

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 Respondents under section 74.01 of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

- and -

**THE DUFRESNE GROUP INC.
TDG FURNITURE INC.
DFA OPERATIONS INC.
FURNITURE INVESTMENT GROUP INC.
DF SWAN LTD.**

Respondents

CONSENT AGREEMENT

WHEREAS the Commissioner is responsible for the administration and enforcement of the Act;

AND WHEREAS the Respondents are based in Winnipeg, Manitoba;

AND WHEREAS the Respondents, through their proprietary retail banner Dufresne Furniture and Appliances and their licensed retail banner Ashley HomeStore, sell mattresses, furniture, appliances, electronics and other home furnishing products in Canada;

AND WHEREAS the Respondents made representations to the public offering Products at substantial discounts off the Respondents' Regular Prices;

AND WHEREAS the representations were made to the public by various means, including through various Advertising Channels, in-store and on the Respondents' Websites;

AND WHEREAS the Commissioner has concluded that the Respondents did not sell a substantial volume of certain Products at the Regular Price (or a higher price) within a reasonable period of time before making the representations to the public;

AND WHEREAS the Commissioner has concluded that the Respondents did not offer certain Products at the Regular Price (or a higher price) for a substantial period of time recently before making the representations to the public;

AND WHEREAS the Commissioner has concluded that when making Regular Price representations, the Respondents offered certain Products to the public at reduced prices more than half of the time;

AND WHEREAS the Commissioner has concluded that the Respondents have engaged in reviewable conduct within the meaning of subsection 74.01(3) of the Act with regard to the promotion and sale of certain Products;

AND WHEREAS the Respondents made representations to the public that convey the general impression that discounted prices on certain Products would no longer be available after a particular date or time, such as "40% OFF (Sale ends Sep 19 2022)" (an "Urgency Cue"), when that was not in fact the case in certain cases;

AND WHEREAS the Urgency Cue representations were made to the public by various means, including in various Advertising Channels, in-store and on the Websites;

AND WHEREAS the Commissioner has concluded that the Respondents' Urgency Cues were false or misleading in a material respect within the meaning of paragraph 74.01(1)(a) of the Act;

AND WHEREAS for the purposes of the execution, registration, enforcement, variation or rescission of this Agreement only, the Respondents do not contest the Commissioner's conclusions, provided that nothing in this Agreement shall be taken as an admission or acceptance by the Respondents of any facts, wrongdoing, submissions, legal argument or conclusions for any other purpose nor shall it derogate from any rights or defences of the Respondents against third parties including, without limitation, any defences available under the Act;

AND WHEREAS the Commissioner acknowledges the Respondents' full and timely cooperation with the Commissioner's inquiry;

AND WHEREAS the Respondents have taken a number of steps to address the conduct at issue;

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;

AND WHEREAS the Respondents are committed to compliance with the Act generally, and the deceptive marketing practices provisions specifically;

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. "**Act**" means the *Competition Act*, R.S.C. 1985, c. C-34;
 - b. "**Advertising Channels**" means mediums and outlets used by the Respondents to market and promote, directly or indirectly, their Products, including but not limited to television, radio, podcasts, print and digital publications, e-mails, and social media, excluding websites;
 - c. "**Affiliate**" means an affiliated corporation, partnership or sole proprietorship within the meaning of subsection 2(2) of the Act;
 - d. "**Agreement**" means this Consent Agreement entered into by the Parties pursuant to section 74.12 of the Act;
 - e. "**Commissioner**" means the Commissioner of Competition appointed pursuant to section 7 of the Act, and their authorized representatives;
 - f. "**Compliance Program**" has the meaning set out in Part V of this Agreement;
 - g. "**Days**" means calendar days;
 - h. "**Execution Date**" means the date on which the Agreement has been signed by all Parties;
 - i. "**Franchisee**" means an entity which operates a retail furniture store under a franchise or license agreement granted to such entity by any of the Respondents or any Affiliate of the Respondents;
 - j. "**Interpretation Act**" means the *Interpretation Act*, R.S.C. 1985, c. I-21;
 - k. "**Parties**" means the Commissioner and the Respondents collectively, and "**Party**" means any one of them;
 - l. "**Person**" means any individual, corporation, partnership, firm, association, trust, unincorporated organization or other entity;

- m. **“Pricing Personnel”** means all current and future Respondents’ employees and Respondents’ Senior Management who are materially involved in or responsible for the formulation of prices and/or the formulation or implementation of advertising, marketing or pricing policies (including on the Websites);
- n. **“Product”** has the meaning in subsection 2(1) of the Act;
- o. **“Record”** has the meaning in subsection 2(1) of the Act;
- p. **“Regular Price”** means the price at which the Respondents represent that a product is ordinarily sold or offered for sale to the public in Canada, or any part thereof;
- q. **“Respondents”** means The Dufresne Group Inc., a company federally incorporated pursuant to the laws of Canada with the registered office in Winnipeg, Manitoba; TDG Furniture Inc., a corporation amalgamated and continued pursuant to the laws of Canada; DFA Operations Inc., a corporation amalgamated and continued pursuant to the laws of Canada; Furniture Investment Group Inc., a company provincially incorporated pursuant to the laws of Ontario; and DF Swan Ltd. a company incorporated under the Canada Business Corporations Act;
- r. **“Senior Management”** means the Chairperson, members of the Board of Directors, President, Chief Executive Officer, Secretary, Treasurer, and Vice-President;
- s. **“Tribunal”** means the Competition Tribunal established by the Competition Tribunal Act, R.S.C. 1985, c. 19 (2nd Supp.); and
- t. **“Websites”** means www.Dufresne.ca and www.Ashleyhomestore.ca.

II. COMPLIANCE WITH PART VII.1 OF THE ACT

2. Within 90 days of the Execution Date, the Respondents shall comply with Part VII.1 of the Act.
3. The Respondents shall incorporate a covenant by Franchisees to comply with the Act in all future franchise or license agreements (including renewals of current franchise or license agreements) with Franchisees.
4. If the Respondents become aware that there has been a breach or likely breach of any of the terms in this Agreement, the Respondents shall, within ten (10) days after becoming aware of the breach or likely breach, notify the Commissioner, and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or likely breach, and the steps the Respondents have taken or intend to take in order to correct the breach or likely breach.

III. PAYMENTS

5. The Respondents shall pay an administrative monetary penalty in the amount of \$3,250,000 dollars.
6. The Respondents shall pay \$100,000 dollars for costs incurred by the Commissioner during the course of his investigation into this matter.
7. The payments referred to in paragraphs (5) and (6) shall be made not later than 30 days after the Execution Date by the Respondents, by certified cheque or by wire transfer payable to the Receiver General for Canada.

IV. CORPORATE COMPLIANCE PROGRAM

8. By 90 days after the Execution Date, the Respondents shall establish, and thereafter maintain, a corporate compliance program, the goal of which will be to promote the compliance of the Respondents with the Act generally, and Part VII.1 of the Act specifically. The Compliance Program shall be framed and implemented in a manner consistent with the Commissioner's Bulletin titled "Corporate Compliance Programs", as published on the Competition Bureau's website on the Execution Date.
9. Within 30 days after the establishment of the Compliance Program, each member of the Senior Management shall acknowledge their commitment to the Compliance Program by signing and delivering to the Commissioner a commitment letter in the form set out in Appendix "A" of this Agreement. Any individual that becomes a member of the Senior Management, during the term of this Agreement, shall sign and deliver to the Commissioner a commitment letter in the form set out in Appendix "A" of this Agreement, within 30 days of becoming a member of the Senior Management.

V. COMPLIANCE REPORTING AND MONITORING

10. During the term of this Agreement, (i) the Respondents shall provide a copy of this Agreement to all Pricing Personnel and Franchisees within 30 days after the Execution Date, and (ii) all future Franchisees and all future Pricing Personnel will be provided with a copy of this Agreement within 30 days after their commencement of employment or becoming a Franchisee.
11. Within 30 days after being provided with a copy of this Agreement, the Respondents shall secure from each Pricing Personnel a signed and dated statement acknowledging that they have read and understood this Agreement and Part VII.1 of the Act.
12. The Respondents shall provide the Commissioner written confirmation that all Pricing Personnel employed as of the Execution Date have received a copy of this Agreement, as required by paragraph 10, within 30 days after the Execution Date.
13. For the purposes of monitoring compliance with this Agreement, the Respondents shall provide to the Commissioner such information relating to any matters referred to in Parts II, IV and V of this Agreement in a form that the Commissioner reasonably requests, within 30 days following receipt of a written request from the Commissioner.
14. No later than 120 days after the Execution Date, the President or Chief Executive Officer of the Respondents shall provide to the Commissioner a statement under oath or solemn affirmation that the compliance program required by Part IV of this Agreement has been implemented. This shall also include a summary report setting out the actions taken to comply with paragraph 2 of this Agreement.

VI. GENERAL

15. 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 emailed transmission to the Parties 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, Cartels and Deceptive Marketing Practices Branch

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

Email: ic.cb_lsu_senior_general_counsel-
avocat_general_principal_usj_bc.ic@canada.ca

and

cb_lsu_senior_general_counsel-avocat_general_principal_usj_bc@ised-
isde.gc.ca

(b) The Respondents:

The Dufresne Group Inc.
TDG Furniture Inc.
DFA Operations Inc.
Furniture Investment Group Inc.
DF Swan Ltd.
147 Commerce Drive
Winnipeg, Manitoba R3P 1A2

Email: mikel@dufresne.ca

With a copy to:

Fillmore Riley LLP
1700-360 Main Street
Winnipeg, MB R3C 3Z3

Attention: Jody S. Langan

Email: jslangan@fillmoreriley.com

And with a copy to:

Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto, ON

M5X 1B8

Attention: Shuli Rodal and Danielle Chu

Email: SRodal@osler.com

16. This Agreement shall be binding for a period of 10 years following its registration with the Tribunal.
17. The Parties consent to the immediate registration of this Agreement with the Tribunal.
18. The Commissioner may upon request by the Respondents, in his sole discretion and after informing the Respondents in writing, extend any of the time frames in Parts II, III, IV, and V of this Agreement within which the Respondents must make a payment or deliver a document hereunder.
19. Nothing in this Agreement precludes the Respondents or the Commissioner from bringing an application under section 74.13 of the Act. The Respondents will not, for the purposes of execution, registration, enforcement, variation or rescission of this Agreement, contest the Commissioner's conclusions as set out in the recitals to this Agreement. Nothing in this Agreement shall be taken as an admission or acceptance by the Respondents of any facts, wrongdoing, submissions, legal argument or conclusions for any other purpose nor shall it derogate from any rights or defences of the Respondents against third parties including, without limitation, any defences available under the Act.
20. The Respondents shall not make any public statement creating the impression that they disagree with the Commissioner's conclusions as set out in the recitals to this Agreement.
21. The Respondents attorn to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement for variation or rescission.
22. In the event of a dispute as to the interpretation or application of this Agreement, any of the Parties shall be at liberty to apply to the Tribunal for an order or direction. 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.
23. 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.
24. The computation of time periods contemplated by this Agreement shall be in accordance with the *Interpretation Act*. 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 Winnipeg, in the Province of Manitoba this 21st day of September, 2023.

"Original signed by Michael Linton"

The Dufresne Group Inc.
TDG Furniture Inc.
DFA Operations Inc.
Furniture Investment Group Inc.
DF Swan Ltd.

Michael Linton, Secretary Treasurer
I have authority to bind the corporation.

DATED at Gatineau in the Province of Quebec, this 22nd day of September, 2023.

"Original signed by Commissioner of Competition Matthew Boswell"

Commissioner of Competition
Matthew Boswell
Commissioner of Competition

APPENDIX “A” – COMMITMENT BY SENIOR MANAGEMENT**RE: Commitment to Establishment and Maintenance of Compliance Program**

Further to paragraph 9 of the Consent Agreement between the Commissioner of Competition and The Dufresne Group Inc., TDG Furniture Inc., DFA Operations Inc., Furniture Investment Group Inc., and DF Swan Ltd., dated [DATE], I hereby commit to the successful implementation of the Corporate Compliance Program described in Part IV of this Agreement, for the purpose of promoting compliance with the *Competition Act*, R.S.C. 1985 c. C-34 (the “Act”), including the deceptive marketing practices provisions in Part VII. 1 of the Act and specifically paragraph 74.01(1)(a) and subsection 74.01(3) of the Act. I will take an active and visible role in the establishment and maintenance of the Corporate Compliance Program.

Sincerely,

[Name and title]

cc: Executive Director and Senior General Counsel, Competition Bureau Legal Services

Deputy Commissioner of Competition, Deceptive Marketing Practices Directorate, Cartels and Deceptive Marketing Practices Branch