

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000526-109

(Class Action)
SUPERIOR COURT

A. SNYDER

and

A. WINKLER

Petitioners

-vs.-

MATTEL CANADA INC., legal person duly incorporated, having its head office at 6155 Freemont Boulevard, City of Mississauga, Province of Ontario, L5R 3W2

and

MATTEL, INC., legal person duly incorporated, having its head office at 333 Continental Boulevard, City of El Segundo, State of California, 90245-5012, USA

and

FISHER-PRICE CANADA INC., legal person duly incorporated, having its head office at 6155 Freemont Boulevard, City of Mississauga, Province of Ontario, L5R 3W2

and

FISHER-PRICE INC., legal person duly incorporated, having its head office at 636 Girard Avenue, City of East Aurora, State of New York, 14052, USA

Respondents

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
&
TO ASCRIBE THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following)**

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT,
SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONERS
STATE AS FOLLOWS:

I. GENERAL PRESENTATION

A) The Action

1. Petitioners wish to institute a class action on behalf of the following group, of which they are members, namely:

- all residents in Canada:
 - i) who purchased and/or otherwise acquired a Trike, Rampway, Infant Toy with an Inflatable Ball, and/or High Chair which were subject to a recall on September 29th and 30th 2010 (the “Recalled Child Products”)

 - and/or

 - ii) who are the parents and/or legal guardians of minor children that have used and/or been injured by a Trike, Rampway, Infant Toy with an Inflatable Ball, and/or High Chair which were subject to a recall on September 29th and 30th 2010 (the “Recalled Child Products”),

or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec:
 - i) who purchased and/or otherwise acquired a Trike, Rampway, Infant Toy with an Inflatable Ball, and/or High Chair which were subject to a recall on September 29th and 30th 2010 (the “Recalled Child Products”)

 - and/or



ii) who are the parents and/or legal guardians of minor children that have used and/or been injured by a Trike, Rampway, Infant Toy with an Inflatable Ball, and/or High Chair which were subject to a recall on September 29th and 30th 2010 (the “Recalled Child Products”),

or any other group to be determined by the Court;

2. Included in the Class Definition, as described above, are the following Recalled Child Products:

a) “Trikes” - sold since January 1997

- 72633 Hot Wheels Trike
- 72639 Barbie™ Butterfly Trike
- 72642 Lil' Kawasaki® Trike
- 72643 Tough Trike
- 72644 Tough Trike
- 72792 Kawasaki Trike
- B8775 Kawasaki® Ninja® Tough Trike
- B8776 Barbie™ Tough Trike
- K6672 Nick Jr./Dora the Explorer Tough Trike
- K6673 Go, Diego, Go! Tough Trike
- M5727 Barbie™ Tough Trike Princess Ride-On
- N6021 Kawasaki Tough Trike
- T6209 Thomas & Friends™ Tough Trike
- V4270 Go, Diego, Go!™ Kid-Tough™ Trike

b) “Rampways” - sold since April 2010

- T4261 Little People® Wheelies™ Stand 'n Play™ Rampway
- V6378 Little People® Wheelies™ Stand 'n Play™ Rampway Gift Set

c) “Infant Toys with Inflatable Balls” - sold since as early as July 2001

- 73408 Baby Playzone™ Crawl & Cruise Playground™
- B2408 Baby Playzone™ Crawl & Slide Arcade™
- C3068 Ocean Wonders™ Kick & Crawl™ Aquarium
- H5704 Baby Gymtastics™ Play Wall
- H8094 Ocean Wonders™ Kick & Crawl™ Aquarium
- J0327 1-2-3 Tetherball
- K0476 Bat & Score Goal™

d) "High Chairs" - sold since September 2001

- 79638 Healthy Care™ High Chair
 - 79639 Healthy Care™ High Chair
 - 79640 Healthy Care™ High Chair
 - 79641 Healthy Care™ High Chair
 - B0326 Deluxe Healthy Care™ High Chair
 - B2105 Deluxe Healthy Care™ High Chair
 - B2875 Healthy Care™ High Chair
 - C4630 Healthy Care™ High Chair
 - C4632 Link-a-doos™ Deluxe Plus Healthy Care™ High Chair
 - C5936 Healthy Care™ High Chair
 - G4406 Healthy Care™ High Chair
 - G8659 Aquarium Healthy Care High Chair™
 - H0796 Deluxe Healthy Care™ High Chair
 - H1152 Healthy Care™ High Chair
 - H4864 Aquarium Healthy Care™ High Chair
 - H7241 Healthy Care™ High Chair
 - H8906 Close to Me™ High Chair
 - H9178 Easy Clean™ High Chair
 - J4011 Easy Clean™ High Chair
 - J6292 Easy Clean™ High Chair
 - J8229 Easy Clean™ High Chair
 - K2927 Rainforest™ Healthy Care™ High Chair
 - L1912 Healthy Care™ High Chair
3. Petitioners contend that the Respondents designed, manufactured, distributed, and sold the Recalled Child Products with inherent hidden defects with rendered these products unsafe;
 4. By reason of these actions and omissions, the Petitioners and the members of the class have suffered damages which they wish to claim;

B) The Respondents

5. Respondent Mattel, Inc. is an American Company and is the parent company of all of the other Respondents;
6. Respondent Fisher-Price Inc. is an American Company involved in designing, manufacturing, marketing, and distributing various children's toys and other products destined to be used by children;
7. Respondent Mattel Canada Inc. and Fisher-Price Canada Inc. are affiliates of the other Respondents and carry on business on their behalves throughout Canada, including the Province of Quebec;



8. Given the close ties between the Respondents and considering the preceding, all Respondents are solidarily liable for the acts and omissions of the other. Unless the context indicates otherwise, all Respondents will be referred to as either “Mattel” or “Fisher-Price” for the purposes hereof;

C) The Situation

9. On September 29th and 30th 2010, the U.S. Consumer Product Safety Commission and Health Canada, in cooperation with the Respondents, announced a voluntary recall of the Recalled Child Products, the whole as appears more fully from a copy of said recall notices, produced herein as:
- a) Trikes - **Exhibit R-1a**
 - b) Rampways - **Exhibit R-1b**
 - c) Infant Toys with Inflatable Balls - **Exhibit R-1c**
 - d) High Chairs - **Exhibit R-1d**;
10. The sales figures of the Recalled Child Products in Canada have been estimated at approximately:
- a) Trikes - 150,000 units at a sale price of around 25\$
 - b) Rampways - 20,000 units at a sale price of around 45\$
 - c) Infant Toys with Inflatable Balls - 125,000 units at a sale price ranging from around 20\$ to 68\$
 - d) High Chairs - 125,000 units at a sale price ranging from around 70\$ to 115\$;
11. While the risks and causes of injuries vary between the various Recalled Child Products, they include: cuts, bruises, bleeding, broken teeth, and choking - due to protruding objects (i.e. pegs, keys, wheels, and valves);
12. There have been numerous cases of injuries occurring to children in Canada and the United States caused by the Recalled Child Products;
13. It is also safe to say that many injuries which were not serious have gone unreported since they were: (1) not severe enough to require medical intervention, and (2) not known to be caused by a safety defect in the product itself;

14. Even for those children that have not yet been injured, continued use would cause them to be at a higher than normal risk of suffering bodily damages caused by the Recalled Child Products;
15. As of currently, and assuming that a parent has heard about the recall, the Respondents remedy has been to immediately stop using these Recalled Child Products and contact them to get a free repair kit;
16. In other words, it is the responsibility of the parents to inform themselves about the products that they bought and to verify if they have one of the Recalled Child Products, stop using them, contact the Respondents, and wait for a repair kit that will hopefully make their products safe (which they thought were safe when they purchased them);
17. The Respondents have not offered class members:
 - a) Compensation or a temporary replacement of the Recalled Child Products during the time between when they are required to stop using the products and when they ultimately receive their repair kits;
 - b) Compensation for the lost value of their Recalled Child Products due to the general loss of confidence that the public will undoubtedly have respecting these products;
 - c) A refund of the purchase price of their Recalled Child Products if parents decide that they no longer trust the safety of these products and instead wish to return or throw these products out;
 - d) Compensation for any bodily injuries that any children may have suffered now that parents have become aware that such bodily damages were actually due to a safety defect in these products
18. The Respondents either knew or should have known about these safety defects prior to placing the Recalled Child Products onto the marketplace;
19. The Respondents either knew or should have known about these safety defects prior to September 29th and 30th 2010 (the date of the recall) and should have acted sooner so as to prevent injury;

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONERS

Petitioner Synder

20. On January 6th 2009, Petitioner's son was born;
21. Petitioner's parents live in Saint-Sauveur and since they have numerous grandchildren, they purchased some years ago a Fisher-Price Easy Clean High Chair, model number H9178;
22. Petitioner goes up to see his parents often and his son uses this high chair when he eats;
23. On or about September 19th 2010, Petitioner's son tripped, fell, and hit his nose on the pegs behind the high chair;
24. Petitioner's son suffered cuts on his face and a nose bleed which kept him home from daycare for an entire week;
25. Petitioner did not take his son to see a physician, as it did not seem like anything was broken;
26. Petitioner was not aware that these pegs on the high chair were a safety defect and did not even think of reporting the incident to Health Canada;
27. Petitioner has since read the recall notices and is now informed on the subject and believes that it is exactly this safety defect that has caused his son bodily injury, which he wishes to claim;
28. Petitioner's son's damages are a direct and proximate result of the Respondents' conduct;
29. In consequence of the foregoing, Petitioner is justified in claiming damages in his capacity as the parent of his minor child;

Petitioner Winkler

30. On May 18th 2007, Petitioner's daughter was born;
31. On or about June 2009, Petitioner purchased a Dora the Explorer Tough Trike, model number K6672 at a garage sale for 30\$;
32. On or about sometime in May 2010, Petitioner's daughter cut her left thigh when she was getting on her Trike and started bleeding;

33. Petitioner did not take his daughter to see a physician, as it did not seem like anything was too serious;
34. Petitioner was not aware that the protruding key on the Trike was a safety defect and did not even think of reporting the incident to Health Canada;
35. Petitioner has since read the recall notices and is now informed on the subject and believes that it is exactly this safety defect that has caused his daughter bodily injury, which he wishes to claim;
36. Petitioner's daughter's damages are a direct and proximate result of the Respondents' conduct;
37. In consequence of the foregoing, Petitioner is justified in claiming damages in his capacity as the parent of his minor child;

III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

38. Every member of the class has purchased or otherwise acquired Recalled Child Products and/or are the parents and/or legal guardians of minor children that have used and/or been injured by the Recalled Child Products;
39. Each member of the class is justified in claiming at least one or more of the following as damages:
 - a) Loss of use and enjoyment of the Recalled Child Products;
 - b) Loss of value of the Recalled Child Products;
 - c) Refund of the purchase price of the Recalled Child Products;
 - d) Trouble, inconvenience, and loss of time having to deal with the problem;
 - e) Bodily injuries suffered and caused by the Recalled Child Products;
 - f) Punitive and/or exemplary damages;
40. All of these damages to the class members are a direct and proximate result of the Respondents' conduct;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical

41. Respondents have been selling the Recalled Child Products since as early as 1997. Petitioner estimates that in Canada approximately 420,000 units have been sold. In Quebec that would mean roughly 105,000 units (i.e. 25% of Canada);
42. Class members are numerous and are scattered across the entire province and country;
43. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of Respondents would increase delay and expense to all parties and to the court system;
44. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgements on questions of fact and law that are similar or related to all members of the class;
45. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the class to obtain mandates and to join them in one action;
46. 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;

B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondents and that which the Petitioners wish to have adjudicated upon by this class action

47. Individual questions, if any, pale by comparison to the numerous common questions that predominate;
48. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;

49. The recourses of the members raise identical, similar or related questions of fact or law, namely:

- a) Do the Recalled Child Products have a hidden defect?
- b) Are the Recalled Child Products unsafe?
- c) Did the Respondents fail to perform adequate testing on the Recalled Child Products prior to releasing them?
- d) Did the Respondents know or should they have known that the Recalled Child Products are unsafe and/or defective?
- e) Did the Respondents fail to adequately disclose to consumers that the Recalled Child Products were unsafe and/or defective or did the Respondents do so in a timely manner?
- f) Are the Respondents responsible for all related costs (including, but not limited to, loss of value, lost time, trouble and inconvenience, loss of use and enjoyment, refund of purchase price, bodily injury) to class members as a result of the problems associated with the Recalled Child Products?
- g) Are the Respondents responsible to pay compensatory, moral, punitive and/or exemplary damages to class members and in what amount?

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

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

51. The action that the Petitioners wish to institute on behalf of the members of the class is an action in damages;

52. The conclusions that the Petitioners wish to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioners and each of the members of the class;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioners and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants 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 to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

A) The Petitioners request that they be attributed the status of representative of the Class

53. Petitioners are members of the class;

54. Petitioners are ready and available to manage and direct the present action in the interest of the members of the class that they wish to represent and are determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec and the *Fonds d'aide aux recours collectifs*, as the case may be, and to collaborate with their attorneys;

55. Petitioners have the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;

56. Petitioners have given the mandate to their attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

57. Petitioners, with the assistance of their attorneys, are ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;

58. Petitioners are in good faith and have instituted this action for the sole goal

of having their rights, as well as the rights of other class members, recognized and protecting so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;

59. Petitioners understand the nature of the action;

60. Petitioners' interests are not antagonistic to those of other members of the class;

B) The Petitioners suggests that this class action be exercised before the Superior Court of justice in the district of Montreal

61. A great number of the members of the class reside in the judicial district of Montreal and in the appeal district of Montreal;

62. Many, if not most, of the Recalled Child Products sold in Quebec were in the judicial district of Montreal;

63. The Petitioners' attorneys practice their profession in the judicial district of Montreal;

64. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Petitioners the status of representative of the persons included in the class herein described as:

- all residents in Canada:
 - i) who purchased and/or otherwise acquired a Trike, Rampway, Infant Toy with an Inflatable Ball, and/or High Chair which were subject to a recall on September 29th and 30th 2010 (the "Recalled Child Products")
 - and/or
 - ii) who are the parents and/or legal guardians of their minor children that have used and/or been injured by a Trike, Rampway, Infant

Toy with an Inflatable Ball, and/or High Chair which were subject to a recall on September 29th and 30th 2010 (the “Recalled Child Products”),

or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec:
 - i) who purchased and/or otherwise acquired a Trike, Rampway, Infant Toy with an Inflatable Ball, and/or High Chair which were subject to a recall on September 29th and 30th 2010 (the “Recalled Child Products”)

and/or

- ii) who are the parents and/or legal guardians of their minor children that have used and/or been injured by a Trike, Rampway, Infant Toy with an Inflatable Ball, and/or High Chair which were subject to a recall on September 29th and 30th 2010 (the “Recalled Child Products”),

or any other group to be determined by the Court;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Do the Recalled Child Products have a hidden defect?
- b) Are the Recalled Child Products unsafe?
- c) Did the Respondents fail to perform adequate testing on the Recalled Child Products prior to releasing them?
- d) Did the Respondents know or should they have known that the Recalled Child Products are unsafe and/or defective?
- e) Did the Respondents fail to adequately disclose to consumers that the Recalled Child Products were unsafe and/or defective or did the Respondents do so in a timely manner?
- f) Are the Respondents responsible for all related costs (including, but not limited to, loss of value, lost time, trouble and inconvenience, loss of use and enjoyment, refund of purchase price, bodily injury) to class members as a result of the problems associated with the Recalled Child Products?

- g) Are the Respondents responsible to pay compensatory, moral, punitive and/or exemplary damages to class members and in what amount?

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

GRANT the class action of the Petitioners and each of the members of the class;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioners and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants 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 to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

DECLARE that all members of the class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

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;

ORDER the publication of a notice to the members of the group in accordance with article 1006 C.C.P. within sixty (60) days from the judgement to be rendered herein in LA PRESSE and the NATIONAL POST;

ORDER that said notice be available on the Respondents website with a link stating “Notice to Recalled Child Products owners and users”;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

THE WHOLE with costs including publications fees.

Montreal, October 4, 2010

(s) Jeff Orenstein

CONSUMER LAW GROUP INC.
Per: Me Jeff Orenstein
Attorneys for the Petitioners