

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Action Division)

Nº: 500-06-000946-182

PANAGIOTIS LEVENTAKIS

Plaintiff

v.

AMAZON.COM.CA ULC
and
AMAZON SERVICES INTERNATIONAL, INC.

Defendants

APPLICATION FOR PARTICULARS AND DISCLOSURE OF DOCUMENTS
OF THE DEFENDANTS

(Article 169 (2) and (3) C.C.P.)

TO THE HONOURABLE JUSTICE DOMINIQUE POULIN, JUDGE OF THE SUPERIOR
COURT OF QUÉBEC FOR THE DISTRICT OF MONTRÉAL, THE DEFENDANTS
RESPECTFULLY SUBMIT THE FOLLOWING:

1. By judgment dated July 10, 2023, the Superior Court authorized the representative plaintiff Panagiotis Leventakis (the “**Plaintiff**”) to institute a class action against Amazon Services International, Inc. and Amazon.com.ca, Inc. on behalf of the following class (the “**Class Members**”):

All persons, entities, partnerships or organizations in Québec who purchased new books, videos (VHS), music or DVDs through the Buy Box on www.amazon.ca, between November 5, 2003 and the following end-date for each product type:

(a) new books and videos: September 10, 2017;

(b) DVDs and music: December 21, 2015;

The “Buy Box” is the rectangular box on the product detail page of www.amazon.ca that contains a button called “Add to Cart” or “Buy Now”. On a desktop computer, it appears on the right-hand side of the page.

2. The class action is predicated on the existence of an alleged illegal agreement between Amazon.com.ca ULC and Amazon Services International, Inc. (collectively the “**Defendants**” or “**Amazon**”) and third-party sellers that sell products in the Amazon.ca store (“**Third Party Sellers**”), whereby Third Party Sellers agreed to exclude their offers from the Buy Box for new books, music, videos and DVDs (“**BMVDs**”).
3. As a result, Plaintiff is claiming damages equivalent to the alleged overcharge for the sale of new BMVDs, as well as punitive damages.
4. The *Originating Application amended on March 11, 2024* (the “**Originating Application**”) contains certain vague and ambiguous allegations for which the Defendants are entitled to request particulars and the disclosure of documents, as set out below.
5. At paragraph 34 of the Originating Application, the Plaintiff alleges that:

“34. While the precise percentage of shoppers that use the Buy Box to make their purchase is not public, the vast majority of Amazon’s sales run through this sales channel.”

Without specifying:

- a) The basis on which the Plaintiff concludes that the vast majority of Amazon’s sales run through the Buy Box.
6. At paragraph 40 of the Originating Application, the Plaintiff alleges that:

“40. At all material times, Amazon has established a set of terms and conditions covering access to, and the operation of, the Buy Box. Those terms applied to products sold through www.amazon.ca, including new BMVDs.”

Without specifying:

- a) The “set of terms and conditions covering access to, and the operation of, the Buy Box” which are being referred to.
7. At paragraph 41 of the Originating Application, the Plaintiff alleges that:

*“41. Throughout the class period, Amazon has excluded offers from Third-Party Sellers for new BMVDs from appearing in the Buy Box, as appears from a webpage on www.amazon.com Seller Central entitled “How the Buy Box Works” dated September 10, 2017 and an undated screenshot of a help page www.amazon.ca with the same title, disclosed as **Exhibit P-7**, en liasse.”*

Without specifying, with respect to the webpages disclosed as Exhibit P-7:

- a) When the webpages were accessed;
 - b) Whether they were accessed using the Plaintiff's own account and, if not, specify the name of the account holder from whose account they were accessed.
8. At paragraphs 54, 59 and 61 of the Originating Application, the Plaintiff alleges that:

"54. Amazon's exclusive control of the Buy Box on www.amazon.ca permitted it to charge supra-competitive prices for all new BMVDs sold through that sales channel because it did not face any competition from Third-Party Sellers for that channel."

"59. As a result of the Unlawful Agreement, Class Members have paid supra-competitive prices to Amazon for the new BMVDs that they purchased during the class period."

"61. Amazon.ca has collected the Overcharge from Class Members."

Without specifying:

- a) The basis for alleging that the prices paid by the Plaintiff to purchase the items identified in Exhibit P-2 were "supra-competitive" or include an "overcharge";
- b) The amount of the "overcharge" paid by the Plaintiff to purchase the items identified in Exhibit P-2;
- c) The basis for alleging that the prices paid by other Class Members to purchase new BMVDs sold through the Buy Box were "supra-competitive" or include an "overcharge".

Without disclosing:

- a) Evidence of the "supra-competitive prices" or "overcharge" paid by the Plaintiff to purchase the items identified in Exhibit P-2;
- b) Evidence of the "super-competitive prices" or "overcharge" paid by other Class Members to purchase new BMVDs sold through the Buy Box.

9. At paragraph 67 of the Originating Application, the Plaintiff alleges that:

"67. The Buy Box and Other Offers constitute "markets" or "territories", or a means of allocating sales or customers within the larger Amazon marketplace and within the public markets for products, offline and online, within the meaning of section 45(1) (b) of the Competition Act."

Without specifying:

- a) Whether the Plaintiff considers the Buy Box to be: (i) a market; (ii) a territory; (iii) a means of allocating sales; or (iv) a means of allocating customers;
 - b) Whether the Plaintiff considers the Other Offers to be: (i) a market; (ii) a territory; (iii) a means of allocating sales; or (iv) a means of allocating customers.
10. At paragraph 68 of the Originating Application, the Plaintiff alleges that:

"68. As set out above, by means of the Unlawful Agreement, Amazon and Third-Party Sellers have conspired, agreed and arranged to:

- a) fix, maintain, increase or control the price for the supply of new BMVDs;*
- b) allocate sales, territories, customers, or markets for the supply of new BMVDs;*
or
- c) fix, maintain, control, prevent, lessen, or eliminate the supply of new BMVDs.*

Without specifying:

- a) Whether the Plaintiff's claim is being advanced under subsections (a), (b) or (c) or Section 45(1) of the *Competition Act*, RSC 1985, c C-34.
11. At paragraph 71 of the Originating Application, the Plaintiff alleges that:

"71. Through the actions and omissions set out above, the Defendants also breached Title II of the Consumer Protection Act by making false or misleading Representations or omitting an important fact when they marketed and sold new BMVDs on the www.amazon.ca marketplace through the Buy Box."

Without specifying:

- a) The nature and details of the specific actions or omissions in the marketing and sale of new BMVDs through the Buy Box on www.amazon.ca that

constitute false or misleading representations or the omission of an important fact under the *Consumer Protection Act*, CQLR c P-40.1.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present *Application for particulars and disclosure of documents of the defendants*;

ORDER the plaintiff Panagiotis Leventakis to provide the requested particulars and documents as to paragraphs 34, 40, 41, 54, 59, 61, 67, 68 and 71 of the *Originating Application amended on March 11, 2024*, within thirty (30) days of the judgment to be rendered;

THE WHOLE without legal costs, unless the present Application is contested.

Montreal, June 7, 2024



DENTONS CANADA LLP

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Lawyers for the Plaintiff

TAKE NOTICE that the *Application for Particulars and Disclosure of Documents of the Defendants* will be presented for adjudication before the Honourable Dominique Poulin of the Superior Court of Québec, sitting in and for the District of Montréal, at the Montréal Courthouse, situated at 1 Notre-Dame Street East, at a time and place to be determined by this Honourable Court.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, June 7, 2024



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Subject: NOTIFICATION / 500-06-000946-182 - P. Leventakis v. Amazon.com.ca ULC et al. / Application for Particulars and Disclosure of Documents of the Defendants
Attachments: 2024-06-07 - Application for particulars and disclosure of documents (500-06-000946-182).pdf

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° : 500-06-000946-182

PANAGIOTIS LEVENTAKIS

Representative Plaintiff

v.

AMAZON.COM.CA ULC

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Defendants

Notification by email
(Articles 110 and 134 CCP)

FROM:

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PLACE AND DATE:	Montréal, June 7, 2024
DOCUMENT NOTIFIED:	<i>Application for Particulars and Disclosure of Documents of the Defendants</i> (Article 169 (2) and (3) C.C.P.)
TOTAL PAGES: (excluding transmission slip)	7

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Defendants

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O R I G I N A L

Dossier 557495-105

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