

THE COMPETITION TRIBUNAL

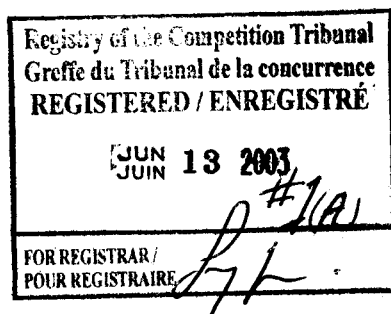
IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34 as amended;

AND IN THE MATTER of an inquiry commenced pursuant to subparagraph (10)(1)(b)(ii) of the *Competition Act* related to a review of the marketing practices of Suzy Shier Limited, pursuant to subsection 74.01(3) of the *Competition Act*;

AND IN THE MATTER of the filing and registration of a Consent Agreement pursuant to section 74.12 of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION



Applicant

-and-

SUZY SHIER INC.

Respondent

CONSENT AGREEMENT

WHEREAS in January 2001, the Commissioner of Competition (the "Commissioner") commenced an inquiry (the "Inquiry") under section 10 of the Competition Act (the "Act") into certain marketing practices of Suzy Shier Limited. The practices in question related to the pricing of women's apparel by its subsidiary Suzy Shier Inc. ("Suzy Shier");

AND WHEREAS further to the Inquiry, the Commissioner gathered and analysed evidence relating to the pricing practices of Suzy Shier which included an evaluation of responses to an order from the Federal Court for a written return of information and the production of documents pursuant to paragraphs 11(1)(b) and 11(1)(c) of the Act;

AND WHEREAS the Commissioner had reason to believe that Suzy Shier had engaged in reviewable conduct under the ordinary selling price provisions of the Act [subsection 74.01(3)], whereby for certain women's apparel products at certain Suzy Shier retail stores:

- (a) Suzy Shier made reference to regular prices when promoting the products at a reduced price, which representations appeared on price tags affixed to the products; and
 - (b) the prices referred to by Suzy Shier as being the regular prices were overstated.
- Having regard to the nature of the products at issue and the relevant geographic market:

- i. Suzy Shier had not sold a substantial volume of the products at the regular prices featured on the price tag representations within a reasonable period of time after the making of the representations. In that regard;
 - S** the "reasonable period of time" (the "Evaluation Period") used to evaluate whether or not Suzy Shier sold a substantial volume of the products at their 'regular prices' took into consideration any seasonal qualities of the products in question in addition to their likely liquidation periods; and
 - S** the combined average volume of product sales at the 'regular price' was approximately 12.5%.
- ii. Suzy Shier did not offer the products at the regular prices featured on the price tags for a substantial period of time immediately before the making of the representations. In this regard, during the Evaluation Period, the products were offered for sale at the 'regular price' for only approximately 11% of the time (combined average);

AND UPON CONSIDERING THAT the Commissioner and Suzy Shier have reached an agreement which resolves all of the Commissioner's concerns about the pricing practices of Suzy Shier and which is reflected in this Consent Agreement (the "Agreement");

AND IT BEING UNDERSTOOD THAT while the Commissioner has made the foregoing conclusions and while Suzy Shier does not agree with those conclusions, solely for the purposes of the Agreement or any proceeding relating to it, including an application to vary or rescind the Agreement under section 74.13 of the Act, Suzy Shier does not contest the Commissioner's conclusions. For greater certainty, nothing in the Agreement will be taken as an admission now or in the future of any facts, submissions or legal arguments for any other purposes, nor will it derogate from any rights or defenses of Suzy Shier under the Act or otherwise.

AND IT BEING FURTHER UNDERSTOOD THAT Suzy Shier is in the process of selling the assets of its operations and that nothing in this Agreement shall be taken to be binding on a purchaser of such assets;

AND WHEREAS the Parties agree that upon the signing of the Agreement, the Parties will file the Agreement with the Competition Tribunal for immediate registration;

AND WHEREAS the Parties understand that upon registration, the Agreement shall be enforceable as if it had been made pursuant to section 74.12 of the Act;

1. The preamble hereof forms part of this Agreement as if recited at length herein.

I. Definitions

2. For the purpose of the Agreement, the following definitions shall apply:
 - (a) **“Agreement”** means this Consent Agreement entered in to by Suzy Shier and the Commissioner;
 - (b) **“Closing Date”** means the date on which Suzy Shier Inc. and a purchaser close a transaction to effect an asset sale.
 - (c) **“Commissioner”** means the Commissioner of Competition appointed pursuant to section 7 of the Act and includes the staff of the Competition Bureau;
 - (d) **“Parties”** means the Commissioner of Competition and Suzy Shier Inc;
 - (e) **“Person”** means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity;
 - (f) **“Suzy Shier”** means Suzy Shier Inc., a company incorporated under the laws of the Province of Quebec; and
 - (g) **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act (Canada)*, R.S.C. 1985, c. 19 (2nd Supp.), as amended.

II. Application

3. The provisions of the Agreement shall apply to:
 - (a) Suzy Shier, including all corporate officers, directors, buyers and all other managers, employees, agents, and representatives acting for, or on behalf of, Suzy Shier with respect to any of the matters referred to in the Agreement; and
 - (b) The Commissioner.

NOW THEREFORE in order to finally resolve the Commissioner's Inquiry into certain marketing practices of Suzy Shier, the Commissioner and Suzy Shier hereby agree as follows:

A. ORDINARY PRICE REPRESENTATIONS

4. Suzy Shier and any person acting on its behalf or for its benefit, including all directors, officers, employees, or agents of Suzy Shier, may make, cause to be made, or permit to be made, by any means whatsoever, for the purpose of promoting, directly or indirectly, the supply or use of any given product, representations to the public as to prices that create the general impression that they are the prices at which the product has been, is or will be ordinarily supplied by Suzy Shier (the "ordinary price"), provided that, having regard to the nature of the product and the relevant geographic market:
 - (a) Suzy Shier sells a substantial volume of that product at the represented ordinary price(s) or a higher price within a reasonable period of time before or after the making of the representation, as the case may be; or
 - (b) Suzy Shier has offered that product at the represented ordinary price(s) in good faith for a substantial period of time recently before or immediately after the making of the representation, as the case may be.

B. MONETARY PENALTY

5. Suzy Shier will pay forthwith, and no later than the point of execution of the Agreement, an administrative monetary penalty in the amount of \$1,000,000.00.

C. CORRECTIVE NOTICE

6. Suzy Shier will publish the corrective notice (the "Notice") set out in Appendix "A" in the newspapers identified in Appendix "B" and on the corporate Suzy Shier web-site in accordance with the terms and conditions in Appendix "C".
7. Suzy Shier will, upon publication, confirm in writing to the Commissioner that the Notice was published as provided in paragraph 6 of the Agreement. Along with the written confirmation, Suzy Shier will attach tear-sheets of the Notice from each publication referenced in Appendix "B".

D. CORPORATE COMPLIANCE PROGRAM

8. Suzy Shier shall establish and maintain a marketing and pricing practices Corporate Compliance Program (the "Compliance Program") the goal of which will be to promote compliance with the Act generally, and the deceptive marketing provisions of the Act (Part VII.1) which include the ordinary selling price provisions of the Act [subsection 74.01(3)] specifically.
9. The Compliance Program will include the following features:
- (a) the designation of a Corporate Compliance Officer within thirty (30) days of the execution of the Agreement, and in any event, no later than 48 hours prior to any Closing Date;
 - (b) the preparation and dissemination of written materials relating to the Compliance Program directed to the persons identified in paragraphs (c) to (g);

- (c) the implementation of an initial compliance education session for senior management and employees materially involved in the formulation of advertising and pricing policies;
 - (d) the implementation of an annual compliance education refresher session for senior management and employees materially involved in the formulation of advertising and pricing policies;
 - (e) *the provision of a written confirmation to the Competition Bureau that existing senior management and employees materially involved in the formulation of advertising and pricing policies have participated in the compliance education sessions;*
 - (f) the provision of a copy of the Corporate Compliance Policy (“Compliance Policy”) flowing from the Compliance Program to all current and future senior management and employees with responsibility for formulating advertising and pricing policies;
 - (g) the execution of a statement indicating that new senior management and employees with responsibility for formulating advertising and pricing policies have read and understood the Compliance Policy; and
 - (h) *the preparation of a one to two page statement outlining the Compliance Policy that is to be inserted into the retail store operations manual and posted internally on the corporate Suzy Shier Intranet network.*
10. A draft outline of the Compliance Program and Compliance Policy will be submitted to the Competition Bureau within forty-five (45) days of the execution of the Agreement, and in any event, no later than 48 hours prior to any Closing Date.

E. COPIES OF THE AGREEMENT

11. Suzy Shier shall, and shall cause any entity which they (collectively or individually) have the ability to control, to provide a copy of the Agreement in its entirety to all of its corporate officers, directors, senior management and all other employees that are materially involved in the formulation of advertising and pricing policies within thirty (30) days of the execution of the Agreement, and in any event, no later than 48 hours prior to any Closing Date. Further, within forty-five (45) days of the execution of the Agreement, and in any event, no later than 48 hours prior to any Closing Date, Suzy Shier will secure from each such person identified above a signed and dated statement acknowledging that he or she has read and understood the Agreement and subsection 74.01(3) of the Act.

III. Notices

12. Notices required to be given pursuant to the Agreement to the Parties hereto shall be given, if dispatched by personal delivery, registered mail or facsimile to the address or facsimile number below:

(a) Commissioner

Konrad von Finckenstein
Commissioner of Competition
Competition Bureau, Industry Canada
Place du Portage, Phase I, 50 Victoria Street
Gatineau, Québec K1A 0C9

Telephone: 819-997-3301
Facsimile: 819-953-5013

with a copy to

Josephine A.L. Palumbo
Crown Counsel
Department of Justice
Competition Law Division
Competition Bureau, Industry Canada
Place du Portage, Phase I, 50 Victoria Street
Gatineau, Québec K1A 0C9

Telephone: 819-997-3325
Facsimile: 819-953-9267

(b) Suzy Shier Inc.

c/o Lori Cornwall
Davies Ward Phillips & Vineberg LLP
44th Floor
1 First Canadian Place
P.O.Box 63, Stn. 1st Canadian Place
Toronto, Ontario M5X 1B1

Telephone: 416-863-5588

Facsimile: 416-569-0871

IV. General

13. The Agreement may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same Agreement.
14. The Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
15. The Parties shall be bound by the terms of the Agreement for a period of ten (10) years following the registration of the Agreement with the Tribunal.
16. For greater certainty, the Tribunal shall retain jurisdiction for the purpose of any application by the Commissioner or Suzy Shier to rescind or vary any of the provisions of the Agreement in the event of a change of circumstances or otherwise, or with respect to any issue concerning the Agreement.
17. In the event of a dispute as to the interpretation or application of the Agreement, including any decision by the Commissioner pursuant to the Agreement or breach of the Agreement by Suzy Shier, any one of the Commissioner or Suzy Shier shall be at liberty to apply to the Tribunal for an order interpreting any of the provisions of the Agreement.

18. In the event that:

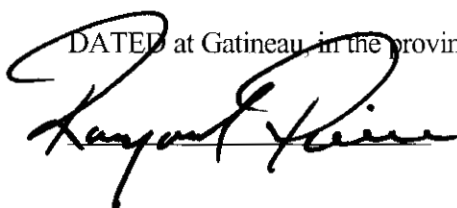
- (a) the Agreement is rescinded or varied for any reason, then Suzy Shier or the Commissioner may terminate the Agreement within thirty (30) days of such rescission or variation on written notice to the other parties hereto; or
- (b) an order is made by the Tribunal varying or rescinding the terms of the Agreement pursuant to section 106 of the Act, Suzy Shier or the Commissioner shall each have the right to terminate the Agreement by written notice to the other parties hereto given within ninety (90) days of the date on which such order is made.

DATED at ~~Montreal~~, in the province of Quebec this 13th day of June, 2003.



Suzy Shier Inc.

DATED at Gatineau, in the province of Quebec this 13th day of June, 2003.



Raymond Pierce

Deputy Commissioner of Competition

Appendix A

NOTICE BY SUZY SHIER INC.

The Competition Bureau (the "Bureau") has informed Suzy Shier Inc. ("Suzy Shier") that its pricing practices regarding the regular selling price of certain women's clothing items have raised concerns under the civil deceptive marketing practices provisions of the *Competition Act* (the "Act").

The Bureau's concerns relate to its belief that Suzy Shier's use of "regular" and "sale" prices overstated the savings that Suzy Shier's customers would receive when purchasing certain clothing items at 'sale prices'. The civil Ordinary Selling Price provisions of the Act seek to ensure that retailers make 'regular price' claims only when they sell a substantial volume of a product or offer a product at that price for a reasonable amount of time.

Although Suzy Shier does not admit any conduct contrary to the Act, in recognition of the Bureau's concerns, and the importance of providing accurate information to consumers, Suzy Shier and the Bureau have filed a Consent Agreement with the Competition Tribunal in order to resolve this matter. Pursuant to the Agreement, Suzy Shier will, among other things,

- ensure that all future savings claims and regular price representations comply with the deceptive marketing practices provisions of the Act;
- implement a corporate compliance program designed to ensure that Suzy Shier complies with the deceptive marketing practices provisions of the Act; and
- pay a substantial administrative monetary penalty.

The Agreement will remain in effect for a 10 year period.

This Notice has been published pursuant to the Agreement, copies of which can be found on the Competition Tribunal's website. (www.ct-tc.gc.ca)

Appendix "B"

The newspapers in which Suzy Shier Inc. is to publish the Notice identified in Appendix "A":

Vancouver Sun	Saint John Telegraph Journal
Edmonton Journal	Halifax Herald Limited
Calgary Herald	(St-Johns) The Telegram
Regina Leader Post	The Gazette
Winnipeg Free Press	La Presse (French)
Ottawa Citizen	National Post
Toronto Star	Globe and Mail
Le Soleil de Québec (French)	Le Droit (French)

Appendix "C"

1. Suzy Shier will commence publishing of the Notice within the following time-frames:
 - (a) for newspapers, commencement of publishing within five (5) days of the registration of the Agreement, and in any event, no later than 48 hours prior to any Closing Date; and
 - (b) for the corporate Suzy Shier web-site (www.suzyshier.com/welcome.php), commencement of publishing within five (5) days of the registration of the Agreement, and in any event, no later than 48 hours prior to any Closing Date.

2. Suzy Shier will publish the Notice set out in Appendix "A" in the Wednesday and Saturday editions of the newspapers listed in Appendix "B" for a period of three (3) consecutive weeks. Suzy Shier will request publication space from each newspaper in accordance with the following hierarchy of availability:
 - (a) for the Wednesday editions;
 - i. within the first five (5) pages of the cover section of the newspaper(s);
 - ii. within the first four (4) pages of the business section of the newspaper(s);
 - iii. within the first ten (10) pages of the cover section of the newspaper(s);
and
 - iv. within the first eight (8) pages of the business section of the newspaper(s).

- (b) for the Saturday editions;
- i. within the first two (2) pages of the fashion, style or lifestyle sections of the newspaper(s);
 - ii. within the first six (6) pages of the fashion, style or lifestyle sections of the newspaper(s);
 - iii. within the first five (5) pages of the cover section of the newspaper(s);
 - iv. within the first four (4) pages of the business section of the newspaper(s);
 - v. within the first ten (10) pages of the cover section of the newspaper(s);
and
 - vi. within the first eight (8) pages of the business section of the newspaper(s).
3. Suzy Shier will request that the text of the Notice appear no less than 6 inches x 4.5 inches in size when published in the newspapers listed in Appendix "B".
 4. Suzy Shier will request that the text of the Notice appear in 10-point font unembellished print in the newspapers listed in Appendix "B". The title of the Notice, "NOTICE BY SUZY SHIER INC.", will be capitalized and Suzy Shier will request that the title appear in 16-point font unembellished print.
 5. Suzy Shier will publish the Notice set out in Appendix "A" on the corporate Suzy Shier web-site for a period of three (3) consecutive weeks. The Notice will be accessed through a link on the menu-bar of the web-site homepage entitled 'Notice'. The Notice will take up the full screen size of the linked page. The text of the Notice will appear in no less than 12-point font and the title of the Notice, "NOTICE BY SUZY SHIER INC.", will be capitalized and appear in no less than 16-point font.