CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No.: **500-06-001262-233**

SUPERIOR COURT
(Class Action)

ANDREW KRASKA

Applicant

v.

KENVUE CANADA INC.

PROCTER & GAMBLE INC.

HALEON CANADA ULC

RB HEALTH (CANADA) INC.

PFIZER CANADA ULC (D.B.A. PFIZER CONSUMER HEALTHCARE)

PFIZER INC.

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

KENVUE INC.

THE PROCTER & GAMBLE COMPANY

-and-

RB HEALTH (US) LLC

Defendants

APPLICATION FOR LEAVE TO ADDUCE EVIDENCE AND TO EXAMINE THE APPLICANT BY THE DEFENDANTS KENVUE CANADA INC., KENVUE BRANDS LLC AND KENVUE INC.
(Art. 574 C.C.P.)

TO THE HONOURABLE JUSTICE ELENI YIANNAKIS, J.S.C., IN HER CAPACITY AS CASE MANAGEMENT JUDGE, THE DEFENDANTS KENVUE CANADA INC., KENVUE BRANDS LLC AND KENVUE INC. RESPECTFULLY SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. The Defendants Kenvue Canada, Kenvue Brands LLC and Kenvue Inc. (the "**Kenvue Defendants**") hereby respectfully requests leave to adduce evidence relevant to the analysis of the allegations of the *Amended Application for Authorization to Institute a Class Action and Appoint Applicant as Class Representative* (the "**Application for Authorization**") and to examine the Applicant, Mr. Andrew Kraska, on limited and specific topics relating to the class action authorization criteria.

II. THE PROCEDURAL CONTEXT

2. On September 14, 2023, Mr. Andrew Kraska, the Applicant, filed the *Application for Authorization to Institute a Class Action and Appoint Applicant as Class Representative*.

3. On July 31, 2024, the initial Defendants each filed applications for leave to adduce evidence and examine the Applicant ("**Defendants' Applications**").

4. On September 6, 2024, the Applicant filed its contestation to the Defendants' Applications.

5. On December 5, 2024, while the parties were ready to proceed with the hearing on the Defendants' Applications scheduled on December 10, 2024, the Applicant's counsel informed the Defendants that they were evaluating the possibility of adding new defendants and causes of action. The hearing on the Defendants' Applications was therefore postponed.

6. On January 24, 2025, the Applicant filed a first version of an *Application for Permission to Amend the Application for Authorization to Institute a Class Action* (the "**Application to Amend**") to add:

   a) several additional foreign defendants (including Johnson & Johnson Consumer Inc. and Kenvue Inc.);

   b) a new cause of action alleging a purported "conspiracy";

   c) allegations relating to events that happened in the United States; and

   d) additional products in the Schedule A – List of Cold Medicine Products Containing Phenylephrine.

7. On August 1, 2025, following discussions with some Defendants, the Applicant filed a second version of the Application to Amend, which amendments were allowed by this Court on November 20, 2025.

8. Concurrently with the filing of the present application, Kenvue Brands LLC filed a notice to continue the proceeding as successor to Johnson & Johnson Consumer Inc.

9. By way of the Application for Authorization, the Applicant seeks authorization to bring a class action against the Defendants on behalf of the following putative class members:

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

10. Schedule A to the Application for Authorization contains a list of "Cold Medicine" products purportedly marketed by each of the Defendants.

11. The Applicant alleges that the Defendants would have misled Québec consumers about the performance and efficacy of orally administered over-the-counter cold and cough medicine containing phenylephrine by representing that these products provide relief of cold and cough symptoms, more precisely nasal congestion. According to his allegations, "had the Applicant known that the Cold Medicine product was ineffective to treat symptoms of nasal congestion, he would not have purchased these Cold Medicine products" (Application for Authorization, para. 37).

12. The proposed class action appears to be predicated on the following purported causes of action:

    a) Prohibited practices concerning representations about phenylephrine's efficacy: Sections 219, 220(a), 228, 253, and 272 of the *Consumer Protection Act* ("**CPA**"); Sections 36 and 52 of the *Competition Act*; and/or Articles 6, 7, 1375, 1401, and 1407 of the *Civil Code of Québec* ("**CCQ**");

    b) Latent defect with the Cold Medicine: Sections 37, 38, 40, and 41 CPA and/or Articles 1726, 1728, and 1730 CCQ;

    c) Civil fault: Article 1457 CCQ; and

    d) Civil "conspiracy": Article 1457 CCQ.

13. On behalf of the putative class members, the Applicant is claiming damages comprised of unspecified and unquantified compensatory damages and punitive damages.

III. THE RIGHT TO ADDUCE RELEVANT EVIDENCE AND TO EXAMINE THE APPLICANT

14. At the authorization hearing, this Court will analyze the allegations found in the Application for Authorization in view of the criteria provided at Article 575 C.C.P. and developed by jurisprudence. The Applicant's individual claim and his adequacy as the proposed class representative are among the main issues to be analyzed by this Court.

15. This Court is entitled to a complete, actual and precise disclosure of the facts with regards to the Kenvue Defendants and their products, rather than general and vague allegations that are unsupported by relevant documentary evidence. Furthermore, allegations are no longer accepted as averred if they are implausible or if disproved by the evidence in the record.

16. This Court will need sufficient evidence to assess the existence of a class and to determine whether there is an arguable case, and whether it raises issues common to the class as a whole.

17. At the authorization hearing, the Kenvue Defendants are entitled to a full and complete defence in this regard.

18. Article 574 C.C.P. empowers this Court to authorize the presentation of appropriate evidence relevant to the analysis of the conditions set out in Articles 574 and 575 C.C.P., including the filing of relevant evidence and the examination of the Applicant.

IV. THE EVIDENCE TO BE ADDUCED

19. In light of the foregoing, the Kenvue Defendants hereby seek leave to adduce the following evidence:

a) The *Guidance Document - Non-prescription Oral Adult Nasal Decongestant Labelling Standard* issued by Health Canada on December 17, 2015 (the "**Labelling Standard**"), communicated herewith as **Exhibit K-1**;

b) The proposed affidavit of K. Jill Grande, Associate Director, Regulatory Affairs at Kenvue Canada Inc. communicated herewith as **Exhibit K-2** and regarding:

i. the authorization for sale of the Cold Medicine products listed for Kenvue Canada inc. (the "**Kenvue Products**") and their labels by Health Canada; and

ii. the role of each Kenvue Defendant regarding the sale and labelling of the Kenvue Products;

c) Extracts of the Health Canada Drug Database for the Kenvue Products that have been added to the list of Cold Medicine products by way of the Application to Amend, in order to complete Exhibit P-1, communicated herewith as **Exhibit K-3**.

A. *Guidance Document - Non-prescription Oral Adult Nasal Decongestant Labelling Standard*

20. In December 2015, Health Canada adopted the Labelling Standard to provide assistance to industry and health care professionals on how to comply with governing statutes and regulations and describe the requirements necessary to receive marketing authorization (a Drug Identification Number (DIN)) for non-prescription oral decongestant products containing phenylephrine hydrochloride.

21. The Labelling Standard is established by the regulator, Health Canada, and is highly relevant to assess the allegations of the Application for Authorization in light of the conditions set out in article 575 C.C.P.

22. Indeed, the Labelling Standard is required to appreciate the proposed legal syllogism in the context of the highly regulated sector of pharmaceutical drugs and their labelling.

23. Moreover, in order to appreciate whether the Kenvue Defendants made a purportedly false or misleading representation, this Court must be enlightened as to the regulatory standards that they are required to comply with in relation to the labelling of the Cold Medicine products.

B. Proposed Affidavit of K. Jill Grande

24. The Kenvue Defendants are proposing to file the short affidavit of K. Jill Grande, Associate Director, Regulatory Affairs at Kenvue Canada Inc.

25. The affidavit will confirm that all Kenvue Products were submitted to Health Canada with the proposed label of the product attached to the submission.

26. All Kenvue Products were authorized for sale by Health Canada and received a DIN, allowing Kenvue Canada Inc. or its predecessor to market the Kenvue Products.

27. The affidavit will also contextualize Exhibit P-1 filed by the Applicant, which contains extracts of Health Canada’s Drug Product Database, as well as the additional extracts for the Kenvue Products that have been added to the list of

Cold Medicine products by way of the Application to Amend, which the Kenvue Defendants propose to file (Exhibit K-3).

28. The filing of the proposed affidavit is required to appreciate the proposed legal syllogism in the context of Health Canada's strict process to authorize the marketing of the pharmaceutical drugs and their labelling in Canada.

29. This information is non-controversial and will allow the Court to understand the context of the marketing of the Kenvue Products.

30. The proposed affidavit will also identify the role of each Kenvue Defendant in the sale and labelling of the Kenvue Products.

31. Since 2007, Kenvue Canada Inc. or its predecessor is the only entity of the Kenvue Defendants that:

a) has been the manufacturer and market authorization holder in Canada for the Kenvue Products; and

b) has had responsibility for submissions to and communications with Health Canada regarding the Kenvue Products.

32. This context is highly relevant to assess the allegations of the Application for Authorization in light of the conditions set out in article 575 C.C.P for each Kenvue Defendant.

C. Extracts of Health Canada's Drug Product Database

33. In support of his allegations, the Applicant communicates, as Exhibit P-1, extracts of Health Canada's Drug Product Database for the Kenvue Products.

34. However, Exhibit P-1 does not include the Kenvue Products that have been added to the list of Cold Medicine products by way of the Application to Amend.

35. Therefore, the Kenvue Defendants propose to complete Exhibit P-1 by filing extracts of the Health Canada Drug Database for the Kenvue Products that have been added by the Applicant.

36. These extracts are evidently relevant in assessing the allegations of the Application for Authorization.

37. This Court should have a complete and accurate portrait of Health Canada's information regarding the Kenvue Products.

V. THE NEED TO EXAMINE THE APPLICANT

38. In the Application for Authorization, the Applicant puts himself forward to act as the class representative.

39. When it assesses the Application for Authorization in light of Articles 575(2) and 575(4) C.C.P., this Court will do so in view of the Applicant's personal situation.

40. The allegations in the Application for Authorization are vague, incomplete and unsupported by relevant documentary evidence. The vagueness is more striking with respect to the alleged individual claim of the Applicant, who has filed no documentary evidence in support of many of his allegations.

41. In order to determine whether the Applicant has an appearance of right to the conclusions sought and any personal interest in this case (Article 575(2) C.C.P.), the Court is entitled to verify the circumstances of the purchase of Cold Medicine products by the Applicant, the Applicant's experience with these products and to know precisely the nature and the quantum of the damages the Applicant has allegedly suffered. The Application for Authorization does not detail those damages; there are no allegations pertaining to the purchasing frequency of Cold Medicine products over the years by the Applicant.

VI. THE PROPOSED EXAMINATION

42. In order to verify the facts giving rise to the Applicant's individual claim and to determine the Applicant's adequacy to act as class representative, the Kenvue Defendants respectfully submit that they should be granted leave to examine the Applicant with respect to the following topics:

a) The frequency and time period when he purchased or used the Cold Medicine products;

b) His usage of and his experience with the Cold Medicine products;

c) Whether he stopped purchasing and/or using Cold Medicine products and, if so, the reason why; and

d) The nature and the quantum of the damages claimed.

43. Such examination should last no more than 90 minutes, and should be conducted out-of-Court, in Montreal, on a date agreed upon by the parties or as directed by this Court in absence of any agreement between the parties.

44. This Application is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application;

AUTHORIZE the Kenvue Defendants to adduce the following evidence:

a) The *Guidance Document - Non-prescription Oral Adult Nasal Decongestant Labelling Standard* issued by Health Canada on December 17, 2015 (Exhibit K-1);

b) The proposed affidavit of K. Jill Grande, Associate Director, Regulatory Affairs at Kenvue Canada Inc. regarding:

   i. the authorization for sale of the Kenvue Products and their labels by Health Canada;

   ii. the role of each Kenvue Defendant regarding the sale and labelling of the Kenvue Products (Exhibit K-2);

c) Extracts of the Health Canada Drug Database for the Kenvue Products that have been added to the list of Cold Medicine products by way of the Application to Amend, in order to complete Exhibit P-1 (Exhibit K-3).

AUTHORIZE the Kenvue Defendants to examine the Applicant, Mr. Andrew Kraska, out-of-Court, at a date to be determined by the parties or by this Court in the absence of any agreement, on the following topics:

a) The frequency and time period when he purchased or used the Cold Medicine products;

a) His usage of and his experience with the Cold Medicine products;

b) Whether he stopped purchasing and/or using Cold Medicine products and, if so, the reason why; and

c) The nature and the quantum of the damages claimed.

THE WHOLE without costs, unless contested.

Montreal, February 27, 2026

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ORIGINAL

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