

**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**

**Applicant**

**- and -**

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED / PRODUIT June 23, 2016 CT-2016-004 Andrée Bernier for / pour Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 8

**MOOSE INTERNATIONAL INC.**

**Respondent**

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**REPLY**

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## Overview

1. Moose Knuckles is materially misleading Canadian consumers by claiming that certain of its winter parkas are “Made in Canada”. In fact, these parkas are made in Vietnam and only finished in Canada. Canadian consumers have been, and continue to be, harmed by this practice. To justify its misleading representations, Moose Knuckles raises in its Response a number of arguments that are irrelevant to determining whether its “Made in Canada” claims are misleading.<sup>1</sup>

### **Moose Knuckles conducted no due diligence**

2. Moose Knuckles did not conduct due diligence prior to marketing certain of its winter parkas with the “Made in Canada” claims. Moose Knuckles did not obtain approval or guidance from the Competition Bureau (“**Bureau**”) regarding the “Made in Canada” representations that it wanted to make prior to moving its production to Vietnam, or at any time after.
3. There is no record of Moose Knuckles providing the Bureau with the information required to assess compliance with the Guidelines in 2010 to 2012. Moose Knuckles never used the advisory process available to it pursuant to section 124.1 of the Act.
4. The first time Moose Knuckles provided the Bureau with the information necessary for the Bureau to evaluate its “Made in Canada” claims was after Moose Knuckles became aware it was being investigated by the Bureau in 2015.
5. After commencing the investigation, the Bureau engaged extensively with Moose Knuckles pursuant to the Competition and Compliance Framework. Moose Knuckles provided information to the Bureau about its production

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<sup>1</sup> Unless otherwise, indicated, defined terms in this Reply have the meaning ascribed to them in the Notice of Application.

process as well as certified a response to a request for information. At Moose Knuckles request, the Bureau attended at Moose Knuckles facilities in Winnipeg to witness the parkas being finished in Canada.

6. After conducting a review of this information, the Bureau advised Moose Knuckles that in the Bureau's view, the "Made in Canada" claims were misleading.

**Other companies' use of Canadian imagery is irrelevant to determining whether Moose Knuckles' "Made in Canada" claims are misleading**

7. Moose Knuckles submits that they are not misleading consumers because many manufacturers and importers brand their products using Canadian words and symbols. This is wholly irrelevant. The use of Canadian symbols by other manufacturers is irrelevant to whether Moose Knuckles itself misled Canadian consumers about where its own parkas are made.
8. Moose Knuckles is using the specific "Made in Canada" claim to market its winter parkas to Canadian consumers. Contrary to the allegation in paragraph 42 of the Response, some Canadian consumers paid for a parka that was made in Canada but they did not in fact get one. This distorts the proper functioning of the marketplace.

**Moose Knuckles is making express and implied misleading claims**

9. Moose Knuckles makes the express and implied claim that its parkas are "Made in Canada". The Response alleges in paragraph 13 that this application is only concerned with the "Made in Canada" representations that were stitched onto the parkas. The Commissioner alleges that Moose Knuckles engaged in reviewable conduct whenever Moose Knuckles made representations to the public promoting its parkas that created the general impression that the parkas were "Made in Canada" when they were not. This includes representations that were stitched into the parkas, representations made in its catalogues, representations made on hang tags, representations on Moose Knuckles' website, and representations on social media.

10. The “Made in Canada” claim is materially false and misleading because Moose Knuckles parkas are made in Vietnam and only finished in Canada. In paragraph 31 of its Response, Moose Knuckles describes in great detail how it finishes the jacket by adding the zipper, snaps, fur trim, and labels. Notably absent from the Response is any description of all the work that goes into making the parkas in Vietnam so that they are ready to be finished when they arrive in Canada.
11. Contrary to the allegation in paragraph 62 of the Response, Moose Knuckles sold many parkas between 2012-2015 without the use of a qualifier on the parkas. Indeed, Moose Knuckles continues to sell parkas it claims are “Made in Canada” without the use of a qualifier. When Moose Knuckles has used the qualifier, it was printed in very small font on the care and content label, but was absent from other “Made in Canada” representations.
12. After having learned of the Bureau’s investigation, Moose Knuckles added a qualifier to the Made in Canada claims on its web site in late 2015.

**Regardless of the test used Moose Knuckles’ “Made in Canada” claims are misleading**

13. Even if the Guidelines are not considered, an ordinary Canadian consumer who sees a claim that a winter jacket is “Made in Canada” has the general impression that the jacket is made in Canada. They do not think that the jacket is made in Vietnam and only finished in Canada.
14. However, the Commissioner submits that the Guidelines should be used for assessing “Made in Canada” claims. The Commissioner recognizes that the Guidelines are not legally binding but they are useful tools for the Tribunal and courts to consider in their analysis and which guide industry.
15. The Guidelines are not burdensome as alleged in paragraph 49 of the Response, to the contrary, they are generous to manufacturers who want to claim that a product is “Made in Canada” even though there is substantial

foreign component to the product. The Guidelines allow “Made in Canada” claims even where 49% of the materials and costs of making the product were actually incurred abroad, provided that the last substantial transformation of the product occurs in Canada, and provided that consumers are advised by way of qualifying language that the product contains foreign content. Indeed, the Guidelines are far less burdensome than in the United States where the Federal Trade Commission standard for “Made in America” claims requires “all or virtually all” of the product be made in America.

16. Moose Knuckles alleges in paragraphs 50 and 51 of the Response that the Guidelines are part of a broader public policy regarding Canadian manufacturing. Moose Knuckles misunderstands the purpose of the Guidelines. The goal of the Guidelines are to encourage manufacturers to provide accurate “Made in Canada” information so that consumers are not fundamentally misled.
17. When the Guidelines are applied, Moose Knuckles’ “Made in Canada” claims fail to meet the three conditions set out therein for the reasons outlined in the Application.

**DATED AT** Gatineau, this 23rd day of June 2016.

“Original signed by John Pecman”  
John Pecman  
Commissioner of Competition

**DEPARTMENT OF JUSTICE CANADA**

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