

FEDERAL COURT

Ottawa, Ontario, this 28th day of July, 2004.

PRESENT: THE HONOURABLE MR. JUSTICE TEITELBAUM

IN THE MATTER OF an application by the Attorney General of Canada for an Order pursuant to subsection 34(1) of the *Competition Act*, R.S.C. 1985, c. C-34 (as amended)

BETWEEN:

HER MAJESTY THE QUEEN

- and -

ANITECH ENTERPRISES INC.

Accused

PROHIBITION ORDER

UPON THE APPLICATION of the Attorney General of Canada for an Order prohibiting certain conduct of the Accused, Anitech Enterprises Inc. (hereinafter referred to as "Anitech") pursuant to subsection 34(1) of the *Competition Act*, R.S.C. 1985, c.C-34, as amended (the "*Competition Act*"), and upon having registered a conviction this day against the Accused for having committed an indictable offence, contrary to subsection 52(1) of the *Competition Act*, and upon hearing the submissions of counsel for the Attorney General of Canada and counsel for the Accused, and upon reading the Statement of Admitted Facts, filed, and upon reading the consent of the Accused to the issuance of this Order, filed:

1. **THIS COURT DOES PROHIBIT** the repetition of acts or things contrary to subsection 52(1) of the *Competition Act* by the Accused for a period of ten (10) years from the date of this Order;

2. **AND THIS COURT DOES FURTHER PROHIBIT** the doing of any act or thing by the Accused and each and every of the Accused's affiliates, directors, officers and employees, constituting or directed towards the commission or continuation of the said offence 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 web sites and e-mail by the Accused;
3. **AND THIS COURT DOES DIRECT** the Accused to clearly disclose and explain the annual administration fee, effective January 1, 2003, on all registration forms and promotional materials, regardless of the communication medium, and to advise all customers, such as veterinarians, shelters, breeders, and distributors, but not individual pet owners, forthwith, of the existence of the said forms and promotional materials, such that previous forms and materials not containing disclosure of the annual administration fee can be destroyed. The Accused shall submit to the Commissioner of Competition under the *Competition Act* (the "Commissioner") within 45 days after the date of this Order, confirmation of such notification, as well as a list of all customers notified;
4. **AND THIS COURT DOES FURTHER DIRECT** the Accused to continue to provide all pre-2003 registrants with the services for which they signed on for at the time of purchase, without ever having to pay a fee for those services. To ensure that pre-2003 registrants do not receive any solicitations for payment of any additional fees, for the original services contracted for, the Accused shall, within 30 days, maintain accurate records such that pre-2003 registrants can be clearly and readily distinguished from other registrants. In the event that such a payment is collected by the Accused in error, effective October 17, 2003, the Accused shall refund such registrant forthwith, upon request from the affected registrant or upon discovery of the error by the Accused, as applicable;
5. **AND THIS COURT DOES ALSO DIRECT** the Accused to:
 - (a) provide within 30 days of this Order to each of its directors, officers and employees:
 - (i) a copy of this Order;
 - (ii) a current copy of the *Competition Act* which is attached hereto and marked as Exhibit "A";
 - (iii) a written statement that it is the Accused's policy to comply with the provisions of the *Competition Act* and this Order; failure to comply will

result in appropriate disciplinary action which may include termination of employment; failure to comply with, or contravention of, this Order is punishable under subsections 34(6) and 35(2) of the *Competition Act*; and that the company's legal advisors are available to confer with its directors, officers and employees about any compliance questions; and

- (iv) a training session outlining and explaining the Accused's policy towards complying with the *Competition Act* generally, and the 'Deceptive Marketing Practices' provisions, specifically;
 - (b) acknowledge, in writing to the Commissioner within 45 days after the date of this Order, compliance with paragraph (a) above, including a list of all directors, officers and employees to whom the material and training, outlined in the said paragraph, were provided;
 - (c) for the period of three (3) years after the date of this Order, provide a copy of each of the materials and deliver the training described in paragraph (a) to everyone who attains the status described in that paragraph within 60 days of attaining such status;
 - (d) for the period of three (3) years after the date of this Order, deliver an annual refresher training session to all directors, officers and employees outlining and explaining the company's policy towards complying with the *Competition Act* generally, and the 'Deceptive Marketing Practices' provisions, specifically;
 - (e) for the period of three (3) years after the date of this Order, submit to the Commissioner, on or before December 31st of each year, a written statement setting out the facts, including the names and titles of all directors, officers and employees, and the manner of compliance with paragraphs (c) and (d), including confirmation that each person referred to in paragraphs (c) and (d) has acknowledged their awareness of the materials and training set out in paragraph (a) and that the acknowledgment is recorded on the personnel file of each such person; and
 - (f) provide to the Commissioner, for a period of ten (10) years after the date of this Order and within 60 days of receipt of a written request from the Commissioner, such information as she may reasonably request for the purpose of monitoring compliance with this Order;
6. **AND THIS COURT DOES FURTHER ORDER** that each and every paragraph of this Order is binding upon the Accused, as well as each and every of the Accused's affiliates, directors, officers, and employees, present and future, in Canada or who would make representations in Canada or affecting Canada, and to any of its'

successors, affiliates, assignees and their agents and employees. Without limiting the generality of the foregoing, the Prohibition Order governs any subsequent purchaser, owner or operator of Anitech Enterprises Inc., whether through purchase, restructuring or a joint venture partnership with Anitech Enterprises Inc.;

7. **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.

Max M. Teitelbaum

Judge