Federal Court  Cour fédérale

Date: 20240509

Docket: T-1591-15

Citation: 2024 FC 717

Ottawa, Ontario, May 9, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

ENERGIZER BRANDS, LLC AND ENERGIZER CANADA INC.

Plaintiffs

and

THE GILLETTE COMPANY, DURACELL CANADA, INC., DURACELL U.S. OPERATIONS, INC., AND PROCTER & GAMBLE INC.

Defendants

COSTS ORDER AND REASONS
(Public Version with Redactions of Confidential Version Issued May 9, 2024)

I. Overview

[1] This dispute between the parties culminated in my earlier decision in *Energizer Brands, LLC v Gillette Company*, 2023 FC 804 [*Energizer 2023*]. I will refer to the Plaintiffs sometimes as "Energizer" in these reasons, and the Defendants sometimes as "Duracell."

[2] I provided the parties with an opportunity to make costs submissions after the issuance of the decision, if they were unable to reach an agreement on costs: *Energizer 2023*, above at para 273.

[3] Because the parties did not agree on the quantum of costs, they provided the Court with their submissions, including permitted reply and sur-reply submissions, as well as supporting affidavits.

[4] Energizer seeks a lump sum award comprised of (a) 25% of actual legal fees (less specified deductions) and (b) reasonable disbursements. They also have provided two alternative amounts for the Court to consider, based on the high end of Column IV and Column V respectively of Tariff B.

[5] Taking issue with my characterization of the outcome in *Energizer 2023* as "split," Duracell also seeks a lump sum award, but comprised of 50% of its legal fees and subject to a multiplier of 150% because of rejected settlement offers.

[6] Having considered the parties' submissions, supporting affidavits and applicable jurisprudence, and as explained below, I determine that Duracell is entitled to a lump sum costs award of $450,000, payable by Energizer. In my view, this amount is just and proportionate in the circumstances and reflects the objective of encouraging settlement.

[7] Set out below are applicable costs principles that I considered in the ensuing analysis which addresses the issue of divided or split success, the inapplicability of rule 420 and the relevant subrule 400(3) factors that I took into account in arriving at the above determination.

II. Applicable Costs Principles

[8] The Court has full discretion over the award and amount of costs: subsection 400(1) of the *Federal Courts Rules*, SOR/98-106 [*Rules*]. See Annex "A" below for relevant *Rules* provisions. The determination of whether to award costs, to which party and how much is a fact-dependent exercise: *Pharmascience Inc v Teva Canada Innovation*, 2022 FCA 207 [*Teva FCA*] at para 20.

[9] Fairness and reasonableness are overarching considerations in making a costs award; it involves striking a balance between compensating the successful party and not burdening the unsuccessful party unduly: *Janssen Inc v Teva Canada Ltd*, 2022 FC 269 [*Janssen*] at para 8. See also rule 3.

[10] As a general principle, costs follow the event. The "event" is less clear, however, where the result is split or divided. A ruling of "no-costs," thus, is not uncommon in the case of such an outcome, but by no means is it mandated: *Mylan Pharmaceuticals ULC v Bristol-Myers Squibb Canada Co*, 2013 FCA 231 [*Mylan*] at para 6. The Court retains the discretion to award costs to achieve certain goals, such as compensating the successful party, encouraging settlement and deterring abusive behaviour: *Air Canada v Thibodeau*, 2007 FCA 115 at para 24; *Teva FCA*, above at para 18; *Janssen*, above at para 7.

[11] Non-exhaustive factors that the Court can take into account in exercising its discretion include the result of the proceeding, the amounts claimed and recovered, the complexity of the issues, offers to settle regardless of whether they satisfy rule 420 (*Teva FCA*, above at paras 13-14), the amount of work, whether a party's conduct tended to lengthen or shorten the proceeding, and whether any step in the proceeding was improper, vexatious or unnecessary, in addition to any other matter the Court considers relevant: subsection 400(3) of the *Rules*.

[12] Chief Justice Crampton canvassed general costs principles in *Allergan Inc v Sandoz Canada Inc*, 2021 FC 186 at paras 19-36. They include:

- indemnifying the successful party or parties;
- sanctioning behaviour that increases the duration and expense of the proceeding, or is unreasonable or vexatious;
- the Court's broad discretion over the amount and allocation or apportionment of costs;
- whether to set costs with reference to Tariff B (the default level being the mid-point of Column III) or in a lump sum amount, further to subrule 400(4) and rule 407;
- whether to set a lump sum amount by beginning at the mid-point of the 25% to 50% range for a complex drug patent proceeding, or at the lower end of this range for other cases and then assessing the subrule 400(3) factors to determine if a higher or lower amount is warranted (per *Seedlings Life Science Ventures, LLC v Pfizer Canada ULC*, 2020 FC 505 at para 22); and
- assessing reasonable disbursements in full.

[13] In addition, lump sum awards may be appropriate for simple or complex matters where precise costs calculations would be complicated and burdensome: *Nova Chemicals Corporation v Dow Chemical Company*, 2017 FCA 25 [*Nova FCA 2017*] at para 12, aff'd on other grounds 2022 SCC 43. Awarding lump sum costs avoids granular analyses that devolve into an accounting exercise: *Nova FCA 2017*, above at paras 11, 15.

[14] Although Chief Justice Crampton noted the trend in case law to set the percentage of fee recovery between 25% and 50%, a lower or higher percentage may be warranted in the circumstances of the particular case: *Loblaws Inc v Columbia Insurance Company*, 2019 FC 1434 at para 15.

[15] Expenses may be reasonable if they are justified in the context of the action; the decision to incur an expense must be prudent and reasonable in the circumstances at the time: *Janssen*, above at para 10.

III. Analysis

[16] In arriving at the costs award in this matter, I have taken into account the above principles and the considerations discussed next.

(1) *Divided Success*

[17] Notwithstanding that each side to this dispute claims victory, I remain of the view that success was split or divided: *Bertrand v Acho Dene Koe First Nation*, 2021 FC 525 [*Bertrand*] at para 14.

[18] Energizer asserts that it is the "successful" party because it obtained a permanent injunction and damages in the amount of $179,000.

[19] Duracell, on the other hand, premises its asserted entitlement to costs on Energizer's lack of success on several key issues, as well as the settlement offers it made, that were rejected or countered, in the context of the overall outcome of the litigation.

[20] The case before me is not analogous, in my view, to the example considered by Justice Grammond in *Bertrand*, above at para 13. There, it is evident that if a defendant to a patent infringement action were to succeed on only one of the issues of non-infringement and invalidity, then logically the action would fail regardless of which issue prevailed, and the defendant would be entitled to costs.

[21] Here, however, I am persuaded that conceptually, the case before me involves different parts with different outcomes (i.e. the meaning ascribed to "divided success" in *Bertrand*, above at para 12).

[22] For example, on the issue of whether Duracell used one or more of Energizer's registered trademarks in a manner likely to depreciate the value of the goodwill attaching to the trademark(s), pursuant to subsection 22(1) of the *Trademarks Act*, RSC 1985, c T-13, Energizer prevailed in respect of at least two of its registered trademarks in issue, ENERGIZER and ENERGIZER MAX: *Energizer 2023*, above at paras 132, 145. As a result, Energizer was entitled to the remedies of a permanent injunction regarding these registered trademarks and damages in the amount of $179,000: *Energizer 2023*, above at paras 261, 265.

[23] Otherwise, Duracell prevailed regarding the issues of false or misleading statements or descriptions, pursuant to paragraphs 7(a) and (d) of the *Trademarks Act*, and subsection 52(1) of the *Competition Act*, RSC 1985, c C-34, and whether Duracell's activities were permitted by agreement with Energizer: *Energizer 2023*, above at paras 158, 166, 232, 271.

[24] The fact that Energizer's level of success on the issues where it succeeded was not as comprehensive as what was claimed, does not make the decision any less divided or split, in my view. The extent of success, however, is a factor the Court can take into account in assessing costs. See, for example, paragraphs 400(3)(a) and (b) of the *Rules*.

(2) Application of Subrules 420(1) and 420(2)

[25] I find that neither side to the dispute benefits from either subrule 420(1), in the case of Energizer, or subrule 420(2), in the case of Duracell. In other words, this is not a case warranting double costs (or even costs plus 50%). Instead, the offers to settle will be considered in the context of paragraph 400(3)(e), bearing in mind that the latter should not be used as a less onerous version of rule 420: *Halford v Seed Hawk Inc*, 2004 FC 1259 at para 18.

[26] Contrary to Duracell's submissions, I find that the Defendants made three, not two, offers to settle in writing, as demonstrated by Energizer's supporting affidavit of Marta Wysokinski, a law clerk with Energizer's counsel. The first offer in evidence was made in 2017 and contained terms enjoining the Defendants from using, displaying, or depreciating the goodwill attaching to, the trademarks ENERGIZER or ENERGIZER MAX, and agreeing to pay an amount totalling $35,000, inclusive of interest and costs. As well, the offer was open until five minutes after the

beginning of the trial or until otherwise withdrawn. In other words, the first offer contained terms contemplating the very injunction granted at trial, but an amount well below the amount of damages granted.

[27] Regarding the second and third settlement offers, I am not persuaded, as Duracell submits, that although they do not comply technically with rule 420, they nonetheless fall within the spirit of the rule. I note in particular that Duracell's second and third offers in 2021 and 2022 respectively were monetary only with no term or terms involving injunctive relief.

[28] Of the two, the second offer in 2021 for the amount of $150,000, came closest to the amount of damages awarded at trial, namely, $179,000. That said, it did not meet the precondition of paragraph 420(2)(a) because the Plaintiffs were not awarded an amount less favourable than $150,000.

[29] The third offer in 2022 came in considerably higher at $500,000; in other words, this amount was more favourable than the damages award Energizer achieved at trial. The offer was made, however, less than 14 days prior to the start of the trial in January 2022 and, thus, the timing of it contravened paragraph 420(3)(a).

[30] The Wysokinski affidavit describes that [redacted], but that Energizer does not rely upon them for its costs submissions. Strictly speaking, that did not prove to be the case because the Plaintiffs' reply costs submissions and the Defendants' sur-reply costs submissions delve into the settlement negotiations in which the

parties engaged days before the trial. These negotiations will be addressed further in respect of the subrule 400(3) factors that I consider relevant, to which I turn next.

(3) Subrule 400(3) Factors

[31] I find that the following factors are relevant to my analysis of the costs award: (a) the result of the proceeding, the amounts claimed and the amounts recovered; (b) the complexity of the issues and the amount of work; (c) the settlement negotiations; (d) the parties' conduct; and (e) disallowed expert evidence.

(a) *Result of the proceeding; amounts claimed and amounts recovered – paragraphs 400(3)(a) and (b)*

[32] In my view, these factors, taken together, favour the Defendants.

[33] While I have found that the result of the action was divided, that is not to say that it was an even division. The Plaintiffs' claim of depreciation of goodwill included not just ENERGIZER and ENERGIZER MAX, but also two registrations for versions of Energizer's iconic "spokes-character" rabbit or bunny embodied in registration Nos. TMA399312 and TMA943350. The Plaintiff was unsuccessful on the established facts in showing depreciation of goodwill in the latter two trademarks on which the damages claim substantially rested.

[34] Further, as mentioned, the Defendants successfully defended the claims for false or misleading statements or descriptions and established, in the process, that their impugned

activities were permitted by agreement with the Plaintiffs. The issue of false or misleading claims necessitated significant battery testing and financial expert evidence by both sides.

[35] In addition, while the Plaintiffs were awarded costs in the amount of $179,000, this is essentially a nominal amount in the context of the overall claim for approximately $9 million in damages or an accounting of profits for just under $11.5 million, plus pre- and post-judgment interest, as well as punitive damages.

(b) *Complexity of the issues; amount of work – paragraphs 400(3)(c) and (g)*

[36] I determine that, in the circumstances, these are neutral factors.

[37] While I do not disagree with the Defendants regarding the complexity of the action, which included expert evidence in three disciplines and detailed factual evidence from varied sources, jurisprudence guides against the trial judge telling a party, with the benefit of hindsight, how they could or should have conducted the litigation: *Travel Leaders Group, LLC v 2042923 Ontario Inc (Travel Leaders),* 2023 FC 613 at para 37.

[38] In other words, the fact that Energizer ultimately was not successful with several key claims does not mean necessarily that those claims were inherently baseless or without merit. I point in this regard to the outcome of the Defendants' motion for summary judgment and the appeal of that outcome that framed the trial of this matter: *Energizer Brands, LLC v The Gillette Company,* 2018 FC 1003, appeal allowed in part and cross-appeal dismissed 2020 FCA 49.

(c) *Settlement negotiations – paragraphs 400(3)(e) and 400(3)(o)*

[39] In my view, these factors weigh in Duracell's favour.

[40] Jurisprudence confirms that the Court may consider a genuine settlement offer made in good faith when assessing costs, despite the inapplicability of rule 420: *Eli Lilly Canada Inc v Mylan Pharmaceuticals ULC*, 2023 FC 780 [*Eli Lilly*] at para 32; *UPL NA Inc v Agracity Crop & Nutrition Ltd*, 2023 FC 163 at para 16. The fact that an offer may not comply with the timeliness requirements of subrule 420(3), for example, does not preclude the Court's consideration of the offer under subrule 400(3): *Teva FCA*, above at para 13.

[41] The Federal Court of Appeal teaches that in connection with the exercise of its discretion, it is appropriate for the Court to consider whether "the offer had substance and addressed the essential matters, was made in good faith, was a serious effort to settle the litigation, contained significant compromise, and was worthy of serious consideration": *Teva FCA*, above at paras 23-24.

[42] I find that Energizer's settlement positions shortly before the start of the trial were unreasonable and were not indicative of significant compromise. Notwithstanding that the parties engaged in settlement discussions during the pendency of the action and even in mediation in the early days (i.e. in 2017), the eve-of-trial negotiations foundered. They did so in part, in my view, because [redacted]. As well, Energizer refused to discuss with

Duracell why Energizer was seeking relief without addressing causation, an issue that proved to be Energizer's undoing at trial insofar as the damages award is concerned: *Energizer 2023*, above at paras 260-265.

[43] I contrast Energizer's settlement stance with Duracell's willingness to double its previous settlement offer to $1,000,000, with reference to [redacted]. Further, Duracell's last offer before trial was significantly more than what Energizer ultimately achieved at trial. In my view, the offer of $1 million had substance, addressed the essential matters, was made in good faith, was a serious effort to settle the litigation, contained significant compromise, and was worthy of serious consideration.

(d) *Parties' conduct – paragraphs 400(3)(i) and 400(3)(k)*

[44] I also find that these factors are neutral.

[45] Each side complains about the other's conduct in this action.

[46] For Energizer's part, it submits that Duracell failed to have quality controls in place regarding the stickering process and failed to make efforts not only to cease shipping the impugned packages displaying ENERGIZER and ENERGIZER MAX to Canada (from January to September 2015), but also to remove them from the market: *Energizer 2023*, above at para 245. Energizer also points to Duracell's delay in producing extensive documents and answers until October 2021. Energizer asserts that the latter conduct contributed to increased fees and disbursements for finalizing its expert reports.

[47] For its part, Duracell submits that Energizer increased the complexity of the proceeding with serious unmeritorious allegations including fraud, did not attempt to prove causation, attacked Duracell's witnesses in an inflammatory manner and inappropriately sought punitive damages.

[48] In my view, neither side has exhibited such extreme behaviour that in itself warrants costs consequences. Further, each side's submissions on this point seemingly urge the Court to conduct an autopsy of the trial and, with the benefit of hindsight, to take the other party to task for their litigation strategies, something this Court's jurisprudence cautions against: *Eli Lilly*, above at para 33, citing *Bauer Hockey Ltd v Sport Maska Inc (CCM Hockey)*, 2020 FC 862 at para 32.

(e) *Disallowed expert evidence – paragraph 400(3)(n.1)*

[49] Although this factor does not weigh significantly in the costs analysis, I find it nonetheless is relevant and warrants comment.

[50] In my view, it is more appropriate to discount the expense related to Dr. Kolsarici's expert evidence by 50%, rather than the 25% proposed by Duracell.

[51] At trial, I disallowed or excluded the portion of Dr. Kolsarici's expert report dealing with the Difference in Difference [DID] analysis, specifically paragraphs 258-272, because of Dr. Kolsarici's failure to comply with paragraph 3(i) of the Court's Code of Conduct for Expert Witnesses (under rule 52.2): *Energizer 2023*, above at para 71.

[52] Further, I found that the failure of Dr. Kolsarici to disclose the involvement of her PhD student in the DID analysis was prejudicial to Energizer and was not in line with similar disclosures by other experts whose evidence was tendered in the action: *Energizer 2023*, above at para 69.

IV. Conclusion

[53] Balancing the above factors, and to promote the objective of encouraging settlement, I conclude that it is appropriate to award costs against Energizer.

[54] In the circumstances, I determine that Duracell is entitled to costs payable by Energizer in the amount of $450,000, comprised of 13% of its legal fees (i.e. 25% divided by 2 and rounded up, resulting in the amount of $272,512.47) and 50% of its reasonable disbursements (i.e. resulting in the amount of $173,632.88), with the total ($446,145.35) rounded up.

[55] Duracell also is entitled to 5% per annum in post-judgment interest.

ORDER in T-1591-15

THIS COURT'S ORDER is that:

1. The Defendants are entitled to a lump sum costs award, payable by the Plaintiffs, of $450,000.
2. The Defendants also are entitled to 5% per annum in post-judgment interest on the costs award payable by the Plaintiffs.

"Janet M. Fuhrer"
Judge

Annex "A": Relevant Legislative Provisions

***Federal Courts Rules*, SOR-98/106.**
***Règles des Cours fédérales*, DORS/98-106.**

General principle **3** These Rules shall be interpreted and applied **(a)** so as to secure the just, most expeditious and least expensive outcome of every proceeding; and **(b)** with consideration being given to the principle of proportionality, including consideration of the proceeding's complexity, the importance of the issues involved and the amount in dispute.	**Principe général** **3** Les présentes règles sont interprétées et appliquées : **a)** de façon à permettre d'apporter une solution au litige qui soit juste et la plus expéditive et économique possible; **b)** compte tenu du principe de proportionnalité, notamment de la complexité de l'instance ainsi que de l'importance des questions et de la somme en litige.
Discretionary powers of Court **400 (1)** The Court shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid. … **Factors in awarding costs** **(3)** In exercising its discretion under subsection (1), the Court may consider **(a)** the result of the proceeding; **(b)** the amounts claimed and the amounts recovered; **(c)** the importance and complexity of the issues; **(d)** the apportionment of liability; **(e)** any written offer to settle; **(f)** any offer to contribute made under rule 421; **(g)** the amount of work; **(h)** whether the public interest in having the proceeding litigated justifies a particular award of costs;	**Pouvoir discrétionnaire de la Cour** **400 (1)** La Cour a le pouvoir discrétionnaire de déterminer le montant des dépens, de les répartir et de désigner les personnes qui doivent les payer. … **Facteurs à prendre en compte** **(3)** Dans l'exercice de son pouvoir discrétionnaire en application du paragraphe (1), la Cour peut tenir compte de l'un ou l'autre des facteurs suivants : **a)** le résultat de l'instance; **b)** les sommes réclamées et les sommes recouvrées; **c)** l'importance et la complexité des questions en litige; **d)** le partage de la responsabilité; **e)** toute offre écrite de règlement; **f)** toute offre de contribution faite en vertu de la règle 421; **g)** la charge de travail; **h)** le fait que l'intérêt public dans la résolution judiciaire de l'instance justifie une adjudication particulière des dépens;

(i) any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the proceeding; **(j)** the failure by a party to admit anything that should have been admitted or to serve a request to admit; **(k)** whether any step in the proceeding was **(i)** improper, vexatious or unnecessary, or **(ii)** taken through negligence, mistake or excessive caution; **(l)** whether more than one set of costs should be allowed, where two or more parties were represented by different solicitors or were represented by the same solicitor but separated their defence unnecessarily; **(m)** whether two or more parties, represented by the same solicitor, initiated separate proceedings unnecessarily; **(n)** whether a party who was successful in an action exaggerated a claim, including a counterclaim or third party claim, to avoid the operation of rules 292 to 299; **(n.1)** whether the expense required to have an expert witness give evidence was justified given **(i)** the nature of the litigation, its public significance and any need to clarify the law, **(ii)** the number, complexity or technical nature of the issues in dispute, or **(iii)** the amount in dispute in the proceeding; and **(o)** any other matter that it considers relevant.	**i)** la conduite d'une partie qui a eu pour effet d'abréger ou de prolonger inutilement la durée de l'instance; **j)** le défaut de la part d'une partie de signifier une demande visée à la règle 255 ou de reconnaître ce qui aurait dû être admis; **k)** la question de savoir si une mesure prise au cours de l'instance, selon le cas : **(i)** était inappropriée, vexatoire ou inutile, **(ii)** a été entreprise de manière négligente, par erreur ou avec trop de circonspection; **l)** la question de savoir si plus d'un mémoire de dépens devrait être accordé lorsque deux ou plusieurs parties sont représentées par différents avocats ou lorsque, étant représentées par le même avocat, elles ont scindé inutilement leur défense; **m)** la question de savoir si deux ou plusieurs parties représentées par le même avocat ont engagé inutilement des instances distinctes; **n)** la question de savoir si la partie qui a eu gain de cause dans une action a exagéré le montant de sa réclamation, notamment celle indiquée dans la demande reconventionnelle ou la mise en cause, pour éviter l'application des règles 292 à 299; **n.1)** la question de savoir si les dépenses engagées pour la déposition d'un témoin expert étaient justifiées compte tenu de l'un ou l'autre des facteurs suivants : **(i)** la nature du litige, son importance pour le public et la nécessité de clarifier le droit, **(ii)** le nombre, la complexité ou la nature technique des questions en litige, **(iii)** la somme en litige; **o)** toute autre question qu'elle juge pertinente.
Tariff B **(4)** The Court may fix all or part of any costs by reference to Tariff B and may award a	**Tarif B** **(4)** La Cour peut fixer tout ou partie des dépens en se reportant au tarif B et adjuger

lump sum in lieu of, or in addition to, any assessed costs.	une somme globale au lieu ou en sus des dépens taxés.
Assessment according to Tariff B **407** Unless the Court orders otherwise, party-and-party costs shall be assessed in accordance with column III of the table to Tariff B.	**Tarif B** **407** Sauf ordonnance contraire de la Cour, les dépens partie-partie sont taxés en conformité avec la colonne III du tableau du tarif B.
Consequences of failure to accept plaintiff's offer **420 (1)** Unless otherwise ordered by the Court and subject to subsection (3), where a plaintiff makes a written offer to settle and obtains a judgment as favourable or more favourable than the terms of the offer to settle, the plaintiff is entitled to party-and-party costs to the date of service of the offer and costs calculated at double that rate, but not double disbursements, after that date. **Consequences of failure to accept defendant's offer** **(2)** Unless otherwise ordered by the Court and subject to subsection (3), where a defendant makes a written offer to settle, **(a)** if the plaintiff obtains a judgment less favourable than the terms of the offer to settle, the plaintiff is entitled to party-and-party costs to the date of service of the offer and the defendant shall be entitled to costs calculated at double that rate, but not double disbursements, from that date to the date of judgment; or **(b)** if the plaintiff fails to obtain judgment, the defendant is entitled to party-and-party costs to the date of the service of the offer and to costs calculated at double that rate, but not double disbursements, from that date to the date of judgment. **Conditions**	**Conséquences de la non-acceptation de l'offre du demandeur** **420 (1)** Sauf ordonnance contraire de la Cour et sous réserve du paragraphe (3), si le demandeur fait au défendeur une offre écrite de règlement, et que le jugement qu'il obtient est aussi avantageux ou plus avantageux que les conditions de l'offre, il a droit aux dépens partie-partie jusqu'à la date de signification de l'offre et, par la suite, au double de ces dépens mais non au double des débours. **Conséquences de la non-acceptation de l'offre du défendeur** **(2)** Sauf ordonnance contraire de la Cour et sous réserve du paragraphe (3), si le défendeur fait au demandeur une offre écrite de règlement, les dépens sont alloués de la façon suivante : **a)** si le demandeur obtient un jugement moins avantageux que les conditions de l'offre, il a droit aux dépens partie-partie jusqu'à la date de signification de l'offre et le défendeur a droit, par la suite et jusqu'à la date du jugement au double de ces dépens mais non au double des débours; **b)** si le demandeur n'a pas gain de cause lors du jugement, le défendeur a droit aux dépens partie-partie jusqu'à la date de signification de l'offre et, par la suite et jusqu'à la date du jugement, au double de ces dépens mais non au double des débours. **Conditions**

(3) Subsections (1) and (2) do not apply unless the offer to settle	**(3)** Les paragraphes (1) et (2) ne s'appliquent qu'à l'offre de règlement qui répond aux conditions suivantes :
(a) is made at least 14 days before the commencement of the hearing or trial; and **(b)** is not withdrawn and does not expire before the commencement of the hearing or trial.	**a)** elle est faite au moins 14 jours avant le début de l'audience ou de l'instruction; **b)** elle n'est pas révoquée et n'expire pas avant le début de l'audience ou de l'instruction.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1591-15
STYLE OF CAUSE:	ENERGIZER BRANDS, LLC AND ENERGIZER CANADA INC. v THE GILLETTE COMPANY, DURACELL CANADA, INC., DURACELL U.S. OPERATIONS, INC., AND PROCTER & GAMBLE INC.
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