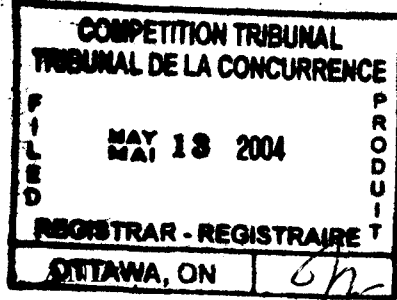


THE COMPETITION TRIBUNAL
File No. CT-2004-004
Registry Document No.: 1(b)

BETWEEN:

PARADISE PHARMACY INC. and
RYMAL PHARMACY INC.

Applicants



NOVARTIS PHARMACEUTICALS CANADA INC./
NOVARTIS PHARMA 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 SHIRLEY SILBERG

I, SHIRLEY SILBERG, of the City of Hamilton, in the Province of Ontario,
MAKE OATH AND SAY AS FOLLOWS:

1. I am the owner and operator of the Applicants, Paradise Pharmacy Inc. and Rymal Pharmacy Inc., 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 the Applicants for leave to make an application against the Respondent, Novartis Pharmaceuticals Canada Inc./Novartis Pharma Canada Inc. ("Novartis"), pursuant to section 75 of the *Competition Act*, R.S.C. 1985, c.34 (the "Act").

3. The Applicants operate retail pharmacies at their respective Hamilton addresses. The retail pharmacy operating at 930 Upper Paradise Road was established in April, 1996. The retail pharmacy operating at 505 Rymal Road East was established in July, 1997. From these locations, the Applicants offer their customers a wide selection of products and services, including prescription and over the counter medicines, health and beauty aides, and cosmetics and fragrances, as is customary with a neighbourhood pharmacy.

4. There is significant competition among retail pharmacies in the areas immediately surrounding both of the Applicants' retail pharmacies. Both pharmacies have at least one Shoppers Drug Mart, a Pharma Plus, a Fortino's Pharmacy and a Wall-Mart within one mile of its respective location.

5. By their very nature, retail pharmacies 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 those operated by the Applicants.

6. Each of the Applicants has sold Novartis products since the establishment of their respective retail stores. Of their respective total annual pharmaceutical drug sales of approximately \$2 million each, approximately 7% (or \$140,000 a year, per store) arise from the sale of drugs manufactured by Novartis.

7. The main Novartis products are:

Drug	Indication
Actos	Diabetes
Diovan	High blood pressure
Femara	Breast cancer prevention
Lesco	High cholesterol
Famvir	Long term herpes treatment

Exelon	Alzheimers
Lotensin	High blood pressure
Foradil	Asthma
Tegretol Chew Tablets	Epilepsy
Zomeca	Bone Metabolism regulator
Zyprexa	Psychiatric disorders

8. The Applicants' two distributors, Kohl & Frisch and RepPharm, have both advised that Novartis has directed them, as of May 5, 2004, not to supply the Applicants with any Novartis products. As a result of this action, the Applicants are no longer able to obtain any pharmaceutical products from Novartis.

9. Novartis' refusal to deal with the Applicants will lead to a very serious disruption in its sales revenue and to the loss of its customer base. Many customers of the Applicants have regular multiple prescriptions and come to the Applicants to fill all of their prescription needs in one visit. If the Applicants are not able to fill the whole prescription because they are out of Novartis product, customers will generally choose to fill the whole prescription at another pharmacy that can do so. If the Novartis products are not available, the Applicants' patients will go elsewhere for their general pharmaceutical and other needs. In such circumstances, it is very likely that the Applicants will lose such customers for good. Novartis' actions seriously threaten the financial viability of the Applicants.

10. Novartis occupies a dominant position in the marketplace with respect to its patented pharmaceutical products. Novartis' products are otherwise in ample supply in the Hamilton area, including the Applicants' large competitors.

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

A Commissioner for Taking Affidavits, etc.