

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 for orders pursuant to section 74.1 of the *Competition Act* for conduct reviewable pursuant to paragraph 74.01(1)(a).

B E T W E E N:

THE COMMISSIONER OF COMPETITION

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED / PRODUIT	
April 26, 2016 CT-2016-004	
Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 2

Applicant

- and -

MOOSE INTERNATIONAL INC.

Respondent

NOTICE OF APPLICATION

TAKE NOTICE that the Commissioner of Competition (the “**Commissioner**”) will make an application to the Competition Tribunal (the “**Tribunal**”) for an order pursuant to section 74.1 of the *Competition Act*, R.S.C. 1985, c. C-34 (the “**Act**”), as amended, in respect of conduct reviewable pursuant to paragraph 74.01(1)(a) of the Act.

AND TAKE NOTICE that the Commissioner relies on the following Statement of the Grounds and Material Facts for this application.

TO: **Moose International Inc.**
225 Chabanel Street West
Suite 200
Montreal, Quebec
H2N 2C9

APPLICATION

1. The Commissioner makes this application pursuant to section 74.1 of the Act for:
 - (a) a declaration that the Respondent, Moose International Inc. carrying on business as Moose Knuckles (“**Moose Knuckles**”), is engaging in or has engaged in reviewable conduct, contrary to paragraph 74.01(1)(a) of the Act;
 - (b) an order prohibiting Moose Knuckles from engaging in the reviewable conduct or substantially similar reviewable conduct, in Canada, for a period of ten years from the date of such order;
 - (c) an order requiring Moose Knuckles to publish or otherwise disseminate notices of the determinations made herein pursuant to paragraph 74.1(1)(b) of the Act, in such manner and at such times as the Commissioner may advise and this Tribunal shall permit;
 - (d) an order requiring Moose Knuckles to pay an administrative monetary penalty in the amount of \$4,000,000;
 - (e) an order that Moose Knuckles provide some form of reasonable restitution to customers that have been misled by the reviewable conduct;
 - (f) costs; and
 - (g) such further and other relief as the Commissioner may advise and this Tribunal may permit.

I. OVERVIEW

2. Moose Knuckles sells, among other clothes, winter parkas to consumers in Canada.
3. Canadian consumers can purchase Moose Knuckles parkas online from Moose Knuckles or at a number of retail outlets. Moose Knuckles represented and continues to represent to the public that the Moose Knuckles parka is “Made in Canada”. The “Made in Canada” claim is material to some Canadian consumers who are willing to pay a premium for a parka that is made in Canada.
4. Moose Knuckles’ claim that its parkas are “Made in Canada” is false or misleading in a material respect. Moose Knuckles, in fact, imports parkas from Vietnam and elsewhere in Asia in a nearly finished form. Moose Knuckles finishes the parkas at third party facilities in Winnipeg, Manitoba, where the zipper, snaps, fur trim, and labels are attached. The textiles, the down, and the fur are all made from materials sourced outside of Canada. The work that Moose Knuckles performed on the parkas in Canada does not constitute a substantial transformation.
5. Moose Knuckles has incurred in Canada less than 51% of the total direct costs to manufacture the parkas.
6. The Commissioner brings this application to stop Moose Knuckles’ deceptive marketing practices and to remedy the harm these practices have caused and continue to cause to Canadian consumers.

II. THE PARTIES

7. The Commissioner is an officer appointed by the Governor in Council under section 7 of the Act and is responsible for the administration and enforcement of the Act.
8. The Respondent, Moose Knuckles, is a corporation organized and existing under the laws of Canada and has its head offices in Montreal, Quebec. Moose Knuckles markets and sells, among other items, winter parkas for men, women and children.

III. MOOSE KNUCKLES' FALSE OR MISLEADING REPRESENTATIONS

9. Moose Knuckles' representations created and continue to create the materially false or misleading general impression that certain of its parkas are "Made in Canada". Consumers that purchase these parkas, however, are not getting products that are made in Canada. Rather, as described in more detail below, they are getting parkas that are made in Vietnam or elsewhere in Asia and completed in Canada.
10. A consumer seeking to purchase a Moose Knuckles parka can do so online at the Moose Knuckles website: <http://www.mooseknucklescanada.com>. As late as 2016, for example, the consumer looking at the 'Stirling Parka' (style MK2001-MP) would see the following page with the "Made in **CANADA**" claim beside a red maple leaf right at the top of the page:



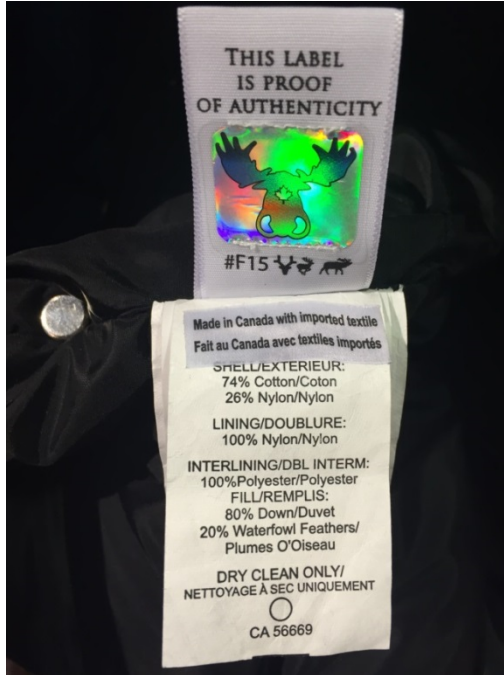
11. A consumer seeking to purchase that same parka at a retailer at about the same time, such as Holt Renfrew, Hudson's Bay, or Sporting Life, would also see embroidered prominently inside on the centre of the parka that it was "Made in Canada". The parka would also have a "Made in Canada" label directly above the embroidering. The message that the parka was made in Canada was reinforced by the use of the red maple leaf on the moose, as well as a hockey player dressed in red with a maple leaf on his jersey:



12. In addition, the tags hanging off the sleeve also claimed that the parka was “Made in Canada”. The label was further misleading because, before the “Made in Canada” claim, it included the statement “Fox fur trimmed. Down filled” implying that these components were sourced from Canada when they were not:



13. If the consumer looked inside the bottom of the parka among various care labels, on at least some of the parkas, they would see that the parka was “Made in Canada with imported textile”:



14. As described above, the “Made in Canada” claim was expressed and implied using text and pictorial representations that combined created the strong general impression that the parka was made in Canada using Canadian components. This representation was a material claim for some Canadian consumers who are willing to pay a premium for a parka that is made in Canada.
15. The representations that were made by Moose Knuckles that its parkas were “Made in Canada” were materially false or misleading. Under the Competition Bureau’s Enforcement Guidelines for “Product of Canada” and “Made in Canada” Claims, a “Made in Canada” claim requires the following three conditions are met: (a) the product has undergone a last substantial transformation in Canada; (b) at least 51% of the total direct costs of producing or manufacturing the good have been incurred in Canada; and (c) the “Made in Canada” claim is accompanied by an appropriate qualifying statement. Moose Knuckles’ “Made in Canada” parkas fails all three conditions.

16. When Moose Knuckles was created in 2009, its parkas were made entirely at third party factories in Winnipeg. However, in 2012 Moose Knuckles started having the parkas produced overseas in Vietnam and elsewhere in Asia.
17. Moose Knuckles now has its manufacturers in Vietnam and elsewhere in Asia make the parkas so that they are nearly complete. Moose Knuckles imported these products under, among others, the HS code 6201930034 – Men's or Boys' Anoraks, Wind-cheaters, Wind-jackets, of Man-made Fibres. The Harmonized Item Description and Coding System (HS) is an international standard maintained by the World Customs Organization that classifies traded products. As shown in the picture below, the imported parkas were not complete because they were missing the fur trim, zippers, snaps, and labels:



18. These parkas were received at three plants in Winnipeg, Manitoba, where the parkas were completed. The work these Canadian plants did to complete the nearly finished parkas does not constitute a substantial transformation.
19. Moose Knuckles did not change the goods such that the goods underwent a fundamental change in form, appearance or nature and that the goods existing after the change were

new and different goods from those existing before the change. Prior to the work done in Winnipeg, they were parkas, just incomplete parkas.

20. In addition to failing the first condition for making a “Made in Canada” claim, Moose Knuckles also failed the second condition. Moose Knuckles does not incur 51% of the total direct costs of manufacturing the parkas in Canada.
21. The total direct costs to manufacture the parkas in Canada including:
 - (a) expenditures on materials (the zippers, snaps, and fur trim) to complete the parkas;
 - (b) the cost of labour at the third party plants in Winnipeg; and
 - (c) overhead directly related to the manufacturing of the parkas;were less than 51% of the overall costs to manufacture the parkas.
22. Finally, Moose Knuckles failed the third condition for making a “Made in Canada” claim, because most of the “Made in Canada” claims were not qualified at all. When they were qualified, the claims that the parkas were “Made in Canada with imported textiles” were false or misleading, because Moose Knuckles parkas were not substantially transformed in Canada and the total direct costs to manufacture the parkas in Canada were less than 51% of the overall costs.
23. Even if Moose Knuckles met the first two conditions for making a “Made in Canada” claim, the application of a single “Made in Canada with imported textiles” label on the care labels in a sleeve does not change the false or misleading impression that the parkas are “Made in Canada”.
24. While Moose Knuckles has made some changes to the representations that it makes on parkas sold in Canada in 2016, they continue to make false or misleading representations on both the parkas and on their website by claiming, in some form or another, that the parkas are “Made in Canada”, when they are not.

IV. Aggravating Factors

25. Moose Knuckles has made and continues to make the foregoing false or misleading representations to the public for the purpose of promoting the sale of their parkas, their associated products and their business interests more generally.
26. Pursuant to subsection 74.1(5) of the Act, the deceptive conduct described herein is aggravated by the following:
 - a. the national reach of Moose Knuckles conduct;
 - b. Moose Knuckles has made the same or similar representations frequently and over an extended period of time;
 - c. Moose Knuckles' false or misleading representations, described herein, are material;
 - d. self-correction is unlikely to remedy adequately or at all Moose Knuckles' conduct; and
 - e. according to a 2015 news article, \$100 million of Moose Knuckles' products were sold at the retail level in 2014.

VI. Relief Sought

27. The Commissioner claims the relief set out in paragraph 1.

VII. Procedural Matters

28. The Commissioner requests that this proceeding be conducted in the English language.
29. The Commissioner requests that this application be heard in the City of Ottawa.

DATED AT GATINEAU, QUEBEC, this 26th day of April, 2016.

”Matthew Boswell” for John Pecman

John Pecman
Commissioner of Competition
Competition Bureau
Place du Portage, Phase I
50 Victoria Street
Gatineau, Quebec
K1A 0C9

For the purposes of this Application, service of all documents on the Commissioner may be served upon:

DEPARTMENT OF JUSTICE CANADA

Competition Bureau Legal Services
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Counsel for the Commissioner of Competition

AND COPIES

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AND TO: The Registrar
Competition Tribunal
Thomas D'Arcy McGee Building
90 Sparks Street, Suite 600
Ottawa, Ontario
K1P 5B4

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