

CANADA

(Class Action)  
SUPERIOR COURTPROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

A [REDACTED] K [REDACTED]

N<sup>o</sup>: 500-06-001202-221*Plaintiff*

v.

BARILLA CANADA INC.

*Defendant*

## ORIGINATING CLASS ACTION APPLICATION

IN SUPPORT OF HER AUTHORIZED CLASS ACTION, THE  
REPRESENTATIVE PLAINTIFF RESPECTFULLY STATES THE FOLLOWING:INTRODUCTION

1. By way of the Superior Court of Quebec's Authorization Judgment dated August 26, 2024 and rectified on September 19, 2024 (collectively the "**Authorization Judgment**"), the class action herein has been authorized against the Defendant and Plaintiff was appointed as the Representative Plaintiff representing all persons included in the Class described as follows:

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| <p>All residents of Quebec who have purchased, at any time since October 24, 2019, Barilla Canada Inc.'s pasta products which were not produced in Italy and which bear the phrase "ITALY'S #1 BRAND OF PASTA" and "LA MARQUE DE PÂTES NO 1 EN ITALIE", in juxtaposition or not of the Italian flag colors.</p> | <p>Tous les résidents du Québec qui ont acheté, à tout moment depuis le 24 octobre 2019, des pâtes alimentaires de Barilla Canada Inc. qui n'ont pas été produits en Italie et qui portent la marque « ITALY'S #1 BRAND OF PASTA » et « LA MARQUE DE PÂTES NO 1 EN ITALIE », que ce soit en juxtaposition des couleurs du drapeau italien ou non.</p> |
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| (hereinafter the “ <b>Class</b> ” or the “ <b>Class Members</b> ”) | (ci-après le « <b>Groupe</b> » ou les « <b>Membres du Groupe</b> ») |
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7. The main issues of fact and law to be treated collectively have been identified by this Honorable Court in the Authorization Judgment as follows:

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| <p>a) Did Barilla make false or misleading statements, advertisements or representations, or did it carry out prohibited practices, in the sale and marketing of its pasta, given their place of production and the geographical origin of their ingredients?</p> <p>b) Must Barilla reimburse the purchase price of the pasta, in whole or in part?</p> <p>c) Should injunctive relief be ordered to prohibit Barilla from continuing to make such statements, representations, advertisements or prohibited practices?</p> <p>d) Must Barilla pay punitive damages to the Class Member and in what amount?</p> | <p>a) Barilla a-t-elle fait des déclarations, messages publicitaires fausses ou trompeuses ou s'est-elle adonnée à des pratiques interdites dans la mise en marché et vente des pâtes alimentaires, compte tenu de leur lieu de fabrication et de l'origine géographique des ingrédients qui les composent?</p> <p>b) Barilla doit-elle rembourser, en tout ou en partie, le prix d'achat des pâtes alimentaires?</p> <p>c) Une ordonnance d'injonction doit-elle être prononcée contre Barilla l'interdisant de faire de telles déclarations, représentations, message publicitaires ou pratiques interdites?</p> <p>d) Barilla doit-elle payer des dommages punitifs aux membres et pour quel montant ?</p> |
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8. Defendant Barilla Canada Inc. is a Canadian corporation, headquartered in Markham, Ontario with its *fondé de pouvoir* in the District of Montreal, Province of Quebec, the whole as more fully appears from the *Registraire des entreprises du Québec* (REQ) report regarding Defendant, communicated herewith as **Exhibit P-1** (hereinafter “**Defendant**” or “**Barilla Canada**”).

**The situation:**

3. Defendant markets, commercializes, distributes and sells its various well-known pasta products through many grocery stores across Canada, including Quebec.
4. The Defendant's pasta products in issue in the present proceeding include without limitation the following products:
  - (a) Barilla® Classic Blue Box Pastas, including Angel Hair, Campanelle, Cellentani, Ditalini, Elbows, Farfalle, Fettuccine, Fideo Cut Spaghetti, Gemelli, Jumbo Shells, Large Shells, Linguine, Linguine Fini, Manicotti, Medium Shells, Mezzi Rigatoni, Mini Farfalle, Mini Penne, Mini Wheels, Mostaccioli, Orzo, Pastina, Penne, Pipette, Rigatoni, Rotini, Spaghetti, Spaghetti Rigati, Thick Spaghetti, Thin Spaghetti, Tri-Color Penne, Tri-Color Rotini, Wavy Lasagne, and Ziti;
  - (b) Barilla® Collezione Artisanal Pastas, including Bucatini, Casarecce, Orecchiette, Penne, Rigatoni, and Spaghetti;
  - (c) Barilla® Gluten Free Pastas, including Elbows, Fettuccine, Penne, Rotini, and Spaghetti;
  - (d) Barilla® Veggie Pastas, including Rotini, and Spaghetti;
  - (e) Barilla® Whole Grain Pastas, including Elbows, Lasagne, Linguine, Penne, Rotini, Spaghetti, and Thin Spaghetti;

(hereinafter the "**Product(s)**").
5. Defendant's primary marketing message for its pasta Products focuses on its

"ITALY'S #1 BRAND OF PASTA" (and in French: "LA MARQUE de PÂTES No 1 EN ITALIE") claim and representation which appears prominently displayed on the front label/panel of each Product box, as depicted below for example:



6. Plaintiff files copies of the front and back panels of the Defendant's boxes of the following Barilla Products: **Spaghetti, Fettuccine, Penne Rigate**, and Cut Macaroni. These boxes prominently display the phrase "ITALY'S #1 BRAND OF PASTA" **and** the phrase "LA MARQUE de PÂTES No 1 EN ITALIE" **and** replicate the green, white and red colors of Italy's flag (in a three leaves pattern) on the front panel (but only indicate and confirm that they are a **product of U.S.A.** in small print on the side panel), communicated herewith as **Exhibit P-2, en liasse**.
  
7. Plaintiff communicates herewith as **Exhibit P-9, en liasse**, copies of all panels of the Defendant's boxes of the following Barilla Products: **Spaghetti**, Macaroni, **Penne Rigate**, and Orzo. These boxes prominently display the phrase "ITALY'S #1 BRAND OF PASTA" **and** the phrase "LA MARQUE de PÂTES No 1 EN ITALIE" on the front panel (but only indicate and confirm that they are **made in Canada** in small print on the side panel). Defendant only started using these product boxes (without the Italian flag colors) **after** the institution of the present proceedings (at an unknown date).
  
8. Plaintiff communicates herewith as **Exhibit P-10, en liasse**, copies of all panels of the Defendant's boxes of the following Barilla Products: Ditali, Conchiglie, Penne Lisce, **Fettuccine**, Spaghettoni, Linguine, Capellini, Cellentani, Rigatoni, Rotini, and Gemelli. These boxes prominently display the phrase "ITALY'S #1 BRAND OF PASTA" **and** the phrase "LA MARQUE de PÂTES No 1 EN ITALIE" on the front panel (but only indicate and confirm that they are a

**product of U.S.A.** in small print on the side panel). Defendant only started using these product boxes (without the Italian flag colors) **after** the institution of the present proceedings (at an unknown date).

9. Plaintiff communicates herewith as **Exhibit P-11** a copy of all four panels of the Defendant's box of the Barilla Lasagne Product. This box prominently displays the phrase "ITALY'S #1 BRAND OF PASTA" **and** the phrase "LA MARQUE de PÂTES No 1 EN ITALIE" **and replicates the green, white and red colors of Italy's flag (in a new three circles pattern)** on the front panel (but only indicates and confirms that it is a **product of U.S.A.** in small print on the side panel). Defendant only started using this product box, with this new labelling and pattern, **after** the institution of the present proceedings (at an unknown date).
10. Plaintiff is not aware of the date on which Defendant started selling some of its Products with the Italian flag in a new three circles pattern (such as depicted in Exhibit P-11) as opposed to the three leaves pattern which is depicted in Exhibit P-2. However, Defendant purposely depicts both patterns in the green, white and red sequence of the Italian flag, in order to further "suggest" to consumers and further convey the general impression that the Products are produced in Italy.
11. Plaintiff communicates herewith as **Exhibit P-12** a copy of all four panels of the Defendant's box of the Barilla Tagliatelle Product. This box also prominently displays **in the same way** the phrase "ITALY'S #1 BRAND OF PASTA" **and** the phrase "LA MARQUE de PÂTES No 1 EN ITALIE" **and also replicates and displays in the same way the green, white and red colors of Italy's flag (in the new three circles pattern)** on the front panel (and indicates and confirms that it is a **product of Italy** on the side panel). Defendant sells this product in the Province of Quebec.
12. Accordingly, before the institution of these proceedings, Defendant sold and

marketed its Barilla pasta Products in the Province of Quebec with boxes bearing and prominently displaying the phrase "ITALY'S #1 BRAND OF PASTA" **and/or** the phrase "LA MARQUE de PÂTES No 1 EN ITALIE" **and/or** displaying/replicating the **Italian flag colors (and pattern)**, on the front panel of the box, for products made outside of Italy (namely in Canada or in U.S.A.) (Exhibit P-2).

13. After the institution of these proceedings (exact date unknown), Defendant started selling its Barilla pasta Products by sometimes removing the Italian flag colors altogether from the front panels of the boxes (Exhibits P-9 and P-10) and sometimes displaying the Italian flag colors in a new three circles pattern (Exhibit P-11).
14. However, and as appears when examining and comparing Exhibit P-11 and Exhibit P-12, Defendant purposely uses and prominently displays the same Italian flag depiction and the "ITALY'S #1 BRAND OF PASTA" phrase on the front panel of its pasta boxes, whether the pasta is made in Italy or in another country. This is clearly and intentionally confusing for purchasers and consumers of Barilla Products who can find these items sitting side by side on the grocery store shelves.
15. As appears from Exhibits P-2 and P-9 to P-11, Defendant reinforces its deceiving messaging by sometimes replicating Italy's national flag's green, white, and red colors, in various shapes, perpetuating the notion that its Products are in fact produced in Italy, which is not in fact the case.
16. The wide range of Defendant's Products sold to Canadian Class Members are labeled as "Italy's #1 Brand of Pasta", although said Products are made outside of Italy, namely in the United States and/or in Canada, with ingredients sourced from countries other than Italy, as appears from Exhibit P-2 and as appears from Exhibits P-9 to P-11.

17. Defendant's advertising and marketing campaign for the Products has been extensive and Defendant has spent a significant amount of money to convey its deceptive messages to Consumers, namely that its Products sold in Canada and Quebec are in fact produced in Italy.
18. Contrary to the labeling, the Products are not produced in Italy and are not manufactured with ingredients from Italy.
19. Defendant deliberately designed and executed a decades long marketing campaign to identify its Barilla brand, company, and Products at issue in this case, as authentic, genuine Italian pastas, made from ingredients sourced in Italy (like durum wheat) and manufactured in Italy.
20. Defendant's advertising is misleading since Defendant sought to take advantage of Consumers' desire for authentic Italian pasta in an effort to gain market share and increase sales.
21. In fact, Defendant knew that its target audience would be eager to accept claims that the Products are made in Italy since Italian products are generally viewed as a higher quality product. Defendant used this opportunity to lure Customers into buying the Products in the first place and/or paying a higher price for the Products, by making prominent misleading representations in the marketing materials for the Products, most notably on the front panels of the Products' boxes.
22. The Consumer's general impression is therefore that each Product was made in Italy, from ingredients sourced in Italy, as the front panels of the Barilla Product boxes clearly convey and "suggest".
23. Accordingly, Defendant has made deceptive claims about the Products, in various ways, including on television, in magazines, on the Internet, and as mentioned on the front panels/labels of the Products themselves, which is

typically the first and sometimes only exposure Consumers will have to Defendant's claims and representations before purchasing the products.

24. In fact, Defendant's Canadian website, [www.barilla.com](http://www.barilla.com), which serves all Canadian users, reiterates the same central marketing theme, and provides consumers access 24 hours a day, 7 days a week, to Defendant's deceptive advertising campaign for the Products.

25. For instance and in order to further reinforce this deceiving marketing scheme, Defendant describes itself as follows on its website: *"an Italian family-owned food company"* that is a *"world leader in the markets of pasta and ready-to-use sauces in continental Europe, bakery products in Italy and crispbread in Scandinavia, the Barilla Group is recognized worldwide as a symbol of Italian know-how."* In addition, at the top of its Classic Blue Box product line webpage, Defendant claims that Italians recognize the Barilla® brand Products merely from their signature dark blue box packaging and that Italians have favored the Products for more than one hundred years, representing that: *"Italians know the familiar Blue Box means quality, perfectly al dente pasta every time. That's why Barilla has been an Italian favorite for over 140 years, and continues to be the #1 pasta in Italy today."*, the whole as more fully appears from extracts from Defendant's Canadian website, communicated herewith as **Exhibit P-3**.

26. Defendant's misleading representations (labels and boxes) and its false advertising about the Products are also reiterated, circulated and promulgated by Defendant's own distributors, to Defendant's knowledge and with its approval. For instance, the well-known Walmart, IGA and amazon.ca websites each offer, depict and list some of Defendant's Products bearing the same "Italy's #1 Brand of Pasta" and Italian flag colors on the front labels, the whole as more fully appears from excerpts from the Walmart, IGA and amazon.ca websites, communicated herewith as **Exhibit P-4, en liasse**. The same can

be seen on other distributors selling Defendant's Products online.

27. As a result of its deceptive conduct, Defendant sometimes charges a premium and/or inflated price for its Products, which premium Plaintiff and other Consumers paid, and many Consumers continue to pay, with the specific understanding, based upon Defendant false and misleading labeling, advertising, and representations, that said Products are from Italy (which vitiates their consent when purchasing the Barilla products in any case, regardless of the price).
28. These actions were and are intended to induce unsuspecting Consumers, including Plaintiff and Class Members, into purchasing and/or over-paying for what they think are Italian products, but receive Products that are not from Italy.
29. In fact, these false claims served as the basis of Consumers' decisions to purchase the Products, instead of other pastas sold on the market, which do not purport to be Italian made.
30. Until such time that Defendant cease to engage in deceptive and misleading advertising of the Products, Class Members will continue to suffer harm and prejudice, hence the injunctive relief being sought herein.
31. Defendant succeeded in its deceit and Defendant has in fact enjoyed massive profits from its deceptive campaigns. Such enormous profits would not have been as large but for Defendant's deceptive and misleading marketing and advertising campaign.
32. Defendant set the price and sometimes charged a premium for the Products. Plaintiff and the other Class Members would not have paid premium prices for the Products, or would not have bought them at all, had they not been exposed to Defendant's false and deceptive advertising about the Products

and had, instead, known the truth regarding Defendant's deceptive marketing promises and omissions relating thereto.

33. Moreover, Plaintiff and other Class Members relied upon Defendant's representations, and they believed that the Products were made in Italy from ingredients sourced in Italy. Although Plaintiff and the other Class Members paid for the Barilla Products believing them to be products of Italy, they did not get what they paid or bargained for.

34. Finally, Defendant's US related entity is also engaging in the same deceptive marketing and advertising schemes. In this regard, Plaintiff refers this Honorable Court to a US class action lawsuit alleging that Defendant's US sister-company (or affiliated entity), Barilla America Inc., has engaged in the same false advertising concerning the same Barilla branded pasta products being sold in the USA as well, the whole as more fully appears from the First Amended Class Action Complaint filed on July 20, 2022 in the United States District Court Northern District of California, communicated herewith, as **Exhibit P-5**, (hereinafter the "**US Class Action**").

35. On October 17, 2022, the Barilla America Inc. Motion to Dismiss the US Class Action was mostly dismissed by the United States District Court Northern District of California, the whole as more fully appears from the October 17, 2022 Judgment, communicated herewith, as **Exhibit P-6**.

36. On May 28, 2024, the United States District Court Northern District of California certified the US Class Action against Barilla America Inc., the whole as more fully appears from the May 28, 2024 Certification Judgment, communicated herewith, as **Exhibit P-6A**.

37. In addition, Plaintiff communicates herewith, as **Exhibit P-8**, *en liasse*, the publicly available records and documents posted on the Government of Canada's Canadian Intellectual Property Office ("**CIPO**") website, regarding

the 2009 trademark application bearing #1428792, filed by Defendant's "affiliated entity" Barilla G. e R. Fratelli – Società per Azioni (hereinafter "**Barilla Italy**"), for the "proposed" Trademark "ITALY'S #1 BRAND OF PASTA", to be used in **Canada** regarding pasta products, including the Examiner's reports refusing said application.

38. As appears from Exhibit P-8, on October 26, 2009 (i.e. before Defendant Barilla Canada Inc. was even constituted – see Exhibit P-1), the CIPO's Examination Section, issued its first "examiner's report" clearly indicating that:

"The mark, which is the subject of this application, is considered to be **clearly descriptive or deceptively misdescriptive of the quality and the place of origine of the wares** since it is a laudatory epithet used in praise of the wares applied for, **which emanate from Italy**.

In view of the provisions of paragraph 12(1)(b) of the *Trade-marks Act*, this mark does not appear registrable."

(Emphasis added)

39. On February 19, 2010, Barilla Italy (through its trade-mark agents) sent its response correspondence and arguments to CIPO regarding the proposed trademark to be used in Canada, a copy of which is communicated herewith, as **Exhibit P-8.1**.
40. Thereafter, and as appears from Exhibit P-8, on April 21, 2010, the CIPO examiner issued a further detailed and reasoned "examiner's report", stating the following as to why the proposed trademark was refused:

"**The subject mark of this application is still considered to be either clearly descriptive or deceptively misdescriptive of the place of origin and quality of the wares, namely that the applicant's pasta is Italy's number one brand.**"

A mark may be considered to be clearly descriptive of the place of origin of the wares if the mark is the geographical name of the place from which the associated wares originate.

The examiner must determine if, as a matter of **first impression**, a user of the services would perceive the trade-mark, whether depicted, written or sounded as the place of origin of the wares. If the examiner believes that the user of the wares would conclude, as a matter of **first impression** that the said services emanate from that geographical area, an objection is to be raised pursuant to paragraph 12(1)(b) of the *Trade-mark Act*.

(...)

With respect to the applicant's statement that the trade-mark is susceptible to other ready meanings, the mark is a skillful allusion, rendering it suggestive, **the examiner respectfully submits that upon first impression the primary meaning, is easy to understand, self-evident and plain. The mark conveys to the average consumer of ordinary intelligence, that the pasta applied for by the applicant is "Italy's #1 brand of pasta".**

(...)

**In the case at hand, a customer would link applicant's pasta to Italy, and would assume that it is Italy's #1 Brand. The numeral 1 is indicative of the word BEST in the market place, in that it indicates to consumers that there can be no better brand of pasta in Italy, it is #1."**

(Emphasis added)

41. Accordingly, Defendant Barilla Canada Inc.'s affiliated entity in Italy, Barilla G. e R. Fratelli – Società per Azioni, applied in 2009 for the trademark "ITALY'S #1 BRAND OF PASTA", for a proposed (i.e. future) use for sales of pasta products here in **Canada**. The CIPO refused the trademark application confirming *inter alia* that it would be misleading to average consumers (for the same reasons as Plaintiff is alleging herein). Defendant nonetheless knowingly and intentionally started and continued selling its pasta products in Canada, all while including this misleading "trademark" on its packaging and marketing (and while including the indication "TM" next to this specific phrase on its packaging in order to give the further impression of a valid trademark to Class Members - see Exhibit P-2 and Exhibits P-9 to P-11).
42. Plaintiff refers to the February 19, 2010 letter sent to CIPO by the trade-mark

agents representing Barilla Italy (Exhibit P-8.1). In the Exhibit P-8.1 letter, Barilla Italy clearly states, argues and admits the following (direct citations with emphasis added):

- a) “It is respectfully submitted that the trade-mark ITALY’S #1 BRAND OF PASTA, when used in association with pasta, tells a prospective consumer nothing about the wares apart from a **suggestion** that such wares have something to do with Italy and a brand of pasta.”;
  - b) “Consequently, although **the mark may be suggestive**, it is not clearly descriptive.”
  - c) “Furthermore, if a **trade-mark is susceptible of other ready meanings, the mark** is not clearly descriptive but **is a covert and skillful illusion to the character, quality or place of origin of the wares, rendering it merely suggestive**”;
  - d) “... it is submitted that **the trade-mark ITALY’S #1 BRAND OF PASTA when used in association with pasta is susceptible of more than one meaning.**”;
  - e) “Having regard to the foregoing, it is submitted that the trade-mark does not clearly describe a quality of the wares. **The mark is only suggestive.** It is also **suggestive** that the product is the most famous brand of pasta in Italy.”;
  - f) “The mark is not clearly descriptive of the place of origine of the wares. It **suggests** that the product is the number one brand in Italy.”
43. We respectfully submit that these many admissions in the Exhibit P-8.1 letter to CIPO, to the effect that the trademark has “other ready meanings” and that the trademark is “suggestive” in many regards to consumers, further confirms

that the general impression of a credulous and inexperienced consumer purchasing the Barilla pasta Products is that the pasta is a superior product from Italy (as clearly **suggested** by Defendant's continued use of this same "trademark" on the front panels of its packaging after CIPO had clearly opposed and rejected Barilla Italy's Exhibit P-8 trademark application back in 2010).

### **THE PLAINTIFF**

44. Plaintiff has regularly purchased, from her local IGA store, Defendant's Products bearing the "Italy's #1 Brand of Pasta" tagline and displaying images of the Italian flag, for herself, her husband and five (5) daughters.
45. Although not having retained the sales receipts from those purchases, Plaintiff has spent over \$100 in 2022 alone for said Products, which amount she claims from Defendant, in addition to the punitive damages claimed herein.
46. Plaintiff only purchased the products in question after reading and believing the "Italy's #1 Brand of Pasta" tagline on the front labels, as detailed above, which gave her the impression that said Products were in fact produced in Italy.
47. In fact, Plaintiff also noticed that the labels displayed and replicating the Italian flag colors, which convinced her even more that said Products were indeed made in Italy.
48. As mentioned above, Plaintiff also refers to Exhibits P-9 to P-11, which evidence the fact that **after** the institution of the present class action proceedings, Defendant intentionally modified its pasta box labeling, including by introducing a new shape for its Italian flag depiction in some cases, all the while still clearly conveying and "suggesting" that the Barilla

Products come from Italy.

49. Plaintiff trusted and relied upon Defendant's representations and/or the general impression to the effect that the Products were made in Italy from ingredients sourced in Italy.
50. In fact, the said claims on the front panels of the Barilla pasta Products convinced Plaintiff to purchase said products instead of any other similar pasta products.
51. Plaintiff would not have purchased the Barilla Products at all if it were not for these false representations and false impressions made by Defendant on the front labels/panels of the boxes (as detailed above).
52. Plaintiff's consent when purchasing the Products was therefore vitiated as a result of the false and/or misleading statements made by Defendant, which are described hereinabove, and which are prominently included and displayed on the front labels/panels of the Products' boxes.

### **PUNITIVE DAMAGES**

53. For all of the reasons more fully detailed hereinabove, Plaintiff respectfully submits that Defendant intentionally promulgated and used its Products marketing in an abusive manner, with full knowledge of the immediate and natural or at least extremely probable consequences that its actions would cause to the Class Members, making it liable to pay punitive and exemplary damages to the Class Members, in an amount to be determined by the Court.
54. Defendant's above detailed actions are a result of wild, willful and foolhardy recklessness, in disregard for the rights of the Class Members, the whole in order to earn more profit.

55. Defendant's said actions show a malicious, oppressive and high-handed conduct that represents a marked departure from ordinary standards of decency when dealing with customers. In that event, punitive damages should be awarded to Class Members.
56. In addition, Defendant knowingly continued and continues to make such false representations to the Class Members, notwithstanding the U.S. Class Action proceeding filed and notwithstanding the present class action proceedings as well.
57. Moreover, as mentioned above, we respectfully submit that the many admissions contained in the Exhibit P-8.1 letter to CIPO, to the effect that the trademark has "other ready meanings" and that the trademark is "suggestive" in many regards to consumers, further confirms that the general impression of a credulous and inexperienced consumer purchasing the Barilla pasta Products is that the pasta is a superior product from Italy (as clearly and intentionally **suggested** by Defendant, by way of its continued use of this same "trademark" on the front panels of its packaging after CIPO had clearly opposed and rejected Barilla Italy's P-8 trademark application back in 2010, on the same or very similar grounds as argued in the present class action).
58. Following this trademark application rejection in 2010 (Exhibit P-8), and notwithstanding the very clear and relevant reasons given by CIPO for rejecting said trademark application (namely consumers being misled), Defendant nonetheless intentionally continued to commercialize, promote and distribute the Products in Canada in this abusive manner. This further justifies the award of punitive damages since Defendant's conduct was clearly intentional.
59. The above therefore confirms Defendant's prior knowledge, intentional actions (for many years before and after the institution of the present proceedings), and bad faith in its false advertising, marketing and distribution

of the Products, justifying the claim for punitive damages herein.

### **OTHER CLASS MEMBERS**

60. Each Class Member has purchased Defendant's Barilla Products.
61. Every Class Member's consent when purchasing the Products was vitiated as a result of the false and/or misleading statements made by Defendant, which are described hereinabove, and which are prominently included and displayed on the front labels/panels of the Products' boxes.
62. Every Class Member would not have purchased the Products at all or would not have paid the inflated price paid for the Products, if it were not for Defendant's misleading marketing campaign, representations and claims described above regarding the Products.
63. The Class Members and Plaintiff further rely upon and invoke all presumptions of prejudice in their favor, according to the Law.
64. The present action is well founded in fact and in law.

### **FOR THESE REASONS, MAY IT PLEASE THE COURT:**

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| <p><b>GRANT</b> the class action of the Representative Plaintiff and each of the Class Members;</p> <p><b>ORDER</b> Defendant to cease selling any products pasta au Québec bearing the phrase "ITALY'S #1 BRAND OF PASTA" et the phrase "LA MARQUE de PÂTES No 1 EN ITALIE" in juxtaposition or not of the Italian flag</p> | <p><b>ACCUEILLIR</b> l'action collective de la demanderesse représentante et de chaque membre du Groupe;</p> <p><b>ORDONNER</b> à la défenderesse de cesser la vente de toutes pâtes alimentaires au Québec portant la marque "ITALY'S #1 BRAND OF PASTA" et the phrase "LA MARQUE de PÂTES No 1 EN ITALIE" en</p> |
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| <p>colors, unless said products are produced in Italy;</p> <p><b>CONDEMN</b> the Defendant to pay to each of the Class members the purchase price paid for the products (or portion thereof), and <b>ORDER</b> collective recovery of these sums;</p> <p><b>CONDEMN</b> the Defendant to pay to each of the Class Members a sum to be determined in punitive or exemplary damages, and <b>ORDER</b> collective recovery of these sums;</p> <p><b>CONDEMN</b> the Defendant to pay interest and additional indemnity on the above sums according to the Law from the date of service of the original Application for Authorization, save for punitive damages where they will run from the date of judgment;</p> <p><b>ORDER</b> the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest, additional indemnity, and costs;</p> <p><b>ORDER</b> that the claims of individual class members be the object of collective liquidation if the proof permits and, alternatively, by individual liquidation;</p> <p><b>CONDEMN</b> the Defendant to bear the costs of the present action including experts' fees and notice fees;</p> | <p>juxtaposition ou non avec les couleurs du drapeau italien, à moins que ces produits ne soient fabriqués en Italie;</p> <p><b>CONDAMNER</b> la défenderesse à verser à chaque membre du Groupe en tout ou en partie le prix payé pour les produits et <b>ORDONNER</b> le recouvrement collectif de ces sommes;</p> <p><b>CONDAMNER</b> la défenderesse à verser à chaque membre du Groupe une somme à être fixée en paiement de dommages punitifs ou exemplaires et <b>ORDONNER</b> le recouvrement collectif de ces sommes;</p> <p><b>CONDAMNER</b> la défenderesse à payer les intérêts et l'indemnité additionnelle sur ces sommes selon la Loi à partir de la date de signification de la demande originale, sauf en ce qui a trait aux dommages punitifs où ils courent à partir de la date du jugement;</p> <p><b>ORDONNER</b> à la défenderesse de déposer au dossier de la Cour l'entièreté des sommes à titre de recouvrement collectif, avec intérêts, indemnité additionnelle et frais;</p> <p><b>ORDONNER</b> que les réclamations individuelles des membres par liquidation collective si la preuve le permet ou, alternativement, par liquidation individuelle;</p> <p><b>CONDAMNER</b> la défenderesse à assumer les frais de la présente action incluant les frais d'expert et de publication des avis;</p> |
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| <b>RENDER</b> any other order that this Court shall determine and that is in the interest of the Class Members; | <b>RENDRE</b> toute autre ordonnance que le tribunal estimera être dans l'intérêt des parties; |
| <b>THE WHOLE</b> with legal costs                                                                               | <b>LE TOUT</b> avec frais de justice.                                                          |

**MONTREAL, JULY 9, 2025**

(s) *Lex Group Inc.*

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**Lex Group Inc.**

Per: David Assor

Class Counsel / Attorneys for the Representative Plaintiff

4101 Sherbrooke St. West

Westmount, (Québec), H3Z 1A7

Telephone: 514.451.5500 ext. 101

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## **SUMMONS**

### **(Articles 145 and following C.C.P.)**

#### **Filing of a judicial application**

Take notice that the Plaintiff(s) has filed this application in the office of the Superior Court of Quebec in the judicial district of Montreal.

#### **Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal, situated at 1, Notre-Dame Est, Montréal, Québec within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Plaintiff's lawyer or, if the Plaintiff is not represented, to the Plaintiff.

#### **Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgment may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

#### **Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

#### **Change of judicial district**

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the Plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

### **Transfer of application to Small Claims Division**

If you qualify to act as a Plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the Plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

### **Calling to a case management conference**

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

### **Exhibits supporting the application**

In support of the application, the Plaintiff intends to use the following exhibits:

- Exhibit P-1:** Copy of the *Registraire des entreprises du Québec* report regarding Defendant Barilla Canda Inc.;
- Exhibit P-2:** Various copies of the front and back panels of the Defendant's boxes of the following Barilla Products: **Spaghetti**, **Fettuccine**, **Penne Rigate**, and Cut Macaroni, *en liasse*;
- Exhibit P-3:** Extracts from the Barilla website;
- Exhibit P-4:** Excerpts from the Walmart, IGA and amazon.ca websites, *en liasse*;
- Exhibit P-5:** First Amended Class Action Complaint filed on July 20, 2022 in the United States District Court Northern District of California;

- Exhibit P-6:** Judgment from the United States District Court Northern District of California, rendered on October 17, 2022;
- Exhibit P-6A:** Certification Judgment from the United States District Court Northern District of California, rendered on May 28, 2024;
- Exhibit P-8:** Publicly available records and documents posted on the CIPO website, regarding the 2009 trademark application bearing #1428792, filed by Barilla G. e R. Fratelli – Società per Azioni, for the “proposed” Trademark “ITALY’S #1 BRAND OF PASTA”, *en liasse*;
- Exhibit P-8.1:** Barilla G. e R. Fratelli – Società per Azioni’s correspondence to CIPO dated February 19, 2010;
- Exhibit P-9:** Copies of all panels of the Defendant’s boxes of the following Barilla Products: **Spaghetti**, Macaroni, **Penne Rigate**, and Orzo, *en liasse*;
- Exhibit P-10:** Copies of all panels of the Defendant’s boxes of the following Barilla Products: Ditali, Conchiglie, Penne Lisce, **Fettuccine**, Spaghettoni, Linguine, Capellini, Cellentani, Rigatoni, Rotini, and Gemelli, *en liasse*;
- Exhibit P-11:** Copy of all four panels of the Defendant’s box of the Barilla Lasagne Product;
- Exhibit P-12:** Copy of all four panels of the Defendant’s box of the Barilla Tagliatelle Product;

These exhibits are available on request.

**Notice of presentation of an application**

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

**DO GOVERN YOURSELF ACCORDINGLY.**

**MONTREAL, JULY 9, 2025**

(s) *Lex Group Inc.*

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**Lex Group Inc.**

Per: David Assor

Class Counsel / Attorneys for the  
Representative Plaintiff

**SUPERIOR COURT  
(CLASS ACTION)**

**PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL**

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A [REDACTED] K [REDACTED]

*Plaintiff*

-VS-

**BARILLA CANADA INC.**

*Defendant*

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**ORIGINATING CLASS ACTION APPLICATION**

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**ORIGINAL**

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*Me David Assor*

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**BL 5606**

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