

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Actions)

NO.: 500-06-001326-244

YONATAN LIEBERMAN

Applicant

v.

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

Respondents

**AMENDED 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 and August 29, 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 [...] Canada who purchased [...] sports trading cards from any of Defendants, namely The Upper Deck Company, Panini America Inc., [...] and The Topps Company inc. [...]:

(a) containing the mention “memorabilia”, “relic” or “game worn / game used”, or

(b) containing insert or chase subset cards bearing titles or descriptions including similar terminology;

Or any class to be determined by the Court.

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” [...], “relic” or “game-worn” / “game used” 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 or game-used jerseys as pieces of “memorabilia” (Authorization Application, para 11);
 - (b) Therefore, “in the consumers mind” there is a direct link between “game worn / “game used jersey cards” and “memorabilia” (Authorization Application, para 12);
 - (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, paras 12.2 and 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, inter alia, the term “relic” or “memorabilia” on product packaging or the trading cards themselves where the trading cards [...] do not contain game-worn jersey patches (Authorization Application, paras 4.13, 4.18, 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 amended sworn statement of Steven Judd, Exhibit R-1.1, 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 amended sworn statement (R-1.1) establishes:
- (a.1) The manner in which Topps sells its trading cards:
- (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; [...]

(b.1) The phrasing featured on Topps' trading cards; 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" [...], "relic", "game-worn" and "game-used" 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. [...]

15. [...]

16. [...]

16.1 Topps seeks leave to examine the Applicant on the allegations contained in the Authorization Application, as regards the Applicant's personal cause of action against Topps.

16.2 For instance, at paragraph 31.1 of the Authorization Application, the Applicant alleges having reviewed "all the different disclaimers used by Defendants".

17. Accordingly, Topps seeks leave to examine the Applicant on whether he has ever purchased any Topps cards bearing the terms "relic" [...], "memorabilia", "game-worn" or "game-used", 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 amended sworn statement of Steven Judd, Exhibit R-1.1, as well as its supporting Exhibits SJ-1 and SJ-2;

AUTHORIZE the Respondent The Topps Company, Inc. to depose the Applicant Yonatan Lieberman, 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, November 14, 2025

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NOTICE OF PRESENTATION

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Lawyers for the Respondent, The Upper Deck Company

TAKE NOTICE that the Amended 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, November 14, 2025

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Subject: NOTIFICATION / Amended application for leave to adduce evidence at authorization and to examine the Applicant / Yonatan Liberman v. The Upper Deck Company et al. - 500-06-001326-244
Attachments: 2025-11-14 - Topps Amended Application to Adduce Evidence.pdf

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-and-

PANINI AMERICA, INC.

-and-

THE TOPPS COMPANY, INC.

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DATE OF TRANSMISSION: Montreal, November 14, 2025

NATURE OF DOCUMENT: AMENDED APPLICATION OF THE RESPONDENT THE TOPPS COMPANY, INC. FOR LEAVE TO ADDUCE EVIDENCE AT AUTHORIZATION AND TO EXAMINE THE APPLICANT and EXHIBIT R-1.1 (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-1.1: 17 pages
Total : 25 pages
Note: Exhibit R-1.1 will be sent separately via secured download link

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OF STEVEN JUDD AND ITS EXHIBITS SJ-1 AND
SJ-2) and NOTICE OF PRESENTATION**

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