

**THE COMPETITION TRIBUNAL**

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

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

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

**THE COMMISSIONER OF COMPETITION**

Applicant

- and -

**MOOSE INTERNATIONAL INC.**

Respondent

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE <b>REGISTERED / ENREGISTRÉ</b> <b>FILED / PRODUIT</b> December 7, 2016 CT-2016-004 Andrée Bernier for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 20

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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, Moose International Inc., is a corporation with its head office in Montréal, Québec that sells and markets sportswear, including certain down-filled winter Parkas;

**AND WHEREAS** the Respondent sells these Parkas through retailers and through its websites, in addition to promoting them through social media;

**AND WHEREAS** the Parkas are designed in Montréal, and the manufacturing of the Parkas begins in Asia, and continues in factories in Canada (more specifically, Winnipeg, Manitoba);

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**AND WHEREAS** the Respondent makes certain representations to the public that these Parkas are “Made in Canada”;

**AND WHEREAS** the Commissioner issued guidelines in 2009 entitled "*Product of Canada*" and "*Made in Canada*" *Claims Enforcement Guidelines* (the “Guidelines”), which were intended to provide predictability for businesses regarding the assessment by the Commissioner of “Product of Canada” and “Made in Canada” claims;

**AND WHEREAS** when businesses follow the Guidelines, when making representations that their products are “Product of Canada” or “Made in Canada”, it is unlikely that the representations will raise concerns under the Deceptive Marketing Practices provisions of the Act;

**AND WHEREAS** the Commissioner commenced an inquiry into the marketing practices of the Respondent under Part VII.1 of the Act, which focused on the representations made by the Respondent that its Parkas were “Made in Canada” and which culminated in the filing of an Application before the Competition Tribunal (the “Tribunal”) on April 26, 2016;

**AND WHEREAS** the Commissioner has concluded that the Respondent was making certain representations to the public that the Parkas were “Made in Canada” that created a materially false or misleading general impression and therefore constituted reviewable conduct under paragraph 74.01(1)(a) of the Act, and since the Respondent does not admit to the Commissioner’s conclusion, nothing in this Consent Agreement (the “Agreement”) shall be taken as an admission thereof, nor shall it derogate from any rights or defenses of the Respondent against third parties;

**AND WHEREAS** as a result, the Parties have agreed not to proceed to a hearing before the Competition Tribunal of Canada but rather to resolve their differences on the basis in this Agreement;

**AND WHEREAS** the Respondent is committed to ensuring going forward that its Parkas are eligible for making “Made in Canada” representations by ensuring compliance with the Guidelines;

**AND WHEREAS** the Commissioner has been advised by the Respondent, that as part of that commitment, it will, among other things, add certain operations at its Canadian factories in the manufacturing of the Parkas;

**AND WHEREAS** the Respondent will also ensure that going forward, each “Made in Canada” representation made to the public in respect of the Parkas is directly accompanied by a Qualifier, so that consumers are informed that the Parkas are “Made in Canada with Canadian and

imported components”;

**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;

**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, as amended;
- b. “**Affiliate**” means an affiliated corporation, partnership or sole proprietorship within the meaning of subsection 2(2) of the Act;
- c. “**Agreement**” means this Consent Agreement entered into by the Parties pursuant to section 74.12 of the Act;
- d. “**Commissioner**” means the Commissioner of Competition appointed pursuant to section 7 of the Act, and his authorized representatives;
- e. “**Compliance Program**” has the meaning set out in paragraph 6 of this Agreement;
- f. “**Days**” means calendar days;
- g. “**Effective Date**” means the date on which this Agreement is recorded by the Tribunal as having been registered pursuant to section 74.12 of the Act;
- h. “**Execution Date**” means the date on which this Agreement has been signed by the Parties;
- i. “**Moose Knuckles**” means the company Moose International Inc., a company headquartered in Montréal, Québec, its successors and assigns, and any present or future subsidiary corporation of Moose International Inc. within the meaning of subsection 2(3) of the Act, the successors and assigns of any subsidiary corporations, as well as all present or future divisions, groups and Affiliates controlled directly or indirectly by Moose International Inc. and their respective successors and assigns;
- j. “**Parka**” or “**Parkas**” means a piece of winter outerwear clothing that the Respondent

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represents is “Made in Canada” that can be worn by consumers to keep warm or dry;

- k. “**Parties**” means the Commissioner and the Respondent collectively, and “Party” means any one of them;
- l. “**Person**” means any individual, corporation, partnership, firm, association, trust, unincorporated organization or other entity;
- m. “**Product**” means an article and a service within the meaning of subsection 2(1) of the Act;
- n. “**Qualifier**” means a word or series of words that accompany a “Made in Canada” claim as the Commissioner may reasonably agree that is used to accurately describe the origin of the Parka including its materials, such as “...with Canadian and imported components”, to ensure that the general impression conveyed by any “Made in Canada” representations made to the consumer are not false or misleading in a material respect;
- o. “**Respondent**” means Moose Knuckles;
- p. “**Senior Management**” includes the Chief Executive Officer (CEO), Chief Financial Officer (CFO) and the Chief Operations Officer (COO); and
- q. “**Tribunal**” means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c. 19 (2<sup>nd</sup> Supp.), as amended.

**II. COMPLIANCE WITH SUBSECTION 74.01(1) OF THE ACT**

- 2. The Respondent shall comply with paragraph 74.01(1)(a) of the Act and without limiting the generality of the foregoing, the Respondent shall adopt the following measures:
  - a. For Parkas produced by the Respondent for sale in 2017 and during the remaining term of this Agreement, the Respondent shall add certain operations in Canada in production of the Parkas as more particularly described in Confidential Appendix “B” attached hereto;
  - b. For Parkas currently in the possession or control of the Respondent, the Respondent shall within 30 days either add a hang tag to the current “Made in Canada” label on the collar, which will state “Made in Canada with Canadian and imported components”, and in which case the statement will be of equal or greater prominence to the collar label, or alternatively, the Respondent will remove the “Made in Canada” label on the collar

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entirely, either option at the discretion of the Respondent;

- c. When the Respondent uses “Made in Canada” with respect to any Product, it shall be directly accompanied by a Qualifier;
- d. The Respondent shall not make or cause to be made any representations to the public that create the general impression that its Parkas are made exclusively with Canadian inputs, including on its website, in its publications and on social media;
- e. For 2017 production and during the remaining term of this Agreement, if the Respondent sells Parkas that it represents as “Made in Canada” outside of Canada, it will do so in accordance with the terms of this Agreement; and
- f. Nothing in this Agreement shall require the Respondent to make representations outside of Canada that are inconsistent with the legal requirements of the jurisdiction where the representations are made.

### III. PAYMENTS

#### CHARITABLE DONATION

3. The Respondent shall pay an amount of \$150,000 each year for 5 years in cash payable to charities that support the needs of underprivileged children in Canada such as the supply of outerwear clothing to be decided by the Parties, the first installment to be paid within thirty (30) days of the Effective Date.

### IV. CORRECTIVE NOTICE

4. The Respondent shall prominently display a corrective notice (the “Notice”) regarding its use of “Made in Canada” claims on the Product Information page of any and all websites owned, operated or controlled by the Respondent that display the Parkas, with a link to the homepage, for a period of one year from the Effective Date of this Agreement. The Notice shall be displayed in a manner that is visible to the public, with a font size of no less than 12.

The Notice shall state the following:

**“Qualifying for "Made in Canada" Representations:** Moose Knuckles has advertised on this website and in certain of its core parkas and bombers that those products are “Made in Canada”. The Competition Bureau of Canada has guidelines entitled “Product of Canada and “Made in Canada” claims <http://www.competitionbureau.gc.ca/eic/site/cb->

[bc.nsf/eng/03169.html](http://bc.nsf/eng/03169.html) which Moose Knuckles supports and has adopted as the Canadian standard for "Made in Canada" representations. We are committed to ensuring that all of our representations comply with the guidelines and that our customers receive accurate information about these products. To this end we have agreed, to post this notice to advise our customers that we added operations at our Canadian factories, and to make it clearer that certain parkas are made with Canadian and imported contents.

**V. CORPORATE COMPLIANCE PROGRAM**

5. Within sixty (60) Days from the Effective Date of this Agreement, the Respondent shall establish and thereafter maintain a Corporate Compliance Program (the "Compliance Program"), the goal of which will be to promote compliance by the Respondent with the Act generally, and subsection 74.01(1) specifically. The Compliance Program shall be framed and implemented in a manner consistent with the Commissioner's Bulletin entitled "Corporate Compliance Programs", as published (as of the Execution Date of this Agreement) on the Competition Bureau's website at:

<http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03942.html>.

6. The Respondent's Senior Management shall fully support and enforce the Compliance Program and shall take an active and visible role in its establishment and maintenance.
7. Within twenty-one (21) days after the establishment of the Compliance Program, each member of Respondent's Senior Management shall acknowledge his or her receipt of the Agreement and 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 Respondent's 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 twenty-one (21) days of becoming a member of the Respondent's Senior Management.

**VI. COMPLIANCE REPORTING AND MONITORING**

8. The Respondent shall provide to the Commissioner or his authorized representative, within thirty (30) days following receipt of a written request from the Commissioner, such information, in such form as the Commissioner requests, for the purposes of monitoring compliance with this Agreement.
9. No later than 120 days after the execution of this Agreement, the Respondent shall provide to the Commissioner a statement under oath or solemn affirmation from a member of the

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Board of Directors of Moose Knuckles, that the Compliance Program required by Part V of this Agreement has been implemented.

10. The Commissioner may, on reasonable notice, inspect the Respondent's products and production process at its head office or facilities.
11. Upon requests of the Commissioner, the Respondent shall certify compliance with the Agreement no more than once a year.

**VII. GENERAL**

12. 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, facsimile transmission or email to the Parties at the following addresses:

**a. The Commissioner**

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

Attention: Matthew Boswell  
Senior Deputy Commissioner of Competition Cartels and  
Deceptive Marketing Practices Branch

Facsimile: 819-953-4792  
Email: matthew.boswell@canada.ca

**With a copy to:**

Competition Bureau Legal Services  
Department of Justice  
Place du Portage, 22nd Floor  
50 Victoria Street, Phase I  
Gatineau, Québec K1A 0C9

Attention: Jonathan Chaplan  
Executive Director and Senior General Counsel

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Facsimile: 819-953-9267

Email: ic.cb\_lsu\_senior\_general\_counsel-  
avocat\_general\_principal\_usj\_bc.ic@canada.ca

**b. The Respondent**

Moose International Inc.  
225 Chabanel West, Suite 200  
Montréal, Québec H2N 2C9

Attention: Noah Stern, CEO

Facsimile: 514-381-3775

Email: noah@levycanada.com

**With a copy to:**

Bennett Jones  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, Ontario M5X 1A4

Attention: Andrew D. Little

Telephone: 416-863-1200

Facsimile: 416-863-1716

13. This Agreement shall be binding upon the Respondent as defined herein for a period of 10 years following its registration.
14. The Commissioner shall file this Agreement with the Tribunal for registration in accordance with section 74.12 of the Act. The Respondent hereby consents to such registration.
15. The Commissioner may, in his sole discretion and after informing the Respondent in writing, extend any of the time frames in this Agreement except paragraph 13.
16. Nothing in this Agreement precludes the Respondent or the Commissioner from bringing an application under section 74.13 of the Act to rescind or vary this Agreement. The Respondent will not, for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions.
17. In the event of a dispute as to 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



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directions. The Parties agree that the Tribunal has jurisdiction to make such order as is required to give effect to this Agreement. In no event shall any dispute suspend any time period under this Agreement.

18. This Agreement may be executed in two or more 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.
19. The computation of time periods contemplated by this Agreement shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. 1-21. 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 Montréal, in the Province of Québec, this 5th day of December, 2016.

[ORIGINAL SIGNED BY “Noah Stern”]

**Moose International Inc.**

Noah Stern, CEO of Moose International Inc.

I have authority to bind the corporation.

**DATED** at Gatineau, in the Province of Québec, this 5th day of December, 2016.

[ORIGINAL SIGNED BY “John Pecman”]

**Commissioner of Competition**

John Pecman

**Appendix “A”- Acknowledgement by Senior Management**

[Corporate Company Letter head] [date], 2016

**CONFIDENTIAL**

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

**RE: Commitment to Establishment and Maintenance of Compliance Program (the “Compliance Program”)**

I have received a copy of the Consent Agreement between the Commissioner of Competition (the “Commissioner”) and Moose International Inc., dated \_\_\_\_\_, 2016. Further to paragraph 7 of the Consent Agreement, I hereby commit to the successful implementation of the Compliance Program described therein. I confirm that Respondent’s Senior Management at Moose International Inc. will take an active and visible role in the establishment and maintenance of the Compliance Program.

Sincerely,

\_\_\_\_\_  
(Name and title)

cc: Executive Director and Senior General Counsel, Competition Bureau Legal Services  
cc: Senior Deputy Commissioner of Competition, Cartels and Deceptive Marketing Practices Branch

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**CONFIDENTIAL APPENDIX “B”**

**[CONFIDENTIAL]**