

Competition Tribunal



Tribunal de la Concurrence

Reference: *The Commissioner of Competition v. P.V.I. International, Inc.* 2001, Comp. Trib. 024
File no.: CT2001001
Registry document no.: 024

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

AND IN THE MATTER of an inquiry pursuant to subsection 10(1)(b)(ii) of the *Competition Act* relating to the marketing practices of P.V.I. International Inc.;

AND IN THE MATTER of an application by the Commissioner of Competition for an order pursuant to section 74.1 of the *Competition Act*

B E T W E E N:

The Commissioner of Competition
(applicant)

and

P.V.I. International, Inc.
Michael Golka and Darren Golka
(respondents)

Date of pre-hearing conference: 20010626
Member: Nadon J. (presiding)
Date of order: 20010704
Order signed by: Nadon J.



CONFIDENTIALITY ORDER

[1] FURTHER TO the motion regarding discovery issues by the Commissioner of Competition ("Commissioner") pertaining to various issues arising in connection with the Respondent's Affidavit of Documents and the examination for discovery of Michael Golka;

[2] AND FURTHER TO the draft confidentiality order filed by the Commissioner;

[3] AND ON HEARING SUBMISSIONS of counsel for the Applicant and the Respondent;

THE TRIBUNAL ORDERS THAT:

[4] For purposes of this order "protected documents" shall mean those documents added to Schedule 1 of the Respondents' Affidavit of Documents and any other documents listed in the affidavits of documents filed by the parties in this application, or otherwise produced in the course of this proceeding, with respect to which a claim for confidentiality has been advanced which claim has not been withdrawn or determined by the Tribunal. Protected documents adduced in evidence at the hearing of this application shall be identified as such and clearly marked as protected documents.

[5] Protected documents may be disclosed to counsel for the parties, counsels' staff directly involved in this application, Michael Golka, Joel Robinson, independent experts retained by the parties, the Commissioner and the Commissioner's staff directly involved in the application.

[6] This order shall apply to all persons, to the extent that they acquire access to protected documents through this application.

[7] Except in accordance with paragraphs 5 and 9 of this order, no protected documents produced in the course of this application shall be disclosed except with the prior written consent of the person that claimed confidentiality over the document.

[8] A party may, at its option, provide another party with copies of electronic versions of its own documents.

[9] Prior to gaining access to Protected Documents referred to in this order, independent experts permitted by this order to have such access shall execute a confidentiality agreement in the form attached as Schedule A. A confidentiality agreement signed pursuant to this order shall be filed promptly with the Registrar of the Tribunal who shall retain all such agreements in confidence until completion or final disposition of this application and any related appeals, at which time the agreements may be disclosed to the Parties upon request.

[10] If a party is required by law to disclose a protected document, or if a party receives written notice from a person who has signed a confidentiality agreement pursuant to this order that they are required by law to disclose a protected document, that party shall give prompt written notice to the party that claimed confidentiality over the protected document so that the party that claimed confidentiality may seek a protective order or other appropriate remedy.

[11] For greater certainty, all persons, including the Commissioner and his staff, who obtain access to documents through the discovery process in this application are subject to an implied undertaking to use the documents and information for the purposes of this application and any related appeals only.

[12] Counsel for the Commissioner, and the Commissioner and his staff, may make such copies of the protected documents as they require in connection with this proceeding. Subject to the conditions described in paragraph 9, copies of protected documents may be provided to independent experts retained by the Commissioner.

[13] Upon completion or final disposition of this application and any appeals, all protected documents and any copies of protected documents disclosed in accordance with this order, with the exception of protected documents in the possession of counsel for the Commissioner, the Commissioner and his staff, shall be returned to the party that listed the documents in its affidavit or produced the document, unless the documents have become public or the party that designated the document confidential states, in writing, that they may be disposed in some other manner. The protected documents and any copies in the possession of the Commissioner and his staff shall be dealt with as directed by the Tribunal.

[14] The termination of proceedings in this application shall not relieve any person to whom protected documents were disclosed pursuant to this order from the obligation of maintaining the confidentiality of such information in accordance with the provisions of this order and any confidentiality agreement.

DATED at Ottawa, this 4th day of July, 2001.

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

(s) Marc Nadon

SCHEDULE "A"

IN CONSIDERATION of being provided with documentation in connection with this application over which claims for confidentiality have been advanced, I, _____, in the Province of _____, hereby agree to maintain the confidentiality of the documentation so obtained. I will not copy or disclose the documentation so obtained or any information therein, to any other person, except persons permitted by the order granted by the Competition Tribunal on _____, nor will I use the documentation so obtained or any information therein for any purpose other than in connection with this application and any related appeals only.

Upon completion of this application and any related appeals, I agree that such documentation, and any copies of same, shall be dealt with in accordance with any applicable order of the Competition Tribunal.

I acknowledge that I am aware of the order granted by the Competition Tribunal on _____, in this regard, a copy of which is attached to this agreement, and agree to be bound by same. I acknowledge that any breach of this agreement by me will be considered to be a breach of the said order of the Competition Tribunal. I further acknowledge and agree that the Commissioner of Competition ("Commissioner"), P.V.I. International, Inc., or any other owner of the documentation may not have an adequate remedy at law and would be irreparably harmed in the event that any of the provisions of this agreement are not performed in accordance with its specific terms or otherwise breached. Accordingly, I agree that any one or more of the Commissioner, P.V.I. International, Inc., or any other owner shall be entitled to injunctive relief to prevent breaches of this agreement and to specifically enforce the terms and provisions hereof, in addition to any other remedy to which they may be entitled at law or in equity.

In the event that I am required by law to disclose any of the documentation which is subject to this agreement, I will provide counsel for the party on whose behalf I have been retained with prompt written notice so that the person that claimed confidentiality over such documentation may seek a protective order or other appropriate remedy. In any event, I will furnish only that portion of the documentation which is legally required and I will exercise my best efforts to obtain reliable assurance that confidential treatment will be accorded to the documentation.

I will promptly, upon the request of the party providing the documentation, advise where such documentation is kept by me and at the conclusion of my involvement in this application and any related appeals, destroy the documentation or deliver it to the said party without retaining any copies thereof. I will destroy all documents received by me relating to such documentation, except that I may retain in my confidential files, subject to the requirements of confidentiality imposed by this agreement, materials prepared by me, such as study results and materials of a general nature which do not replicate any confidential documents.

I hereby attorn to the jurisdiction of the Federal Court of Canada and/or the Competition Tribunal to resolve any disputes arising under this agreement.

SIGNED, SEALED AND DELIVERED before a witness this _____ day of _____, 2000.

(Witness Signature)

(Print Name)

(Signature)

xxxxxx

APPEARANCES:

For the applicant:

The Commissioner of Competition

John L. Syme

For the respondents:

P.V.I. International, Inc., Michael Golka and Darren Golka

Michael Golka

Joel Robinson