

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N^o: 500-06-000592-127

SUPERIOR COURT
(Class Action)

IRWIN HALPERN,


Petitioner

-vs-

BSH HOUSEHOLD APPLIANCES LIMITED,
9220 du Golf boulevard, city of Anjou, judicial
district of Montreal, province of Quebec ,H1J
3A1

and

BSH HOME APPLIANCES CORPORATION
1901 Main St, #600 Irvine, California, 92614
United States

and

**BSH BOSH UND SIEMENS HAUSGERÄTE
GMBH**
(BSH BOSH AND SIEMENS HOME
APPLICANCES GROUP)
Carl-Wery-Straße 34
81739 Munich, Germany
089 459001

Respondents

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND
TO ASCRIBE THE STATUS OF REPRESENTATIVE**
(Art. 1002 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF
QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER
STATES THE FOLLOWING:

GENERAL PRESENTATION

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is member, namely:
 - All persons in Canada who purchased and/or otherwise became the owner, and/or who suffered injuries from a Tassimo Home Brewing System by Bosch, models TAS100x, date codes 8806 thru 9109, TAS200x, date codes 8806 thru 9109, TAS451x, date codes 8806 thru 9109, TAS46, date codes 8806 thru 9109, TAS651x, date codes 8806 thru 9109 and TAS651CULx, date codes 8905 through 9109 (the "**Home Brewing Systems**") or any other group to be determined by the Court;

alternately (or as a subclass):

 - All persons in Canada including Quebec residents (or in the alternative, all persons in Quebec alone) who purchased or owned, or who suffered injuries caused by, a Tassimo Home Brewing System by Bosch, models TAS100x, date codes 8806 thru 9109, TAS200x, date codes 8806 thru 9109, TAS451x, date codes 8806 thru 9109, TAS46, date codes 8806 thru 9109, TAS651x, date codes 8806 thru 9109 and TAS651CULx, date codes 8905 through 9109 or any other group to be determined by this Honourable Court;

(hereinafter, Class Members are collectively referred to as, "Petitioner(s)", "Class Member(s)", "Group Member(s)", the "Group", the "Class", the "Member(s)", the "Consumer(s)");
2. Respondents design and manufacture the Home Brewing Systems in Slovenia and China, and distributes them in Canada and the United-States and elsewhere;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

3. The 9th of February 2012, Respondents recalled their Home Brewing Systems, models TAS100x, date codes 8806 thru 9109, TAS200x, date codes 8806 thru 9109, TAS451x, date codes 8806 thru 9109, TAS46, date codes 8806 thru 9109, TAS651x, date codes 8806 thru 9109 and TAS651CULx, date codes 8905 through 9109, the whole as more fully appears from a copy of the Health Canada Recall Notice dated February 9 2012, filed herewith as those recited at length herein, as **Exhibit R-1**;

4. Respondents sold their Home Brewing Systems through their retailers throughout Canada and the United States;
5. Respondents sold over 835 000 Home Brewing Systems in the United States and over 900 Home Brewing Systems in Canada. Respondents' Home Brewing Systems typically sold in the 100\$-200\$ range, as it appears on Respondents' online retailer website as **Exhibit R-2**;
6. These systems used a small plastic container called a T-disk that carries pre grounded coffee or tea leaves which must be inserted into the Home Brewing Systems in order to get a hot beverage;
7. As appears from the February 9 2012 recall, R-1, the T-disk that holds the coffee grounds or the tea leaves to be brewed is defective, and according to Health Canada,

"The T Disc that holds the coffee or tea can burst and spray hot liquid, coffee grounds and/or tea leaves onto consumers using the brewer and onto bystanders, posing a burn hazard.

There have been 140 reports from consumers in Canada (61) and in the United States (79) who have come into contact with hot liquid, coffee grounds and/or tea leaves discharged from the brewer, including 37 reports of second-degree burn injuries.

Health Canada has received no reports of incidents or injuries to Canadians related to the use of these brewers.";

8. To ordinary and prudent owners, the above-mentioned defects were latent;
9. Before they sold the Home Brewing Systems, Respondents knew or should have known of the existence of these defects;
10. In Canada and the United States, there were numerous reported and unreported incidents of personal injury as a result of the abovementioned defects of Respondents' Home Brewing Systems;
11. As a result of the abovementioned defects and unreasonable risk of personal injury, Home Brewing Systems were dangerously and irreparably defective or unsafe;

12. After the recall, Respondents warned owners not to use the Home Brewing Systems until they were repaired, as it appears on a copy of the Frequently Asked Questions section of Respondents' recall internet site as **Exhibit R-3**;
13. Respondents' warning is an admission that Respondents manufactured, sold or distributed Home Brewing Systems that are not reasonably fit for their intended purpose or unsafe;
14. Respondents cannot reasonably expect owners to use the Home Brewing Systems that are defective;
15. No repairs can mitigate the unreasonable risk of injury from the Home Brewing Systems;
16. Finally, many Group Members have not actually been made aware of the recall (R-1) and accordingly, they are still at risk of injury;

Petitioner:

17. Petitioner was the owner of a Tassimo Home Brewing System, which was subject to a February 2012 recall, R-1;
18. Furthermore, Petitioner's Home Brewing System had previously blown up while he was brewing coffee ;
19. Petitioner had used the said Home Brewing System until it failed, and was forced to deal with a dangerous product that could not be used for its intended use;
20. Petitioner requires compensation for the Home Brewing System he lost, as he could not use the said brewer after it failed;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

21. The Petitioner and the Group Members are comprised of persons who have purchased or otherwise became the owners of the Home Brewing Systems by Respondents which are defective or unsafe, as detailed above;
22. Accordingly, the Group Members are entitled to a full reimbursement of the

purchase price of their home Brewing System and compensation for any other expenses incurred or other damages suffered stemming from the R-1 recall by Respondents;

23. Some Group Members were injured from the Home Brewing Systems' failure and the Group Members are entitled to claim damages as a result thereto from Respondent;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

24. The composition of the group makes the application of article 59 or 67 C.C.P. impractical or impossible for the reasons detailed below;
25. The number of persons included in the Group is estimated at being over 900 000 across Canada, as appears from the Exhibit R-1 recall notice;
26. The names and addresses of all persons included in the Group are not known to the Petitioner, however, Respondents are likely to possess data regarding sales and distribution figures;
27. In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against Respondent. Even if the Group Members themselves could afford such individual litigation, the Court system could not as it would be overloaded. Furthermore, individual litigation of the factual and legal issues raised by the conduct of Respondent would increase delay and expense to all parties and to the Court system;
28. Moreover, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province) risks having contradictory judgments on questions of fact and law that are similar or related to all Members of the Group;
29. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Member of the Group to obtain mandates and to join them in one action;
30. In these circumstances, a class action is the only appropriate procedure for all of the Members of the Group to effectively pursue their respective rights and have access to justice;
31. The recourses of the Members raise identical, similar or related questions of fact or law, namely:
 - a) Did Respondents' Home Brewing Systems have a latent defect?

- b) Were Respondents' Home Brewing Systems unsafe?
 - c) Are Respondents responsible to reimburse the purchase price paid by Group Members for the Home Brewing Systems?
 - d) Are Respondents responsible to pay compensatory damages to Group Members stemming from the bodily injuries resulting from the failure of the Home Brewing Systems, and if so in what amount?
 - e) Are Respondents responsible to pay any other compensatory, moral, punitive and/or exemplary damages to Group Members, and if so in what amount?
32. The interests of justice favour that this motion be granted in accordance with its conclusions;

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

33. The action that Petitioner wishes to institute for the benefit of the members of the class is an action in damages for product liability;
34. The conclusions that Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT Plaintiff's action against Defendants;

CONDEMN Defendants to reimburse to the Members of the Group the purchase price paid for the Home Brewing Systems, plus interest as well the additional indemnity since the date of purchase;

CONDEMN Defendants to pay an amount of compensatory damages to Group Members stemming from the bodily injuries from the failure of the Home Brewing Systems;

CONDEMN Defendants to pay an amount in compensatory, moral, punitive and/or exemplary damages to every Group Member, plus interest as well the additional indemnity;

GRANT the class action of Petitioner on behalf of all the Members of the Group;

ORDER the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

35. Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:
- a) Respondents' Home Brewing systems are sold in the District of Montreal;
 - b) Class Counsel are domiciled in the District of Montreal;
 - c) Petitioner is domiciled in the District of Montreal;
36. Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Members of the Group, since Petitioner:
- a) purchased a defective or unsafe Home Brewing System by Respondents, as detailed above;
 - b) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Group;
 - c) is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Group attorneys in this regard;
 - d) is ready and available to manage and direct the present action in the interest of the Group Members that Petitioner wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Group;
 - e) does not have interests that are antagonistic to those of other members of the Group;
 - f) has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intend to keep informed of all developments;
 - g) is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Group and to keep them informed;
37. The present motion is well founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Petitioner the status of representative of the persons included in the group herein described as:

- All persons in Canada who purchased or owned, or who suffered injuries caused by a Tassimo Home Brewing System by Bosch, models TAS100x, date codes 8806 thru 9109, TAS200x, date codes 8806 thru 9109, TAS451x, date codes 8806 thru 9109, TAS46, date codes 8806 thru 9109, TAS651x, date codes 8806 thru 9109 and TAS651CULx, date codes 8905 through 9109 or any other group to be determined by the Court;

Alternatively (or as a subclass):

- All persons in Quebec who purchased or owned, or who suffered injuries caused by a Tassimo Home Brewing System by Bosch, models TAS100x, date codes 8806 thru 9109, TAS200x, date codes 8806 thru 9109, TAS451x, date codes 8806 thru 9109, TAS46, date codes 8806 thru 9109, TAS651x, date codes 8806 thru 9109 and TAS651CULx, date codes 8905 through 9109 or any other group to be determined by the Court;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Did Respondents' Home Brewing Systems have a latent defect?
- b) Were Respondents' Home Brewing Systems unsafe?
- c) Are Respondents responsible to reimburse the purchase price paid by Group Members for the Home Brewing Systems?
- d) Are Respondents responsible to pay compensatory damages to Group Members stemming from the bodily injuries resulting from the failure of the Home Brewing Systems, and if so in what amount?
- e) Are Respondents responsible to pay any other compensatory, moral, punitive and/or exemplary damages to Group Members, and if so in what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT Plaintiff's action against Defendants;

CONDEMN Defendants to reimburse to the Members of the Group the purchase price paid for the Home Brewing Systems, plus interest as well the additional indemnity since the date of purchase;

CONDEMN Defendants to pay an amount of compensatory damages to Group Members stemming from the bodily injuries from the failure of the Home Brewing Systems;

CONDEMN Defendants to pay an amount in compensatory, moral, punitive and/or exemplary damages to every Group Member, plus interest as well the additional indemnity;

GRANT the class action of Petitioner on behalf of all the Members of the Group;

ORDER the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

DECLARE that all Members of the Group that have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the Members;

ORDER the publication of a notice to the Members of the Group in accordance with article 1006 C.C.P.;

THE WHOLE with costs to follow.

MONTREAL, February 10 2012

Merchant Law Group LLP

MERCHANT LAW GROUP LLP
Attorneys for Petitioner

**NOTICE TO DEFENDANT
(Art. 119 C.C.P.)**

TO:

BSH HOUSEHOLD APPLIANCES LIMITED,
9220 du Golf boulevard, city of Anjou,
judicial district of Montreal, province of Quebec ,H1J 3A1

and

BSH HOME APPLIANCES CORPORATION
1901 Main St, #600 Irvine, California, 92614 United States

and

BSH BOSH UND SIEMENS HAUSGERÄTE GMBH
(BSH BOSH AND SIEMENS HOME APPLICANCES GROUP)
Carl-Wery-Straße 34
81739 Munich, Germany
089 459001

TAKE NOTICE that the Petitioner has filed this action or application in the office of the Superior Court of the judicial district of Montreal.

To file an answer to this action or application, you must first file an Appearance, personally or by advocate, at the Courthouse of Montreal situated at 1 Notre Dame East, Montreal, Quebec, within ten (10) days of service of this Motion.

If you fail to file an Appearance within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the ten (10) day period.

If you file an Appearance, the action or application will be presented before the Court on **March 23, 2012 at 9:00 AM**, in room **2.16** of the Courthouse. On that date, the Court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the Court may hear the case.

In support of the Motion To Authorize The Bringing Of A Class Action And To Ascribe The Status Of Representative, the Petitioner discloses the following Exhibits:

- EXHIBIT R-1:** Health Canada Recall Notice dated February 9 2012;
- EXHIBIT R-2:** Respondents' online retailer website;
- EXHIBIT R-3:** Frequently Asked Questions section of Respondents' recall internet site

These Exhibits are available on request.

MONTREAL, February 10, 2012

Merchant Law Group LLP

MERCHANT LAW GROUP LLP
Attorneys for Petitioner and the
Class Members