit NADM #'s 5994S to 6057S

Miscellaneous:

TIRE ADS:

- A50 Sears advertising document for November 14th, 1999
- A51 The Calgary Sun: Wednesday, November 3rd, 1999
- A52 The Hamilton Spectator: Wednesday, October 27th, November 3rd and 10th
- A53 The Ottawa Citizen: Thursday, October 28th, November 3rd and 8th
- A54 The Vancouver Sun: Wednesday, October 27th, November 3rd and 10th
- A55 The Province (Vancouver): Wednesday, October 27th, November 3rd and 10th
- A56 The Metro (Winnipeg); Thursday, November 11th
- A57 The Montreal Gazette; Sunday October 24th and 31st
- A58 La Presse (Montreal): Sunday October 24th and 31st
- A59 Journal de Montreal: Sunday, October 24th and 31st
- A60 The Era Banner (Newmarket): Tuesday, October 26th, November 2nd and 9th
- A61 The Edmonton journal: Wednesday, November 3rd and 10th
- A62 The Standard Freeholder (Cornwall): Wednesday, October 27th, November 3rd and 10th
- A63 The Windsor Star: Wednesday, October 27th, November 3rd and 10th
- A64 The Record (Kitchener): November 3rd and 10th
- A65 Le Nouvelliste (Trois-Rivières); Wednesday, October 17th
- A66 The Daily Gleaner (Fredericton): Wednesday, October 27th, November 3rd and 10th
- A67 The Telegram (St. John's): Wednesday, October 27th, November 3rd and 10th
- A68 The StarPhoenix (saskatoon): Wednesday, November 3rd and 10th
- A70 Sears advertising document for Nov. 22 to Nov. 28, 1999
- A71 The Calgary Sun: Wednesday, November 17th
- A72 The Ottawa Citizen: Wednesday, November 18th
- A73 The Daily Gleaner (Fredericton): Wednesday November 17th
- A74 The Standard Freeholder (Cornwall): Wednesday, November 17th
- A75 The Windsor Star: Wednesday, November 17th
- A76 The Hamilton Spectator: Wednesday, November 17th
- A77 The Era Banner (Newmarket): Tuesday, November 16th
- A78 The Edmonton Journal: Wednesday November 17th
- A79 The StarPhoenix (Saskatoon): Wednesday, November 17th
- A80 The Telegram (St. John's): Wednesday, November 17th
- A81 The Vancouver Sun: Wednesday, November 17th
- A82 The Province (Vancouver): November 17th
- A84 Sears advertising documents Dec. 18 to Dec. 19, 1999
- A131 Sears flyer from July 5 to July 18, 1999

TIME TEST DOCUMENTS PREPARED BY Christian Warren

- A85 Line 36 - BF Goodrich Plus - Time Test Table

A86 Line 51 - Roadhandler "T" Plus
A87 Line 58 - Weatehrwise/RH Sport
A88 Line 59 - Response RST Touring 2000
A89 Line 68 - Silverguard Ultra IV
CA90 Line 36 - BF Goodrich Plus - Back to January 1, 1999
CA91 Line 51 - Roadhandler "T" Plus - Back to January 1, 1999
CA92 Line 58 - Weathenvise(*sic*)/RH Sport - Back to January 1, 1999
CA93 Line 59 - Response RST Touring
CA94 Line 68 - Silverguard Ultra IV
A97 Summary of Time Analysis from Date of Selected Representations back to
January 1, 1999
CA98 Line 36 - BF Goodrich Plus - Date of Relevant Representations back to January 1,
1999
CA99 Line 51 - Roadhandler "T" Plus - Date of Relevant Representations back to
January 1, 1999
CA100 Line 58 - Weatherwise RH Sport - Date of Relevant Representations back to
January 1, 1999
CA101 Line 59 - Response RST Touring 2000 - Date of Relevant Representations back to
April 1, 1999
CA102 Line 68 - Silverguard Ultra IV - Date of Relevant Representations back to January
1, 1999

OTHER

CA17 Index to Sears response to the Sears s. 11 Dubé order prepared by O.R. counsel
when Sears responded(*sic*) sent to Commissioner
A95 CTC Catalogue
A96 Sears Annual Report