



Reference: *Commissioner of Competition v. P.V.I. International Inc.*, 2001 Comp. Trib. 017
File no.: CT2001001
Registry document no.: 015

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 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
Darren Golka
(respondents)



Date of pre-hearing conference call: 20010524
Member: McKeown J. (Chairman)
Date of reasons and order: 20010530
Reasons and order signed by: McKeown J.

**REASONS AND ORDER REGARDING MOTION FOR DISMISSAL OF THE
COMMISSIONER'S APPLICATION**

[1] On March 1, 2001, the Commissioner of Competition (the "Commissioner") brought an application pursuant to subsection 74.1(1) of the *Competition Act*, R.S.C. 1985, c. C-34 (the "Act") against the respondents, P.V.I. International Inc., Michael Golka and Darren Golka for various orders in relation to alleged deceptive marketing practices in the promotion of the Platinum Vapor Injector fuel saving device.

[2] In his application, the Commissioner submits that the respondents made certain claims about the ability of the Platinum Vapor Injector to save fuel and reduce harmful emissions which were false or misleading, and were not based on adequate and proper tests.

[3] On May 17, 2001, the respondents filed a motion for an order dismissing the Commissioner's application without a hearing. This motion was heard by conference call on May 24, 2001.

[4] The respondents submit that "this case" has already been adjudicated in the United States by the Consumer Protection Division of the US Postal Service. Further, they argue that, though consumer protection laws in Canada may be different from the "corresponding laws" in the United States, no law may be applied until the "Fact Finder" has determined the facts. The respondents submit that "the science which underpins the Platinum Vapor Injector is identical in both countries."

[5] The Commissioner submits that the motion is, in effect, an application for summary judgement. The Commissioner submits that quasi-judicial tribunals such as the Competition Tribunal have only such jurisdiction and powers as are provided for in their enabling statute or such jurisdiction and powers as may be inferred by "necessary implication". According to the Commissioner, the Competition Tribunal does not have the necessary jurisdiction to grant the respondents' motion.

[6] The Tribunal is of the view that it does not have either the express statutory jurisdiction or an implied jurisdiction to grant summary judgment. Indeed, there is no provision in the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.), as amended (the "CTA") which expressly provides the Tribunal with the jurisdiction to grant summary judgment. Further, there is no evidence of practical necessity for implying a general power to grant summary judgment. The Tribunal relies on the reasoning of the Federal Court of Appeal in *Reference Re National Energy Board Act*, (1986), 29 D.L.R. 4th 35 (F.C.A.).

FOR THESE REASONS, THE TRIBUNAL ORDERS THAT:

[7] The respondents' motion is hereby dismissed.

DATED at Ottawa, this 30th day of May, 2001.

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

(s) W.P. McKeown

APPEARANCES

For the applicant:

The Commissioner of Competition

John Syme

For the respondents:

P.V.I. International Inc.

Michael Golka

Darren Golka

Michael Golka

Joel Robinson