

Ontario
SUPERIOR COURT OF JUSTICE

BETWEEN:

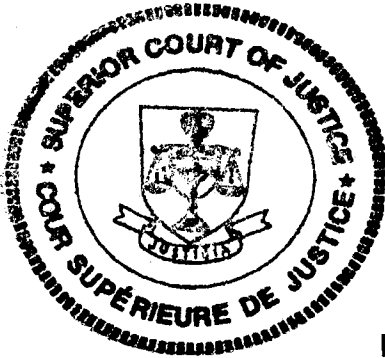
NEWLY WEDS FOODS CO.

Plaintiff

- and -

PFIZER INC., PFIZER CANADA INC.,
OTSUKA CHEMICAL CO., LTD.

Defendants



Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in the Court Office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period of serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

Date issued:

JUN 10 2002

Issued By:


Local Registrar

London Court House
80 Dundas Street
London, Ontario
N6A 6A3

TO: Pfizer Inc.
235 East 42nd Street
New York, NY 10017
U.S.A.

AND TO: Pfizer Canada Inc.
2200 Eglinton Avenue East
Toronto, ON M1L 2N3

AND TO: Otsuka Chemical Co., Ltd.
747 Third Avenue, 26th Fl.
New York, NY 10017-2830

C L A I M

1. The Plaintiff, Newly Weds Foods Co. claims on its own behalf and on behalf of class members:

- a. general damages for conspiracy in the amount of \$6,000,000.00;
- b. general damages for intentional interference with economic relations, in the amount of \$6,000,000.00;
- c. general damages for conduct that is contrary to Part VI of the *Competition Act*, R.S. 1985, c. 19 (2nd Supp.), s.36, in the amount of \$6,000,000.00;
- d. punitive and exemplary damages in the amount of \$1,000,000.00;
- e. pre-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, s.128;
- f. costs of this action on a solicitor and client basis;
- g. such further and other relief as this Honourable Court seems just.

THE PLAINTIFF

2. Newly Weds Foods Co. is a manufacturer of various food products who purchased Maltol from Pfizer Canada Inc. for use in its products.

THE DEFENDANTS AND THEIR EMPLOYEES

3. Pfizer Inc. ("Pfizer") is a corporation with its global headquarters based in New York, New York. During the relevant conspiracy period, Pfizer, through its former Food Science Group, was engaged in the production, and the distribution and sale into Canada, of Maltol.

4. Pfizer Canada Inc. ("Pfizer Canada") is a Canadian subsidiary of Pfizer, and carries on business in Ontario. Pfizer Canada distributed Maltol in Canada.

5. Otsuka Chemical Co. Ltd., ("Otsuka") is a corporation with places of business located in New York, N.Y. and Osaka Japan. Otsuka was engaged in the distribution and sale of Maltol into Canada.

6. The acts alleged in this complaint to have been done by each Defendant were authorized, ordered and done by its officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.

7. Various persons and/or firms, not named as Defendants herein, may have participated as co-conspirators in the conspiracy alleged herein and may have performed acts and made statements in furtherance thereof.

8. Maltol is a chemical food-flavoring agent and includes Ethyl Maltol and Methyl Maltol and excludes natural Maltol. It is used primarily as a flavour enhancer in fruit and caramel-flavoured confectioneries and beverages. It is also used in the production of perfume and certain antiseptic substances. Methyl Maltol was sold by Pfizer under the trade name Veltol and by Otsuka under the trade name Pyromaltol. Ethyl Maltol was sold by Pfizer under the trade name Veltol-Plus and by Otsuka under the trade name Ethyl Pyromaltol. Methyl Maltol and Ethyl Maltol are referred to as "Maltol" herein.

9. The Plaintiff alleges that the Defendants were involved in a conspiracy as detailed herein.

10. Plaintiff alleges that Pfizer and Otsuka allocated customers and territories for sale of Maltol between January 1, 1989, and December 31, 1995.

11. For the purposes of forming and effectuating this combination and conspiracy, the Defendants and their representatives did the things that they combined and conspired to do, including, among others, the following:

- (a) Participating in meetings in at least New York and Japan and communicating to discuss markets, customers and the prices of Maltol sold in Canada and the world. The participants in such meetings and communications included the following persons:

Otsuka

Makio Okamoto
Hiraoki Fujiwara
Haruki Yoshida

Pfizer

D. Farley (Executive Vice President)
M. Sasayaner
A. Yoshizumi

- (b) Agreeing, during those meetings and communications, to allocate markets and customers and to charge prices at certain levels and maintain prices of Maltol sold in Canada at artificially high levels; and
- (c) Issuing price announcements and price quotations in accordance with the agreements reached.

12. On July 19, 1999, Pfizer agreed to plead guilty before the United States District Court to participating in a conspiracy to allocate customers and territories for Maltol.

13. The Plaintiff and proposed Class Members have suffered damages as follows:

- (a) The price of Maltol purchased by the Plaintiff and the Class has been fixed, raised, maintained and stabilized at artificial and non-competitive levels; and
- (b) Competition in the sale of Maltol has been restrained.

14. During the period covered by this claim, the Plaintiff and proposed Class have directly or indirectly purchased millions of dollars of Maltol manufactured by the Defendants. By reason of the alleged violations of the *Competition Act* and the common

law, the Plaintiff and proposed Class paid more for Maltol or products containing Maltol than they would have paid in the absence of the illegal combination and conspiracy and, as a result, have been injured in their business and property and have suffered damages in an amount presently undetermined.

15. The Plaintiff's damages have been suffered in the Province of Ontario.

16. The Defendant Pfizer Inc. has had dealings with Canadian authorities in the Province of Ontario with respect to the subject matter of this claim and as such has attained to the jurisdiction of the Ontario courts.

17. The Plaintiff pleads and relies on the *Competition Act*, R.S. 1985, c. 19 (2nd Supp), s.36.

18. The Plaintiff pleads and relies on section 17 (g), (h), (p) of the *Rules of Civil Procedure*, allowing for service *ex juris* of the foreign Defendants.

19. The Plaintiff pleads and relies on the *Class Proceedings Act, 1992*.

20. The proposed Representative Plaintiff states that it is representative of a Class which suffered damages as a consequence of the illegal and tortious activities of the Defendants.

21. The Plaintiff proposes that this action be tried at Toronto, Ontario.

Date:

JUN 10 2002

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London, Ontario N6A 3V8

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