

SEAL

28-Aug-15

Vancouver
REGISTRY



Court File No. **VLC-S-S-157170**

No.
Vancouver Registry

In the Supreme Court of British Columbia

Between

**THERESA KOZMA, KEVIN GILCHRIST,
LAUREEN FREAYH, and ALLAN HUSTAD**

PLAINTIFFS

and

**NONG SHIM CO., LTD., NONGSHIM AMERICA, INC.,
OTTOGI CORPORATION, OTTOGI AMERICA, INC., SAM
YANG FOODS CO., LTD., SAM YANG U.S.A., INC., KOREA
YAKULT CO., LTD. AND PALDO CO., LTD.**

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the Plaintiffs.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the Plaintiffs and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiffs,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,

- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

Overview

1. Beginning at least as early as December 2000 and continuing until at least July 2012 (the “Class Period”), the Defendants (as defined in paragraphs 11 through 29 below) conspired with each other and various other corporations, persons, partnerships, firms and/or individuals not named in this lawsuit, the identities of which are not presently known, to 1) fix, maintain, increase or control the price for the supply of Korean Noodles (as defined in paragraphs 32 through 34 below), 2) to allocate sales, territories, customers or markets for the production or supply of Korean Noodles, and/or 3) to fix, maintain, control, prevent, lessen or eliminate the production or supply of Korean Noodles (collectively the “Conspiracy”, as further defined in paragraphs 41 through 43 below).
2. The Conspiracy was targeted at wholesalers and other vendors who purchased Korean Noodles from the Defendants or one of them for re-sale.
3. As a consequence of the Defendants’ collusive conduct, the Defendants and their co-conspirators eliminated or reduced competition in the Korean Noodles industry. Through their conduct, the Defendants effectuated an overcharge for the Korean Noodles.
4. The artificially inflated prices that vendors paid for the Korean Noodles were passed on to indirect purchasers of the Korean Noodles, namely customers who purchased Korean Noodles from grocery stores and snack vendors.
5. The Defendants’ Conspiracy therefore raised prices for all members of the proposed class, all of whom suffered losses as a consequence of the Defendants’ unlawful conduct.

The Parties*The Plaintiffs*

6. The Plaintiff, Theresa Kozma, is a resident of Abbotsford, British Columbia. Ms. Kozma has purchased 10-15 packages of Korean Noodles weekly for the past 15 years. She has purchased the Korean Noodles from a variety of vendors in British Columbia.

7. The Plaintiff, Kevin Gilchrist, is a resident of Fauquier, British Columbia. Mr. Gilchrist has purchased 24 packages of Korean Noodles monthly for the past several years. He has purchased the Korean Noodles from a variety of vendors in British Columbia.

8. The Plaintiff, Lauren Freayh, is a resident of West Kelowna, British Columbia. Ms. Freayh has purchased several packages of Korean Noodles weekly for the past 15 years. She has purchased the Korean Noodles from a variety of vendors in British Columbia.

9. The Plaintiff, Allan Hustad, is a resident of Lethbridge, Alberta. Mr. Hustad has purchased several packages of Korean Noodles three times a week for the past 12 years. He has purchased the Korean Noodles from a variety of vendors in Alberta and British Columbia.

10. The Plaintiffs bring this claim on behalf of themselves and on behalf of a class of persons who purchased, either directly or indirectly, the Korean Noodles ("Class Members", to be defined in the Plaintiffs' application for class certification).

The Nongshim Defendants

11. The Defendant, Nong Shim Co., Ltd. ("Nongshim"), is a company existing under the laws of South Korea with a registered legal address at 112 Yeouidaebang-ro, Tongjak-gu, Seoul 156709, South Korea. Nongshim is a leading food company in South Korea with a dominant market share of approximately 70% of the Korean Noodle business in Korea. As of July 20, 2015, Nongshim's stated capital was US\$53,537,967. Nongshim started in 1965 and, according to its website, "became the #1 noodle and snack manufacturer in the country". Nongshim's website provides: "Our vision is to become a global food company that provides a wide variety of unique and excellent quality products. We are committed to reach our vision with the focus on the most important part of the company: the consumers.... Through the continuous efforts of

strategic sales operation and the commitment to provide better products and services, today, Nongshim products are available in most retail outlets throughout North America and over 80 countries around the world!”.

12. Nongshim is registered extra-provincially in Ontario with an address for service c/o Hyun Seong Kim at 5369 Fasdon Court in Mississauga, Ontario L5V 1Y8.

13. The Defendant, Nongshim America, Inc. (“Nongshim America”), is a California company with an address for service of process c/o CT Corporation System at 818 W Seventh Street, Suite 930 in Los Angeles, California 90017, USA. Nongshim America has its headquarters in Rancho Cucamonga, California. According to its website, Nongshim America “was established in 1994 as part of the global expansion plan to reach out to the consumers in North America. In 2005, Nongshim America, Inc. built a state-of-the-art facility in southern California to serve the fast growing demands for [its] award-winning products”. Nongshim America’s manufacturing facility has an annual production capacity of approximately 200 million Korean Noodles. Nongshim America is wholly owned by the California company Nongshim Holdings USA, Inc. who, in turn, is wholly owned by Nongshim.

14. Nongshim America is registered extra-provincially in British Columbia with an address for service c/o Sam Kim at 6951 72nd Street, Unit 117 in Delta, British Columbia V4G 1K7.

15. Nongshim America is also registered extra-provincially in Ontario with an address for service c/o Sung Jin Park at 6255 Cantay Road, Unit 4 in Mississauga, Ontario L5R 3Z4.

16. The companies named and described in paragraphs 12 through 15 of this pleading are collectively referred to herein as the “Nongshim Defendants”. Each of the Nongshim Defendants was an agent of the other for the purposes of the manufacture, distribution, marketing and/or sale of the Korean Noodles.

17. At all material times, the Nongshim Defendants functioned as a joint enterprise in the Conspiracy to suppress and eliminate competition in the Korean Noodle industry. The business

of each of the Nongshim Defendants is inextricably interwoven, and they operate collectively for their mutual benefit and profit.

The Ottogi Defendants

18. The Defendant, Ottogi Corporation (“Ottogi”), is a South Korean company with a registered legal address at 405 Heungan-daero, Tongan-gu, Anyang, Kyonggi-do 431070, South Korea. Ottogi was founded in 1969 under its original name, Pung-Lim Company. Ottogi manufactures various food products, including Korean Noodles. Its 2014 annual net income was ₩87,711,138,693. Its website notes: “We will rise as the leading Asian food company in the continent of America and become the cornerstone in globalizing our Ottogi Corporation to expand as a worldwide company”.

19. The Defendant, Ottogi America, Inc. (“Ottogi America”) is a California company with an address for service of process c/o Young Jae Ham at 1650 W El Segundo Blvd. in Gardena, California 90249, USA. According to its website: “Ottogi America distributes [Ottogi] products all over the United States and Canada.... Ottogi America, as a wide-ranging food distributor, has acquired top food technology and brand name from Ottogi corporation to bring competitive products that will lead North and South America’s Korean Food Industry”. Ottogi America is wholly owned by Ottogi.

20. The companies named and described in paragraphs 18 and 19 of this pleading are collectively referred to herein as the “Ottogi Defendants”. Each of the Ottogi Defendants was an agent of the other for the purposes of the manufacture, distribution, marketing and/or sale of the Korean Noodles.

21. At all material times, the Ottogi Defendants functioned as a joint enterprise in the Conspiracy to suppress and eliminate competition in the Korean Noodle industry. The business of each of the Ottogi Defendants is inextricably interwoven, and they operate collectively for their mutual benefit and profit.

The Sam Yang Defendants

22. The Defendant, Sam Yang Foods Co., Ltd. ("Sam Yang"), is a South Korean company with a registered legal address at 104 Opaesan-ro 3-gil, Songbuk-gu, Seoul 136754, South Korea. The cover page of Sam Yang's website reads: "Honest [sic] & Integrity". Sam Yang was established in 1961. On its website, Sam Yang notes that it "produced the first ramen in Korea" in 1963 and "produced the first cup type noodle in Korea" in 1972. Sam Yang's Chairman, In-Chang Chun, states: "We of Samyang Foods Group have dedicated to the promotion of dietary life culture towards supplying most nutritious and delicious natural foods in safe and convenient manner in order to make stable progress of the enterprise in earnest with the creed of honesty and trust. With the main product of instant noodle called Ramen produced since the foundation of the company, Samyang Foods Co., Ltd. has grown to one of the leading general food makers in Korea". As of July 21, 2015, Sam Yang's stated capital was US\$57,999,465.

23. The Defendant, Sam Yang (U.S.A.), Inc. ("Sam Yang USA"), is a California company with an address for service of process c/o See Y. Lee at 10316 Norwalk Blvd. in Santa Fe Springs, California 90670, USA. With respect to overseas sales, Sam Yang notes on its website: "As of now, we are exporting our products of Ramen and Snack in the brand name of Samyang to more than 45 countries in the world and we are getting high reputation and evaluation by meeting consumer's needs and requirements with a supply of a good quality food and service". Sam Yang USA has a long-term, exclusive distributorship agreement with Sam Yang. Sam Yang USA also has agreements with Sam Yang concerning trademarks and other intellectual property.

24. The companies named and described in paragraphs 22 and 23 of this pleading are collectively referred to herein as the "Sam Yang Defendants". Each of the Sam Yang Defendants was an agent of the other for the purposes of the manufacture, distribution, marketing and/or sale of the Korean Noodles.

25. At all material times, the Sam Yang Defendants functioned as a joint enterprise in the Conspiracy to suppress and eliminate competition in the Korean Noodle industry. The business of each of the Sam Yang Defendants is inextricably interwoven, and they operate collectively for their mutual benefit and profit.

The Yakult Defendants

26. The Defendant, Korea Yakult Co., Ltd. ("Yakult"), is a South Korean company with a registered legal address at 577 Gangnam-daero, Socho-gu, Seoul 137904, South Korea. Yakult is a manufacturer of various food products, including Korean Noodles. Yakult had a 2014 annual net income of ₩57,739,246,270.

27. The Defendant, Paldo Co., Ltd. ("Paldo"), is a South Korean company with a registered legal address at 7FI Wooduck Bldg, 577 Gangnam-daero, Socho-gu, Seoul 137904, South Korea. Paldo is registered to do business in California with an address for service of process c/o Minsu Kang at 3700 Wilshire Blvd., Suite 909 in Los Angeles, California 90010, USA. Paldo is a manufacturer of various food products, including Korean Noodles. As of July 20, 2015, Paldo had a stated capital of US\$89,229,946. Prior to 2012, when Paldo was registered to do business in California, Yakult did business in California as Paldo America, Inc., which has now been dissolved.

28. The companies named in paragraphs 26 and 27 of this pleading are collectively referred to herein as the Yakult Defendants. Each of the Yakult Defendants was an agent of the other for the purposes of the manufacture, distribution, marketing and/or sale of the Korean Noodles.

29. At all material times, the Yakult Defendants functioned as a joint enterprise in the Conspiracy to suppress and eliminate competition in the Korean Noodle industry. The business of each of the Yakult Defendants is inextricably interwoven, and they operate collectively for their mutual benefit and profit.

Un-named co-conspirators

30. Other corporations, persons, partnerships, firms and/or individuals not named in this pleading, because their identities are currently unknown to the Plaintiffs, participated as co-conspirators in the Conspiracy and performed acts and made statements and agreements in furtherance of the Conspiracy (the "Co-conspirators"). The Co-conspirators were all persons whom it is reasonable to believe would have, in the absence of the Conspiracy, been likely to have competed with the Defendants with respect to the Korean Noodles.

31. Whenever reference is made in this pleading to any act, communication, agreement or transaction of a corporation, the Plaintiffs are alleging that the corporation engaged in the act, communication, agreement or transaction by or through its directors, officers, employees and/or agents while they were actively engaged in the direction, management and/or control of the corporation's business.

Korean Noodles

32. "Korean Noodles", as used in this pleading, refer to instant ramen noodles manufactured by any of the Defendants or their subsidiaries or affiliates. Korean Noodles are dried and pre-cooked noodles usually sold with flavouring powder and/or seasoning oil. Korean Noodles are sold either in a packet or in a disposable cup or bowl. The two main ingredients used to produce Korean Noodles are wheat flour and palm oil. Korean Noodles in packets can be cooked within minutes in boiling water, after which the seasoning and dehydrated vegetables are added. Korean Noodles in cups and bowls can be prepared by adding hot water and the seasoning to the prepackaged container which already contains the dehydrated vegetables.

33. Korean Noodles are distinct from other types of noodles sold in Canada. Korean Noodles contain unique spices which are typically hotter and have a bolder flavour than other instant noodles from Japan, China or elsewhere. There are various types of Korean Noodles including but not limited to: Kimchi Ramen, Udon, Kalgugusu, Chajang, Champong, Bibimmyun, Yukgaejang, Potato Ramen, Soon Noodle, Shin Black, Shin Ramyun, Meal Noodle, Cup Ramen, Japaghetti and Bowl Noodle.

34. The Korean Noodles share the same general characteristics, including manufacturing processes, ingredients, flavour profiles, packaging, product positioning and distribution systems. There is minimal variation in the quality of Korean Noodle products.

The Korean Noodle Market

35. As the Korean Noodle market in South Korea became saturated, the Defendants sought to sell more Korean Noodles outside of Korea, including in Canada and the United States.

36. The Defendants manufactured the Korean Noodles in South Korea, China, the United States, Canada and elsewhere and then distributed the Korean Noodles to various wholesalers and other vendors, *inter alia* 1) in Canada for distribution and sale in Canada, 2) in the United States for distribution and sale in Canada, 3) in Canada for distribution and sale in the United States and elsewhere, 4) in South Korea for distribution and sale in Canada and elsewhere.

37. During the Class Period, the Defendants sold millions of dollars' worth of Korean Noodles in Canada.

38. The affected vendors included but were not limited to: Costco, Walmart, Safeway, Superstore, Save-On-Foods, T & T, 7 Eleven, Loblaws, Shoppers Drug Mart, London Drugs, Metro, A & P, PriceSmart, Extra Foods, No Frills, IGA, Sobeys, Thrifty Foods and certain of their subsidiaries, affiliates, and suppliers in Canada.

39. The identities of all affected vendors who entered into supply contracts with the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and/or the Yakult Defendants and their Co-conspirators are currently unknown to the Plaintiffs.

40. The sale of the Korean Noodles – and the Conspiracy which led to their artificially inflated prices – resulted in substantial revenues for the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants. The revenues of these companies were increased as a consequence of the Conspiracy.

The Conspiracy

41. The Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants voluntarily colluded as between themselves and with other Co-conspirators to use unlawful means to injure the economic interests of 1) wholesalers and other vendors who purchased the Korean Noodles directly from the Defendants or one of them, and 2) indirect purchasers of the Korean Noodles.

42. Beginning at least as early as December 2000 and continuing until at least July 2012, the exact dates being unknown to the Plaintiffs, the Nongshim Defendants, the Ottogi Defendants,

the Sam Yang Defendants and the Yakult Defendants knowingly entered into a continuing agreement, understanding and concert of action to 1) increase or maintain the prices of the Korean Noodles, and/or 2) suppress and eliminate competition with respect to the manufacture, marketing, sale and/or distribution of the Korean Noodles (the "Agreement"), and to conceal their Agreement from wholesalers, vendors, end-users and other stakeholders.

43. The substantial terms of the Agreement included: 1) fixing, maintaining, increasing or controlling the price for the supply of Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere, 2) allocating sales, territories, customers or markets for the production or supply Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere, and/or 3) fixing, maintaining, controlling, preventing, lessening or eliminating the production or supply of Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere.

44. With respect to the Conspiracy, "price" includes any discount, rebate, allowance, price concession or other advantage in relation to the supply of the Korean Noodles.

45. For the purpose of carrying out the Conspiracy, the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants and their Co-conspirators engaged in conduct that included, among other things:

- a. participating in meetings, conversations, email correspondence and other communications to discuss price increases for Korean Noodles;
- b. participating in meetings, conversations, email correspondence and other communications to discuss price quotations for Korean Noodles to be submitted to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;
- c. participating in meetings, conversations, email correspondence and other communications to discuss the allocation among the companies of certain sales, territories, customers or markets for the production or supply of Korean Noodles;
- d. agreeing, in those meetings, conversations, emails and other communications to fix, maintain, increase or control the price for the supply of Korean Noodles sold to

- wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;
- e. agreeing, in those meetings, conversations, emails and other communications on price quotations for Korean Noodles to be submitted to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;
 - f. agreeing, in those meetings, conversations, emails and other communications to allocate among the companies certain sales, territories, customers or markets for the production or supply of Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;
 - g. agreeing, in those meetings, conversations, emails and other communications to fix, maintain, control, prevent, lessen or eliminate the production or supply of Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;
 - h. in order to effectuate the Agreement, exchanging information on: 1) price increases for Korean Noodles and the timing of those price increases, 2) sensitive management information, such as sales results, business support strategies, plans for new product releases, sales promotion plans and advertising plans, 3) price quotations to be submitted to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere, 4) the allocation of certain sales, territories, customers or markets for the production or supply of Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere, and/or 5) the production and supply of Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;
 - i. in accordance with the Agreement, fixing, maintaining, increasing and/or controlling the price for the supply of the Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;
 - j. in accordance with the Agreement, submitting price quotations to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;
 - k. in accordance with the Agreement, allocating among the companies certain sales, territories, customers and/or markets for the production or supply of Korean Noodles

sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;

- l. in accordance with the Agreement, fixing, maintaining, controlling, preventing, lessening and/or eliminating the production and/or supply of the Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere;
- m. selling Korean Noodles to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere at collusive and non-competitive prices;
- n. accepting payment for Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere at collusive and non-competitive prices which resulted in increased revenues for each of the Defendants;
- o. engaging in conversations and other communications for the purpose of monitoring and enforcing adherence to the agreed upon price fixing scheme; and
- p. employing measures to keep their conduct secret.

46. The Defendants agreed upon a strategy to best implement the Conspiracy: Nongshim, as the market leader, would increase the price for its Korean Noodles, and the other Defendants would follow shortly thereafter. The pattern of price increases occurred initially in Korea, followed by price increases in Canada and the United States through, and with the assistance of, the Defendants incorporated in the United States and the Defendants registered extra-provincially in British Columbia and Ontario.

47. During the Class Period, the Defendants increased the price of Korean Noodles at least six times. Each of these price increases was supra-competitive.

48. The acts in furtherance of the Conspiracy were carried out, at least in part, within Canada and were an unreasonable restraint of trade and commerce.

49. The conduct of the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants and their Co-conspirators was contrary to Part VI of the *Competition Act*, RSC 1985, c C-34.

50. Each of the Defendants aided, abetted and/or counselled the other Defendants and Co-conspirators in the commission of the breaches of Part VI of the *Competition Act*, RSC 1985, c C-34. Each of the Defendants therefore violated sections 21 and 22 of the *Criminal Code*, RSC 1985, c C-46.

51. The conduct of the Defendants and their Co-conspirators was also contrary to the competition laws of the United States and South Korea.

52. Further, for the purpose of giving effect to the Conspiracy and contrary to Part VI of the *Competition Act*, RSC 1985, c C-34, beginning at least as early as December 2000 and continuing until at least July 2012, the exact dates being unknown to the Plaintiffs, Nongshim America, Ottogi America, Sam Yang USA and other Defendants wherever incorporated who carried on business in Canada, implemented, in whole or in part in Canada, a directive, instruction, intimation of policy or other communication to the corporation or any person from a person in a country other than Canada who was in a position to direct or influence the policies of the corporation, which communication was for the purpose of giving effect to a conspiracy, combination, agreement or arrangement entered into outside Canada, whether or not any director or officer of the corporation in Canada had knowledge of the conspiracy, combination, agreement or arrangement.

53. The conduct of the Defendants and their Co-conspirators increased the price of the Korean Noodles in Canada, including in the province of British Columbia, and in the United States, South Korea and elsewhere. The Plaintiffs and Class Members were overcharged for the Korean Noodles.

54. As a consequence of the increased price of the Korean Noodles, economic losses and damages were incurred by direct purchasers of the Korean Noodles, including wholesalers and other vendors of the Korean Noodles.

55. Economic losses and damages were also incurred by indirect purchasers of the Korean Noodles, being customers who purchased Korean Noodles from a grocery store or other vendor.

56. The Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants intended to cause damage to the Plaintiffs and Class Members. Alternatively, the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants knew or ought to have known that their actions would injure the Plaintiffs and Class Members.

57. The conduct of the Defendants in furtherance of the Conspiracy was unlawful and inequitable. The increased revenues that the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants realized as a consequence of artificially inflating the prices of the Korean Noodles are ill-gotten profits.

58. Pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34, the Plaintiffs and Class Members are entitled to recover from the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants an amount equal to the loss or damage suffered by them, together with any additional amount that the Court may allow.

59. The Plaintiffs and Class Members are also entitled to damages at common law or, alternatively, to restitutionary damages.

60. The Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants are jointly and severally liable for the actions of all of the Co-conspirators and for the damages allocated to each Defendant.

The Korean Fair Trade Commission Order

61. On or about July 12, 2012, the Korean Fair Trade Commission (“KFTC”) issued an order (the “KFTC Order”) holding that Nongshim, Ottogi, Sam Yang and Yakult (collectively the “Korean Defendants”) had each conspired to fix, maintain, raise and/or stabilize the price for Korean Noodles. The KFTC found that the Korean Defendants had increased the price for their respective Korean Noodles at the same time and to similar levels at least 6 times between May 2001 and February 2010. Notably, the KFTC found that there was never any obvious disruption or interruption in the Defendants’ Conspiracy to increase the price of Korean Noodles; the Defendants’ Conspiracy was continuous and repetitive.

62. The KFTC Order enjoined the Korean Defendants from 1) committing anti-competitive acts by collaboratively deciding the price for Korean Noodles, and 2) exchanging pricing information regarding Korean Noodles.

63. The KFTC Order required the Korean Defendants to pay penalties totaling approximately ₩136.3 billion (approximately US\$120 million) as follows:

- a. Nongshim was ordered to pay approximately ₩108.1 billion in penalties;
- b. Sam Yang was ordered to pay approximately ₩12.1 billion in penalties;
- c. Ottogi was ordered to pay approximately ₩9.8 billion in penalties; and
- d. Yakult was ordered to pay approximately ₩6.3 billion in penalties.

64. Sam Yang announced on July 17, 2012, that it was excused by the KFTC from paying the ₩12.1 billion penalty because it had voluntarily reported the price fixing conspiracy to the KFTC to avail itself of the KFTC's Leniency Program.

65. Each of Nongshim, Ottogi and Yakult appealed to the Seoul High Court seeking to vacate the penalties imposed by the KFTC. On November 8, 2013, the Court upheld the KFTC's ruling as against Nongshim and Ottogi. On December 4, 2013, the Seoul High Court upheld the KFTC's ruling as against Yakult.

Discoverability

66. The Plaintiffs could not reasonably have known that

- a. they sustained injury, loss or damage as a consequence of the Conspiracy; and
- b. having regard to the nature of their injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage

until, at the earliest, on or about December 4, 2013 when the Seoul High Court ruled against Yakult and upheld the KFTC's ruling against it. It was at this time that all appeals from the KFTC's order were exhausted and the KFTC's ruling was final and binding on the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants.

Jurisdiction

67. The Plaintiffs rely on ss. 3, 7 and 10 of the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28 and plead that there is a real and substantial connection between the subject matter of this action and the Province of British Columbia for the following reasons:

- (a) the Defendants or some of them carried on business in British Columbia and elsewhere in Canada;
- (b) the Defendants marketed, distributed and/or sold the Korean Noodles to wholesalers and other vendors in Canada, including in British Columbia;
- (c) three of the proposed representative Plaintiffs reside in British Columbia; and
- (d) the Plaintiffs' damages were sustained in British Columbia.

Part 2: RELIEF SOUGHT

68. The Plaintiffs claim, on their own behalf and on behalf of a class of similarly situated persons:

- a. an order certifying this action as a class proceeding and appointing each of them as a representative plaintiff under the *Class Proceedings Act*, RSBC 1996, c 50;
- b. general damages and special damages for civil conspiracy and unlawful interference with economic interests;
- c. statutory damages pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34 for losses and damages suffered as a result of conduct that is contrary to Part VI of the *Competition Act*, RSC 1985, c C-34;
- d. declaratory relief as well as statutory damages under the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2;
- e. restitutionary damages for unjust enrichment and waiver of tort;
- f. punitive damages;
- g. pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 79;
- h. investigative costs and the costs of this proceeding on a full-indemnity basis pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34; and
- i. such further and other relief this Honourable Court deems just.

Part 3: LEGAL BASIS

Generally

69. The Plaintiffs plead and rely on the *Class Proceedings Act*, RSBC 1996, c 50, the *Competition Act*, RSC 1985, c C-34, the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, the *Court Order Interest Act*, RSBC 1996, c 79, the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, the *Limitation Act*, SBC 2012, c 13, the *Criminal Code*, RSC 1985, c C-46 and the common law generally, including civil conspiracy, unlawful interference with economic interests, unjust enrichment and waiver of tort.

Breaches of Part VI of the *Competition Act*

70. The conduct of the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants was contrary to Part VI of the *Competition Act*, RSC 1985, c C-34.

71. Pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34, the Plaintiffs and Class Members are entitled to recover from the Defendants an amount equal to the loss or damage suffered by them, together with any additional amount that the Court may allow.

Civil Conspiracy

72. Civil conspiracy requires 1) an agreement between two or more persons, 2) concerted action taken pursuant to the agreement, and 3) actual damage suffered by the plaintiff. If the defendant's action is lawful, there must be evidence that the conspirators intended to cause damage to the plaintiff. If the defendant's action is unlawful, there must at least be evidence that the conspirators knew or ought to have known that their action would injure the plaintiff.

73. In this case, each of the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants entered into a continuing agreement with the other Defendants, who were their competitors with respect to the Korean Noodles, to 1) increase or maintain the prices of Korean Noodles, and/or 2) suppress and eliminate competition with respect to the manufacture, marketing, sale and/or distribution of Korean Noodles, and to conceal their Agreement from wholesalers, vendors, end-users and other stakeholders.

74. Pursuant to the Agreement, the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants: 1) fixed, maintained, increased or controlled the price for the supply of Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere, 2) allocated sales, territories, customers or markets for the production or supply of Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere, and/or 3) fixed, maintained, controlled, prevented, lessened or eliminated the production or supply of Korean Noodles sold to wholesalers and other vendors in Canada, the United States, South Korea and elsewhere.

75. The Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants intended to cause damage to the Plaintiffs and Class Members. Alternatively, the conduct of the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants was unlawful, and the Defendants knew or ought to have known that their actions would injure the Plaintiffs and Class Members.

76. The Plaintiffs and Class Members suffered loss and damage as a consequence of the Agreement and the concerted action of the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants taken pursuant to the Agreement.

77. The Plaintiffs and Class Members should be compensated for their losses.

Unlawful Interference with Economic Interests

78. The three essential elements of the tort of unlawful interference with economic interests are 1) the defendant intended to injure the plaintiff's economic interests, 2) the interference was by illegal or unlawful means, and 3) the plaintiff suffered economic loss or harm as a result.

79. With respect to the first element of the test, the defendant must intend to cause loss to the plaintiff either as an end goal or as the means of achieving another end goal such as self-enrichment. In this case, the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants intended to cause loss to the Plaintiffs and Class Members as a means of achieving their goal of self-enrichment.

80. The “unlawful means” required for the second branch of the test includes the Defendants’ torts, breaches of the *Competition Act*, RSC 1985, c C-34, breaches of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, breaches of the *Criminal Code*, RSC 1985, c C-46, and breaches of competition laws in the United States and South Korea.

81. The overcharge for the Korean Noodles by the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants satisfies the third element of the test, being economic loss to the Plaintiffs and Class Members.

82. The Plaintiffs and Class Members should be compensated for their losses.

Business Practices and Consumer Protection Act

83. In relation to indirect purchasers who purchased Korean Noodles in British Columbia for personal, family or household use, the conduct of the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants was in breach of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.

84. The Nongshim Defendants’, the Ottogi Defendants’, the Sam Yang Defendants’ and the Yakult Defendants’ solicitations, offers, advertisements, promotions, sales and supply of the Korean Noodles – ultimately for personal, family or household use by the Plaintiffs and by other Class Members – were “consumer transactions” within the meaning of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.

85. With respect to these consumer transactions, the Plaintiffs and Class Members were “consumers” within the meaning of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants were each “suppliers” within the meaning of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 and the Korean Noodles were “goods” within the meaning of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.

86. The Nongshim Defendants’, the Ottogi Defendants’, the Sam Yang Defendants’ and the Yakult Defendants’ conduct in their solicitations, offers, advertisements, promotions, sales and supply of the Korean Noodles, as particularized in the Statement of Facts, had the capability,

tendency or effect of deceiving or misleading the Plaintiffs and other Class Members with respect to the fair market price of the Korean Noodles. The Nongshim Defendants', the Ottogi Defendants', the Sam Yang Defendants' and the Yakult Defendants' conduct constituted deceptive acts and practices within the meaning of s.4 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 and contrary to s. 5 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.

87. As a result of the Nongshim Defendants', the Ottogi Defendants', the Sam Yang Defendants' and the Yakult Defendants' deceptive acts and practices – which resulted in unlawful overcharges for the Korean Noodles – the Plaintiffs and other Class Members have suffered losses and damages. The Plaintiffs and other Class Members paid an amount for the Korean Noodles which exceeded the products' true market value. The Plaintiffs seek declaratory relief, damages and statutory compensation pursuant to ss. 171 and 172 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 on their own behalf and on behalf of other Class Members.

88. The declaratory relief sought by the Plaintiffs in this case includes an order under s.172 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 that the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants advertise any judgment against them.

89. It is not necessary for the Plaintiffs and other Class Members to establish reliance on the Nongshim Defendants', the Ottogi Defendants', the Sam Yang Defendants' and the Yakult Defendants' deceptive acts or practices in order to establish a breach of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 and a remedy for that breach. In the alternative, if reliance is required to establish a statutory breach and/or remedy, such reliance may be assumed or inferred on the facts of this case. In the further alternative, there was actual reliance by the Plaintiffs and other Class Members on the Nongshim Defendants', the Ottogi Defendants', the Sam Yang Defendants' and the Yakult Defendants' deceptive acts and practices.

Unjust Enrichment

90. As a result of the unlawful conduct of the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants and their Co-conspirators, the Defendants benefited from the increased prices of Korean Noodles which resulted in increased revenue for the Defendants or some of them.

91. The Plaintiffs and Class Members suffered a corresponding deprivation as a consequence of the inflated prices of the Korean Noodles.

92. There was no juristic reason or justification for the enrichment of the Defendants; conversely, the conduct of the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants was unlawful.

93. Restitution should be paid to the Plaintiffs and Class Members.

Waiver of Tort

94. The conduct of the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants in furtherance of the Conspiracy was unlawful and inequitable. The increased revenues that the Defendants realized as a consequence of artificially inflating the prices of the Korean Noodles are ill-gotten profits.

95. The Defendants should be compelled to disgorge the profits of their wrongdoing.

96. Restitution should be paid to the Plaintiffs and Class Members.

Causation and Damages

97. As a consequence of the Conspiracy, the Plaintiffs and Class Members suffered economic loss and damage. These losses were the direct result of the unlawful conduct of the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants which had the effect of eliminating competition with respect to the Korean Noodles.

This lack of competition caused the Plaintiffs and Class Members to pay artificially inflated prices for the Korean Noodles.

98. Such loss and damage was foreseeable by the Defendants, who intended to injure the economic interests of the Plaintiffs and Class Members.

Punitive Damages

99. A punitive damage award in this case is necessary to express society's condemnation of the conduct engaged in by the Defendants and to achieve the goals of both specific and general deterrence.

100. The Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants intentionally engaged in unlawful conduct for their personal financial gain. The conduct of the Defendants was planned and deliberate. It lasted for several years. The Defendants profited from their misconduct. Their conduct was high-handed and represented a marked departure from ordinary standards of decent behaviour.

101. Compensatory damages are insufficient in this case. The conduct of the Nongshim Defendants, the Ottogi Defendants, the Sam Yang Defendants and the Yakult Defendants merits punishment and warrants a claim for punitive damages.

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

The Plaintiffs claims the right to serve this pleading on the Defendants outside British Columbia on the grounds that:

- (a) this action concerns a tort committed in British Columbia pursuant to section 10(g) of the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28; and
- (b) this action concerns a business carried on in British Columbia, pursuant to section 10(h) of the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28.

Plaintiffs' address for service:
Suite 400, 1385 West 8th Avenue
Vancouver, BC V6H 3V9
Fax number address for service: (604)874-7171

Place of trial: Vancouver

The address of the registry is: 800 Smithe Street
Vancouver, BC V6Z 2E1

Date: August 28, 2015



David A. Klein,
Lawyer for the Plaintiffs

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (c) serve the list on all parties of record.

Appendix**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

This action is a proposed class proceeding concerning violations of Part VI of the *Competition Act*, RSC 1985, c C-34 and the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 as well as civil conspiracy, unlawful interference with economic interests, unjust enrichment and waiver of tort. The plaintiffs and other class members suffered loss and damage as a consequence of a conspiracy entered into by the defendants and other unknown co-conspirators to reduce competition with respect to Korean noodles. Beginning at least as early as December 2000 and continuing until at least July 2012 the defendants conspired with each other and various other corporations, persons, partnerships, firms and/or individuals not named in this lawsuit, the identities of which are not presently known, to 1) fix, maintain, increase or control the price for the supply of Korean noodles, 2) to allocate sales, territories, customers or markets for the production or supply of Korean Noodles, and/or 3) to fix, maintain, control, prevent, lessen or eliminate the production or supply of Korean Noodles. The conspiracy had the effect of increasing the price of Korean noodles sold to wholesalers and other vendors. The artificially inflated prices affected both direct and indirect purchasers of the Korean noodles.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)

- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Business Practices and Consumer Protection Act, S.B.C. 2004, c. 2

Class Proceedings Act, RSBC 1996, c 50

Competition Act, RSC 1985, c C-34

Court Order Interest Act, RSBC 1996, c 79

Court Jurisdiction and Proceeding Transfer Act, SBC 2003, c 28

Criminal Code, RSC 1985, c C-46

Limitation Act, SBC 2012, c 13