

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Action)

NO: 500-06-000740-155

SHAY ABICIDAN, inventory comptroller,
residing and domiciled at 5657 Merrimac
road, Côte Saint-Luc, Quebec, H4W 1S5

Petitioner

-vs-

BELL CANADA, legal person having its head
office at 1050 Côte du Beaver Hall, Suite
1900, province of Québec, district of
Montréal, H2Z 1S4

Respondent

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

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR
THE DISTRICT OF MONTREAL, YOUR PETITIONER STATES AS FOLLOWS:**

I. GENERAL PRESENTATION

A) THE ACTION

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:
 - All current or former residents of Quebec who subscribed to Bell Canada's "Fibe TV" and/or "Fibe Internet" (hereinafter the "Fiber Optic Services") since the introduction of the Fiber Services;

2. As of the eve of the filing of this Motion, Respondent continuously made and continues to make false and misleading representations to consumers across Quebec concerning its Fiber Optic Services;
3. Respondent employs sales tactics whereby it falsely ascribes certain special advantages attributed to the use of their Fiber Optic Services, notably that the Respondent's services are of superior quality to their competitors because the Fiber Optic technology is used directly to consumer's home;
4. Moreover, Respondent advertises on its website that the Fiber Optic Services are "powered by Fiber optic" that goes "straight to the home", but omits to disclose that the use of Fiber optic technology is limited to the junction box in the consumer's neighborhood, from which point conventional cables are used, Petitioner disclosing as **Exhibit-P1** an extract from Respondent's website;
5. The Respondent justifies levying a premium for similar, if not identical, services as those offered by its competitors, on the false grounds that their Fiber Optic technology to the home provides consumers with superior quality, when, in fact, no such wiring is connected to the consumer's home;
6. It is evident that the Respondent falsely ascribes certain characteristics of performance to its Fiber Optic Services as a means of convincing consumers to contract with them and to pay a premium for a service;
7. Ironically, the Petitioner's claim results from the very same prohibited practice for which the Respondent high-handedly accuses their competitors of employing;
8. By reason of this unlawful conduct, the Petitioner and the members of the group have subscribed under false pretenses and paid higher prices for services which Respondent promised to provide, but which they ultimately never received, causing damages which they wish to claim;

B) THE PARTIES

9. The Petitioner is a consumer within the meaning of the Consumer Protection Act (hereinafter the "**CPA**");
10. The Respondent is carrying on the business of diverse telecommunications services, as appears from a copy of the enterprise's information statement from the enterprise register (CIDREQ), disclosed as Petitioner's **Exhibit P-2**;
11. The Respondent is a merchant within the meaning of the *CPA* and its activities are governed by this legislation, among others;

II. FACTS GIVING RISE TO THE PETITIONER'S CLAIM

12. Commencing around the month of October, 2012, and continuing to date, the Petitioner subscribed to and is using Respondent's Fiber Optic Services;
13. The Petitioner has been paying Respondent monthly for "Bell Fiber Internet 15" and "Bell Fibe TV", as it appears from a copy of the Bell Canada invoice dated April 10, 2015, disclosed as Petitioner's **Exhibit P-3**;
14. For the reasons detailed in this Motion it is clear that at no point did the Respondent provide the Petitioner with the Fiber Optic Services it promised and in respect of which it collects payments;
15. It has now come to Petitioner's knowledge that the Respondent: (i) made and continues to make false representations regarding their Fiber Optic Services; and, (ii) in furtherance of this policy and behavior, have been discrediting services offered by others;
16. The Respondent's *modus operandi*, as described above, constitutes prohibited practices as defined in the *CPA*;
17. The Petitioner benefits from the legal presumption in the *CPA*, that comes into effect when a merchant makes use of a prohibited practice that had he been aware, he would not have agreed to subscribe to the service or would not have paid such a high price;
18. Moreover, the Respondent failed in its obligation and duty to act in good faith in their representations and performance of their obligations;

III. DAMAGES

19. In light of the foregoing, the following damages may be claimed against the Respondent:
 - a) Reimbursement of the amounts paid to the Respondent for the Fiber Optic Services that were promised but never rendered; and
 - b) A lump sum in punitive damages, to be determined, for the breach of several obligations imposed on the Respondent by the *CPA* pursuant to article 272;

IV. THE GROUP

20. The group for whom the applicant intends to act is described in the first paragraph of this Motion and includes: (i) any former or current resident of Quebec who subscribed to the Respondent's Fiber Optic Services since the inception of the service; and (ii) any former or current resident of Quebec who was exposed to the prohibited business practices of the Respondent in any form including, without limitation, through its website, telephone representatives, retail stores, flyers, emails and kiosks;

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

21. Every member of the group subscribed to the Respondent's Fiber Optic Services;
22. No member of the group received the service represented, advertised and promised by the Respondent, that is Fiber wiring "straight to the home";
23. Instead of using Fiber wiring "straight to the home" as the Respondent represented, advertised and promised, the Fiber wiring was connected only as far as the neighborhood junction box, from which point conventional category 5 and/or 5e cables were used, as will be established at the proof and hearing;
24. Consequently, each member of the group is paying an inflated cost for their Fiber Optic Services, since in reality the other telecommunications providers offer similar, if not identical, services at a lower cost, as will be established at the proof and hearing;
25. Every member of the group has suffered damages equivalent to the difference between the inflated prices that they have paid for Fiber Optic Services and what they should have paid, either to the Respondent or to another provider, had the Respondent not made the misrepresentations referred to above;
26. All of the damages to the group members are a direct and proximate result of the Respondent's misconduct;
27. The questions of fact and law raised and the recourse sought by this Motion are identical with respect to each member of the group;
28. In taking the foregoing into account, all members of the group are justified in claiming damages;

VI. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

29. The composition of the group renders the application of articles 59 or 67 C.C.P. difficult or impractical;
30. Petitioner is unaware of the total number of the Respondent's Fiber Optic Service customers in Quebec contemplated by this application, but Respondent has boasted that as of the first quarter of 2015 it had a total 2,658,106 television subscribers, which it implies are all "fibe" related, as appears from the BCE news release dated April 30, 2015, disclosed as Petitioner's **Exhibit-P4**;
31. In addition, petitioner is unaware of the total number of the Respondent's internet Fiber Optic Services customers in Quebec, but Respondent has boasted that as of the first quarter of 2015 it had a total 3,297,745 total internet subscribers, which it implies are all "fiber", as it appears from **Exhibit-P4** described above;
32. Group members who at any time were residing in Quebec since the inception of the Fiber Optic Services are very numerous and are dispersed across the province, if not elsewhere;
33. 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 without overburdening the court system;

VII. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

34. The action that the Petitioner wishes to institute on behalf of the members of the group is an action in damages;
35. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioner and each of the members of the group;

DECLARE the Respondent liable for the damages suffered by the Petitioner and each of the members of the group;

CONDEMN the Respondent to pay each member of the group an amount of **FIFTY DOLLARS (\$50.00) plus applicable taxes** per month for each month subscribed in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

CONDEMN the Respondent to a global lump sum payment on account of punitive damages in an amount of **SEVEN MILLION TWO-HUNDRED THOUSAND DOLLARS (\$7,200,000.00)**, and **ORDER** collective recovery of this sum;

CONDEMN the Respondent to pay interest and the additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER that the claims of individual group members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Respondent to bear the costs of the present action including expert, expertise and notice fees;

RENDER any other order that this Honourable court shall determine;

VIII. THE PETITIONER REQUESTS THAT HE BE ATTRIBUTED THE STATUS OF REPRESENTATIVE OF THE GROUP

36. Petitioner is a member of the group;
37. Petitioner is ready and available to manage and direct the present action in the interest of the members of the group that they wish to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the group, as well as, to dedicate the time necessary for the present action and to collaborate with his attorneys;
38. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the group;
39. Petitioner has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
40. Petitioner, with the assistance of his attorneys, are 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;
41. Petitioner is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other group members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondent's conduct;

42. Petitioner understands the nature of the action;
43. Petitioner's interests are not antagonistic to those of other members of the group;
44. The Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal;
45. A great number of the members of the group reside in the judicial district of Montreal;
46. The Petitioner's attorneys practice their profession in the judicial district of Montreal.

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 current or former residents of Quebec who subscribed to Bell Canada's Fiber Optic Services since the introduction of the Fiber Optic Services;

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

- a) Does the Respondent's conduct constitute prohibited business practices as defined in the *CPA*?
- b) Did the Respondent's conduct cause the members of the group to subscribe to the Fiber Optic Services at inflated levels?
- c) Were members of the group prejudiced by the Respondent's conduct, and, if so, what is the appropriate measure of these damages?
- d) Is the Respondent liable to pay compensatory and/or punitive damages to members of the group, and, if so, in what amounts?

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

GRANT the class action of the Petitioner and each of the members of the group;

DECLARE the Respondent liable for the damages suffered by the Petitioner and each of the members of the group;

CONDEMN the Respondent to pay to each member of the group a sum of **FIFTY DOLLARS (\$50.00) plus applicable taxes** per month for each month subscribed in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

CONDEMN the Respondent to pay a global lump sum payment on account of punitive damages in an amount of **SEVEN MILLION TWO-HUNDRED THOUSAND DOLLARS (\$7,200,000.00)**, and **ORDER** collective recovery of these sums;

CONDEMN the Respondent to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER that the claims of individual group members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Respondent to bear the costs of the present action including expert, expertise and notice fees;

RENDER any other order that this Honourable court shall determine;

DECLARE that all members of the group that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the group that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

ORDER the publication of a notice to the members of the group in accordance with article 1006 C.C.P. within sixty (60) days from the judgement to be rendered herein in LA PRESSE and the MONTREAL GAZETTE;

ORDER that said notice be published on the Respondent's various websites, in a conspicuous place, with a link stating "Notice to Bell Fibe Subscribers";

RENDER any other order that this Honourable court shall determine;

THE WHOLE with costs including publications fees.

Montréal, May 1st, 2015

(S) DE GRANDPRÉ CHAIT

DE GRANDPRÉ CHAIT S.E.N.C.R.L./LLP
Attorneys for Petitioner

COPIE CONFORME

PAR: _____

SCHEDULE 1
(s. 119, CCP)

NOTICE TO DEFENDANT

Take notice that the plaintiff has filed this action or application in office the Superior Court of the judicial district of Montreal.

You must file an appearance, personally or by advocate, at the courthouse of Montreal, located at 1 Notre-Dame St. East, within 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 10-day period.

If you file an appearance, the action or application will be represented before the court on **June 2, 2015, at 9:00 a.m., 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, unless you make a written agreement with the plaintiff or the plaintiff's advocate on a timetable for the orderly progress of the proceeding. The timetable must be filed in the office of the court.

In support of this motion to institute proceedings, the Petitioner discloses the following exhibits:

LIST OF EXHIBITS

- Exhibit P-1:** Copy of the Bell Fibe Service website;
- Exhibit P-2:** Copy of enterprise's information statement from the enterprise register (CIDREQ) for Bell Canada;
- Exhibit P-3:** Copy of Shay Abicidan's Bell Canada invoice dated April 10, 2015;
- Exhibit P-4:** Copy of the BCE news release dated April 30, 2015;

The exhibits in support of the motion are available on request.

Request for transfer of a small claim

If the amount claimed by the plaintiff does not exceed \$15,000 and if you could have filed such an action as a plaintiff in Small Claims Court, you may make a request to the clerk for the action to be disposed of pursuant to the rules of Book VIII of the Code of Civil Procedure (R.S.Q., c. C-25). If you do not make such a request, you could be liable for costs higher than those provided for in Book VIII of the Code.