

CT-2004-011

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 pursuant to subsection 10(1)(b)(ii) and (iii) of the *Competition Act* relating to the promotion of the AB Energizer by Urus Industrial Corporation (doing business as Koolatron);

AND IN THE MATTER OF the filing and registration of a consent agreement pursuant to s.74.12 of the *Competition Act*.

B E T W E E N:

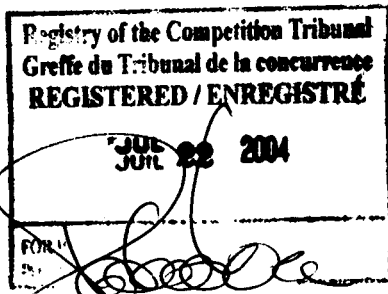
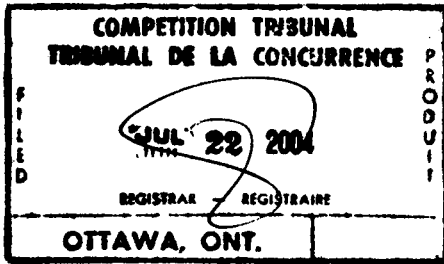
THE COMMISSIONER OF COMPETITION

Applicant

-and-

**URUS INDUSTRIAL CORPORATION
o/a KOOLATRON**

Respondent



P. LAVOIE

CONSENT AGREEMENT

FURTHER TO an inquiry by the Commissioner of Competition (the "Commissioner") pursuant to subsection 10(1)(b)(ii) and (iii) of the *Competition Act* (the "*Act*") relating to the Canadian marketing practices of Urus Industrial Corporation ("Urus") (the "Respondent");

WHEREAS the Respondent is a company located in Brantford, Ontario that manufactures and /or sells a variety of home, health and beauty, sport and fitness, automotive and camping products.

WHEREAS, from December 2001 to August 2002, the Respondent made representations to the public on several television stations across Canada in the form of an infomercial and on an Internet Web site for the promotion of the AB Energizer, an electronic muscle stimulation (“EMS”) device;

AND WHEREAS these representations were in the form of statements regarding the performance, efficacy or length of life of the AB Energizer that gave the general impression that the device, without the need for physical exercise,

- (a) would cause weight loss; and
- (b) provide its user with an athletic physique and well-defined abdominal muscles; and
- (c) provide the same benefits as the use of a gymnasium;

AND WHEREAS the Respondent and its President recognize that the information and documentation to support the performance claims which were provided to Urus by the foreign distributor prior to promoting the device, were not based on adequate and proper testing and the Respondent and its President acknowledge that no additional testing of the device was conducted, which resulted in materially false and/or misleading representations regarding the performance of the device being made;

AND WHEREAS the Commissioner has concluded that the Respondent, its President, officers, directors and senior management engaged in reviewable conduct within the meaning of paragraph 74.01(1)(a) (“false or misleading representation”) and paragraph 74.01(1)(b) (“adequate and proper test”) of the *Act*;

The Commissioner and the Respondent consent to the registration by the Competition Tribunal of this Consent Agreement (“Agreement”).

The provisions of this Agreement shall apply to the Respondent, its subsidiaries, affiliates, and successors, and its corporate officers, directors, senior management and all other personnel, agents and/or representatives acting for or on behalf of the Respondent.

The parties agree as follows:

1. The Respondent shall immediately cease the sale and marketing of the AB Energizer, by any means whatsoever, including the Internet;
2. The Respondent shall not make any representation to the public for the promotion of the AB Energizer, or similar devices – in the form of a statement, warranty or guarantee of performance, efficacy or length of life – that gives the general impression that the use of the device can provide weight loss, development of an athletic physique and well-defined abdominal muscles, and provide the same benefits as the use of a gymnasium, unless such representations are based on adequate and proper tests submitted to and approved by the Competition Bureau;

3. The Respondent shall not make any representation to the public for the promotion of the AB Energizer, or similar devices that gives the materially false or misleading general impression that the use of the device can provide weight loss, development of an athletic physique and well-defined abdominal muscles, and provide the same benefits as the use of a gymnasium;
4. The Respondent shall refund the purchase price of the AB Energizer to customers who purchased an AB Energizer marketed in Canada by Urus in respect of purchases made directly from Urus or from a reseller of an AB Energizer supplied by Urus, according to terms described in the Appendix C of this Agreement.
5. The Respondent shall post, concurrent with the broadcasting of the notices referred to in paragraph 6 of this Agreement, a notice (see Appendix A) accessible on its Web site (through a link appearing on the home page) with hyperlinks to the Competition Tribunal web site to view this Agreement. This notice shall be posted on the web site for twelve weeks following the first television broadcast date as contemplated in paragraph 6 of this Agreement;
6. The Respondent shall broadcast a notice (see Appendix B), to be aired commencing no later than 10 days from execution of this Agreement and according to a broadcast plan to be approved by the Competition Bureau prior to the execution of this Agreement;
7. The Respondent will pay forthwith, and no later than the point of execution of this Agreement, an administrative monetary penalty in the amount of CDN \$ 75,000.00, payable by certified cheque to the Receiver General for Canada;
8. The Respondent will establish, implement and maintain a formal Corporate Compliance Program regarding the use and content of advertisements and other promotions. The goal of the Compliance Program will be to promote compliance with the Act generally, and the deceptive marketing provisions of the Act (Part VII.1) specifically. The Compliance Program will be framed and implemented in a manner consistent with the Commissioner's Information Bulletin on "Corporate Compliance Programs". A draft outline of the Compliance Program and Corporate Compliance Policy will be submitted to the Commissioner within forty-five (45) days of the execution of this Agreement. The Program and Policy will be implemented within ninety (90) days from execution of this Agreement.
9. The Compliance Program will include the following features:
 - (i) designation of a corporate compliance officer within thirty (30) days of the execution of this Agreement;
 - (ii) the development of a written Corporate Compliance Policy;
 - (iii) the distribution of the Compliance Policy to all current and future Urus corporate officers, directors, senior management and other personnel agents and/or representatives who are materially involved in the formulation and/or implementation of marketing, advertising and sales of Urus products;
 - (iv) written acknowledgement of Urus personnel described in subparagraph (iii) of their awareness and comprehension of, and agreement with the Compliance Program/Policy; initial training sessions to ensure the full comprehension of the

Program by marketing, advertising and sales personnel, and annual refresher sessions;

- (v) annual notification to the Competition Bureau of the activities undertaken to ensure compliance with the *Act* under the Program. More specifically, upon written request of the Deputy Commissioner of Competition, Fair Business Practices Branch, copies of records regarding the implementation and maintenance of the Corporate Compliance Program/Policy will be provided to the Competition Bureau, within 30 days.

10. The Respondent shall maintain, and make available to the Deputy Commissioner upon request, records that verify compliance with the terms contained in paragraphs 4, 5, 6 and 8 of this Agreement. Without intending to dictate the precise manner of record keeping for these different obligations, with respect to paragraph 4, the Respondent will keep records that track the number of inquiries, number of refund claims, number of reimbursements and persons being reimbursed, number of refused requests and main reasons for refusal.

11. This Agreement is intended to apply to all firms under defacto or actual control of the Respondent or any successor of these firms and to all firms that come under defacto or actual control of the Respondent within the duration of this Agreement.

12. This Agreement shall be applicable for a period of 10 years from the date of its registering.

13. Any notice required to be given pursuant to any term of this Agreement is valid if given by facsimile transmission or registered mail to:

- (a) For the Commissioner of Competition

Attention: Raymond Pierce
Deputy Commissioner of Competition
Competition Bureau
50 Victoria Street
Gatineau, Quebec K1A 0C9
Facsimile: (819) 953-9267

- (b) For the Respondent

Attention: Richard Campbell
P.O.Box 267
Lynden, Ontario L0R 1T0

AND WHEREAS the undersigned parties agree that upon the signing of this Consent Agreement it may be filed with the court for immediate registration.

PUBLIC VERSION

Gaston Jorré [signed]

Acting Commissioner of Competition

Dated at Gatineau, Québec, this
21st day of July, 2004.

URUS INDUSTRIAL CORPORATION

By:

Arun Kulkarni [signed]

Arun Kulkarni,
President and authorized signing officer

Dated at Brantford, Ontario this
17th day of July, 2004.

Signature witnessed by:

Hasan Mirza [signed]

(print and sign name)

Dated at Brantford, Ontario this
19th day of July, 2004.

Appendix A

**NOTICE BY KOOLATRON
RE: AB ENERGIZER**

The Commissioner of Competition has concluded that certain representations made by Koolatron, division of Urus Industrial Corporation, for the promotion of the AB Energizer were false or misleading in a material respect contrary to paragraph 74.01(1)(a) ("false or misleading representation") and paragraph 74.01(1)(b) ("adequate and proper test") of the misleading representations and deceptive marketing practices provisions of the *Competition Act*.

Link: www.ct-tc.gc.ca

The Commissioner believes these representations gave the false and misleading general impression that the use of the AB Energizer would, without the need for physical exercise:

- cause weight loss;
- provide its user with an athletic physique and well-defined abdominal muscles; and
- provide the same benefits as the use of a gymnasium;

The company has agreed, among other things, to discontinue the sale of the AB Energizer, to pay an administrative monetary penalty in the amount of \$ 75,000.00, to implement a formal company policy regarding the use of advertisements and other promotions and to provide a refund to customers.

Any customers who have purchased an AB Energizer directly from Koolatron, through its web site or television advertising, may obtain a refund of the purchase price on request:

Urus Industrial Corporation,
27 Catharine Ave,
Brantford, Ontario N3T 1X5.
Call: 1-888-568-8674 (French or English)

Any other customers who have purchased an AB Energizer from a reseller of AB Energizers supplied by Koolatron may obtain a refund of the purchase price by sending a proof of purchase, along with their request.

The text of the notice on Urus Industrial Corporation's web site will be in 10-point font in unembellished print. The title of the notice, "Notice by Urus Industrial Corporation (Koolatron) Re "AB Energizer", will appear in bolded 12-point font, as will the name, address and phone number of the corporation at the bottom of the notice.

There will be an hyperlink to the Competition Tribunal to view the Consent Agreement.

The "1-800" number provided by Urus will not simply lead to a recorded message and will provide a caller with the opportunity to speak to a person should additional information be required.

- The "1-800" number shall remain active until 3 months after the last request for a reimbursement is received by Urus.

Appendix B

**NOTICE BY KOOLATRON
RE: AB ENERGIZER**

The Commissioner of Competition has concluded that the representations made by Koolatron for the promotion of the AB Energizer as a device that can cause weight loss and provide an athletic physique were false or misleading contrary to the provisions of the *Competition Act*.

Consequently, Koolatron has agreed to correct their advertising, to pay an administrative monetary penalty in the amount of \$ 75,000.00 and to provide a refund, on request, to customers who purchased an AB Energizer directly from Koolatron.

Any other customers who purchased an AB Energizer from a reseller supplied by Koolatron can obtain a refund by sending a proof of purchase along with their request.

SUPERSCRIPT:

AB ENERGIZER REQUEST FOR REFUND:

KOOLATRON

**27 Catharine Ave,
Brantford, ONTARIO, N3T 1X5
CALL: 1-888-568-8674 (French or English)**

- This notice shall be broadcasted 300 times, in the form of a 60 second television spot in which 40 seconds will be used to read the notice and 20 seconds will be used for a full screen superscript.
- Notices shall be aired according to the initial proportion of infomercials per television station and time of the day as per the broadcast plan provided to the Commissioner.
- The 300 notices shall be broadcasted over a 21 day period to begin within 10 days of the execution of the Agreement.
- The "1-800" number provided by Urus will not simply lead to a recorded message and will provide a caller with the opportunity to speak to a person should additional information be required.
- The "1-800" number shall remain active until 3 months after the last request for a reimbursement is received by Urus.

Appendix C

“Proof of purchase”: All persons who request a refund and who purchased the product directly from Urus through their web site or through the infomercial will automatically be credited according to Urus’s records.

All other persons who did not purchase an AB Energizer directly from Urus will need to provide a proof of purchase. A “proof of purchase” may constitute an invoice, credit card billing, bank confirmation, or any other paper or documentation which demonstrates that the claimant is the owner of an AB Energizer marketed by Urus.

Additionally, any person who sends back the main device (the main belt and electronic centre piece) or any component of the device will be reimbursed if, according to the serial number or other marks on the device or component(s), it can be determined that the device was marketed by Urus. Components include:

- conductive gel;
- Weight Loss guide & Instruction Manual;
- Koolatron AB Energizer Instructional Video.

Where a purchaser of a device marketed by Urus cannot show the exact amount paid, there will be a refund of \$75.