

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class action)

No.: 500-06-000413-076

UNION DES CONSOMMATEURS

Plaintiff

v.

MAGASINS BEST BUY LTÉE

Defendant

DEFENCE
(Art. 170 C.C.P.)

IN DEFENCE TO PLAINTIFF'S JUDICIAL APPLICATION ORIGINATING A PROCEEDING, DEFENDANT MAGASINS BEST BUY LTÉE SUBMITS THE FOLLOWING:

1. With respect to the allegations contained in paragraph 1 of the Amended Originating Application dated January 21, 2022 (the "**Originating Application**"), it refers to the judgment rendered by the Court of appeal on March 22, 2018 in the present matter and denies anything not in conformity therewith;
2. With respect to the allegations contained in paragraph 2 of the Originating Application, it refers to exhibits P-1 to P-3, denying anything not in conformity therewith;
3. With respect to the allegations contained in paragraphs 3 to 7 of the Originating Application, it refers to the judgment rendered in the present matter, denying anything not in conformity therewith;
4. With respect to the allegations contained in paragraph 8 of the Originating Application, it refers to exhibit P-3, denying anything not in conformity therewith;
5. With respect to the allegations contained in paragraph 9 of the Originating Application, it refers to the judgment rendered in the present matter, denying anything not in conformity therewith;
6. It admits the allegations contained in paragraph 10 of the Originating Application;

7. With respect to the allegations contained in paragraph 11 of the Originating Application, it refers to exhibit P-5, denying anything not in conformity therewith;
8. With respect to the allegations contained in paragraph 12 of the Originating Application, it refers to exhibit P-6, denying anything not in conformity therewith;
9. It admits the allegations contained in paragraphs 13 and 14 of the Originating Application;
10. With respect to the allegations contained in paragraph 15 of the Originating Application, it refers to exhibit P-8, denying anything not in conformity therewith;
11. With respect to the allegations contained in paragraph 16 of the Originating Application, it refers to exhibits P-9 and P-10, denying anything not in conformity therewith;
12. It admits the allegations contained in paragraph 17 of the Originating Application;
13. With respect to the allegations contained in paragraph 18 of the Originating Application, it refers to exhibit P-11, denying anything not in conformity therewith;
14. It has no knowledge of the allegations contained in paragraph 19 of the Originating Application;
15. With respect to the allegations contained in paragraph 20 of the Originating Application, it refers to exhibit P-12, denying anything not in conformity therewith;
16. It denies as drafted the allegations contained in paragraphs 21 and 22 if the Originating Application;
17. With respect to the allegations contained in paragraph 23 of the Originating Application, it refers to exhibit P-13, denying anything not in conformity therewith;
18. It denies the allegations contained in paragraphs 24 to 58 of the Originating Application;
19. With respect to the allegations contained in paragraph 59 of the Originating Application, it refers to exhibit P-19, denying anything not in conformity therewith;
20. With respect to the allegations contained in paragraph 60 of the Originating Application, it refers to exhibit P-20, denying anything not in conformity therewith;
21. With respect to the allegations contained in paragraphs 61, 62 and 63 of the Originating Application, it refers to exhibits P-1 to P-3, denying anything not in conformity therewith;
22. It denies the allegations contained in paragraphs 64 to 75 of the Originating Application.

AND FOR FURTHER PLEA, THE DEFENDANT ADDS:

A. Introduction

23. Magasins Best Buy Ltée (“**Best Buy**”) is Canada’s largest consumer electronics retailer and operates the Best Buy, Geek Squad, Best Buy Mobile and Best Buy Business brands;
24. Best Buy stores first began operating in Québec in May 2005;
25. From March 2001 and until March 2015, Best Buy also owned the Future Shop brand. For ease of reference and unless specifically mentioned, Future Shop and Best Buy will jointly be referred to as “Best Buy”;
26. Each brand operated separately, on a national basis, under separate management, each with its own Senior Vice-President;
27. In Québec, each brand had its own officers, its own operations, merchandising and marketing departments and its own staff, including its own sales staff. Each brand also had its own stores, located in different areas of the province;
28. Since March 2015, numerous Future Shop locations were closed and all remaining locations were converted to Best Buy stores;

B. Advantages Provided by the Product Service Plan / Performance Service Plan (PSP)

29. During the class period, Best Buy offered and still offers a Product/ Performance Service Plan (the “**PSP**”) for some of the retail products it sells. The PSP is a form of extended warranty that, in many cases, also includes additional advantages and services;
30. Article 35 of the *Consumer Protection Act* (the “**CPA**”) does not prevent a merchant from offering an extended warranty to consumers. Extended warranties can serve to extend (in effect) the manufacturer's conventional warranty, since they cover a longer period than said conventional warranty, but they can also provide other benefits and services not included in the manufacturer’s conventional warranty or even the legal warranty;
31. The manufacturer’s conventional warranty, which can typically vary according to the product category in question and has at time even varied according to the manufacturer, is distinct from the legal warranty in terms of its duration and scope, as well as the way in which it is exercised;
32. During the class period, Best Buy’s PSP coverage periods varied from 1 to 9 years, depending on the product type and sub-type. For most product types, a customer could (and still can) opt for a choice of coverage periods. The choice of available

coverage periods for a given product type and sub-type may have varied from time to time;

33. The terms and conditions of the PSP are different and generally more beneficial than those of the manufacturer's conventional warranty, although, in certain instances, they may address the same subject matter;
34. The terms and conditions of the PSP have, from time to time during the class period, provided *inter alia* for the following benefits, which are either (i) not covered by the manufacturer's conventional warranty or (ii) are extended in time or scope by the PSP: Parts and Labour Coverage, beyond the manufacturer's conventional warranty coverage period (included at least as of 2004);
 - 34.1 The "Performance Guarantee", ensuring the product will perform to factory specifications, beyond the manufacturer's conventional warranty coverage period (included at least as of 2007);
 - 34.2 The "Peace of Mind Guarantee", covering the quality of workmanship by approved repair technicians for 90 days (included at least as of 2010);
 - 34.3 "Power Surge Protection", covering repairs and/or replacement associated with damage from a power surge (included at least as of 2004);
 - 34.4 "Repair Benefit & Power Surge Protection", covering repairs associated with manufacturer's defects in materials and workmanship that reveal themselves in normal usage and or as a result of damage from a power surge (included at least as of 2010);
 - 34.5 The "Accessory Coverage", covering accessories and peripheral devices included with the purchased product in the original manufacturer's package (included at least as of 2004);
 - 34.6 The "No Lemon Guarantee", providing that after three repairs, a product necessitating a fourth repair will instead be replaced (included at least as of 2004);
 - 34.7 The "Replacement Guarantee" (also known as the "replacement benefit" in certain documents), providing that in the event a repair takes longer than 60 days to complete, it will instead be replaced (included at least as of 2004);
 - 34.8 In-Home / Express Ship or Carry-In Service Options, above or beyond the manufacturer's conventional warranty coverage period (included at least as of 2007);
 - 34.9 24-hour Customer Service/ 365-days (included at least as of 2007);
 - 34.10 Global (International) Coverage (included at least as of 2004);

34.11 Diagnostic Support for Computers and Notebooks (included at least as of 2007);

35. Likewise, the terms and conditions of the PSP have provided, from time to time during the class period, inter alia, for “Product Specific Benefits” such as:
- (i) Coverage of viewing mechanisms (including, but not limited to, notebook computer screens, LCD TV screens, plasma TV screens) (included at least as of 2004);
 - (ii) Performance maintenance on select products, such as video cameras, DVD players and VCRs (included at least as of 2004);
 - (iii) Pixel burnout coverage for screens, based upon manufacturer’s guidelines (included at least as of 2004);
 - (iv) Allowance for food spoilage for service repairs on refrigerators and freezers (included at least as of 2004);
 - (v) Reimbursement of laundry cleaning services for service repairs on washers and dryers (included at least as of 2018);
 - (vi) Car Audio Removal & Re-Installation (included at least as of 2004);
 - (vii) Repair of blown speaker components not due to abuse or misuse (included at least as of 2004);

as appears from a sample of PSP terms and conditions made available to Quebec customers over the class period and communicated in support hereof as **Exhibits D-1 to D-9**;

36. In 2014, Best Buy rebranded the PSP under the “Geek Squad” brand name and offered it as the “Geek Squad Protection Service and Replacement Plan”, which contained two components. The Geek Squad “Protection Service Plan” offered the same benefits and services offered in the PSP available at the time of this rebranding, while the “Replacement Plan” offered a one-time refund, via store credit or gift card equal to the original purchase price of the product, in replacement of a product found to be defective and/or damaged as a result of a power surge. An example of the PSP (Geek Squad) terms and conditions made available to Quebec customers following the 2014 rebranding is communicated in support hereof as **Exhibit D-10**;
37. In 2017, Best Buy began offering, as an add-on available to PSP customers depending on the product category and/or sub-category, coverage for accidental and/or physical damage (referred to herein as the “Physical Damage Benefit”). This add-on, when available, provides for the coverage of product repair costs, in exchange for a service fee depending on the value of the product, when a product is determined to be defective as a result of unintentional physical damage. When

repair is deemed to be impossible, in exchange for the same aforementioned fee, a replacement product is to be provided, as appears from a sample of PSP terms and conditions made available to Quebec customers as of March 1, 2017, communicated in support hereof as **Exhibit D-11**;

38. In the same year, coverage for accidental and/or physical damage was also made available for wireless devices and provides the following benefits:
 - 38.1 The “Physical Damage Benefit” described in paragraph 37 above;
 - 38.2 The “Replacement & Power Surge Benefit” covering repairs associated with manufacturer’s defects in materials and workmanship that reveal themselves in normal usage and or as a result of damage from a power surge;
 - 38.3 The “Accessory Replacement Benefit” covering accessories and peripheral devices included with the purchased product in the original manufacturer’s package;
 - 38.4 The “Battery Replacement Benefit” covering “the cost of funding and shipping a replacement battery once during the plan coverage period”;
39. The PSP provides that consumers should contact the manufacturer directly during the manufacturer’s conventional warranty coverage period. During this coverage period, in the event that a consumer contacts Best Buy regarding a benefit covered by the manufacturer’s conventional warranty, consumers are referred to the applicable manufacturer;
40. This is due to the nature of the PSP, which provides, at its core, an extension on the manufacturer’s conventional warranty and not a replacement of same. Indeed, the pricing of the PSP for a given product is based on its duration beyond the manufacturer’s conventional warranty for the product in question;
41. That said, Best Buy honors the various additional benefits provided in the PSP from the date of its purchase, and does not refer the client to the manufacturer for such additional benefits (not offered by the manufacturer);
42. Ultimately, the PSP has always offered an extension of the coverage period applicable to the manufacturer’s conventional warranty for a given product, and it has added, depending on the period and the product type, a number of additional benefits that go well-beyond the manufacturer’s conventional and legal warranties;
43. It is therefore patently untrue to suggest, as the Plaintiff does, that the PSP has no intrinsic value;
44. Furthermore, it noteworthy that the Plaintiff does not allege that the PSP offered by Best Buy, at any material time, is or was materially different from other extended warranties offered by its competitors;

45. The PSPs are administered by Assurant Services Canada Inc., a third party which executes the services provided for in the PSP;

C. The Pricing of the PSP

46. The purchase price of a given PSP, for a given product, has and will generally vary depending on: (i) the category of the purchased product, (ii) the sub-category of the purchased product, (iii) the price of the purchased product and (iv) the PSP coverage period, as it relates to the coverage period for the applicable manufacturer’s conventional warranty;
47. Hence, the purchase price not only varies from one product category to another, but also from one product sub-category to another;
48. The terms and conditions of the applicable manufacturers’ conventional warranties for a given product category or sub-category (including (but not limited to) the coverage period(s)), product reliability, product durability, obsolescence and market expectations, are all factors considered when setting the PSP prices;
49. On this point, it is worth noting that manufacturers generally offer different conventional warranties on the various product types they sell, such as televisions, computers and refrigerators, and even for different product subtypes;
50. At times over the class period, manufacturers have changed the coverage period for their manufacturer’s conventional warranty for a given product type or subtype. Such changes have usually resulted in adjustments to the pricing of the PSP to reflect a longer or shorter PSP coverage period beyond the manufacturer’s conventional warranty. For example, when LG (manufacturer) reduced its conventional warranty coverage period for its televisions from two years to one year in 2008, the availability and pricing for the PSP was modified accordingly, as per the following table:

Product Type and model	Product model price		Manufacturer warranty coverage period		PSP coverage period		PSP price	
	2007	2008	2007	2008	2007	2008	2007	2008
Television LG 52LB5D 52" WS LCD 1080P	\$2,799.99		2-years in 2007	1-year in 2008	2-years 3-years 4-years		N/A \$399.99 \$499.99	\$369.99 \$469.99 \$569.99

51. In recent years, the manufacturers of the different product types have standardized the coverage period for the manufacturer’s conventional warranty they offer. As an example, we note that televisions manufactured by LG, Samsung and Sony all now have comparable conventional warranties with a one-year coverage period;

52. Due to the standardization of these coverage periods, the PSP pricing (and offering) no longer needs to be adjusted, such that it is now standardized for all product types and subtypes, regardless of manufacturer;
53. Hence, the variables affecting the PSP pricing for televisions (product category), for example, are now (i) the sub-category (0-27 inches or 30+ inches), (ii) the price (in various increments) and (iii) the PSP coverage period selected (two, three or four years, compared to the one-year manufacturer’s conventional warranty);
54. The distinction between sub-categories in the case of televisions lies notably in the difference in service offered under the PSP terms and conditions for each sub-category: smaller televisions (0-27 inches) must be carried into Best Buy to be serviced, while larger televisions (30+ inches) can be serviced “on-site” (i.e. in a client’s home);
55. To illustrate this, we reproduce hereinbelow the PSP price list for televisions under the Geek Squad Protection plan in 2017 (list updated June 6, 2017):

Product	2 year Rate	3 year Rate	4 year Rate
TV - GEEK SQUAD PROTECTION			
TELEVISIONS 0-27"+			
\$0-199.99	39,99 \$	44,99 \$	49,99 \$
\$200-299.99	49,99 \$	59,99 \$	69,99 \$
\$300-399.99	69,98 \$	79,99 \$	119,99 \$
\$400-499.99	89,98 \$	99,99 \$	149,99 \$
\$500-599.99	119,98 \$	129,99 \$	149,99 \$
\$600-749.99	149,98 \$	159,99 \$	179,99 \$
\$750-999.99	169,98 \$	189,99 \$	249,99 \$
\$1000 - 1199.99	199,98 \$	229,99 \$	299,99 \$
\$1200 - 1499.99	239,98 \$	279,99 \$	349,99 \$
\$1500-1999.99	289,98 \$	329,99 \$	399,99 \$
\$2000+	349,98 \$	399,99 \$	499,99 \$

Product	2 year Rate	3 year Rate	4 year Rate
TV - GEEK SQUAD PROTECTION			
TELEVISIONS 30"+			
\$0-199.99	59,99 \$	79,99 \$	99,99 \$
\$200-299.99	69,99 \$	89,99 \$	109,99 \$
\$300-399.99	79,98 \$	99,99 \$	119,99 \$
\$400-499.99	89,98 \$	109,99 \$	129,99 \$
\$500-599.99	99,98 \$	119,99 \$	149,99 \$

Product	2 year Rate	3 year Rate	4 year Rate
TV - GEEK SQUAD PROTECTION			
TELEVISIONS 30"+			
\$600-699.99	109,98 \$	139,99 \$	169,99 \$
\$700-799.99	129,98 \$	159,99 \$	189,99 \$
\$800-899.99	149,98 \$	179,99 \$	209,99 \$
\$900-999.99	169,98 \$	199,99 \$	229,99 \$
\$1000-1199.99	189,98 \$	219,99 \$	249,99 \$
\$1200-1399.99	209,98 \$	239,99 \$	269,99 \$
\$1400-1599.99	239,98 \$	269,99 \$	299,99 \$
\$1600-1799.99	269,98 \$	299,99 \$	339,99 \$
\$1800-1999.99	299,98 \$	329,99 \$	379,99 \$
\$2000-2499.99	329,98 \$	369,99 \$	479,99 \$
\$2500-2999.99	369,98 \$	469,99 \$	579,99 \$
\$3000-3999.99	469,98 \$	569,99 \$	669,99 \$
\$4000-4999.99	569,98 \$	669,99 \$	769,99 \$
\$5000-5999.99	669,98 \$	769,99 \$	969,99 \$
\$6000 - 6999.99	829,99 \$	1 069,99 \$	1 269,99 \$
\$7000 - 7999.99	1 169,99 \$	1 349,99 \$	1 599,99 \$
\$8000 - 8999.99	1 369,99 \$	1 529,99 \$	1 799,99 \$
\$9000 - 9999.99	1 529,99 \$	1 749,99 \$	1 999,99 \$
\$10000 - 10999.99	1 669,99 \$	1 949,99 \$	2 199,99 \$
\$11000 - 11999.99	1 849,99 \$	2 149,99 \$	2 399,99 \$
\$12000 - 12999.99	1 999,99 \$	2 369,99 \$	2 599,99 \$
\$13000 - 13999.99	2 169,99 \$	2 569,99 \$	2 869,99 \$
\$14000 - 14999.99	2 299,99 \$	2 749,99 \$	3 099,99 \$
\$15000 - 15999.99	2 469,99 \$	2 949,99 \$	3 369,99 \$
\$16000 - 16999.99	2 669,99 \$	3 149,99 \$	3 399,99 \$
\$17000 - 17999.99	2 829,99 \$	3 349,99 \$	3 669,99 \$
\$18000 - 18999.99	2 999,99 \$	3 529,99 \$	3 899,99 \$
\$19000 - 19999.99	3 129,99 \$	3 729,99 \$	4 099,99 \$
\$20000 - 20999.99	3 329,99 \$	3 899,99 \$	4 369,99 \$
\$21000 - 21999.99	3 469,99 \$	4 099,99 \$	4 699,99 \$
\$22000 - 22999.99	3 629,99 \$	4 299,99 \$	4 899,99 \$
\$23000 - 23999.99	3 799,99 \$	4 499,99 \$	5 099,99 \$
\$24000 - 24999.99	3 929,99 \$	4 699,99 \$	5 499,99 \$
\$25000 - 29999.99	4 369,99 \$	5 279,99 \$	6 169,99 \$
\$30999 - 34999.99	5 249,99 \$	6 299,99 \$	7 469,99 \$
\$35000 - 39999.99	5 999,99 \$	7 169,99 \$	8 669,99 \$
\$40000 - 44999.99	6 799,99 \$	8 169,99 \$	9 679,99 \$

Product	2 year Rate	3 year Rate	4 year Rate
TV - GEEK SQUAD PROTECTION			
TELEVISIONS 30"+			
\$45000 - 49999.99	7 499,99 \$	9 129,99 \$	10 999,99 \$
\$50000 - 54999.99	8 399,99 \$	10 099,99 \$	12 399,99 \$
\$55000 - 59999.99	8 999,99 \$	10 999,99 \$	13 499,99 \$

56. We also reproduce the 2017 PSP price list for televisions covered under the Geek Squad Protection Plan with the Physical Damage Benefit since this product did not contain sub-divisions by television size and was only available for televisions priced between \$300 and \$4,999.99.

Product	2 year Rate	3 year Rate	4 year Rate
TV - GEEK SQUAD PROTECTION WITH PHYSICAL DAMAGE			
TELEVISIONS (all sizes)			
\$300 - 399.99	89,99 \$	114,99 \$	139,99 \$
\$400 - 499.99	114,99 \$	134,99 \$	159,99 \$
\$500 - 599.99	139,99 \$	164,99 \$	194,99 \$
\$600 - 699.99	164,99 \$	194,99 \$	229,99 \$
\$700 - 799.99	189,99 \$	224,99 \$	264,99 \$
\$800 - 899.99	199,99 \$	254,99 \$	299,99 \$
\$900 - 999.99	219,99 \$	284,99 \$	334,99 \$
\$1000 - 1199.99	244,99 \$	309,99 \$	384,99 \$
\$1200 - 1399.99	289,99 \$	364,99 \$	429,99 \$
\$1400 - 1599.99	329,99 \$	419,99 \$	479,99 \$
\$1600 - 1799.99	359,99 \$	444,99 \$	544,99 \$
\$1800 - 1999.99	399,99 \$	494,99 \$	609,99 \$
\$2000 - 2499.99	449,99 \$	584,99 \$	789,99 \$
\$2500 - 2999.99	549,99 \$	714,99 \$	964,99 \$
\$3000 - 3999.99	699,99 \$	944,99 \$	1 224,99 \$
\$4000 - 4999.99	899,99 \$	1 169,99 \$	1 529,99 \$

57. For ease of reference, spreadsheets demonstrating the PSP price lists for all product categories covered under the Geek Squad protection plan (with or without the Physical Damage Benefit coverage, but outside of any membership pricing or discounts) for years 2017, 2020 and 2022 are communicated in support hereof as **Exhibits D-12, D-13 and D-14** respectively.
58. We also note that the price list for 2022 (Exhibit D-14) contains two pricing options for consumers, which is a lump sum payment or a monthly payment. This monthly

option has been available since 2018 and allows consumers to tailor the length of the PSP coverage period according to their needs and specific situation.

D. The PSP Is not Abusive and Does not Amount to the Exploitation of Consumers

59. As explained above, the purchase price of a given PSP, for a given product, has and will vary depending on such factors as: (i) the category and subcategory of the purchased product, (ii) the price of the purchased product and (iii) the length of the PSP coverage period, as it relates to the coverage period for the applicable manufacturer's conventional warranty;
60. Due to the inherent nature of a warranty, as well as the wide range of claims, rights, services and benefits available under the PSP, its intrinsic value will vary for each consumer, since every claim brought by a consumer under the PSP (and the benefits reaped therefrom) shall likewise differ for every consumer;
61. Indeed, in most cases where a claim is made under the PSP, the value of the claim will exceed the purchase price of the PSP;
62. The value of the services to be performed under the PSP will vary depending on a myriad of circumstances. In light of all the services provided under the PSP, there is (and has been) no lesion or disproportion of the obligations that would amount to exploitation of consumers;
63. As consumers may benefit from a wide range of claims, rights, services and benefits as part of the PSP, the purchase price of the PSP – coupled with the recognized value of such warranties – cannot be said to generate any exploitation of consumers;
64. The Plaintiff vaguely alleges that profits made by Best Buy on the sale of the PSP are abusive to all members, without alleging the prejudice that would necessarily have been suffered by the members of the class (as described in paragraph 5 of the Originating Application);
65. On this point, it is noteworthy that the pricing for the PSP is (and has been, at all relevant times) in line with prevailing market conditions, in that it is similar to the pricing applied by other similar retailers for extended warranties (with similar services and additional benefits, where applicable) on similar products;
66. Indeed, the relationship between the purchase price and the rights, services and benefits provided under the PSP is similar to that of other similar extended warranties sold by similar retailers for similar products, such that it cannot be said that the price paid by consumers for the PSP is abusive;

E. The PSP Does not Purport To Allow Best Buy To Avoid Its Obligations Under The Legal Warranty Or The Manufacturer's Conventional Warranty

67. The Plaintiff alleges, at paragraphs 63 and 64 of the Originating Application, that Best Buy attempts to circumvent its liability to consumers, regarding any defects covered by (i) the manufacturer's conventional warranty and (ii) the legal warranty, through the application of the following clause appearing (in these or similar terms) in the PSP terms and conditions (Exhibits D-1 to D-11 and D-15):

***Responsabilité du fabricant :** Ce Plan complète, mais ne remplace pas la garantie du fabricant. Les pièces et les réparations que couvre la garantie du fabricant sont uniquement la responsabilité du fabricant. Pendant la durée de la garantie du fabricant, communiquez directement avec ce dernier, notamment pour le Service sur place / par messenger. Si vous communiquez avec nous, nous vous référerons au fabricant concerné. Pendant la période de garantie du fabricant, le Plan fournit certains avantages supplémentaires qui ne sont pas couverts par la garantie du fabricant. Ces avantages supplémentaires sont énumérés aux Conditions énumérées ci-après. (as reproduced at paragraph 63 of the Originating application, Exhibit P-1, page 2)*

***Manufacturer's Responsibilities:** Parts and services covered by the manufacturer's warranty are the responsibility of the manufacturer only. During the manufacturer's warranty coverage period, please contact the manufacturer directly. We will refer you to the applicable manufacturer. (as appears from page 1 of Exhibit D-16, the English version of Exhibit P-1)*

68. On this point, it is worth noting that this clause makes no mention whatsoever of the legal warranty and that it does not purport in any way to modify or limit Best Buy's legal obligations (under the CPA or the *Civil Code of Quebec*) in relation to same;
69. Nothing in the allegations of the Plaintiff, including paragraphs 24 to 58 of the Originating Application, which detail the Representative's alleged experience attempting to enforce the PSP she had purchased, indicate that this clause was used by Best Buy to avoid or circumvent any applicable legal warranty;
70. Hence, the Plaintiff falsely conflates Best Buy's obligations under the legal warranty and the contractual obligations it has under the PSP, which are limited (as far as the extended warranty component is concerned) during the coverage period of the manufacturer's conventional warranty, as was explained above;
71. There is nothing illegal or abusive in offering, via the PSP, a product that provides to consumers a conventional warranty in which the obligation to repair or replace commences at the end of the manufacturer's conventional warranty for the product

in question, nor is it illegal for the PSP to offer other services of which the customer can take advantage during the entire duration of the PSP;

72. Indeed, the PSP makes clear the additional services available to the customer during the entire duration of the PSP, notwithstanding any manufacturer's conventional warranty, and nothing in the allegations of the Plaintiff indicates that Best Buy refused or failed to provide any said additional services;

F. No False Representations Are Made in the PSP

73. Contrary to what the Plaintiff alleges at paragraphs 70 to 73 of the Originating Application, there are no false representations contained in the PSP documentation and literature made available to consumers;

74. First, the Plaintiff alleges that the PSP falsely represents to consumers that it is more advantageous than the legal warranty;

75. However, it is patent that the PSP offers a number of advantages, whether in terms of extended coverage period or additional rights, services and benefits, that go beyond the legal warranty;

76. The Court of Appeal of Québec, in *Fortier c. Meubles Léon Itée*¹, recognized that additional or extended warranties offered by nine different retailers (and analyzed in separate court files) had intrinsic benefit and value, even in the presence of the legal warranty, namely (and if only) with regard to (i) their implementation and the reduced burden of proof for consumers, and (ii) their clear delimitation in scope and time;

77. Further, the Court of Appeal in *Meubles Léon* found that the additional or extended warranties at issue conferred "greater peace of mind" (our translation) to consumers and eliminated the necessity of proving a latent defect²;

78. Indeed, due to the general definition of legal warranties created by statute (the CPA and the CCQ), the period and scope of coverage for a given product is undefined at the time of purchase;

79. In this sense, the PSP, like the extended or additional warranties analyzed in *Meubles Léon*, offers a conventional warranty that clearly defines the period and scope of coverage, sets the expectations for consumers and provides "peace of mind" to consumers by ensuring that a malfunctioning product will be repaired or replaced, without the need to demonstrate the presence of a latent defect or the application of any other legal warranty;

80. In addition, many of the additional services considered by the Court of Appeal in *Meubles Léon* as having value beyond the legal warranty are also present under

¹ *Fortier c. Meubles Léon Itée*, 2014 QCCA 195, at paras 106-115 [*Meubles Léon*].

² *Ibid*, para 109.

the PSP for certain products, such as (i) preventive maintenance services (see paragraph 35 (ii) above), (ii) evening and weekend services (see paragraphs 34.8, 34.9 above), (iii) protection against loss of food (see paragraph 35 (iv) above), (iv) protection against power surges (see paragraph 34.3 above), (v) in-home service (see paragraph paragraphs 34.8, 34.9 above) and (vi) replacement options after a certain number of repetitive breakdowns (see paragraph 34.6 above);

81. Second, regarding the allegation made in paragraph 72 of the Originating Application, it is not a false representation for the PSP to state that it may generate potential savings on the cost of repairs and/or product replacement depending on the scope of the purchased plan, since it is possible that a consumer unable to bring or justify a claim under an applicable legal warranty would have to incur costs to have the covered product repaired or replaced;
82. In addition, while the coverage period of the PSP is usually to be read in relation to the manufacturer's conventional warranty, it is possible that the PSP coverage period may exceed that of the legal warranty (whose duration is undefined and may result in a dispute), depending on the PSP coverage period selected by each consumer;
83. Third, there is also no false representation in the statement made by Best Buy that the PSP can be transferred, as this is not a given for all conventional or extended warranties, as per article 45 c) of the CPA;
84. Based on the foregoing, it is patent that the PSP documentation and literature contain no misrepresentations or false statements, and that they cannot support any alleged breach(es) of articles 8, 35, 37, 38, 53, 54, 219 or 220 of the CPA;
85. Likewise, the Plaintiff does not demonstrate any fault, whether contractual or legal, that would justify its claims for (i) the annulment of all PSPs sold to class members or a "substantial reduction" of their purchase price, or (ii) for punitive damages;
86. The Originating Application is ill founded in fact and in law.
87. The present Defence is well founded in fact and in law.

FOR THESE REASONS, DEFENDANT PRAYS THIS HONOURABLE COURT TO:

- A. GRANT** the present Defence;
- B. DISMISS** Plaintiff's Amended Judicial Application Originating a Proceeding;
- C. THE WHOLE** with legal costs.

Montréal, December 23, 2022

Borden Ladner Gervais LLP

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CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class action)

No.: **500-06-000413-076**

UNION DES CONSOMMATEURS

Plaintiff

v.

MAGASINS BEST BUY LTÉE

Defendant

LIST OF EXHIBITS

- EXHIBIT D-1:** Future Shop PSP brochure detailing applicable terms and conditions from 2007;
- EXHIBIT D-2:** Best Buy PSP brochure detailing applicable terms and conditions from 2007;
- EXHIBIT D-3:** Best Buy PSP brochure detailing applicable terms and conditions from November 2010;
- EXHIBIT D-4:** Future Shop PSP brochure detailing applicable terms and conditions from November 2010;
- EXHIBIT D-5:** Best Buy PSP brochure detailing applicable terms and conditions from 2004;
- EXHIBIT D-6:** Future Shop PSP brochure detailing applicable terms and conditions from 2004;
- EXHIBIT D-7:** Best Buy PSP brochure detailing applicable terms and conditions from 2007;
- EXHIBIT D-8:** Future Shop PSP brochure detailing applicable terms and conditions from 2007;
- EXHIBIT D-9:** Geek Squad Protection Plan brochure detailing applicable terms and conditions from 2018;

- EXHIBIT D-10:** Geek Squad Protection Plan brochure detailing applicable terms and conditions from 2014;
- EXHIBIT D-11:** Geek Squad Protection Plan brochure (With the Physical Damage Benefit) detailing applicable terms and conditions from 2017;
- EXHIBIT D-12:** PSP price lists for all product categories covered under the Geek Squad Protection Plan for 2017;
- EXHIBIT D-13:** PSP price lists for all product categories covered under the Geek Squad Protection Plan for 2020;
- EXHIBIT D-14:** PSP price lists for all product categories covered under the Geek Squad Protection Plan for 2022;
- EXHIBIT D-15:** Future Shop PSP brochure detailing applicable terms and conditions from 2003 (English version of Exhibit P-1).

Montréal, December 23, 2022



Borden Ladner Gervais LLP

Lawyers for Defendant Magasins Best Buy Ltée

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NOTIFICATION: Union des consommateurs c. Magasins Best Buy Ltée (500-06-000413-076) // Defence and Exhibits D-1 to D-15



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23 déc. 2022, 16:25

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2 pièces jointes -Expire le : 21 janv. 2023

BORDEREAU DE NOTIFICATION PAR COURRIER ÉLECTRONIQUE

(Article 134 C.p.c.)

DATE :

Montréal, le 23 décembre 2022

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NUMÉRO DE DOSSIER DE COUR ET NATURE DU DOCUMENT NOTIFIÉ :

Numéro de dossier :	500-06-000413-076
Parties :	Union des consommateurs c. Magasins Best Buy Ltée
Nature du document :	Defence and Exhibits D-1 to D-15

Nombre de pages : (pièces jointes seulement)	-18- (excluding exhibits)
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DISTRICT DE MONTRÉAL
N° : 500-06-000413-076

UNION DES CONSOMMATEURS

Demanderesse

c.

MAGASINS BEST BUY CANADA LTÉE

Défenderesse

DEFENCE
(art. 170 C.C.P)

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