

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.
FOR LEAVE TO ADDUCE RELEVANT EVIDENCE**
(Articles 574 CCP)

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

I. INTRODUCTION

1. Barilla Canada Inc. ("**Barilla Canada**" or the "**Defendant**") seeks permission to submit evidence which is both relevant to the authorization criteria applicable to the Plaintiff's Application for Authorization to Institute a Class Action (the "**Application for Authorization**") pursuant to Article 575 of the Code of Civil Procedure (the "**CCP**"), and necessary in order for this Honorable Court to undertake an informed analysis of those criteria.
2. More particularly, Barilla seeks leave to submit the proposed Sworn Statement of Doyle Brown, Marketing Director for Barilla, attached hereto as Exhibit **R-1**.

II. THE PROPOSED CLASS ACTION

3. As appears from paragraph 1 of the Application for Authorization, the Plaintiff seeks authorization to institute a Class Action against Barilla 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**")

4. 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).

5. 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**")

6. 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;
7. 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 RELEVANT EVIDENCE

8. The evidence Barilla seeks leave to adduce is both relevant to the authorization criteria and necessary to allow this Honorable Court to assess whether those criteria are met, in particular whether the Plaintiff has a *prima facie* case against Barilla.
9. At paragraphs 6 and following of the Application for Authorization, the Plaintiff alleges *inter alia* that Barilla:
- a. Deliberately made false, misleading and deceptive representations about the Italian origin of the Products;
 - b. Deliberately made false, misleading and deceptive representation about the Products being “Italian-made”;
 - c. Deliberately designed and executed a decade-long marketing campaign to identify its Barilla brand, company, and Products, as authentic, genuine Italian pastas, made from ingredients sourced in Italy (like durum wheat) and manufactured in Italy; and
 - d. Deliberately sought to take advantage of the proposed National Class members desire for authentic Italian pasta in an effort to gain market share and increase sales.

10. The allegations made against Barilla are incomplete and inaccurate and provide a strong and lasting impression that Barilla brand, Barilla company, and its Products have no connection with Italy.
11. More particularly, the Plaintiff's allegations omit to mention that ITALY'S #1 BRAND OF PASTA™ is a trademark in Canada, that Barilla, as a brand, is indeed the #1 brand of pasta in Italy, and that Barilla uses the same recipe and processes as Barilla's pasta production worldwide, including Italy.
12. Barilla contends that the evidence contained in the proposed Sworn Statement of Doyle Brown (R-1) is necessary to correct and complete the Plaintiff's allegations and to provide this Honorable Court with a comprehensive understanding of Barilla's Italian origins and of the ingredients, recipes and processes used for the Product's production.
13. The evidence contained in the proposed Sworn Statement is also essential to demonstrate that the facts alleged by the Plaintiff do not appear to justify the conclusions sought as it will serve to establish that Barilla did not engage in deceptive practices.
14. Barilla respectfully submits that the Court should have the benefit of evidence that could assist it in its analysis of the criteria set forth in article 575 CCP.
15. Furthermore, the additional evidence proposed by Barilla will allow the Court to decide whether the criteria for authorization are met against it, not only in the interest of proportionality but also for the better administration of justice by ensuring a thorough and comprehensive debate regarding authorization.
16. Additionally, the evidence will assist the Court in determining an appropriate group description and identifying the questions to be dealt with collectively, if necessary, as required by 576 CCP.
17. This evidence is relevant, appropriate, and proportional in respect of the assessment of the authorization conditions.
18. Allowing Barilla to file the Sworn Statement would not cause undue delay or prejudice to the Plaintiff, as the evidence is brief and to the point, and can be easily reviewed by the Court in a timely manner.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Application for leave to adduce relevant evidence*;

ALLOW Barilla Canada inc. to file an executed Sworn Statement substantially similar to the proposed Sworn Statement communicated herewith as **R-1**, within thirty (30) days of judgment to be rendered on this Application;

THE WHOLE without costs, except if this Application is contested.

Montreal, February 27, 2023

Lavery De Billy

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N° : 500-06-001202-221

**(CLASS ACTION)
SUPERIOR COURT**

ARIANE KNAFO

Plaintiff

v.

BARILLA CANADA INC.

Defendant

**APPLICATION BY DEFENDANT
BARILLA CANADA INC. FOR LEAVE
TO ADDUCE RELEVANT EVIDENCE
(Article 574 CCP)**

ORIGINAL

BL 1332

Ms. Myriam Brixi

OUR FILE : 142535-00004

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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

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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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