

File No. CT-2001/001

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF THE *COMPETITION ACT*, R.S., 1985, c. C-34, as amended;**

**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*

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED	MAR 1 2001 <i>gl</i>
REGISTRAR — REGISTREUR	
OTTAWA, ONT.	#001

**B E T W E E N :**

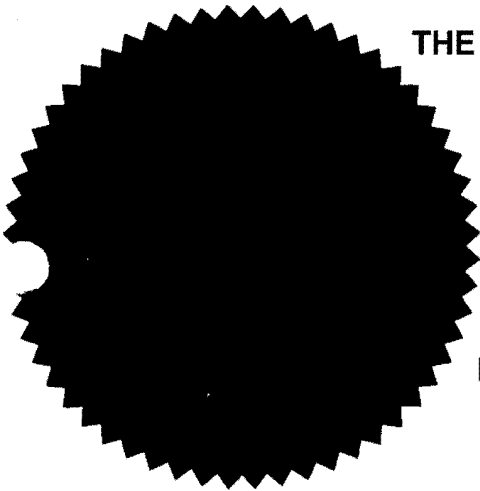
**THE COMMISSIONER OF COMPETITION**

**Applicant**

**-and-**

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

**Respondents**




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**NOTICE OF APPLICATION**

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**TAKE NOTICE** that the Applicant will make an application to the Competition Tribunal (the "Tribunal") pursuant to s.s. 74.1(1) of the *Competition Act* (the "Act") for:

1. An order that the Respondents and any person acting on their behalf or for their benefit, including all directors, officers, employees, agents or assigns of the Respondents, or any other person or corporation acting on behalf of any or all of the Respondents (hereinafter the foregoing persons are referred to as the "Collective Respondents"), shall for a period of 10 years from the date of such order, cease making, causing to be made, or permitting to be made, by any means whatsoever, false or misleading representations to the public for the purpose of promoting the use of a device known as the "Platinum Vapor Injector" (hereinafter "the PVI") or any similar allegedly gas-saving, emission-reducing and/or performance-enhancing device; and, without limiting the generality of the foregoing, the Collective Respondents, or any of them, shall cease making, causing to be made, or permitting to be made by any means whatsoever, representations to the public that create a false or misleading general impression regarding the PVI's or any similar device's capacity:
  - (a) to increase the gasoline mileage or efficiency or diesel mileage or efficiency of vehicles, boats, or other machines which are propelled by or powered by internal combustion engines; and
  - (b) to reduce or eliminate certain harmful emissions or "pollution" emitted by vehicles, boats, or other machines which are propelled by or powered by internal combustion engines;

2. An order that the Collective Respondents or any of them, shall for a period of 10 years from the date of such order, cease making, causing to be made, or permitting to be made, by any means whatsoever, any false or misleading representations for the purpose of promoting the use of the PVI or any similar allegedly gas-saving, emission-reducing and/or performance-enhancing device, which create the general impression that the PVI, or a similar device, has been endorsed or tested and approved as a fuel-saving, emission-reducing and/or performance-enhancing device, by any governmental authority, including courts of law, in Canada, the United States or elsewhere;
  
3. An order that the Collective Respondents or any of them, shall for a period of 10 years from the date of such order, cease making, causing to be made, or permitting to be made, by any means whatsoever, any representations to the public for the purpose of promoting the use of the PVI, or any similar allegedly gas-saving, emission-reducing and/or performance-enhancing device, in the form of a statement, warranty or guarantee of the performance or efficacy of the PVI or any similar device, unless and until the Respondents perform such adequate and proper tests as are necessary to substantiate such statements, warranties or guarantees. Without limiting the generality of the foregoing, such representations include representations regarding the PVI's or any similar device's capacity:

- (a) to increase the gasoline mileage or efficiency or diesel mileage or efficiency of vehicles, boats, or others machines which are propelled by or powered by internal combustion engines;
- (b) to increase the percentage of fuel burnt in the average engine from 68% of each liter to 90%;
- (c) to make non-burning fuel burn;
- (d) to substantially or dramatically reduce or entirely eliminate certain harmful emissions or "pollution" emitted by vehicles, boats, or other machines which are propelled by or powered by internal combustion engines;
- (e) to increase the octane level of regular gasoline and eliminate the need to use high octane gasoline with certain internal combustion engines;
- (f) to increase the "pulling power" of vehicles equipped, propelled or powered by internal combustion engines;
- (g) to eliminate engine "knock and ping" in internal combustion engines;

- (h) to generally improve the performance of internal combustion engines;
  - (i) to extend the engine life of internal combustion engines;
  - (j) to extend the life expectancy of catalytic converters installed on vehicles with internal combustion engines; and
  - (k) for the diesel version of the PVI, to reduce oil consumption by up to 75%; to increase the mileage between required vehicle servicing or maintenance; and, to extend engine life;
4. An order that the Collective Respondents or any of them, shall for a period of 10 years from the date of such order, not represent to the public for the purpose of promoting the use of the PVI, or any similar gas-saving, emission-reducing and/or performance-enhancing device, that a test has been made as to the performance and efficacy of the PVI or any similar device, unless they can establish that:
- (a) such representation was previously made or published by the person by whom the test was made; or

(b) such representation was, before being made or published, approved and permission to make or publish it was given in writing by the person by whom the test was made,

and that the representation made by the Respondents or any of them, accords with the representation previously made, published or approved;

5. An order requiring the Respondents, within 30 days of the issuance of any order the Tribunal makes in connection with this application, to publish a notice or notices, in such manner and at such times as the Tribunal may specify, to bring to the attention of the class of persons likely to have been reached or affected by the Collective Respondents conduct: the name under which the Collective Respondents carry on business; and, the Tribunal's determination with respect to this application. The notice or notices would include:

(i) a description of the reviewable conduct,

(ii) the time period and geographical area to which the conduct related, and

(iii) a description of the manner in which any representation or advertisement was disseminated.

6. An order that the Respondents, within 30 days of the issuance of any order the Tribunal makes in connection with this matter, provide a copy of that order to all distributors, agents or other persons who are engaged or have been engaged in the promotion, marketing, distribution or sale of the PVI during the period from October 1, 1998 through the date of the issuance of the Tribunal's order;
7. An order that Respondents, within 30 days of the issuance of any order the Tribunal makes in connection with this matter, withdraw all promotional materials which are in the possession of the Respondents' distributors, agents or other persons who are engaged or have been engaged in the promotion, marketing, distribution or sale of the PVI;
8. An order that the Respondents pay an administrative monetary penalty or monetary penalties as the court may specify; and
9. Such further and other order as to this Honourable Tribunal seems just.

AND TAKE NOTICE that in support of this Application, the Applicant will rely on the following Statement of Grounds and Material Facts.

**STATEMENT OF GROUNDS AND MATERIAL FACTS**

**I. GROUNDS FOR APPLICATION**

10. The Applicant states that in connection with the promotion and sale of the PVI to the public, the Respondents have engaged in and continue to engage in reviewable conduct, contrary to paragraph 74.01(1)(a) of the Act. Specifically, the Respondents have, for the purpose of promoting a business interest generally, and promoting the use of the PVI in particular, made and continue to make representations to the public which are false or misleading in a material respect and which create a false or misleading general impression regarding:

- (a) the capacity of the PVI to affect various improvements in engine and exhaust system performance of vehicles powered or propelled by gasoline or diesel-fired internal combustion engines. Those improvements include the improvements set out in paragraph 1 of this Application; and
- (b) the endorsement or approval of the PVI as a fuel-saving, emission-reducing and/or performance-enhancing device, by certain government authorities.

11. The Applicant states that in connection with the promotion and sale of the PVI to the public, the Respondents have engaged in and continue to engage in



reviewable conduct contrary to paragraph 74.01(1)(b) of the Act. Specifically, the Respondents have, for the purposes of promoting a business interest generally, and promoting the use of the PVI in particular, made and continue to make representations to the public in the form of statements regarding the performance and efficacy of the PVI, which statements are not based on adequate and proper tests. These statements include those statements set out in paragraph 3 of this Application.

12. The Applicant further states that, in connection with the promotion and sale of the PVI to the public, the Respondents have engaged in and continue to engage in reviewable conduct, contrary to paragraph 74.02 of the Act. Specifically, the Respondents have, for the purpose of promoting a business interest generally, and promoting the use of the PVI in particular, made and continue to make representations to the public that tests have been made as to the performance and efficacy of the PVI, where the Respondents cannot establish:

-that such representations were previously made or published; or, alternatively, that they received permission in writing to publish such representations; and

-that the representation made by the Respondents or any of them, accords with the representation previously made, published or approved.

## II. MATERIAL FACTS

### Introduction

#### (a) The Parties

13. The Applicant is the Commissioner of Competition, appointed under section 7 of the Act.
  
14. The Respondent, P.V.I. International Inc. ("PVI International"), is a corporation incorporated under the Alberta *Business Corporations Act*. Corporations incorporated under the Alberta *Business Corporations Act*, are assigned a "corporate access number" by the Alberta Registrar of Corporations. PVI International has corporate access number 20550516. The corporation which is now called PVI International Inc. with corporate access number 20550516, has the following corporate history:
  - a. The corporation was incorporated on December 30, 1992 under the name Rainbow Valley Limousin Ltd. At the time of incorporation, Gary Olin was named the sole director of the corporation;
  
  - b. On January 6, 1993, 100 Class "A" common shares of the corporation were issued to Michael Golka. On January 13, 1993, Mr. Olin ceased to be a director and Michael Golka became the sole director of the

corporation. As of the date of this application, Michael Golka remained the sole director of the corporation;

- c. On April 2, 1996, the name of the corporation was changed from Rainbow Valley Limousin Ltd. to Golka Enterprises Ltd.;
  - d. On April 3, 1996, an additional 155 Class "A" common shares of the corporation were issued to Michael Golka;
  - e. On August 28, 1998, the name of the corporation was changed from Golka Enterprises Ltd. to Gasaver Canada Inc.;
  - f. On September 15, 1998, 245 Class "A" common shares of the corporation were issued to Darren Golka; and
  - g. On February 26, 1999, the name of the corporation was changed from Gasaver Canada Inc. to P.V.I. International Inc.
15. Article 1.1 of the corporation's Articles of Incorporation, as amended, provides that subject to certain limited exceptions set out in the Alberta *Business Corporations Act*, at meetings of the shareholders the holders of Class "A" common shares of the corporation are entitled to one vote for each Class "A"

share held by them. Subject to the aforementioned exceptions, the holders of Class "B" and Class "C" shares of the corporation are not entitled to "vote" their shares.

16. As of the date of this application, Michael Golka held 255 Class "A" shares and Darren Golka held 245 Class "A" shares of PVI International. No other person holds any Class "A" shares of PVI International. Michael and Darren Golka control PVI International.
17. As of the date of this application, Michael Golka was PVI International's Chief Executive Officer, President and Secretary-Treasurer. As of the date of this application, Darren Golka was PVI International's Vice-President.

**(b) What is the PVI?**

18. The PVI is a device which may be installed on gasoline or diesel engines. The device consists of a 4" x 7" plastic dispenser, a rubber hose, a plastic "T connector," a tie strap and 5 vials of a liquid. The dispenser is designed to be mounted inside a vehicle's engine compartment.
19. Once installed in the engine compartment, the dispenser is filled with the "specially formulated, non-freezing solution" and "PVI concentrate," which is made up of platinum, rhodium and rhenium. The dispenser then is connected to

an existing vacuum line on the engine using the rubber hose and "T connector."

The Respondents' product literature indicates that for most vehicles, one vial should be added to the dispenser for every 10,000 kilometres a vehicle is driven.

The Respondents' product literature also states that when an engine fitted with the PVI is running, the PVI continuously injects platinum, rhodium and rhenium into the engine's combustion chamber(s).

20. On October 1, 1998, the Respondents, Michael Golka and Darren Golka, and Barnett J. Robinson ("Robinson"), the inventor of the PVI and a US citizen, entered into an agreement, pursuant to which Michael and Darren Golka became the exclusive distributors of the PVI in Canada.
  
21. The PVI is sold directly by the Respondents through a call-centre sales office (1-877- LESS-GAS) in Edmonton, Alberta. The PVI is also sold by the Respondents' distributors. The Respondents and their distributors sell the gasoline version of the PVI for between \$259 and \$380 and the diesel version of the PVI for \$549. The Respondents have represented to the public by the various means described below, that over 400,000 PVI's units have been sold.

**(c) Patents**

22. The Respondents rely on Canadian and US patents issued in respect of the PVI, and similar predecessor devices, in support of certain of their representations

regarding the capacity of the PVI to affect various improvements in the performance of internal combustion engines.

23. On December 29, 1987, Robinson was issued a patent by the Canadian Patent Office for a device similar to the PVI (Canadian patent No. 1,230,818) (the "Canadian patent"). The patented device is identical to the PVI in all respects, except that the patent does not provide for the use of platinum or rhodium as catalysts. The "claims" in the Canadian patent include specific and detailed claims for the use of certain quantities of rhenium as a catalyst for "the more complete combustion of hydrocarbons."
24. On February 4, 1992, Robinson was issued a patent by the US Patent and Trademark Office (US patent No. 5,085,841) in respect of the PVI (hereinafter the "First US patent"). That patent contains specific and detailed "claims" for the use of platinum, rhodium and rhenium as catalysts.
25. Neither the Canadian patent nor the First US patent make reference to the respective patented devices being for use in increasing the fuel efficiency of internal combustion engines.
26. On January 23, 2001, Robinson was issued a patent by the US Patent and Trademark Office (US patent No. 6,176,701) in respect of a device similar to the

PVI in every respect, except that the patent "claims" provide for the use of platinum, rhodium, rhenium and molybdenum as catalysts (hereinafter the "Second US Patent"). The Second US patent contains "claims" which specifically refer to improving the fuel efficiency of internal combustion engines.

### **Reviewable Conduct**

#### **(a) Form of Representations**

27. Between October, 1998 and the date of this application (the "Relevant Period"), the Respondents advertised the PVI in approximately 100 different newspapers across Canada and in a variety of other flyer-like, magazine and trade publications such as the "Bargain-Finder" and "Ontario Farmer." (The Respondent's newspaper, magazine and trade publication advertisements are hereafter collectively referred to as "print ads").
28. The Respondents have also run radio advertisements promoting the PVI on a number of radio stations during the Relevant Period.
29. During the Relevant Period, the Respondents have maintained an Internet site dedicated to promoting the sale of the PVI (<http://www.pvitech.com/pvi/>).

30. Finally, during the Relevant Period, the Respondents made representations regarding the PVI through persons employed at their call centre (1-877-LESS GAS). The call centre telephone number is featured in the Respondents' print ads, radio spots and on their Internet site.
  
31. The representations made in the Respondents' print ads and radio spots, and the representations appearing on the Respondents' Internet site, varied in certain respects during the Relevant Period. However, the general impression conveyed by those representations remained consistent throughout the Relevant Period.

**(b) Reviewable Conduct under paragraph 74.01(a) of the Act**

32. Subsection 74.01(1) of the Act provides as follows:

A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

(a) makes a representation to the public that is false or misleading in a material respect;

33. The false and/or misleading representations made by Respondents during the Relevant Period fall into the following 3 categories:

1. representations which create a false or misleading general impression as to the capacity of the PVI to increase the gasoline mileage or efficiency or



diesel mileage or efficiency of vehicles, boats, or others machines which are propelled by or powered by internal combustion engines;

2. representations which create a false or misleading general impression as to the capacity of the PVI to reduce the emissions or "pollution" emitted from or by internal combustion engines;
3. representations which create a false or misleading general impression regarding the endorsement or approval of the PVI as a fuel-saving, emission-reducing or performance-enhancing device by government authorities.

**(1) Representations Regarding Fuel Savings**

34. The Respondent's representations regarding fuel savings which may be gained through use of the PVI have varied over the Relevant Period; however, the general impression conveyed by those representations has remained the same during that period. That general impression is that the installation of the PVI on an engine will result in substantial fuel savings. Examples of those representations and the medium in which they appeared, are as follows:

**Print Ad Representations regarding fuel savings**

- PVI “increases gas mileage by 22% while reducing pollution.”;
- PVI is “guaranteed to increase gas mileage and reduce emissions.”;
- “Platinum has unique ability to make non-burning fuel burn.”;
- “You increase the percentage of fuel burning in the average engine from 68% of each gallon to 90%.”;

**TEST DATA**

In its study of the fuel saving claims of the P.V.I., the U.S. Government produced the following test data from a fleet of 15 identical 5-liter vehicles

Vehicle Number	Miles/gal. without P.V.I.	Miles/gallon with P.V.I.	Percentage increase
59	14.4	21.3	47.9%
63	13.5	19.9	47.4%
53	16.9	24.8	46.7%
51	15.6	22.5	44.2%
56	14.6	20.5	40.4%
64	11.5	15.9	38.2%
60	15.9	21.5	35.2%
55	11.7	15.7	34.2%
68	17.2	22.1	28.5%
50	13	16.7	28.4%
62	16.9	21.1	24.8%
66	19	21	10.5%
57	17.3	19.1	10.4%
54	15.7	16.8	7.0%
65	15.5	13.5	-12.9%
Average	15.5	19.5	27.4%

**Internet Representations regarding fuel savings**

- **"15% to 30% fuel savings**  
With potentially more complete combustion using platinum, rhodium and rhenium, it can take less gas to drive the same distance. Everyone likes to improve gas mileage and save on fuel."

Baseline Fuel consumption without PVI .....13.18 mpg

Test No.	MPG	Test No	MPG	Test No	MPG
1	15.72	8	15.67	15	15.57
2	15.71	9	15.70	16	15.60
3	15.65	10	15.66	17	15.63
4	15.68	11	15.63	18	15.69
5	15.70	12	15.58	19	15.63
6	15.69	13	15.60		
7	15.71	14	15.62		

Average Fuel Consumption with PVI.....15.66 mpg  
Percentage Improvement.....18.8%

**Radio Representations regarding fuel savings**

- "Next time you reach for the gas pump, how would you like to save up to 20 cents on every liter of gasoline you buy?

Now in Canada, the Platinum Vapour Injector. A simple, inexpensive device that's proven to dramatically reduce fuel costs.

The PVI injects platinum vapour directly into your engine to improve fuel combustion up to 30%.

The result? Our customers report up to a 30% savings in gas. That's money in your pocket. ...

Call 877.LESS.GAS now and start saving today!

877.LESS.GAS - Your best defence against high gas prices."

***Call Centre representations regarding fuel savings***

- Officers of the Competition Bureau, posing as prospective purchasers of the PVI, telephoned the Respondents' toll-free number to obtain information regarding the PVI. The Respondents' sales representatives confirmed to the officers that, with the installation of the PVI on their vehicles, they could expect to obtain fuel savings in the 22% to 28% range.
35. The foregoing print, radio, Internet and oral representations each create the general impression that the installation of the PVI on a vehicle powered by an internal combustion engine will result in a substantial increase in the mileage or fuel efficiency of that vehicle. That general impression is false and/or misleading in a material respect.
36. The Applicant states that installing the PVI on a vehicle powered by an internal combustion engine will not result in any statistically significant increase in the fuel efficiency of that vehicle. Environment Canada tested the PVI to determine whether the installation of that device on vehicles with internal combustion engines increases the fuel efficiency or mileage of such vehicles. Environment Canada concluded that the installation of the PVI on a vehicle would not increase its fuel efficiency. The US Environmental Protection Agency tested the Platinum Gasaver, the predecessor device to the PVI, and concluded that the installation of that device on a vehicle would not increase its fuel efficiency.

37. The Applicant also states that a table submitted by Robinson, the inventor of the PVI, to the US patent Office in connection with the Second US Patent, contradicts the fuel efficiency representations made by the Respondents regarding the PVI. That table forms part of "Detailed Description of the Invention" section of the Second US Patent. The table contains data comparing the fuel efficiency of 6 vehicles in the following 3 operating states:
- a. mileage of vehicle with engine as produced by the manufacturer;
  - b. mileage of vehicle with engine fitted with the device patented under the First US Patent (i.e. the PVI); and
  - c. mileage of vehicle with engine fitted with the device patented under the Second US Patent.

38. The following table summarizes the referenced table in Robinson's Second US Patent application, insofar as it relates to the PVI:

	<b>Km/liter - no PVI</b>	<b>Km/liter - with PVI</b>	<b>percent increase</b>
<b>highway driving</b>	6.9	7.6	10.1%
<b>city driving</b>	8.5	9.2	7.9%

39. The Applicant disputes the foregoing data and the test results filed as part of Robinson's Second US patent application. However, as the foregoing illustrates, Robinson's own data, filed with the US Patent Office, indicates that vehicles fitted with the PVI obtained only a 9% gain in fuel efficiency. In other words, the

inventor of the PVI and the person from whom the Respondents purchase the PVI has in a formal legal process “declared” that the PVI increases fuel efficiency by only 9%: that is, less than half the 22% fuel efficiency increase that the Respondents have represented the PVI will produce.

**(2) Representations Regarding Reduction or Elimination of Emissions**

40. The Respondent’s representations to the public regarding the reduction or elimination of harmful emissions through use of the PVI have varied over the Relevant Period; however, the general impression conveyed by those representations has remained the same. That general impression is that the installation of the PVI on an engine will result in substantial reductions in emissions of total hydrocarbons, oxides of nitrogen and carbon monoxide. Examples of those representations are as follows:

***Print Representations Regarding Reduction or Elimination of Emissions***

- “.... the PVI continuously dispenses microscopic amounts of platinum into the combustion chambers through the engine’s vacuum line, creating an increase in fuel-burning efficiency which results in a substantial reduction in toxic emissions, significantly improved gas mileage and extended engine life.”
- “What would you say if you were told a compact device exists that will lower your vehicle’s emissions to satisfy North America’s toughest standards and as a bonus, save you 15 to 30% in fuel costs while extending your engine life by removing abrasive carbon deposits? The answer is likely to be one of skepticism, but the facts support the claims.”

**Radio Representations Regarding Reduction or Elimination of Emissions**

- "... . You can also experience a drastic reduction in harmful emissions. The PVI not only saves you money, it can help save our environment as well."

**Internet Representations Regarding Reduction or Elimination of Emissions**

- "With PVI installed, we directly reduce toxic pollution when we combust more of the fuel in the engine. In addition to this, there is a further overall reduction of pollution (HC, CO, Nox) and CO2 emissions with every litre of gasoline that PVI saves. According to National Resources Canada, for every litre of gasoline saved, CO2 emissions are reduced 2.5kg! With PVI being installed on more and more vehicles, the positive environmental impact will be substantial.

Below are emission test results for various vehicles. As the test data demonstrates, PVI drastically reduces toxic emissions on any vehicle. A vehicle with two sets of data reflects the idle and the cruise tests respectively."

<b>Vehicle Type</b>	<b>HC</b>	<b>HC</b>	<b>%</b>	<b>CO</b>	<b>CO</b>	<b>%</b>	<b>NOX</b>	<b>NOX</b>	<b>%</b>
	<b>Before</b>	<b>After</b>	<b>Change</b>	<b>Before</b>	<b>After</b>	<b>Change</b>	<b>Before</b>	<b>After</b>	<b>Change</b>
1990 Chev ½ ton Truck no catalytic converter	422	25	94.1%	1.18	0	100%			
1992 Chev 4x4 ½ ton	289 116	94 23	67.5% 80.2%	0.92 0.42	0.01 0.06	98.9% 85.7%			
1994 Ford F250	25 1	6 0	76.0% 100%	1.87 0.57	0.54 0.41	71.1% 28.1%			
1995 S10 Sonoma	54 26	0 0	100% 100%	0.04 0.12	0 0	100% 100%			
1979 Saab 99GL no catalytic converter	253 200	49 38	80.6% 81.0%	5.21 4.96	0.2 1.15	96.2% 76.8%			
1987 Pontiac	158	10	93.7%	3.8	0.02	99.5%			
1989 Honda Accord	171 74	10 6	94.2% 91.9%	0.43 0.52	0 0.02	100% 96.02%			
1993 Chrysler Intrepid	3015	0	100% 100%	0.01 0.00	0	100% None			
1994 Mercury Sable Aircare Test	19 33	9 21	52.6% 36.4%	0.17 0.13	0.07 0.09	58.8% 30.8%	446	234	47.5%
1990 Lumina Van	47	25	46.8%	0.15	0	100%			
1992 BMW Drive Clean Test	204	64	68.6%	0.57	0.14	75.4%	1901	202	89.4%

41. The foregoing print, radio and Internet representations each create the general impression that installing the PVI on a vehicle powered by an internal combustion engine will result in a substantial decrease in harmful exhaust emissions. That general impression is false and/or misleading in a material respect.
  
42. Environment Canada tested the PVI to determine whether the installation of the PVI on vehicles with internal combustion engines would decrease emissions of carbon monoxide, carbon dioxide, oxides of nitrogen and total hydrocarbons. It concluded that the installation of the PVI on an automobile would not result in a statistically significant reduction in emissions of those pollutants. The US Environmental Protection Agency tested the Platinum Gasaver, the predecessor device to the PVI, and concluded that the installation of that device on a vehicle would not decrease emissions of the referenced pollutants.

**(3) Representations Regarding Government Endorsement or Approval**

43. The Respondent's representations to the public regarding the approval or endorsement of the PVI have varied over the Relevant Period; however, the general impression conveyed by those representations has remained the same. That general impression is that various levels of government in both Canada and the US have approved the PVI and, in particular, have confirmed the PVI's capacity to increase fuel efficiency, reduce emissions and increase the octane level of regular gasoline. Examples of these representations are as follows:



### **US Government**

- “After a five year review the U.S. government concluded: ‘Independent testing shows greater fuel savings with the PVI than the 22% claimed by the developer.’”
- “U.S. Consumer Protection has determined that the fuel saving claims of this advertisement are 100% accurate.”;
- “US GOVERNMENT CONFIRMS THAT THE PVI WORKS”

#### TEST DATA

In its study of the fuel saving claims of the P.V.I., the U.S. Government produced the following test data from a fleet of 15 identical 5-liter vehicles

Vehicle Number	Miles/gal. without P.V.I.	Miles/gallon with P.V.I.	Percentage increase
59	14.4	21.3	47.9%
63	13.5	19.9	47.4%
53	16.9	24.8	46.7%
51	15.6	22.5	44.2%
56	14.6	20.5	40.4%
64	11.5	15.9	38.2%
60	15.9	21.5	35.2%
55	11.7	15.7	34.2%
68	17.2	22.1	28.5%
50	13	16.7	28.4%
62	16.9	21.1	24.8%
66	19	21	10.5%
57	17.3	19.1	10.4%
54	15.7	16.8	7.0%
65	15.5	13.5	-12.9%
Average	15.5	19.5	27.4%

44. The foregoing representations regarding the "US Government" are false. Neither the "US Government" nor any of its agencies has tested the PVI and concluded that it "saves fuel" or that "it works."
45. In fact, as noted the EPA concluded that the installation of the Platinum Gasaver, the predecessor to the PVI, on vehicles with internal combustion engines would not result in greater fuel efficiency.
46. Moreover, in November, 1992, the US Federal Trade Commission ("FTC") issued a brochure entitled "Gas Saving Products." In that brochure, the FTC described a variety of "gas saving" devices that have from time to time been marketed in the United States. The brochure states:
- "... the Federal Trade Commission (FTC) warns you to be wary of any gas-saving claims for automotive devices or oil and gas additives. Even for the few gas-saving products that have been found to work, the savings have been small. This brochure alerts you to bogus "gas-saving" ad claims, tells you what to do if you have a complaint, and suggests practical ways to get better gas mileage. ...
- No government agency endorses gas-saving products for cars. The most that can be claimed in advertising is that the EPA has reached certain conclusions about possible gas savings by testing the product or by evaluating the manufacturer's own test data."
47. The FTC brochure goes on to identify over 50 gas saving devices which have been tested by the EPA, including the Platinum Gasaver. The brochure indicates that the Platinum Gasaver does "not increase fuel economy."

**Canadian/US Government**

48. The Respondents have also represented from time to time in various media that the "...the U.S. and Canadian governments have issued the PVI patents for cleaning out the carbon deposits and raising octane making high octane fuel unnecessary for most vehicles." That representation is false and/or misleading for two reasons.
  
49. The issuance of a patent by Canadian or US patent authorities does not represent an endorsement or guarantee that the patented article will perform the function described in the patent. The patents - in Canada, patent No. 1,230,818 and in the First US patent - merely provide the holder of the patents, Robinson, the exclusive right to make, construct or use the patented device, and to exclude others from its use.
  
50. Moreover, the First US patent makes no reference to increasing the octane level of gasoline or to cleaning out the carbon deposits from engines. The Canadian patent, referred to in paragraph 23 above, is not in respect of the PVI, but a predecessor device to the PVI. In other words, there is no Canadian patent for the PVI. The Respondents' representation with respect to the PVI is, in effect, based upon a patent which does not relate to that device.

**Other Governments**

51. The Respondents have represented from time to time in various media that, the PVI is recognized by BC Aircare and the Ontario Drive Clean program. That representation creates the general impression that those agencies have, in some manner, approved or endorsed the PVI. That general impression is false. Neither BC Aircare nor Ontario Drive Clean have approved, endorsed or recognized the PVI.

52. The Respondents have represented from time to time in various media that the PVI:

“meets and exceeds all emission controls in all 50 states including California, which has tougher standards than any province in Canada. In fact, the California Air Resources Board (CARB) allows the sale of the PVI into California as it was tested and proven safe for the environment.”

53. That representation creates the general impression that CARB has, on the basis of test results provided to CARB, approved or endorsed the PVI as an emission control device. That general impression is misleading. CARB has simply provided a letter to National Fuelsaver Inc., the corporation that markets the PVI in the US, indicating that the installation of the Fuelsaver (i.e. the PVI) would not constitute a violation of the “tampering prohibition” set out in certain Regulations promulgated by the EPA pursuant to the US *Clean Air Act*. CARB has not endorsed, approved or otherwise recognized the PVI or its US equivalent, the Fuelsaver, as an emission control device.

**(c) Reviewable Conduct under paragraph 74.01(1)(b) of the Act**

54. Paragraph 74.01(1)(b) of the Act provides as follows:

74.01 (1) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

(b) makes a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an adequate and proper test thereof, the proof of which lies on the person making the representation;

55. Paragraph 74.01(1)(b) of the Act specifically places the burden of proof on the person making such a representation, to demonstrate that the relevant statement, warranty or guarantee has been substantiated by an “adequate and proper” test.

56. The Collective Respondents have, for the purpose of promoting, directly or indirectly, the sale of the PVI, made a number of representations to the public in the form of statements, warranties and/or guarantee of the performance and efficacy of the PVI. These representations include statements, warranties and/or guarantee regarding the PVI’s capacity:

(a) to increase by 22% the gasoline mileage or efficiency or diesel mileage or efficiency of vehicles, boats, or others machines which are propelled by or powered by internal combustion engines;

- (b) to increase the percentage of fuel burnt in the average engine from 68% of each gallon to 90%;
- (c) to make non-burning fuel burn;
- (d) to “substantially” or “dramatically” reduce or entirely eliminate certain harmful emissions or “pollution” emitted by vehicles, boats, or others machines which are propelled by or powered by internal combustion engines;
- (e) to increase the octane level of regular gasoline and eliminate the need to use high octane gasoline with certain internal combustion engines;
- (f) to increase the “pulling power” of vehicles equipped propelled or powered by internal combustion engines;
- (g) to eliminate engine “knock and ping” in internal combustion engines;
- (h) to generally improve the performance of internal combustion engines;
- (i) to extend the engine life of internal combustion engines;

- (j) to extend the life expectancy of catalytic converter installed on vehicles with internal combustion engines; and
- (k) for the diesel version of the PVI, to reduce oil consumption by up to 75%; to increase the mileage between required vehicle servicing or maintenance; and, to extend engine life.

57. The Applicant states that the foregoing representations are not based on adequate and proper tests and therefore constitute reviewable conduct contrary to paragraph 74.01(1)(b) of the Act. The Applicant makes this statement after having had the benefit of reviewing all of the tests and other material relied on by the Respondents in substantiation of their statements, warranties and guarantees with respect to the PVI. Those tests and that material were provided to the Applicant pursuant to an order issued under s. 11 of the Act.

**(d) Reviewable Conduct under section 74.02 of the Act**

58. Section 74.02 of the Act provides as follows:

74.02 A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of any product, or for the purpose of promoting, directly or indirectly, any business interest, makes a representation to the public that a test has been made as to the performance, efficacy or length of life of a product by any person, or publishes a testimonial with respect to a product, unless the person making the representation or publishing the testimonial can establish that

(a) such a representation or testimonial was previously made or published by the person by whom the test was made or the testimonial was given, or

(b) such a representation or testimonial was, before being made or published, approved and permission to make or publish it was given in writing by the person by whom the test was made or the testimonial was given,

and the representation or testimonial accords with the representation or testimonial previously made, published or approved.

59. During the Relevant Period, the Respondents made representations to the public regarding a number of tests purportedly made on the PVI. These representations include the following:

- “U.S. Consumer Protection has determined that the fuel saving claims of this advertisement are 100% accurate”
- “After a five year study the U.S. government concluded “Independent testing shows greater fuel savings with the PVI than the 22% claimed by the developer.”
- “The U.S. government studied fuel saving test data on vehicles using the PVI Listed below is the data from a fleet of 15 identical 5.0L vehicles.”

60. The Applicant states that during the Relevant Period, the Respondents engaged in reviewable conduct contrary to section 74.02 in light of the fact that the Respondents cannot establish that:

- (a) the foregoing representations were previously made or published by the person by whom the test was allegedly made, or



(b) that the foregoing representations were, before being made or published, approved and permission to make or publish it was given in writing by the person by whom the test was allegedly made  
and that the representations accord with representations previously made, published or approved.

61. The Applicant makes the foregoing statement after having had the benefit of reviewing all of the tests and other material relied on by the Respondents in substantiation of their statements, warranties and guarantees with respect to the PVI. Those tests and that material was provided to the Applicant pursuant to an order issued under s. 11 of the Act.

### **III. Procedural Matters**

62. The Commissioner requests that this proceeding be conducted in the English language.

63. The Commissioner requests the hearing of this application be heard in the City of Ottawa.

64. The address of PVI International Inc. is:

2600, 10180-101 Street,  
Edmonton, Alberta  
T6X 1A1

65. The address of Michael Golka is:

#50, 53049, Range Road 220,  
Androssan, Alberta  
T8E 2C8

66. The address of Darren Golka is

#E104, 319 Saddleback Road,  
Edmonton, Alberta  
T6G 4M5

Dated at Hull, Quebec, this 1st day of March, 2001



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File No.

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF THE *COMPETITION ACT*,**  
R.S., 1985, c. C-34, as amended;

**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**

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**NOTICE OF APPLICATION**

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