

**SUPERIOR COURT  
(CLASS ACTION)**

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**No.: 500-06-001139-217**

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**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

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**APPLICATION BY DEFENDANTS FOR A DECLINATORY EXCEPTION  
(Articles 167 C.C.P. and 3148 C.C.Q.)**

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**TO THE HONOURABLE JUSTICE HIVON OF THE SUPERIOR COURT OF QUÉBEC, THE DEFENDANTS RESPECTFULLY SUBMIT THE FOLLOWING:**

**I. Introduction**

1. The Defendants, Essilor-Luxottica S.A., Luxottica Retail North America Inc. (collectively referred to as the “**Foreign Defendants**”) and Essilor-Luxottica Canada Inc. (the three entities collectively referred to as the “**Defendants**”) raise the lack of jurisdiction of the Québec courts with respect to the proposed class action initiated by Shawn Faria (the “**Plaintiff**”) against them.
2. The Plaintiff’s proposed class action fails to allege sufficient grounds to justify the Québec Superior Court’s jurisdiction over this matter.
3. In particular, taking the facts as averred, Québec courts do not have jurisdiction to hear and adjudicate the claims of non-Québec resident members of the proposed class against the Foreign Defendants.

## II. Application for Authorization to Institute a Class Action

4. The Plaintiff seeks authorization from the Superior Court to institute a class action in order to represent the following classes:

*“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. In the 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 and (iii) failed to abide by the statutory duties and the general rules of conduct incumbent upon them.
6. Amongst these alleged failures to abide by statutory duties, the Plaintiff alleges that the Defendants conspired with their alleged competitors by:
- a. 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
  - b. entering into exclusive sales agreements with eyewear manufacturers for the distribution and sale of the manufacturers’ products;
- (collectively, the “**Agreements**”).
7. According to the Plaintiff, the fact that the Defendants entered into such Agreements constitutes a conspiracy pursuant to section 45 of the *Competition Act* to:
- a. fix, maintain, increase or control prices for the supply of eyewear; and/or
  - b. allocate sales, territories, customers or markets for the supply of eyewear; and/or
  - c. fix, maintain, control, prevent, lessen or eliminate the supply of eyewear in Québec and throughout Canada.

8. The Plaintiff claims that as a result, the Defendants charged abusive overcharges to consumers for eyewear purchased directly or indirectly from the Defendants, and is now seeking damages on behalf of the class members.

### **III. The Québec Superior Court does not have Jurisdiction**

9. The proposed claim as put forward by the Plaintiff is a personal action of a patrimonial nature.
10. Québec courts have jurisdiction to hear such a personal action if, and only if, one of the conditions listed in article 3148 of the *Civil Code of Québec* (“C.C.Q.”) is met with regards to each defendant.
11. For the following reasons, and taking the facts alleged by the Plaintiff as true, Plaintiff has failed to satisfy its burden of demonstrating that Québec courts have jurisdiction under article 3148 C.C.Q. to hear and adjudicate the claims of non-Québec resident members of the proposed class against the Foreign Defendants.

#### **(a) Article 3148 (1) C.C.Q.: no Domicile in Québec**

12. The Foreign Defendants are not domiciled in Québec.
13. Essilor-Luxottica S.A. is domiciled in Charenton-Le-Pont in France, as appears from paragraph 4 of the Application for Authorization.
14. Luxottica Retail North America Inc. is domiciled in New Castle, in the state of Delaware in the United States, as appears from paragraph 6 of the Application for Authorization.
15. Since the Foreign Defendants are not domiciled in Québec, this Court cannot exercise jurisdiction over them under article 3148 (1) C.C.Q.

#### **(b) Article 3148 (2) C.C.Q.: no Establishment in Québec and no Dispute Related to Activities in Québec**

16. Neither of the Foreign Defendants has an establishment in Québec, and the Application for Authorization does not establish that the non-Québec class members’ individual claims relate to the Foreign Defendants’ alleged activities in Québec.
17. Even if the Court were to determine that the Foreign Defendants carried on business in Québec directly, or had establishments in Québec (which the Defendants deny), the Application for Authorization contains no allegations to the effect that this conduct would affect non-Québec class members.
18. As such, Québec courts do not have jurisdiction over the Foreign Defendants under paragraph 3148 (2) C.C.Q. with regard to the non-Québec class members.

**(c) Article 3148 (3) C.C.Q.: no Fault, no Injury and no Contractual Obligation in Québec**

19. The Foreign Defendants committed no fault in Québec, no injury was suffered and no injurious act or omission occurred in Québec, and none of the obligations arising from a contract that would involve the Foreign Defendants and non-Québec members was to be performed in Québec.

**(i) No Fault, no Injurious Act or Omission in Québec**

20. Notwithstanding the fact that the Defendants deny any and all liability, for the purposes of the present Application, the Application for Authorization fails to establish that a fault (or an injurious act or an omission) would have been committed in Québec by the Foreign Defendants.
21. No specific fault (nor any injurious act or omission) is alleged to have been committed by the Foreign Defendants in Québec.
22. In particular, the only potential fault specifically alleged by Plaintiff is the conclusion of the Agreements between the Defendants and Fashion Houses or other manufacturers, but the Application for Authorization does not establish that any of the Foreign Defendants would have entered into such Agreements in Québec. This criterion is thus not met with regard to non-Québec members for acts allegedly committed by the Foreign Defendants.

**(ii) No Injury in Québec**

23. The alleged injury that would have been suffered by non-Québec members of the proposed class, if it exists, can only have been suffered outside of Québec as they are not residents of Québec.
24. Therefore, since the injury, if any, must have been suffered outside of Québec, the jurisdiction of the Québec courts is not justified over non-Québec members for acts allegedly committed by the Foreign Defendants.

**(iii) No Obligation Arising from a Contract in Québec**

25. Similarly, the Application for Authorization contains no allegation that one of the obligations arising from a contract between the Foreign Defendants and the non-Québec members was to be performed in Québec.

**(d) Article 3148 (4) and (5) C.C.Q.: No Agreement and No Conduct Submitting the Dispute to the Québec Courts**

26. Finally, there are no allegations to the effect that the parties have submitted to the Québec courts' jurisdiction, and in fact they have not.
27. Thus, the requirements set out at article 3148 (4) and (5) C.C.Q. are not satisfied.

28. In light of the above, the Plaintiff has failed to establish the jurisdiction of the Québec courts over the dispute between the non-Québec proposed class members and the Foreign Defendants.

## **V. Conclusion**

29. The Superior Court does not have the required jurisdiction to hear and adjudicate the proposed class action against the Foreign Defendants where the class members include non-Québec residents.
30. Moreover, if the Court were to authorize a class action in this matter, it should opt for a class composed exclusively of Québec class members against the Defendants.
31. Subsidiarily, the Court only has jurisdiction over a national class solely against Essilor-Luxottica Canada Inc.

### **FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** the present *Application for a Declinatory Exception*;

**DISMISS** the Application for Authorization with regards to non-Québec class members for lack of jurisdiction;

### **SUBSIDIARILY:**

**DISMISS** the Application for Authorization with regards to Essilor-Luxottica S.A and Luxottica Retail North America Inc. for lack of jurisdiction;

**THE WHOLE**, with costs.

**MONTRÉAL, April 28, 2023**



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**McCARTHY TÉTRAULT LLP**  
**M<sup>tre</sup> Sarah Woods / M<sup>tre</sup> Daphné Anastassiadis**  
**Lawyers for the Defendants**

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Our file # 225643-543869

**SUPERIOR COURT  
(CLASS ACTION)**

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

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Defendants

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**NOTICE OF PRESENTATION**

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**TO:** M<sup>re</sup> Irwin I. Liebman  
**LIEBMAN LEGAL INC.**  
1, Westmount Square, Suite 350  
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*Counsel for Plaintiff*

Mr. Saro J. Turner / M<sup>re</sup> Andrea Roulet  
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*Counsel for Plaintiff*

**TAKE NOTICE** that the *Application by Defendants for a Declinatory Exception* shall be presented before Justice Marie-Christine Hivon of the Superior Court, at the same date and time as the hearing on the *Amended Application for Authorization to Institute a Class Action & to Obtain the Status of Representative Plaintiff* on October 11 and 12, 2023, or at any other date and time as may be ordered by the Honorable Justice Hivon.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

**MONTRÉAL, April 28, 2023**

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

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**McCARTHY TÉTRAULT LLP**  
**M<sup>re</sup> Sarah Woods / M<sup>re</sup> Daphné Anastassiadis**  
**Lawyers for the Defendants**

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DECLINATORY EXCEPTION  
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**ORIGINAL**

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M<sup>re</sup> Sarah Woods /  
M<sup>re</sup> Daphné Anastassiadis  
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