

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

(Class Action)  
SUPERIOR COURT

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NO: 500-06-000824-165

ANTONIO BRAMANTE,

Applicant

-vs-

LES RESTAURANTS MCDONALD DU CANADA  
LIMITÉE, legal person having an establishment  
at 1325 route Transcanadienne, Dorval, district  
of Montréal, province of Québec, H9P 2V5

Defendant

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APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO APPOINT THE  
STATUS OF REPRESENTATIVE PLAINTIFF  
(ARTICLES 571 AND FOLLOWING C.C.P)

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

I. GENERAL PRESENTATION

A) THE ACTION

1. Applicant wishes to institute a class action on behalf of the following class of which he is a member, namely:

**Class:**

Every consumer, pursuant to the terms of Quebec's *Consumer Protection Act* ("*CPA*"), who since November 15<sup>th</sup>, 2013 (the "**Class Period**"), purchased a toy from McDonald's (including McDonald's franchised and company-operated restaurant sites),

either with or without a *Happy Meal*<sup>®</sup>, for any child under thirteen years of age;

(hereinafter referred to as the “**Class**”)

or any other Class to be determined by the Court;

2. Applicant is a consumer within the meaning of the *CPA*;
3. During the Class Period, Defendant Les Restaurants McDonald du Canada Limitée (hereinafter “**McDonald’s**”), carries on in the business of restaurants (including drive-through) without a liquor license, and also operates franchised restaurants, as it appears from an extract from the enterprise’s information statement from the Quebec enterprise register (“**CIDREQ**”), Applicant disclosing **Exhibit P-1**;
4. McDonald’s is a “*merchant*” within the meaning of the *CPA* and its activities are governed by this legislation, among others;
5. Although officially registered as a restaurant operator, McDonald’s sells more than just food and beverages;
6. In the course of its business, McDonald’s sells millions of dollars’ worth of children’s toys to consumers in Quebec and around the world;
7. During the Class Period, McDonald’s has sold toys associated to the marketing of an existing television show, the release of a new movie and/or the promotion of a toy brand. Some of the toys sold by McDonald’s include, but are not limited to: *Minions*, *Super Mario Bros*, *Transformers*, *My Little Pony*, *Shopkins*, *Trolls* and others;
8. During the Class Period, McDonald’s unlawfully makes use of commercial advertising directed at persons under thirteen (13) years of age, in violation of sections 248 and 249 *CPA* and of paragraph *e* of section 91 of the *Regulation Respecting the Application of the Consumer Protection Act*, CQLR c P-40.1, r 3 (hereinafter the “**Regulations**”);
9. As more fully detailed herein, McDonald’s advertisements for the toys it sells directly incite children to buy (or urge another person to buy) said toys or to seek information about the toys, and this in violation of consumer protection law in Quebec;
10. Throughout the Class Period, McDonald’s sells various kinds of children’s toys, which consumers can purchase individually for approximately \$1.99 plus tax (approximately, \$2.29 tax included), or which are included as a premium with the purchase of a McDonald’s “*Happy Meal*<sup>®</sup>” (which sells for approximately \$5.16

including taxes);

11. Toys are an example of “Premiums”, defined by the United States Federal Trade Commission as “specialty or premium items **other than food products** that are distributed in connection with the sale of any of the company’s food products, whether distributed by sale, by redemption of coupons, codes, or proofs of purchase, within food packages, **in conjunction with restaurant meals**, as prizes in contests or sweepstakes, or otherwise”, Applicant disclosing a copy of the August 2014 issue brief titled “Food Marketing: Using Toys to Market Children’s Meals”, prepared by Dr. Jennifer J. Otten of the University of Washington, as **Exhibit P-2**;
12. McDonald’s *Happy Meals*® are marketed for children both under and over thirteen years of age, but mostly for children younger than thirteen years old;
13. Without marketing toys and distributing toys as premium, McDonald’s would not sell its *Happy Meals*®, or certainly not sell as many at its current price;
14. According to Dr. Otten, Exhibit P-2, there is evidence of are several harmful effects associated to marketing toys with food, a tactic used by McDonald’s to target children, notably:
  - Food marketing to children via toys is pervasive;
  - Eating out is a growing and problematic part of children’s diets;
  - Children’s restaurant meals - many of which use toys as a marketing technique - are of poor nutritional quality;
  - Parents do not support the use of toys to market fast food to their children;
  - Fast-food advertisements to children feature toys more often than foods;
  - Industry self-regulations often do not address toys and other premiums;
15. Dr. Otten further points out that McDonald’s competitors in the fast food industry, such as *Jack in the Box* and *Taco Bell*, no longer offer or market toys with their children’s meals, making McDonald’s one of the only fast food chains committing the prohibited practice;
16. Even on its website, McDonald’s first emphasizes the toys it distributes and sells in conjunction with its *Happy Meal*® and not the food that it sells therewith, by mentioning at the very top of the *Happy Meal*® webpage “SEE THE TOYS” and by providing a hyperlink directly to the image of its selection of toys, Applicant disclosing *en liasse* screen captures of the [www.McDonalds.ca](http://www.McDonalds.ca) website taken on



November 14<sup>th</sup>, 2016, as Exhibit P-3:



HAVE FUN  
WITH YOUR  
FAVOURITES!



17. Without limiting the generality of the foregoing, Applicant discloses *en liasse* pictures of the toys advertised by McDonald's as of November 13<sup>th</sup>, 2016, at its restaurant situated at 1300 Beaumont avenue, in Mont-Royal, Quebec, H3P 3E5, as well the publicity used by McDonald's therefor, **Exhibit P-4**:



18. As it appears from the pictures above, McDonald's incites children to "Trollifiez votre tête!";
19. A similar fixture is displayed as of November 13<sup>th</sup>, 2016, at the McDonald's restaurant situated at 7570 Decarie Boulevard, in Montreal, Quebec, H4P 2N1, and likely at many other McDonald's restaurants across the province of Quebec, Applicant disclosing **Exhibit P-5**, reproduced below:





20. Included in the transparent displays pictured above, Exhibits P-4 and P-5, are toy Troll colour pencils that McDonald's markets and sells for \$1.99 plus tax (the toy comes as a kit that includes a colour pencil, a toy troll, stickers and colour booklet, all clearly intended for children under the age of thirteen);
21. In the fixture pictured above, Exhibit P-5, the maximum height a child must be to fit under the blue troll is **37 inches** and **33 inches** to fit under the pink troll;
22. According to a 2014 chart published by the Dietitians of Canada, based on the World Health Organization (WHO) Child Growth Standards (2006) and WHO Reference (2007) adapted for Canada by the Canadian Paediatric Society (hereinafter the "Chart"), a 12-year old boy measures **53 to 64 inches** and a 12-year old girl measures 54 to 64 inches, Applicant disclosing *en liasse* the charts for both genders as **Exhibit P-6**;
23. According to the Canadian Paediatric Society, Exhibit P-6, 97% of Canadian 12-year old boys measure between 53 to 64 inches and a 97% of 12-year old girls measure 54 to 64 inches. In other words, less than 3% of Canadian boys and girls are shorter than 54 inches (still very far off the 37 inches required to fit under the blue *Troll*);
24. The Chart further illustrates that at a height of 33 and 37 inches respectively, the pink-haired and blue-haired troll displays are suitable and targeted for **2 to 4-year-old** boys and girls, certainly not for children over thirteen!

25. McDonald's markets and sells its toys and *Happy Meals*® in the province of Quebec with complete disregard to the CPA;
26. Quebec consumer law is a matter of protective public order;
27. By targeting young children, McDonald's shamelessly takes advantage of its iconic brand, which it very well knows can influence consumers. In a letter to its shareholders dated April 15<sup>th</sup>, 2016, Applicant disclosing **Exhibit P-7**, Steve Easterbrook, President and CEO of McDonald's writes:

No one has our iconic brand, franchising model, geographic diversification or size and scale. When we take advantage of these, we win customers – **and in turn, grow sales and cash flows.**

28. As a result of the foregoing, Class members are justified in claiming compensatory and punitive damages;

## II. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (SECTION 575 C.C.P.):

### A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT

#### Applicant's Claim against McDonald's

29. Applicant is the father of three children under the age of thirteen (two girls aged 5 and 10 respectively, as well as an 8-year old boy);
30. Applicant generally eats at McDonald's once every two weeks with at least one of his children, sometimes even more often;
31. Applicant tries to limit the frequency at which he visits McDonald's with his children, but the reality is that it facilitates his schedule and his children often request that he take them to McDonald's over any other restaurant;
32. During the Class Period, Applicant has spent hundreds of dollars (if not more), purchasing *Happy Meals*® which were distributed with a toy as a premium, as well as on the purchase of individually packaged toys (purchased without a *Happy Meal*®);
33. On September 2<sup>nd</sup>, 2014, Applicant posted a video to YouTube titled "*Chiara Pony Pallouza Fest*" (<https://www.youtube.com/watch?v=Uk3HLwv8Dt0>), in which his daughter displays her collection of pony figurines, several of which were purchased by Applicant from McDonald's in 2014, Applicant disclosing the video as **Exhibit P-8**;
34. September 27<sup>th</sup>, 2014, marks the release of the animated film "*My Little Pony*:"

*Equestria Girls – Rainbow Rocks*”, whose target audience are young girls under the age of thirteen, including Applicant’s daughter;

35. Applicant has come to realize that McDonald’s times the release of the newest toy it markets and sells with the release of popular upcoming children’s movies or cartoon series;
36. Applicant also realizes that McDonald’s generally markets and sells its toys in a series or set. Consequently, Applicant has, on several occasions, purchased the set of toys (over the course of several visits to McDonald’s) so that his children can “collect” the entire series;
37. Some of McDonald’s intense advertisement campaigns that stand out to Applicant (because he purchased these toys for his children) are the *Minions*, *Transformers*, *Super Mario Bros*, and *My Little Pony*;
38. Applicant purchases Happy Meals® and toys individually for his children because McDonald’s: (i) makes use of commercial advertising directed at his children (who were all under thirteen years of age); and (ii) directly incites his children to urge him to buy the toys or *Happy Meals*® (or to seek information about the toys);
39. But for the unlawful advertising targeting children under thirteen years of age used by McDonald’s, Applicant would have either never purchased said toys and/or *Happy Meals*® (or would have certainly not purchased as many during the Class Period);

**(i) Applicant’s claim for compensatory damages (arts. 248, 249 and 272 CPA)**

40. Applicant benefits from an absolute presumption of prejudice because:
  - a) Applicant is a consumer within the meaning of the CPA;
  - b) McDonald’s is a merchant within the meaning of the CPA;
  - c) McDonald’s makes use of commercial advertising directed at persons under thirteen years of age and said advertisement directly incited his child to buy or to urge Applicant to buy toys individually and/or *Happy Meals*® from McDonald’s (or to seek information about the toys);
  - d) Applicant and his children saw the advertisement at the different McDonald’s restaurants where they ate;
  - e) After seeing the advertisements made by McDonald’s, Applicant entered into a consumer contract;



- f) There existed a sufficient nexus between the content of the McDonald's advertisements and the toys and *Happy Meals*® covered by the contract (McDonald's practice influenced the Applicant's behavior with respect to the formation of the consumer contract);

41. Applicant's damages are a direct and proximate result of McDonald's misconduct;

**(ii) Applicant's claim for punitive damages (arts. 248, 249 and 272 CPA)**

- 42. McDonald's breached and continues to breach the CPA, without any explanation, for a significant period;
- 43. It appears that McDonald's is the only restaurant committing the prohibited practice in Quebec;
- 44. This complete disregard for consumers' rights and to their own obligations under the CPA on the part of McDonald's - **a multinational corporation** - is in and of itself an important reason for this Court enforce measures that will punish McDonald's, as well as deter and dissuade other entities – both local and foreign - from engaging in similar reprehensible conduct to the detriment of Quebec consumers and their children;
- 45. The reality is that McDonald's generates tremendous revenues by promoting the sale of its *Happy Meals*® with toys as premium, as well as from the individual sale of toys;
- 46. McDonald's is also able to attract children (and consequently their families) to its restaurants by directing its commercial advertising at persons under thirteen years of age;
- 47. Studies have shown, Applicant disclosing **Exhibit P-9**, that such commercial advertising:
  - a) accentuates the impoverishment of economically disadvantaged people;
  - b) contributes to children undermining their parents authority; and
  - c) promotes unhealthy eating habits, such as ingestion of sugary foods and/or foods that are bad for one's health;
- 48. The punitive damages provided for in section 272 CPA have a preventive objective, that is, to discourage the repetition of such undesirable conduct;
- 49. McDonald's violations are intentional, calculated, malicious and vexatious;

50. Even worse, McDonald's violations target and are to the detriment of young children;
51. McDonald's demonstrates through its behavior (before, during and after the violation) that it is more concerned about its bottom line than about consumers' rights, children's health, and their own obligations under the *CPA*;
52. In these circumstances, Applicant's claim for both compensatory and punitive damages against McDonald's is justified;

**B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:**

53. All Class members, regardless of which specific toy/*Happy Meal*® they purchased or at which particular McDonald's location they purchased them at, have a common interest both in proving the commission of a prohibited businesses practice (the violation of section 248-249 *CPA* in the present case) by McDonald's and in maximizing the aggregate of the amounts unlawfully charged to them by McDonald's (had McDonald's not committed the prohibited practice many Class members would have never purchased toys/*Happy Meals*® to begin with, or may have purchased less and at a lower price);
54. In this case, the legal and factual backgrounds at issue are common to all the members of the Class, namely whether McDonald's advertisement is directed at children under thirteen years of age in violation of sections 248 and 249 *CPA*, and whether said advertisements **directly incite** a child to buy or to urge another person to buy the toys/*Happy Meals*® or to seek information about them, in violation of paragraph e of section 91 of the *Regulations*;
55. The claims of every member of the Class are founded on very similar facts to the Applicant's claim;
56. Requiring a separate class action, based on the specific toy/*Happy Meal*® purchased from McDonald's or based on the specific McDonald's location, for very similar questions of fact and identical questions of law would be a waste of resources;
57. Every member of the Class was subject to McDonald's use of commercial advertising directed at persons under thirteen years of age, which directly incited a child to buy or to urge another person to buy toys/*Happy Meals*® from McDonald's or to seek information about the toys;
58. By reason of McDonald's unlawful conduct, Applicant and members of the Class have suffered damages, which they may collectively claim against McDonald's;

59. The damages sustained by the Class members flow, in each instance, from a common nucleus of operative facts, which occur from the moment they walk into a McDonald's restaurant and see the prohibited advertisements, up until the completion of their purchases;
60. All of the damages to the Class members are a direct and proximate result of McDonald's misconduct;
61. In taking the foregoing into account, all members of the Class are justified in claiming the sums which they unlawfully overpaid to McDonald's, as well as punitive damages pursuant to section 272 CPA;
62. Individual questions, if any, pale by comparison to the numerous common questions that are significant to the outcome of the present Application;
63. **The questions of fact and law raised and the recourse sought by this Application are identical with respect to each member of the Class, namely:**
  - a) Does McDonald's make use of commercial advertising directed at persons under thirteen years of age?
  - b) Does McDonald's commercial advertising directly incite a child to buy or to urge another person to buy goods or to seek information about it?
  - c) In the affirmative, what is the appropriate remedy for a violation of section 248 CPA?
  - d) Are the Class members and the Applicant entitled to a declaratory judgment stating that McDonald's is liable for the damages suffered by the Applicant and by each of the members of the Class?
  - e) Should an injunctive remedy be ordered to force McDonald's to immediately cease the prohibited practice?
  - f) Is McDonald's responsible to pay punitive damages to Class members and, if so, in what amount?

### **C) THE COMPOSITION OF THE CLASS**

64. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
65. McDonald's is a multinational publicly traded company (NYSE: MCD). According to its



2015 Annual Report, McDonald's has approximately 420,000 employees worldwide (including in both its franchised and company-operated restaurants) and its 2015 revenues were in the amount of **\$25,413,000,000.00**, Applicant disclosing the 2015 McDonald's Annual Report as **Exhibit P-10**;

66. It was reported that as of 2014, McDonald's had 1400 stores across Canada. It appears from the McDonald's "Restaurant Locator" on its website that over 300 of these locations are in the province of Quebec, Applicant disclosing **Exhibit P-11**;
67. The "*McDonald's Canada*" Facebook page has over 875,000 "*likes*";
68. The number of persons included in the Class is likely in the **hundreds of thousands or even in the millions** in the province of Quebec (many members have likely purchased more than one toy and/or *Happy Meal*<sup>®</sup>, as did the Applicant);
69. The names and addresses of all persons included in the Class are not known to the Applicant;
70. Class members are very numerous and are dispersed across the province, across Canada and elsewhere;
71. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;
72. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

**D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS**

73. Applicant requests that he be appointed the status of representative plaintiff;
74. Applicant is a member of the Class;
75. Applicant is upset about wasting so much money over the years on toys and meals marketed and sold by McDonald's. Applicant feels that McDonald's takes advantage of parents' vulnerability as consumers, especially when they are with their children;
76. After speaking to several friends, colleagues and relatives, Applicant realized that almost everyone he knows with children has encountered a similar experience at McDonald's;
77. Applicant voiced his discontent about the situation to his attorney, who has

experience in class actions and who works on several consumer protection related files and gave him the mandate to take the present action on his behalf and for the interest of the Class members;

78. Applicant is stunned to realize that likely hundreds of thousands of parents in Quebec fall victim to McDonald's prohibited advertisements targeting children under 13 years of age and that nobody has done anything to stop the prohibited practice;
79. Applicant has recently become aware that a non-profit organization, the *Coalition québécoise sur la problématique du poids "CQPP" (une initiative parrainée par l'Association pour la santé publique du Québec)*, has been advocating against the unlawful use of advertisement targeting young children, and Applicant is prepared to work with his attorney and the CQPP to put an end to this practice by McDonald's;
80. Applicant feels that McDonald's should be held accountable for its misconduct and is taking this action so that he and the Class members can receive compensation, as well as force McDonald's to cease directing its advertising at children under thirteen years of age;
81. As for identifying other Class members, Applicant draws certain inferences from the situation, and this based on the number of McDonald's restaurants in Montreal and in the province of Quebec. Applicant realizes that by all accounts, there is a very important number of consumers that find themselves in an identical situation, and that it would not be useful for him to attempt to identify them given their sheer number;
82. Applicant, with the assistance of his attorney, is ready and available to manage and direct the present action in the interest of the members of the Class that he wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the Class, as well as to dedicate the time necessary for the present action and to collaborate with his attorney;
83. Applicant has given the mandate to his attorney to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
84. Applicant has the capacity and interest to fairly and adequately protect and represent the interest of the members of the Class;
85. Applicant is prepared to dedicate the time necessary for this action and to collaborate with other members of the Class and to keep them informed;
86. Applicant is in good faith and has instituted this action for the sole purpose of having his rights, as well as the rights of other Class members, recognized and protected so

that they may be compensated for the damages that they have suffered as a consequence of McDonald's misconduct and to put an end to McDonald's unlawful behaviour;

87. Applicant understands the nature of the action;
88. Applicant's interests are not antagonistic to those of other members of the Class;
89. Applicant's interest and competence are such that the present class action could proceed fairly;

### **III. DAMAGES**

90. During the Class Period, McDonald's has generated **billions of dollars** while intentionally choosing to ignore the law in Quebec;
91. McDonald's conduct is reprehensible and to the detriment of vulnerable Quebec consumers, their children and their families;
92. McDonald's must be held accountable for the breach of obligations imposed on it by consumer protection legislation in Quebec, including:
  - a) Quebec's *Consumer Protection Act*, notably sections 248, 249, 261, 262 and 272;
93. In light of the foregoing, the following damages may be claimed against McDonald's:
  - a) compensatory damages, in an amount to be determined, on account of the damages suffered; and
  - b) punitive damages, in an amount to be determined, for the breach of obligations imposed on McDonald's pursuant to section 272 CPA;

### **IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

94. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages, injunctive relief and declaratory judgment;
95. The conclusions that the Applicant wishes to introduce by way of an Originating Application are:

**GRANT** Plaintiff's action against Defendant on behalf of all the members of the Class;

**DECLARE** the Defendant liable for the damages suffered by the Applicant and each of



the members of the Class;

**ORDER** the Defendant to cease making use of commercial advertising directed at persons under thirteen years of age;

**CONDEMN** the Defendant to pay to each member of the Class a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendant to pay to each of the members of the Class punitive damages, in an amount to be determined, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*;

**ORDER** the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

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

**CONDEMN** the Defendant to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

**RENDER** any other order that this Honourable Court shall determine;

96. The interests of justice favour that this Application be granted in accordance with its conclusions;

## **V. JURISDICTION**

97. The Applicant suggests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, for the following reasons:
- a) There exists a real and substantial connection between the province of Quebec and the damages suffered by the Applicant and the Class members;
  - b) McDonald's appears to have over 300 restaurants in the province of Quebec, with a head office at 1325 route Transcanadienne, in the city of Dorval, district of Montreal, Quebec, H9P 2V5;

- c) The contracts between the Class members and the Defendant were entered into in the province of Quebec (with an important number likely entered into in the district of Montreal);
- d) A great number of the members of the Class, including the Applicant, reside in the district of Montreal;
- e) The Applicant's attorney practices his profession in the district of Montreal;

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present application;

**AUTHORIZE** the bringing of a class action in the form of an Originating Application in damages;

**APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

**Class:**

Every consumer, pursuant to the terms of Quebec's *Consumer Protection Act* ("**CPA**"), who since November 15<sup>th</sup>, 2013 (the "**Class Period**"), purchased a toy from McDonald's (including McDonald's franchised and company-operated restaurant sites), either with or without a *Happy Meal*<sup>®</sup>, for any child under thirteen years of age;

(hereinafter referred to as the "**Class**")

or any other Class to be determined by the Court;

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

- a) Does McDonald's make use of commercial advertising directed at persons under thirteen years of age?
- b) Does McDonald's commercial advertising directly incite a child to buy or to urge another person to buy goods or to seek information about it?
- c) In the affirmative, what is the appropriate remedy for a violation of section 248 CPA?

- d) Are the Class members and the Applicant entitled to a declaratory judgment stating that McDonald's is liable for the damages suffered by the Applicant and by each of the members of the Class?
- e) Should an injunctive remedy be ordered to force McDonald's to immediately cease the prohibited practice?
- f) Is McDonald's responsible to pay punitive damages to Class 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 Defendant on behalf of all the members of the Class;

**DECLARE** the Defendant liable for the damages suffered by the Applicant and each of the members of the Class;

**ORDER** the Defendant to cease making use of commercial advertising directed at persons under thirteen years of age;

**CONDEMN** the Defendant to pay to each member of the Class a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendant to pay to each of the members of the Class punitive damages, in an amount to be determined, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*;

**ORDER** the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

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

**CONDEMN** the Defendant to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;



**RENDER** any other order that this Honourable Court shall determine;

**DECLARE** that all members of the Class 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 Class 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 Class in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in the "News" sections of the Saturday editions of LA PRESSE, LE JOURNAL DE MONTRÉAL and the MONTREAL GAZETTE;

**ORDER** that said notice be published on the Defendant's website, Facebook pages and Twitter accounts, in a conspicuous place, with a link stating "Notice to Quebec Consumers";

**ORDER** the Defendant to send an Abbreviated Notice by e-mail to each Class member, to their last known e-mail address, with the subject line "Notice of a Class Action";

**RENDER** any other order that this Honourable Court shall determine;

The whole with costs including publications fees.

Montreal, November 15<sup>th</sup>, 2016



**LPC AVOCAT INC.**

Per: Me Joey Zukran  
Attorney for Applicant

**SUMMONS**  
(ARTICLES 145 AND FOLLOWING C.C.P)

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**Filing of a judicial application**

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of Montreal.

**Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

**Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

**Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

**Change of judicial district**

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

### **Transfer of application to Small Claims Division**

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

### **Calling to a case management conference**

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

### **Exhibits supporting the application**

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** Copy of the extract from the enterprise's information statement from the Quebec enterprise register ("CIDREQ") for McDonald's;
- Exhibit P-2:** Copy of the August 2014 issue brief, prepared by Dr. Jennifer J. Otten of the University of Washington titled "Food Marketing: Using Toys to Market Children's Meals";
- Exhibit P-3:** *En liasse*, screen captures of the [www.McDonalds.ca](http://www.McDonalds.ca) website taken on November 14<sup>th</sup>, 2016;
- Exhibit P-4:** *En liasse*, pictures of the toys being advertised at the McDonald's restaurant situated at 1300 Beaumont avenue, in Mont-Royal, Quebec, H3P 3E5 as of November 13<sup>th</sup>, 2016;
- Exhibit P-5:** Picture of the fixture displayed as of November 13<sup>th</sup>, 2016, at the McDonald's restaurant situated at 7570 Decarie Boulevard, in Montreal, Quebec, H4P 2N1;

- Exhibit P-6:** *En liasse*, copies of a 2014 chart published by the Dietitians of Canada, adapted for Canada by the Canadian Paediatric Society, for boys and girls;
- Exhibit P-7:** Copy of letter to McDonald's shareholders, signed by Steve Easterbrook, President and CEO of McDonald's, dated April 15<sup>th</sup>, 2016;
- Exhibit P-8:** Copy of video posted to YouTube by Applicant on September 2<sup>nd</sup>, 2014, titled "*Chiara Pony Pallouza Fest*";
- Exhibit P-9:** Copy of studies concerning commercial advertising and the negative effects on children;
- Exhibit P-10:** Copy of the 2015 McDonald's Annual Report;
- Exhibit P-11:** Screen capture of the McDonald's "Restaurant Locator" tool on its website, appearing to show over 300 McDonald's locations in the province of Quebec;

These exhibits are available on request.

#### **Notice of presentation of an application**

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, November 15<sup>th</sup>, 2016



**LPC AVOCAT INC.**

Per: Me Joey Zukran  
Attorney for Applicant



**NOTICE OF PRESENTATION**  
(articles 146 and 574 al. 2 N.C.P.C.)

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**TO: LES RESTAURANTS MCDONALD DU CANADA LIMITÉE**

1325 route Transcanadienne

Dorval, Québec, H9P 2V5

**Defendant**

**TAKE NOTICE** that Applicant's *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

**GOVERN YOURSELF ACCORDINGLY.**

Montreal, November 15<sup>th</sup>, 2016



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**LPC AVOCAT INC.**

Per: Me Joey Zukran

Attorney for Applicant



N°: 500-06-000824-165

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(Class Action)  
SUPERIOR COURT  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

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**ANTONIO BRAMANTE,**

Applicant

-VS-

**LES RESTAURANTS MCDONALD DU CANADA LIMITÉE**, legal person having an establishment at 1325 route Transcanadienne, Dorval, district of Montréal, province of Québec, H9P 2V5

Defendant

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**APPLICATION TO AUTHORIZE THE  
BRINGING OF A CLASS ACTION AND TO  
APPOINT THE STATUS OF  
REPRESENTATIVE PLAINTIFF**  
(ARTICLES 571 AND FOLLOWING C.C.P)

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**COPY**

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5800, boulevard Cavendish, Suite 411  
Montréal (Québec) H4W 2T5  
T: (514) 379-1572 • F: (514) 221-4441  
E: [jzukran@lpclex.com](mailto:jzukran@lpclex.com)

**ME JOEY ZUKRAN**  
CODE: AZ 00X4

N/D: JZ-126