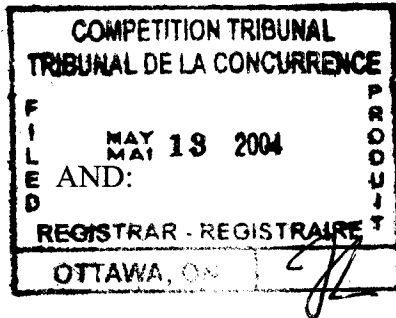


THE COMPETITION TRIBUNAL
File No. CT-2004-003
Registry Document No.: 2

BETWEEN: MRS. O'S PHARMACY INC.



Applicant

PFIZER CANADA INC.

Respondent

NOTICE OF APPLICATION PURSUANT TO SECTION 75
OF THE *COMPETITION ACT*

TAKE NOTICE THAT:

1. The Applicant, Mrs. O's Pharmacy Inc. ("Mrs. O's"), is applying to the Competition Tribunal pursuant to section 103.1 of the *Competition Act*, R.S. 1985, c. 19 (2nd supp.), as amended (the "Act"), for an Order under section 75 of the Act that the Respondent, Pfizer Canada Inc. ("Pfizer Canada"), accept Mrs. O's as a customer on the "usual trade terms", forthwith upon issuance of said Order.
2. The person against whom an Order is sought is the Respondent, Pfizer Canada. Its address is:

Pfizer Canada Inc.
17300 Trans Canada Highway
Kirkland, Quebec
H9J 2M5
3. The Applicant requests that this application proceed in English.

4. The Applicant requests that documents be filed in paper form.
5. Mrs. O's will rely on the Statement of Grounds and Material Facts attached herein and on the Affidavit of Olga O'Charchin, duly sworn on May 10, 2004, and such further and other material as counsel may advise and the Tribunal permit.

THE GROUNDS AND MATERIAL FACTS FOR THE APPLICATION ARE:

The Parties

6. The Applicant, Mrs. O's Pharmacy Inc. ("Mrs. O's"), is a corporation, duly incorporated under the laws of the Province of Ontario and carries on business at 118 Jarvis Street, in the Town of Fort Erie, in the Province of Ontario. Its principal is Olga O'Charchin, a licensed pharmacist since 1953.
7. The Respondent, Pfizer Canada Inc. ("Pfizer Canada"), is a corporation incorporated pursuant to the laws of Canada with its head office at 17300 Trans Canada Highway, Kirkland, in the Province of Quebec. Pfizer Canada carries on business as a pharmaceutical manufacturer across Canada, including Ontario.

Nature of Applicant's Business

8. Mrs. O's operates a retail pharmacy at its Fort Erie address. It has operated a pharmacy from that location since on or about January 5, 2004. From this location, Mrs. O's offers its customers a wide selection of products and services, including prescription and over the counter medicines and vitamins, as is customary with a neighbourhood pharmacy.
9. Mrs. O's is located in the original downtown area of Fort Erie and is about 2 miles from the Peace Bridge. Fort Erie's population is about 25,000 and doubles in the summer months due to the influx of Americans. There is no other pharmacy in the immediate area, and the area had not previously been serviced by

a pharmacy for over 10 years, despite the fact that there is high population density in the surrounding area. Fort Erie's downtown and surrounding residential neighbourhoods are suffering from the movement of the larger corporate stores (Shoppers, Wal-Mart, Pharma Plus, Zeller's and No Frills) to the main highway strip. In addition, the hospital pharmacy has been closed for about 5 years.

10. 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 Mrs. O's.

Pfizer Canada Products

11. Pfizer Canada has previously supplied a number of key products to Mrs. O's: Lipitor (for high cholesterol), Accupril (for high blood pressure), Norvasc (for high blood pressure), Ministrin (for birth control), Loestrin (for birth control), Bextra (for arthritis), Arthrotec (for arthritis) and Detrol (for bladder incontinence). These important therapeutic products represented a significant portion of Mrs. O's gross sales. Generally, in the industry, such products represent about 20% of an Ontario pharmacist's gross annual sales. While Mrs. O's has been in business only a limited amount of time, it reasonably expected Pfizer Canada products to be a significant portion of prescription sales, as reflected by their status as one of the major pharmaceutical companies in the world.
12. By letter dated March 11, 2004, and without any prior notice, Pfizer Canada advised Mrs. O's that it was "not in compliance with Pfizer Canada's terms of trade, namely the selling, transferring or distributing of Pfizer Canada pharmaceutical products only to person in Canada or to any person that [Mrs. O's] know[s] who have reasonable grounds for believing, will or may export Pfizer

Canada pharmaceutical products out of Canada.” Pfizer Canada’s letter went on to state: “Consequently, effective immediately, your pharmacy is no longer approved to purchase Pfizer Canada pharmaceutical products from Pfizer Canada’s authorized distributors.”

13. The purported basis for Pfizer Canada’s decision to cut off supply to Mrs. O’s namely, that it was exporting Pfizer Canada products out of Canada, was completely unfounded. Mrs. O’s has never exported Pfizer Canada products out of Canada. Despite repeated efforts to reinstate the supply of Pfizer Canada products, Mrs. O’s has been unsuccessful. Mrs. O’s is no longer able to obtain any pharmaceutical products from Pfizer Canada.
14. By letter dated April 29, 2004, Pfizer Canada advised Mrs. O’s that it would be prepared to reinstate supplies if, among other things, Mrs. O’s agreed to commit itself to four annual audits by Pfizer Canada. This intrusive requirement is not a usual term of trade. In fact, no other pharmaceutical manufacturer requires it. To comply with it would mean breaching Mrs. O’s professional obligations of privacy and confidence in respect of its customers/patients.
15. Pfizer Canada’s actions have significantly limited Mrs. O’s growth. It had forecasted completing about 50 prescriptions per day by this time in its business development plan. However, the store is now in fact filling only about 20 prescriptions per day. Mrs. O’s had also forecasted that, by this time, it would bring on another pharmacist for 15 hours per week and would have another technician in training. None of these milestones have been met due in large part to Pfizer Canada’s actions.
16. Many of Mrs. O’s customers have multiple prescriptions and come to Mrs. O’s to fill all of their prescription needs. If Mrs. O’s is not able to fill its customers whole prescription because they are out of Pfizer Canada products, customers will generally choose to fill their whole prescriptions at another pharmacy that can do

so. If the Pfizer Canada products are not available, Mrs. O's patients will go elsewhere for their general pharmaceutical and other needs. In such circumstances, it is very likely that Mrs. O's will lose such customers/patients for good. Pfizer Canada's actions seriously threaten the financial viability of Mrs. O's.

17. Mrs. O's calculates that the loss of Pfizer Canada products has resulted in a loss of approximately \$10,800 per month in gross revenue. Pfizer Canada's actions seriously threaten the financial viability of Mrs. O's business.
18. Pfizer Canada occupies a dominant position in the marketplace with respect to its patented pharmaceutical products. Pfizer Canada's products are otherwise in ample supply in the Fort Erie area.
19. In this application, Mrs. O's seeks an order pursuant to section 75 of the Act, which provides:

“75. (1) Where, on application by the Commissioner or a person granted leave under section 103.1, the Tribunal finds that

- (a) a person is substantially affected in his business or is precluded from carrying on business due to his inability to obtain adequate supplies of a product anywhere in a market on usual trade terms,
- (b) the person referred to in paragraph (a) is unable to obtain adequate supplies of the product because of insufficient competition among suppliers of the product in the market,
- (c) the person referred to in paragraph (a) is willing and able to meet the usual trade terms of the supplier or suppliers of the product,
- (d) the product is in ample supply, and
- (e) the refusal to deal is having or is likely to have an adverse effect on competition in a market,

the Tribunal may order that one or more suppliers of the product in the market accept the person as a customer within a specified time on usual trade terms unless, within the specified time, in the case of an article, any customs duties on the article are removed, reduced or remitted and the effect of the removal, reduction or remission is to place the person on an equal footing with other persons who are able to obtain adequate supplies of the article in Canada.”

20. The actions of Pfizer Canada in refusing to deal with Mrs. O's and in refusing to allow its distributors to deal with Mrs. O's clearly fall within the scope of activity prescribed by section 75 of the Act.

DATED at Toronto, in the Province of Ontario, this 13th day of May, 2004.

"Don Jack" and "Mark Adilman"

D.H. Jack and Mark Adilman

McDONALD & HAYDEN LLP

Barristers and Solicitors

One Queen Street East, Suite 1500

Toronto, ON M5C 2Y3

Tel.: 416-364-3100

Fax: 416-601-4100

Solicitors for the Applicant

Address for Service:

TO: The Registrar
The Competition Tribunal
Thomas D'Arcy McGee Building
90 Sparks Street, Suite 600
Ottawa, Ontario
K1P 5B4

AND TO: Sheridan Scott
Commissioner of Competition
Competition Bureau
50 Victoria Street
Gatineau, Quebec
K1A 0C9

AND TO: Pfizer Canada Inc.
17300 Trans Canada Highway
Kirkland, Quebec
H9J 2M5

The Applicant's address for service is as follows:

McDONALD & HAYDEN LLP
Barristers and Solicitors
One Queen Street East, Suite 1500
Toronto, ON M5C 2Y3

D.H. Jack
Email: djack@mchayden.ca
Direct Line: 416-601-4121

Mark Adilman
Email: madilman@mchayden.ca
Direct Line: 416-601-4101
Fax: 416-601-4100