

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

(Class Action)
SUPERIOR COURT

NO: 500-06-000780-169

MICHAEL ATTAR, 


Applicant

-VS-

RED BULL CANADA LTD., legal person having
its head office at 381 Queen Street West,
Suite 200, Toronto, Ontario, M5V 2A5

and

RED BULL GMBH, legal person having its head
office at Am Brunnen 1, 5330 Fuschl am See,
Austria

Defendants

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO APPOINT
THE STATUS OF REPRESENTATIVE PLAINTIFF
(ARTICLE 571 AND FOLLOWING C.C.P)**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR
THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES AS FOLLOWS:**

I. GENERAL PRESENTATION

A) THE ACTION

1. Defendants produce, market, distribute and/or sell their products across Canada under various names including, but not limited to Red Bull Energy Drink, Red Bull Sugarfree, Red Bull Total Zero, Red Bull Editions, Red Bull Red Edition, Red Bull Blue

Edition, Red Bull Lime Edition, Red Bull Yellow Edition and Red Bull Orange Edition (hereinafter referred to collectively as "**Red Bull**");

2. The Applicant wishes to institute a class action on behalf of the following group, of which he is a member, namely:

All current and former residents of Canada (subsidiarily Quebec) who have purchased Red Bull,

or any other group to be determined by the Court;

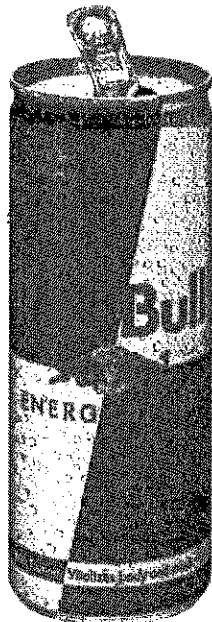
(hereinafter referred to as the "**Group**")

3. Defendants have made and continue to make false and misleading representations to Group members across Canada concerning the supposed superior effects of Red Bull;
4. Up until at least March 25, 2015, Defendants falsely claim on their website that "*numerous scientific studies*" on Red Bull "*prove*" its superiority;
5. Red Bull does not perform as promised by Defendants;
6. In reality, there are other caffeine only products, such as a cup of coffee or caffeine tablets, that are as effective as Red Bull and would cost Group members a fraction of the price;
7. Defendants' claim that Red Bull is a superior source of energy and provides other benefits worthy of a premium price is unsupported by objective, credible and scientific evidence to substantiate such claims;
8. Defendants thus unlawfully relied upon data, falsely presented as scientific to Group members, in order to charge a premium for Red Bull:
9. Defendants' business practices are unlawful and misleading because they intentionally deceive consumers into believing that they are obtaining a product that provides more benefit to consumers than other caffeine products, including but not limited to the enhancement of physical or cognitive performance;
10. Defendants listed a total of 26 "*scientific studies*" during several years on their website, as it appears from screen captures of Red Bull's website from March 2011 through March 2015, Applicant disclosing *en liasse* **Exhibit P-1**;

- 11. Defendants intentionally misinform Group members leading them to believe that the product they were paying for had qualities that in reality it did not have;
- 12. The webpages appearing on Defendants' website referring to so-called "scientific studies", one of which is reproduced below, have all been removed from Red Bull's website some time after March 25, 2015:

PRODUCTS CAN LIFECYCLE COMPANY CARTOONS

RED BULL ENERGY DRINK RED BULL SINGAPORE RED BULL ENERGY STUDY RED BULL COCA



INGREDIENTS ▶

WHEN TO DRINK ▶

AVAILABLE SIZES ▶

RED BULL ENERGY DRINK

Red Bull Energy Drink is a functional beverage. Thanks to a unique combination of high quality ingredients Red Bull Energy Drink vitalizes body and mind.

Numerous scientific studies on the product and the individual ingredients prove that Red Bull Energy Drink:

▶ Increases performance

▼ Increases concentration and reaction speed

In various studies it was proven that Red Bull increases concentration and reaction speed:

1. Mets MA, Ketzer S, Blom C, van Gerwen MH, van Willigenburg GM, Olivier B, Verster JC. Positive effects of Red Bull Energy Drink on driving performance during prolonged driving. *Psychopharmacology* 2010, DOI 10.1007/s00213-010-2078-2
2. Barthel T. et al., Readiness potential in different states of physical activation and after ingestion of taurine and/or caffeine containing drinks, *Amino Acids* 20, 1, 63-73 (2001)
3. Horne J.A., Reyner L.A., Beneficial effects of an "energy drink" given to sleepy drivers, *Amino Acids* 20, 1, 83-89 (2001)
4. Reyner LA and Horne JA, Efficacy of a 'functional energy drink' in counteracting driver sleepiness, *Physiology & Behaviour* 75, 331 - 335 (2002)
5. Seidl R. et al., A taurine- and caffeine-containing drink stimulates cognitive performance and well-being, *Amino Acids* 19, 3/4, 635-642 (2000)
6. Alford C. et al., The Effects of Red Bull Energy Drink on Human Performance and Mood, *Amino Acids* 21, 2, 139 - 150 (2001)

✳

▶ Improves vigilance

- 13. The above constitutes, it is suggested, an admission on behalf of the Defendants as to its heretofore improper and misleading behaviour and establishes the fundamental facts underpinning the present application;
- 14. Moreover, the Applicant discloses herewith, *en liasse*, the "Class Action Complaint" filed before the United States District Court, Central District of California, in *Wolf et al. v. Red Bull GmbH, et al*, Court file No. CV13-01444-MWF(JCGx) and the "First Amended Class Action Complaint", filed before the United States District Court, Southern District of New York, in *Benjamin Careathers v. Red Bull North America*,

Inc., Court file No. 1:13-CV-0369-VM, which describe in great detail the nature and extent of the misleading advertising by Defendants' counterparts in the United States concerning Red Bull, **Exhibit P-2**;

15. The abovementioned consumer class action lawsuits were consolidated in the United States District Court for the Southern District of New York and is currently the subject of a settlement between the parties of that action, notably with the Defendant Red Bull GMBH;
16. Applicant hereby discloses the following documents from the *Careathers, Wolf et al.* Consolidated Class Action:
 - a) the Amended Stipulation of Settlement, signed by the parties on or about April 30, 2015, **Exhibit P-3**;
 - b) the Order Granting Preliminary Approval of Class Action Settlement (including Conditional Certification of Settlement Class, and providing for Notice and Scheduling Order), **Exhibit P-4**;
 - c) Legal Notice of Settlement to Class Members, **Exhibit P-5**, which provides *inter alia* that: "**Red Bull further confirms that all future claims about the functional benefits of its products will be medically and/or scientifically supported**";
17. In Canada Defendants engaged in similar if not identical deceptive behaviour, as they had done in the United States, by disseminating false and misleading claims about the functional benefits of Red Bull, which they knew were not medically or scientifically supported;
18. Defendants knew or ought to have known that Canadian consumers would be affected, rely upon and be influenced by both the Canadian and the American advertising campaigns, as well as by the information unlawfully reported as "*scientific*" on Defendants' website <http://www.redbull.com>;
19. And yet, the Overview Of The Settlement webpage indicates in bold: "**You must be a resident of the United States to participate in this settlement**", Applicant disclosing **Exhibit P-6**;
20. Defendants have not offered any compensation to Canadian Group members or consumers, despite settling the *Careathers, Wolf et al.* consolidated Class Action in the United States;

B) THE PARTIES

21. The Applicant is a consumer within the meaning of Quebec's *Consumer Protection Act* (hereinafter "**CPA**") and has purchased and consumed Red Bull for approximately four years;
22. Defendant, Red Bull GMBH, is a company organized and existing under the laws of Austria, and offers various goods and services, notably energy drinks, in over 160 countries, including Canada, and sponsors many entertainment and sports-related events;
23. Defendant, Red Bull Canada Ltd., is primarily engaged in wholesale dealing in non-alcoholic beverages and the distribution of carbonated beverages, as it appears from an extract of the enterprise's information statement from the Quebec enterprise register (CIDREQ), **Exhibit P-7**;
24. Defendant Red Bull GMBH offers Red Bull in Canada through Defendant Red Bull Canada Ltd;
25. Defendants Red Bull GMBH and Red Bull Canada Ltd. operate the website <http://www.redbull.com>, Applicant disclosing the Terms and Conditions page of said site as **Exhibit P-8**;
26. The Defendants are merchants within the meaning of the *CPA*, as well as the consumer protection and trade practice legislation in other Canadian provinces, and their activities are governed by these legislation, among others;

II. FACTS GIVING RISE TO THE APPLICANT'S CLAIM

27. Applicant has been purchasing and ingesting Red Bull since at least 2012;
28. Applicant has regularly purchased Red Bull at gas stations, convenience stores and night clubs in Montreal and Laval;
29. Defendants' misleading marketing, described above, regarding the purported superiority of Red Bull is what set Red Bull apart from other caffeine products as the most efficient way to gain energy quickly;
30. However, no objective, credible and scientific evidence exists to support the Defendants' claims about Red Bull;
31. Defendant's use of such prohibited business practices resulted in the Applicant and Group members not having the chance to make an informed decision or to give an informed consent before purchasing and consuming Red Bull;

- 32. Defendants' widespread marketing campaigns were devised to mislead the Applicant and Group members;
- 33. By disseminating false and misleading information about Red Bull, Defendants induced the Applicant and Group members into purchasing, at a premium price, millions of dollars worth of Red Bull;
- 34. Had the Applicant and Group members been aware of the true functionality of Red Bull, they would not have purchased Red Bull (or would not have paid such a high price for it);
- 35. By reason of the Defendants' unlawful conduct, the Applicant and Group members have purchased Red Bull under false pretences and paid higher prices for goods, causing damages which they wish to claim;

III. **DAMAGES**

- 36. On their webpage <http://energydrink-ca.redbull.com/en/how-much-caffeine-in-red-bull>, Defendants now acknowledge the fact that: *"One 8.4 fl oz can of Red Bull Energy Drink contains 80 mg of caffeine, **about the same amount as in a cup of coffee**"* and list several other caffeine products in comparison, as it appears from Applicant's **Exhibit P-9**;
- 37. By Defendants' own admission, as it appears from Exhibit P-9, Group members would benefit from virtually the same amount of caffeine by ingesting other (less expensive) products, such as:

Product	Caffeine
Filter coffee (250 ml)	69-127 mg
Black tea (250 ml)	26-116 mg
Instant coffee (250 ml)	63-90 mg
Dark Chocolate Bar (100 grams)	18-123mg
Cola drink (355 ml)	30-60 mg

- 38. For instance, a medium coffee at Tim Hortons contains 205 mg of caffeine (more than 2.5 times the caffeine than in a can of Red Bull Energy Drink) and costs **\$1.60** plus taxes, compared to an 8.4 fl oz can of Red Bull Energy Drink that generally retails for **\$2.99** plus taxes;
- 39. A cup of instant coffee that could be made at one's own home would cost less than **\$0.30** per cup (and provides roughly the same amount of caffeine as a can of Red Bull Energy Drink);

40. Consequently, Defendants have breached several obligations imposed on them by consumer protection and trade practice legislation in Quebec and other Canadian provinces, including:

- a) Quebec's *Consumer Protection Act*, including sections 219, 220(a), 221(c), (d) and (g), 228, 239 and 272;
- b) Alberta's *Fair Trading Act*, RSA 2000, c F-2, including sections 6, 7 and 13;
- c) Saskatchewan's *The Consumer Protection and Business Practices Act*, SS 2014, c C-30.2, including sections 6-9 and 93;
- d) Manitoba's *The Business Practices Act*, CCSM c B120, including sections 2, 3 and 23;
- e) British Columbia's *Business Practices and Consumer Protection Act*, SBC 2004, c 2, including sections 4-10;
- f) Ontario's *Consumer Protection Act*, 2002, SO 2002, c 30, Schedule A, including sections 11 and 14;
- g) New Brunswick's *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1, including sections 4, 10, 15-18 and 23;
- h) Nova Scotia's *Consumer Protection Act*, RSNS 1989, c 92, including sections 26 and 28A;
- i) Prince Edward Island's *Business Practices Act*, RSPEI 1988, c B-7, including sections 2-4;
- j) Newfoundland and Labrador's *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, including sections 7-10;

41. Moreover, Defendants failed in their obligation and duty to act in good faith in their representations and in the performance of their obligations;

42. In light of the foregoing, the following damages may be claimed against the Defendants:

- a) Reimbursement of the amounts paid by Group members for Red Bull; and
- b) Punitive damages in the amount of **ONE HUNDRED DOLLARS (\$100.00)** per Group member for breach of the aforementioned obligations;

IV. THE GROUP

43. The Group for whom the Applicant intends to act is described in the second paragraph of this Application and includes all current and former residents of Canada (subsidiarily Quebec) who have purchased Red Bull;

V. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

44. Every Group member has purchased and ingested Red Bull;
45. Every Group member's consent when purchasing Red Bull was vitiated as a result of the false and/or misleading representations made by the Defendants, which are described hereinabove;
46. Every Group member would not have purchased Red Bull, or would not have paid the inflated price for Red Bull, if it was not for Defendants' misleading marketing campaigns, described above, regarding Red Bulls' purported functionality, including but not limited to the enhancement of physical or cognitive performance;
47. Defendants have made various false and unlawful representations to all Group members about the purported superior nature of Red Bull over simpler and much less expensive caffeine products as described and illustrated above;
48. Although Defendants rely upon "*scientific studies*" which purport to substantiate the product claims, independent researchers and industry experts have found otherwise;
49. A research article titled "*Debunking the Effects of Taurine in Red Bull Energy Drinks*" concluded that the claimed improvement in cognitive capabilities and muscular performance were more plausibly related to caffeine alone rather than the purported unique combination of Red Bull's key ingredients of caffeine, taurine and glucuronolactone, Applicant disclosing **Exhibit P-10**:

Caffeine

It seems more plausible that any muscular function enhancement from Red Bull is derived from its caffeine content. Numerous studies have shown caffeine to have an ionotropic effect on the body and improve one's endurance (7,8). Due to such effects, the IOC (International Olympics Committee) ban caffeine concentrations higher than 12 mg/mL (8). Studies show that caffeine ingestion results in an increase in epinephrine, plasma lactate, and cortisol levels (7). Plasma beta-endorphin levels almost

double in some studies following caffeine intake (7). The molecular mechanism of caffeine involves blockage of adrenergic receptors leading to an increase in cAMP concentration and inhibition of cAMP catabolism (8). Thus it can be concluded that caffeine is an ergogenic aid that stimulates muscular performance, and may well be the only active compound in Red Bull to produce the supposed invigorating sensations.

[...]

The Red Bull Company claims that drinking Red Bull improves one's cognitive capabilities and muscular performance (1). The company attributes these enhancements to the unique combination of the ingredients including key components such as caffeine, taurine and glucuronolactone. **However, it seems more plausible that most of the effects observed when drinking Red Bull come principally from caffeine.** Red bull contains about the same amount of caffeine (80 mg) as a cup of coffee. However, because coffee takes time to cool, it is ingested over a longer period of time than it takes to consume Red Bull. Drinking Red Bull brings into the body a large dose of caffeine in a short amount of time, resulting in a sharp rise of plasma caffeine concentration. **In addition, a psychosomatic placebo effect of having consumed an "energy drink" may compound the chemical's actual effects. Thus it seems that drinking a cold cup of coffee may induce the same "energizing and refreshing" effects of drinking Red Bull – and best of all, at one-third the cost.**

50. More recently, an article titled *"Energy Drinks Promised Edge, but Experts Say Proof is Scant"*, reported by the New York Times on January 1, 2013, claimed that: *"interviews with researchers and a review of scientific studies show: the energy drink industry is based on a brew of ingredients that, apart from caffeine, have little, if any benefit for consumers"*, Applicant disclosing **Exhibit P-11**. The author further found that:

Promoting a message beyond caffeine has enabled the beverage makers to charge premium prices. A 16-ounce energy drink that sells for \$2.99 a can contains about the same amount of caffeine as a tablet of NoDoz that costs 30 cents. Even Starbucks coffee is cheap by comparison; a 12-ounce cup that costs \$1.85 has even more caffeine.

51. Defendants know or ought to know that there is no greater benefit of ingesting Red Bull than ingesting an equivalent dose of caffeine and have intentionally caused

Group members to have a misconception with respect to the functionality of Red Bull;

52. The general impression that Defendants' representations convey to a credulous and inexperienced consumer is that it is **scientifically proven** that ingesting Red Bull increases performances, increases concentration and reaction speed, improves vigilance, stimulates metabolism, and makes one feel more energetic and thus improves ones well-being;
53. Defendants operate this way intentionally and with complete disregard to their obligations not to:
 - (i) make false or misleading representations about Red Bull to Group members, by any means whatever;
 - (ii) falsely ascribe certain special advantages to Red Bull;
 - (iii) falsely hold out that Red Bull is of a specified standard;
 - (iv) falsely represent that Red Bull is of a particular category or type;
 - (v) falsely ascribe certain characteristics of performance to Red Bull;
 - (vi) fail to mention an important fact in representations it makes to Group members;
 - (vii) distort the meaning of the information it addresses to the Group members;
 - (viii) rely upon data falsely presented as scientific;
54. Defendants subject many Canadians to its prohibited business practices in several forms including, without limitation, through its website, social media (Red Bull has more than 44 million fans on its Facebook page and has received more than 100 million views on its YouTube videos), on television, in print media, by the distinctive design on its cans and promotions, on clothing and other merchandise (such as tents, coolers and umbrellas) and at sporting and entertainment events sponsored and/or organized by Red Bull (such as *Red Bull Crashed Ice* recently held in Quebec and on race cars at the *Formula One Grand Prix* held annually in Montreal) ;
55. Under consumer protection and trade practice legislation in Quebec and other Canadian provinces the prohibited behaviour is against public order;
56. Group members benefit from the legal presumption in the *CPA* that comes into effect when a merchant makes use of a prohibited business practice, that had the Group member been aware, they would never had purchased Red Bull, or would not have paid such a high price for Red Bull;

57. Defendants have a legal obligation to provide Group members with correct information in their representations concerning Red Bull;
58. The Defendants have engaged in unlawful conduct to the detriment of all the Group members, which constitutes prohibited business practices as defined in the *CPA*;
59. It is evident that the Defendant engages in the abovementioned prohibited business practices as a means of convincing Group members and consumers to purchase and to pay a premium for Red Bull;
60. All of the damages to the Group members are a direct and proximate result of the Defendants' misconduct;
61. The questions of fact and law raised and the recourse sought by this Application are identical, related, or similar with respect to each member of the Group, namely;

QUESTIONS OF LAW:

- a) were the claims and/or representations made by Defendants regarding Red Bull misleading or deceptive?
- b) did Defendants distort the meaning of any information, opinion or testimony regarding Red Bull?
- c) did Defendants rely upon data or analyses falsely presented as scientific?
- d) did Defendants know, or ought to have known, that consumers would not receive the benefits from Red Bull that Defendant was claiming and/or representing the consumer would receive?
- e) did Defendants fail to mention an important fact in any representation made to consumers?
- f) did Defendants knowingly make misleading statements in connection with a consumer transaction that the consumer was likely to rely upon to his/her detriment?
- g) did Defendants know, or should they have known, that their representations and advertisements regarding Red Bull were unsubstantiated, false and/or misleading?
- h) did Defendants engage in false and/or misleading advertising?

- i) did Defendants use deceptive representations in connection with the sale of goods?
- j) did Defendants' representations cause a likelihood of confusion or misunderstanding as to the validity of the "scientific studies" it advertised concerning Red Bull?
- k) did Defendants represent that Red Bull has certain characteristics, ingredients, uses or benefits that it does not have;
- l) did Defendants represent that Red Bull is of a particular standard, quality or grade when it is of another;
- m) did Defendants advertise Red Bull with intent of not selling it as advertised and/or marketed;
- n) does the general impression of Defendants' representations convey to a credulous and inexperienced consumer that it is scientifically proven that ingesting Red Bull increases performances, increases concentration and reaction speed, improves vigilance, stimulates metabolism, and makes one feel more energetic and thus improves ones well-being?
- o) If so, is that general impression true to reality?
- p) do Defendants take advantage of Group members' inability to make an informed decision about purchasing Red Bull?
- q) does the Defendants' conduct constitute prohibited business practices as defined in the *CPA* and does it contravene the consumer protection and trade practice legislation in the other Canadian provinces?
- r) were members of the Group prejudiced by the Defendants' conduct, and, if so, what is the appropriate measure of these damages?
- s) are the Defendants liable to pay compensatory and/or punitive damages to members of the Group, and, if so, in what amounts?

QUESTIONS OF FACT:

- a) in its normal and customary use by consumers, does Red Bull work as advertised, marketed and conveyed to consumers?
- b) do numerous scientific studies on the product and the individual ingredients prove that Red Bull Energy Drink increases performance?

- c) does Red Bull Energy Drink in fact increase performance?
 - d) do numerous scientific studies on the product and the individual ingredients prove that Red Bull Energy Drink increases concentration and reaction speed?
 - e) does Red Bull Energy Drink in fact increase concentration and reaction speed?
 - f) do numerous scientific studies on the product and the individual ingredients prove that Red Bull Energy Drink improves vigilance?
 - g) does Red Bull Energy Drink in fact improve vigilance?
 - h) do numerous scientific studies on the product and the individual ingredients prove that Red Bull Energy Drink stimulates metabolism?
 - i) does Red Bull Energy Drink in fact stimulate metabolism?
 - j) do numerous scientific studies on the product and the individual ingredients prove that Red Bull Energy Drink makes people feel more energetic and thus improves a person's overall well-being?
 - k) does Red Bull Energy Drink in fact make people feel more energetic and thus improve a person's overall well-being?
 - l) does drinking a cup of coffee (or other similar caffeine products) induce the same "energizing" effects as Red Bull?
 - m) if so, did Group members pay a premium for purchasing Red Bull as opposed to these other caffeine products?
 - n) do other companies in the same industry as Defendants mention the terms "proven" and "scientific studies" (or similar) to market and sell their products?
62. In taking the foregoing into account, all members of the Group are justified in claiming damages;

VI. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

63. The composition of the Group makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
64. The Applicant is unaware of the exact number of Group members contemplated by this Application, but Defendants boast on their website that they have sold over 60

billion cans of Red Bull worldwide. The number of persons included in the Group is estimated at being in the tens or even hundreds of thousands and are scattered across Canada;

65. The names and addresses of all persons included in the Group are not known to the Applicant, however, Defendants are likely to possess data regarding sales and distribution figures;
66. In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against the Defendants. Even if the Group members themselves could afford such individual litigation, the Court system could not as it would be overburdened. Furthermore, individual litigation of the factual and legal issues raised by the conduct of the Defendants would increase delays and expenses to all parties and to the Court system;
67. Moreover, a multitude of actions instituted in different jurisdictions, both territorial and judicial districts, risks having contradictory judgments on questions of fact and law that are similar or related to all members of the Group;
68. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Group member to obtain mandates and to join them in one action;
69. In these circumstances, a class action is the only appropriate procedure for all of the Group members to effectively pursue their respective rights and have access to justice without overburdening the court system;

VII. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

70. The action that the Applicant wishes to institute on behalf of the members of the Group is an action in damages;
71. The conclusions that the Applicant wishes to introduce by way of an originating application are:

GRANT Plaintiff's class action against Defendants;

GRANT the class action of the Plaintiff on behalf of all of the members of the Group;

DECLARE the Defendants liable for the damages suffered by the Plaintiff and each of the members of the Group;

CONDEMN the Defendants to reimburse each member of the Group the total amount paid for their purchases of Red Bull, the exact amount to be determined, in

compensation of the damages suffered, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to a payment on account of punitive damages in an amount of **ONE HUNDRED DOLLARS (\$100.00)** per Group member and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to Authorize a Class Action;

ORDER that the claims of individual Group members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

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

RENDER any other order that this Honourable Court shall determine;

VIII. THE APPLICANT REQUESTS THAT HE BE DESIGNATED THE STATUS OF REPRESENTATIVE PLAINTIFF

72. Applicant is a member of the Group;
73. Applicant has purchased and consumed Red Bull, often multiple times per week, over several years, the whole as a result of the Defendants' misleading marketing strategies described above;
74. Applicant was not given the chance to make an informed decision and to give an informed consent before purchasing and consuming Red Bull, again due to the Defendants' misleading marketing strategies described above;
75. Applicant is ready and available to manage and direct the present action in the interest of the members of the Group that he wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the Group, as well as, to dedicate the time necessary for the present action and to collaborate with his attorneys;
76. Applicant has the capacity and interest to fairly and adequately protect and represent the interest of the members of the Group;

77. Applicant has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
78. Applicant, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Group and to keep them informed;
79. Applicant has already taken steps to locate Group members and is prepared to be active on social media in this regard;
80. Applicant is able to work with his attorneys and considers his attorneys competent;
81. 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 Group members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Defendants' conduct;
82. Applicant understands the nature of the action;
83. Applicant's interests are not antagonistic to those of other members of the Group;
84. The Applicant suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:
 - a) A great number of the members of the Group reside in the judicial district of Montreal;
 - b) Most of Applicant's purchases were made in the judicial district of Montreal;
 - c) Red Bull Canada Ltd. has a place of establishment for Eastern Canada at 481 Viger avenue West, Montreal, province of Quebec, in the judicial district of Montreal;
 - d) The Applicant's attorneys practice their profession in the judicial district of Montreal.

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 the status of Representative Plaintiff of the persons included in the Group herein described as:

All current and former residents of Canada (subsidiarily Quebec) who have purchased Red Bull,

or any other group to be determined by the Court;

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

QUESTIONS OF LAW:

- a) were the claims and/or representations made by Defendants regarding Red Bull misleading or deceptive?
- b) did Defendants distort the meaning of any information, opinion or testimony regarding Red Bull?
- c) did Defendants rely upon data or analyses falsely presented as scientific?
- d) did Defendants know, or ought to have known, that consumers would not receive the benefits from Red Bull that Defendant was claiming and/or representing the consumer would receive?
- e) did Defendants fail to mention an important fact in any representation made to consumers?
- f) did Defendants knowingly make misleading statements in connection with a consumer transaction that the consumer was likely to rely upon to his/her detriment?
- g) did Defendants know, or should they have known, that their representations and advertisements regarding Red Bull were unsubstantiated, false and/or misleading?
- h) did Defendants engage in false and/or misleading advertising?
- i) did Defendants use deceptive representations in connection with the sale of goods?
- j) did Defendants' representations cause a likelihood of confusion or misunderstanding as to the validity of the "scientific studies" it advertised concerning Red Bull?
- k) did Defendants represent that Red Bull has certain characteristics, ingredients, uses or benefits that it does not have;

- l) did Defendants represent that Red Bull is of a particular standard, quality or grade when it is of another
- m) did Defendants advertise Red Bull with intent of not selling it as advertised and/or marketed;
- n) does the general impression of Defendants' representations convey to a credulous and inexperienced consumer that it is scientifically proven that ingesting Red Bull increases performances, increases concentration and reaction speed, improves vigilance, stimulates metabolism, and makes one feel more energetic and thus improves ones well-being?
- o) If so, is that general impression true to reality?
- p) do Defendants take advantage of Group members' inability to make an informed decision about purchasing Red Bull?
- q) does the Defendants' conduct constitute prohibited business practices as defined in the *CPA* and does it contravene the consumer protection and trade practice legislation in the other Canadian provinces?
- r) were members of the Group prejudiced by the Defendants' conduct, and, if so, what is the appropriate measure of these damages?
- s) are the Defendants liable to pay compensatory and/or punitive damages to members of the Group, and, if so, in what amounts?

QUESTIONS OF FACT:

- a) in its normal and customary use by consumers, does Red Bull work as advertised, marketed and conveyed to consumers?
- b) do numerous scientific studies on the product and the individual ingredients prove that Red Bull Energy Drink increases performance?
- c) does Red Bull Energy Drink in fact increase performance?
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- e) does Red Bull Energy Drink in fact increase concentration and reaction speed?
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- h) do numerous scientific studies on the product and the individual ingredients prove that Red Bull Energy Drink stimulates metabolism?
- i) does Red Bull Energy Drink in fact stimulate metabolism?
- j) do numerous scientific studies on the product and the individual ingredients prove that Red Bull Energy Drink makes people feel more energetic and thus improves a person's overall well-being?
- k) does Red Bull Energy Drink in fact make people feel more energetic and thus improve a person's overall well-being?
- l) does drinking a cup of coffee (or other similar caffeine products) induce the same "energizing" effects as Red Bull?
- m) if so, did Group members pay a premium for purchasing Red Bull as opposed to these other caffeine products?
- n) do other companies in the same industry as Defendants mention the terms "proven" and "scientific studies" (or similar) to market and sell their products?

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

GRANT Plaintiff's class action against Defendants;

GRANT the class action of the Plaintiff on behalf of all of the members of the Group;

DECLARE the Defendants liable for the damages suffered by the Plaintiff and each of the members of the Group;

CONDEMN the Defendants to reimburse each member of the Group the total amount paid for their purchases of Red Bull, the exact amount to be determined, in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to a payment on account of punitive damages in an amount of **ONE HUNDRED DOLLARS (\$100.00)** per Group member and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to Authorize a class action;

ORDER that the claims of individual Group members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

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

RENDER any other order that this Honourable Court shall determine;

DECLARE that all members of the Group that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Group that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

ORDER the publication of a notice to the members of the Group in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in LA PRESSE and the MONTREAL GAZETTE;

ORDER that said notice be published on the Defendants' website, in a conspicuous place, with a link stating: "Notice to Red Bull Consumers in Canada";

RENDER any other order that this Honourable Court shall determine;

THE WHOLE with legal costs including publications fees.

Montréal, February 18th, 2016


SIMON & ASSOCIÉS
Attorneys for Applicant

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SIMON & ASSOCIÉS

SUMMONS
(ARTICLES 145 AND FOLLOWING C.C.P.)

Filing of a judicial application

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of Montreal.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

Exhibit P-1: *En liasse*, screen captures of Red Bull's website from October 2012 through March 2015;

Exhibit P-2: *En liasse*, copies of the "Class Action Complaint" in *Wolf et al. v. Red Bull GmbH, et al*, Court file No. CV13-01444-MWF(JCGx) and the "First Amended Class Action Complaint", in *Benjamin Careathers v. Red Bull North America, Inc.*, Court file No. 1:13-CV-0369-VM;

- Exhibit P-3:** Copy of the "Amended Stipulation of Settlement" signed by the parties from the *Careathers, Wolf et al.* Consolidated Class Action against Red Bull;
- Exhibit P-4:** Copy of the "Order Granting Preliminary Approval of Class Action Settlement" (including Conditional Certification of Settlement Class, and providing for Notice and Scheduling Order) from the *Careathers, Wolf et al.* Consolidated Class Action against Red Bull;
- Exhibit P-5:** Copy of the "Legal Notice of Settlement to Class Members" from the *Careathers, Wolf et al.* Consolidated Class Action against Red Bull;
- Exhibit P-6:** Copy of the Overview Of The Settlement webpage;
- Exhibit P-7:** Copy of the extract of the enterprise's information statement from the Quebec enterprise register (CIDREQ) of Red Bull Canada LTD;
- Exhibit P-8:** Terms and Conditions from the <http://www.redbull.com> website;
- Exhibit P-9:** Extract from the Defendants' website confirming that "One 8.4 fl oz can of Red Bull Energy Drink contains 80 mg of caffeine, about the same amount as in a cup of coffee": <http://energydrink-ca.redbull.com/en/how-much-caffeine-in-red-bull>;
- Exhibit P-10:** Research article titled "Debunking the Effects of Taurine in Red Bull Energy Drinks" by Woojae Kim;
- Exhibit P-11** The New York Times article by Barry Meier titled "Energy Drinks Promised Edge, but Experts Say Proof is Scant", reported on January 1, 2013.

These exhibits are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montréal, February 18th, 2016



SIMON & ASSOCIÉS

Attorneys for Applicant

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SIMON & ASSOCIÉS

NOTICE OF PRESENTATION
(articles 146 and 574 al. 2 N.C.P.C.)

TO: RED BULL CANADA LTD.
381 Queen Street West, Suite 200
Toronto, (Ontario) M5V 2A5

Defendant

RED BULL GMBH
Am Brunnen 1
5330 Fuschl am See, Austria

Defendant

TAKE NOTICE that Applicant's Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff will be presented before the Superior Court on **March 29th, 2016, at 9:00 a.m., in room 2.17 of the courthouse of Montreal, 1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, or as soon as counsel may be heard.

GOVERN YOURSELVES ACCORDINGLY.

Montreal, February 18, 2016



SIMON ET ASSOCIÉS
Attorneys for Applicant

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SIMON & ASSOCIÉS