

CANADA

SUPERIOR COURT
(Class Action Chamber)

PROVINCE DE QUEBEC
DISTRICT OF MONTRÉAL

ARIANE KNAFO

NO: 500-06-001202-221

Plaintiff

v.

BARILLA CANADA INC.

Defendant

**APPLICATION BY DEFENDANT BARILLA CANADA INC.
TO STRIKE ALLEGATIONS AND EXHIBITS**
(Articles 169(2) and 575 CCP)

TO THE HONOURABLE CHRISTIAN IMMER, S.C.J., SITTING IN THE CLASS ACTION DIVISION, IN AND FOR THE DISTRICT OF MONTRÉAL, BARILLA CANADA INC. RESPECTFULLY SUBMITS THE FOLLOWING:

I. INTRODUCTION

1. On or about October 24, 2022, the Plaintiff filed an Application for Authorization to Institute a Class Action against Barilla (the “**Application for Authorization**”) on behalf of the following proposed National Class (the “**Class action**”):

All residents of Canada who have purchased at least one of the Defendant’s pasta products, which products were not produced in Italy but which bear the phrase “ITALY’S #1 BRAND OF PASTA” and/or “LA MARQUE de PÂTES No 1 EN ITALIE” and/or which display the Italian flag colors on the front label of the packaging, or any other group to be determined by the Court.

(the “**National Class**”)

2. The Class action essentially alleges that:

Defendant’s advertising is misleading since Defendant sought to take advantage of Consumers’ desire for authentic Italian pasta in an effort to gain market share and increase sales, (as appears from paragraph 12 of the Application).

3. The Class Action targets the following products:

- a. Barilla ® Classic Blue Box Pastas, including Angle Hair, Campanelle, Cellentani, Ditalini, Elbows, Farfalle, Fettuccine, Fideo Cut Spaghetti,

Gemelli, Jumbo Shells, Large Shells, Linguine, Linguine Fini, Manicotti, Medium Shells, Mezzi Rigatoni, Mini Farfalle, Mini Penne, Mini Wheels, Mostaccioli, Orzo, Pastina, Penne, Pipette, Rigatoni, Rotini, Spaghetti, Spaghetti Rigati, Thick Spaghetti, Thin Spaghetti, Tri-Color Penne, Tri-Color Rotini, Wavy Lasagne and Ziti;

- b. Barilla ® Collezione Artisanal Pastas, including Bucatini, Casarecce, Orecchiette, Penne, Rigatoni and Spaghetti;
- c. Barilla ® Gluten Free Pastas, including Elbows, Fettuccine, Penne, Rotini, Spaghetti;
- d. Barilla ® Veggie Pastas, including Rotini and Spaghetti; and
- e. Barilla ® Whole Grain Pastas, including Elbows, Lasagne, Linguine, Penne, Rotini, Spaghetti and Thin Spaghetti.

(together, the “**Products**”)

4. The Plaintiff’s legal syllogism in support of the proposed Class Action is outlined at paragraphs 6 to 25 of the Application for Authorization and can be summarized as follows:

- a. Barilla engaged in unfair, misleading and deceptive practices with regards to the marketing and sale of the Products in violation of the *Competition Act* (R.S.C., 1985, c. C-34) and the consumer protection legislation;
- b. More particularly, Barilla made false, misleading and deceptive representations about the origin of the Products and the ingredients it contains by:
 - 1. Displaying the trademark “ITALY’S #1 BRAND OF PASTA™” and, in French, “LA MARQUE de PÂTES No 1 EN ITALIE ^{MC}” on the packaging of the Products; and
 - 2. Displaying the Italian national flag’s green, white and red colors on the packaging of the Products;
- c. Barilla’s false, misleading and deceptive representations led the proposed National Class members to believe the Products were made in Italy with ingredients sourced in Italy;
- d. Were it not for Barilla’s deceptive practices, the proposed National Class members would have not purchased the Products; and
- e. Barilla acted knowingly and recklessly;

5. The Plaintiff, on behalf of the proposed National Class, seeks compensatory and punitive damages, as well as injunctive relief (as appears from paragraphs 52 and 53 of the Application for Authorization).

II. THE IMMATERIAL ALLEGATIONS SHOULD BE STRUCK

6. Barilla respectfully submits that the allegations made at paragraphs 26, 27 and 40 as well as the Exhibits R-5 and R-6 of the Application for Authorization, referred to therein, should be struck from the Class action:

26. Finally, it appears that some of Defendant's related entities, in other countries, are also engaging in the same deceptive marketing and advertising schemes. In this regard, Plaintiff refers this Honorable Court to a US class action lawsuit alleging that Defendant's US sister-company Barilla America Inc. has engaged in the same false advertising concerning the same Barilla branded pasta products being sold in the USA as well, the whole as more fully appears from the First Amended Class Action Complaint filed on July 20, 22 in the United States District Court Northern District of California, communicated herewith, as though recited at length herein, as Exhibit R-5, (hereinafter the "**US Class Action**").

27. On October 17, 2022, the Barilla America Inc. Motion to Dismiss the US Class Action was mostly dismissed by the United States District Court Northern District of California, the whole as more fully appears from the October 17, 2022 Judgment, communicated herewith, as though recited at length herein, as Exhibit R-6.

40. Furthermore, Defendant knowingly continued and continues to make such false representations to the Class Members, notwithstanding the U.S. Class Action proceeding filed.

7. These allegations are immaterial and not relevant to the determination of the four conditions set out in article 575 CCP for the following reasons:
 - a) The US Class Action is outside the jurisdiction of this court;
 - b) The US Class Action does not involve the parties to the present application or the proposed class members;
 - c) The US Class Action pertains to a different legal regime and different facts;
 - d) The US Class Action is still in a preliminary stage and no judgment on the merits has been issued.
 - e) The US Class Action is likely to confuse the issues and distract from the core claims of the class action.

8. Finally, the principle of proportionality requires striking these allegations at this preliminary stage of the proceedings to limit the scope of the debate, avoid unnecessary waste of time and resources, and ensure the fair administration of justice.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

- A. GRANT** the present *Application to strike allegations and exhibits*.
- B. STRIKE** paragraphs 26, 27 and 40 of the Class action and Exhibits R-4 and R-5, in support thereof.

THE WHOLE, with costs.

Montreal, February 27, 2023



LAVERY, DE BILLY, L.L.P.
Lawyers for Defendant Barilla Canada Inc.
Ms. Myriam Brix
1 Place Ville-Marie, Suite 4000
Montreal QC H3B 4M4
Telephone: 514 878-5449
Fax: 514 871-8977
E-mail: mbrix@lavery.ca
Notifications: notifications-mtl@lavery.ca

N° : 500-06-001202-221

(CLASS ACTION)
SUPERIOR COURT

ARIANE KNAFO

Plaintiff

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**APPLICATION BY DEFENDANT
BARILLA CANADA INC. TO STRIKE
ALLEGATIONS AND EXHIBITS
(Articles 169(2) and 575 CCP)**

ORIGINAL

BL 1332

Ms. Myriam Brixl OUR FILE: 142535-00004

LAVERY, DE BILLY, LLP

SUITE 4000, 1, PLACE VILLE MARIE, MONTRÉAL (QUEBEC) H3B 4M4
TELEPHONE : 514 871-1522 TELECOPIER : 514 871-8977
NOTIFICATIONS BY EMAIL: NOTIFICATIONS-MTL@LAVERY.CA
lavery.ca



Ladouceur Jean-René

De: Ladouceur Jean-René
Envoyé: 27 février 2023 15:34
À: 'davidassor@lexgroup.ca'
Cc: Notifications - Lavery; Brixix Myriam
Objet: Notification by email - article 134 C.C.P./ Ariane Knafo v. Barilla Canada Inc. / S.C.M. 500-06-001202-221
Pièces jointes: Exhibit R-1 Sworn Statement of Mr. Doyle Brown - February 27, 2023.pdf; Application by Barilla to strike allegations 27-02-2023_19649586_2.pdf; Application by Barilla for leave to adduce relevant evidence_19676947_3.pdf

Transmission Slip

(article 134 C.p.c.)

DATE, HOUR AND MINUTE OF SENDING:

Montréal, this February 27, 2023, at the hour and the minutes indicated on the email

SENDER:

Name: Ms. Myriam Brixix
Firm : Lavery, de Billy, LLP
Address : 1, Place Ville Marie, Suite 4000
Montreal, Quebec, H3B 4M4
Telephone : 514 878-5449
Email: mbrixix@lavery.ca
Our reference : 142535-00004
Notifications : notifications@lavery.ca

ADDRESSEE(S):

Name: Mr. David Assor
Firm : Lex Group Inc.
Address : 4101 Sherbrooke Street West
Westmount, Quebec H3Z 1A7
Telephone : (514) 451-5500
Email: davidassor@lexgroup.ca
Our reference :
Notifications :

COURT FILE AND DOCUMENT INFORMATION:

Court file number : 500-06-001202-221
Parties: *Ariane Knafo v. Barilla Canada Inc.*
Nature of document: **Application to Strike Allegations, Application for Leave to Adduce Relevant Evidence and Exhibit R-1 (Sworn Statement)**

ATTACHED FILE INFORMATION:

File name : Application by Barilla To Strike Allegations, Application by Barilla for Leave to Adduce Relevant Evidence and Exhibit R-1 – Sworn Statement of Mr. Doyle Brown – February 27, 2023
Page count : 14 pages

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