

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Action)

No: 500-06-001389-259

AMRITA KAMALA GABOURG

Plaintiff

v.

DOMINO'S PIZZA OF CANADA LTD.
-and-
DOMINO'S PIZZA INC.
-and-
PH CANADA COMPANY
-and-
YUM! BRANDS INC.
-and-
PIZZA PIZZA LIMITED

Defendants

APPLICATION BY DEFENDANTS
PH CANADA COMPANY AND YUM! BRANDS INC.
FOR LEAVE TO ADDUCE RELEVANT EVIDENCE
(Article 574 CCP)

TO THE HONOURABLE JUSTICE POULIN OF THE SUPERIOR COURT OF QUEBEC,
SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE DEFENDANTS PH
CANADA COMPANY AND YUM! BRANDS INC. RESPECTFULLY SUBMITS THE
FOLLOWING:

I. INTRODUCTION

1. Defendants PH Canada Company ("**Pizza Hut**") and Yum Brands Inc. (together with Pizza Hut, the "**PH Defendants**") seek leave to adduce relevant and limited evidence in order to establish facts that are necessary to enable this Court to undertake an informed analysis, in light of the criteria set out in article 575 of the *Code of Civil Procedure* (the "**CCP**") regarding the authorization sought by Plaintiff to institute class action proceedings against the Defendants.

II. BACKGROUND

2. On or around June 17, 2025, Plaintiff filed an *Application for authorization to institute a class action and to obtain the status of representative*, as appears from the record of this Honourable Court (the “**Application**”).
3. On or around July 8, 2025, Plaintiff filed an *Amended application for authorization to institute a class action and to obtain the status of representative* (the “**Amended Application**”).
4. As appears from paragraph 15 of the Amended Application, Plaintiff seeks authorization to institute a class action on behalf of the following group:

Tous les consommateurs au sens de la Loi sur la protection du consommateur au Québec qui, depuis le 17 juin 2022, ont effectué une commande de repas livré via le site internet ou les applications mobiles de l'une des Intimées et ont payé un prix supérieur (en raison de frais ajoutés obligatoires) au prix initialement annoncé ou indiqué pour pouvoir compléter leur commande.

ou tout autre membre tel que déterminé par la Cour;

*(lesquels étant ci-après désignés les « **Membres du groupe** » ou le « **Groupe** »);*

5. Plaintiff alleges that Defendants’ commercial practice of advertising an initial price for a meal delivery order that is purportedly incomplete, fragmentary, partial, and unattainable, and then demanding and charging a higher price at the end due to additional delivery fees, is illicit.
6. Further, Plaintiff alleges that this commercial practice contravenes the *Consumer Protection Act* (the “**CPA**”) and the *Competition Act*.
7. Consequently, Plaintiff, who claims to have suffered harm as a result of this commercial practice, seeks to have Defendants condemned to pay a sum as loss or damage, or as reduction of the obligation or compensatory damages, or alternatively the nullity of contracts.
8. In addition, Plaintiff seeks punitive damages on behalf of the Group in the amount of \$5,000,000 from each Defendant.
9. The common questions put forward by the Plaintiff are the following:
 - (a) *Est-ce que les intimées chargent un frais de livraison?*
 - (b) *Est-ce que les intimées ont inclus le frais de livraison dans toutes leurs représentations de prix?*
 - (c) *Les intimées ont-elles contrevenu à l’article 224(c) de la LPC?*

- (d) *Les intimées ont-elles contrevenu à l'article 52, 52(1.1) et 52(1.3) de la Loi sur la concurrence?*
- (e) *Les membres du groupe ont-ils droit:*
 - (i) *à la nullité des contrats, à une réduction de leur obligation ou des dommages compensatoires sous la L.P.C.;*
 - (ii) *au recouvrement de leur perte économique ou dommages subis découlant du comportement de l'Intimée? (art. 36 Loi sur la concurrence)*
 - (iii) *au recouvrement des honoraires d'avocats pour l'enquête et les procédures engagées? (art. 36 Loi sur la concurrence)*
 - (iv) *à un montant de 5 000 000\$ en dommages punitifs par intimée; et/ou*
 - (v) *à l'intérêt et indemnité additionnelle prévue par le Code civil du Québec sur ces montants, à compter de la date du dépôt de la demande d'autorisation?*

10. The Amended Application contains certain vague and imprecise allegations. Therefore, the PH Defendants seek leave from this Court to adduce relevant evidence in order to rectify incorrect allegations and to correct facts that are necessary for the purposes of the authorization hearing.

III. EVIDENCE PROPOSED BY THE PH DEFENDANTS

11. The evidence which the PH Defendants seek leave to adduce consists of a sworn statement of Scott Kessler, who held the position of Chief Digital & Technology Officer at Pizza Hut between July 3, 2023, and March 1st, 2025, covering the following topics:

- (a) A concise overview of Pizza Hut franchises, including Pizza Hut's role as franchisor;
- (b) A general description of the purpose of the delivery fees and their determination;
- (c) A general description of changes to Pizza Hut's ordering platforms; and
- (d) A description of the current ordering process on Pizza Hut's website and mobile application;

as appears from the draft sworn statement of Scott Kessler communicated herewith as **Exhibit R-1** (the "**Sworn Statement**").

IV. GROUNDS IN SUPPORT OF THE PRESENT APPLICATION

12. The evidence which the PH Defendants seek leave to adduce is eminently relevant and appropriate to the authorization inquiry proposed by the Plaintiff.
13. It appears from the Amended Application that the Court does not have sufficient information to render judgment in light of the criteria set forth in article 575 CCP, and therefore the PH Defendants should be authorized to submit the additional evidence referred to above.
14. Notably, at paragraphs 37 and following of the Amended Application, Plaintiff discusses the PH Defendants' role in offering and providing pizza delivery services to Group Members.
15. In particular, at paragraph 37 of the Amended Application, Plaintiff states that "*les deux sociétés participent ensemble à l'offre et la fourniture du service de pizza livrée aux Membres du groupe, le rôle exact de chacune des entités face aux activités au Canada étant de connaissance exclusive de ces deux entités*", the two entities being the PH Defendants.
16. Further, at paragraph 40 of the Amended Application, Plaintiff alleges that the PH Defendants control the purchasing process, i.e., each step on the transactional website or mobile applications, and more specifically control the content displayed at each step, including when prices are announced or indicated, and are therefore responsible for compliance with the CPA and the *Competition Act*.
17. The Sworn Statement would enable the PH Defendants to correct and bring more precision to the allegations made by Plaintiff in this regard.
18. In addition, the Sworn Statement is relevant and useful to the Court in that it briefly sets out various considerations that must be understood by the Court in order to assess the circumstances at hand, particularly with regard to the activities of the PH Defendants, the delivery fees, and the ordering process at issue which has undergone changes prior to the filing of the Application.
19. The Sworn Statement will allow to streamline the authorization hearing by providing precision and clarity on the issues of fact and law alleged by the Plaintiff. It will address and rectify certain ambiguities and generalities contained in the Amended Application and ensure an accurate examination of the criteria for authorization.
20. The PH Defendants' application to adduce evidence is necessary to enable this Court to fully understand the nature of this class action and to allow the PH Defendants to mount a balanced, informed challenge to the authorization criteria.
21. The Sworn Statement is succinct and limited in scope; it is thus consistent with the nature of the authorization process and the principle of proportionality.

WHEREFORE MAY IT PLEASE THIS COURT TO:

GRANT the present *Application by Defendants PH Canada Company and Yum Brands Inc. for Leave to Adduce Relevant Evidence*;

AUTHORIZE PH Canada Company and Yum! Brands Inc. to file the sworn statement of Scott Kessler;

ALL OF WHICH IS REQUESTED without costs, except in case of contestation.

MONTREAL, December 12, 2025



Osler, Hoskin & Harcourt LLP

Lawyers for Defendants

PH Canada Company and Yum! Brands Inc.

c/o Mtre Éric Préfontaine / Mtre Jessica

Harding

1000 de la Gauchetière Street West

Suite 1100

Montreal, Quebec H3B 4W5

Telephone: (514) 904-8100

Fax: (514) 904-8101

Email: eprefontaine@osler.com /

jharding@osler.com

Notification by e-mail:

notificationosler@osler.com

Our file: 1271299

NOTICE OF PRESENTATION

TO: Me Sébastien A. Paquette
SERVICES JURIDIQUES SP INC.
1434, Sainte-Catherine Street West
Suite 200
Montreal, Quebec H3G 1R4
Telephone: 514-944-7344
Email: spaquettelaw@gmail.com
Notification: notification@mslex.ca

Lawyers for Plaintiff

TAKE NOTICE that the present *Application by Defendants PH Canada Company and Yum! Brands Inc. for Leave to Adduce Relevant Evidence* will be presented for hearing at a date and time to be determined by the Honourable Justice Poulin of the Superior Court of Québec, 1 Notre-Dame Street East, Montreal, Québec.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, December 12, 2025



Osler, Hoskin & Harcourt LLP

Lawyers for Defendants

PH Canada Company and Yum! Brands Inc.

c/o Mtre Éric Préfontaine / Mtre Jessica

Harding

1000 de la Gauchetière Street West

Suite 1100

Montreal, Quebec H3B 4W5

Telephone: (514) 904-8100

Fax: (514) 904-8101

Email: eprefontaine@osler.com /

jharding@osler.com

Notification by e-mail:

notificationosler@osler.com

Our file: 1271299

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Action)

No: 500-06-001389-259

AMRITA KAMALA GABOURG

Plaintiff

v.

DOMINO'S PIZZA OF CANADA LTD.
-and-
DOMINO'S PIZZA INC.
-and-
PH CANADA COMPANY
-and-
YUM! BRANDS INC.
-and-
PIZZA PIZZA LIMITED

Defendants

**LIST OF EXHIBITS OF DEFENDANTS PH CANADA COMPANY AND YUM!
BRANDS INC.**

Exhibit R-1:

Draft sworn statement of Scott Kessler

MONTREAL, December 12, 2025



Osler, Hoskin & Harcourt LLP

Lawyers for Defendants

PH Canada Company and Yum! Brands Inc.

c/o Mtre Éric Préfontaine / Mtre Jessica Harding

1000 de la Gauchetière Street West

Suite 1100

Montreal, Quebec H3B 4W5

Telephone: (514) 904-8100

Fax: (514) 904-8101

Email: eprefontaine@osler.com /

jharding@osler.com

Notification by e-mail:

notificationosler@osler.com

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

SUPERIOR COURT
(Class Action)

No: **500-06-001389-259**

AMRITA KAMALA GABOURG

Plaintiff

v.

DOMINO'S PIZZA OF CANADA LTD.
-and-
DOMINO'S PIZZA INC.
-and-
PH CANADA COMPANY
-and-
YUM! BRANDS INC.
-and-
PIZZA PIZZA LIMITED

Defendants

SWORN STATEMENT OF SCOTT KESSLER

I, the undersigned, Scott Kessler, Senior Director, Global E-Commerce at Yum Connect, LLC, an affiliate of YUM! Brands, Inc., having its principal place of business at 1441 Gardiner Lane, Louisville, Kentucky, 40213, USA, solemnly affirm the following:

1. Between July 3, 2023, and March 1st, 2025, I held the position of Chief Digital & Technology Officer at PH Canada Company.
- I. PIZZA HUT FRANCHISES AND DELIVERY FEES**
2. PH Canada Company is the franchisor of the Pizza Hut system, providing franchisees with the Pizza Hut brand and trademarks, as well as the proprietary concept, operating methods, and support services necessary for the operation of Pizza Hut restaurants in Canada, which are owned and operated by independent franchisees.
3. The services offered by PH Canada Company to its franchisees include access to a platform (website and mobile application) to direct customer orders placed online based on various parameters, including the franchisee's participation in the platform, location, time, availability and customer traffic.

4. When placing an order online, a customer must determine whether they wish to pick up their order at the designated Pizza Hut restaurant, or if they wish to have the order delivered to the location of their choice, in which case delivery fees apply for the delivery service offered by the franchisee.
5. The delivery fees represent the consideration for the service offered to the customer for the delivery of their order. Delivery fees are for the benefit of the franchisee to compensate in whole or in part for the costs they incur in offering this service, through their employees, self-employed workers or delivery partners, as applicable.
6. It is not possible for PH Canada Company to determine the purpose, context or occasion of the orders placed by customers through its website or mobile application.
7. It is also not possible for PH Canada Company to determine the identity of the payer of the order, unless the payer provides this detail when placing an order through PH Canada Company's website or mobile application.

II. DETERMINATION OF DELIVERY FEES

8. Yum Connect, LLC d/b/a Byte by Yum! ("**Yum Connect**"), an affiliate of PH Canada Company, operates the website www.pizzahut.ca.
9. Each franchisee is responsible for determining the delivery fee applicable to orders that it delivers, by working directly with a third-party point-of-sale system services provider called KRK Holdings Inc.
10. Neither PH Canada Company nor Yum Connect is involved in setting or determining the delivery fees applicable to orders placed online by customers for delivery.

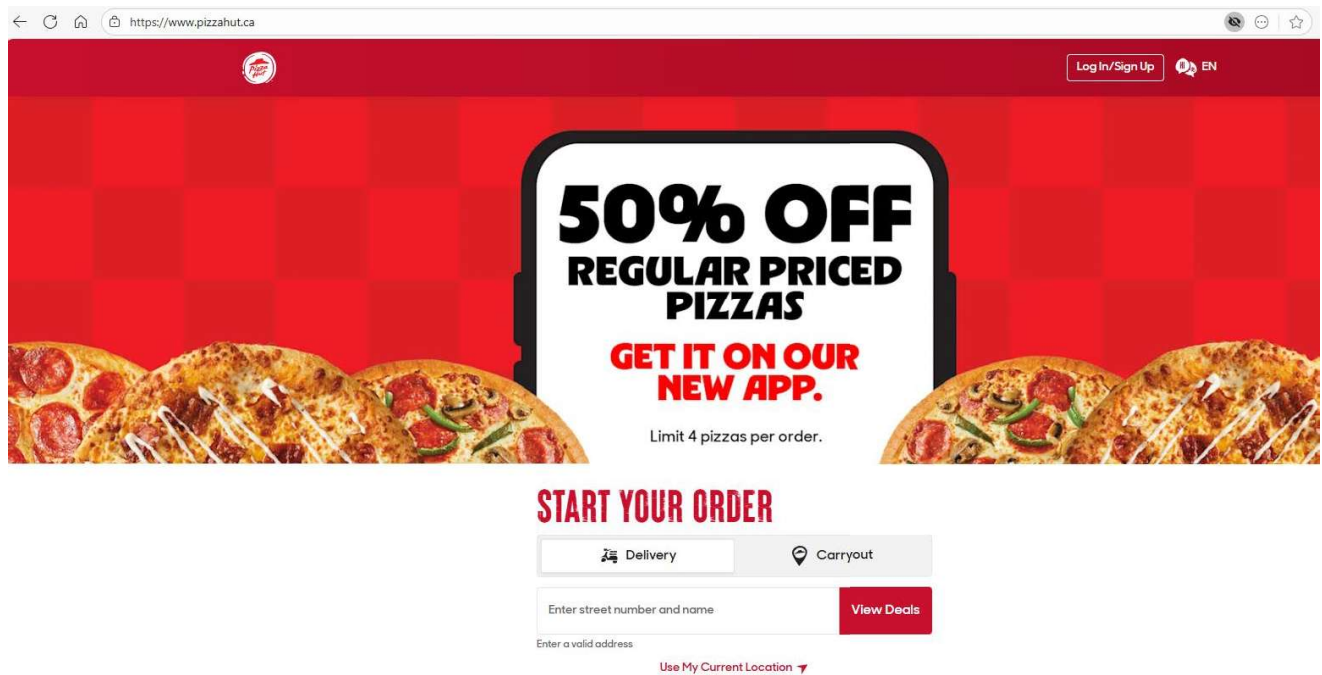
III. CHANGES TO THE ORDERING PLATFORMS

11. Prior to the filing of the Application for authorization to institute a class action on or around June 17, 2025, PH Canada Company had already undertaken work to update and improve its online ordering platforms, including the www.pizzahut.ca website and the mobile application.
12. On or around May 27, 2025, PH Canada Company began implementing these changes across its ordering platforms.
13. As of May 27, 2025, customers attempting to place orders through the www.pizzahut.ca website were directed to the updated website environment as part of a progressive transition and rollout.
14. The updated website and mobile application became completely operational on September 12, 2025.

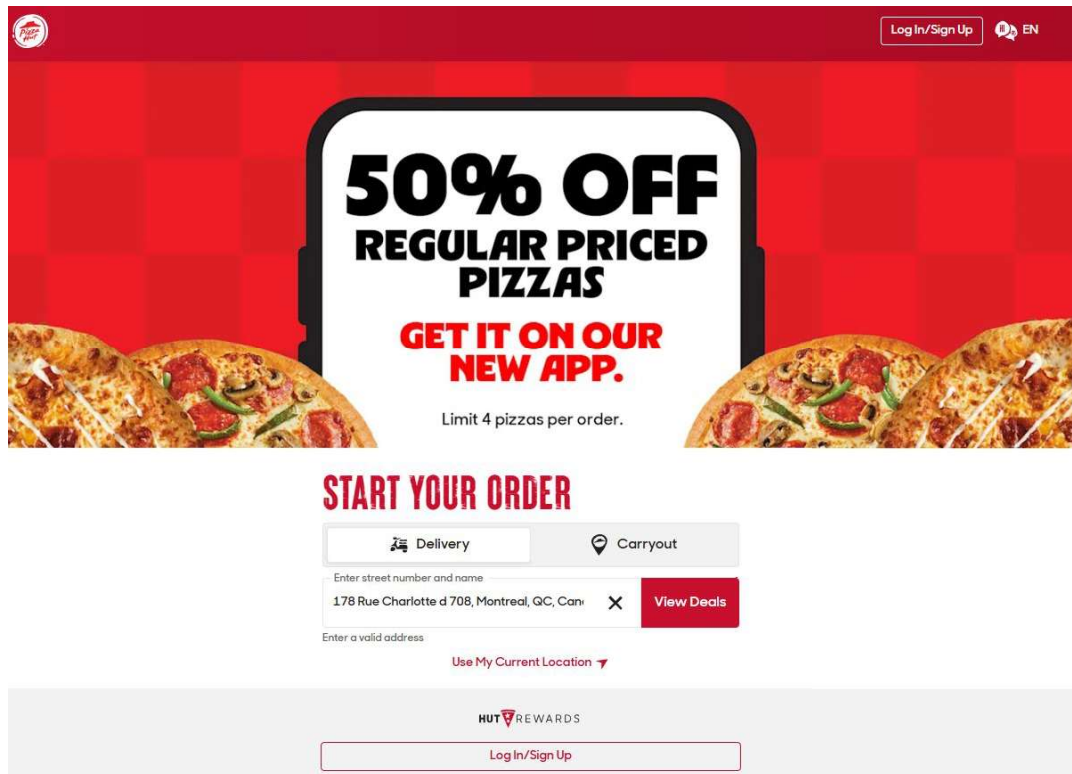
15. As of September 12, 2025, all orders placed with PH Canada Company have been processed exclusively through the updated website and the updated mobile application.
16. The following section describes the online ordering process that has been in place since that date.

IV. CURRENT ONLINE ORDER PROCESS

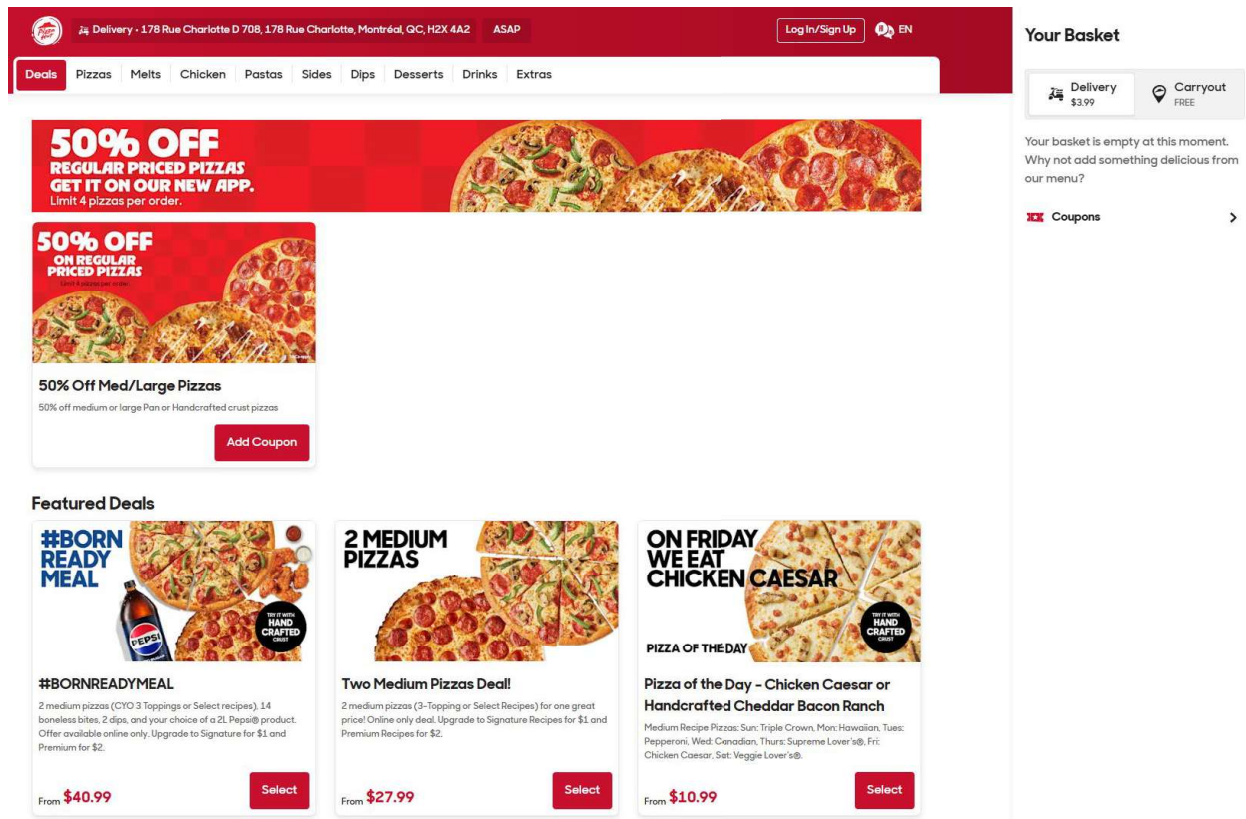
17. When a customer visits the www.pizzahut.ca website to place an online order, the “Delivery” option is selected by default. The customer is prompted to enter their delivery address, as appears from a screenshot below:



18. The address of Ms. Amrita Kamala Gabourg is used for the purposes of this example:



19. Then, clicking on the red button “View Deals” brings the customer to the following page, where a delivery fee of \$3.99 automatically appears on the upper right-hand corner of the page, under “Your Basket”, as appears from a screenshot below:



20. Alternatively, toggling to the “Pizzas” tab displays various pizza options, while the delivery fee is still apparent on the upper right-hand corner of the page, under the “Your Basket” mention, as appears from a screenshot below:



🇩🇪 Delivery - 178 Rue Charlotte D 708, 178 Rue Charlotte, Montréal, QC, H2X 4A2

ASAP

Log In/Sign Up

🇬🇧 EN

Deals

Pizzas

Melts

Chicken

Pastas

Sides

Dips

Desserts

Drinks

Extras

50% OFF

REGULAR PRICED PIZZAS

GET IT ON OUR NEW APP.

Limit 4 pizzas per order.



Customize



Create Your Own

Pick your toppings and create your pizza.

\$23.99

Select



Half And Half

Customize each side of your pizza with any recipe you like.

\$19.49

Select

Handcrafted Pizzas



Customize

Handcrafted Pepperoni Duo

Light crust with cupped & classic pepperoni.

Select Size & Crust

12" Medium, Handcrafted

\$19.49

Add



Customize

Handcrafted Classic Pepperoni

Light crust, classic pepperoni & mozzarella.

Select Size & Crust

12" Medium, Handcrafted

\$19.49

Add



Customize

Handcrafted Smoky Tri Cheese Blend

Light crust with smoked cheddar, parmesan & mozzarella.

Select Size & Crust

12" Medium, Handcrafted

\$19.49

Add

Your Basket

🚚 Delivery \$3.99

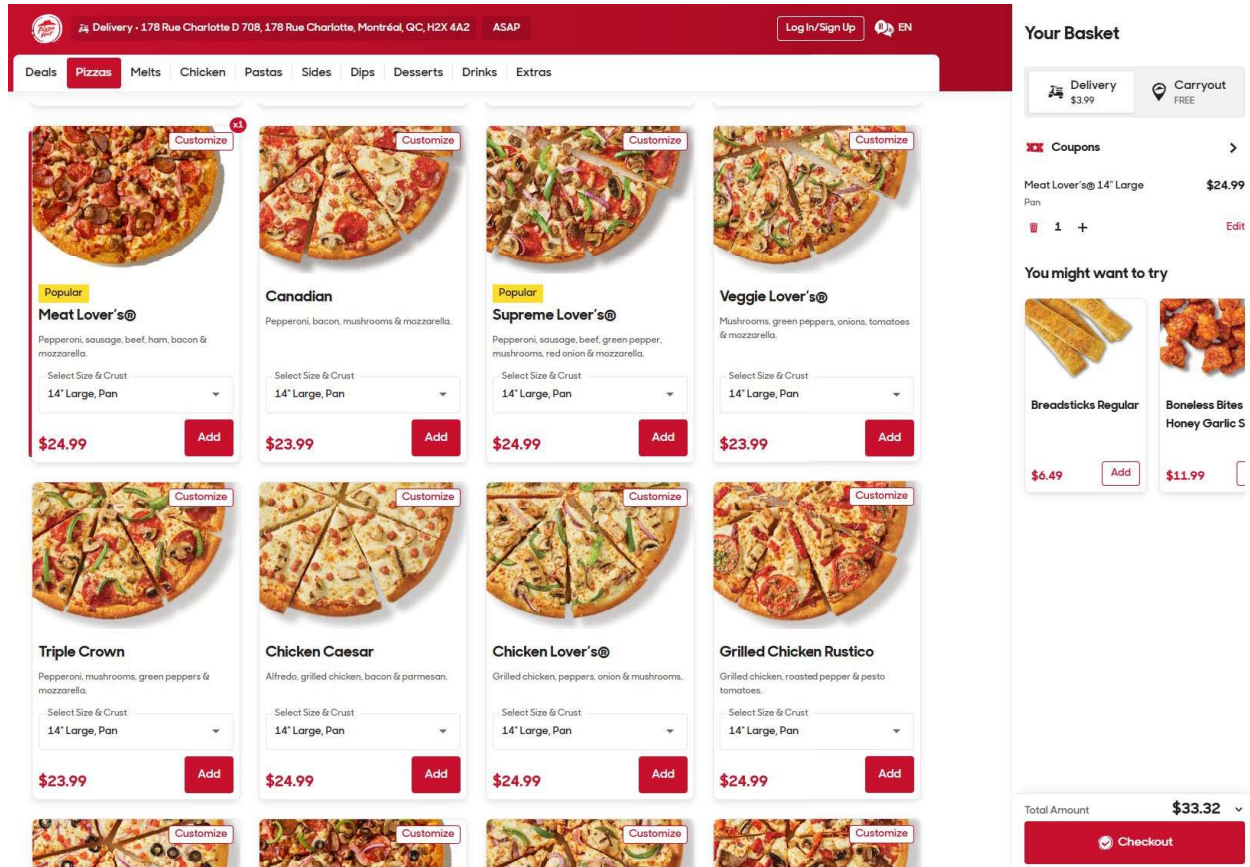
📍 Carryout FREE

Your basket is empty at this moment. Why not add something delicious from our menu?

🔖 Coupons

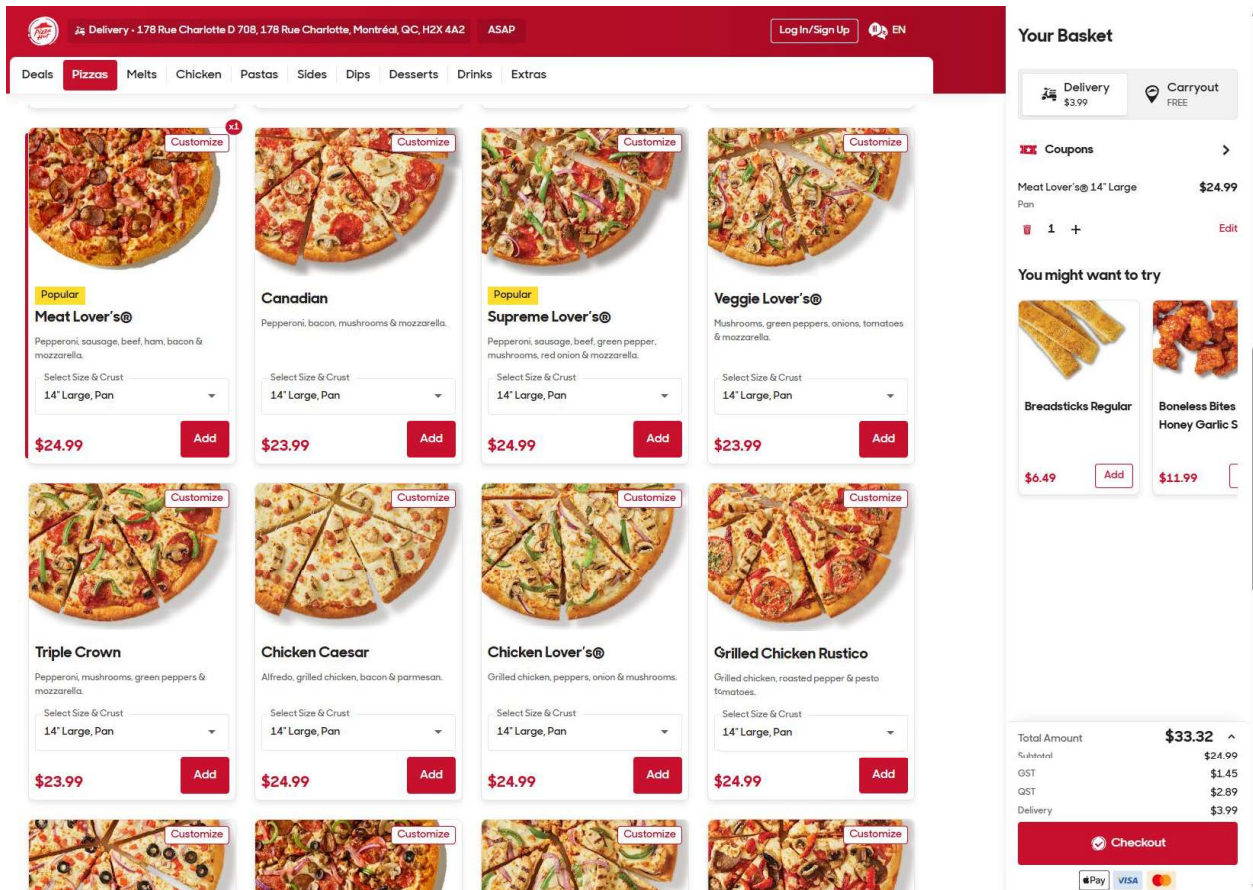
>

21. Clicking the “Add” button under any pizza will have the effect of adding that pizza to the customer’s basket, where the delivery fees will remain displayed on the upper right-hand corner of the page, under “Your Basket”, as appears from a screenshot below, where a Meat Lover’s 14” Large pizza has been added to the basket:



22. The “Total Amount” displayed in the lower right-hand corner of the page includes the delivery fees and applicable taxes.

23. In addition, clicking on the arrow next to the Total Amount on the bottom right-hand corner of the page will display the Total Amount breakdown, as appears from a screenshot below:



24. Lastly, when clicking the "Checkout" button, the customer is brought to the next page where they are prompted to enter their contact and payment information, and where the Total Amount breakdown appears right above the "Place Order" button, as appears from a screenshot below:

[← Back](#)

CHECKOUT

Who are we delivering to?

First Name *

Last Name *

Mobile Number *

+1

In case we need to contact you about your order

Email Address *

Delivery Address



178 Rue Charlotte d 708
178 Rue Charlotte, Montréal, QC
H2X 4A2

Any other details you wish to add?

Delivery Instructions (Optional)

Example: 2 blocks before the park

How are you paying?

Pay with Debit/Credit Card

We accept

VISA



☐ Debit Card - Pay at door

☒ Credit Card - Pay at door

☐ Pay in Cash



Before you checkout

We will send you occasional marketing offers and promotions. Please click the relevant option below if you **do not want** to receive marketing offers and promotions by Email or SMS:

☐ Email ☐ SMS

Total Amount

\$33.32 ^

Subtotal

\$24.99

GST

\$1.45

QST

\$2.89

Delivery

\$3.99



Place Order

By placing your order, you agree to our
[Terms of Use](#) & [Privacy Policy](#)

25. This process would be the same for any item ordered on PH Canada Company's website or mobile application – the delivery fee appears at every step of placing an online order for delivery.
26. To the best of my knowledge, all the facts in this statement are true.

AND I HAVE SIGNED:

Scott Kessler
Senior Director, Global E-Commerce
Yum Connect, LLC

Solemnly declared before me by
technological means in Montréal,
Québec, on this ● day of ●, 2025

Commissioner of Oaths for the Province of
Québec

De: Ciciotti, Fabiola
Envoyé: 12 décembre 2025 12:41
À: spaquettelaw@gmail.com
Cc: Préfontaine, Éric; Harding, Jessica; Romcea, Alexandra; Di Fruscia, Sandy
Objet: NOTIFICATION - 500-06-001389-259 - Amrita Kamala Gabourg v. Domino's Pizza of Canada Ltd. et al. : Application by PH Canada Company and Yum! Brands Inc. for leave to adduce relevant evidence and Exhibit R-1
Pièces jointes: 2025-12-12 - Application by PH Canada Company and Yum! Brands Inc. for leave to adduce relevant evidence and Exhibit R-1.pdf

Suivi:	Destinataire	Réception
	spaquettelaw@gmail.com	
	Préfontaine, Éric	Remis: 2025-12-12 12:41
	Harding, Jessica	Remis: 2025-12-12 12:41
	Romcea, Alexandra	Remis: 2025-12-12 12:41
	Di Fruscia, Sandy	Remis: 2025-12-12 12:41

NOTIFICATION BY EMAIL
(Art. 134 CCP)

SENDER

FIRM: **OSLER, HOSKIN & HARCOURT LLP**
LAWYER(S): Mtre Éric Préfontaine
Mtre Jessica Harding

ADDRESS: 1000 de la Gauchetière St. West, Suite 1100
Montréal, Québec H3B 4W5

TELEPHONE: 514-904-5282 (EP) / 514-904-8128 (JH)
TELECOPIER: 514-904-8101
NOTIFICATION: eprefontaine@osler.com / jharding@osler.com
notificationosler@osler.com

OUR FILE NUMBER: 1271299

ADDRESSEES

FIRM: **SERVICES JURIDIQUES SP INC.**
LAWYER(S): Mtre Sébastien A. Paquette
ADDRESS: 1440 Sainte-Catherine St. West, Suite 522
Montréal, Québec, H3G 1R4

TELEPHONE: 514-944-7344
TELECOPIER: 514-800-2286
EMAIL ADDRESS: spaquettelaw@gmail.com

Place of transmission: Montréal
Time of transmission: (see above)

Date of transmission: December 12, 2025

Number of
pages transmitted: 17 pages attached

Type of document: **APPLICATION BY DEFENDANTS PH CANADA
COMPANY AND YUM! BRANDS INC. FOR LEAVE TO
ADDUCE RELEVANT EVIDENCE (Article 574 CCP)
AND EXHIBIT R-1**

Court file number: 500-06-001389-259



Fabiola Ciciotti
Legal Assistant
514.904.5808 | fciciotti@osler.com
Osler, Hoskin & Harcourt LLP | osler.com

Ciciotti, Fabiola

De: Microsoft Outlook
À: spaquettelaw@gmail.com
Envoyé: 12 décembre 2025 12:41
Objet: Relayé : NOTIFICATION - 500-06-001389-259 - Amrita Kamala Gabourg v. Domino's Pizza of Canada Ltd. et al. : Application by PH Canada Company and Yum! Brands Inc. for leave to adduce relevant evidence and Exhibit R-1

La remise à ces destinataires ou groupes est terminée, mais aucune notification de remise n'a été envoyée par le serveur de destination :

spaquettelaw@gmail.com (spaquettelaw@gmail.com)

Objet : NOTIFICATION - 500-06-001389-259 - Amrita Kamala Gabourg v. Domino's Pizza of Canada Ltd. et al. : Application by PH Canada Company and Yum! Brands Inc. for leave to adduce relevant evidence and Exhibit R-1

No: 500-06-001389-259

SUPERIOR COURT
(Class Action)
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

AMRITA KAMALA GABOURG

Plaintiff

v.

DOMINO'S PIZZA OF CANADA LTD.

-and-

DOMINO'S PIZZA INC.

-and-

PH CANADA COMPANY

-and-

YUM! BRANDS INC.

-and-

PIZZA PIZZA LIMITED

Defendants

**APPLICATION BY DEFENDANTS PH CANADA
COMPANY AND YUM! BRANDS INC. FOR
LEAVE TO ADDUCE RELEVANT EVIDENCE
(Article 574 CCP) AND EXHIBIT R-1**

ORIGINAL

BO 0323

O/F: 1271299

Mtre Éric Préfontaine / Mtre Jessica Harding

OSLER, HOSKIN & HARCOURT LLP

1000 de la Gauchetière Street West, Suite 1100

Montréal, Québec H3B 4W5

Tél. : 514.904.8100

Télec. : 514.904.8101

eprefontaine@osler.com / jharding@osler.com /

notificationosler@osler.com