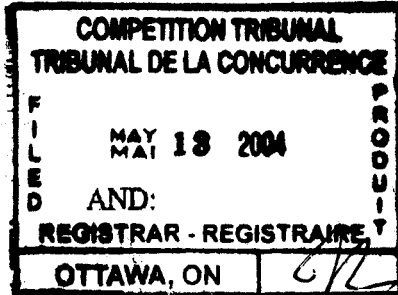


THE COMPETITION TRIBUNAL
File No. CT-2004-003
Registry Document No.: 1(6)

BETWEEN:

MRS. O'S PHARMACY INC.



Applicant

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 OLGA O'CHARCHIN

I, OLGA O'CHARCHIN, of the Town of Fort Erie, in the Province of Ontario,
MAKE AOTH AND SAY AS FOLLOWS:

1. I am the owner and operator of the Applicant, Mrs. O's Pharmacy Inc. ("Mrs. O's"), 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 Mrs. O's for leave to make an application against the Respondent, Pfizer Canada Inc. ("Pfizer Canada"), pursuant to section 75 of the *Competition Act*, R.S.C. 1985, c.34 (the "Act").
3. I am 73 years of age and have been a licensed pharmacist since 1953. Mrs. O's operates a retail pharmacy at 118 Jarvis Street, in the Town of Fort Erie, Ontario. 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.

4. 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.

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 Mrs. O's.

6. 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 is 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.

7. By letter dated March 11, 2004, a copy of which is annexed hereto and marked as “Exhibit “A”, 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.” Mrs. O’s subsequently received a letter from Pfizer Canada dated March 15, 2004, a copy of which is attached hereto and marked as Exhibit “B”. My response to that letter was dated April 20, 2004, and is attached hereto as Exhibit “C”.

8. 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.

9. By letter dated April 29, 2004, a copy of which is annexed hereto and marked as Exhibit “D”, 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.

10. 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.

11. 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.

12. I have estimated that the loss of Pfizer Canada’s product line has caused Mrs. O’s to lose 30 additional prescriptions per day, or 720 prescriptions per month. In my experience the average Pfizer Canada prescription costs \$100 (due to the higher cost of its drugs). As Pfizer Canada’s products had accounted, minimally, for 15% of Mrs. O’s gross prescription drug revenues, this results in a loss of 108 prescriptions per month, with a gross unit value of \$100 each, for a total of \$10,800 in lost gross revenue per month, all as a result of Mrs. O’s inability to have access to and sell Pfizer Canada products. Pfizer Canada’s actions seriously threaten the financial viability of Mrs. O’s business.

13. 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.

SWORN before me at the Town of)
Fort Erie, in the Province of Ontario,)
this day of May, 2004.)
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Olga O’Charchin

A Commissioner for Taking Affidavits, etc.