

FILED / PRODUIT

Date: July 3, 2025

CT- 2025-001

Sarah Sharp-Smith for / pour
REGISTRAR / REGISTRAIRE

CT-2025-001

OTTAWA, ONT.

8

THE COMPETITION TRIBUNAL

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

AND IN THE MATTER OF an application by the Commissioner of Competition for an order pursuant to section 74.1 of the *Competition Act* regarding conduct reviewable pursuant to paragraph 74.01(1)(a) and as clarified for greater certainty by subsection 74.01(1.1) of the *Competition Act*;

BETWEEN:

COMMISSIONER OF COMPETITION

Applicant

– and –

CANADA'S WONDERLAND COMPANY

Respondent

REPLY OF THE COMMISSIONER OF COMPETITION

I. OVERVIEW

1. Wonderland advertises a “2025 Silver Pass” for \$89, except consumers can’t buy the pass online at that price because of a fixed obligatory Processing Fee. This conduct is deemed to be misleading regardless of whether and how the Processing Fee is disclosed.
2. Wonderland’s fixed obligatory Processing Fee harms the very consumers it professes to value by exploiting well known behavioural biases. Parliament deemed this conduct to be misleading through the addition of subsection 74.01(1.1) because even fully disclosed fixed obligatory fees – which Wonderland’s Processing Fee is not – can distort markets and harm consumers. Wonderland’s Processing Fee falls squarely within the conduct that subsection 74.01(1.1) is meant to prevent.
3. This case is about Wonderland’s Unattainable Price Representations due to fixed obligatory Processing Fees — not price regulation. Wonderland is free to raise the price of its products. Wonderland is free to charge fees it believes are appropriate. What Wonderland cannot do is mislead consumers by advertising a price that is subject to a fixed obligatory fee that makes the initially advertised price unattainable.
4. Wonderland’s selective and misleading account of its interactions with the Bureau are irrelevant to the fact that it advertised, and continues to advertise, prices that are unattainable because of a fixed obligatory Processing Fee. For the purposes of remedy, it was, and still is, Wonderland’s obligation to ensure compliance with the Act.
5. The Commissioner repeats and relies upon the allegations in his Notice of Application and, except as hereinafter expressly admitted, denies the allegations in the Response. Unless otherwise indicated, defined terms in the Reply have the meaning ascribed to them in the Notice of Application.

II. WONDERLAND CONTINUES TO MAKE UNATTAINABLE PRICE REPRESENTATIONS

6. On June 28, 2025, after Wonderland filed its Response which contained repeated claims of compliance and transparency, Wonderland advertised the “Coke Ride N’ Refresh” (RN’R) Single- Day Admission in its App at an unattainable price of \$70.00.

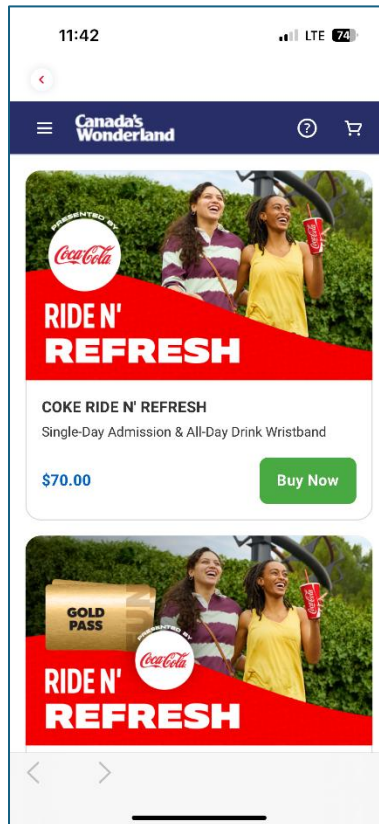


Figure 1: Screen capture of the RN’R product selection page from Wonderland’s App, taken on June 28, 2025.

7. While disclosure of the Processing Fee in fine print would not render the \$70.00 RN’R Single-Day Admission price attainable, this is an example, contrary to paragraph 4 of Wonderland’s Response, where consumers are not even told the Processing Fee exists let alone the amount by which it could increase the price of a ticket. The screenshots below show the

RN'R product selection page in the App, including all available RN'R products and the information shown as the user scrolls down.

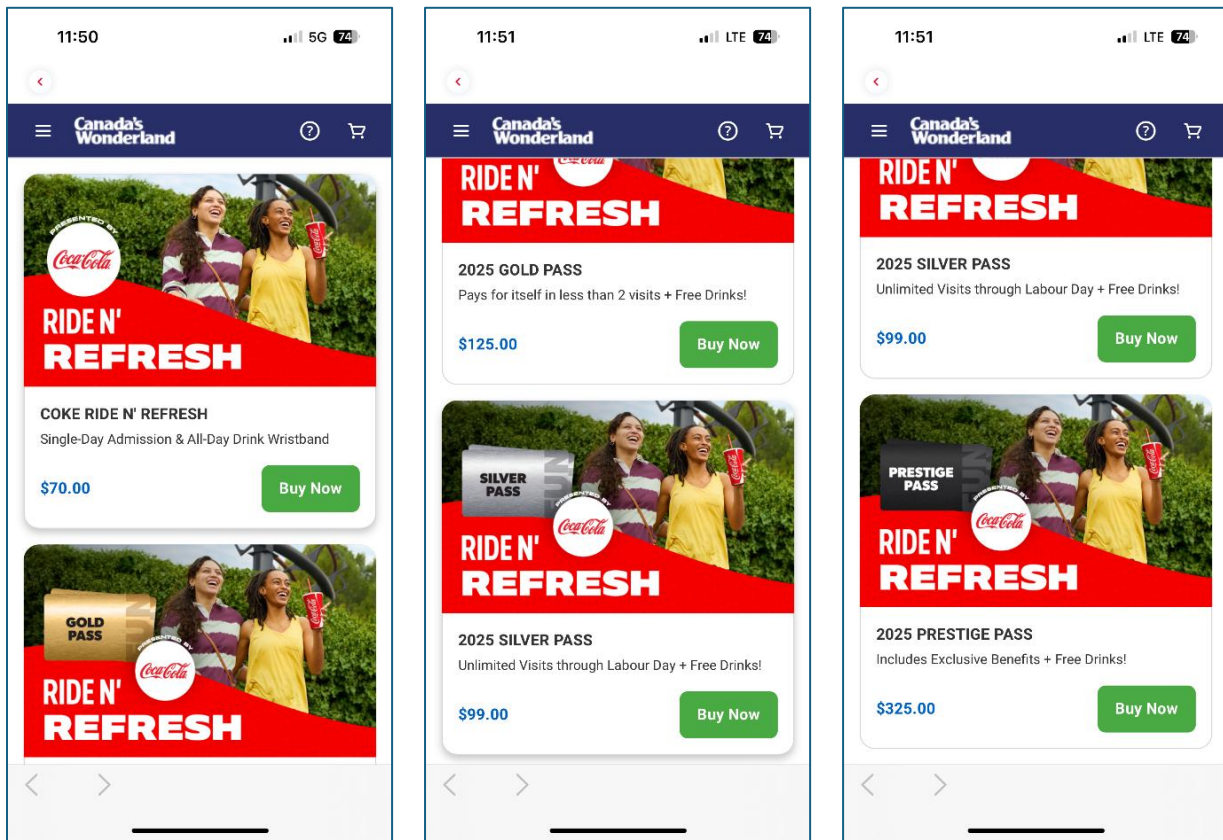


Figure 2: Screen captures of the RN'R product selection page from Wonderland's App, taken on June 28, 2025.

8. Contrary to paragraph 37 of the Response, in this example, Wonderland maintains this lack of transparency throughout the purchasing process. Even after selecting the product they want to purchase, in this case the RN'R Single-Day Admission, Wonderland still keeps the existence and additional cost of the Processing Fee from consumers. The following is a series of consecutive captures as the consumer scrolls down the page after selecting an RN'R product.

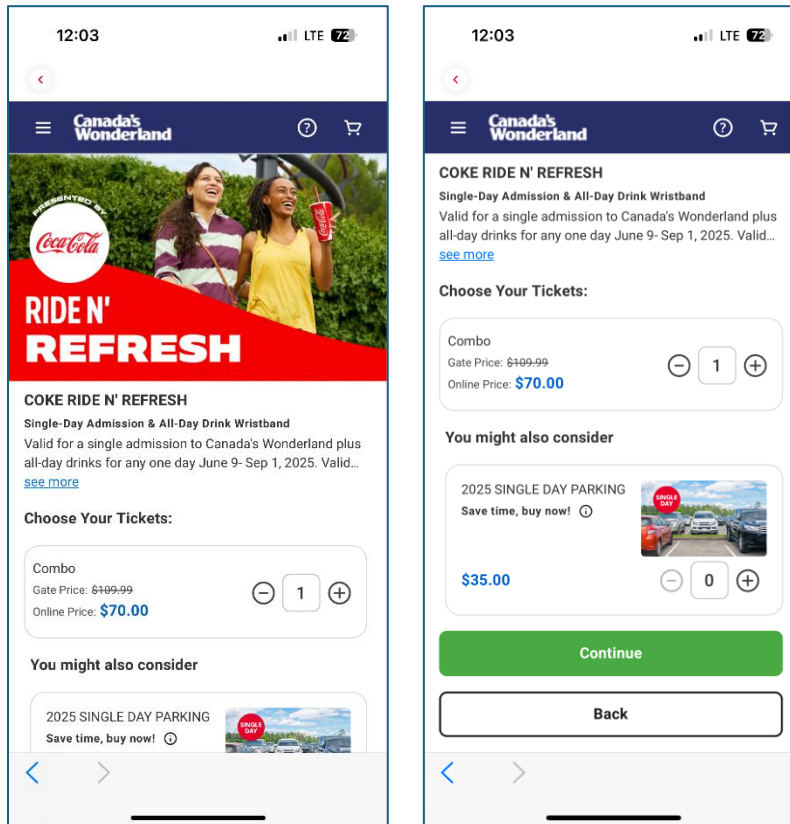


Figure 3: Screen captures of the RN'R purchase page from Wonderland's App, taken on June 28, 2025.

9. In this example, Wonderland has hidden the existence of the Processing Fee and relies on consumer curiosity to uncover it, not that such disclosure would render the initially advertised \$70 price attainable. It is only after clicking on the “see more” link and expanding the product description that consumers are first told of the Processing Fee. Even then, the fine print is located at the end of the applicable terms and conditions and after Wonderland has repeated that it is “Only \$70.00 for admission + all-day Wristband”. The following is a series of consecutive captures as the consumer scrolls down the page if they choose to click on the “see more” link in Figure 3 above.

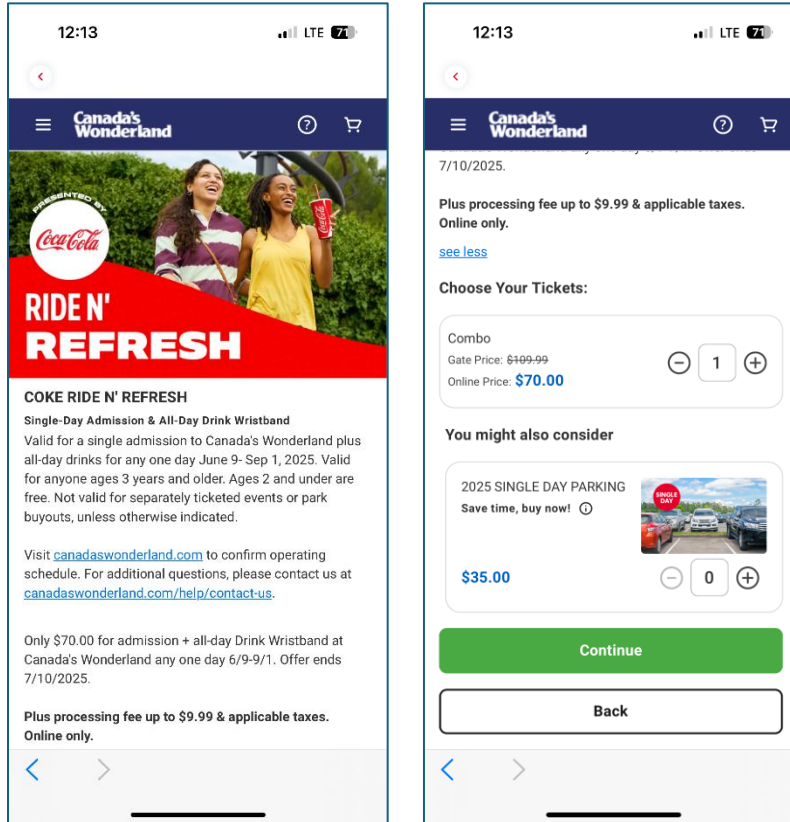


Figure 4: Screen captures of the RN'R Single- Day Admission purchase page from Wonderland's App, taken on June 28, 2025.

10. Continuing with the example, it is only at the checkout stage that a \$6.99 Processing Fee is added to the initially advertised price of \$70 rendering it unattainable.

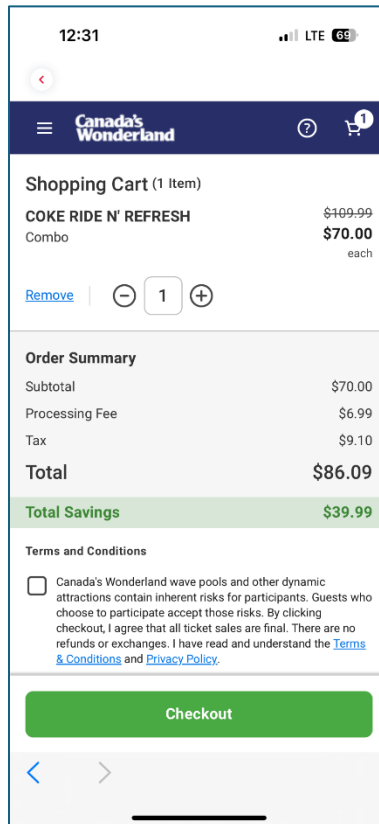


Figure 5: Screen capture of the Order Summary page from Wonderland’s App, taken on June 20, 2025.

11. Almost all of the sample representations in Wonderland’s Response are from the last month after Wonderland further modified its advertising to change the visual representation of its fine print disclosure. However, the Notice of Application includes examples of advertisements made after the Act was amended in June 2022 in which Wonderland advertised prices without mentioning the existence of the Processing Fee. In any event, improvements to the disclosure of the fine print do not render the initially advertised price attainable for the reasons contained in the Notice of Application and discussed below.

III. THE ACT REQUIRES THE PRICE BE ATTAINABLE

12. Subsection 74.01(1.1) of the Act is a deeming provision that prohibits making an unattainable price representation due to fixed obligatory

charges or fees, unless the obligatory charges or fees represent only an amount imposed on a purchaser of the product referred to in subsection (1) by or under an Act of Parliament or the legislature of a province.

13. Parliament introduced subsection 74.01(1.1) because even disclosure of fixed obligatory fees, which render an advertised price unattainable, harm consumers. Whether the fees are partitioned from the initial price representation or they are added later in the purchase process, both practices can harm consumers – and both are captured by subsection 74.01(1.1). By separating the Processing Fee from the advertised price, Wonderland exploits well-established behavioural economic principles that consumers typically do not fully incorporate fees into their decision-making processes.
14. Consequently, even fully informed consumers can make suboptimal decisions, resulting in consumer harm distorting markets. Wonderland's addition of a fixed obligatory Processing Fee to the Unattainable Price Representations is exactly the type of conduct that Parliament wanted to address with the addition of subsection 74.01(1.1) of the Act.
15. To absolve itself of misleading consumers, Wonderland frames drip pricing in a manner that ignores the plain language of subsection 74.01(1.1) which states that "the making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation". Wonderland instead substitutes its own interpretation of drip pricing to incorporate the idea that there must be a temporal component for subsection 74.01(1.1) to apply. Wonderland's interpretation is not what subsection 74.01(1.1) of the Act states.
16. Wonderland cannot avoid that it advertises Product prices on its Website, in its Social Media posts, and in the App for unattainable prices because of a fixed obligatory Processing Fee that is added to the price. Presenting

consumers with a price and separate fine print disclaimers announcing the existence of the Processing Fee does not cure the misleading conduct. The Act draws no distinction between fees that are dripped on the initial page of a website or app and fees that are dripped on subsequent pages: they are all prohibited.

IV. THE ACT REQUIRES PRICES TO BE ATTAINABLE

17. This case is about Wonderland making price representations that feature prices lower than what consumers ultimately pay because Wonderland adds a fixed, obligatory Processing Fee to the initially advertised price. The initially advertised prices in Wonderland's Unattainable Price Representations are material to consumers. Therefore, Wonderland has engaged in deceptive marketing practices contrary to paragraph 74.01(1)(a) of the Act. Contrary to Wonderland's hyperbolic claims, the Commissioner's application is not a new, unprecedented or legally unsubstantiated position.

V. WONDERLAND'S PRICE REPRESENTATIONS ARE NOT TRANSPARENT NOR DO THEY FORM AN INSEPARABLE PART OF THE PRICE CLAIM

18. Whether consumers are informed about the Processing Fee is irrelevant to whether that Processing Fee is fixed and obligatory making the advertised price unattainable. Regardless, consumers are not as "fully informed" as Wonderland asserts in paragraph 7.

19. Consumers are never made aware of the fixed set of rules guiding the application of the Processing Fee, as set out in paragraph 31 of the Response, nor is this information available on Wonderland's website or in its App. The exact amount of the Processing Fee is not disclosed to the consumer until the end of the transaction – after they have already acted on the initially advertised Unattainable Price Representations.

20. Wonderland's assertion in paragraph 43 that the fine-print disclosure of the Processing Fee forms an inseparable part of its price claim is not supported in law or fact. Jurisprudence and the Bureau's *Deceptive Marketing Practices Digest* both confirm that the accuracy of headline pricing is evaluated on its own merits. Fine print disclosure of additional fixed obligatory processing fees is not part of the disclosure of the product price. This is demonstrated in part by the fact that there are points during the transaction where Wonderland displays the product price without any reference to the Processing Fee.

VI. THE PROCESSING FEE IS OBLIGATORY

21. The Processing Fee is obligatory notwithstanding Wonderland's contention that it has created two niche scenarios where it has waived the Processing Fee. The Processing Fee is waived – not eliminated – for (i) group purchases of at least 15 tickets and (ii) birthday-party packages, and only if the customer does not attempt to purchase anything else. Even in these examples, the moment any additional item is added to the cart, Wonderland automatically reinstates the Processing Fee. These exemptions do not change the fact that the Processing Fee is obligatory applying to the vast majority of purchases on the website and in the App.

VII. THE PROCESSING FEE IS FIXED

22. Wonderland's own Response demonstrates that the Processing Fee is fixed. Paragraph 31 of the Response identifies four fixed price points that Wonderland sets itself and predetermines before it makes any representations about price.

23. Subsection 74.01(1.1) applies to any fixed, obligatory charge or fee, whether the fee is assessed on a per-item basis or only once per transaction.

VIII.PRICE IS MATERIAL

24. Wonderland's Response misstates the legal test for materiality by conflating two separate questions: (i) whether a representation is deceptive and (ii) whether the deceptive representation influences the consumer's decision making. Wonderland argues that its price representations are not material because consumers are aware of the Processing Fee. While the Commissioner disagrees with that position, the argument goes to the first question – whether the Unattainable Price Representations are deceptive.
25. If the Tribunal finds that Wonderland made price representations that were unattainable due to a fixed obligatory Processing Fee, then under subsection 74.01(1.1), the representation – an unattainable price – is deemed to be misleading. The analysis then shifts to the second question: whether the misleading representation – the unattainable price – was material. In other words, did the advertised unattainable price influence the consumer's decision making, including the decision to purchase? Price is almost always a fundamental element in any consumer transaction and is plainly material to consumers. Wonderland's own advertisements which focus on price and emphasize price savings demonstrate this.

IX. THE DUE DILIGENCE DEFENCE IS UNAVAILABLE TO WONDERLAND

26. Contrary to the allegations contained in the Response, the due diligence defence is unavailable to Wonderland. In any event, the chronology provided by Wonderland is incomplete and selectively presented. It omits material facts, downplays its delay in responding to the Bureau's concerns and casts reactive as proactive efforts.
27. Wonderland was and is still obligated to comply with subsection 74.01(1.1) when it came into force in June 2022. The fact that Wonderland only changed its conduct - with changes that did not bring it

into compliance with the Act - after being contacted by the Commissioner in July 2023, demonstrates a lack of proactive compliance. Wonderland could have engaged with the Bureau following the amendment to ensure its price representations complied with the Act. It did not do so.

28. Instead, it took receiving a warning letter from the Commissioner in July 2023 setting out the Commissioner's preliminary view that its pricing practices could constitute drip pricing under subsection 74.01(1.1) for Wonderland to act. Even upon receiving the warning letter, Wonderland waited more than a month to say it would "consider the concerns raised" in the Bureau's warning letter.
29. Wonderland implemented changes in September 2023 without asking the Bureau if the revised disclosures were compliant. Furthermore, it revised the fine print despite the warning letter expressly cautioning that in the Bureau's view, "the use of disclaimers disclosing the existence of additional fees does not prevent these price representations from raising concerns under the Act."
30. Regardless, Wonderland's account of its interactions with the Bureau is not relevant to whether it has engaged in reviewable conduct.
31. Wonderland also incorrectly implies that it was incumbent on the Bureau to instruct it on how to achieve compliance. That is not the Bureau's role. The Bureau is not required and nor would it be appropriate to draft compliant representations for Wonderland.
32. Similarly, the absence of any subsequent communications from the Bureau following Wonderland's August 2023 acknowledgment email, specifically with respect to changes that the Bureau was not informed of, in no way constitutes the acceptance, or tacit approval, of those changes. Again, it is incumbent on Wonderland to ensure that its price representations comply with the Act.

X. REMEDIES

33. The Commissioner repeats and relies on his Notice of Application with respect to the remedies requested and the facts discussed above with respect to Wonderland's purported compliance with subsection 74.01(1.1) and interactions with the Bureau. In addition, Wonderland is incorrect in paragraph 76 of its Response to imply that the Commissioner must establish that consumers have suffered loss for the Tribunal to order a remedy under paragraph 74.1(1)(d) of the Act.

DATED AT Gatineau, Quebec, this 3rd day of July, 2025.

**ATTORNEY GENERAL OF
CANADA**

Department of Justice Canada
Competition Bureau Legal
Services
Place du Portage, Phase 1
50 rue Victoria
Gatineau, QC K1A 0C9

Jonathan Hood

Tel: 416-954-5925
jonathan.hood@cb-bc.gc.ca

Reema Mahbubani

Tel: 613-240-4561
reema.mahbubani@cb-bc.gc.ca

Counsel to the Commissioner of
Competition

TO: FASKEN MARTINEAU DUMOULIN LLP

Bay Adelaide Centre
333 Bay Street, Suite 2400
Toronto, ON M5H 2T6

Antonio Di Domenico

Tel: 416-868-3410
adidomenico@fasken.com

Huy Do

Tel: 416-868-3505

hdo@fasken.com

Caroline Youdan

Tel: 416-868-7834

cyoudan@fasken.com

David Ziegler

Tel: 416-865-4516

dziegler@fasken.com

Anastasia Reklitis

Tel: 416-865-5460

areklitis@fasken.com

Counsel to Canada's Wonderland Company

AND TO: The Registrar

Competition Tribunal

Thomas D'Arcy McGee Building

90 Sparks Street, Suite 600

Ottawa, ON K1P 5A5