

Federal Court
of Appeal



CANADA

Cour d'appel
fédérale

Date: 20090604

**Dockets: A-571-08
A-580-08**

Ottawa, Ontario, June 4, 2009

**CORAM: NOËL J.A.
LAYDEN-STEVENSON J.A.
RYER J.A.**

BETWEEN:

**MERCK FROSST CANADA LTD.
and MERCK FROSST CANADA & CO.**

Appellants

and

APOTEX INC.

Respondent

JUDGMENT

[1] The appeal is allowed in part, paragraph 2 (c) of the judgment rendered by the Federal Court Judge is set aside, and giving the judgment which ought to have been given, it is held that Apotex's claim for damages for lost sales and lost permanent market share must be confined to such losses which can be shown to have been incurred during the section 8 period. Costs computed at the mid-level of Column I of Tariff B are awarded in favour of the appellant.

[2] Apotex's cross-appeal is dismissed with costs computed at the mid-level of Column III of Tariff B.

“Marc Noël”

J.A.