

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

(“Class Action”)  
SUPERIOR COURT

---

No: 500-06-001277-231

Natasha Perry-Fagant

299 rue Villeneuve O

Montreal, PQ

H2V 2R2

and

Lorraine Briscoe

8 Glenarn

Knowlton, QC.

JOE 1V0

Applicants

-vs-

“UPS” aka MBEC Communications Inc.

605-1225 rue du Square-Phillips

Montreal, QC. H3B 3G1

Defendant

and

9332-6510 Quebec Inc.

and

2964-4481 Quebec Inc.

605-1225 rue du Square-Phillips

Montreal, QC. H3B 3G1

Mise-En-Causes

**APPLICATION FOR AUTHORIZATION TO INSTITUTE**  
**A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVES**  
(Articles 575 f.f. C.C.P.)

## FACTS

1. This collective action concerns false, misleading, deceptive and insufficient representations made by UPS. Fees are not properly identified at the time of initial contract with the vendor and payment and fee structures are hidden online by the Defendant, see **Exhibit R-1 UPS zone**, and **Exhibit R-2 UPS site taxes and fees page 115**. The added fees are hidden inside of Exhibit R-2 on page 115 in a 144 page document and the manner of their calculation is incomprehensible.

2. The value and delivery address are known at the time of shipment and fees should be disclosed at that time. For Applicant Perry-Fagant, the value calculated at Canadian Border Services web site and shown on the UPS Import Fees document, **Exhibit R-7A**, indicates an amount of \$20.87 owed on import value of US\$103.80 were due, while the total charged by UPS to Applicant Perry-Fagant, was an amount of \$61.52. UPS therefore overcharged Applicant Perry-Fagant \$40.65 in fees and associated taxes. On Exhibit R-7A it states "NOTE: the total value used for calculation of all Duty-based fees is 11.08.". The manner employed by Defendant to establish the fees charged is therefore arbitrary and capricious.

3. For Applicant Briscoe, the value calculated at Canadian Border Services web site and shown on the UPS Import Fees document, **Exhibit R-8A**, indicates an amount of \$6.53 owed on import value of \$43.58 were due by Applicant Briscoe. UPS therefore overcharged Applicant Briscoe \$53.86 in fees and associated taxes (\$46.85 brokerage fee + GST + QST).

4. The Defendant lacks any transparency as concerns their actual corporate identity. On Applicant Briscoe's credit card receipt, see **Exhibit R-8B**, the Defendant identifies itself as "UPS Sherbrooke 3335". On Applicant Briscoe's invoice the UPS symbol appears and the sender is identified as UPS brokerage C. O. D. Again, no corporate entity is identified. Furthermore, on their Quebec website, the *only* corporate entity named is United Postal Services of America inc., as appears from **Exhibit R-13A**.

a. UPS uses a franchise arrangement in Quebec, wherein MBEC Communications inc. is the Master Franchisor. That company's first and second shareholders are 9332-6510 Quebec inc. and 2964-4481 Quebec inc, as indicated in Exhibit R-13A. As the transactions with Representatives did not identify MBEC Communications inc. as a counterparty, any related corporate entity may be held liable for Representatives damages. For that reason, 9332-6510 Quebec inc. and 2964-4481 Quebec inc. are named as Mises en Cause. All three are collectively referred to hereinafter as "UPS".

b. The Mises en Causes are the first and second shareholders of Defendant in MBEC Communications Inc. Their offices are at the same address as the Defendant. The first shareholder of the first Mise en Cause is a majority shareholder and has close family

ties with the shareholders, officers and directors of all three entities named herein. The sole director of that company claims in his Facebook page to be the President and CEO of UPS Store Canada and has worked with it for over eighteen years.

c. The second Mise en Cause also has as its elected domicile a close family member. Its sole shareholder is again, a person that claims on his Facebook page to be the President and CEO of UPS Store Canada and has worked with it for over eighteen years. He is also the only officer or director, all of which appears from Exhibit R – 13A.

d. It is therefore more than arguable that the Mises en Causes are in fact and in law the alter ego of UPS in Québec, control UPS in Québec, make all decisions on behalf of UPS in Québec, and receive all monies generated for the benefit of UPS in Québec. They are therefore to be presumed liable in the present circumstances for all amounts owed by UPS operations in Québec.

e. Defendant is clearly attempting to avoid liability for its improper behaviour by hiding in its shadow. The history on the UPS web site clearly shows who is liable in Canada, see **Exhibit R-13B UPS History** and **R-13C**.

5. A request by Applicant Briscoe to UPS for clarification of the UPS fees only resulted in a confusing email from a UPS agent where the tax amounts were slightly different from the original duty and fee statement, see **Exhibit R-12 Briscoe-UPS email exchange**.

6. UPS required the Applicants and other Class Members (defined below) to make payments to UPS for “import duties and taxes” and “brokerage fees” before releasing to Class Members their purchased goods that were shipped, via UPS, to their residences in Quebec from the United States or internationally.

7. At time of original billing for the purpose of shipping service of Applicant Perry-Fagant’s Taxidermy supplies, see **Exhibit R-3A**, there was no indication of fees,

8. At time of original billing for the purpose of shipping service of Applicant Briscoe’s liquid paraffin, see **Exhibit R-4A**, there was no indication of fees.

9. UPS billed Applicants and other Class Members previously undisclosed fees at time of delivery, see **Exhibits R-7A Perry-Fagant** and **Exhibit R-8A Briscoe**.

10. This “import duty/tax payment” included a “brokerage fee” which was presumably retained by UPS after payment was made by Applicants or a Class Member. Other

undisclosed fees are calculated in an arbitrary and capricious manner.

11. For Applicant Perry-Fagant the original purchase price of the shipping service was US\$37.95 (Cad \$51.94) as seen in **Exhibit R-3A**, the added fees upon reception were “Brokerage fees” of \$35.35<sup>1</sup> plus taxes. This almost doubles the cost of shipping.

12. For Applicant Briscoe the original purchase price of the shipping service was \$20.76 as seen in **Exhibit R-4A**, the added fees upon reception were “Brokerage fees” of \$46.85<sup>2</sup> plus taxes, see **Exhibit R-8A**. This doubles the cost of shipping. She paid via her Mastercard to “UPS Sherbrooke 3555” as appears from **Exhibit R-8B**.

Amounts assessed by UPS as customs duties are proven to be completely arbitrary and capricious by the fact that the shipment of a same item and of similar value, had no customs duties assessed when shipped by FedEx, as indicated by Representative Briscoe's CAEN request, attached as **Exhibit R – 8C**.

13. Had the Applicants known of the added fees they would have likely looked at other possible shipping methods which could have been more economical or would not have made the purchases.

14. UPS knew these “Brokerage fees” would be levied by them at the time they agreed to ship and should have made them clearly known and explained them honestly and transparently at that time.

A. As indicated in the Competition Bureau of Canada's "The deceptive marketing practices digest, volume 1", at page 4, **Exhibit R-6**, hiding the true cost of a product or service is a growing problem in the digital economy where concealing the true cost occurs and it is only revealed to the consumer after purchase.

B. That bulletin further notes at page 4 that a body of research shows that hiding or obscuring costs significantly affects consumers ability to make well-informed decisions, and has a negative impact on the proper function of the marketplace.

C. An article published by CBC news on March 18, 2021, see **Exhibit R-11 Industry Fraud Hannuka bread**, clearly shows that deceptive fees are a common industry problem with shipping companies and have a significant impact on consumers.

---

<sup>1</sup> \$6.96 HST + \$13.91 Other government charges + (\$35.35 Brokerage fee + \$1.77 Brokerage GST/HST + \$3.53 Brokerage QST) = \$61.52

<sup>2</sup> (\$46.85 brokerage fee + \$2.34 Brokerage GST + \$4.67 Brokerage PST)+\$6.53GST/PST = \$60.39 total

15. At no time before payment was made did UPS disclose to Applicants or Class Members that this “import duty/tax payment” included a UPS “Brokerage fee”. At all material times, UPS lead Representatives and Class Members to believe that the payments being made by them to UPS were for import duties and taxes charged by the Canada Border Services Agency (“Canada Customs”) for goods crossing the border and entering Canada. Applicants and Class Members were given that general impression by Defendant.

16. UPS’s representations were false, misleading, deceptive and insufficient. UPS knew, or ought to have known, that its representations were false, misleading, deceptive, and insufficient.

### **BREACH OF CIVIL CODE**

#### 10.b. Warranty of quality

1726. The seller is bound to warrant the buyer that the property and its accessories are, at the time of the sale, free of latent defects which render it unfit for the use for which it was intended or which so diminish its usefulness that the buyer would not have bought it or paid so high a price if he had been aware of them.

1730. The manufacturer, any person who distributes the property under his name or as his own, and any supplier of the property, in particular the wholesaler **and the importer, are also bound to a seller’s warranty.** (Emphasis added)

Read together, articles 1726 and 1730 *C.C.Q.* render Defendant, as importer, liable for the seller's warranty of quality, as article 1726 *C.C.Q.* creates liability for Defendant for the undisclosed fees and related taxes. The Applicants say they would not have paid those amounts.

### **BREACH OF THE CPA**

17. UPS’s representations and conduct were in breach of the *Quebec Consumer Protection Act*. UPS was unjustly enriched by its conduct, and its conduct constituted the tort of deceit.

17.a.

Applicants submit that Defendant is liable pursuant to the following provisions of the *CPA*:

#### **Representation defined**

216. For the purposes of this title, representation includes a an affirmation, a behaviour or an omission.

#### **Use of a prohibited practice**

217. The fact that a prohibited practice has been used is not subordinate to whether or not a contract has been made.

### **False representations re duties payable**

227.1. No person may, by any means whatever, make false or misleading representations concerning the existence, charge, amount or rate of duties payable under a federal or provincial statute.

Section 227.1 applies to pre-contractual and contractual representations. Applicant says that a detailed total amount invoiced as duties and fees must be disclosed and must clearly indicate all amounts invoiced providing comprehensive details for each item charged, failing which, as is the case here, false or misleading representations are made.

### **Failure to mention a serious factor**

228. No merchant manufacturer or advertiser may fail to mention an important fact in any representation made to a consumer.

## **BREACH OF THE QUEBEC CHARTER**

18. Representatives and Class Members are entitled to restitution of administrative fees, clearance entry fees and related taxes, Quebec *Charter*, punitive and exemplary damages, the latter in an amount to be determined by the operation of Art. 1621 *CCQ*.

### **Punitive Damages**

18.1 Not indicating the amounts charged were fees or some other undisclosed charges, rather than duties was a failure to mention an important fact. This failure is a breach of the right to information guaranteed by sections 44 and 49 of the Charter for which punitive damages should be awarded.

19. UPS's representations were false, misleading, deceptive and insufficient.

20. As set out in detail in this claim, UPS's conduct was high-handed and showed a marked departure from the ordinary standards of decent behaviour.

21. UPS's conduct was planned and deliberate and merits punishment.

22. An award of punitive damages in this case is necessary to achieve the goals of general and specific deterrence, to punish the Defendant, and to indicate the Court's disapproval of the Defendant's behaviour.

23. Applicants and class members are also entitled to compensation by Defendant for its extra

contractual fault in charging an undisclosed administrative fee, clearance entry fee and related taxes to them causing them a loss in that amount. Defendant should therefore be bound to make reparation for that injury.

### **Punitive damages pursuant to the CPA**

24. As UPS had an Ontario class action authorized against it in *Wright vs. United Parcel Service Canada Ltd.* 2011 ONSC 5044 for the improper collection of similar duties and processing fees, its continued improper collection of similar fees since 2011 should be considered intentional as well as grossly negligent and, as such, punitive damages pursuant to section 272 of the *Québec Consumer Protection Act* are warranted.

24.2 The Quebec Consumer Protection legal regime (which includes the *C.C.Q.* and the *Quebec Charter*), while more complex at Authorization, is more generous as concerns the types and quantum of damages available. Authorization in Quebec will often be granted where Authorizations are denied in the Common law provinces, as there is a reduced burden of proof in Quebec (namely the absolute presumption of prejudice, the lower standard of misrepresentation and “general impression rule”). Presumptions of fact, in the *CPA*, the *C.C.Q.* and the *C.C.P.* assist this consumer collective action Authorization in Quebec which is consequently considerably less onerous than at common law provinces.

Applicants therefore allege:

(1) that should Authorization succeed (or fail) in the province of Ontario, meaningfully different factual and legal considerations applicable in the province of Québec, including Québec *Civil Code* articles 1401 (in the case of fraud), Art. 1457 and 1458 liability for damages due to fault and/or breach of contractual duty, and Art. 1624 re relative patrimonial position of the parties, CPA Sec.227.1 and the application ss. 44 and 49 Québec *Charter of Human rights and freedoms* justify authorization;

(2) the categories of the damages available under the common law consumer protection statutes do not include meaningful remedies and punitive or exemplary damages which are solely available in the province of Québec pursuant to the application of the Québec *Charter* the *CPA* and specific relevant articles of the Québec *Civil Code* including articles 1457, 1624, 1726, 1730 and 2849.

A presumption of fact arises from the allegations of prior similar schemes and their settlement, the serious, precise and concordance of the schemes, leading to a judicial inference whereby the Defendant must advance exculpatory evidence at the Merits stage. Quebec's lessened threshold of proof for Authorization is crucial and decisive.

### **History of prior actions**

25. UPS was named Defendant in another Ontario application for authorization filed in 2007 and settled on June 5, 2018, see **Exhibit R-5A and R-5B Siskends**.

### **The Parties and the Class**

26. The Applicant, Natasha Perry-Fagant, is an actress and performer currently residing in Montreal, Quebec domiciled at 299 rue Villeneuve O, Montreal, PQ, H2V 2R2.

27. The Applicant Lorraine Briscoe, is a retired CA, CPA, currently residing in Knowlton, Quebec domiciled at 8 Glenarn, Knowlton, QC., J0E 1V0.

28. The Applicants bring this action on their own behalf and on behalf of a proposed Class of (Quebec) consumers who have paid UPS fees charged by UPS which include UPS's processing, clearance or brokerage fees for goods shipped to Class Members, via UPS, from a destination outside of Canada originating from Europe, the United States and Asia from Nov. 15, 2020 until the date of authorization. In many circumstances, Class Members used UPS's courier delivery services primarily for personal, family or household purposes or uses.

### **The Group:**

All natural persons, legal persons established for a private interest, partnerships and associations or other groups not endowed with judicial personality, in Québec, who, from November 15, 2020 until the date of Authorization, were charged customs duties and/or processing fees collected by UPS in respect to the import of any goods.

29. UPS identifies its business activity as "Whether you need something shipped across the street or across the nation, UPS has a service that works best for your shipment".

30. UPS is a package delivery and express courier service. UPS operates internationally and holds itself out as a specialist in international shipping and courier delivery services.

31. On its website, UPS sets out "UPS zone guide" for receivers. See **Exhibit R-1A UPS zone guide**. This guide has an opportunity to inform of what charges may occur and in no way informs the shipper of total fees. These fees are a hidden fee structure as they are not made evident at the time of contracting the shipment and are hidden.



32. On its FAQs webpage, UPS states, **Exhibit R-1B** UPS web site Understanding-customs. UPS has the opportunity to inform about what fees will occur and they fail to inform and only obfuscate. Attempts to be informed as to the breakdown of the customs duties and fees have proven impossible and very time consuming.

33. UPS brokerage fees are so confusing that some sellers have made simplified explanations on how to mitigate these brokerage fees, See **Exhibit R-10** which explains UPS fees, not a UPS web site but a seller of disc golf supplies. As such, the “general impression” given by “UPS” is that they are grossly non-transparent.

### **UPS’s Unlawful Scheme**

34. UPS holds itself out as a business that specializes in express courier delivery services for shipments of goods being transported across international borders.

35. In the course of its business, UPS has engaged in an unlawful scheme whereby it has made false, misleading, deceptive and insufficient representations to the Applicant and other Class Members — to their detriment — for its own financial gain and business interest.

36. When deliveries were made, there was an immediate demand for payment of import duties and fees. See **Exhibit R-7A** and **Exhibit R-8A** before products would be released to the Applicants.

37. At all material times, UPS gave to the Applicants and other Class Members the general impression that in order to receive delivery of their goods in the shortest possible time after entering Canada - UPS would pay any import duties or taxes (also referred to as government levies) deemed payable by Customs Canada.

38. At all material times, the Applicants and other Class Members understood that the fees being charged by UPS — and paid to UPS by them — were to repay UPS for duties and taxes (government levies) charged by Canada Customs for goods being shipped when they crossed the border into Canada.

39. In reality, however, the fees charged by UPS to the Applicants and other Class Members for “import duties and taxes” included a UPS “Brokerage fee”. These fees were retained by UPS after payment was made by Class Members.

40. At no time before payment was made, did UPS disclose to Applicants or Class Members that this “import duty/tax payment” included UPS’s “Brokerage fee”. These are hidden fees, contrary to the duty to fully inform required by the *CPA* and section 44 of the *Charter*.

41. UPS's conduct was high-handed, planned, and deliberate and showed a marked departure from the ordinary standards of reasonable behaviour.

### **The Applicant's Experience**

42. The Applicant Perry-Fagant purchased taxidermy supplies valued at \$103.80, see **Exhibit R-3A**, from Mackenzie Taxidermy, plus \$37.95 for shipping for a total of \$141.75. The taxidermy supplies were for personal use.

A. The Applicant's order was shipped by the vendor, via UPS, with waybill number 1Z2084206821569991. The Applicant was provided UPS's courier delivery services for personal, family, or household purposes.

B. On the date of September 25, 2023 she received the delivery at her door with demand for immediate payment of added fees, failing which her order would not be delivered.

C. The Applicant paid UPS the CDN\$61.52 fee as indicated in **Exhibit R-7A**.

D. At all material times prior to payment, UPS represented to the Applicant that the fee being charged on her shipment was for duties and taxes. UPS never advised the Applicant, prior to payment, that the fee being charged included UPS's "brokerage fee" of CDN\$35.35 plus tax and also a fee declared as "Other Government Charges" for \$13.91. These fees were also not declared at the time of shipping.

E. The Applicant only learned that she had paid UPS a "brokerage fee" as well as a "Other Government Charges" fee after being able to examine the documentation in detail.

43. The Applicant Briscoe purchased liquid paraffin valued at \$23.52, see **Exhibit R-4A**, from Lucid Candle, plus \$20.76 for shipping for a total of \$44.28. The liquid paraffin is for personal use.

A. The Applicant's order was shipped by the vendor, via UPS, with waybill number 1Z0235216897147740. The Applicant was provided UPS's courier delivery services for personal, family, or household purposes.

B. On the date of October 19, 2023 she received the delivery at her door with demand for immediate payment of added fees.

C. The Applicant paid UPS the CDN\$60.39 fee as indicated in **Exhibit R-8A**.

D. At all material times prior to payment, UPS represented to the Applicant that the fee being charged on her shipment was for duties and taxes. UPS never advised the Applicant, prior to payment, that the fee being charged included UPS's "brokerage fee" of CDN\$46.85 plus tax. This fee was not declared at the time of shipping.

E. The Applicant only learned that she had paid UPS a “brokerage fee” after being able to examine the documentation in detail.

F. On Nov. 9<sup>th</sup> the applicant contacted UPS by phone to ask for the breakdown of the \$46.85 in fees that were on her invoice and whether they included duties. She was told to send an email to request this information which she did. An hour later she got back an email which explained that the \$46.85 was brokerage fees for processing her shipment and present the paperwork to customs on her behalf. There was no mention of any duties in the email. Furthermore the “value for duty” as stipulated on the applicant’s invoice incorrectly included the vendor’s shipping cost of \$20.76.

## **Damages**

44. As a consequence of UPS’s conduct and its false, misleading, deceptive and insufficient representations — which caused the Applicants and other Class Members to act and to pay UPS a processing and/or brokerage fee — the Applicants and other Class Members have sustained loss and damage, including the monies they paid to UPS for UPS’s processing and/or brokerage fees plus all taxes on those amounts.

45. The Applicants and other Class Members have also suffered stress, frustration and anxiety as a result of UPS’s high-handed conduct and as a result of time they have had to spend investigating the fees charged by UPS.

## **Part 2: RELIEF SOUGHT**

46. The Applicants claim, on their own behalf and on behalf of the Class:

- a) an order authorizing this action as a collective action and appointing Natasha Perry-Fagant and Lorraine Briscoe as Representative Plaintiffs;
- b) Condemn the Defendant to pay punitive damages in the minimum amount of \$75 million, *sauf a parfaire*, the whole with interest and the additional indemnity provided by law;
- c) Condemn the Defendant to pay to the Applicants and Class Members compensatory damages for all monetary losses, the whole with interest and the additional indemnity provided by law;
- d) damages equal to the costs of notices and the plan of distribution;
- e) Interest, costs; and
- f) The Special indemnity provided by law.
- g) Any Further relief as may be just and proper.

### **Part 3: LEGAL BASIS**

#### **Legislation**

47. The Applicant pleads and relies on the *Consumer Protection Act*, CQLR c P-40.1; *Civil code of Quebec*, *Code of Civil Procedure*, *The Quebec Charter of Rights and Freedoms*.

#### **Consumer Misrepresentation**

48. UPS made false representations to the Applicant and other Class Members.

49. UPS knew of the falsehood of its representations or, alternatively, UPS was reckless and ought to have known that its representations were false.

50. UPS's false representations caused the Applicant and other Class Members to act and to pay UPS the hidden processing and/or brokerage fees.

51. The Applicant and other Class Members suffered a loss as a result of their actions, being the amount they paid to UPS for the hidden processing and/or brokerage fees.

#### **Unjust Enrichment**

52. UPS received financial gain and was enriched from charging the Applicant and other Class Members processing, clearance and/or brokerage fees.

Applicants allege that Defendant is liable due to its unjust enrichment and Applicants and class members correlative impoverishment. In the context of Québec collective actions this principle has been applied as a basis for class claims. Here, proof of loss is alleged to be the in respect to Applicant Briscoe, a brokerage fee of \$46.85 and related taxes and in respect to Applicant Perry-Fagant, and administrative fee of \$35.35 and related taxes plus "Other Government Charges" of \$13.91. All are non-reimbursed administration fees.

53. The Applicants and other Class Members suffered a corresponding deprivation, being the monies they paid to UPS for UPS's hidden processing and/or brokerage fees.

54. There was no juristic reason for UPS's enrichment and Applicants and Class Members' corresponding deprivation.

55. The Applicants and other Class Members are entitled to restitution of UPS's financial gain.

#### **Breach of Consumer Protection Legislation**

56. With respect to Class Members resident in Quebec:

(a) each Class Member was a "consumer"; and

(b) UPS was a “merchant” and “person”;

within the meaning of section 1 of the *Consumer Protection Act*, CQLR c P-40.1.

57. As set out above and in the whole of this claim, a contract for services was entered into, in the course of UPS’s business, between Applicant and each Class Member in Quebec and UPS, within the meaning of section 2 of the *Consumer Protection Act*.

58. As set out above and in the whole of this claim, UPS made various representations which were relied on by Class Members with regard to UPS for courier delivery services.

59. As set out above and in the whole of this claim, UPS acted contrary to those representations. The representations made by UPS to Class Members in Quebec were false, insufficient and misleading and, accordingly, UPS contravened sections 216, 217, 219 and 227.1 of the *Consumer Protection Act*.

60. UPS further contravened section 228 of the *CPA* in failing to mention an important fact in its representation to consumers.

61. Applicant and Class Members are entitled to statutory damages under section 272 of the *Consumer Protection Act*, including punitive damages.

62. Proposed common questions of fact and law:

one. Was/is the Respondent entitled to charge and collect custom duties and or brokerage fees from members of the class?

Two. Is Respondent a “merchant” or “person” governed by the Québec *Consumer Protection Act*?

Three. Are certain members of the class consumers governed by the Québec *Consumer Protection Act*?

Four. Did Respondent fail to comply with the requirements of the Québec *Consumer Protection Act* by charging and collecting, during the Class Period, customs duties and brokerage fees from members of the class?

Five. How much money did Respondent collect from members of the class collectively for customs duties and brokerage fees during the Class Period?

Six. Is Respondent liable to pay punitive damages to consumer members of the class for their repeated breaches of the Québec *Consumer Protection Act* and the Quebec Charter and if so, what amount of punitive damages should respondent be condemned to pay collectively?

63. The applicable sections of the, Québec *Consumer Protection Act* are:

As concerns punitive damages section 272 provides:

216. For the purposes of this title, representation includes an affirmation, a behaviour or an omission.

217. The fact that a prohibited practice has been used is not subordinate to whether or not a contract has been made.

227.1. No person may, by any means whatever, make false or misleading representations concerning the existence, charge, amount or rate of duties payable under a federal or provincial statute.

228. No merchant, manufacturer or advertiser may fail to mention an important fact in any representation made to a consumer.

As concerns punitive damages section 272 provides:

272. If the merchant or the manufacturer fails to fulfil an obligation imposed on him by this Act, by the regulations or by a voluntary undertaking made under section 314 or whose application has been extended by an order under section 315.1, the consumer may demand, as the case may be, subject to the other recourses provided by this Act,

- (a) the specific performance of the obligation;
- (b) the authorization to execute it at the merchant's or manufacturer's expense;
- (c) that his obligations be reduced;

or ...

without prejudice to his claim in damages, in all cases. He may also claim punitive damages.

### Conclusions sought

64. **Authorize** this application to institute a collective action;

**Authorize** the Applicants to proceed with this collective action against the Defendant;

**Designate** the Applicants representative of the members of the group;

**Define** the group as:

All natural persons, legal persons established for a private interest, partnerships and associations or other groups not endowed with judicial personality, in Québec, who, from November 15, 2020 until the date of Authorization, were charged customs duties and or processing fees collected by UNITED PARCEL SERVICE CANADA LTD. (aka UPS) in respect to the import of any goods.

**Identify** the questions to be decided collectively as follows:

**One.** Was/is the Respondent entitled to charge and collect custom duties and or processing fees from members of the class?

**Two.** Is Respondent a “merchant” or “person” governed by the *Québec Consumer Protection Act*?

**Three.** Are certain members of the class consumers governed by the *Québec Consumer Protection Act*?

**Four.** Did Respondent fail to comply with the requirements of the *Québec Consumer Protection Act* by charging and collecting, during the Class Period, customs duties and brokerage fees from members of the class?

**Five.** How much money did Respondent collect from members of the class collectively for customs duties and brokerage fees during the Class Period?

**Six.** Is Respondent liable to pay punitive damages to consumer members of the class for their repeated breaches of the *Québec Consumer Protection Act* and if so, what amount of punitive damages should respondent be condemned to pay collectively?

**Identify** the conclusions sought as being:

**GRANT** the Class Action against the Defendant;

**CONDEMN** the Defendant to pay to the Applicants, for the benefit of the Class, all amounts owing to the Class, the whole with interest and the additional indemnity provided by law;

**CONDEMN** the Defendant to pay punitive damages in the minimum amount of \$75 million, *sauf a parfaire*, the whole with interest and additional indemnity provided by law;

**ORDER** the collective recovery of the total amount of the claims herein;

**ORDER** that the claims of the members of the Class be the object of individual liquidation in accordance with Articles 599 to 601 CCP or, if impractical or inefficient, order the Defendant to perform any remedial measures that this Honourable Court deems to be in the interests of the members of the Class;

**CONDEMN** the Defendant to any further relief as may be just and proper;

**THE WHOLE** with legal costs and the Special Indemnity, including the costs of all exhibits, reports, expertise and publication of notices.

**Refer** this matter to the Chief Justice of the Superior Court of Québec to determine the district in which this collective action should be heard and designate the judge who will hear it;

**Request** the clerk of this Court, should this matter be heard in another district, to transmit the file, following the decision of the Chief Justice, to the clerk of that of the district;

**Postpone** the matter of publication of notice to members, including its contents, to the next case management conference;

**The whole**, with costs to follow.

---

CHARLES O'BRIEN  
Lorax Litigation for Representatives Perry-Fagant  
and Briscoe

Exhibits supporting the application

In support of the Motion Seeking Authorization, Applicant alleges the following Exhibits, referred to in the links or available on request: *(provided on the attached USB key)*

Exhibit R-1 UPS zone guide

R-1A Zone guide

R-1B Customs basics

Exhibit R-2 UPS rate guide page 115

Exhibit R-3 Shipping and purchase docs Perry-Fagant

R-3A Mackenzie taxidermy order

R-3B Payment of shipping

Exhibit R-4 Shipping and purchase docs Briscoe

R-4A Lucid Invoice with shipping

Exhibit R-5 Siskends Settlement

R-5A Siskends web site about UPS class action and settlement

R-5B Siskends notice of settlement approval

Exhibit R-6 The deceptive marketing practices digest volume 1

Exhibit R-7 Fees demanded from Perry-Fagant

R-7A Fees demanded on delivery

R-7B Tracking notice of delivery

Exhibit R-8 Fees demanded from Briscoe

R-8A Fees demanded on delivery Briscoe

R-8B Master card statement UPS

R-8C Fedex correspondance - no fees

Exhibit R-9 Perry-Fagant Taxidermy products

Exhibit R-10 Fees explanation Discs Unlimited

Exhibit R-11 Industry fraud Hannuka Bread

Exhibit R-12 Briscoe email exchange with UPS



Exhibit R-13 UPS Corporate entity  
R-13A UPS corporate entity  
R-13B UPS History screen shot  
R-13C UPS History wordperfect

**S.C.: 500-06-001277-231**

---

---

**Class Action  
SUPERIOR COURT  
DISTRICT OF MONTREAL**

---

---

**Natasha Perry-Fagant**

299 rue Villeneuve O, Montreal, PQ, H2V 2R2

and

**Lorraine Briscoe**

8 Glenarn, Knowlton, QC. J0E 1V0

Applicants

vs.

**“UPS” aka MBEC Communications Inc.**

605-1225 rue du Square-Phillips, Mtl., QC, H3B 3G1

Defendant

and

9332-6510 Quebec Inc.

and

2964-4481 Quebec Inc.

605-1225 rue du Square-Phillips, Mtl., QC., H3B 3G1

Mise-En-Causes

---

---

**APPLICATION FOR AUTHORIZATION  
TO INSTITUTE A CLASS ACTION TO OBTAIN  
THE STATUS OF REPRESENTATIVE**

---

---

Original

---

---

Mtre. Charles O'Brien

Lorax Litigation

1233 Island street

Montreal, Quebec H3K 2N2

Telephone: (514) 484-0045

Fax: (514) 484-1539

bluegreenlaw@gmail.com

AO1372