

**SUPERIOR COURT
(CLASS ACTIONS)**

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

No.: 500-06-001195-227

EVA BITTON

Applicant

v.

AMAZON.COM.CA INC.

and

AMAZON CANADA FULFILLMENT SERVICES, INC.

and

AMAZON.COM, INC.

and

AMAZON.COM LLC

and

WAYFAIR LLC

and

HOME DEPOT OF CANADA INC.

Defendants

**APPLICATION BY DEFENDANT HOME DEPOT OF CANADA INC.
FOR LEAVE TO ADDUCE EVIDENCE
(Article 574(3) CCP)**

**TO THE HONOURABLE JUSTICE PIERRE NOLLET OF THE SUPERIOR COURT OF
QUEBEC, THE DEFENDANT, HOME DEPOT OF CANADA INC., RESPECTFULLY
SUBMITS THE FOLLOWING :**

I. Introduction

1. The Defendant Home Depot of Canada Inc. (hereinafter “**Home Depot**”) seeks leave to file limited and relevant evidence into the Court record.
2. Through this evidence, Home Depot seeks 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 July 26, 2022, Applicant filed an *Application for Authorization to Institute a Class Action* against six (6) Defendants, including Home Depot, on behalf of the following proposed class:

All consumers who, since July 26, 2019, purchased an extended warranty on goods from the Amazon, Wayfair or Home Depot website(s).

4. On or around November 7, 2022, the Plaintiff filed an *Amended Application for Authorization to Institute a Class Action*, in which the proposed class was amended as follows:

Amazon Class :

All consumers who, since February 7, 2019, purchased an extended warranty on good from the Amazon mobile application(s) and/or website(s).

(hereinafter the “Amazon Class”)

Home Depot Class :

All consumers who, since February 7, 2019 to September 30, 2022, purchased an extended warranty on goods from the Home Depot mobile application(s) and/or website(s).

(hereinafter the “Home Depot Class”)

Wayfair Class :

All consumers who, since February 7, 2019 to October 31, 2022, purchased an extended warranty on good from the Wayfair mobile application(s) and/or website(s).

(hereinafter the “Wayfair Class”)

5. Applicant alleges that Amazon, Wayfair and Home Depot sold and continue to sell consumer electronics and home appliances and that, for an additional cost, they sell extended warranties for these items.
6. Applicant further alleges that Defendants acted in contravention of the *Consumer Protection Act* and its Regulations by selling extended warranties to consumers without notifying them of Quebec's legal warranty.
7. Home Depot modified its business practices and started informing consumers about Quebec's legal warranty.
8. Applicant namely seeks the reimbursement of the price paid for the extended warranties and \$100 in punitive damages per class member.

III. Application for Leave to File Relevant Evidence

9. Home Depot seeks leave to file relevant evidence into the Court record in order to permit the Court to examine the authorization criteria appropriately.
10. Specifically, Home Depot intends to seek leave to file evidence completing details left out by Plaintiff about extended warranties provided to consumers who purchase Home Depot's extended warranty in addition to the basic protections provided by Quebec's legal warranty.
11. To that effect, Home Depot seeks leave to file as **Exhibit HD-1** a page from its website (homedepot.ca) detailing their extended warranties, also referred to as Home Depot Protection Plans ("**HDPP**").
12. As appears from **Exhibit HD-1**, the HDPPs namely provide four years of guaranteed coverage after the manufacturer's warranty ends, easy online claims (with 100% coverage for parts and labour; no deductibles or hidden fees), 24/7 tech support for smart appliances, 5-day service guarantee, "no lemon" policy, up to \$250 of spoiled food coverage caused by mechanical failure of certain protected appliance, and coverage for mechanical and electrical malfunctions plus product breakdowns during normal use.
13. The evidence that Home Depot seeks to file is limited to what is necessary at the authorization stage and will assist the Court in examining the authorization criteria.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application;

AUTHORIZE Home Depot to file **Exhibit HD-1**;

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

MONTREAL, APRIL 3, 2023

McCarthy Tétrault LLP

McCARTHY TÉTRAULT LLP

Me Jean Lortie / Me Catherine Martin

Lawyers for Defendant,

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Our file # 184622-564416

AFFIDAVIT

I, the undersigned, Catherine Martin, lawyer, exercising my profession at McCarthy Tétraut LLP, located at Suite MZ400, 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 Defendant Home Depot of Canada inc; and
2. All of the facts alleged in the present application filed by the Defendant are true.

AND I HAVE SIGNED, at Montreal, Province of Quebec



Me Catherine Martin

SOLEMLY DECLARED before me,
by technological means, at Montreal,
Province of Quebec, this 3rd day of April 2023



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



NOTICE OF PRESENTATION

TO: Me Joey Zukran
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Attorneys for Defendant Wayfair

TAKE NOTICE that the *Application by Defendant Home Depot of Canada Inc. for Leave to Adduce Evidence and for Leave to Examine Plaintiff* will be presented for adjudication before the Honourable Stéphane Lacoste of the Superior Court of Quebec, on April 17, 2023, at the Montreal Courthouse located at 1, Notre-Dame Street East.

MONTREAL, APRIL 3, 2023

McCarthy Tétrault LLP

McCARTHY TÉTRAULT LLP
Me Jean Lortie / Me Catherine Martin
Lawyers for Defendant, Home Depot of Canada Inc.

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Cc: Lortie, Jean; Martin, Catherine
Objet: NOTIFICATION | 500-06-001195-227 - APPLICATION BY DEFENDANT HOME DEPOT OF CANADA INC. FOR LEAVE TO ADDUCE EVIDENCE (ARTICLE 574(3) CCP) - Bitton v. Amazon.com.ca., Inc. and al. [MT-MTDOCS.FID3710258]
Pièces jointes: Application for Leave to Adduce Evidence - HD comments(47258035.6).pdf; Exhibit HD-1(47437234.2).pdf

**SUPERIOR COURT
(CLASS ACTIONS)**

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°.: 500-06-001195-227

EVA BITTON

Applicant

vs

AMAZON.COM.CA, INC. ET AL

Defendants

**NOTIFICATION SLIP BY EMAIL
(Art. 133 and 134 C.C.P.)**

MONTREAL, this **April 3, 2023**

SENDER :

TIME : indicated on the present slip
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Our reference : 184622-564416

NATURE OF THE DOCUMENT

APPLICATION BY DEFENDANT HOME DEPOT OF CANADA INC. FOR LEAVE TO ADDUCE EVIDENCE (ARTICLE 574(3) CCP)

NUMBER OF DOCUMENTS

2

TRANSMITTED (not including the slip) :

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Confirmation de la transmission des documents



Succès

Vos documents ont bien été transmis.

Numéro de demande : 2023-PROC-00085406

Date et heure de transmission : 2023-04-03 14:23:06

Numéro de dossier judiciaire : 500-06-001195-227

Titre : Application by Defendant Home Depot of Canada inc for leave to adduce evidence

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Defendants

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OF CANADA INC. FOR LEAVE TO ADDUCE
EVIDENCE AND FOR LEAVE TO EXAMINE
PLAINTIFF**

ORIGINAL

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