

C A N A D A

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

S U P E R I O R C O U R T  
(Class Action Division)

N°: 500-06-001223-235

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MARGARET SAKHRANI

Petitioner

v.

L'ORÉAL CANADA INC. ET AL.

Respondents

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APPLICATION FOR A DECLINATORY EXCEPTION BY  
THE RESPONDENT DABUR USA INC.  
(art. 167 C.C.P and art. 3148 C.C.Q)

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TO THE HONOURABLE JUSTICE MARIE-CHRISTINE HIVON, SITTING IN AND FOR THE DISTRICT OF MONTRÉAL AS DESIGNATED JUDGE FOR THE PRESENT INSTANCE, THE RESPONDENT DABUR USA, INC. RESPECTFULLY SUBMITS THE FOLLOWING:

I. INTRODUCTION

1. On or around February 2, 2023, the Petitioner Margaret Sakhrani filed an *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* (the "**Application for Authorization**") against several Respondents, including Dabur USA, Inc. ("**Dabur USA**"), arising out of the Respondents' alleged failure to conduct reasonable research and testing into the harmful side effects of chemical hair straightening products designed, manufactured, marketed, promoted and/or sold by them in Canada (the "**Hair Straightening Products**");
2. The Petitioner alleges that as a result of the Respondents' alleged misrepresentations and failure to warn of the risk of uterine, ovarian, and breast cancer as well as fibroids associated with the use of Hair Straightening Products, the Petitioner and the class members suffered serious physical, psychological, financial and moral injury;
3. On March 2, 2023, the Petitioner amended the Application for Authorization to remove the former Respondent Dabur Style Ltd. and allegations pertaining to Dabur Style Ltd. (the "**Amended Application**"), although the amendments have not yet been approved by the Court;
4. In the Amended Application, the Petitioner alleges that the Respondents, directly

or indirectly, researched, designed, developed, manufactured, formulated, compounded, produced, processed, tested, inspected, packaged, promoted, marketed, licenced, assembled, labelled, advertised, distributed, imported/exported, and/or sold Hair Straightening Products to distributors and retailers for resale and to the general public throughout Canada (the "**Impugned Activities**");

5. For the reasons detailed below, Dabur USA respectfully submits that Québec courts do not have jurisdiction over it and that consequently, the Amended Application should be dismissed against Dabur USA;

## **II. THE SUPERIOR COURT OF QUÉBEC LACKS JURISDICTION OVER DABUR USA IN THE PRESENT INSTANCE**

6. On September 10, 2007, Dabur USA filed a certificate of incorporation with the State of New Jersey, as appears from Dabur USA's *Public Records Filing for New Business Entity* filed on September 10, 2007 and copy of the certification from the Treasurer of the State of New Jersey dated May 9, 2023, copies of which are filed *en liasse* in support hereof as **Exhibit D-USA-1**;
7. On December 14, 2015, Dabur USA was dissolved without commencing business, as appears in Dabur USA's *Certificate of Dissolution Before Commencing Business* signed by Dabur USA's registered agent on December 9, 2015 and filed on December 14, 2015 and copy of the certification from the Treasurer of the State of New Jersey dated May 9, 2023, copies of which are filed *en liasse* in support hereof as **Exhibit D-USA-2**;
8. Indeed, Dabur USA had not commenced business/activity, had issued no shares, had *no* debts or other liabilities, had not received payments or subscriptions to its shares (or if it had received such payments, had returned them to those entitled thereto), as appears from Exhibit D-USA-2;
9. On September 22, 2023, the Treasurer of the State of New Jersey further certified that *Dabur* USA had been registered by the office of the State of New Jersey, Department of the Treasury, Division of Revenue and Enterprise Services on September 10, 2007 and was dissolved before commencing business, as appears from a copy of the Treasurer of the State of New Jersey's September 22, 2023 certificate, copy of which is filed in support hereof as **Exhibit D-USA-3**;
10. As appears from Exhibits D-USA-1, D-USA-2 and D-USA-3, Dabur USA has never had a domicile, a residence or an establishment in Québec, and it has never been registered to do business in Québec;
11. The *Amended* Application does not contain any allegations to the contrary. Instead, as it concerns Dabur USA, Petitioner only alleges that Dabur USA is a corporation duly incorporated pursuant to the laws of New Jersey, USA, with its principal place of business at 5 Independence Way, Suite 300, Princeton, NJ, 08540 (*Amended Application*, para. 25);
12. *Moreover*, during its period of legal existence, i.e. between September 10, 2007 and December 14, 2015, Dabur USA did not conduct any type of business

activities whatsoever, let alone in the province of Québec or elsewhere in Canada;

13. Since December 14, 2015 and as of the date of the present Application, Dabur USA has remained dissolved and inoperative;
14. *Considering* that Dabur USA has never conducted any business activities whatsoever, Dabur USA was therefore not involved in the Impugned Activities concerning the Hair Straightening Products in Canada, including within the Province of Québec;
15. As *such*, Dabur USA has not committed any of the faults alleged by the Petitioner in Québec which are the object of the Amended Application;
16. *Consequently*, the Petitioner and/or putative class members have not suffered any injury in Québec attributable to Dabur USA;
17. *Finally*, Dabur USA never agreed to submit to the jurisdiction of Québec courts;
18. In *light* of the foregoing, Dabur USA has no connection to the province of Québec, and the Superior Court of Québec lacks jurisdiction to rule on the Amended Application as it concerns Dabur USA;
19. Dabur USA therefore asks this honourable Court to:

**GRANT** Respondent Dabur USA, Inc.'s *Application for a Declinatory Exception*;

**DISMISS** Petitioner's *Modified Motion for Authorization to Institute a Class Action and to Obtain the Status of Representative Dated March 2, 2023* against Dabur USA, Inc.; and

**THE WHOLE** with judicial costs against the Petitioner.

**MONTREAL**, February 5, 2024

*Bennett Jones SENCRL, s.r.l.*

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**BENNETT JONES SENCRL, S.R.L.**

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