

C A N A D A

PROVINCE DE QUEBEC
DISTRICT DE MONTREAL

COUR SUPÉRIEURE
(Actions Collectives)

NO: 500-06-001353-255

HO CHUN,

Requérant

c.

INDIGO PARK CANADA INC. / INDIGO PARC
CANADA INC.

Intimées

DEMANDE DE SUSPENSION TEMPORAIRE DE L'ACTION COLLECTIVE
(arts. 18, 49, 577 C.p.c. et art. 3137 C.C.Q.)

À l'HONORABLE JUGE MARTIN SHEEHAN, J.C.S, COORDONATEUR DE LA
CHAMBRE DES ACTIONS COLLECTIVES, LE REQUÉRANT EXPOSE CE QUI SUIT :

I. INTRODUCTION

1. Dans le présent dossier, la Demande d'autorisation d'exercer une action collective et pour obtenir le statut de représentant, déposée au greffe le 10 janvier 2025 dernier (ci-après « **l'Action québécoise** »), vise le groupe proposé suivant et concerne des frais de services additionnels chargés aux clients :

*Tous les consommateurs résidant partout dans le monde, du 10 janvier 2022 à la date d'autorisation du recours collectif, qui ont payé les services de stationnement d'Indigo Park au Canada à l'aide des applications mobiles, des sites Web et/ou des codes QR d'Indigo Park, et qui ont payé des frais de service supplémentaires en plus des tarifs horaires ou quotidiens de stationnement affichés, à l'exception des personnes qui ont utilisé la fonction « Réserver à l'avance » et les « abonnements mensuels ».
ou tout autre groupe déterminé par la Cour;*

2. Préalablement au dépôt de la demande d'autorisation dans le présent dossier, une autre action collective avait déjà été déposée en Colombie-Britannique, tel que plus amplement détaillé ci-après :
3. Pour les raisons qui suivent, le requérant demande la suspension temporaire de l'Action québécoise :

II. LITISPENDANCE

4. Le 9 janvier 2025, le cabinet Evolink Law Group, assisté du soussigné et de Me Jérémie John Martin, représentant M. Ho Chun, ont déposé un *Notice of Civil Claim* devant la Cour suprême de Colombie-Britannique en vertu du *Class Proceedings Act*, R.S.B.C. 1996, c. 50, dossier de Cour S-250188, contre INDIGO PARK CANADA INC. / INDIGO PARC CANADA INC., le tout tel qu'il appert du *Notice of Civil Claim* ci-joint comme **pièce R-1**. Le groupe proposé est défini au paragraphe 14 du *Notice of Civil Claim* et se lit ainsi :

All individuals residing anywhere in the world, from January 9, 2022 to the date of certification of the class action, that paid for Indigo Park's Parking Services in Canada using Indigo Park's Mobile Applications, Websites, and/r QR Codes, and paid an additional service fee on top of the posted hourly or daily parking rates, excluding individuals that used the "Book in advance" feature and "monthly subscriptions." (the "Class" or "Class Member(s)").

5. Le procureur soussigné, également membre du Barreau de la Colombie-Britannique, collabore avec Evolink Law Group dans l'Action de Colombie-Britannique afin de faire avancer le présent litige à portée nationale;
6. En effet, l'Action québécoise et l'Action de Colombie-Britannique soulèvent essentiellement les mêmes questions juridiques et factuelles et incluent les mêmes membres;
7. Les parties cherchent à éviter la possibilité de jugements contradictoires et à assurer une utilisation saine et efficace des ressources judiciaires, tout en protégeant les intérêts des membres proposés du groupe résidant au Québec comme l'exige l'article 577 C.p.c.;
8. Le requérant demande donc la suspension de l'Action québécoise en attendant un jugement définitif sur la certification du recours collectif putatif en Colombie-Britannique, ou plus tôt si nécessaire à la demande du requérant ou si ordonné par la Cour;
9. Pour les raisons exposées ci-dessous, le requérant soutient qu'il est dans l'intérêt de la justice et conforme aux principes de proportionnalité et d'économie judiciaire que les questions qui se chevauchent soulevées dans l'Action québécoise et l'Action de Colombie-Britannique soient tranchées par un seul tribunal, que les parties proposent d'être la Cour suprême de la Colombie-Britannique (les intimées ne s'opposent pas à cette demande);

10. Les parties soumettent qu'il y a litispendance entre l'Action québécoise et l'Action de Colombie-Britannique, car il y a identité des parties, cause et objet;
11. Il existe une identité d'objet car tant l'Action québécoise que l'Action de Colombie-Britannique visent à faire autoriser / certifier un recours collectif. La Cour d'appel du Québec a conclu que l'objet est le «bénéfice juridique immédiat qu'il veut faire reconnaître par le tribunal» (*Hotte c. Servier*, [1999] R.J.Q. 2598 (C.A.));
12. L'Action québécoise et l'Action de Colombie-Britannique reposent toutes les deux sur les mêmes allégations de faits essentielles et font valoir les mêmes causes d'action, à savoir que des frais de services additionnels réclamés et chargés aux clients seraient imputés à l'encontre de dispositions statutaires encadrant l'affichage des prix de biens et services, causant ainsi un préjudice monétaire direct aux clients qui ont acheté ces services;
13. Les causes d'action invoquées dans l'Action de Colombie-Britannique sont pratiquement les mêmes que les causes d'action revendiquées dans l'Action québécoise;
14. Dans les circonstances, les droits des membres putatifs dans l'Action québécoise seront mis de l'avant d'une façon similaire dans l'Action de Colombie-Britannique;
15. Les procureurs du requérant soumettent qu'en ayant recours à une seule procédure, les membres putatifs du Québec bénéficieront d'une économie judiciaire et que leurs procureurs ne consacreront pas de temps et d'argent simultanément dans plus d'une juridiction;
16. Les avocats du groupe dans le cadre de l'Action québécoise maintiendront le site internet bilingue créé pour cette action collective (<https://champlainavocats.com/action-collective/indigo-park/>) afin de tenir les membres du groupe putatifs de l'Action québécoise informés de tous les développements importants dans l'Action de Colombie-Britannique;
17. Les procureurs soussignés s'engagent à fournir à cette Cour une mise à jour du statut de l'Action de Colombie-Britannique sur une base biannuelle et à aviser cette Cour dans les 30 jours de tout développement significatif dans l'Action de Colombie-Britannique qui pourrait affecter le cours de l'Action québécoise;

POUR CES MOTIFS, PLAISE À LA COUR:

ACCORDER la présente Demande;

SUSPENDRE le présent dossier jusqu'à 60 jours suivant un jugement final sur la certification dans le recours collectif putatif déposé le 9 janvier 2025 devant la Cour suprême de la Colombie-Britannique portant le numéro de Cour S-250188, ou plus tôt à la demande du requérant ou si ordonné par la Cour;

PREND ACTE de l'engagement des avocats du groupe de fournir à cette Cour une mise à jour sur le statut de l'Action de Colombie-Britannique sur une base biannuelle et d'aviser la Cour dans les 30 jours de tout développement significatif dans l'Action de Colombie-Britannique qui pourrait affecter le cours de l'Action québécoise;

LE TOUT SANS FRAIS

Montréal, le 21 avril 2025

SERVICES JURIDIQUES SP INC.

SERVICES JURIDIQUES SP INC.

(Me Sébastien A. Paquette)

Avocats du Requérant

C A N A D A

**PROVINCE DE QUEBEC
DISTRICT DE MONTREAL**

**COUR SUPÉRIEURE
(Actions Collectives)**

NO: 500-06-001353-255

HO CHUN,

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c.

**INDIGO PARK CANADA INC. / INDIGO PARC
CANADA INC.**

Intimées

INVENTAIRE DES PIÈCES

PIÈCE R-1: Copie de la *Notice of Civil Claim* de Colombie-Britannique déposée le 9 janvier 2025, portant le numéro de Cour S-250188.

Montréal, le 21 avril 2025

SERVICES JURIDIQUES SP INC.

SERVICES JURIDIQUES SP INC.
(Me Sébastien A. Paquette)
Avocats du Requérant

DÉCLARATION ASSERMENTÉE

Je soussigné, Sébastien A. Paquette, avocat pratiquant au 1440, rue Sainte-Catherine Ouest, Bureau 522, à Montréal (Québec), H3G 1R8, déclare solennellement ce qui suit :

1. Je suis procureur de la partie requérante dans le présent dossier;
2. Tous les éléments contenus à la présente demande en suspension temporaire de l'action collective sont vrais.

Et j'ai signé,



SÉBASTIEN A. PAQUETTE

Assermenté devant moi à Montréal, ce 21^e jour d'avril 2025,



Timothée Martin, avocat

avocat X 329474-9



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HO CHUN

Plaintiff

AND:

INDIGO PARK CANADA INC. / INDIGO PARC CANADA INC.

Defendant

Brought under the *Class Proceedings Act*, RSBC 1996 c. 50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIMS OF THE PLAINTIFF

PART 1: STATEMENT OF FACTS

Overview

1. “Junk fees” added to the price of a product or service are a widespread nuisance in today’s economy. In June 2022, Parliament enacted s. 52(1.3) of the *Competition Act*, RSC 1985, c. C-34 (the “**Competition Act**”) to outlaw the practice of junk fees (i.e., obligatory fees that make a represented price unattainable).
2. This is a class action against Indigo Park’s unlawful practice of charging its customers additional fees at checkout, on top of the posted rates for the parking.
3. In essence, the Plaintiff submits that Indigo Park charged Class Members (defined below) additional service fees in violation of: (a) the *Competition Act*, namely ss. 52, 52(1.3) and/or 54; (b) the consumer protection law in the province where Indigo Park is headquartered, the Québec *Consumer Protection Act* (the “**QCPA**”), arts. 219 and 224(c); and (c) the B.C. *Business Practices and Consumer Protection Act* (the “**BPCPA**”), namely ss. 4-5 and 8-9.
4. The Plaintiff, on behalf of the Class Members, seeks damages (including punitive damages), investigation and legal costs, a restoration order, reduction of obligations, and/or an interim or permanent injunctive relief enjoining Indigo Park from continuing to unlawfully charge users additional service fees.
5. The Plaintiff is not seeking to prevent Indigo Park from operating its business, as it is possible for Indigo Park to operate their business without violating these laws.
6. The Plaintiff will also be filing an action in the province of Québec to preserve the putative class members’ interest arising from potential uncertainty on whether this Court will certify the *QCPA* claims and also whether a filing in a B.C. court would be sufficient to preserve the running of limitations for the *QCPA* claims of the Class.

Indigo Park and its Business Operations in British Columbia and Canada

7. The Defendant, Indigo Park Canada Inc. / Indigo Parc Canada Inc., is a corporation under the laws of the province of Québec, with its headquarters at 1 Place Ville-Marie, Bureau 1130, Montreal, Quebec, H3B 2A7 (hereafter “**Indigo Park**”). Indigo Park has an agent for service at 2400-745 Thurlow Street, Vancouver BC.
8. Indigo Park has a place of business in B.C. at 610-1100 Melville Street, Vancouver B.C., with a business license issued by the City of Vancouver. Indigo Park employs numerous employees in the province of British Columbia including but not limited to its Chief Executive Officer, John Laires.
9. Indigo Park operates numerous parking facilities in B.C. including 32 parking lots in the City of Vancouver for which Indigo Park holds business licenses for. Indigo Park also operates numerous parking facilities in other Canadian jurisdictions.
10. Indigo Park offers its parking services, including the ability to pay for a parking spot on a one-off basis at a parking facility operated by Indigo Park within Canada including B.C. (hereafter the “**Parking Services**”).
11. Indigo Park solicits customers to use its Parking Services in B.C.
12. Indigo Park provides some or all of its Parking Services to customers from Indigo Park’s headquarters in Québec via the following electronic means:
 - a. mobile applications on the Apple and Android platforms that enable users to utilize Indigo Park’s Parking Services (the “**Mobile Application(s)**”);
 - b. Indigo Park’s websites including www.indigoneo.ca and ca.parkindigo.com (the “**Website(s)**”); and
 - c. QR codes physically posted by Indigo Park at Indigo Park’s parking facilities that link to Indigo Park’s Website(s) (the “**QR Code(s)**”).
13. Indigo Park’s Websites are hosted in Québec and/or otherwise controlled from

Indigo Park's headquarters in Québec. Indigo Park's Mobile Applications are operated using computer servers hosted by Indigo Park in Québec and/or otherwise controlled from Indigo Park's headquarters in Québec.

The Composition of the Class

14. This action is brought on behalf of members of a class consisting of:

All individuals residing anywhere in the world, from January 9, 2022 to the date of certification of the class action, that paid for Indigo Park's Parking Services in Canada using Indigo Park's Mobile Applications, Websites, and/or QR Codes, and paid an additional service fee on top of the posted hourly or daily parking rates, excluding individuals that used the "Book in advance" feature and "monthly subscriptions." (the "**Class**" or "**Class Member(s)**").

15. The Class includes a subclass of members that were using Indigo Parks' Parking Services primarily for personal, family, or household purposes (the "**Consumer Subclass**").

16. Indigo Park has electronic records of all the transactions for its Parking Services.

17. It is estimated that the Class consists of tens of thousands of persons.

The Plaintiff's Circumstances

18. The Plaintiff, Ho Chun (aka Ho Wei Chun), resides in B.C., and used Indigo Park's Parking Services primarily for personal, family, or household purposes. The Plaintiff paid for Indigo Park's Parking Services using Indigo Park's QR Codes displayed on site at the parking facility. Upon scanning the QR Code using his mobile device at the parking facility, the Plaintiff was re-directed to Indigo's Website, with that parking facility being already pre-selected.

19. For example, on September 20, 2024, the Plaintiff, primarily for personal, family, or household purposes parked his vehicle at a parking facility managed by Indigo Park (V361 - Rocky Point Park) and paid for Indigo Park's Parking Services using a QR Code physically posted at that parking facility.

20. The parking rate prominently posted by Indigo Park at the aforementioned parking facility was \$0.75 per half hour or \$1.50 per hour. During the payment process however, the following price breakdown was made available to the Plaintiff:

- a. Parking Rate: \$0.75 for thirty minutes
- a. Convenience fee: \$0.40
- b. Transaction fee: \$0.01
- c. Total Charged: \$1.16

21. Indigo Park charged \$1.16 to the Plaintiff's credit card for the Parking Services.

22. As another example, on December 26, 2024, the Plaintiff, primarily for personal, family, or household purposes parked his vehicle at a parking facility managed by Indigo Park (V034 - Canada Place) and paid for Indigo Park's Parking Services using a QR Code physically posted at that parking facility.

23. The parking rate prominently posted by Indigo Park at the aforementioned parking facility was \$4.00 per half hour. During the payment process however, the following price breakdown was made available to the Plaintiff:

- a. Parking Rate: \$16.00 for two hours
- b. Convenience fee: \$0.40
- c. Transaction fee: \$0.16
- d. Total Charged: \$16.56

24. Indigo Park charged \$16.56 to the Plaintiff's credit card for the Parking Services.

Indigo Park's Charging of Additional Fees in Addition to the Parking Rates

25. The Class Members' circumstances are similar or identical to the Plaintiff's circumstances, as described further below.
26. Indigo Park knowingly represented or caused to be represented the hourly and/or daily parking rates for its Parking Services at all of Indigo Park's parking facilities, in the form of prominent physical signs at the parking facilities (the **First Price(s)**”).
27. During the payment process for Indigo Park's Parking Services using the Mobile Applications, Websites, and/or QR Codes, Indigo Park represents a higher price that includes an additional “convenience fee” of around \$0.40 and a “transaction fee” of around 1% of the parking rate (the **Second Price(s)**”).
28. Indigo Park's “convenience fee” and “transaction fee” are not imposed by the government, but Indigo Park made them mandatory as part of each transaction.
29. The First Price includes government taxes such as GST and the B.C. Translink parking tax. The First Price is not attainable due to Indigo Park's additional fees.
30. During the payment process for Indigo Park's Parking Services using the Mobile Applications, Websites, and/or QR Codes, Indigo Park also breaks down the price in a manner substantially as described in paragraphs 20 and 23 above.
31. Upon conclusion of the payment process, all of the Class Members are charged the Second Price, which is always higher than the First Price.
32. The difference between the First Price and Second Price is the additional service fees, which are labelled as “convenience fee” and a “transaction fee” by Indigo Park on its receipts. In all instances, the receipts that Indigo Park issued to the Class Members document the higher Second Price, with the additional fees.
33. When a Class Member pays for parking using Indigo Park's Mobile Applications, Websites, and/or QR Codes, Indigo Park charges the Class Member the Second Price, not the First Price.

34. Indigo Park charging the Plaintiff and the Class Members the Second Price, instead of the First Price, effectively caused the Plaintiff (and the Class Members) to suffer a monetary loss and/or damage equivalent to the amount of the additional fees charged upon conclusion of the payment process the Plaintiff and the Class members went through, namely the “convenience fee” and the “transaction fee” which they were all charged.
35. Moreover, Indigo Park’s charging of the “convenience fee” and the “transaction fee” caused the Class Members to acquire less value in the exchange than they expected to acquire. Specifically, the Class Members expected that they would only need to pay the First Price only.
36. The payment process and the representations are identical for Class Members that used the Parking Services primarily for business purposes, and Class Members that used the Parking Services primarily for non-business purposes.

PART 2: RELIEF SOUGHT

1. The Plaintiff claims, on his own behalf and on behalf of other members of the Class:
 - (a) an Order pursuant to section 4 of the *Class Proceedings Act*, RSBC 1996, ch. 50 (the “**CPA**”), certifying this action as a class proceeding;
 - (b) an Order pursuant to section 8 of the *CPA* appointing the Plaintiff as the representative plaintiff for the Class and appointing Plaintiff’s counsel as Class Counsel;
 - (c) an Order granting relief in respect of the federal *Competition Act*:
 - i. a declaration that the Defendant charged the Class Members a price higher than the lowest of two or more prices clearly expressed by the Defendant to the Class, contrary to section 54 of the *Competition Act*;
 - ii. a declaration that the Defendant engaged in a pricing practice contrary to ss. 52 and/or 52(1.3) of the *Competition Act*;

- iii. damages or loss, pursuant to s. 36 of the *Competition Act*, for the contravention of ss. 52, 52(1.3) and/or 54 of the *Competition Act*;
 - iv. costs of investigation and prosecution of this proceeding pursuant to s. 36 of the *Competition Act*;
- (d) an Order granting relief in respect of the *QCPA* (i.e., the Québec *Consumer Protection Act*):
 - i. a declaration that the Defendant has engaged in a pricing practice contrary to arts. 219 and 224(c) of the *QCPA*;
 - ii. relief under art. 272 of the *QCPA* including compensatory damages, moral damages, punitive damages, reduction of obligations and/or that any agreement to pay the “convenience fee” and/or the “transaction fee” be annulled or set aside;
- (e) an Order granting relief in respect of the *BPCPA* (i.e., the British Columbia *Business Practices and Consumer Protection Act*):
 - i. a declaration that the Defendant has engaged in a pricing practice that constitutes a deceptive act or practice, contrary to ss. 4-5 of the *BPCPA*;
 - ii. a declaration that the Defendant has engaged in a pricing practice that constitutes an unconscionable act or practice, contrary to ss. 8-9 of the *BPCPA*;
 - iii. damages under s. 171 of the *BPCPA*, including punitive damages;
 - iv. orders under s. 172 of the *BPCPA* for an interim, interlocutory, and/or permanent injunction; restoration of moneys acquired; and/or advertisement to the public of the particulars of the Court’s judgment;
- (f) an Order pursuant to section 29 of the *CPA* for the aggregate assessment

of monetary relief and its distribution to the Plaintiff and the Class;

- (g) if any individual issues remain, an Order pursuant to ss. 27 and 28 of the *CPA* for individual assessment of monetary awards to members of the Class and the appointment of a special referee for assessing each individual case using simplified modes of proof as directed by the Court; and
- (h) pre-judgment and post-judgment interest; and
- (i) such further and other relief as this Honourable Court deems just.

PART 3: LEGAL BASIS

1. The Plaintiff pleads and relies upon the following laws:
 - a. the *Class Proceedings Act*, RSBC 1996, ch. 50 (the “**CPA**”);
 - b. the federal *Competition Act*, RSC 1985, c. C-34 (the “**Competition Act**”);
 - c. the Québec *Consumer Protection Act*, chapter P-40.1 (the “**QCPA**”);
 - d. the British Columbia *Business Practices and Consumer Protection Act*, SBC 2004, ch. 2 (the “**BPCPA**”); and
 - e. the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, ch. 28 (the “**CJPTA**”).

The Court’s Jurisdiction over this Class Proceeding and the Class

2. Indigo Park is ordinarily resident in British Columbia, with a place of business in British Columbia, its Chief Executive Officer being based in British Columbia, and having nominated an agent for service of process in British Columbia.

CJPTA, s. 3(d) and 7(b)(ii), (c), and (d).

3. The Class Members, whether resident in B.C. or not and whether they used Indigo Park’s Parking Services in B.C. or in the rest of Canada, share the same common issues in relation to the *Competition Act*, *QCPA*, and/or the *BPCPA*.

Sanis Health Inc. v. British Columbia, 2024 SCC 40 at para. 90.

Indigo Park’s Contraventions of the *Competition Act*

Contravention of Section 54 of the *Competition Act*

4. With its current setup as detailed at paras. 25-36, Indigo Park supplied, or offered to supply, the Parking Services at a price that exceeds the lowest of two clearly expressed prices at the time which the product is so supplied, in contravention of section 54 of the *Competition Act*.

5. The Plaintiff and all Class Members were entitled to pay to Indigo Park only the First Price for its Parking Services, in accordance with s. 54 of the *Competition Act*.
6. The Plaintiff and all Class Members, having factually paid the Second Price for the Parking Services, effectively suffered loss and/or damage equivalent to the monetary difference between the Second Price and First Price.
7. The Plaintiff submits that he, and the Class, have suffered damage or loss as a result of the Defendant's impugned conduct which breaches section 54 of the *Competition Act*, and as a result of said breaching conduct seeks to recover pursuant to section 36 of the *Competition Act*, specifically:
 - a. monetary amounts equivalent to the "convenience fee" and the "transaction fee" unlawfully charged by Indigo Park to the Plaintiff and each of the Class Members (namely the monetary difference between the Second Price and First Price); and
 - b. the costs of investigation and prosecuting this class action.

Contravention of Sections 52 and/or 52(1.3) of the Competition Act

8. With its current setup as detailed at paras. 25-36, Indigo Park knowingly made or caused to be made a representation of price for its Parking Services which was not attainable due to the "convenience fee" and the "transaction fee", therefore engaging in false or misleading representation in contravention of ss. 52 and/or 52(1.3) of the *Competition Act*;
9. Indigo Park was only entitled to charge the First Price (i.e., the parking rate strictly, without a "convenience fee" and a "transaction fee"), and the Plaintiff and all Class Members were entitled to pay the First Price only.
10. If Indigo Park had complied with ss. 52 and/or 52(1.3) of the *Competition Act*, the Class Members would have indeed paid the First Price.
11. It follows that the Class Members, having been obliged to pay the "convenience

fee” and the “transaction fee” when they were entitled to pay the First Price without these fees, suffered loss and/or damage equivalent to these additional fees.

12. Further or alternatively, Indigo Park’s false or misleading representations caused in effect the Class Members to acquire less value in the exchange than they expected to acquire. Specifically, the Class Members expected that they would only need to pay the First Price.
13. The Plaintiff submits that he, and the Class, have suffered damages or loss as a result of Indigo Park’s impugned conduct which breaches ss. 52 and/or 52(1.3) of the *Competition Act*, and as a result of said breaching conduct seeks to recover pursuant to section 36 of the *Competition Act*, specifically:
 - a. monetary equivalent to some or all of the “convenience fee” and the “transaction fee” unlawfully charged by Indigo Park, or caused to be charged by Indigo Park, to the Plaintiff and the Class Members; and
 - b. the costs of investigation and prosecuting this action.

Indigo Park’s Contravention of the QCPA (Québec Consumer Protection Act)

14. Indigo Park is incorporated in and physically headquartered in Québec and its Parking Services are also provided from its headquarters in Québec. The consumer protection laws of Québec would apply to Indigo Park, as a merchant based in Québec and the QCPA’s protection would extend to consumers physically situated outside of Québec.

Sharp v. Autorité des marchés financiers, 2023 SCC 29

Ware v Airbnb, Inc., 2024 BCSC 2240 at para. 186

15. Members of the Consumer Subclass utilized Indigo Park’s Parking Services for non-business purposes and are “consumers” under the QCPA.

Contravention of Article 219 of the QCPA

16. Article 219 of the QCPA provides that:

219. No merchant, manufacturer or advertiser may, by any means whatever, make false or misleading representations to a consumer.

17. Indigo Park's representation of the First Price, as detailed in paragraph 26 of Part 1 above, constitutes a false or misleading representation to a consumer as that price representation was not attainable.

18. Further, or in the alternative, Indigo Park's representations as detailed in paragraph 30 of Part 1 above, constitutes a false or misleading representation to a consumer as that price representation was not attainable.

Contravention of Article 224(c) of the QCPA

19. Article 224(c) of the QCPA provides that:

224. No merchant, manufacturer or advertiser may, by any means whatever,

...

(c) charge, for goods or services, a higher price than that advertised.

...

For the purposes of subparagraph c of the first paragraph, the price advertised must include the total amount the consumer must pay for the goods or services. However, the price advertised need not include the Québec sales tax or the Goods and Services Tax. More emphasis must be put on the price advertised than on the amounts of which the price is made up.

20. Indigo Park advertised the lower price without the "convenience fee" and the

“transaction fee”, and then charged the higher price with the “convenience fee” and the “transaction fee,” contrary to article 224(c) of the QCPA.

21. The “convenience fee” and the “transaction fee” were not government taxes.

Relief for the Class Members under Article 272 CPA

22. Article 272 of the QCPA entitles the consumer to relief for breaches of the QCPA:

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;

(d) that the contract be rescinded;

(e) that the contract be set aside; or

(f) that the contract be annulled,

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

23. The practice of representing or advertising an incomplete First Price for its Parking Services the way it did and then charging a higher “Second Price” demonstrates carelessness, serious negligence and recklessness from Indigo Park regarding its legal obligations and the rights of the Plaintiff and of the Class Members under the QCPA, justifying this Court to order Indigo Park to pay punitive damages.

24. A merchant's failure to fulfil an obligation under the *QCPA* gives rise to an absolute presumption of prejudice in favour of the consumer, and entitles the consumer to seek one of the remedies under art. 272 of the *QCPA*.

Richard v. Time Inc., 2012 SCC 8.

Indigo Park's Contravention of the British Columbia *BPCPA*

25. Indigo Park is a "supplier" based in British Columbia within the meaning of the *BPCPA*, considering Indigo Park is considered to be ordinarily resident in B.C.

26. All members of the Consumer Subclass are "consumers" within the meaning of the *BPCPA*, irrespective of whether the Class Members are resident in B.C. or not.

27. Alternatively, members of the Consumer Subclass that used Indigo Park's Parking Services relating to a parking facility physically situated in British Columbia are "consumers" within the meaning of the *BPCPA*.

28. The transactions for the Indigo Park's Parking Services are "consumer transactions" within the meaning of the *BPCPA*.

29. By the conduct set out above including, in particular, charging of a higher price in contravention of ss. 52, 52(1.3) and/or 54 of the *Competition Act*, Indigo Park's actions are also "deceptive acts or practices" or "unconscionable acts or practices", contrary to ss. 4-5 and 8-9 of the *BPCPA*.

30. Indigo Park knew or ought to have known that displaying two different prices, and charging the higher price, is a "deceptive act or practice" or "unconscionable act or practice" under the *BPCPA*.

31. Further, or in the alternative, per the *BPCPA*, s. 8(3)(e), in imposing the Second Price when the Class Members were entitled to be charged the lower First Price, Indigo Park has subjected those Class Members to terms and conditions that were so harsh or adverse so as to be inequitable.

32. As a result of the breaches of the *BPCPA*, and in particular s. 8, the transactions between Indigo Park and the Class Members are not binding on those Class Members pursuant to *BPCPA*, s. 10.

33. The Class Members have an interest in the funds received by Indigo Park, in particular the “convenience fee” and the “transaction fee” collected. Those funds were obtained in breach of ss. 4-5 and 8-9 of the *BPCPA*, and which are also not binding on the consumer per s. 10(1) of the *BC BPCPA*. The Class Members would have a right to make a claim for damages under s. 171 of the *BPCPA*.

34. As a result of Indigo Park’s breach of the *BPCPA*, the Class Members are entitled to a declaration under s. 172(1)(a) of the *BPCPA*, an injunction under s. 172(2) of the *BPCPA*, and/or a restoration order under s. 172(3)(a) of the *BPCPA*.

Plaintiff’s address for service:

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Email address for service: service@evolinklaw.com

Place of trial: Vancouver, British Columbia

The address of the registry is: Vancouver Law Courts
800 Smithe Street
Vancouver, British Columbia V6Z 2E1

Dated: January 9, 2025



Signature of counsel for the Plaintiff

SIMON LIN

SEBASTIEN PAQUETTE

JEREMIE JOHN MARTIN

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

- (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

**Form 11 - ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR
SERVICE OUTSIDE BRITISH COLUMBIA**

The Plaintiff claims the right to serve this pleading on Indigo Park outside British Columbia on the grounds that this action concerns:

section 10(e)(i): “contractual obligations, to a substantial extent, were to be performed in British Columbia” in relation to parking facilities physically situated in British Columbia

section 10(e)(iii): “purchase of services for use other than in the course of the purchaser’s trade or profession as a result of solicitations in British Columbia” in relation to parking facilities physically situated in British Columbia

section 10(f): “restitutionary obligations that, to a substantial extent, arose in British Columbia”

section 10(g): “a tort committed in British Columbia”

section 10(h): “a business carried on in British Columbia”

section 10(i): “a claim for an injunction ordering a party to refrain from doing anything in British Columbia”

of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28.

APPENDIX

Part 1: Concise summary of nature of claim: consumer protection class action against Indigo Park for drip pricing

Part 2: This claim arises from the following:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☒ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☐ a matter not listed here

Part 3:

- ☒ a class action
- ☐ maritime law
- ☐ Aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

Part 4:

Competition Act, RSC 1985, c. C-34

Business Practices and Consumer Protection Act, SBC 2004, ch. 2

Class Proceedings Act, RSBC 1996, ch. 50

Nº 500-06-001353-255

COUR SUPÉRIEURE
(Actions collectives)
DISTRICT DE MONTREAL

HO CHUN,

Requérant

c.

**INDIGO PARK CANADA INC. / INDIGO
PARC CANADA INC.**

Intimées

**DEMANDE DE SUSPENSION TEMPORAIRE
DE L'ACTION COLLECTIVE; PIÈCE R-1**
(arts. 18, 49, 577 C.p.C. et art. 3137 C.C.Q.)

ORIGINAL

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