

**SUPERIOR COURT
(CLASS ACTION)**

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL**

No.: 500-06-001139-217

SHAWN FARIA

Plaintiff

v.

ESSILOR-LUXOTTICA S.A.

-and-

ESSILOR-LUXOTTICA CANADA INC.

-and-

LUXOTTICA OF AMERICA INC. (formerly known as Luxottica Retail North America, Inc.)

Defendants

**APPLICATION BY DEFENDANTS FOR LEAVE TO ADDUCE EVIDENCE
(Article 574(3) CCP)**

TO THE HONOURABLE JUSTICE LACOSTE OF THE SUPERIOR COURT OF QUEBEC, THE DEFENDANTS RESPECTFULLY SUBMIT THE FOLLOWING:

I. Introduction

1. The Defendants seek leave to file relevant evidence into the Court record.
2. Through this evidence, the Defendants seek to assist the Court in its determination as to whether Plaintiff meets the criteria found at section 575 C.C.P. and to allow this Court to benefit from a more accurate and relevant factual context in order to determine in an enlightened manner whether the proposed class action should be authorized.

II. Brief Description of the Proposed Class Action

3. On March 22, 2021, an *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative Plaintiff* (“**Application for Authorization**”) was filed by the Plaintiff against the Defendants, on behalf of the following proposed class:

All persons in Canada, excluding residents of British Columbia, who purchased eyewear manufactured or sold by Luxottica between March 12, 2010 and the date this action is certified as a class proceeding. In particular, the Class Members include purchasers of prescription frames and sunglasses manufactured or sold by Luxottica, and an included subclass of persons who bought them for personal, family or household purposes.

4. On February 4, 2022, the Plaintiff filed an Amended Application for Authorization, in which the proposed class and sub-class was amended as follows:

All persons in Canada who purchased eyewear, including prescription frames or sunglasses, manufactured or sold by Luxottica between May 17, 2005 and the date this action is certified as a class proceeding.

(the "Class", "Class Members" and "Class Period")

All persons in Canada who purchased prescription frames and sunglasses manufactured or sold by Luxottica, except for those who obtained them for the purpose of their business, between May 17, 2005 and the date this action is certified as a class proceeding.

(the "Consumer Sub-Class", "Consumer Sub-Class Members")

5. The Defendants are a vertically integrated organization and leader in the design, manufacture and distribution of fashion, luxury, sports and performance eyewear.
6. In the Amended Application for Authorization, the Plaintiff alleges that the Defendants (i) failed to compete fairly in the Canadian eyewear market, (ii) abused their alleged dominant position in the market thereby breaching section 78 of the *Competition Act*, RSC 1985, c C-34 (the "**Competition Act**") and (iii) failed to abide by the statutory duties and the general rules of conduct incumbent on them.
7. In addition, the Plaintiff alleges that the Defendants conspired with their alleged competitors by entering into licensing agreements with eyewear brand owners (the "**Fashion Houses**"), under which Luxottica benefits from licenses for the design, manufacturing and distribution of eyewear under the brands of the Fashion Houses, and into exclusive sales agreements with eyewear manufacturers for the distribution and sale of the manufacturers' products (collectively, the "**Agreements**").
8. Plaintiff alleges that, through these Agreements, the Defendants have the ability to coordinate prices and restrict the retail pricing freedom of their distributors and retail outlets.
9. According to the Plaintiff, the fact that the Defendants entered into those Agreements would constitute a conspiracy pursuant to section 45 of the *Competition Act* to 1) fix, maintain, increase or control prices for the supply of eyewear; and/or 2) allocate sales, territories, customers or markets for the supply of eyewear; and/or 3) fix, maintain, control, prevent, lessen or eliminate the supply of eyewear in Quebec and throughout Canada.

10. The Plaintiff claims that the Defendants charged abusive overcharges to consumers for eyewear purchased directly or indirectly from the Defendants.
11. The Defendants reject the claims made against them.

III. Application for Leave to File Relevant Evidence

12. The Defendants seek leave to file relevant and limited documentary evidence into the Court record in order to permit the Court to examine the authorization criteria appropriately.
13. The Defendants intend to seek leave to file the following evidence:
 - (a) Luxottica Press Release dated July 24, 2017 – Antitrust Process Update for the Proposed Combination Between Essilor and Luxottica, as Exhibit **LUX-1**;
 - (b) Luxottica Press Release dated September 26, 2017 – Further Progress in the Proposed Combination Between Essilor and Luxottica, as Exhibit **LUX-2**;
 - (c) Australian Competition & Consumer Commission Press Release dated October 26, 2017 – ACCC Won't Oppose Proposed Essilor and Luxottica Merger, as Exhibit **LUX-3**;
 - (d) Luxottica Press Release dated November 28, 2017 – Proposed Combination Between Essilor and Luxottica Approved in Canada, as Exhibit **LUX-4**;
 - (e) Luxottica Press Release dated March 1, 2018 – Proposed Combination Between Essilor and Luxottica Approved Without Conditions by the European Commission, as Exhibit **LUX-5**;
 - (f) European Commission Press Release dated March 1, 2018 – Mergers: Commission Clears Merger Between Essilor and Luxottica, as Exhibit **LUX-6**;
 - (g) Luxottica Press Release dated March 1, 2018 – Proposed Combination Between Essilor and Luxottica Receives Clearance from US Federal Trade Commission Without Conditions, as Exhibit **LUX-7**;
 - (h) Statement of Federal Trade Commission Concerning the Proposed Acquisition of Luxottica Group by Essilor dated March 1, 2018, as Exhibit **LUX-8**;
 - (i) European Commission Press Release dated March 28, 2021 – Mergers: Commission Clears Acquisition of GrandVision by EssilorLuxottica, Subject to Conditions, as Exhibit **LUX-9**.
14. The evidence that Defendants seek to file will serve to:
 - (a) Demonstrate that Plaintiff's syllogism with respect to a supposed conspiracy between competitors is *prima facie* unfounded (art. 575(2) CCP); and
 - (b) Rectify erroneous or vague allegations of fact (art. 575(2) CCP).

15. More specifically, the proposed evidence will provide publicly-available clarifications as to the nature of the commercial relationships between the Defendants and the Fashion Houses, as well as publicly-available statements by competition law regulators that have examined in detail the structure of the Defendants' organization and the relationship between them.
16. Allowing this limited – and public-facing – documentary evidence to be adduced will streamline the hearing on authorization, obtain focus and clarity on the issues of fact and law alleged by the Plaintiff, demonstrate that the allegations of the Plaintiff are manifestly unfounded and ensure an appropriate examination of the criteria for authorization.
17. The proposed evidence is clearly relevant to a determination, at the authorization stage, of whether the Plaintiff has demonstrated a reasonable cause of action (art. 575(2) CCP).
18. The leave sought here to file evidence is in the interests of proportionality and the better administration of justice.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Application for Leave to Adduce Evidence*;

AUTHORIZE the Defendants to file the evidence as listed in the Defendants' *List of Exhibits in Support of their Application for Leave to Adduce Evidence*;

ALL OF WHICH IS SOUGHT without costs, unless the present Application is contested.

MONTREAL, March 24, 2022



McCARTHY TÉTRAULT LLP
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Lawyers for the Defendants

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Our file # 225643-543869

AFFIDAVIT

I, the undersigned, J.R. Kristian Brabander, lawyer, exercising my profession at McCarthy Tétraut LLP, located at Suite 2500, 1000 De La Gauchetière Street West, in the City and District of Montreal, Province of Quebec, solemnly declare and affirm the following:

1. I am one of the lawyers of the Defendants, Essilor-Luxottica S.A., Essilor-Luxottica Canada Inc. and Luxottica of America Inc. (formerly known as Luxottica Retail North America, Inc.);
2. All of the facts alleged in the present Application filed by the Defendants are true.

AND I HAVE SIGNED, by technological means, at Baie d'Urfé, Province of Quebec



J.R. KRISTIAN BRABANDER

**SOLEMLY DECLARED before me,
by technological means,
at Montreal, Province of Quebec, this
24th day of March 2022**



**Commissioner of Oaths for all Judicial
Districts of Quebec**

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Defendants

NOTICE OF PRESENTATION

TO: Me Irwin I. Liebman
LIEBMAN LEGAL INC.
1, Westmount Square, Suite 350
Montreal, QC H3Z 2P9

Counsel for Plaintiff

1. PRESENTATION OF THE APPLICATION

TAKE NOTICE that the *Application by Defendants for Leave to Adduce Evidence* shall be presented before Justice François Lacoste of the Superior Court, at a place and time to be determined by the Court.

PLEASE GOVERN YOURSELF ACCORDINGLY.

MONTREAL, March 24, 2022

A handwritten signature in blue ink that reads "McCarthy Tétrault" followed by a flourish.

McCARTHY TÉTRAULT LLP

**Mtre J.R. Kristian Brabander / Mtre Daphné Anastassiadis
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ORIGINAL

Mtre J.R. Kristian Brabander /
Mtre Daphne Anastasiadis
File # 225643-542991

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