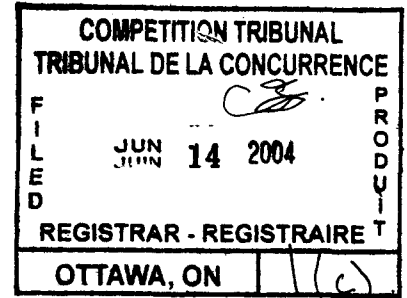


THE COMPETITION TRIBUNAL  
File No. CT-2004-006  
Registry Document No.: 1(c)



BETWEEN: 1177057 ONTARIO INC. c.o.b. as  
BROADVIEW PHARMACY

Applicant

AND: PFIZER CANADA INC.

Respondent

APPLICATION PURSUANT TO SECTION 103.1 OF THE *COMPETITION ACT*  
FOR LEAVE TO MAKE APPLICATION UNDER SECTION 75 OF THE *ACT*

### AFFIDAVIT OF HARVEY ORGAN

I, HARVEY ORGAN, of the City of Toronto, in the Province of Ontario, MAKE  
OATH AND SAY AS FOLLOWS:

1. I am a licensed pharmacist, and as such I have knowledge of the matters to which I hereinafter depose, except where such matters are stated to be based on information and belief, and where so stated, I verily believe those matters to be true.
2. I have a 51% ownership interest in the Applicant, 1177057 Ontario Inc., carrying on business as Broadview Pharmacy ("Broadview Pharmacy").
3. I have read the affidavit of Herbert Cohen sworn June 8, 2004 in this matter, and I am fully familiar with and agree with all of its contents.

4. In addition to my ownership interest in Broadview Pharmacy, I also have a 51% ownership interest in Kohler's Drug Store Limited ("Kohler's"), a pharmacy located in Hamilton, Ontario. Kohler's, along with its regular pharmacy business in Hamilton, operates an internet website "CanadaRX", which sells prescription pharmaceuticals to persons living outside of Canada. The Respondent, Pfizer Canada Inc. ("Pfizer Canada") is fully aware of Kohler's activities in this regard. As a result, Pfizer Canada has taken steps to cut off all supply of its pharmaceutical products to Kohler's. Similar steps have been taken against Kohler's by most of the other major pharmaceutical manufacturers.

5. As outlined in greater detail in Mr. Cohen's affidavit in this proceeding, Broadview Pharmacy has undertaken to not export Pfizer Canada pharmaceutical products outside of Canada, and not supply such products to anyone that it knows, or has reason to know, is doing so. This, of course, would include an undertaking not to sell Pfizer Canada pharmaceutical products to Kohler's or CanadaRX. I am fully in agreement with this undertaking, and I will see to it that it is honoured.

6. As also described more fully in Mr. Cohen's affidavit in this proceeding, it appears that Pfizer Canada and Broadview Pharmacy would be able to make suitable arrangements for Pfizer Canada to conduct up to four audits each year in respect of Broadview Pharmacy's sales of Pfizer Canada products. I am also fully in agreement with this proposed arrangement, and I would assist in its fulfilment.

7. The essence of the ongoing dispute with Pfizer Canada, and the reason why Pfizer Canada says that it will not reinstate supply to Broadview Pharmacy at the present time (hence the bringing of this application), is Broadview Pharmacy's refusal to undertake that none of its owners have or will have an interest in another pharmacy or entity which sells Pfizer Canada pharmaceutical products outside of Canada. Mr. Cohen's affidavit refers to this as the "no cross-ownership undertaking." Broadview Pharmacy cannot give such an undertaking unless I give up my ownership interest in Broadview Pharmacy, which I am not prepared to, nor should I be compelled to do.

8. With all other respect to Pfizer Canada, it seems to me that Broadview Pharmacy's express undertaking not to export Pfizer Canada pharmaceutical products out of Canada and not to supply such products to anyone else who does so, together with the four audits per year which Broadview Pharmacy is prepared to permit, fully protects Pfizer Canada's interests.

9. The no cross-ownership undertaking demands of Pfizer Canada appear to me to be quite arbitrary, and indeed hypocritical. In this regard, reference should be made to a copy of the most recent list of "unapproved purchasers" sent out by Pfizer Canada on June 8, 2004, to one of Broadview Pharmacy's distributors, NuQuest Distribution Inc., a copy of which is attached hereto and marked as **Exhibit "A"**. That list shows that seven locations of Medicine Shoppe, a western-Canada chain of pharmacies, have been listed as "unapproved purchasers" by Pfizer Canada. It is important to bear in mind that the Medicine Shoppe chain well exceeds 200 pharmacies. Equally important, the entire chain of Medicine Shoppe pharmacies is owned by one group of principals. By selecting only seven of the over 200 Medicine Shoppe stores as "unapproved purchasers", Pfizer Canada has shown that it is not at all concerned about cross-ownership issues as far as Medicine Shoppe is concerned. The seven Medicine Shoppe locations which have been listed by Pfizer Canada's as "unapproved purchasers" are known, or suspected by Pfizer Canada to be exporting Pfizer Canada pharmaceutical products from Canada, or supplying to others who do so. Yet Pfizer Canada continues to supply its products to the 200 plus remaining Medicine Shoppe locations without regard to cross-ownership concerns. This inconsistency is quite glaring, in my view, and demonstrates that Pfizer Canada has chosen to discriminate against smaller pharmacies such as Broadview Pharmacy while allowing the larger drug store chains, and those distributors who supply them, to continue to carry on business as usual.

10. Notwithstanding Pfizer Canada's inconsistent dealings with the Medicine Shoppe stores, as described above, and with particular reference to Exhibit "A", it appears that dozens of smaller pharmacies throughout Canada, neighbourhood pharmacies like Broadview Pharmacy, have now been cut off of all supply of pharmaceutical products by

Pfizer Canada. This will have a devastating impact on the availability of important medicines to patients across Canada.

**SWORN** before me at the City of )  
Toronto, in the Province of )  
Ontario, this day of June, )  
2004. )

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**HARVEY ORGAN**

A Commissioner for Taking Affidavits, etc.