CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Actions)

NO: 500-06-001262-233

ANDREW KRASKA

Applicant

v.

KENVUE CANADA INC. (formerly known as Johnson & Johnson Inc.)

and

PROCTER & GAMBLE INC.

and

HALEON CANADA ULC (formerly known as Glaxosmithkline Consumer Health Care ULC)

and

RB HEALTH (CANADA) INC.

and

PFIZER CANADA ULC (d.b.a. Pfizer Consumer Healthcare)

and

PFIZER INC.

and

KENVUE BRANDS LLC (formerly known as Johnson & Johnson Consumer Inc.)

and

KENVUE INC.

and

THE PROCTER & GAMBLE COMPANY

and

RB HEALTH (US) LLC

Defendants

APPLICATION OF THE DEFENDANTS RB HEALTH (CANADA) INC. AND RB HEALTH (US) LLC FOR LEAVE TO ADDUCE RELEVANT EVIDENCE
(Articles 574, 575 CCP)

TO THE HONOURABLE ELENI YIANNAKIS, J.S.C., THE DEFENDANTS RB HEALTH (CANADA) INC. AND RB HEALTH (US) LLC HEREBY SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. RB Health (Canada) Inc. ("**RB Health Canada**") and RB Health (US) LLC ("**RB Health US**"), and collectively, "**RB Health**", seek leave to adduce relevant evidence pursuant to article 574 of the Code of Civil Procedure ("CCP") to contest the Applicant Andrew Kraska (the "**Applicant**")'s *Amended Application for Authorization to Institute a Class Action and Appoint Applicant as Class Representative* in this matter (the "**Application for Authorization**").

2. More particularly, RB Health seeks leave to file the proposed short affidavit of Manushvi Gupta, in a form substantially similar to the document attached hereto as **Annex A** (the "**Gupta Affidavit**"), including the following exhibits:

   a) excerpts of Health Canada's Drug Product Database for each of RB-Health Canada's products listed in the Application for Authorization (Exhibit RB-1);

   b) excerpt of Health Canada's Drug Product Database for "Mucinex Chest Congestion" (Exhibit RB-2);

   c) Health Canada's "*Labelling requirements for non-prescription drugs guidance document*" (Exhibit RB-3);

   d) package labelling accepted by Health Canada for each of RB-Health Canada's products listed in the Application for Authorization (Exhibit RB-4).

3. As further detailed below, this evidence would provide the Court with "essential and indispensable" information with respect to:

   a) the identity and effect of each of the active ingredients contained in RB Health Canada's products listed in the Application for Authorization, allowing the Court to assess whether the commonality and appearance of right criteria of article 575 (1) and (2) CCP are met;

   b) background information about Health Canada's regulatory process for non-prescription drugs, including its labelling requirements, allowing the Court to assess whether the appearance of right criterion of article 575 (2) CCP is met, and providing it with useful contextual evidence in a highly regulated environment; and

c) the complete package labelling of the four RB-Named Products (as defined below) to complete the fragmentary labelling related evidence filed by the Applicant.

II. THE PROPOSED CLASS ACTION

4. As appears from the Application for Authorization, the Applicant seeks authorization to institute a class action on behalf of the following proposed class (the "**Proposed Class Members**"):

> *All persons in Quebec who purchased, between February 1, 2007, and date this case is authorized as a class action, any Cold Medicine listed in Schedule A to the Application for Authorization.*

5. The Applicant broadly and indistinctly alleges that the Defendants have misrepresented to the Proposed Class Members that over-the-counter cold and cough medicine containing phenylephrine ("**PE**") could act as **"a decongestant and alleviate nasal congestion, fever, sneezing, sinus pressure, runny nose and cough**".[1]

6. The Applicant alleges that contrary to the defendants' representations, medicines containing PE are not effective via oral administration for the relief of nasal decongestion.[2]

7. The Applicant also alleges that certain defendants, referred to in the Application for Authorization as the "Task Group Defendants", including RB Health US, carried out a "coordinated conspiracy to suppress scientific evidence" regarding their products' alleged ineffectiveness in the United States.[3]

8. Amongst a list of 77 PE-containing products manufactured and/or distributed by all Defendants, each composed of various combinations of active ingredients (the "**Named Products**"), the Applicant specifically lists in Schedule A to the Application for Authorization four multi-ingredient products distributed by RB Health Canada:

a) Mucinex Multi-Action Congestion, Cold & Cough;

b) Mucinex Multi-Action Congestion, Cold & Flu;

c) Mucinex Multi-Action Congestion, Cold & Cough Solution; and

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1 *Application for Authorization* (Application), at para. 1. Such symptoms are collectively referred to by the Applicant as "**Cold/Cough Symptoms**".

2 *Ibid.,* at para. 22.

3 Application*, supra,* note 1, at para. 20.19.

d) Mucinex Multi-Action Congestion, Stuffy Nose & Cough Liquid (collectively the "**RB-Named Products**").[4]

9. The Applicant alleges that RB Health Canada represented to the Proposed Class Members that its *Mucinex Multi-Action Cold & Sinus Caplets*[5] "**helps relieve […] cold and flu symptoms in 1 simple solution"**,[6] and that it lists PE hydrochloride in a 5 mg dosage as a nasal decongestant, exclusively relying on an excerpt of *Mucinex*'s website (Exhibit P-28) for this specific product, in which a general description of it is made.

10. Although the Applicant's broad statement regarding the Defendants' misrepresentations covers "Cold/Cough Symptoms", which include numerous symptoms detailed in paragraph **5** above, his allegations against RB Health Canada are limited to the representation that one of the RB-Named Products "temporarily relieves **symptoms of nasal and chest congestion due to common cold**".[7]

11. The Applicant does not allege having ever purchased any of the RB-Named Products, stating that he "was subjected to the **Defendant Kenvue's** misleading and deceitful marketing practices"[8] only, which he believed, "**would provide decongestion**".[9]

12. Rather, the Applicant speculates and extrapolates from his personal experience with Kenvue Canada Inc.'s products ("**Kenvue**" or "**Kenvue Products**") to make vague allegations against RB Health, "lumping" it with all Defendants despite the existence of 77 different Named Products, containing different active ingredients and/or combinations thereof, which provide different effects or combinations of effects and ignoring that many Proposed Class Members may have purchased RB-Named Products for reasons other than their nasal decongestant effects.

III. THE PROPOSED EVIDENCE IS RELEVANT AND NECESSARY

13. The criteria to determine whether the Application for Authorization should be granted are established in article 575 CCP.

14. In its analysis of these criteria, the Court assumes that the facts alleged are true, unless they are clearly inaccurate and contradicted by other evidence.

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4 See Schedule A to the Application.

5 As appears from the Gupta Affidavit, this product is now branded as Mucinex Multi-Action Congestion, Cold & Flu.

6 Application, *supra*, note 1, at para. 30.

7 *Ibid*.

8 Application, *supra*, note 1, at para. 32.

9 Application, *supra*, note 1, at para. 36.

Furthermore, the Court should not consider as true allegations which are based on inferences, conclusions, unverified hypotheses, legal arguments or opinions.

15. RB Health seeks leave to file the Gupta Affidavit and its supporting exhibits, primarily detailing:

a) the complete list of active ingredients in each RB-Named Product and their respective effects, including the signature active ingredient in the RB-Named Products, namely guaifenesin, which is used as an expectorant (phlegm/mucus reducing agent);

b) the regulatory process undertaken by Health Canada prior to authorizing the sale of non-prescription drug products; and

c) the complete package labelling for the four RB-Named Products.

A. COMPOSITION OF RB-NAMED PRODUCTS (PARAGRAPHS 4-11 AND EXHIBIT RB-1 AND EXHIBIT RB-2)

16. The proposed evidence is relevant as it provides the Court with essential and indispensable information required to assess whether the Application for Authorization meets the commonality and appearance of right criteria of article 575 (1) and (2) CCP.

17. Indeed, the Application for Authorization is premised on the assumption that, because the Applicant would have bought the Kenvue Products based on the so-called representations relating to their decongestant effects, each Proposed Class Member would have necessarily purchased an RB-Named Product for the sole purpose of alleviating their cold and flu symptoms.

18. The Applicant’s legal syllogism as regards to RB Health is defective and does not take into account that the Defendants each manufactured or sold different products, containing different combinations of different active ingredients, each with a different effect, making the reason each Proposed Class Member may have purchased them highly individual.

19. RB Health intends to argue at authorization that the RB-Named Products' varied composition of active ingredients, each with a specific effect and, besides PE, not alleged to be ineffective by the Applicant, led the Proposed Class Members who bought its products to use them for a multitude of reasons beyond the relief of nasal congestion symptoms which are at the heart of the Applicant’s proposed legal syllogism against Kenvue.

20. The proposed evidence demonstrates that, because of the varied composition of each RB-Named Product, none of the elements of the Applicant’s proposed personal cause of action against Kenvue, if sufficient, can be extrapolated to the

Proposed Class Members who consumed RB Health Canada's products without individual inquiries as to why they bought the products, on what basis and what their satisfaction was with these products such that the requirements of article 575 (1) CCP are also not met.

21. Additionally, given the impossibility of extrapolating the Applicant's proposed legal syllogism with respect to Kenvue to RB Health, the proposed evidence demonstrates the insufficiency of the Applicant's allegations and the inexistence of an appearance of right against RB Health pursuant to article 575 (2) CCP.

22. RB Health US also intends to argue at authorization that at all relevant times, the RB-Named Products were only distributed, marketed and sold in Canada by RB Health Canada, such that there is no cause of action against RB Health US regarding the alleged ineffectiveness of the PE.

B. HEALTH CANADA'S REGULATORY PROCESS (PARAGRAPHS 12-20 AND EXHIBIT RB-3)

23. The proposed evidence is essential as it provides the Court with useful context in a highly regulated environment and constitutes essential and indispensable information required to assess whether the Application for Authorization meets the appearance of right criterion of article 575 (2) CCP.

24. RB Health intends to argue at authorization that what the Applicant alleges to be a misrepresentation regarding the effect of PE in the RB-Named Products is in fact not a misrepresentation at all, but a **labelling requirement imposed by Health Canada**, which requires that the labelling of pharmaceutical products include the "purpose" and "use" of each active ingredient.

C. RB-NAMED PRODUCTS' COMPLETE LABELLING (PARAGRAPH 18 AND EXHIBIT RB-4)

25. As appears from the Application for Authorization, the Applicant exclusively relies on an excerpt of *Mucinex*'s website (Exhibit P-28) for one of the four RB-Named Products, namely Mucinex Multi-Action Congestion, Cold & Flu.

26. However, Exhibit P-28 is not the product label of said product and relates to only one of the four RB-Named Products.

27. The evidence that RB Health seeks to adduce therefore, supplements the fragmentary evidence filed in support of the Application for Authorization, introducing the complete labelling of each of the RB-Named Products, which contains the information required by Health Canada, as described above.

IV. CONCLUSION

28. It would be contrary to the interests of justice to refuse evidence directly relevant to understanding the proposed class action and assessing the criteria for authorization.

29. This Court should have the benefit of the evidence described above, providing it with a comprehensive understanding of the RB-Named Products, so that it may be able to make an informed decision at the authorization stage.

30. Without this evidence, the Court may be unable to properly assess whether the criteria for authorization are met and, if they are, how best to define the class and frame the common issues and conclusions sought.

31. The present Application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Application of the Defendants RB Health (Canada) Inc. and RB Health (US) LLC for Leave to Adduce Relevant Evidence;*

AUTHORIZE RB Health (Canada) Inc. and RB Health (US) LLC to submit an affidavit from RB Health Canada's representative Manushvi Gupta in a form substantially similar to the document attached hereto as Annex A, as well as Exhibits RB-1 to RB-4 in support thereof;

THE WHOLE without costs save in the event of contestation.

MONTRÉAL, February 27, 2026

Torys Law Firm LLP

TORYS LAW FIRM LLP
Attorneys for the Defendants
RB Health (Canada) Inc. and RB Health (US) LLC
M^tre^ Sylvie Rodrigue, Ad. E.
srodrigue@torys.com
Tel.: 514.868.5601
M^tre^ Anne Merminod
amerminod@torys.com
Tel.: 514.868.5642
M^tre^ Karl Boulanger
kboulanger@torys.com
Tel.: 514.868.5621
1000 De La Gauchetière Street West, Suite 4000, PO Box 9
Montréal, Québec H3B 4W5

Fax: 514.868.5700
notifications-mtl@torys.com
Permanent Code: BS-2554
Our Reference: 43980-0001

NOTICE OF PRESENTATION

ADDRESSEES:

SLATER VECCHIO LLP
5352 Saint Laurent Boulevard
Montréal, Québec H2T 1S1
Fax: 514.552.9706

M^tre^ Saro J. Turner
sjt@slatervecchio.com
Tel.: 514.534.0962
M^tre^ Ali Daoud-Brixi
adb@slatervecchio.com
Tel.: 514.699.0390
M^tre^ Andrea Roulet
acr@slatervecchio.com
Tel.: 514.534.0962

Attorneys for the Applicant

BLAKE CASSELS & GRAYDON LLP
1 Place Ville Marie, Suite 3000
Montréal, Québec H3B 4N8
Fax: 514.982.4099

M^tre^ Simo Jun Seida
simon.seida@blakes.com
Tel.: 514.982.4103

Attorneys for the Defendants
KENVUE CANADA INC. (formerly known as Johnson & Johnson Inc.)
KENVUE BRANDS LLC (formerly known as Johnson & Johnson Consumer Inc.)
KENVUE INC.

STIKEMAN ELLIOTT LLP
1155 René-Lévesque Blvd. West, 41st Floor
Montréal, Québec H3B 3V2
Fax: 514.397.3222

M^tre^ Eric Azran
eazran@stikeman.com
Tel.: 514.397.3169

Attorneys for the Defendants
PROCTER & GAMBLE INC.
THE PROCTOR & GAMBLE COMPANY

NORTON ROSE FULBRIGHT CANADA LLP
1 Place Ville Marie, Suite 2500
Montréal, Québec H3B 1R1

M^tre^ Paul Prosterman
paul.prosterman@nortonrosefulbright.com
Tel.: 514.847.4481
M^tre^ Maya Angenot
maya.angenot@nortonrosefulbright.com
Tel.: 514.847.4310

Attorneys for the Defendants
HALEON CANADA ULC (formerly known as Glaxosmithkline Consumer Health Care ULC)
PFIZER CANADA ULC (d.b.a. Pfizer Consumer Healthcare)
PFIZER INC.

TAKE NOTICE that the *Application of the Defendants RB Health (Canada) Inc. and RB Health (US) LLC for Leave to Adduce Relevant Evidence* will be presented before the Honourable Justice Eleni Yiannakis, J.S.C. of the Superior Court, sitting in and for the

District of Montréal, at a date and time to be determined by the Court, at the Montréal Courthouse, located at 1 Notre-Dame Street East, Montréal, Québec H2Y 1B6.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, February 27, 2026

Torys Law Firm LLP

TORYS LAW FIRM LLP
Attorneys for the Defendants
RB Health (Canada) Inc. and RB Health (US) LLC
M^tre^ Sylvie Rodrigue, Ad. E.
srodrigue@torys.com
Tel.: 514.868.5601
M^tre^ Anne Merminod
amerminod@torys.com
Tel.: 514.868.5642
M^tre^ Karl Boulanger
kboulanger@torys.com
Tel.: 514.868.5621
1000 De La Gauchetière Street West, Suite 4000,
PO Box 9
Montréal, Québec H3B 4W5
Fax: 514.868.5700
notifications-mtl@torys.com
Permanent Code: BS-2554
Our Reference: 43980-0001

Donna Goodman

From: Todoc.ca <info@todoc.ca>
Sent: February 27, 2026 3:30 PM
To: Donna Goodman
Subject: Objet : 500-06-001262-233 - Confirmation de Notification des documents 'Application of the Defendants RB Health (Canada) Inc. and RB Health (US) LLC for Leave to Adduce Relevant Evidence; Annex A - Affidavit of Manushvi Gupta and Exhibits RB-1 to RB-4'...

TODOC
NOTIFICATION & SIGNIFICATION ÉLECTRONIQUE

CONFIRMATION DE NOTIFICATION

Nous confirmons que votre notification du ou des document(s) intitulé(s) **'Application of the Defendants RB Health (Canada) Inc. and RB Health (US) LLC for Leave to Adduce Relevant Evidence; Annex A - Affidavit of Manushvi Gupta and Exhibits RB-1 to RB-4'** a été effectuée le 27 février 2026, à 15:27 HNE.

Lorsque le(s) destinataire(s) auront téléchargé la documentation notifiée, vous recevrez un courriel de confirmation de téléchargement.

Message de l'expéditeur

Good afternoon,

Please see attached proceedings.

Cordially,

Donna Goodman, Legal Assistant
(for: Mtres Sylvie Rodrigue and Karl Boulanger)

Document(s) notifié(s)

Nom	Clé de validation
Annex_A_-_Affidavit_of_Manushvi_Gupta_and_Exhibits_RB-1_to_RB-4.pdf	a266d7b7e44a79fa9a44
Application_for_Leave_to_Adduce_Relevant_Evidence_RB_Health_Feb_27_2026.pdf	2f169b0cfa54ab80e9dec

Information sur le dossier

Parties au dossier:	**Andrew Kraska v. Kenvue Canada Inc. et al.**
Cour:	Superior Court (Class Actions)
District:	Montréal
Numéro de dossier:	500-06-001262-233
Référence interne:	43980-0001

Expéditeur

Donna Goodman
Torys Law Firm LLP
1000 De La Gauchetière Street West, Suite 4000, PO Box 9, Montréal (Québec) H3B 4W5
(514) 868-5633
dgoodman@torys.com

Destinataire(s)

Mtre Saro Turner
Slater Vecchio LLP
5352 Saint Laurent Boulevard, Montréal (Québec) H2T 1S1
514.534.0962
sjt@slatervecchio.com

Mtre Andrea Roulet
Slater Vecchio LLP
5352 Saint Laurent Boulevard, Montréal (Québec) H2T 1S1
514.534.0962
acr@slatervecchio.com

Mtre Ali Daoud-Brixi
Slater Vecchio LLP
5352 Saint Laurent Boulevard, Montréal (Québec) H2T 1S1
514.699.0390
adb@slatervecchio.com

Mtre Simon Seida
Blake Cassels & Graydon LLP
1 Place Ville Marie, Suite 3000, Montréal (Québec) H3B 4N8
514.982.4103
simon.seida@blakes.com

Mtre Eric Azran
Stikeman Elliott LLP
1155 René-Lévesque Blvd. West, 41st Floor, Montréal (Québec) H3B 3V2
514.397.3169

eazran@stikeman.com

Mtre Paul Prosterman
Norton Rose Fulbright Canada LLP
1 Place Ville Marie, Suite 2500, Montréal (Québec) H3B 1R1
514.847.4481
paul.prosterman@nortonrosefulbright.com

Mtre Maya Angenot
Norton Rose Fulbright Canada LLP
1 Place Ville Marie, Suite 2500, Montréal (Québec) H3B 1R1
514.847.4310
maya.angenot@nortonrosefulbright.com

L'équipe Todoc
514-657-2034 | 1-866-301-2476
todoc.ca | support@todoc.ca

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Defendants

APPLICATION OF THE DEFENDANTS RB HEALTH (CANADA) INC. AND RB HEALTH (US) LLC FOR LEAVE TO ADDUCE RELEVANT EVIDENCE (*Articles 574, 575 CCP*)

ORIGINAL

M^tre Sylvie Rodrigue, Ad. E.
srodrigue@torys.com
Tel.: 514.868.5601
TORYS LAW FIRM LLP
1000 De La Gauchetière Street West
Suite 4000, PO Box 9
Montréal, Québec H3B 4W5
Fax: 514.868.5700
notifications-mtl@torys.com

BS-2554 43980-0001