

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-000947-180

SUPERIOR COURT
(Class Action Chambers)

PANAGIOTIS LEVENTAKIS

Applicant

v.

AUDIBLE INC.

and

APPLE, INC.

and

APPLE CANADA INC.

and

AMAZON.COM, INC.

and

AMAZON.COM.CA, INC.

Defendants

APPLICATION FOR PERMISSION TO AMEND THE APPLICATION FOR
AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND TO OBTAIN THE STATUS OF REPRESENTATIVE
(Art. 206 and 585 CCP)

TO THE HONOURABLE JUSTICE DOMINIQUE POULIN OF THE SUPERIOR
COURT, SITTING IN THE CLASS ACTION CHAMBERS IN THE DISTRICT OF
MONTREAL, YOUR APPLICANT STATES AS FOLLOWS:

I. PROCEDURAL CONTEXT

1. On September 28, 2018, the Applicant filed an *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* (“**Application for Authorization**”) against the Defendants on behalf of the following class:

*“All persons, entities, partnerships or organizations in Québec who purchased digital audiobooks from the Defendants (“**Class Members**”), or any other group to be determined by the Court, between 2003 and 2017 (“**Class Period**”),*

the whole as appears from the Court record;

2. The Applicant seeks permission to amend the Application for Authorization in the form and content of the *Amended Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* ("**Amended Application for Authorization**"), communicated hereto as **Exhibit P-1**;

II. PROPOSED MODIFICATIONS

3. The Applicant wishes to make amendments to his Application for Authorization as was stated in correspondence submitted to this honorable Court in the context of the Applicant's stay renewal requests. These amendments also respond to disclosures made by the Defendants in the parallel action in British Columbia, *Williams v. Audible Inc. et al.* (the "**BC proceeding**"), which are pertinent to the present action;
4. The Applicant moves to remove Apple Canada Inc. as a defendant to address the disclosure in the BC proceeding that, prior to January 1, 2019, consumer contracts for digital audiobooks purchasers in Canada were between the purchaser and the defendant Apple, Inc., not Apple Canada Inc. The latter entity was not involved in the sale of audiobooks to Quebec customers until January 1, 2019;
5. The Application further seeks to remove the Amazon entities as defendants to address the following two disclosures in the BC proceeding:
 - a. the Amazon entities have never been a party to any agreement with Apple, Inc. regarding digital audiobooks; and
 - b. they did not sell digital audiobooks listed on www.amazon.ca and rather directed all interested customers to Defendant Audible Inc's website www.audible.com to complete their purchase;
6. The Applicant also makes changes to clarify the class definition and add precise start and end dates for the Class Period;
7. The Applicant finally moves to amend his allegations to clarify the facts relevant to digital audiobooks and the unlawful behaviour of the Defendants, and in support thereof, add new exhibits in the form of:
 - a. brief histories of audiobooks;
 - b. press releases from the Defendants that contain their own representations regarding digital audiobooks and their online stores;
 - c. the 2000 and 2006 agreements between the Defendants for the sale of digital audiobooks, which were disclosed by Defendant Audible Inc. in the BC proceeding; and

- d. news releases from Rakuten Kobo and Google announcing their entry into the market for digital audiobooks in late 2017 and early 2018;
- 8. The proposed modifications are relevant to the assessment of the criteria set out in article 575 CCP for consideration of the authorization of the class action;
- 9. The proposed modifications do not change the nature of the action;
- 10. The proposed modifications are in the best interests of the class members;
- 11. The proposed modifications comply with the principle of proportionality;
- 12. The proposed modifications do not cause any prejudice to the Defendants;
- 13. It is in the interests of justice that the present application be granted;

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present application;

ALLOW the Applicant to modify the allegations of its *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* in accordance with the *Amended Application for Authorization to Institute a Class Action and to Obtain the Status of Representative*, Exhibit P-1 and **ALLOW** it to be produced in the Court record;

THE WHOLE without costs, save in the case of contestation.

Montréal, June 28, 2024

(sgd) Klein Avocats Plaideurs Inc.

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Delangie Cleland Limoges

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Attorneys for the Applicant

AFFIDAVIT

I, the undersigned, Careen Hannouche, lawyer, having my professional domicile at 500, Place d'Armes, suite 1800, in the city and district of Montréal, solemnly declare the following:

1. I am counsel for the applicant for the present *Application for Permission to Amend the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative*;
2. All the facts alleged in the present application are true;

And I have signed:

(sgd) Careen Hannouche

Careen Hannouche

Solemnly declared before me
in Montreal, on this June 28, 2024

(sgd) Emmanuelle Duclos

Emmanuelle Duclos, 213 149
Commissioner for the taking of oaths
in the Province of Québec

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

TO : Me Margaret Weltrowska
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Attorneys for the Defendant Apple, Inc. and Apple Canada Inc.

TAKE NOTICE that the *Application for Permission to Amend the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* will be presented before the honourable Justice Dominique Poulin of the Superior Court, at the Montréal Courthouse, located at 1, Notre-Dame Est, at a date and time to be determined by this honorable judge.

Montréal, June 28, 2024

(sgd) *Klein Avocats Plaideurs Inc.*

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