

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N^o: 500-06-001227-236

SUPERIOR COURT
(Class Action Division)

EDEN OHAYON

Applicant

v.

FIRMENICH INTERNATIONAL SA (GENEVA)

and

FIRMENICH OF CANADA, LIMITED

and

GIVAUDAN SA (GENEVA)

and

GIVAUDAN CANADA CO.

and

**INTERNATIONAL FLAVORS & FRAGRANCES
INC. (USA)**

and

**INTERNATIONAL FLAVORS & FRAGRANCES
INC. (CANADA) LTD**

and

SYMRISE AG (GERMANY)

and

SYMRISE PET FOOD CANADA (SPF)

Defendants

**DEFENDANTS' JOINT APPLICATION FOR
STAY OF THE PROCEEDINGS**
(Art. 8, 18, 49, 51, 53, 577 C.C.P.)

**TO THE HONOURABLE FLORENCE LUCAS, J.S.C., SITTING AS CASE
MANAGEMENT JUDGE IN THE PRESENT ACTION, THE DEFENDANTS JOINTLY
SUBMIT:**

I. INTRODUCTION

1. For the reasons set out below, the Defendants jointly ask this Court to stay all proceedings associated with the Applicant's *Application to authorize the bringing of a Class Action and to appoint the status of Representative Plaintiff* (the "**Québec Application**") until a final judgment is rendered on the certification of the action brought before the Federal Court under docket number T-487-23.

2. On March 8, 2023, the Applicant, represented by Mtre Joey Zukran of LPC Avocat Inc., filed the Québec Application against the Defendants.

3. The Québec Application was brought on behalf of the following putative class:

All persons, entities, partnerships or organizations resident in Canada who purchased at least one product containing a [*sic*] produced or supplied by one of the Defendants.

4. In the Québec Application, the Applicant alleges that the Defendants engaged in activities prohibited under the *Competition Act*, stating as follows at paragraph 9 of the Québec Application:

It appears that the Defendants engaged in activities prohibited under the general rules of Quebec civil law, as well as under sections 45 and 46 of the *Competition Act*, which prohibits agreements between two or more persons to prevent or unduly lessen competition or to unreasonably enhance the price of a product;

5. Five days after the filing of the Québec Application, Joyce Romano, also represented by Mtre Joey Zukran of LPC Avocat Inc., filed a proposed class action against the same Defendants raising, albeit in a more detailed manner, the same allegations and common issues on behalf of the same putative class before the Federal Court, as appears from the statement of claim filed at the Federal Court dated March 13, 2013, and bearing court docket number T-487-23 (the "**Federal Court Action**"), communicated herewith as Exhibit R-1.

6. The Federal Court Action was brought on behalf of the following putative class:

All persons and entities in Canada who purchased at least one product containing a fragrance, flavour, aroma chemical or cosmetic ingredient produced, sold or supplied by any of the Defendants.

7. In the Federal Court Action, Ms. Romano alleges as follows at paragraphs 2 and 67:

This case concerns the conspiracy among the world's four largest fragrance companies to fix the prices of fragrances, flavours, aroma chemicals and cosmetic ingredients that are used in the manufacture of many products, including, to name a few, perfumes, colognes, cosmetics, personal care products, detergents, food and cleaning products ("fragrances"). The Defendants also entered into secret agreements to prohibit their competitors from supplying

certain customers and limited the production of certain fragrances.

[...]

As a result of the Defendants' conspiracy, the price of fragrances, flavours, aroma chemicals and cosmetic ingredients were unreasonably increased to artificially high and non-competitive levels, and competition in the sale of fragrances, flavours, aroma chemicals and cosmetic ingredients was unduly restrained.

8. Between July 15, 2023, and September 7, 2023, four additional proposed class action proceedings raising mostly identical facts and issues, and with similarly constituted proposed classes, were filed against the Defendants and related companies in Ontario and British Columbia, namely:
 - a) On July 15, 2023, an action before the Ontario Superior Court of Justice filed in Ottawa (court docket number CV-23-92672-CP);
 - b) On August 4, 2023, an action before the Supreme Court of British Columbia filed in Vancouver (court docket number S-235533);
 - c) On August 30, 2023, an action before the Supreme Court of British Columbia filed in Vancouver (court docket number S-236040); and
 - d) On September 7, 2023, an action before the Ontario Superior Court of Justice filed in Ottawa (court docket number CV-23-007055662-00CP);

as it appears from the respective statements of claims filed at the Ontario Superior Court of Justice and the Supreme Court of British Columbia, communicated herewith as Exhibit **R-2**, *en liasse*.

9. To the extent there exists duplication between the Québec Application and the Ontarian and British Columbian proceedings, such duplication is the result of competing law firms, each seeking to represent a class.
10. By contrast, the duplication between the Québec Application and the Federal Court Action is the result of the deliberate and calculated behaviour of a single lawyer.
11. Furthermore, in both the Québec Application and the Federal Court Action, the Applicants propose to represent completely overlapping national classes, including Québec residents.

II. THE QUÉBEC APPLICATION MUST BE STAYED

A. The Concurrent and Deliberate Filing of the Québec Application and Federal Court Action by LPC Avocat Inc. is an Abuse of Process

12. The filing of a proposed class action expends scarce judicial resources, requires significant involvement on the part of the proposed representative, creates expectations among the putative class members, and requires the Defendants to incur significant costs.
13. As a result, it requires rigorous reflection on its practical implications on the part of those wishing to avail themselves of this procedural route.
14. In the present matter, there is no reasonable possibility that the proposed class representatives and their counsel actually intend to pursue both actions until final judgment.
15. Nevertheless, the Applicant's counsel filed both the Québec Application and the Federal Court Action within five days of each other.
16. This intentional parallel filing of duplicative claims by the same counsel, with no other apparent objective than to occupy the field, constitutes an abuse of process.
17. In addition, it causes prejudice to the Defendants, the putative class members and the two representatives who are being counselled to pursue two actions when one action will inevitably never result in a final judgment capable of being executed. Indeed, the existence of two parallel claims raises questions as to how a representative in one case could simultaneously be a class member in another case filed by her own counsel, assuming one of the cases gets certified or authorized.

B. The Interests of Putative Class Members and the Administration of Justice are Better Served by a Stay of the Québec Application

18. This Court has the inherent jurisdiction to suspend the Québec Application in favour of the Federal Court Action.
19. In determining whether to grant such a suspension, this Court must rule in the interests of the sound administration of justice and the putative class members. Both favour a stay of the Québec Application.
20. First, the proceedings must not be duplicated. The Québec Application and the Federal Court Action share the same Defendants, are brought by the same counsel on behalf of the same putative national class, and are predicated on the same allegations. They also share the same common issues and legal foundation, namely a purported breach of the *Competition Act*, a federal statute of pan-Canadian application.

21. The prosecution of both the Québec Application and the Federal Court Action thereby inevitably creates a risk of conflicting authorization and/or certification judgments.
22. Second, the duplication of the proceedings before two courts with jurisdiction over the claims of Québec residents has negative consequences for the putative national class and the Defendants.
23. From the standpoint of the proposed national class, class members would benefit from their claims being adjudicated by a single decision with a national scope. As a result of its pan-Canadian jurisdiction over the proposed national class, the Federal Court is able to adjudicate the claims of all class members through a single decision with national scope. This would not be achievable through the Québec Application, since this Court does not have jurisdiction over the claims of non-Québec residents pursuant to well-established case law restricting the availability of national classes in Québec.
24. From the standpoint of the Defendants, forcing them to defend themselves simultaneously before two forums on identical issues involving the same putative class and against the same counsel is a waste of judicial resources and results in all parties incurring costs caused by the duplication. It further results in all parties incurring costs caused by the duplication.
25. Finally, the Québec Application presents no issue and offers no remedy that would be unavailable through the Federal Court Action:
 - a) The extracontractual damages claimed under the *Civil Code of Québec*, which are denied by the Defendants, can be claimed under the *Competition Act*. Indeed, the Applicant claims both compensatory and special damages in the Federal Court Action;
 - b) The Applicant's allegations relating to the *Consumer Protection Act* are vague and unsupported. Even when taken as proven, they fail to establish that the *Consumer Protection Act* applies to the claims brought by the putative class members against the Defendants. Even if this is the case, which is denied, the remedies sought on behalf of the national class do not differ from those sought under the Federal Court Action.
 - c) In any event, remedies solely available under the *Consumer Protection Act*, if any, can only be claimed by consumers residing in Québec, and not by a national class. Any such portion of the Québec Application could be adjudicated after the Federal Court's decision on certification.

III. CONCLUSION

26. For the reasons set forth above, the Defendants ask this Court to order a stay of the Québec Application. They submit that the concurrent filing of the Québec Application and Federal Court Action by LPC Avocat Inc. is an abuse of process.
27. Furthermore, ordering a stay is in the best interest of a sound administration of justice and the putative class members. It will save scarce judicial resources while avoiding the risk of conflicting judgments and further prejudice to the Defendants.
28. The Defendants jointly undertake to provide this Court with a status update on the progress of the certification motion in the Federal Court Action.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the *Defendants' Joint Application in Abuse of Process and Stay of the Proceedings*;

STAY all proceedings associated with the *Application to authorize the bringing of a Class Action and to appoint the status of Representative Plaintiff* until a final judgment is rendered on the certification of the action brought before the Federal Court under docket number T-487-23;

ACKNOWLEDGE the Defendants' undertakings to provide this Court with periodic status reports every four months about the aforementioned action brought before the Federal Court;

THE WHOLE, with legal costs.

Montréal, November 17, 2023

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