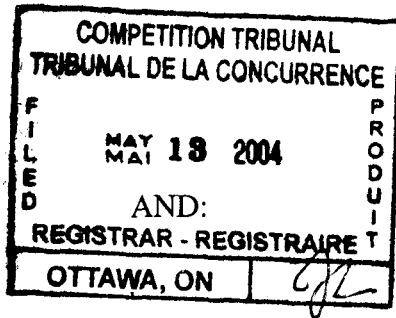


THE COMPETITION TRIBUNAL
File No. CT-2004-005
Registry Document No.: 166

BETWEEN:

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

Applicant



WYETH 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 HERBERT COHEN

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

1. I am the manager of the Applicant, 1177057 Ontario Inc., carrying on business as Broadview Pharmacy ("Broadview Pharmacy"), 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 make this affidavit in support of an application made by Broadview Pharmacy for leave to make an application against the Respondent, Wyeth Canada Inc. ("Wyeth") pursuant to section 75 of the *Competition Act*, R.S.C. 1985, c.34 (the "Act").

3. Broadview Pharmacy is an Ontario corporation which carries on business at 381 Broadview Avenue, Toronto. I have managed the retail store at that location for the past 44 years. I am a licensed pharmacist in Ontario.

4. From its location, Broadview Pharmacy offers its customers a wide selection of products and services, including prescription and over the counter medicines, health and beauty aides, cosmetics and fragrances, as is customary with a neighbourhood pharmacy.

5. There is a very significant competition among retail pharmacies in the Broadview and Gerrard area of Toronto where the Broadview Pharmacy is located. In fact, six other retail pharmacies are located within a two block radius of Broadview Pharmacy's location.

6. By the very nature, retail pharmacies such as Broadview Pharmacy are entirely dependent upon the supply of pharmaceutical medicines from the manufacturers of those products. In some cases, a generic version of a drug is available. Where no generic drug is available, however, the drug manufacturers are the sole source of ongoing, longer-term supply for retail pharmacies such as Broadview Pharmacy. Such is the case with the patented pharmaceutical medicines produced by Wyeth.

7. Broadview Pharmacy has sold Wyeth products for the past several years. Of Broadview Pharmacy's total annual sales of \$1.5 million in pharmaceutical drugs, somewhat in excess of 5% (or \$75,000 a year) are from the sale of drugs manufactured by Wyeth.

8. Among the important patented medicines available only through Wyeth are the anti-depressant Effexor, and a number of very popular birth control pills, including Triphasil, Alesse, Minovral, as well as the female hormone replacement drugs, Premarin and Premplus.

9. By letter dated April 26, 2004, a copy of which is attached hereto and marked as Exhibit "A", Wyeth advised its Canadian distributors that they were not accept any orders from, or otherwise sell products to, any purchasers on an attached list of "unapproved purchasers". Among the group of "unapproved purchasers" was Broadview Pharmacy.

10. Typically when Broadview Pharmacy orders pharmaceutical product it does so "on-line", usually through a distributor. Since April 26, 2004, when Broadview Pharmacy "logs-in" to its account for Wyeth products, the computer screen announces the following: "Item disallowed by supplier restriction." Broadview Pharmacy is no longer able to obtain pharmaceutical products from Wyeth.

11. It is my understanding that Wyeth has made a decision to refuse to deal with Broadview Pharmacy because, in the past, Broadview Pharmacy supplied some pharmaceutical medicines to some internet pharmacy businesses. Broadview Pharmacy has ceased this practice. By letter to Wyeth dated April 30, 2004, a copy of which is attached hereto and marked as Exhibit "B", Broadview Pharmacy advised that it has altogether ceased selling to internet pharmacies. Notwithstanding this, Wyeth continues to refuse to supply or otherwise deal with Broadview Pharmacy.

12. At present, Broadview Pharmacy is managing to obtain some short-term substitute supplies of the Wyeth products from other sources. However, this temporary source of supply cannot be sustained. Without the ongoing, longer-term supply of Wyeth products direct from Wyeth, Broadview Pharmacy will not be able to service its customers and its business will suffer very significantly.

13. Many customers of Broadview Pharmacy have regular multiple prescriptions and come to Broadview Pharmacy to fill all of their prescription needs in one visit. If Broadview Pharmacy is not able to fill the whole prescription, because it is out of Wyeth product, the customer will choose to fill the whole prescription at another pharmacy that can do so. If the Wyeth products are not available, Broadview Pharmacy's patients will go elsewhere for their pharmaceutical and their other needs. In such circumstances, it is

very likely that Broadview Pharmacy will lose the customer for good. Wyeth's actions seriously threaten the financial viability of the Broadview Pharmacy.

14. Wyeth occupies a dominant position in the marketplace with respect to its patented pharmaceutical products. Wyeth's products are otherwise in ample supply in the Toronto area, including Broadview Pharmacy's neighbourhood competitors.

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

Herbert Cohen

A Commissioner for Taking Affidavits, etc.