

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Actions)

NO.: 500-06-001326-244

ELIJAH AMAR

Applicant

v.

THE UPPER DECK COMPANY
and
PANINI AMERICA, INC.
and
THE TOPPS COMPANY, INC.

Respondents

APPLICATION OF THE RESPONDENT THE TOPPS COMPANY, INC. FOR LEAVE
TO ADDUCE EVIDENCE AT AUTHORIZATION AND TO EXAMINE THE APPLICANT
(Article 574(3) CCP)

TO THE HONOURABLE JUSTICE SHAUN E. FINN, J.S.C., ACTING AS
DESIGNATED JUDGE IN THIS CASE, RESPONDENT THE TOPPS COMPANY, INC.
RESPECTFULLY SUBMITS THE FOLLOWING:

I. **INTRODUCTION**

1. Respondent The Topps Company, Inc. ("**Topps**") seeks leave to adduce relevant evidence at authorization in order to establish the facts that are necessary to enable this Court to undertake an informed analysis of whether the criteria set out in article 575 of the *Code of Civil Procedure* (the "**CCP**") are satisfied.

II. **THE PROPOSED CLASS ACTION**

2. On or about August 9, 2024, the Applicant filed an *Application to authorize a class action*, which was subsequently modified on February 13, 2025 (the "**Authorization Application**") on behalf of the following class (the "**Class**") in connection with the allegedly misleading wording on the packaging of the products sold by the Respondents:

All persons in Quebec and Canada who purchased any sports cards from Upper Deck, Panini or Topps containing the term "memorabilia", "relic" or "game-worn" on the packaging;

as appears from the Court record.

3. Topps manufactures and sells collectible trading cards, primarily for sports and entertainment.
4. The Applicant alleges that the Respondents use the words “memorabilia” or “relic” on their products’ packaging in a misleading manner, falsely implying that the trading cards inside contain game-worn sports memorabilia.
5. The legal syllogism proposed by the Applicant in support of this theory is essentially the following:
 - (a) That it is “obvious” that the Respondents consider trading cards that contain patches of game-worn jerseys as pieces of “memorabilia” (Authorization Application, para 11);
 - (b) Therefore, “in the consumers mind” there is a direct link between “game worn jersey cards” and “memorabilia” (Authorization Application, para 13);
 - (c) The term “memorabilia” must be understood as exclusively including items that are “related to a specific subject or event (such as being worn during a professional sporting game)” (Authorization Application, para 28);
 - (d) The Respondents use the terms “relic” and “memorabilia” interchangeably (Authorization Application, paras 19.1 and 40.1);
 - (e) Therefore, it is misleading to use the term “relic” or “memorabilia” on product packaging where the trading cards contained therein do not contain game-worn jersey patches (Authorization Application, paras 36 and 37).
6. According to Applicant, this practice allegedly misleads consumers and inflates the value and price of the cards sold, thereby violating:
 - (a) Sections 219, 228 and 239(a) of the *Consumer Protection Act*;
 - (b) Section 52 of the *Competition Act*;
 - (c) The obligation of good faith provided for under the *Civil Code of Québec*.
7. As a result, the Applicant seeks **(i)** the issuance of an injunction ordering the Respondents to modify their advertising and to cease the allegedly prohibited business practice; **(ii)** compensatory damages in the amounts overcharged by the Respondents for the patch cards, to be quantified on the merits; and **(iii)** punitive damages of \$300 per member.

III. APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE PRIOR TO THE AUTHORIZATION HEARING

8. Topps hereby requests leave to depose the Applicant and to adduce additional evidence of its own at the authorization hearing, evidence which is essential and indispensable to the Court's analysis of whether the criteria of articles 575(2) and (4) CCP are met in the present matter.
9. In particular, the allegations of the Authorization Application overlook the particular context in which they arise, namely the sports cards industry and its functioning, which is essential to understanding the manner in which Topps' markets its products.
10. In addition, the Applicant's claim is premised on false and inaccurate allegations regarding the types of cards sold by Topps, including relic cards. It also misrepresents the manner in which Topps uses the terms "game-worn", "game-used", "race-worn" or "player-worn" in association with relic cards.
11. To ensure that this Court has all the relevant and accurate evidence necessary to properly evaluate the claim underpinning the Applicant's allegations, Topps thus requests leave to file the sworn statement of Steven Judd, Exhibit R-1, as well as its supporting Exhibits SJ-1 and SJ-2 (the "**Evidence**"), in order to dispel the false and inaccurate assumptions underpinning the allegations of the Authorization Application.
12. More precisely, Mr. Judd's sworn statement (R-1) establishes:
 - (a) The functioning of the trading cards industry, and more specifically the element of chance inherent to collecting sports cards;
 - (b) The manner in which the words "relic" and "memorabilia" are used by Topps on its packaging and the meaning of these terms; and
 - (c) The factors impacting the value of a card, and more specifically the fact that whether or not a card contains a "game-worn", "game-used", "race-worn" or "player-worn" relic is not dispositive of its value.
13. The Evidence serves to complete and correct the facts alleged in the Authorization Application and thus provide the Court with the true and complete factual matrix regarding the allegations advanced by the Applicant.
14. In addition, the Evidence is both useful and necessary to highlight the significant flaws in the legal syllogism advanced by the Applicant concerning the use of the

terms “memorabilia” and “relic”, which is based on an inherently subjective interpretation that mischaracterizes how these terms are actually used by Topps.

15. The Evidence, which is neutral, objective and uncontroversial, is limited to only that which is essential and indispensable to assessing the criteria of article 575 CCP. Accordingly, it meets the requirements of the rule of proportionality set out in articles 18 and 19 CCP.

IV. LEAVE TO EXAMINE THE APPLICANT

14. The Applicant has filed, as Exhibit P-10, various receipts purportedly evidencing purchases of trading cards. With the exception of the receipt found at page 1 of P-10, it is not possible to ascertain from these receipts the specific items purchased or to determine whether any of the items are Topps products.
15. Furthermore, the information on the receipts included in P-10 does not indicate whether the packaging of any of the items purchased by the Applicant contained the terms “relic” or “memorabilia”, nor do they specify whether such terms (if used) were qualified as being “game-worn” or “player-worn”.
16. Establishing whether the products purchased by the Applicant contained these representations is both essential and indispensable to the Court’s analysis of the Applicant’s personal cause of action under article 575(2) CCP as the Applicant alleges that it was specifically the Respondents’ use of the word “memorabilia” on their packaging that drew him to purchase the sports cards (Authorization Application, para 8).
17. Accordingly, Topps seeks leave to examine the Applicant on whether he has ever purchased any Topps cards bearing the terms “relic” or “memorabilia”, the price paid for such cards as well as the nature of the representations made on the cards that he purchased.
18. The answers provided by the Applicant will directly assist the Court in its assessment of Petitioner’s personal recourse under article 575(2) CCP as well as the Court’s evaluation of the Applicant’s ability to represent the Class under article 575(4) CCP.
19. Topps proposes that the examination take place prior to the authorization hearing for a duration of thirty (30) minutes.
20. The present application is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application;

AUTHORIZE the Respondent The Topps Company, Inc. to file into evidence the sworn statement of Steven Judd, Exhibit R-1, as well as its supporting Exhibits SJ-1 and SJ-2;

AUTHORIZE the Respondent The Topps Company, Inc. to depose the Applicant Elijah Amar, prior to the authorization hearing, on the topics identified in paragraph 17 for a duration of thirty (30) minutes;

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

Montréal, June 27, 2025

Dentons Canada LLP

DENTONS CANADA LLP

Lawyers for the Respondent THE TOPPS
COMPANY, INC.

Mtre Margaret Weltrowska

Mtre Erica Shadeed

Mtre Ana-Maria Nicolau

1 Place Ville Marie, Suite 3900

Montréal, QC H3B 4M7

Email : margaret.weltrowska@dentons.com

erica.shadeed@dentons.com

ana-maria.nicolau@dentons.com

Telephone: 514 878 5841 / 4191 / 4193

Fax: 514 866 2241

Our reference: 613016-1

NOTICE OF PRESENTATION

TO: Mtre Daniel Brook
BROOK LEGAL INC.
3285 Cavendish Boulevard
Suite 440
Montréal, QC H4B 2L9
db@brooklegal.ca

*Lawyers for the Petitioner, Elijah
Amar*

Mtre Jean Lemoine
Mtre Ramy Amine
SPIEGEL RYAN LLP
1255 Peel Street
Suite 1000
Montréal, QC H3B 2T9
jlemoine@spiegelryan.com
ramine@spiegelsohmer.com

*Lawyers for the Respondent, The
Upper Deck Company*

Mtre Fadi Amine
MILLER THOMSON LLP
1000 De La Gauchetière Street West
Suite 3700
Montréal, QC H3B 4W5
famine@millerthomson.com

*Lawyers for the Respondent, Panini
America, Inc.*

TAKE NOTICE that the *Application of the respondent The Topps Company, Inc. for leave to adduce evidence at authorization and to examine the Petitioner* will be presented for adjudication before the Honourable Shaun E. Finn of the Superior Court of Quebec, sitting in and for the District of Montréal, at the Montréal Courthouse, situated at 1 Notre-Dame Street East, at a date and time to be determined by this Honourable Court.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, June 27, 2025

Dentons Canada LLP

DENTONS CANADA LLP
Lawyers for the Respondent THE TOPPS
COMPANY, INC.
Mtre Margaret Weltrowska
Mtre Erica Shadeed
Mtre Ana-Maria Nicolau

1 Place Ville Marie, Suite 3900
Montréal, QC H3B 4M7
Email : margaret.weltrowska@dentons.com
erica.shadeed@dentons.com
ana-maria.nicolau@dentons.com
Telephone: 514 878 5841 / 4191 / 4193
Fax: 514 866 2241
Our reference: 613016-1

Ghneim, Dimitri

From: Ghneim, Dimitri
Sent: Friday, June 27, 2025 4:57 PM
To: db@brooklegal.ca; mar@brooklegal.ca; JLemoine@spiegelryan.com; Me Ramy Amine; famine@millერთhompson.com
Cc: Weltrowska, Margaret; Shadeed, Erica; Nicolau, Ana-Maria
Subject: NOTIFICATION / Application for leave to adduce evidence at authorization and to examine the Applicant / Elijah Amar v. The Upper Deck Company et al. - 500-06-001326-244
Attachments: 2025-06-27 - Application of The Topps Company, Inc. for leave to adduce evidence.pdf

C A N A D A

**PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

SUPERIOR COURT
(Class Actions)

No.: 500-06-001326-244

ELIJAH AMAR

Applicant

v.

THE UPPER DECK COMPANY

-and-

PANINI AMERICA, INC.

-and-

THE TOPPS COMPANY, INC.

Defendants

FROM:

DENTONS

Dentons Canada LLP
1 Place Ville Marie, Suite 3900
Montréal, QC H3B 4M7

Mtre Margaret Weltrowska
Mtre Erica Shadeed
Mtre Ana-Maria Nicolau
Tel.: 514 878-5841 / 514 878-4191 / 514 878-4193
Fax: 514 866-2241
Email: margaret.weltrowska@dentons.com;
erica.shadeed@dentons.com; ana-maria.nicolau@dentons.com

Our reference: 613016-1

TO:

Firm:	Attention of :	Email:	Telephone:	Attorneys for:
BROOK LEGAL INC.	Mtre Daniel Brook Mtre Miranda Renda	db@brooklegal.ca ; mar@brooklegal.ca	514 606-0542	Plaintiff Elijah Amar
SPIEGEL RYAN LLP	Mtre Jean Lemoine Mtre Ramy Amine	JLemoine@spiegelryan.com ; RAmine@spiegelsohmer.com	514 866-3514, ext. 203	Defendant The Upper Deck Company
MILLER THOMSON LLP	Mtre Fadi Amine	famine@millერთhompson.com	514 879-4063	Defendant Panini America Inc.

DATE OF TRANSMISSION:	Montreal, June 27, 2025
NATURE OF DOCUMENT:	APPLICATION OF THE RESPONDENT THE TOPPS COMPANY, INC. FOR LEAVE TO ADDUCE EVIDENCE AT AUTHORIZATION AND TO EXAMINE THE APPLICANT and EXHIBIT R-1 (UNSIGNED SWORN STATEMENT OF STEVEN JUDD AND ITS EXHIBITS SJ-1 AND SJ-2) and NOTICE OF PRESENTATION
TOTAL NUMBER OF PAGES:	Application: 8 pages Exhibit R-1: 15 pages Total : 23 pages Note: Exhibit R-1 will be sent separately via secured download link

Dimitri Ghneim

Assistant to Margaret Weltrowska, Xavier Van Overmeire and Stéphane Beaulac

+1 514 878 5862 | +1 514 866 2241

dimitri.ghneim@dentons.com | [Website](#)

Dentons Canada LLP | 1, Place Ville-Marie, 39e étage, Montréal, Québec, H3B 4M7, Canada



[Our Legacy Firms](#) | [Client Experience \(CX\)](#)

Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. Email you receive from Dentons may be confidential and protected by legal privilege. If you are not the intended recipient, disclosure, copying, distribution and use are prohibited; please notify us immediately and delete the email from your systems. To update your commercial electronic message preferences email dentonsinsightsca@dentons.com. Please see [dentons.com](https://www.dentons.com) for Legal Notices.

CANADA'S GLOBAL LAW FIRM

Creative people. Intelligent solutions.

Dimitri Ghneim

Assistant to Margaret Weltrowska, Xavier Van Overmeire and Stéphane Beaulac

+1 514 878 5862 | +1 514 866 2241

dimitri.ghneim@dentons.com | [Website](#)

Dentons Canada LLP | 1, Place Ville-Marie, 39e étage, Montréal, Québec, H3B 4M7, Canada



[Our Legacy Firms](#) | [Client Experience \(CX\)](#)

Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. Email you receive from Dentons may be confidential and protected by legal privilege. If you are not the intended recipient, disclosure, copying, distribution and use are prohibited; please notify us immediately and delete the email from your systems. To update your commercial electronic message preferences email dentonsinsightsca@dentons.com. Please see [dentons.com](https://www.dentons.com) for Legal Notices.

CANADA'S GLOBAL LAW FIRM

Creative people. Intelligent solutions.

No. 500-06-001326-244

SUPERIOR COURT
(Class Actions)
DISTRICT OF MONTRÉAL

ELIJAH AMAR

Applicant

v.

THE UPPER DECK COMPANY
-and-
PANINI AMERICA, INC.
-and-
THE TOPPS COMPANY, INC.

Defendants

**APPLICATION OF THE RESPONDENT THE TOPPS
COMPANY, INC. FOR LEAVE TO ADDUCE EVIDENCE
AT AUTHORIZATION AND TO EXAMINE THE
APPLICANT and EXHIBIT R-1 (UNSIGNED SWORN
STATEMENT OF STEVEN JUDD AND ITS EXHIBITS
SJ-1 AND SJ-2) and NOTICE OF PRESENTATION**

ORIGINAL



Mtre Margaret Weltrowska
Mtre Erica Shadeed / Mtre Ana-Maria Nicolau
margaret.weltrowska@dentons.com
erica.shadeed@dentons.com
ana-maria.nicolau@dentons.com

Dentons Canada LLP
1 Place Ville Marie, Suite 3900
Montréal QC H3B 4M7
Tel. : 514 878 5841 / 4191 / 4193
Fax : 514 866 2241

O/F 613016-01

dentons.com

BB0822