

THE COMPETITION TRIBUNAL

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

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 -

MOOSE INTERNATIONAL INC.

Respondent

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE FILED / PRODUIT June 10, 2016 CT-2016-004 Andrée Bernier for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 6

RESPONSE

OF MOOSE INTERNATIONAL INC.

1. Moose International Inc. ("Moose") is a small Canadian company based in Montreal. Moose has not made any representations to the public that are false or misleading in a material respect as alleged by the Commissioner (or at all). Moose has not engaged in reviewable conduct contrary to paragraph 74.01(1)(a) of the *Competition Act*.
2. Moose makes the winter parkas at issue in this proceeding in Canada.
3. The Commissioner has decided to commence this application to test, for the first time, whether Canadian manufacturers must comply with three purported "conditions" set out in the

Competition Bureau's Guidelines on "Made in Canada" claims.¹ The Commissioner's application alleges that Moose has not met the three "conditions" in the Bureau's Guidelines.

4. The Guidelines are not the law. The Commissioner has no power to make law, regulations or public policy and cannot impose "conditions" for compliance with paragraph 74.01(1)(a) of the *Competition Act*.

5. Even applying the Commissioner's Canadian production "conditions", Moose's parkas labelled "Made in Canada" were made in Canada due to the substantial skilled labour, Canadian design, Canadian components and other work done in Canada to make them. At factories in Winnipeg, Canadian workers combined Canadian materials and components with imported materials and components to substantially transform them into a Moose parka. In addition, more than 51% of the costs of producing a parka were incurred in Montreal, Winnipeg and elsewhere in Canada. Moose's care and contents label stated that its parkas were "Made in Canada with Imported Textiles".

6. Moose also exercised due diligence to prevent reviewable conduct from occurring and therefore, under subsection 74.1(3) of the *Competition Act*, the Commissioner is not entitled to the remedies he seeks. In 2011-2012, Moose revised its production process specifically to be in accordance with the Bureau's Guidelines. Before changing its operations in 2012, a Moose representative spoke to the Bureau on two different occasions, once in October 2011 and again in March 2012, and described the new production process. In each case a Bureau official confirmed that it would be in accordance with the Guidelines.

7. In addition, the Tribunal should exercise its discretion not to make any Order against Moose under subsection 74.1(1), due to Moose's diligence and conduct, the untested nature of the Bureau's Guidelines, the absence of any need for an order to promote conformity by Moose with the purposes of Part VII.1 of the *Competition Act* and all of the other circumstances set out in this Response.

8. The Commissioner's application must be dismissed, with costs payable to Moose.

¹ Competition Bureau, *Enforcement Guidelines on "Product of Canada" and "Made in Canada" Claims*, December 22, 2009 (the "Guidelines").

A. Moose and its Parkas

9. Moose is a Canadian company that is controlled and operated by Canadians. Moose operates its business from offices in Montreal.

10. Moose's parkas are high quality, fur-trimmed, premium outerwear designed for cold weather. They are sold by luxury retailers in the United States, Europe, South Korea and other countries. Foreign sales make up a substantial part of Moose's overall sales.

11. Moose's retail brand is "Moose Knuckles". It is Canadian, cutting-edge fashionable, sporty, edgy and humorous.

12. Moose sells certain jackets that are made in Canada and other jackets that are made in other countries. When Moose makes jackets in Canada, such as the Parkas at issue in this proceeding (defined below), they are labelled "Made in Canada". When it makes jackets in another country, they are labelled as made in that other country.

13. The Commissioner's application only concerns certain Moose parkas that had a small neck label and embroidery that stated "Made in Canada" in the yoke, as well as two fighting hockey players and a small red maple leaf (the "Parkas"). Those Parkas were made in Canada as described in detail below, and stated "Made in Canada with Imported Textiles" on their care and contents labels.

B. Moose's Parkas were made in Canada

i. Overview

14. Moose's Parkas were made in Canada from Canadian and imported components and materials.

15. The design, engineering and production of high-quality Moose Parkas is complex. Unlike some garments (such as socks or t-shirts), the Parkas have many constituent parts. Their design must be durable, high quality, warm and very fashionable.

16. Moose's Canadian design, sourcing and production teams in Montreal ensured the Parkas used leading-edge design and that high-quality materials were sourced. Moose's production and logistics teams in Montreal and Winnipeg planned and executed careful component engineering of the Parkas. Moose's production teams in Montreal and Winnipeg managed and directed the production of textile components both inside and outside of Canada and the Canadian production of Parkas at factories in Winnipeg (and, in 2012-13, at one factory in Toronto), and in Montreal.

17. More specifically, Moose's production teams in Montreal and Winnipeg:

- (a) researched and sourced new and innovative fabrics, accessories, insulations and other materials;
- (b) researched outerwear, sportswear and fashion style trends and fits worldwide, for use in the design of Moose's premium Parkas;
- (c) designed its jackets, including the Parkas;
- (d) engineered the technical specifications and fit of the Parkas;
- (e) sourced the materials, components and skilled labour for the Parkas;
- (f) managed the production costing and the import, logistics and Canadian freight of components; and
- (g) managed and directed Moose's Canadian production of Parkas in Winnipeg and Montreal.

18. At the Winnipeg factories, skilled sewing machine operators, cutters, dome machine operators, trim managers and many others built the Parkas from component parts and materials, as described further below. During the process there were many inspections for quality assurance, something essential to the marketability of a premium garment such as a Moose Parka.

ii. Events in 2010-2012

19. In 2010, Moose had small overall sales of winter jackets, including Parkas, and met demand for its jackets using a single Canadian factory. In 2011, sales were noticeably higher and a second Canadian factory was needed to meet demand.

20. In early autumn 2011, with demand continuing to increase, Moose faced challenging commercial and competitive circumstances. Its sales were increasing well beyond expectations. Other manufacturers had tied up most of the already-limited manufacturing capacity at factories in Canada. Moose had grave concerns that it would not be able to continuously and consistently fulfill the growing orders from its retail customers in a timely way. Moose could not scale up its operations to meet increasing demand.

21. In addition, Moose had, in the previous year, successfully tested its first distribution agreement to launch its winter jackets in foreign markets. It was clear that Moose would continue to enhance the global sales and profile of its products by using distributors. But because distributors would only purchase from Moose at significant discounts off its regular wholesale prices (as is common practice in the industry), the growth of the business using distributors would also negatively affect Moose's margins.

22. Moose recognized that in order to grow its business, it could move all of its production outside of Canada. But it did not want or decide to do so, even though its costs of production would be significantly lower outside of Canada. Moose management strongly preferred to continue making its core products in Canada, in keeping with the roots of its brand and to maintain the quality of its products. Moose also wanted to continue supporting the Canadian manufacturing of garments such as winter jackets.

23. In 2011, Moose began to consider whether and how it could re-organize the complex process of its jacket-making operations, to continue to make jackets in Canada while having some operations done outside Canada, in accordance with the Guidelines.

24. Moose began to prepare a revised production process in 2011 specifically to fulfill the Guidelines and to make certain of its jackets in Canada, including Parkas, using some imported

and some domestic components and materials. That new production process would satisfy each of the three elements of the Guidelines, namely:

- (a) using some Canadian components and materials, and some imported components and materials, and substantially transforming them into a Parka in Canada,
- (b) spending more than 51% of its costs of production in Canada, and
- (c) adding a qualifier to its contents labeling.

25. In late October 2011, Moose approached the Competition Bureau to discuss its proposed process and the Guidelines. A Moose representative described the new production process to a Bureau official. The official advised that it would be in accordance with the Guidelines. The official suggested that the care and content label include the qualifier "with Imported Textiles".

26. In March 2012, before its Canadian production began, Moose again approached the Competition Bureau to re-verify that its production process was in accordance with the Guidelines. A Moose representative again described the new production process to a different Bureau official and that official also advised that it would be in accordance with the Guidelines. That official also suggested that the care and content label include the qualifier "with Imported Textiles".

27. Beginning with its 2012 production runs and in reliance on its discussions with the Bureau, Moose began making its Parkas in accordance with the production process disclosed to the Bureau, and consistently in accordance with the Bureau's Guidelines. This also enabled Moose to obtain greatly-needed factory capacity, while maintaining sufficient gross margins, its quality assurance standards and its commitment to the Canadian industry.

iii. Production of Moose Parkas in Canada from 2012-2015²

28. For 2012 to 2015 production of Moose's Parkas:

- (a) Moose designed and engineered the Parkas in Canada,
- (b) Moose used significant Canadian labour and personnel in Montreal, Winnipeg, Toronto and elsewhere in Canada to make the Parkas, and
- (c) Moose obtained (or caused its factories to obtain) certain Parka components and materials in Canada, including fur, zippers and snaps, and sourced other components and materials outside Canada.

29. At Moose's direction and in accordance with its own designs and specifications, the textiles comprising the liner, the down bag, and the shell and hood components were partially cut and sewn outside Canada. This was done in accordance with Moose's production process, which was designed to manage where costs were incurred and remain in accordance with the Bureau's Guidelines. In addition, most of these imported components were shipped together in order to ensure they matched sufficiently in length, width and other dimensions, and so that the dyed fabrics of the components to be used in the same Parka also matched. Components with different dimensions or dye lots cannot be made into a Moose Parka to be sold to a consumer and would have to be discarded.

30. Moose sourced its fur trim and pom-poms from Canadian furriers. The fur trim and fur pom-poms were made in Canada. Moose also sourced its main metal zippers from a manufacturer in Canada, and the zippers were made in Canada. Other materials and components were also sourced in Canada.

² In this Response, Moose addresses its production of Parkas from 2012 to 2015. There is no factual basis for the Commissioner's application in respect of 2016 production of Parkas. When the Commissioner commenced his application, Moose's production of components for its Parkas for sale in 2016 had not been completed; thus the Commissioner cannot allege that 2016 production did not pass the 51% "condition" in the Guidelines because many expenses had not yet been incurred. Further, no 2016 Parkas had been shipped to any customer nor sold to any consumer.

31. Most of the Canadian and imported Parka components and materials were gathered at factories in Winnipeg. There, over 90 skilled workers performed over 70 different operations, including significant sewing, to make the Parkas, including the following:

(a) [REDACTED]
[REDACTED]
[REDACTED]

(b) [REDACTED]
[REDACTED]
[REDACTED]

(c) [REDACTED]
[REDACTED]

(d) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(e) [REDACTED]

(f) [REDACTED]
[REDACTED]
[REDACTED]

(g) [REDACTED]

(h) [REDACTED]

(i) [REDACTED]
[REDACTED]

(j) [REDACTED]

- (k) [REDACTED]
- (l) [REDACTED]
[REDACTED]
- (m) [REDACTED]
[REDACTED]

32. In Montreal, Moose personnel did additional work to make the Parkas ready for delivery to retailers. There, Canadian workers received and sorted the Parkas by scanning bar codes for tracking purposes, pressed Parkas using specialized machinery, added price tickets and stickers, inspected the fur, performed final quality inspections, picked Parkas and other jackets for each retailer's order, and labelled and prepared the Parkas for shipping to retailers.

33. As is apparent, Moose and its factories performed very detailed, labour-intensive, highly skilled and costly operations in Canada to transform constituent components and materials into Moose's premium, high-quality Parkas ready for delivery to retailers and enjoyment by consumers.

34. Moose's Parkas were made in Canada.

iv. Events in 2015-2016

35. In 2015 the Bureau received false information from a former principal of Moose who had, in late 2013 or early 2014, organized and carried out the clandestine manufacture, importation and sale of counterfeit Moose Knuckles jackets (conduct which has resulted in criminal charges against him). Moose understands that following receipt of that false information, the Bureau requested Canada Border Services Agency ("CBSA") to stop certain shipments of Moose jackets and to take the photographs now relied upon by the Commissioner in this application.

36. In May 2015, after Moose learned of the stoppages, a customs broker representing Moose contacted the Bureau. A Bureau official advised once again that Moose's Canadian production

was in accordance with the Guidelines. However, about a week later, a different Bureau official called to advise Moose that he did not believe Moose's operations complied with the Guidelines.

37. The Bureau has been aware of the unlawful conduct of the former principal since at least July 2015, and that he had his own agenda to obtain money illegitimately from Moose and was attempting to use the Bureau's investigation to advance his agenda. The former principal has claimed in 2016 that the Bureau has recently attempted to contact him again in relation to this matter.

C. No Reviewable Conduct under paragraph 74.01(1)(a) of the *Competition Act*

38. Moose has not engaged in reviewable conduct under paragraph 74.01(1)(a) of the *Competition Act*. No representations made by Moose to the public were false or misleading in any material respect.

39. The Commissioner's position requires the Tribunal to adopt a complicated, three-part test that is dependent on technical, industry-specific evidence and detailed accounting evidence, in order to determine whether that respondent has made a representation to the public that is false or misleading in a material respect.

40. Moose's position is that when the Tribunal assesses conduct under paragraph 74.01(1)(a), "made" and "made in Canada" should be given their plain and ordinary meaning.

41. On either approach, Moose has not engaged in reviewable conduct.

42. The Commissioner alleges (in paragraphs 3 and 14) that a "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". In fact, when a consumer buys a Moose Parka, he or she buys a very high-quality, fashionable parka that fits with that person's style and image. Consumers get exactly what they pay for.

43. Nothing stated on a Moose Parka could confuse consumers or distort any market and nothing is inconsistent with the purposes of the *Competition Act* or Part VII.1 of it.

44. Consumers cannot be confused by Canadian branding of garments or other goods, and certainly not by Moose's Parkas. Many manufacturers and importers brand their products using Canadian words, symbols and icons, from the word "Canada", to beavers, igloos, polar bears and the maple leaf – even the Canadian flag. Many garments that are made elsewhere and sold in Canada are branded as Canadian in various places on the garment itself. Jackets include Canadiana on the front, in the neck or yoke area, on the sleeve, embroidered on the interior or exterior, or printed on tags and labels. People buy these products as a source of national pride, to support sports teams and international sporting events such as the Olympics, and for their style, look and design. Using Canadiana in its marketing and branding does not mean that a manufacturer has misled consumers or otherwise engaged in reviewable conduct.

D. The Bureau's "Made in Canada" Guidelines

45. The Commissioner's application alleges in paragraph 15 that a "Made in Canada" claim "requires" that the three "conditions" in the Guidelines are met.

46. The Guidelines are not law. The three so-called "conditions" in the Guidelines are not prescribed or even authorized under the *Competition Act* or any other statute or regulation. The Commissioner's application erroneously characterizes compliance with the "conditions" as being "require[d]". Indeed, the Guidelines themselves advise that they do not "restate the law" and do not constitute a binding statement of how the Commissioner may exercise discretion in any particular case.

47. The Commissioner also purports to require compliance with all three "conditions" before a manufacturer can use the phrase "Made in Canada". The first "condition", that a "final substantial transformation" occurred in Canada, is subjective and imprecise. The second requires sophisticated accounting evidence on the manufacturer's production costs, including overhead costs. The third "condition" is that a qualifying statement must always be added to "Made in Canada" even if a manufacturer complies with both of the production-related "conditions". Adding this condition creates the odd result that a stand-alone "Made in Canada" representation can never be made (the Guidelines refer to the use of "Product of Canada" where a product is

comprised of all or virtually all Canadian materials and components). After the Bureau published the final Guidelines in late 2009, representatives of Canadian industry objected to their contents in part based on the addition of this third "condition".

48. The Commissioner's position that Canadian manufacturers must pass all three "conditions" also does not account for the current state of Canadian manufacturing. Most manufacturers in this country in 2016, including the garment industry, operate in a global marketplace. Manufacturing in Canada is dependent on materials, parts and components that are produced in other countries as well as in Canada. The garment industry uses foreign textiles, for example, as there is virtually no textile manufacturing left in Canada. Moose believes that garments made for the Government of Canada are labelled "Made in Canada" but use foreign textiles, materials and components.

49. Compliance with the three "conditions" in the Guidelines imposes certain operational burdens and additional expenses on Canadian manufacturers that may adversely impact their competitiveness in the global market.³ These additional burdens are more pronounced on small- and medium-sized enterprises. Applied to a garment manufacturer like Moose, they are inconsistent with two of the express purposes of the *Competition Act*, namely, to maintain and encourage competition in Canada in order to allow small- and medium-sized enterprises an equitable opportunity to participate in the Canadian economy and in order to expand opportunities for Canadian participation in world markets.

50. The Guidelines also have major implications for Canada's industrial and manufacturing policy, trade policy, Canadian jobs, and the international competitiveness of significant sectors of the Canadian economy. The production "conditions" in the Guidelines are in essence a statement of public policy on the production of goods in Canada and what it means to be made in Canada, even though neither "made" nor "made in Canada" has a single or consistent regulatory meaning.

³ For example, the Bureau's Guideline "conditions" directly affect manufacturers' production costs in labeling their goods for export. If Canada's internal requirements (e.g. the qualifier in the Guidelines) impose different labelling requirements than those required or permitted by our trading partners, Canadian industry must deal with additional operational costs and inventory costs and implications of compliance in multiple legal regimes and producing goods that are properly but differently labelled for each country.

51. The imposition of Canadian production standards relates to broader public policy and not to reviewable conduct in paragraph 74.01(1)(a) of the *Competition Act*. The Bureau should not be the arbiter of these matters and the Tribunal should not be put in the position of deciding whether the production requirements in the Guidelines constitute good public policy. If such standards are to be imposed on industry, Parliament should provide its own express guidance to the Tribunal, Canadian manufacturers and the Bureau by legislation or regulation.

52. The Bureau's Guidelines are not legally binding, and the imposition of the three required "conditions" is not necessary or appropriate when assessing Moose's conduct under paragraph 74.01(1)(a) of the *Competition Act*.

E. Moose's Parka Production Complied with the Bureau's Guidelines in any event

53. Although the three "conditions" in the Bureau's Guidelines are not a legal standard and Moose's representations were not false or misleading in a material respect, nonetheless, the Parkas made by Moose did comply with the Commissioner's position in the Guidelines.

i. Final Substantial Transformation in Canada

54. The components and materials described above were substantially transformed into Moose's Parkas in Canada. None of the components that arrived at the Winnipeg factories constituted a parka, let alone a high-quality fashion Parka made by Moose. The components could not be worn as either one. No consumer would have bought them. The skilled labour, machinery and expertise necessary to convert the components into saleable, wearable, useable Parkas is not available in a local tailor or dry-cleaning store; only specialized manufacturing factories such as the ones used by Moose in Winnipeg have the required capabilities.

55. When the components were brought together and all the work was done in Canada, they became a Moose Parka. That Parka was a new and different good and was fundamentally

different from any of its components. Prior to becoming a Moose Parka, the components were unwearable and unmarketable.

56. The Commissioner's position on final substantial transformation of the Parkas is based on photographs taken by the CBSA and how the components "looked" when they arrived at the Canadian border. Such a position has no basis in law. An analysis of final substantial transformation must account for the multi-step, labour-intensive Canadian operations that are required to make a complex garment like a Moose Parka, as detailed above. A subjective and impressionistic position based on photographs cannot support allegations of reviewable conduct under paragraph 74.01(1)(a). It should be noted that the photograph relied on by the Commissioner in paragraph 17 of the application depicts components of a bomber jacket – not a Parka.

ii. Costs of Production Incurred in Canada

57. The second "condition" in the Guidelines is that "at least 51% of the total direct costs of producing or manufacturing the good have been incurred in Canada".

58. More than 51% of the costs of Moose's production of Parkas were incurred in Canada. The Commissioner admits at paragraph 21 of his application that direct costs of production for the purposes of the Guidelines in this case include:

- (a) Expenditures incurred by Moose on materials and components including zippers, snaps and fur;
- (b) labour costs at the factories in Winnipeg; and
- (c) Moose overhead costs that were directly related to the manufacturing of Parkas.

59. Certain non-Canadian costs, which are a meaningful part of Moose's total costs, are incurred in U.S. dollars and are therefore dependent on foreign exchange rates, which are not in the control of Moose.

60. For 2012 to 2015, Moose incurred more than 51% of its costs of production in Canada.

iii. Addition of a "Qualifier" to "Made in Canada" Representations

61. The third "condition" in the Bureau's Guidelines is the mandatory addition of a qualifying statement to a "Made in Canada" representation to the public, even if both of the other two "conditions" are met. This third "condition" was added to the Guidelines in 2009, and industry objected. It is redundant and unnecessary, particularly if, as in this case, a manufacturer complies with either of the other two "conditions".

62. In any event, from 2012 to 2015 the care and content labels sewn into the Parkas stated "Made in Canada with Imported Textiles".

F. The Commissioner's Allegations about Parka Components

63. The Commissioner also alleges in paragraph 12 that a hang tag allegedly "hanging off the sleeve" of the Parkas was false or misleading in a material respect because it implied that components of a Parka are "Made in Canada", "when they [were] not".

64. Moose's hang tags did not hang off the sleeve of any Parka. In addition, Moose's statements on its hang tags were not false or misleading in a material respect. Moose's Parkas were fox fur trimmed and they were down-filled. The fur trim was made in Canada. Moose made no representation that the ducks or their down were Canadian.

65. The Commissioner then alleges generally in paragraph 14 that certain representations all together created a strong general impression that the Parkas were "made in Canada using Canadian components". That is not correct either and in any event, some components were made in Canada. The allegation also stands in contrast to the photograph and the Commissioner's statement in the immediately-preceding paragraph of the application, paragraph 13, that if a consumer looked inside the Parka, the consumer would see that Moose marked every Parka "Made in Canada with Imported Textiles".

66. Moose's statements in relation to Parka components were not false or misleading in a material respect and no consumer was or could have been misled.

67. The Commissioner also claims, based apparently on their proximity, that the two statements "Down Filled" and "Made in Canada" in a Parka yoke implied that the down came from Canada. That is not correct, it was not false or misleading, and in any event, it was not material to any consumer.

G. Additional Responses to the Commissioner's Application

68. Contrary to the allegations in paragraph 10, no such content appeared on the mooseknuckles.com website in January 2016.

69. Contrary to paragraph 17, the photograph does not depict a Parka or any parts or components of one. The Commissioner's reference in paragraph 17 to import documentation and classifications under World Customs Organization rules of the application is irrelevant. In addition, to apply such classifications to assess conduct under paragraph 74.01(1)(a) would create an even more complex and unworkable standard for industry to follow.

70. In paragraph 23, the Commissioner states that there is a "care label in a sleeve" of a Moose Parka. In fact, there were no labels in the sleeve. Moose's care and content labels were located where they were supposed to be, sewn into the side seam of the Parkas.

71. Contrary to paragraph 24, Moose has always complied with paragraph 74.01(1)(a) of the *Competition Act*.

H. Remedies Requested by the Commissioner

72. The Commissioner's requests for a declaration, prohibition order, public notices and an administrative monetary penalty ("AMP") should not be granted because Moose has not engaged in reviewable conduct under paragraph 74.01(1)(a) of the *Competition Act*.

73. In the alternative, Moose exercised due diligence to prevent such conduct from occurring. Therefore, under subsection 74.1(3) of the *Competition Act*, no prohibition order may be made, no AMP may be ordered and no amount should be ordered to be paid to anyone, under paragraphs 74.1(1)(b), (c) or (d) respectively.

74. Further, the Tribunal should exercise its discretion in this case not to make an order under section 74.1, given Moose's diligence and conduct, the untested nature of the Bureau's Guidelines, the absence of any need for an order to promote conformity by Moose with the purposes of Part VII.1 of the *Competition Act* and all of the other circumstances set out in this Response.

75. Strictly in the further alternative,

- (a) the prohibition order as requested by the Commissioner is unwarranted and unnecessary in scope and duration;
- (b) there is no need for any terms in an order under paragraphs 74.1(1)(b), (c) or (d) to promote conformity by Moose with the purposes of Part VII.1 of the *Competition Act*;
- (c) an AMP of \$4 million as requested by the Commissioner is well beyond any reasonable amount needed to promote conformity by Moose with the purposes of Part VII.1 of the *Competition Act*. An AMP of that magnitude – indeed any AMP at all – would be excessive, punitive and out of proportion to the conduct of Moose and would therefore not comply with subs. 74.1(4) of the *Competition Act*; and
- (d) the Commissioner's claim for an order for "some form of reasonable restitution" has no factual foundation in the Commissioner's application. Moose states that the Commissioner must establish a factual and quantitative basis in evidence for a remedy of "restitution" under paragraph 74.1(1)(d). In this case, no consumer or group of consumers has suffered any quantifiable loss due to any reviewable conduct, nor has any consumer or group of consumers been misled in any material

respect (or at all) due to any reviewable conduct, nor was any consumer's or group of consumers' behaviour influenced by any reviewable conduct with respect to the purchase of Parkas by such consumers. Without such factual, quantitative and causal proof (in addition to proof of reviewable conduct), the Commissioner cannot establish a basis for a remedy under paragraph 74.1(1)(d).

I. Relief Requested by Moose

76. Moose requests that the Tribunal dismiss the Commissioner's application, with costs payable to Moose.

77. The Commissioner has and is causing Moose to incur legal, expert and other expenses in order to defend a proceeding that for the first time tests the Bureau's Guidelines. Moose seeks full reimbursement of its expenses, or alternatively, that the nature of this proceeding and the conduct and issues raised in it, all be taken into account when the Tribunal makes an order as to costs.

J. Language and Place of the Hearing

78. Moose agrees that this proceeding be heard in English.

79. Moose requests that the hearing of this matter occur in Winnipeg, Manitoba to enable the Tribunal to take a view of the Winnipeg factories, and in Ottawa, Ontario.

Dated at Toronto this 10th day of June 2016.

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File No. **CT-2016-004**

THE COMPETITION TRIBUNAL

THE COMMISSIONER OF COMPETITION

Applicant

- and -

MOOSE INTERNATIONAL INC.

Respondent

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