

Ontario
SUPERIOR COURT OF JUSTICE

BETWEEN:

BONA FOODS LTD.

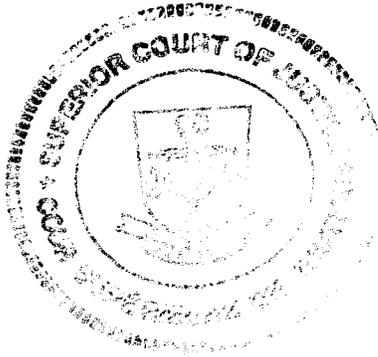
Plaintiff

- and -

PFIZER INC., PFIZER CANADA INC.,
FUJISAWA PHARMACEUTICAL CO. LTD., and
PMP FERMENTATION PRODUCTS INC.

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: DEC 27 2001

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: FUJISAWA PHARMACEUTICAL CO., LTD.
Osaka Head Office
4-7 Doshomachi 3-chome, Chuo-ku
Osaka 541-8514
Japan

AND TO: PMP FERMENTATION PRODUCTS INC.
900 N.E. Adams Street
Peoria, IL 61603
U.S.A

C L A I M

1. The Plaintiff, Bona Foods Ltd, 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. Bona Foods Ltd. is a manufacturer of meat products and who has purchased and continues to purchase sodium erythorbate 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 sodium erythorbate.

4. Pfizer Canada Inc. ("Pfizer Canada") is a Canadian subsidiary of Pfizer, and carries on business in Ontario. Pfizer Canada distributed sodium erythorbate in Canada.
5. Fujisawa Pharmaceutical Co., Ltd. ("Fujisawa") is a Japanese corporation engaged in the production, manufacturing, distribution, sale and supply of sodium erythorbate throughout the world. Fujisawa supplied sodium erythorbate through its U.S. subsidiary, PMP Fermentation Products Inc., ("PMP"). PMP sells sodium erythorbate in Canada through its distributor, Ashland Canada Inc.
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.

FACTUAL BACKGROUND

8. Sodium erythorbate is a chemical food ingredient preservative. It is used primarily to maintain colour and flavour in foods from meat and fish to fruits and vegetables. It is produced by fermentation of liquid corn sugar.

9. The Plaintiffs allege that the Defendants were involved in a conspiracy as detailed herein.

10. At various times in the period between approximately July, 1992, and December, 1995, Pfizer employees periodically engaged in conversations and attended meetings with each other and representatives of Fujisawa. Meetings occurred in locations in the United States and Japan.

11. As a result of these conversations and meetings, an unlawful agreement between Pfizer and Fujisawa was reached as to the prices at which each company would sell sodium erythorbate, and as to the volume of sodium erythorbate that each company would supply to their customers in Canada.

12. On October 24, 2001, Pfizer pleaded guilty to a violation of subsection 45(1)(c) of the *Competition Act* with respect to the sale of sodium erythorbate in Canada. Pfizer agreed to pay a fine of \$ 1.5 million (CDN).

13. Pfizer's sales of sodium erythorbate in Canada in the conspiracy period were approximately \$7,500,000.00.
14. The Plaintiff and proposed Class Members have suffered damages as follows:
 - a. The price of sodium erythorbate 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 sodium erythorbate has been restrained.
15. During the period covered by this claim, the Plaintiff and the Class have directly or indirectly purchased millions of dollars of sodium erythorbate manufactured by the Defendants. By reason of the alleged violations of the *Competition Act* and the common law, the Plaintiff and the Class paid more for sodium erythorbate or products containing sodium erythorbate 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.
16. The Plaintiff's damages have been suffered in the Province of Ontario.
17. The Defendants Pfizer Inc and Fujisawa Pharmaceutical Co. Ltd have had dealings with Canadian authorities in the Province of Ontario with respect to the subject matter of this claim and as such have attorned to the jurisdiction of the Ontario courts.

18. The Plaintiff pleads and relies on the *Competition Act*, R.S. 1985, c. 19 (2nd Supp), s.36.
19. 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.
20. The Plaintiffs pleads and relies on the *Class Proceedings Act, 1992*.
21. 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.
22. The Plaintiffs propose that this action be tried at Toronto, Ontario.

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Date: December 21, 2001

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