

CANADA
PROVINCE OF ONTARIO

Court File No.

IN THE SUPERIOR COURT OF ONTARIO
(JUDICIAL DISTRICT OF TORONTO)

IN THE MATTER OF an application by the Attorney General of
Canada for an order pursuant to section 34 of the *Competition Act*,
R.S.C. 1985, c. C-34 (as amended)

BETWEEN:

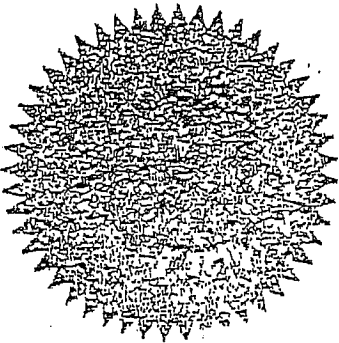
HER MAJESTY THE QUEEN

Applicant

- and -

LIFESTYLES CANADA LIMITED

Respondent



PROHIBITION ORDER

ON THE APPLICATION OF THE ATTORNEY GENERAL OF CANADA pursuant
to subsection 34(1) of the *Competition Act*, R.S.C. 1985, c.C-34, as amended, (the
"*Competition Act*") for an order prohibiting certain conduct of the Respondent,
Lifestyles Canada Limited;

ON READING THE CONSENT of the Respondent to the Draft Order:

AND UPON reading the Statement of Admitted Facts filed,
and

AND UPON having registered a conviction on the following counts this day against the Respondent, Lifestyles Canada Limited (hereinafter referred to as "Lifestyles Canada"), for having committed indictable offences, contrary to subsections 55(2) and 55(2.1) of the *Competition Act* and being liable pursuant to paragraph 55(3)(a) of the said Act:

(i) On January 26, 1999, in London, Ontario, Lifestyles Canada made representations relating to compensation under the Lifestyles Canada multi-level marketing plan, to prospective participants in the plan, verbally and in written promotional material, without fair, reasonable and timely disclosure of information relating to compensation actually received or likely to be received by typical participants in the plan, contrary to section 55(2) of the *Competition Act*. (Count #1)

(ii) On May 25, 1999, in Hull, Quebec, Lifestyles Canada made representations relating to compensation under the Lifestyles Canada multi-level marketing plan, to prospective participants in the plan, on the Internet web site (<http://www.lifestyles-mlm.com>) without fair, reasonable and timely disclosure of information relating to compensation actually received or likely to be received by typical participants in the plan, contrary to subsection 55(2) of the *Competition Act*. (Count #2)

(iii) On March 9, 2000, in Hull, Quebec, Lifestyles Canada did not ensure that representations relating to compensation under the Lifestyles Canada multi-level marketing plan, made to prospective participants in the plan, on an Internet web site (<http://www.lifestyler.com>), by a participant in the plan, constituted or included fair, reasonable and timely disclosure of information relating to compensation actually received or likely to be received by typical participants in the plan, contrary to section 55(2.1) of the *Competition Act*. (Count #3)

(iv) On February 17, 1999, in Strathroy, Ontario, Lifestyles Canada did not ensure that representations relating to compensation under the Lifestyles Canada multi-level marketing plan, made to prospective participants in the plan, verbally and in written promotional material, by a participant in the plan, constituted or included fair, reasonable and timely disclosure of information relating to compensation actually received or likely to be received by typical participants in the plan, contrary to section 55(2.1) of the *Competition Act*. (Count #4)

AND UPON hearing the submissions of counsel for the Attorney General of Canada and counsel for the Respondent,

AND WHEREAS Lifestyles Canada was incorporated November 6, 1989, in the Province of Ontario and carries on business at 790 Arrow Road, Toronto, Ontario.

AND WHEREAS Lifestyles Canada operates a multi-level marketing plan as defined in subsection 55(1) of the *Competition Act* for the sale of botanical extract blends such as Intra®, as well as nutritional supplements, personal care products, household cleaning products, vitamin and mineral supplements and a diet program.

AND WHEREAS Lifestyles Canada made representations relating to compensation under the plan, to prospective participants in the plan, without fair, reasonable and timely disclosure of information relating to compensation actually received or likely to be received by typical participants in the plan, which representations were made to prospective participants verbally, in published promotional material, and electronically on an Internet web site contrary to subsection 55(2) of the *Competition Act*.

AND WHEREAS Lifestyles Canada did not ensure that representations relating to compensation under the plan, which were made to prospective participants in the plan, by participants in the plan or by employees of Lifestyles Canada, constituted or included fair, reasonable and timely disclosure of information relating to compensation actually received or likely to be received by typical participants in the plan, which representations were made to prospective participants verbally, in published promotional material and electronically on an Internet web site contrary to subsection 55(2.1) of the *Competition Act*.

AND WHEREAS the representations made relating to compensation under the plan included references to earnings such as "\$113,000 per month", "2 million dollars in 7 years", "\$500,000 per year and still growing", which far exceed the earnings of a typical participant in the plan, which Lifestyles Canada reported as ranging from \$399.00 to \$2,000.00 per year.

THIS COURT DOES PROHIBIT the doing of any act or thing constituting or directed towards the commission or continuation of the said offences through any form of promotional representation, including, but not limited to, representations made verbally, in published material or through any electronic means such as audio or audio-visual tape recordings, Internet websites and e-mail by the Respondent;

THIS COURT DOES ORDER that the Respondent shall ensure that any representative of Lifestyles Canada or any participant in the Lifestyles Canada multi-level marketing plan, including each and every of the Respondent's affiliates, directors, owners, officers, shareholders, agents, participants and employees, present and future: subsidiaries, assignees and their agents and employees, shall not do any act or thing constituting or directed towards the commission or continuation of the said offences through any form of promotional representation, including, but not limited to, representations made verbally, in published material or through any electronic means such as audio or audio-visual tape recordings, Internet websites and e-mail.

AND THIS COURT DOES DIRECT the Respondent to provide a copy of this Order and a written statement that it is the policy of the Respondent to comply with the provisions of the *Competition Act* and a current copy of those sections of the *Competition Act* which are attached hereto and marked as Exhibit "A" with respect to the conduct as set out herein:

- (a) within 90 days hereof, to each of the Respondent's present affiliates, directors, owners, officers, shareholders and employees who is in Canada or who may make representations regarding the Lifestyles Canada multi-level marketing plan in that capacity in Canada or affecting Canada, including any of such subsidiaries, assignees and their agents and employees, including officers, managers, salespersons and purchasers of materials;
- (b) within 90 days of their attaining that position, to everyone who attains a position described in subparagraph (a) of this paragraph subsequent to the date hereof, through any electronic means such as audio or audio-visual tape recordings, Internet websites and e-mail;
- (c) within 90 days hereof, to all present participants in the Lifestyles Canada plan who are in Canada or who may make representations regarding the Lifestyles Canada plan in that capacity in Canada or affecting Canada; and
- (d) within 90 days of their attaining that position, to everyone who becomes, subsequent to the date hereof, a National Marketing Director of the Lifestyles Canada plan in Canada or who may make representations regarding the Lifestyles Canada plan in that capacity in Canada or affecting Canada.

AND THIS COURT DOES DIRECT the Respondent to provide a written statement that it is the policy of the Respondent to comply with the provisions of the *Competition Act* and a copy of those sections of the *Competition Act* which are attached hereto and marked as Exhibit "A" with respect to the conduct set out herein:

- (a) within 90 days of their attaining that position, to everyone who becomes, subsequent to the date hereof, a participant in the Lifestyles Canada multi-level marketing plan in Canada or who may make representations regarding the Lifestyles Canada plan in that capacity in Canada or affecting Canada.

AND THIS COURT DOES FURTHER ORDER that each and every paragraph of this Order is binding upon the Respondent, as well as each and every of the Respondent's, present and future, affiliates, directors, owners, officers, shareholders, agents, and employees, as well as present participants, in Canada or who would make representations in Canada or affecting Canada: and, to any of its subsidiaries, assignees and their agents and employees directed towards the commission or repetition of the said offences.

AND THIS COURT SHALL retain jurisdiction over the parties to this proceeding for the purposes of interpreting, varying or rescinding any of the provisions of this Order, upon the application of either party.

DATED at the City of Toronto, in the Province of Ontario, this 18th day of May, 2001.

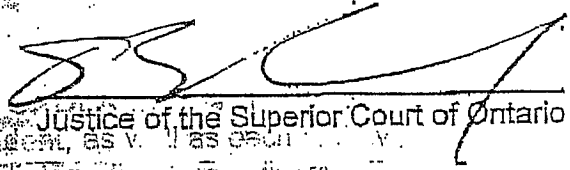

Justice of the Superior Court of Ontario

Exhibit "A"

Competition Act

R.S.C. 1985, c. C-34.

as am. to April 30, 2000 Section 34
Section 55

34.

(1) Where a person has been convicted of an offence under Part VI, the court may, at the time of the conviction, on the application of the Attorney General of Canada or the attorney general of the province, in addition to any other penalty imposed on the person convicted, prohibit the continuation or repetition of the offence or prohibit the doing of any act or thing, by the person convicted or any other person, that is directed toward the continuation or repetition of the offence.

Idem

(2) Where it appears to a superior court of criminal jurisdiction in proceedings commenced by information of the Attorney General of Canada or the attorney general of the province for the purposes of this section that a person has done, is about to do or is likely to do any act or thing constituting or directed toward the commission of an offence under Part VI, the court may prohibit the commission of the offence or the doing or continuation of any act or thing by that person or any other person constituting or directed toward the commission of the offence.

Prescriptive terms

(2.1) An order made under this section in relation to an offence may require any person

(a) to take such steps as the court considers necessary to prevent the commission, continuation or repetition of the offence; or

(b) to take any steps agreed to by that person and the Attorney General of Canada or the attorney general of the province.

Duration of order

(2.2) An order made under this section applies for a period of ten years unless the court specifies a shorter period.

Variation or rescission

(2.3) An order made under this section may be varied or rescinded in respect of any person to whom the order applies by the court that made the order

(a) where the person and the Attorney General of Canada or the attorney general of the province consent to the variation or rescission; or

(b) where the court, on the application of the person or the Attorney General of Canada or the attorney general of the province, finds that the circumstances that led to the making of the order have changed and, in the circumstances that exist at the time the application is made, the order would not have been made or would have been ineffective in achieving its intended purpose.

Other proceedings

(2.4) No proceedings may be commenced under Part VI against a person against whom an order is sought under subsection (2) on the basis of the same or substantially the same facts as are alleged in proceedings under that subsection.

Appeals to courts of
appeal and Federal
Court

(3) The Attorney General of Canada or the attorney general of the province or any person against whom an order is made under this section may appeal against the order or a refusal to make an order or the quashing of an order

(a) from a superior court of criminal jurisdiction in the province to the court of appeal of the province, or

(b) from the Federal Court -- Trial Division to the Federal Court of Appeal, as the case may be, on any ground that involves a question of law or, if leave to appeal is granted by the court appealed to within twenty-one days after the judgment appealed from is pronounced or within such extended time as the court appealed to or a judge thereof for special reasons allows, on any ground that appears to that court to be a sufficient ground of appeal.

Appeals to Supreme
Court of Canada

(3.1) The Attorney General of Canada or the attorney general of the province or any person against whom an order is made under this section may appeal against the order or a refusal to make an order or the quashing of an order from the court of appeal of the province or the Federal Court of Appeal, as the case may be, to the Supreme Court of Canada on any ground that involves a question of law or, if leave to appeal is granted by the Supreme Court, on any ground that appears to that Court to be a sufficient ground of appeal.

Disposition
of appeal

(4) Where the court of appeal or the Supreme Court of Canada allows an appeal, it may quash any order made by the court appealed from, and may make any order that in its opinion the court appealed from could and should have made.

Procedure

(5) Subject to subsections (3) and (4), Part XXI of the Criminal Code applies with such modifications as the circumstances require to appeals under this section.

Punishment for
disobedience

(6) A court may punish any person who contravenes an order made under this section by a fine in the discretion of the court or by imprisonment for a term not exceeding two years.

Procedure

(7) Any proceedings pursuant to an information of the Attorney General of Canada or the attorney general of a province under this section shall be tried by the court without a jury, and the procedure applicable in injunction proceedings in the superior courts of the province shall, in so far as possible, apply.

Definition of "Superior
court of criminal
jurisdiction"

(8) In this section, "superior court of criminal jurisdiction" means a superior court of criminal jurisdiction as defined in the Criminal Code.

(4) Where the court of appeal or the Supreme Court of Canada allows an appeal, it may quash any order made by the court appealed from, and may make any order that in its opinion the court appealed from could and should have made.

Definition of "multi-level marketing plan"

55. (1) For the purposes of this section and section 55.1, "multi-level marketing plan" means a plan for the supply of a product whereby a participant in the plan receives compensation for the supply of the product to another participant in the plan who, in turn, receives compensation for the supply of the same or another product to other participants in the plan.

Representations as to compensation

(2) No person who operates or participates in a multi-level marketing plan shall make any representations relating to compensation under the plan to a prospective participant in the plan unless the representations constitute or include fair, reasonable and timely disclosure of the information within the knowledge of the person making the representations relating to

(a) compensation actually received by typical participants in the plan;

(b) compensation likely to be received by typical participants in the plan, having regard to any relevant considerations, including a participant in the plan receiving compensation for the supply of the product to

- (i) the nature of the product, including its price and availability, compensation for the supply of the same or another
- (ii) the nature of the relevant market for the product,

(iii) the nature of the plan and similar plans, and

(iv) whether the person who operates the plan is a corporation, partnership, sole proprietorship or other form of business organization.

Idem

(2.1) A person who operates a multi-level marketing plan shall ensure that any representations relating to compensation under the plan that are made to a prospective participant in the plan by a participant in the plan or by a representative of the person who operates the plan constitute or include fair, reasonable and timely disclosure of the information within the knowledge of the person who operates the plan relating to

(a) compensation actually received by typical participants in the plan; or

(b) compensation likely to be received by typical participants in the plan, having regard to any relevant considerations, including those specified in paragraph (2)(b).

Due diligence defence

(2.2) A person accused of an offence under subsection (2.1) shall not be convicted of the offence if the accused establishes that he or she took reasonable precautions and exercised due diligence to ensure

(a) that no representations relating to compensation under the plan were made by participants in the plan or by representatives of the accused; or

(b) that any representations relating to compensation under the plan that were made by participants in the plan or by representatives of the accused constituted or included fair, reasonable and timely disclosure of the information referred to in that subsection.

Offence and punishment

(3) Any person who contravenes subsection (2) or (2.1) is guilty of an offence and liable

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(a) on conviction on indictment, to a fine in the discretion of the court or to imprisonment for a term not exceeding five years or to both; or

(b) on summary conviction, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding one year, or to both.

CANADA
(Province of Ontario)

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(Judicial District of Toronto)

IN THE MATTER OF an application by the
Attorney General of Canada for an order
pursuant to section 34 of the *Competition Act*,
R.S.C. 1985, c. C-34, as amended

BETWEEN:

HER MAJESTY THE QUEEN

APPLICANT

- and -

LIFESTYLES CANADA LIMITED

(Province of Ontario)

RESPONDENT

SUPERIOR COURT OF JUSTICE
PROHIBITION ORDER

IN THE MATTER OF
Attorney General of Canada
Morris Rosenberg
Deputy Attorney General of Canada
R.S.C. 1985, c. C-34

Per: Francois Handfield/Josephine Palumbo
Counsel for the Attorney General of Canada,
Department of Justice
Competition Law Division