

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001095-203

(Class Action)
SUPERIOR COURT

I. BABAN

Applicant

-vs.-

**SYNTA TECHNOLOGY
CORPORATION OF TAIWAN**, No. 89
Lane 4, Chia-An W. Rd., Lung-Tan Tao-
Yuan, Taiwan, R.O.C.

**SYNTA CANADA INTERNATIONAL
ENTERPRISES LTD.**, 4035 Williams
Road, Richmond, British Columbia, V7E
1J7

**SUZHOU SYNTA OPTICAL
TECHNOLOGY CO., LTD.**, No. 65,
Yushan Road, New District, 215011
Suzhou, Jiangsu, China

**NANTONG SCHMIDT OPTO-
ELECTRICAL TECHNOLOGY CO. LTD.**,
No. 399 West Zhongshan Rd., Rugao
City, Jiangsu, China

SW TECHNOLOGY CORPORATION,
2835 Columbia Street, Torrance,
California, 90503

SKY-WATCHER USA, 475 Alaska
Avenue, Torrance, California, 90503

PACIFIC TELESCOPE CORP., 11880
Hammersmith Way, Richmond, British
Columbia, V7A 5C8

CELESTRON ACQUISITION, LLC, 2835
Columbia Street, Torrance, California,
90503

CELESTRON INTERNATIONAL, 2835
Columbia Street, Torrance, California,
90503

OLIVON MANUFACTURING CO. LTD.,
11880 Hammersmith Way, Suite 175,
Richmond, British Columbia, V7A 5C8

**OLIVON INTERNATIONAL
ENTERPRISE INC.**, 7331 Woolridge
Court, Richmond, British Columbia, V7C
4H2

OLIVON USA, LLC, 241 Rusty Plank
Avenue, Las Vegas, Nevada, 89148

**NINGBO SUNNY ELECTRONIC CO.,
LTD.**, No. 199 Anshan Road, Yuyao,
Zhejiang, China, 315400

Defendants

**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
(Art. 574 C.C.P.)**

I. GENERAL

A) ACTION

1. Applicant wishes to institute a class action on behalf of:
 - all persons resident in Quebec that purchased a telescope that was manufactured or sold by the Defendants or co-conspirators since January 1, 2005;
2. Applicant contends that Defendants, the largest manufacturers, marketers, and distributors of telescopes, engaged in price fixing, market allocation and other anticompetitive activity with the purpose and effect of monopolizing the telescope market in Canada since January 1, 2005;
3. Applicant also contends that the Defendants' conduct has caused the charging to Class Members of telescopes at a supracompetitive rate;

B) DEFENDANTS

4. There are essentially two manufacturers for telescopes in Canada; Synta and Sunny;
5. The parent Defendants control the finances, policies, and business practices of their various subsidiaries;
6. These telescope suppliers manufacture and sell telescopes branded Celestron, Meade, Sky-Watcher, Olivon, and Synta;

I. Synta

7. Synta Technology Corporation of Taiwan ("Synta Taiwan") is a Taiwanese corporation. It is a manufacturer of telescopes and optical components that was founded by owner and chairman Dazhong/Dar Tson "David" Shen ("Shen"). In 1999, Synta established the brand Sky-Watcher to sell optics produced by Suzhou Synta. It is also the parent company of Celestron, SW Technology Corporation, and Suzhou Synta **[R-1]**;
8. While being the owner and chairman of Synta, Shen was also an officer of Ningbo Sunny Electronic Co., Ltd. from 2001-2005, who was a direct competitor. He held a 26% ownership interest in Sunny until 2005 when Synta acquired Celestron, at which point he transferred his shares to his sister;
9. Synta Canada International Enterprises Ltd. is a Canadian corporation. It is the owner of the trademark "SYNTA" **[R-2]**;
10. Suzhou Synta Optical Technology Co., Ltd. ("Suzhou Synta") is a Chinese corporation and is the primary manufacturing subsidiary of Synta Taiwan. It produces telescopes and astronomical equipment like mounts and eyepieces. Products produced by Suzhou Synta are distributed under the Acuter name and via the Synta Taiwan-owned subsidiary company Celestron;
11. Nantong Schmidt Opto-Electrical Technology Co. Ltd. is a Chinese corporation that is owned or controlled by Shen **[R-3]**;
12. SW Technology Corporation is an American corporation and a wholly-owned subsidiary of Synta Taiwan. It was established in 2005 to acquire Celestron;
13. Sky-Watcher USA is an American commercial distribution corporation and is a wholly-owned subsidiary of Synta Taiwan that was established to sell telescopes manufactured by Suzhou Synta **[R-1] [R-4]**;
14. Pacific Telescope Corp. is a Canadian corporation that was established in 1997 to sell Synta's Sky-Watcher brand of devices in Canada. It is the owner of the trademark "SKY-WATCHER" **[R-5]**;

15. Celestron Acquisition, LLC (“Celestron”) is a Canadian corporation and is a wholly-owned subsidiary of SW Technology Corporation. It is the owner of the trademark “CELESTRON LUMINOS EYEPIECES” [R-6];
16. Celestron International is a Canadian corporation and is the owner of the trademark “CELESTRON” [R-7];
17. Olivon Manufacturing Co. Ltd. is a Canadian corporation;
18. Olivon International Enterprise Inc. is a Canadian corporation and is the owner of the trademark “OLIVON” [R-8];
19. Olivon USA, LLC is an American corporation;
20. All of the above Defendants are referred to as Synta and all either directly or indirectly, designed, manufactured, distributed, imported, exported, marketed and sold telescopes in Canada, including in Quebec, during the class period;

II. Sunny

21. Ningbo Sunny Electronic Co., Ltd. (“Sunny”) is a Chinese telescope manufacturer;
22. Co-conspirators Meade Instruments Corp. (“Meade”) and Sunny Optics Inc. are American corporations and are wholly-owned subsidiaries of Sunny that filed for bankruptcy on December 4, 2019 following the loss of a multi-million-dollar antitrust lawsuit brought by Orion Telescopes & Binoculars. A jury found that Sunny, Meade, and Sunny Optics Inc. colluded with other Chinese manufacturers (who had confidentially settled; i.e. Synta) in a price-fixing scheme that formed a monopoly over the consumer telescope market and awarded \$50.4 million in damages [R-9];
23. Sunny had systematically acquired key U.S. distributors and brands to create a vertically-integrated manufacturing, distribution, and sales conglomerate despite regulators’ concerns [R-10];
24. During the Class Period, Sunny either directly or indirectly designed, manufactured, distributed, imported, exported, marketed and sold telescopes in Canada, including in Quebec, during the class period;

C) SITUATION

I. The Telescope Market

25. A telescope is an optical instrument using lenses, curved mirrors, or a combination of both to observe distant objects [R-11];

26. In 2018, the total value of Canadian imports of telescopes and telescope products was \$14,876,670 and the total value of Canadian imports of telescopes was \$11,053,234 [R-12];

27. The global amateur telescope market is expected to grow in the forecast period of 2020 to 2025, with a compound annual growth rate of 7.8% and will be expected to reach \$294 million by 2025, up from \$218.1 million in 2019 [R-13];

28. Within the broader consumer telescope market, there are two relevant markets: the manufacturing market and the distribution market;

(i) The Manufacturing Market

29. The geographic scope of this market is global. Sunny and Synta together possess 80% of that market;

30. Synta and Sunny are each able to manufacture all types of consumer telescopes; however, they have an illegal agreement or understanding that Synta only manufactures higher-end products while Sunny manufactures lower-end products [R-14];

31. Pursuant to that unlawful agreement, Synta will not manufacture or respond to a request for quotation (RFQ) for products offered by Sunny and vice versa, thereby eliminating competition;

32. Because of their understanding, Synta and Sunny charge supracompetitive prices, restrict supply, and engage in other anticompetitive conduct that artificially increases the prices of the telescopes;

(ii) The Distribution Market

33. The second relevant market is a post-manufacturing, distribution market. Synta and Sunny possess over 80% of the consumer telescope market in North America;

34. In 2005, Synta acquired telescope distributor Celestron as its wholly-owned subsidiary through SW Technology Corp. Celestron, through Defendants' collusion, became the dominant telescope distributor in North America [R-15];

35. With Synta's help, Sunny subsequently acquired telescope distributor Meade [R-16];

36. Synta and Sunny manufacture, market, and/or sell their telescopes to distributors (including their respective wholly-owned subsidiaries Celestron and Meade). These distributors then sell the telescopes online, in stores, and through dealers to astronomy enthusiasts in North America. Telescopes sold by Celestron and Meade account for the vast majority of consumer telescopes sold in North America;

II. The U.S. Federal Trade Commission (FTC)

37. The consumer telescope market has long drawn the attention of antitrust regulators. Approximately 30 years ago, the FTC investigated a proposed joint venture between Meade and Celestron that it charged would have created a virtual monopoly in the manufacture and sale of certain telescopes. FTC's motion for a preliminary injunction barring the acquisition of any assets or other interest in Celestron International by Harbour Group (Meade's parent) and further barring Diethelm (Celestron's parent) from acquiring any assets or other interest in Meade was granted. In 1991, the FTC gave final approval to a consent agreement that settled those charges. The agreement required, for ten years, the former parents of Meade and Celestron to obtain FTC approval before acquiring any company that manufactures or sells certain telescopes in the United States [R-17];
38. In 2002, Meade, at the time the leading manufacturer of performance telescopes and Schmidt-Cassegrain telescopes in North America, attempted to acquire Celestron. The deal was abandoned after a temporary restraining order and a preliminary injunction was ordered in federal district court. According to the FTC complaint, Meade's acquisition of Celestron assets would adversely impact the performance telescope market by eliminating substantial actual competition between the two companies and by creating a monopoly in the telescope market [R-10];

III. Monopoly of Different Telescope Products

39. Synta and Sunny divided the consumer telescope market. By agreeing that Synta would manufacture higher-end products and Sunny would manufacture lower-end products;
40. As a result of their respective market shares, agreements not to compete, and significant barriers to entry, Synta and Sunny have maintained an effective monopoly over their respective products;
41. Sunny and Synta limit supply, charge supracompetitive prices, and engage in other anticompetitive conduct that artificially increases the prices of the telescopes that they manufacture, market and/or sell;

IV. The Meade Acquisition

42. For many years, Meade was the leading manufacturer and supplier of high- and low-end telescopes. Meade owned highly valued patents; one of these patents was for "GoTo technology," a telescope mount and related software that can automatically point a telescope at astronomical objects that the user selects. GoTo technology was also the subject of extensive litigation between Meade and Celestron [R-18];

43. When Meade was offered for sale in 2013, a small telescope manufacturer (Jinghua Optical Co. Ltd.) tried to purchase it. Jinghua was a competitor of Sunny and Synta and if it had succeeded, it would have gained critical manufacturing knowledge about high-end telescopes and accessories, as well as Meade's patents, permitting it to better compete with Sunny and Synta in both the manufacturing and distribution markets **[R-19]**;
44. Sunny and Synta colluded to prevent Jinghua's acquisition of Meade, which would have diversified the manufacturing market, preserved an independent distributor, and increased competition in the telescope industry;
45. The FTC had blocked Meade and Celestron from merging in 1991 and 2002 [R-10 & R-16]. Because Synta owned Celestron, Synta could not acquire Meade directly. As a result, Sunny's Mr. Ni and Synta's Mr. Shen agreed that if Sunny moved to acquire Meade, Celestron and Synta would provide financial and other assistance to complete the acquisition. This was explained in an email from Mr. Ni to co-conspirator Anderson (Celestron's then-CEO) and Celestron board members Huen, Chen and Sylvia Shen, asking Celestron and Synta to continue providing financial support to Sunny;
46. Synta/Celestron made substantial payments and loans to Sunny to facilitate the Meade acquisition. These payments were documented, for example, in an accounting provided by Celestron's CFO, Paul Roth;
47. In exchange for Synta's support, (1) Sunny concealed Synta's and Celestron's involvement or assistance in its acquisition of Meade; (2) Sunny provided Celestron and Synta with access to Meade's intellectual property rights, ensuring that Celestron no longer needed to compete with Meade; and (3) Sunny shared its customers' data—including pricing data—with Celestron, enabling them to coordinate their prices and strategies. This cooperation fortified Synta and Sunny's respective monopoly for their products;
48. After Sunny acquired Meade, Shen and Huen continued to provide advice and assistance to what should have been its competitors. Shen and Huen met with Mr. Ni about manufacturing and other issues and toured Meade's facilities. Further evidence of Synta's collusive relationship with Sunny, Mr. Huen (Celestron Board Member and advisor to Synta's Mr. Shen) also instructed Sunny to remove Meade's CEO and to replace him with Celestron's former CEO, Mr. Lupica;

V. Orion's Acquisition of Hayneedle Assets

49. Synta and Sunny conspired to prevent Orion from acquiring various valuable assets that would have threatened their monopoly. In 2014, independent telescope distributor and retailer Orion attempted to acquire certain assets, including web domains like "telescopes.com" from online retailer Hayneedle. Defendants used their market power to fix credit terms to prevent Orion from

acquiring the Hayneedle assets; they cut off Orion's credit when they learned that Orion sought to acquire these assets;

50. On May 12, 2014, Orion sent a letter to Hayneedle stating that Orion sought to purchase the Hayneedle assets. Synta subsequently sent Orion's CEO, Peter Moreo, an email on June 14, 2014 threatening to end Orion's credit, stating, "if Orion really buys Hayneedle, this will be the beginning of hazard, we could not trust Orion's credit any more." Synta then forwarded this email threat to Sunny and requested that Sunny also withdraw Orion's line of credit. Sunny then sent Orion an email nearly identical to Synta's email. With its supplier credit cut off, Orion could not move forward with the asset acquisition. Synta and Sunny sabotaged Orion's purchase of the Hayneedle assets that would have allowed Orion to better compete with them **[R-20]**;

VI. Collusion

51. Synta and Sunny agreed to divide the market whereby Sunny produces low to medium end telescopes and Synta makes the higher end models. Absent such an agreement, both Defendants would have produced all models;

52. As a result of their unlawful agreement, both Synta and Sunny have long been free to fix prices, restrict output, and engage in other anticompetitive conduct;

53. Defendants have engaged in the following:

- Jointly setting the price at which Class Members could purchase telescopes and telescope products;
- Jointly setting trade and credit terms for Class Members' purchase of telescopes and telescope products;
- Jointly refusing to manufacture specific telescope products;
- Jointly agreeing to divide the market for the production and distribution of telescopes and telescope products;
- Jointly colluding to ensure Defendants' purchase of Meade;

54. The effect of Defendants' conduct as described herein has been to: (1) reduce the number of manufacturers for consumer telescopes and accessories; (2) eliminate new entrants into the consumer telescope market and push existing independent manufacturers and distributors out of the market; (3) restrain or eliminate price competition; and (4) artificially inflate the prices paid by Applicant and Class Members for telescopes;

55. In the Orion litigation [R-9], evidence showed that the defendants fixed the prices for consumer telescopes, allocated the market thereof, illegally acquired assets, and unlawfully monopolized and/or attempted to monopolize the

telescope supply and distribution markets. They also used cooperation and dominance in the consumer telescope manufacturing market to take over of the distribution market.

56. Through these activities, the Synta and Sunny corporate families illegally combined and conspired with each other instead of competing against one another and enabled Celestron to dominate the consumer telescope distribution market;

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY APPLICANT

57. On December 12, 2016, Applicant purchased a Celestron 21024 FirstScope telescope for \$68.97 taxes included from Amazon as a Christmas gift for his son [R-21];
58. On December 26, 2016, Applicant purchased another Celestron 21024 FirstScope telescope for \$68.97 taxes included from Amazon as a birthday present for a friend [R-22];
59. Due to Defendants' conduct, Applicant was deprived of the benefit of free market competition, and because of this, he was charged a higher price for the telescopes that he purchased;
60. Applicant has suffered damages in the amount of the difference between the artificially-inflated price that he paid for said products and the price that he would have paid in a competitive market;
61. The conduct of Defendants was kept secret and was not known to Applicant at the time that he purchased said products nor could it have been discovered through the exercise of reasonable diligence;
62. Applicant's damages are a direct and proximate result of Defendants' conduct;
63. In consequence of the foregoing, Applicant is justified in claiming damages equivalent to the difference between the artificially-inflated price that he paid to the Defendants for Telescopes and what he would have paid in a competitive market;

III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE CLASS MEMBERS

64. Every Class Member has purchased a telescope;
65. All Class Members have paid artificially-inflated prices for their Telescopes due to Defendants' anticompetitive conduct;

66. Class Members have suffered damages equivalent to the difference between the artificially-inflated price that they paid for Telescopes and the price that they should have paid in a free market;
67. All of the damages to the Class Members are a direct and proximate result of Defendants' conduct;
68. In consequence of the foregoing, Class Members are justified in claiming damages;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

(a) Article 575 (3) C.C.P.

69. Telescopes are widespread in Quebec;
70. Applicant is unaware of the specific number of persons who purchased telescopes from the Defendants or their co-conspirators; however, given their widespread use, it is safe to estimate that it is in the thousands;
71. Class Members are numerous and scattered across the province;
72. Given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against Defendants;
73. These facts demonstrate that it would be impractical, if not impossible, to contact every Class Member to obtain mandates to join them in one action;

(b) Article 575 (1) C.C.P.

74. Individual issues, if any, pale by comparison to the numerous common issues that predominate and are significant to the outcome of the litigation;
75. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, Defendants' misconduct;
76. The claims of Class Members raise identical, similar or related issues of fact or law as outlined hereinbelow;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

77. The action that Applicant wishes to institute on behalf of the Class Members is an action in damages;
78. The conclusions that Applicant wishes to introduce by way of an application to institute proceedings appear hereinbelow;
- A) Applicant requests that he be designated as Class representative

79. Applicant is a Class Member;
80. Applicant is ready and available to manage and direct the present action in the interest of Class Members and is determined to lead the present dossier until a final resolution for the benefit of the Class;
81. Applicant has the capacity and interest to properly protect and represent the interest of Class Members;
82. Applicant has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed;
83. Applicant, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other Class Members and to keep them informed;
84. Applicant has instructed his attorneys to put information about this class action on its website and to collect the coordinates of those Class Members, as will be shown at the authorization hearing;
85. Applicant is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other Class Members, recognized and protected;
86. Applicant understands the nature of the action;
87. Applicant's interests are not in conflict with Class Members;
88. Applicant is prepared to be examined on his allegations (as may be authorized) and to be present for Court hearings, as necessary;
89. Applicant has spent time researching this issue and meeting with his attorneys to prepare this file. In so doing, he is convinced that the problem is widespread;
- B) Applicant suggests that this class action be exercised before the Superior Court of Justice in Montreal
90. A great number of Class Members reside in Montreal;
91. Applicant's attorneys practice their profession in Montreal;
92. The present application is well founded in fact and law.

FOR THESE REASONS, MAY IT PLEASE THE COURT

GRANT the present application;

AUTHORIZE the bringing of a class action in the form of an application to institute proceedings in damages;

APPOINT the Applicant as representative of the persons included in the Class described as:

- all persons resident in Quebec that purchased a telescope that was manufactured or sold by the Defendants or co-conspirators since January 1, 2005;

IDENTIFY the principle issues of fact and law to be treated collectively as the following:

- a) Did Defendants engage in an agreement, combination, collusion, and/or conspiracy to fix, raise, maintain, and/or stabilize prices of telescopes?
- b) Did Defendants engage in an agreement, combination, collusion, and/or conspiracy to allocate customers and the markets for telescopes?
- c) Did Defendants' conduct cause the prices of telescopes to be sold at artificially inflated and non-competitive levels?
- d) Did Defendants engage in conduct contrary to s. 45 of the *Competition Act* during the Class Period?
- e) Are Defendants liable to Class Members under article 1457 of the *Civil Code of Quebec*?
- f) Are Defendants solidarily liable for damages?
- g) Are Defendants liable to pay compensatory and/or punitive damages to Class Members, and, if so, in what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the class action;

DECLARE Defendants solidarily liable for the damages suffered by Applicant and Class Members;

ORDER Defendants to permanently cease from continuing or maintaining the agreement, combination, collusion, and/or conspiracy alleged herein;

CONDEMN Defendants to pay to each Class Member a sum to be determined in compensation of the damages suffered and ORDER collective recovery;

CONDEMN Defendants to pay punitive damages to Class Members, and ORDER collective recovery of these sums;

CONDEMN Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the present application;

ORDER Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class Members be the object of collective recovery if the proof permits and alternately, by individual recovery;

CONDEMN Defendants to bear the costs of the present action including expert and notice fees;

DECLARE that all Class Members that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the members, date upon which the Class Members that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

ORDER the publication of a notice to the Class Members in accordance with article 579 C.C.P. within 60 days from the judgment to be rendered herein in a manner to be determined;

THE WHOLE with legal costs, including publication fees.

Montreal, October 6, 2020

(S) Andrea Grass

CONSUMER LAW GROUP INC.

Per: Me Andrea Grass

Attorneys for Applicant