

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO: 500-06-001306-246

(Class Action)  
SUPERIOR COURT

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JONATHAN [REDACTED]  
[REDACTED]

Applicant

v.

**RESTAURANT BRANDS INTERNATIONAL INC.**, legal person having its head office at 130 King Street West, Suite 300, Toronto, Ontario, M5X 1E1

and

**RESTAURANT BRANDS INTERNATIONAL LIMITED PARTNERSHIP**, legal person having its head office at 130 King Street West, Suite 300, Toronto, Ontario, M5X 1E1

and

**THE TDL GROUP CORP.**, legal person having its establishment at 130 King Street West, Suite 300, Toronto, Ontario, M5X 1E1

Defendants

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**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION**  
(ARTICLES 571 AND FOLLOWING C.C.P.)

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**I. INTRODUCTION**

1. Applicant seeks to institute a class action on behalf of the following class of which he is a member:

**Class:**

All consumers in Canada who received an email from Tim Hortons declaring that they won a Tracker Targa 18 WT 2024

boat and its trailer as part of the Roll Up To Win promotion, or any other prize that was never delivered to them;

(hereinafter referred to as the “**Class**”).

2. On April 17, 2024, Tim Hortons sent an email (from the email address [promo@promo.timhortons.ca](mailto:promo@promo.timhortons.ca)) to approximately 500,000 of its mobile application customers declaring to them that they won a Tracker Targa 18 WT 2024 boat and its trailer as part of their “Roll Up To Win” campaign, as it appears from a copy of said email also sent to the Applicant, a portion of which is reproduced below, communicated as **Exhibit P-1**;



3. The Tracker Targa 18 WT 2024 boat and its trailer is worth \$64,000.00 inclusive of taxes;
4. The subject line of the email sent by Tim Hortons (Exhibit P-1) is “**Vos résultats Déroule pour gagner sont arrivés**” and is addressed individually by name to each Class Member;
5. Just as in the Supreme Court of Canada case of *Richard v. Time*, the general impression of the representation in the email (Exhibit P-1) clearly gave the average consumer the impression that they won the boat and therefore constitutes a prohibited practice;
6. Indeed, section 41 of the *Consumer Protection Act* (“CPA”) states that when a merchant makes statements about its services, such as the Tim Hortons mobile app or the Roll Up to Win promotion: “The statements or advertisements are binding on that merchant or that manufacturer”. Section 42 CPA goes further and stipulates that “A written or verbal statement by the representative of a merchant

or of a manufacturer respecting goods or services is binding on that merchant or manufacturer". The CPA is of public order and cannot be derogated from pursuant to sections 261 and 262 CPA;

7. As such, the legislator prohibits a merchant from raising error as a means of defence, and under consumer law the risk of error is borne by the merchant. This is precisely what the Supreme Court of Canada concluded in the *Richard v. Time* (par. 113: "First, the *C.P.A.* imposes a range of statutory contractual obligations on merchants and manufacturers that are set out primarily in Title I of the Act. Proof that one of these substantive rules has been violated **entitles a consumer, without having to meet any additional requirements, to obtain one of the contractual remedies provided for in s. 272 C.P.A.**");
8. In light of the above, the Applicant hereby requests, pursuant to section 272(a) CPA, the specific performance of the obligation to deliver the boat, as well as damages and punitive damages in amounts to be determined;

## **II. THE PARTIES**

9. The Defendant, Restaurant Brands International Inc. (hereinafter "**RBI**"), is a publicly traded company on the Toronto Stock Exchange (symbol: QSR.TO) and on the New York Stock Exchange (symbol: QSR). The Applicant discloses herewith a copy of RBI's *CIDREQ* report as **Exhibit P-2**;
10. The Defendant, Restaurant Brands International Limited Partnership ("**RBILP**"), is a subsidiary of RBI and the indirect parent of The TDL Group Corp. The Applicant discloses herewith a copy of RBI LP's *CIDREQ* report as **Exhibit P-3**;
11. The Defendant, The TDL Group Corp. ("**TDL**"), is registered as a restaurant and also operates under the name "Tim Hortons", as it appears from copy of its *CIDREQ* report disclosed as **Exhibit P-4**;
12. Together, the Defendants RBI, RBILP and TDL operate the Tim Hortons coffee chain (include the mobile application) and are collectively referred to herein as "Tim Hortons";
13. In the "About Us" section of its website ([www.timhortons.ca](http://www.timhortons.ca)), Tim Hortons describes itself as "*Canada's largest restaurant chain*" and a "*proud symbol of our country and its values*", Applicant disclosing **Exhibit P-5**:

"Tim Hortons is now proud to be Canada's largest restaurant chain serving over 5 million cups of coffee every day with 80% of Canadians visiting a Tims in Canada at least once a month. More than a coffee and bake shop, Tim Hortons is part of the fabric of Canada and a proud symbol of our country and its values."
14. The Applicant is a consumer who has been using the Tim Hortons mobile application for several years;

**III. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (s. 575 C.C.P.):**

**A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT:**

15. On April 17, 2024, at 10:48 a.m., the Applicant received an email from Tim Hortons ([promo@promo.timhortons.ca](mailto:promo@promo.timhortons.ca)) with the subject line: “Vos résultats D roule pour gagner sont arriv s” (Exhibit P-1);
16. Tim Hortons declared and made representations (within the meaning of sections 41 and 42 CPA) to the Applicant that in the context of the Roll Up To Win promotion, he was the winner of a Tracker Targa 18 WT 2024 boat and its trailer;
17. Upon receipt of this email, the Applicant (and all Class Members who received the same email) was ecstatic and was under the impression – based on Tim Hortons representations – that he had won a boat and trailer worth \$64,000.00 inclusive of taxes;
18. The Applicant was so excited that he immediately contacted Tim Hortons customer service phone number, but after more than an hour on hold was unable to get through to a live agent. He tried calling back a second time and waited on hold again for another 45 minutes without ever speaking to a live agent;
19. While on hold during his second attempt, the Applicant received a second email from Tim Hortons informing him that the first email was due to a technical error and to just ignore it (Tim Hortons did not address the boat specifically), Applicant communicating **Exhibit P-6**;
20. Applicant respectfully submits that Tim Hortons cannot ask him to waive his rights under the CPA (sections 261 and 262) and demands, pursuant to section 272(a) CPA, that Tim Hortons deliver the boat and trailer as per its declarations and representations in Exhibit P-1 (sections 41 and 42 CPA);
21. Applicant also claims, on his behalf and on behalf of all Class Members an additional amount pursuant to section 272 CPA in damages (in an amount to be determined) due to the excitement, stress and disappointment caused by Tim Hortons’ conduct and negligence;
22. Applicant claims punitive damages in the amount of **\$10,000.00** per Class Member, subject to adjustment, notably due to the fact that Tim Hortons is a repeat offender, as it appears from the news articles filed *en liasse* as **Exhibit P-7**;
23. The Applicant’s damages are a direct and proximate result of Tim Hortons omissions, breaches and negligence;

**B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:**

24. All Class members have a common interest in proving Tim Hortons' liability;
25. In this case, the legal and factual backgrounds at issue are common to all members of the Class;
26. Every Class member received an email from Tim Hortons containing written representations and declaration that they won a boat and trailer (or other prize) that Tim Hortons never delivered;
27. Each Class member is also justified in claiming damages and punitive damages. Indeed, the situation is widespread as it appears from the CBC News article titled "*Tim Hortons says 'technical errors' falsely told people they won \$55K boat in Roll Up To Win promo*" communicated as **Exhibit P-8**;
28. All of the damages to the Class Members are a direct and proximate result of the Tim Hortons negligence and refusal to honour its own representations;
29. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;
30. **The recourses of the Class members raise identical, similar or related questions of fact or law, namely:**
  - a) Does Tim Hortons have a legal obligation to deliver the boats and trailers (or other prizes) to the Class Members that received an email from Tim Hortons stating that they won these prizes?
  - b) Alternately, are Class Members entitled to damages equivalent to the aggregate value of the Tracker Targa 18 WT 2024 boats and their trailer (or other prizes);
  - c) Are Class Members entitled to other damages?
  - d) Is Tim Hortons liable to pay punitive damages to the Class Members, and, if so, in what amount?

**C) THE COMPOSITION OF THE CLASS**

31. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
32. It is reported that more than 500,000 people received the email (Exhibit P-1) from

Tim Hortons, Applicant communicated **Exhibit P-9**;

33. A Facebook group named "Tim Hortons "you Won A Boat" Group 2024" has already accumulate more than 1900 members, as it appears from **Exhibit P-10**;
34. Class members are very numerous and are dispersed across the province and Canada;
35. These facts demonstrate that it would be impossible to contact each and every Class member to obtain mandates and to join them in one action;
36. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

**D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS**

37. The Applicant requests that he be appointed the status of representative plaintiff for the following main reasons:
  - a) he is a member of the Class and has a personal interest in seeking the conclusions proposed herein;
  - b) he is competent, in that he has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
  - c) his interests are not antagonistic to those of other Class members;
38. Additionally, the Applicant respectfully adds that:
  - a) he has the time, energy, will and determination to assume all the responsibilities incumbent upon him in order to diligently carry out the action;
  - b) after learning about the situation, he mandated his attorneys to file the present application for the sole purpose of having his rights, as well as the rights of other Class members, recognized and protected so that they can be compensated;
  - c) he cooperates and will continue to fully cooperate with his attorneys, who have experience in consumer protection-related class actions;
  - d) he understands the nature of the action; and
  - e) he wants to hold Tim Hortons accountable, especially since they are repeat offenders (a similar situation occurred last year where Tim Hortons refused to honour other Roll Up To Win prizes).

39. As for identifying other Class members, the Applicant draws certain inferences from the situation and realizes that by all accounts, there is a very significant number of Class members that find themselves in an identical situation, and that it would not be useful to attempt to identify each of them given their sheer numbers;
40. For the above reasons, the Applicant respectfully submits that his interest and competence are such that the present class action could proceed fairly and in the best interest of Class members;

#### **IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

41. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in specific performance and damages;
42. The conclusions that the Applicant wishes to introduce by way of an originating application are:

**GRANT** the Representative Plaintiff's action against the Defendants on behalf of all Class Members;

**ORDER** the Defendants, solidarily, to deliver the Tracker Targa 18 WT 2024 boat and its trailer (or other prizes) to the Representative Plaintiff and to each Class Member;

**alternately,**

**CONDEMN** the Defendants, solidarily, to pay damages to the Representative Plaintiff and the Class Members equivalent to the aggregate value of the Tracker Targa 18 WT 2024 boats and their trailer (or other prizes);

**CONDEMN** the Defendants, solidarily, to pay damages to the Representative Plaintiff and the Class Members in an amount to be determined;

**CONDEMN** the Defendants, solidarily, to pay punitive damages to the Representative Plaintiff and the Class Members in the amount of \$10,000.00 each;

**DECLARE** that an award of aggregate damages should be made;

**ORDER** the collective recovery of all damages to the Class members;

**CONDEMN** the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize a Class Action*;

**ORDER** the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

**ORDER** that the claims of individual Class members be the object of collective

liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants, solidarily, to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders.

43. The interests of justice favour that this Application be granted in accordance with its conclusions;

## **V. JURISDICTION**

44. The Applicant requests that this class action be exercised before the Superior Court in the district of Montreal.

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

1. **GRANT** the present application;
2. **AUTHORIZE** the bringing of a class action in the form of an originating application in specific performance and damages;
3. **APPOINT** the Applicant the status of Representative Plaintiff of the persons included in the Class herein described as:

#### **Class:**

All consumers in Canada who received an email from Tim Hortons declaring that they won a Tracker Targa 18 WT 2024 boat and its trailer as part of the Roll Up To Win promotion, or any other prize that was never delivered to them;

(hereinafter referred to as the "**Class**").

or any other Class to be determined by the Court;

4. **IDENTIFY** the principle questions of fact and law to be treated collectively as the following:
  - a) Does Tim Hortons have a legal obligation to deliver the boats and trailers (or other prizes) to the Class Members that received an email from Tim Hortons stating that they won these prizes?
  - b) Alternately, are Class Members entitled to damages equivalent to the aggregate value of the Tracker Targa 18 WT 2024 boats and their trailer (or other prizes);
  - c) Are Class Members entitled to other damages?



- d) Is Tim Hortons liable to pay punitive damages to the Class Members, and, if so, in what amount?

5. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

- a) **GRANT** the Representative Plaintiff's action against the Defendants on behalf of all Class Members;
- b) **ORDER** the Defendants, solidarily, to deliver the Tracker Targa 18 WT 2024 boat and its trailer (or other prizes) to the Representative Plaintiff and to each Class Member;

**alternately,**

- c) **CONDEMN** the Defendants, solidarily, to pay damages to the Representative Plaintiff and the Class Members equivalent to the aggregate value of the Tracker Targa 18 WT 2024 boats and their trailer (or other prizes);
- d) **CONDEMN** the Defendants, solidarily, to pay damages to the Representative Plaintiff and the Class Members in an amount to be determined;
- e) **CONDEMN** the Defendants, solidarily, to pay punitive damages to the Representative Plaintiff and the Class Members in the amount of \$10,000.00 each;
- f) **DECLARE** that an award of aggregate damages should be made;
- g) **ORDER** the collective recovery of all damages to the Class members;
- h) **CONDEMN** the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize a Class Action*;
- i) **ORDER** the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
- j) **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
- k) **CONDEMN** the Defendants, solidarily, to bear the costs of the present action at all levels, including the cost of all exhibits, notices,

the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

6. **ORDER** the publication of a notice to the Class Members in accordance with article 579 C.C.P., pursuant to a further order of the Court, and **ORDER** the Defendants to pay for said publication costs;
7. **FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;
8. **DECLARE** that all members of the Class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;
9. **RENDER** any other order that this Honourable Court shall determine;
10. **THE WHOLE** with costs, including the court stamp, bailiff fees, stenographer fees and publication fees.

Montreal, April 19, 2024

*(s) LPC Avocats*

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**LPC AVOCATS**

Mtre Joey Zukran  
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**SUMMONS**  
**(ARTICLES 145 AND FOLLOWING C.C.P)**

**Filing of a judicial application**

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of **Montreal**.

**Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the courthouse of **Montreal** situated at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

**Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

**Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

**Change of judicial district**

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main

residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

### **Transfer of application to Small Claims Division**

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

### **Calling to a case management conference**

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

### **Exhibits supporting the application**

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** First email sent from Tim Hortons to Applicant on April 17, 2024;
- Exhibit P-2:** Extract of the enterprises' information statement from the Quebec enterprise register ("CIDREQ") for RBI Inc.;
- Exhibit P-3:** Extract of the enterprises' information statement from the Quebec enterprise register ("CIDREQ") for RBI LP;
- Exhibit P-4:** Extract of the enterprises' information statement from the Quebec enterprise register ("CIDREQ") for The TDL Group Corp.;
- Exhibit P-5:** Screen capture of the "about us" section of the Tim Hortons website;
- Exhibit P-6:** Second email sent from Tim Hortons to Applicant on April 17, 2024;
- Exhibit P-7:** *En liasse* news articles showing that Tim Hortons is repeat offender;
- Exhibit P-8:** Copy of CBC News article titled "*Tim Hortons says 'technical errors' falsely told people they won \$55K boat in Roll Up To Win promo*";
- Exhibit P-9:** TikTok video explaining the situation and referring to the number of

Class Members;

**Exhibit P-10:** Screen captures of the Facebook group named "Tim Hortons "you Won A Boat" Group 2024".

These exhibits are available on request.

### **Notice of presentation of an application**

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, April 19, 2024

*(s) LPC Avocats*

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**LPC AVOCATS**

Mtre Joey Zukran

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**NOTICE OF PRESENTATION**  
(articles 146 and 574 al. 2 C.C.P.)

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**TO: RESTAURANT BRANDS INTERNATIONAL INC.**  
130 King Street West, Suite 300  
Toronto, Ontario, M5X 1E1

**RESTAURANT BRANDS INTERNATIONAL LIMITED PARTNERSHIP**  
130 King Street West, Suite 300  
Toronto, Ontario, M5X 1E1

**THE TDL GROUP CORP.**  
130 King Street West, Suite 300  
Toronto, Ontario, M5X 1E1

**DEFENDANTS**

**TAKE NOTICE** that Applicant's *Application to Authorize the Bringing of a Class Action* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action Division.

Montreal, April 19, 2024

(s) *LPC Avocats*

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**LPC AVOCATS**  
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500-06-001306-246

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(Class Action)  
SUPERIOR COURT  
DISTRICT OF MONTREAL

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JONATHAN [REDACTED]

Applicant

v.

RESTAURANT BRANDS INTERNATIONAL INC.  
RESTAURANT BRANDS INTERNATIONAL LP  
THE TDL GROUP CORP.

Defendants

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**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION**  
(ARTICLES 571 AND FOLLOWING C.C.P.)

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**ORIGINAL**

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N/D : JZ-268

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