

Competition Tribunal



Tribunal de la Concurrence

Reference: *Commissioner of Competition v. Sears Canada Inc.*, 2003 Comp. Trib. 17

File no.: CT2002004

Registry document no.: 0060

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34;

AND IN THE MATTER OF an inquiry pursuant to subparagraph 10(1)(b)(ii) of the *Competition Act* relating to certain marketing practices of Sears Canada Inc.;

AND IN THE MATTER OF an application by the Commissioner of Competition for an order pursuant to section 74.01 of the *Competition Act*.

B E T W E E N:

**The Commissioner of Competition**  
(applicant)

and

**Sears Canada Inc.**  
(respondent)

Date of hearing: 20030925 and 20031003

Member: Dawson J. (presiding)

Date of order: 20031006

Order signed by: Dawson J.



**ORDER REGARDING RESPONDENTS' MOTION FOR LEAVE TO AMEND  
RESPONSE AND DIRECTING THE COMMISSIONER TO PRODUCE DOCUMENTS**

[1] FURTHER TO the motion of the respondent Sears Canada Inc. (“Sears”) for an order:

(i) granting leave to it to amend the responding statement of grounds and material facts filed by Sears on September 18, 2002 in the form of the fresh as amended response, attached as Schedule “A” to Sears’ Notice of Motion;

(ii) directing the Commissioner to produce to Sears Exhibit C to the affidavit of Mr. Jim King, sworn April 24, 2001 and schedule B-4 to the affidavit filed on behalf of Michelin North American (Canada) Inc., as well as any records completing schedule B-4 which may have been attached to the letter dated April 20, 2001, from Michelin (together the “Documents”);

[2] AND ON reading the affidavits sworn by Ms. Anna Trear on September 8 and 24, 2003, the affidavit sworn by Mr. George Weber on September 23, 2003, and the motion records filed by the parties;

[3] AND ON hearing the submissions of counsel;

FOR REASONS TO BE DELIVERED, THE TRIBUNAL ORDERS THAT:

[4] The request for leave to amend the responding statement of grounds and material facts is dismissed.

[5] The request that the Commissioner be directed to produce the Documents is allowed on terms that the Documents are designated as Confidential - Level A documents as that term is defined in the Tribunal’s Interim Confidentiality Order dated April 28, 2003.

DATED at Ottawa this 6<sup>th</sup> day of October, 2003.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) Eleanor R. Dawson

APPEARANCES

For the applicant:

The Commissioner of Competition

John L. Syme  
Arsalaan Hyder

For the respondent:

Sears Canada Inc.

William W. McNamara  
Phillip Kennedy  
Martha Healey