

FEDERAL COURT

IN THE MATTER OF an application by the Attorney General of Canada for an Order pursuant to subsection 34(2) of the *Competition Act*, R.S.C. 1985, c. C-34 (as amended)

BETWEEN:

HER MAJESTY THE QUEEN Upon the Information
of the **ATTORNEY GENERAL OF CANADA**

Applicant

- and -

PAUL BROWN

Respondent

STATEMENT OF ADMITTED FACTS

The Respondent, by its counsel, hereby admits the following facts solely for the purposes of dispensing with their proof in this proceeding under subsection 34(2) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, (the "*Competition Act*") and for no other purpose.

THE RESPONDENT

1. Paul Brown was President and Chief Executive Officer of Anitech Enterprises Inc. from May 1995 until May 2003. In May 2003, Brett Proud was appointed President and Chief Operating Officer after which Mr. Brown retained his title as CEO until his resignation on June 1, 2004. Mr. Brown's role after May 2003 was to provide transition assistance to the new President. Mr. Brown remained on the Board of Directors of Anitech until June 1, 2004. At all material times, Mr. Brown was fully aware of all key details relating to the annual administration fee mail campaign conducted between September 2002 and June 2003.
2. Mr. Brown holds shares in Anitech representing approximately 6% of the outstanding voting shares of the company.

THE COMPANY

3. Anitech distributes microchips for permanent identification of pets, and owns and operates a national pet registry and recovery service of over 400,000 microchipped pets. It operates under the business name "PetNet".
4. Anitech markets its PetNet product to veterinarians, breeders, and animal shelters across Canada, who in turn sell the product to pet owners. The tiny chip is injected under the loose skin between the pet's shoulder blades by a veterinarian. In the event that the pet is lost, the chip can be read by a scanner which animal shelters and veterinarians possess. The scanned identification number is used to access the PetNet national registry and identify the owner.
5. The company was first incorporated under the name "First Alberta Enterprises Corporation" in the Province of Alberta, under the *Alberta Business Corporations Act*, on April 4, 1986. On October 17, 1990, First Alberta Enterprises Corporation changed its name to "Anitech Enterprises Inc.". On November 26, 1990, Anitech Enterprises Inc. was discontinued in Alberta under section 182 of the *Business Corporations Act* and continued in the Province of British Columbia under the *British Columbia Company Act*. On June 6, 1993, Anitech Enterprises Inc. was granted Continuation in the Province of Ontario under the *Business Corporations Act of Ontario*. Anitech Identification Systems Inc., a fully owned subsidiary of Anitech Enterprises Inc., was incorporated in June 1988 under the *Canada Business Corporations Act*. Both Anitech Enterprises Inc. and its subsidiary Anitech Identification Systems Inc. (hereinafter referred to as "Anitech") carry on business at 620 Alden Road, Unit 101, Markham, Ontario.
6. Under Mr. Brown's direction the number of pets microchipped and registered on the PetNet database grew from 50,000 to 400,000. During this time Anitech's database and recovery service evolved from a desk top computer and mobile phone to a full Internet accessible registry and 24-hour bilingual phone service.

CONDUCT DIRECTED TOWARD THE COMMISSION OF AN OFFENCE

7. Between September 2002 and June 2003, the exact dates being unknown, Mr. Brown and other company officials, did, for the purpose of promoting the PetNet microchip and recovery service, and in order to ensure the long-term viability of the pet recovery service, make representations to the public in the form of mailings to pet owners, which representations gave the general impression that payment of an annual administration fee was required to ensure continued pet registration and recovery services, which representations constituted conduct directed toward the commission of an offence, contrary to subsection 52(1) of the *Competition Act*.

8. Subsection 52(1) of the *Competition Act* prohibits knowingly or recklessly making a representation to the public, for the purpose of promoting a product or business interest, that is false or misleading in a material respect.
9. Approximately 400,000 mailings, which had the look and feel of an invoice, were sent to PetNet registrants in several provinces across Canada, requesting payment of \$19.95 for an annual administration fee, a fee that had not been disclosed to registrants at the time of purchase. The initiative consisted of 81 campaigns, generally in batches of 5,000 mailings per campaign. Over 33,700 payments were received by Anitech totalling over \$800,000 in revenue for the company.

THE REPRESENTATIONS

10. Since the inception of the Pet Registry in or about 1991 through to September 2002, Anitech represented its pet microchip and recovery service as a one time lifetime fee. Marketing material supplied to distributors, veterinarians, animals shelters, breeders and various groups of government, stated that the initial fee protected the pet for its lifetime. It further stated that there would be no renewal fees, free information changes, and included lifetime registration on the PetNet National Database. PetNet sold the chip to veterinarians for \$24.00. The typical cost of the chip, implantation and lifetime registration on the PetNet database when purchased from a veterinarian is \$60.00.
11. In February 2002, Anitech began considering a new business model whereby it would institute an annual registration fee to ensure an annual recurring revenue stream for the company. This model would combine some aspects of the previous membership driven program with an annual registration fee, for which registrants would be expected to pay.
12. In April 2002, Anitech hired Mohammad Ali to act as the company's Director of Marketing. Although Mr. Ali had responsibility for day to day operations and general company marketing initiatives, his main focus was to develop and implement this new annual fee model, under the direction and approval of Mr. Brown. Mr. Brown directed that invoices be sent to registrants in batches in order to measure the response and effectiveness of the approach.
13. Anitech initially considered a voluntary loyalty type program, whereby members (registrants) would be offered certain premium services in exchange for a modest annual fee. Over time the program moved from a voluntary loyalty program to an official company policy change, whereby registrants would be advised that the company, in order to ensure its viability, had made a policy change which now required registrants to pay an annual fee.
14. In September 2002, Anitech began sending invoices to registrants requiring payment of an annual administration fee in the amount of \$19.95, effective January 1, 2003, to reflect

the company's change in policy. Prior to this mailing, Anitech did not advise pet owners, veterinarians, animal shelters, breeders, distributors, or other concerned parties of its new policy. Anitech issued a press release concerning the annual fee on October 23, 2002.

15. In response to numerous complaints from pet owners, veterinarians, distributors, and the Ontario Veterinary Medical Association (OVMA), Anitech issued a memorandum to veterinarians in November 2002 outlining its reasons for introducing the new fee, explaining how it would be instituted for new registrants effective January 1, 2003, and reassuring them that pre-2003 registrants would be 'grandfathered'.
16. Despite this assurance, Anitech, under the direction of Mr. Brown, continued to send invoices to pre-2003 registrants which clearly indicated that payment of the annual administration fee was required. Between September 2002 and mid-January 2003, Anitech sent approximately 60,000 invoices to existing registrants. In response to these mailings the OVMA received hundreds of calls from angry pet owners and veterinarians outraged that Anitech was invoicing for a service which had been represented at the time of purchase as a one time fee, with no annual renewal fees. The OVMA continued to express its serious concerns with Anitech's business practices and placed significant pressure on Anitech to make it clear to registrants that the fee was optional.
17. In January 2003, the OVMA and Anitech reached an agreement whereby Anitech agreed to offer a refund to all pet owners who had received an invoice, and to clearly indicate in any future correspondence that the fee is optional for pre-2003 registrants.
18. Anitech initially abided by the agreement and produced a clearly worded refund letter and mailing. However, shortly thereafter Anitech revised the refund letter and the mailing such that it went on at length to explain the improvements to PetNet's pet recovery service and the reason for the annual fee and fell short of clearly stating that payment was optional. The result was that many registrants receiving the refund letter were unclear that a refund was being offered. Attached and marked as Exhibits "A" and "B" are copies of the revised refund letter and a sample copy of the mailing (respectively).
19. Although over 14,000 payments were subject to the OVMA/Anitech agreement, Anitech sent out 8,188 refund offer letters, 90% of which were sent in May 2003, over 3 months after the agreement had been made. The first refund cheques were issued in June 2003.
20. Subsequent to the agreement with the OVMA, Anitech continued to send mailings to an additional 330,000+ registrants. Although there were numerous versions of the mailing, all versions had the look and feel of an invoice and gave the general impression that payment of the fee was required to maintain ones' pet on the registry. Each version was designed to obtain the maximum response rate. Versions which yielded a poor response rate were quickly replaced in the subsequent campaign with wording that would be more likely to prompt payment.

21. Customer service representatives for Anitech were provided with scripts to direct them on how to respond to callers inquiring about the fee. The general tone of these scripts were to lead the caller to believe that the fee had to be paid, without stating it directly. Customer service representatives were instructed never to say to a caller that "the fee is voluntary or that it is not mandatory". Rather, they were to respond to direct questions such as "Do I have to pay?", by explaining the reasons for the fee, the losses incurred by the company over the years, the excellent services offered by PetNet, the upgrades implemented by the company, and so forth. The aim was to convince the caller to pay the fee by pointing out the reasons for the fee.
22. Throughout the period from late January 2003 to June 2003, Anitech continued to suggest to veterinarians, breeders, shelters, distributors, veterinarian associations and certain government agencies, that the fee was optional for pre-2003 registrants, while at the same time conveying a confusing message to pet owners. This was a tactic designed to minimize the loss of microchip sales, while at the same time maximize the annual fee revenue. The OVMA continued to voice its objections to Anitech's business practises and to demand that Anitech, and in particular Mr. Brown, take corrective measures.
23. In July 2003, the OVMA submitted a formal complaint to the Competition Bureau.

OTHER CONSIDERATIONS

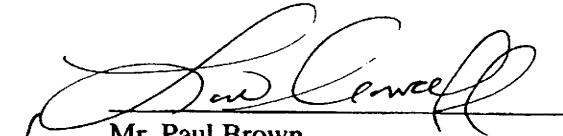
24. In acknowledgement of the seriousness of the conduct engaged in by Anitech and the Respondent, while the Respondent was acting in his capacity as President and CEO of Anitech, the Respondent has made a personal monetary contribution of \$50,000.00 dollars to Anitech.
25. The decision by the Respondent to consent to an Order of Prohibition under subsection 34(2) has saved considerable costs of further investigation and possible trial which would otherwise have been incurred by the Government of Canada.
26. The Respondent has resigned as a director of Anitech and its CEO effective June 1, 2004.
27. The Respondent has cooperated with the Competition Bureau in reaching a resolution in this matter.

CONCLUSION

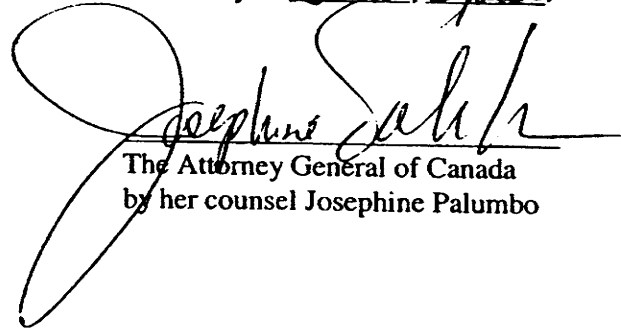
28. The conduct engaged in by the Respondent and described above constitutes acts or things, that are directed toward the commission of the offence contrary to subsection 52(1) of the *Competition Act*. For greater certainty, in admitting these facts for the purpose of this proceeding, the Respondent does not admit to the commission of an offence under subsection 52(1) of the *Competition Act*.

29. The Respondent consents to the imposition of an Order of Prohibition pursuant to subsection 34(2) of the *Competition Act* in the terms set out in Annex "A" to this Statement of Admitted Facts.

Dated this 17th day of July, 2004,
at the City of Toronto, Ontario.


for Mr. Paul Brown

Dated this 19th day of July, 2004,
at the City of ~~Quebec~~ Quebec


The Attorney General of Canada
by her counsel Josephine Palumbo