

**THE COMPETITION TRIBUNAL**

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

**AND IN THE MATTER** of a Consent Agreement pursuant to section 74.12 of the *Competition Act* with respect to certain deceptive marketing practices of the Respondent under paragraph 74.01(1)(b) of the *Competition Act*.

**BETWEEN:**

**COMMISSIONER OF COMPETITION**

**Applicant**

**- and -**

**TRUE SPORTS, INC.**

**Respondent**

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**CONSENT AGREEMENT**

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**WHEREAS** the Commissioner of Competition (the “Commissioner”) is responsible for the administration and enforcement of the *Competition Act* (the “Act”);

**AND WHEREAS** the Respondent is a designer, manufacturer and marketer of hockey equipment, including hockey helmets;

**AND WHEREAS** the Respondent developed, manufactured and marketed the TRUE Dynamic 9 Pro hockey helmet (the “Product”), which is available throughout Canada through online retailers and brick-and-mortar retailers;

**AND WHEREAS** the Respondent is aware that, in recent years, there has been increased public concern about concussions in hockey;

**AND WHEREAS** experts state that concussions are mainly due to acceleration or deceleration of the brain caused by linear and rotational forces;

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**AND WHEREAS** hockey helmets may not prevent concussions caused by these or other forces, and it remains unclear what role hockey helmets can play in protecting players from concussions;

**AND WHEREAS** since at least November 2019, the Respondent has promoted the Product to the public by making Representations that the Commissioner has concluded create the general impression that the Product reduces strain on the brain by reducing rotational motion due to angled impacts, thereby reducing the risk of minor or severe brain injuries, including concussions;

**AND WHEREAS** the Respondent has made the Representations in a variety of ways, including through the use of diagrams, illustrations and text on its website, namely true-hockey.com, as well as text on the Product packaging and in certain materials and/or displays provided to Authorized Retailers;

**AND WHEREAS** the Commissioner has concluded that the Representations are performance claims within the meaning of paragraph 74.01(1)(b) of the Act, and therefore must be supported by adequate and proper testing;

**AND WHEREAS** such testing must be reflective of the risk or harm that the product is designed to prevent or assist in preventing;

**AND WHEREAS** the Respondent submitted the Product to laboratory testing by a corporation that designs and sells technology that is incorporated into sports helmets (including the Product), allegedly to increase the protection they offer to athletes;

**AND WHEREAS** the Respondent additionally relied on studies concerning brain injuries, the majority of which focused on sports with fundamentally different patterns of injuries than those suffered while playing ice hockey;

**AND WHEREAS** the Commissioner opened an inquiry into this matter to determine if the Representations were supported by adequate and proper testing;

**AND WHEREAS** the Commissioner has concluded that the prior testing conducted by or on behalf of the Respondent was not adequate and proper to support the Representations, in that it was not sufficient to establish that the Product offers protection to players from concussions;

**AND WHEREAS** a relevant consideration for the Commissioner in his evaluation of the testing offered by the Respondent is the absence of an established injury threshold for concussions;

**AND WHEREAS** the Commissioner acknowledges that the Respondent cooperated with the Commissioner's investigation;

**AND WHEREAS** the payment referred to in paragraph 5 of this Agreement reflects, among other things, the low volume of Canadian sales of the Product;

**AND WHEREAS** the requirements in paragraphs 2 through 8 reflect the difficulties imposed on the Respondent due to the COVID-19 Pandemic;

**AND WHEREAS** that for the purposes of this Agreement only, including execution, registration, enforcement, variation or rescission of this Agreement, the Respondent does not contest the Commissioner's conclusions but does not agree with the conclusions and nothing in this Agreement shall be taken as an admission or acceptance by the Respondent of any facts, allegations or conclusions for any other purpose nor shall it derogate from any rights or defences of the Respondent against third parties;

**AND WHEREAS** the Parties are satisfied that this matter can be resolved with the registration of this Agreement which, upon registration, shall have the same force and effect as an order of the Tribunal;

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**NOW THEREFORE** in order to resolve the Commissioner's concerns, the Parties hereby agree as follows:

**I. INTERPRETATION**

1. For the purpose of the Agreement, the following definitions shall apply:
  - a. "**Affiliate**" means an affiliated corporation, partnership or sole proprietorship within the meaning of subsection 2(2) of the Act;
  - b. "**Agreement**" means this Consent Agreement entered into by the Parties pursuant to section 74.12 of the Act;
  - c. "**Authorized Retailer**" means any retailer, whether online or brick-and-mortar, that is authorized by the Respondent to sell the Product in Canada;
  - d. "**Commissioner**" means the Commissioner of Competition appointed pursuant to section 7 of the Act, and his or her authorized representatives;
  - e. "**Compliance Program**" has the meaning set out in Part IV of this Agreement;
  - f. "**Execution Date**" means the date on which the Agreement has been signed by both Parties;
  - g. "**Interpretation Act**" means the *Interpretation Act*, R.S.C. 1985, c. I-21;
  - h. "**Marketing Personnel**" means all current and future senior management of the Respondent and all other employees of the Respondent who are materially involved in the formulation and/or implementation of advertising or marketing policies with respect to the Product or any other ice hockey helmet designed, manufactured or marketed by the Respondents;

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- i. **“Parties”** means the Commissioner and the Respondent collectively, and **“Party”** means any one of them;
- j. **“Person”** means any individual, corporation, partnership, firm, association, trust, unincorporated organization, or other entity;
- k. **“Record”** has the meaning in subsection 2(1) of the Act;
- l. **“Representations”** means any and all representations made, caused to be made, or permitted by or on behalf of the Respondent including any representation on the Website and social media that create the general impression that the Product reduces strain on the brain by reducing rotational motion due to angled impacts, thereby reducing the risk of minor or severe brain injuries including concussions;
- m. **“Respondent”** means TRUE;
- n. **“Similar Products”** means any TRUE ice hockey helmet that purports to offer protection against minor or severe brain injuries, including concussions;
- o. **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2nd Supp.); and
- p. **“TRUE”** means True Sports, Inc., incorporated pursuant to the laws of the State of Delaware, its successors and assigns, all Affiliates, and the respective successors and assigns of each; and
- q. **“Website”** means the website accessible at true-hockey.com via desktop, laptop or mobile device, and any other website owned, controlled or operated by the Respondent and used for the purposes of promoting the Helmet to consumers in Canada.

## II. COMPLIANCE WITH PARAGRAPH 74.01(1)(B) OF THE ACT

- 2. Within 30 days of the Execution Date, the Respondent shall discontinue, take down, conceal or remove any Representations that it has made or is making to the public with respect to the Product or Similar Products, including all Representations displayed on the packaging for the Product and Similar Products that are within its own inventory.
- 3. Within 30 days of the Execution Date, the Respondent shall: (i) request Authorized Retailers to remove all Representations for the Product or Similar Products, including videos and point-of-sale materials, and make best efforts to confirm that it has been complied with; (ii) take all reasonable measures to ensure that their respective sales staff are advised not to make the Representations; and (iii) in good faith and on a best efforts basis, request that the Authorized Retailers remove or conceal all Representations displayed on the packaging for the Product offered for sale to the public and work with

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said Authorized Retailers to achieve this; and shall, within 30 additional business days after the end of the referenced 30-day period, provide a report to the Commissioner's authorized representative setting out the actions it took to comply with this paragraph.

4. The Respondent shall not make or cause to be made any representation to the public that creates the general impression that the Product or Similar Products designed, manufactured or marketed by the Respondent offer protection from brain injuries such as concussions, including but not limited to any representation that creates the general impression that any such helmet can reduce rotational motion transferred to the brain by angled impacts to the head, thereby reducing the risk of minor or severe brain injuries, including concussions, unless such representation is based on adequate and proper testing, as required by paragraph 74.01(1)(b) of the Act.

### **III. PAYMENTS**

#### **PAYMENT IN LIEU OF AN ADMINISTRATIVE MONETARY PENALTY**

5. The Respondent shall make a donation of sports equipment and/or apparel having a total retail value of \$100,000 CDN within five (5) years following the registration of the Agreement to either (i) a registered Canadian charity to be approved by the Commissioner dedicated to removing financial barriers so youth can participate in sports, or (ii) teams, associations or leagues for underprivileged children or youth Canadian hockey players to be approved by the Commissioner. Each installment of the donation shall be a minimum of approximately \$20,000 CDN in retail value. The first instalment of the donation shall be made within 60 days of the registration of this Agreement. Subsequent installments shall be made each year thereafter on or before the anniversary date of the registration of the Agreement, until the donation is made in full. This amount will be in addition to any charitable donations previously committed to or planned by the Respondent.

#### **COSTS**

6. Within 60 days of the Execution Date, the Respondent shall pay the Competition Bureau \$20,000 CDN for costs and disbursements incurred during the course of its investigation into this matter.

### **IV. CORPORATE COMPLIANCE PROGRAM**

7. On or before February 1, 2021, the Respondent shall establish, and thereafter maintain, a Compliance Program, the goal of which will be to promote the compliance of the Respondent with the Act generally, and paragraph 74.01(1)(b) specifically. The Compliance Program shall be framed and implemented in a manner consistent with the Commissioner's bulletin titled "Corporate Compliance Programs", published on the Competition Bureau's website at [www.competitionbureau.gc.ca](http://www.competitionbureau.gc.ca).

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8. During the term of this Agreement, (i) the Respondent shall provide a copy of this Agreement to all Marketing Personnel within 14 days after the date of registration of this Agreement, and (ii) all future Marketing Personnel will be provided with a copy of this Agreement within 14 days after his or her commencement of employment. Within 14 days after being provided with a copy of this Agreement, the Respondent shall secure from each such person a signed and dated statement acknowledging that he or she read and understood this Agreement and Part VII.1 of the Act.

#### **V. COMPLIANCE REPORTING**

9. The Respondent shall provide to the Commissioner or his authorized representative, within 30 days following receipt of a written request from the Commissioner, such Records and information, in such form as the Commissioner reasonably requests, for the purposes of monitoring compliance with this Agreement.

#### **VI. GENERAL**

10. Notices, reports and other communications required or permitted pursuant to any of the terms of this Agreement shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail or facsimile transmission to the Respondent and to the Commissioner at the following addresses:

**(a) The Commissioner:**

Commissioner of Competition  
Competition Bureau Canada  
Place du Portage, Phase 1  
50 Victoria Street, 21st Floor  
Gatineau, Quebec K1A 0C9

Attention: Deputy Commissioner of Competition, Deceptive Marketing Practices  
Directorate  
Facsimile: 819-953-4792

Email: [josephine.palumbo@canada.ca](mailto:josephine.palumbo@canada.ca)

**With a copy to:**

Executive Director and Senior General Counsel  
Competition Bureau Legal Services  
Department of Justice  
Place du Portage, Phase 1  
50 Victoria Street, 22nd Floor  
Gatineau, Quebec K1A 0C9

Facsimile: 819-953-9267

**(b) The Respondent:**

TRUE Sports, Inc.  
Attention: Legal Department  
40 S. Main Street  
Floor 20  
Memphis TN 38103

Facsimile: 901-746-2161

**With a copy to:**

Daniel G. Edmondstone  
McMillan LLP  
Brookfield Place, 181 Bay Street, Suite 4400  
Toronto, ON M5T 2T3

Facsimile: 416-865-7048

11. This Agreement shall be binding for a period of five (5) years following its registration.
12. The Parties consent to the immediate registration of this Agreement with the Tribunal.
13. The Commissioner may, in his sole discretion and after informing the Respondent in writing, extend any of the time periods in Parts II, III, IV and V of this Agreement.
14. Nothing in this Agreement precludes the Respondent or the Commissioner from bringing an application under section 74.13 of the Act.
15. The Respondent shall not make any public statement that contradicts the terms of this Agreement.
16. In the event of a dispute regarding the interpretation, implementation or application of this Agreement, any of the Parties shall be at liberty to apply to the Tribunal for an order or directions. In no event shall any dispute suspend any time period under the Agreement. The Parties agree that the Tribunal has jurisdiction to make such order as is required to give effect to this Agreement.
17. This Agreement may be executed in counterparts, each of which shall be an original instrument, and all of which taken together shall constitute one and the same instrument. In the event of any discrepancy between the English and French versions of this Agreement, the English version shall prevail.

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18. The computation of time periods contemplated by this Agreement shall be in accordance with the *Interpretation Act*. For the purpose of this Agreement, the definition of “holiday” in the Interpretation Act shall include Saturday. For the purposes of determining time periods, the date of this Agreement is the last date on which it is executed by a Party.

The undersigned hereby agree to the filing of this Agreement with the Tribunal for registration.

**DATED** at San Diego, in the State of California this 17th day of November, 2020.

"Original signed by Neal Haas"

TRUE Sports, Inc.

Neal Haas

Senior Vice President and Chief Technology Officer

I have authority to bind the corporation.

**DATED** at Gatineau, in the Province of Quebec, this 17th day of November, 2020.

"Original signed by Matthew Boswell"

Commissioner of Competition

Matthew Boswell

Commissioner of Competition