SUPERIOR COURT
(Class Actions)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

Nos: 500-06-000964-185

DATE: February 25, 2020

BY THE HONOURABLE CHANTAL TREMBLAY, J.S.C.

KATHLEEN GAUTHIER
Plaintiff

v.

JOHNSON & JOHNSON INC.
Defendant

JUDGMENT ON LEAVE TO AUTHORIZE A CLASS ACTION

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[1] Kathleen Gauthier wishes to institute a class action on behalf of all consumers residing in Quebec who bought Tylenol Products[1] containing acetyl-para-aminophenol (**APAP**) alone or in combination with other medications.

[2] She alleges that Johnson & Johnson (**J&J**) mislead consumers in omitting to disclose and properly caution against the risks and side effects related to Tylenol Products, including the risk of death and acute liver failure requiring a liver transplant.

[3] J&J submits that the Re-Amended Motion for Authorization should be dismissed since the criteria found at paragraphs (2) and (4) of article 575 CCP are not met.

1. ANALYSIS

1.1 The Class

JT1698

[4] The Plaintiff seeks leave to institute a class action on behalf of the following class:[2]

> All of the consumers residing in Quebec who bought before December 12, 2017, Tylenol Products, listed below, manufactured and/or sold and/or marketed by John

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1 As listed in the Re-Amended Motion for Authorization.
2 As verbally amended during the authorization hearing.

& Johnson Inc. containing acetaminophen alone or in combination with other medications

"Tylenol Products"

Adults:

TYLENOL Rapid Release Gels

TYLENOL Extra Strength

TYLENOL Liquid Gels

TYLENOL Regular Strength

TYLENOL Ultra Relief

TYLENOL Muscle Aches & Body Pain

TYLENOL Back Pain

TYLENOL Arthritis Pain

TYLENOL NUIT Extra Fort

TYLENOL Body Pain Night

TYLENOL Complete Cold, Cough & Flu

TYLENOL Complete Cold, Cough & Flu Plus Mucus Relief Liquid Gets

TYLENOL Complete Cold, Cough & Flu Plus Mucus Relief Syrup

TYLENOL Complete Cold, Cough & Flu Plus Mucus Relief Nighttime Syrup

TYLENOL Cold

TYLENOL Cough

TYLENOL Flu

TYLENOL Cold & Sinus

TYLENOL Sinus

Infants and Children:

Infants' TYLENOL Drops

Infants' TYLENOL Fever & Sore Throat Pain

Children's TYLENOL Liquid

Childrens' TYLENOL Chewables

TYLENOL Fièvre et mal de gorge, pour enfants

Junior Strength Children's TYLENOL FASTMELTS

Children's TYLENOL Cold & Stuffy Nose

Children's TYLENOL Cold

Children's TYLENOL Cold & Cough Nighttime

Children's TYLENOL Cold & Cough

Children's TYLENOL Complete Cold Cough & Fever

Children's TYLENOL Complete Cold Cough & Fever Nighttime

[5] The class definition must be based on objective criteria, cannot be circular nor imprecise and must not depend on the outcome of the class action.[3]

[6] Defendant asks the Court to determine the period of the proposed Class as it does not include any starting date.

[7] Plaintiff suggests not dealing with this issue at the authorization stage of the proceedings. She refers to the Superior Court decision in *Option Consommateurs* v. *LG Chem Ltd.*[4] stating that the issue of prescription is a factual question which should be decided on the merits of the case.

[8] The Court is of the view that the Class definition must include a starting point in order for a person to know whether or not he or she is a class member.[5] In the decision cited above, the proposed class included a starting date.

[9] At the hearing, Plaintiff did not suggest any starting point but argued that the class period should not be limited to three years prior to the institution of the initial Motion for Authorization.

[10] The Court can modify or redefine the proposed class[6] but cannot randomly identify a timeframe. Due to the absence of allegations dealing with the issue of prescription, the Court has no choice but to use October 23, 2015, as the starting date, which corresponds to three years prior to the filling of the initial Motion for Authorization.

[11] For these reasons, the Court redefines the Class as follows:

All of the consumers residing in Quebec who bought between October 23, 2015, and December 12, 2017, the Tylenol Products, listed below, manufactured and/or sold and/or marketed by John & Johnson Inc. containing acetaminophen alone or in combination with other medications.

"Tylenol Products"

Adults:

TYLENOL Rapid Release Gels

TYLENOL Extra Strength

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3 *Western Canadian Shopping Centres Inc v. Dutton*, 2001 CSC 46; *Hollick v. Toronto (Ville)*, 2001 CSC 68; *George v. Québec (Procureur général)*, 2006 QCCA 1204; *Voisins du train de banlieue de Blainville inc v. Agence métropolitaine de transport*, 2007 QCCA 236; *Lallier v. Volkswagen Canada inc*, 2007 QCCA 920; *Sibiga* v. *Fido Solutions inc.*, 2016 QCCA 1299.

4 *Option Consommateurs v. LG Chem Ltd.*, 2017 QCCS 3569 (Motion for permission to appeal denied, 2017 QCCA 1442).

5 *Western Canadian Shopping Centres Inc v. Dutton*, 2001 CSC 46.

6 *Lallier v. Volkswagen Canada inc*, 2007 QCCA 920, par. 18.

TYLENOL Liquid Gels
TYLENOL Regular Strength
TYLENOL Ultra Relief
TYLENOL Muscle Aches & Body Pain
TYLENOL Back Pain
TYLENOL Arthritis Pain
TYLENOL NUIT Extra Fort
TYLENOL Body Pain Night
TYLENOL Complete Cold, Cough & Flu
TYLENOL Complete Cold, Cough & Flu Plus Mucus Relief Liquid Gets
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TYLENOL Complete Cold, Cough & Flu Plus Mucus Relief Nighttime Syrup
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TYLENOL Fièvre et mal de gorge, pour enfants
Junior Strength Children's TYLENOL FASTMELTS
Children's TYLENOL Cold & Stuffy Nose
Children's TYLENOL Cold
Children's TYLENOL Cold & Cough Nighttime
Children's TYLENOL Cold & Cough
Children's TYLENOL Complete Cold Cough & Fever
Children's TYLENOL Complete Cold Cough & Fever Nighttime

1.2 Criteria for Authorization

[12] According to article 575 CCP, the court authorizes the class action and appoints the class member it designates as representative plaintiff if it is of the opinion that all the following criteria have been met:

(1) The claims of the members of the class raise identical, similar or related issues of law or fact;

(2) The facts alleged seem to justify the conclusions sought;

(3) 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;

(4) The class member appointed as representative is in a position to properly represent the class members.

[13] At the authorization stage, the court must perform a filtering role by ensuring that the requirements of article 575 CCP are met. The plaintiff's individual cause of action must be analyzed to determine whether it meets the applicable criteria.[7]

[14] The court must adopt a flexible and liberal approach toward class actions as it is a procedural vehicle to achieve the twin goals of deterrence and victim compensation.[8]

[15] The plaintiff must show an arguable case. It is sufficient for the plaintiff to present a case with a good colour of right that has a chance of success, without needing to establish a reasonable possibility of success.[9]

[16] As stated by the Supreme Court, the class action is not an "*exceptional remedy*" that must be interpreted narrowly. On the contrary, it is "*an ordinary remedy whose purpose is to foster social justice*".[10]

[17] The principle of proportionality finds its way into the analysis of the authorization criteria. Therefore, the court must ensure that the proceedings are, in terms of the cost and time involved, proportionate to the nature and complexity of the matter and its outcome. However, the court cannot, in the name of the proportionality, refuse the Motion for Authorization if it respects the four established criteria.

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7 *L'Oratoire Saint-Joseph du Mont-Royal v. JJ*, 2019 CSC 35; *Vivendi Canada Inc. v. Dell'Aniello*, 2014 CSC 1; *Infineon Technologies AG v. Option consommateurs*, 2013 CSC 59, par. 68; *Marcotte v. Ville de Longueuil*, 2009 CSC 43, par. 22.

8 *L'Oratoire Saint-Joseph du Mont-Royal v. JJ*, 2019 CSC 35, par. 8; *Infineon Technologies AG v. Option consommateurs*, 2013 CSC 59, par. 60; *Banque de Montréal v. Marcotte*, 2014 CSC 55, par. 43; *Theratechnologies inc v. 121851 Canada inc*, 2015 CSC 18, par. 35; *Asselin v. Desjardins Cabinet de services financiers inc*, 2017 QCCA 1673 (leave to appeal to SCC granted, 2019-06-27, 37898).

9 *L'Oratoire Saint-Joseph du Mont-Royal v. JJ,* 2019 CSC 35, par 7; *Infineon Technologies AG v. Option consommateurs*, 2013 CSC 59, par. 59 and 65; *Vivendi Canada Inc. v. Dell'Aniello*, 2014 CSC 1, par. 37.

10 *L'Oratoire Saint-Joseph du Mont-Royal v. JJ*, 2019 CSC 35, par. 8.

1.2.1 The alleged facts appear to justify the conclusions sought

[18] When analyzing this criterion, the alleged facts must be considered as true, unless they appear to be clearly inaccurate or implausible, particularly in light of the relevant evidence adduced at the authorization hearing.[11]

[19] Vague, general, and imprecise allegations are not sufficient to meet such a burden. Nor are hypothetical or purely speculative allegations.[12]

[20] In addition, the court must distinguish factual allegations from arguments, opinions, unsupported inferences and hypotheses, as well as assertions that are implausible or false. The insinuations, opinions, and legal arguments set out in the authorization proceeding are not facts that the court must regard as true.

[21] Plaintiff's personal right of action is described as follows:

1. She purchased and used Tylenol Products and occasionally gave some to her two children;
2. She learned about the risks and side effects of the Tylenol Products in 2017;
3. Had she been properly informed, her use of Tylenol Products would have been different and less frequent, and she would not have given Tylenol Products to her children;
4. She is therefore entitled to compensatory damages in the form of the reimbursement of part of the cost she incurred in purchasing Tylenol Products. Such amount is estimated at $400;
5. She is also entitled to claim $100 in punitive damages as a result of the intentional breach by the Defendant of its obligations under the *Consumer Protection Act*;

[22] Defendant submits that Plaintiff does not meet the appearance of right condition due to the absence of any indemnifiable damages.

[23] Indeed, as alleged in the Re-Amended Motion for Authorization, Plaintiff did not suffer any personalized injury flowing from the use of Tylenol Products. The mere exposure to a risk factor or the potential of future injury does not give rise to any right of action.[13] The general rule underlying this principle is set out at Article 1611 CCQ, which provides that future injury can only be considered in awarding damages when the injury is *certain* and *assessable*. Also, the stress and anxiety caused by the fear of sustaining

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11 *Lambert (Gestion Peggy) v. Écolait* ltée, 2016 QCCA 659, par. 38.

12 *Asselin v. Desjardins Cabinet de services financiers inc.*, 2017 QCCA 1673, par. 33 and 34 (leave to appeal to SCC granted, 2019-06-27, 37898); *Charles v. Boiron Canada inc.*, 2016 QCCA 1716, par. 43 (leave to appeal to SCC denied with dissidence, 2017-05-04, 37366).

13 *Li v. Equifax inc*, 2019 QCCS 4340, par. 29-32 and 34; *Kennedy v. Colacem Canada inc*, 2015 QCCS 222, par. 102-103; *Hotte v. Servier Canada inc*, [2002] RJQ 230, par. 69 (discontinuance of the application for leave to appeal to SCC, 2002-05-02, 29115).

an injury, or exposure to an increased risk of injury, is not indemnifiable under Quebec Law.[14]

[24] Defendant relies notably on the decision rendered by the Court of Appeal in the matter of *Perreault* v. *McNeil PDI inc.*[15] In that case, the plaintiff alleged that pharmaceutical companies had failed to properly warn consumers with respect to effectiveness and the risks associated with certain infants' medication, including Tylenol. The plaintiff was seeking a refund of the purchase price, as well as punitive and compensatory damages. The Superior Court refused to authorize the class action since the plaintiff had not suffered indemnifiable damages. The Court of Appeal upheld the first instance's decision since the plaintiff did not suffer any compensable damages and did not demonstrate a violation of the *Consumer Protection Act* (***CPA***).

[25] Plaintiff submits that her proposed class action is not for bodily injury or financial loss resulting from the risk of death or acute liver failure but rather to enforce Defendant's duty to inform the consumers in the marketplace in accordance with Sections 219 and 228 of the *CPA*, Section 52 of the *Competition Act* and Articles 6, 7, 1357 and 1401 CCQ.

[26] Sections 219 and 228 *CPA* and Section 52 (1) of the *Competition Act* read as follows:

> 219. No merchant, manufacturer or advertiser may, by any means whatever, make false or misleading representations to a consumer.
>
> 228. No merchant, manufacturer or advertiser may fail to mention an important fact in any representation made to a consumer.
>
> 52. (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.

[27] As stated by the Supreme Court of Canada in *Richard* v. *Time inc.*[16], a recourse under Section 272 *CPA* to have the Court sanction the failure to fulfil an obligation imposed by the *CPA* gives rise to an absolute presumption of prejudice.

[28] Plaintiff invokes the following violations of Sections 219 and 228 *CPA* and 52(1) of the *Competition Act*:

1. For purely mercantile reasons and to protect its important market share, J&J misled consumers by omitting to disclose and properly caution against serious risks and major side effects related to the Tylenol Products, up to and including risk of death and acute liver failure requiring a liver transplant;

2. These omissions are particularly unconscionable given that these serious dangers were known and had been voluntarily disclosed by J&J in the United

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[14] *MacMillan v. Abbott Laboratories*, 2012 QCCS 1684, par. 95-96 (appeal dismissed 2013 QCCA 906); *FL v. Astrazeneca Pharmaceuticals, plc*, 2010 QCCS 470, par. 91-92 (discontinuance of the appeal).

[15] *Perreault v. McNeil PDI inc.*, 2012 QCCA 713 (leave to appeal to SCC denied, 201-10-25, 34877).

[16] 2012 CSC 8, par. 112 -114.

States, by way of warning labels appearing clearly and expressly on the bottles and packaging of equivalent Tylenol products;

3. As far back as 1994, in the United States, J&J implemented measures to prevent accidental overdoses for Tylenol Products, namely warning information and dosage reduction;

4. Two warnings were added on the packaging of the Tylenol products supplied to the American marketplace: a warning not to take more than two alcoholic drinks per day while taking a Tylenol product and a warning not to consume more than one product containing APAP at the same time;

5. In 2011, J&J also reduced in the United States the maximum daily dosage of its products in order to establish a substantial margin of safety. In doing so, J&J stated the following with regards to Extra Strengh Tylenol:

> To help encourage the safe use of acetaminophen, the makers of TYLENOL® have lowered the maximum daily dose for single-ingredient Extra Strength TYLENOL® (acetaminophen) products sold in the U.S. from 8 pills per day (4,000 mg) to 6 pills per day (3,000 mg). The dosing interval has also changed from 2 pills every 4 - 6 hours to 2 pills every 6 hours.[17]

6. These measures were not implemented in the Canadian market for Canada consumers;

7. The Tylenol Products sold in Quebec and the rest of Canada prior to December 12, 2007, did not have warnings appearing on container labels and/or on the box with respect to the risk of toxicity and serious health consequences.

[29] Also, at paragraph 52 of the Re-Amended Motion for Authorization, Plaintiff summarizes the alleged material omissions of fact as follows:

> 52. In summary, Defendant voluntarily implemented several years ago, for the benefit and safety of American consumers, the following precautionary measures to ensure a safer use of APAP specifically aimed at reducing the risk and number of accidental overdoses causing death, acute liver failure and other severe health problems, but deliberately chose not to implement the same measures for the benefit and safety of Canadian consumers:
>
> a. Reducing from 4000mg to 3000mg (or 3250mg depending on the Tylenol Product) in the USA the maximum daily recommended dosage of APAP in order to create a substantial safety margin between a safe use of the Tylenol Products and the risk of toxicity (which begins at 4000mg per period of 24 hours) in order to both diminish the risk of accidental overdose and allow for the safe use of acetaminophen.

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17 https://www.tylenol.com/safety-dosing/usage/dosage-for-adults.

For Canadian consumers, no such lowering of the recommended daily dosage to increase the margin of safety was implemented with the result that the maximum recommended daily dose of 4000mg also coincides with the starting point of toxicity. In addition, no specific warning was given to Canadian consumers that the recommended daily dosage does not provide for a safety margin and that it coincides with the toxicity threshold.

b. Expressly warning the American consumers that taking more than 2 alcoholic beverages per day while using a Tylenol Product can cause severe liver damage (which can result in death or require a liver transplant).

   No such warning is given to Canadian consumers on the label affixed to the Tylenol Porduct containers nor the box in which the container is enclosed. The only indication given to Canadian consumers concerning alcohol consumption is to consult a doctor or a pharmacist before taking a Tylenol Product if they suffer from "chronic alcoholism".

c. Expressly warning the American consumers that taking a Tylenol Product with any other product containing acetaminophen can cause severe liver damage (which can result in death or require a liver transplant).

   No such clear warning is given to Canadian consumers on the label affixed to the Tylenol product containers nor on the box in which the container is enclosed. Both Canadians and Americans are advised not to use a Tylenol Product with any other product containing acetaminophen, but only the American consumers are specifically warned, in a clear, separate and additional warning, of the potentially severe consequences of doing so, namely severe liver damage (which can result in death or require a liver transplant).

[30] J&J argues that it did properly disclose the purportedly undisclosed risks alleged by Plaintiff.

[31] With the Motion for Authorization, Plaintiff failed to include the full label of the Tylenol® Extra Strength product communicated as Exhibit P-8. Therefore, she filed an Amended Motion for Authorization with Exhibit P-8a) to purportedly complete the labelling of Exhibit P-8. However, P-8 refers to the current label of the Tylenol® Extra Strength product used since December 12, 2017, whereas P-8a) relates to the previous label of the same product.

[32] In essence, Exhibit P-8a) is the relevant label to be considered during the class period. The box contains the following cautions:

[...] Do not take more than 8 caplets per day [i.e. 4000mg]

> [Red Warn Sign] **CAUTION**: [...] **Do not use** with other drugs containing **acetaminophen**. Use the smallest effective dose. Do not take more than the maximum daily dose. Overdose may result in **severe or possibly fatal liver damages**. [...] Ask a doctor or pharmacist before use if you are pregnant or breastfeeding; have chronic alcoholism; have a serious liver or kidney disease; use any other medications including natural health products, prescription drugs, salicylates or other pain and fever relief medication.

[33] Also, the Court authorized Defendant to file the guidance documents issued by Health Canada concerning labelling standards for acetaminophen, a complete view of the current label of the Tylenol® Extra Strength product and an affidavit from Kristin Jill Grande, Senior Manager, regulatory Affairs at McNeil Consumer Healthcare, a division of J&J.

[34] Such evidence demonstrates that the previous label found at Exhibit 8a) and the current label filed as Exhibit D-3 are consistent with the requirements of the labelling standards issued by Health Canada to be followed by the manufacturers of acetaminophen products in Canada.

[35] For the following reasons, the Court is of the view that the condition provided for at article 575 (2) is met:

1. Even if Plaintiff did not suffer personalized injury, the proposed class action presents a good colour of right in light of the allegations concerning the violations to the *CPA* and *Competition Act*;
2. The respect of the labelling standards may not exempt Defendant from its liability in a case dealing with misrepresentation by omission;
3. The assertions found notably in paragraph 52 a) and b) of the Re-Amended Motion for Authorization are not implausible or false. Whether they constitute a violation of the obligations imposed by the *CPA* and the *Competition Act* should be decided on the merits of the case.

1.2.2 The members of the class claims raise identical, similar or related issues of law or fact

[36] At the authorization stage, the threshold requirement for common questions is low.[18]

[37] All that is needed is that there be an identical, related or similar question of law or fact, if it settles a significant portion of the dispute.[19]

[38] The common questions submitted need not necessarily lead to common answers.[20] It is not required that each member of a group be in an identical or even a

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18 *Infineon Technologies AG v. Option consommateurs*, 2013 CSC 59, par. 72.
19 *L'Oratoire Saint-Joseph du Mont-Royal v. JJ*, 2019 CSC 35; *Vivendi Canada Inc v. Dell'Aniello*, 2014 CSC 1, par. 58.
20 *Vivendi Canada Inc v. Dell'Aniello*, 2014 CSC 1, par. 59.

similar position in relation to the defendant or to the injury suffered.[21] It is also not mandatory for the question submitted to obligatoraly be common to all the members of the group. Merely related is sufficient.[22]

[39] The common issues described in the Re-Amended Authorization Application are as follows:

a) Whether the Material Omissions indeed constitute information that is material to the members of the class' consumer knowledge;

b) Whether Defendant has a duty to inform the members of the Quebec as to the Material Omission under the provisions of the *Consumer Protection Act* and whether it breached said duty;

c) Whether Defendant has a duty to inform the members of the class as to the Material Omission under the provisions of the *Competition Act* and whether it breached said duty;

d) Whether Defendant breached its duties of good faith under the *Civil Code of Quebec vis-à-vis* the members of the Quebec in the consumer market;

e) If any of b. to d. are answered in the affirmative, are the class members entitled to compensatory damages? And if so, in what amount?

f) Whether the class members are entitled to punitive damages by reason of the violation by the Defendant of the *Consumer Protection Act* and *Competition Act*. And if so, in what amount?

g) Whether collective recovery of compensatory and punitive damages is appropriate?

[40] The Court is of the view that the above constitute common issues and that the issue of damages must not be decided on the particular facts of each case.

[41] Therefore, this criterion is met.

1.2.3 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

[42] This third criterion of article 575 CCP seeks to ascertain whether it is difficult or impracticable to proceed by taking legal action for the benefit of another person or by the joining of actions, under sections 88, 91 and 143 CCP.

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21 *L'Oratoire Saint-Joseph du Mont-Royal v. JJ*, 2019 CSC 35; *Infineon Technologies AG v. Option consommateurs*, 2013 CSC 59, par. 73.

22 *L'Oratoire Saint-Joseph du Mont-Royal v. JJ*, 2019 CSC 35; *Société québécoise de gestion collective des droits de reproduction (Copibec) v. Université Laval*, 2017 QCCA 199, par. 60.

[43] This criterion must be given the same broad and liberal interpretation as the first two.

[44] Plaintiff alleges that the class includes thousands of consumers, the identity of whom is unknown.

[45] In addition, she argues that since the individual claims would remain modest in value and because of the cost of litigation for an individual, the members of the group do not have a realistic opportunity to assert their rights without a class action.

[46] The Court is of the view that this criterion is met.

1.2.4 The representative plaintiff is in a position to properly represent the class members

[47] When analyzing this fourth criterion, the Court must conclude that the following three elements are present: (1) interest in the suit, (2) competence, and (3) absence of conflict with other class members.[23]

[48] Once again, this criterion must be given a liberal interpretation. No proposed representative should be excluded unless his or her interest or competence is such that the case could not possibly proceed fairly.[24]

[49] Plaintiff argues that she has a personal interest in the case since she purchased Tylenol products during the class period and was misled by the Defendant's material omission.

[50] She also believes being in a proper position to adequately represent the class members, as she has reviewed the relevant information and conducted an investigation into the practices and behaviour of the Defendant, hired competent counsel, and diligently pursued the present claim.

[51] Defendant submits that Plaintiff has not established a valid personal claim and cannot adequately represent the putative class. Indeed, since the risk of developing a future illness or medical condition is not an indemnifiable injury, Plaintiff has no legal interest. Furthermore, she has failed to present an arguable case as to existence of a misrepresentation.

[52] In view of the Court's conclusions regarding the condition stipulated at article 575 (2) CPC, this fourth condition is also met.

WHEREFORE, THE COURT:

[53] **AUTHORIZES** Plaintiff's *Re-Amended Motion for Authorization to Institute a Class Action;*

[54] **DEFINES** the Class as follows:

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[23] *Infineon Technologies AG v. Option consommateurs*, 2013 CSC 59; *Sibiga v. Fido Solutions inc*, 2016 QCCA 1299.

[24] *Sibiga v. Fido Solutions inc*, 2016 QCCA 1299, par. 97.

All of the consumers residing in Quebec who bought between October 23, 2015, and December 12, 2017, the Tylenol Products, listed below, manufactured and/or sold and/or marketed by John & Johnson Inc. containing acetaminophen alone or in combination with other medications.

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Children's TYLENOL Cold & Stuffy Nose

Children's TYLENOL Cold

Children's TYLENOL Cold & Cough Nighttime

Children's TYLENOL Cold & Cough

Children's TYLENOL Complete Cold Cough & Fever

Children's TYLENOL Complete Cold Cough & Fever Nighttime

[55] **IDENTIFIES** the collective issues as follows:

a) Whether the Material Omissions indeed constitute information that is material to the members of the class' consumer knowledge;

b) Whether Defendant has a duty to inform the members of the Quebec as to the Material Omission under the provisions of the *Consumer Protection Act* and whether it breached said duty;

c) Whether Defendant has a duty to inform the members of the class as to the Material Omission under the provisions of the *Competition Act* and whether it breached said duty;

d) Whether Defendant breached its duties of good faith under the *Civil Code of Quebec* vis-à-vis the members of the Quebec in the consumer market;

e) If any of b. to d. are answered in the affirmative, are the class members entitled to compensatory damages? And if so, in what amount?

f) Whether the class members are entitled to punitive damages by reason of the violation by the Defendant of the *Consumer Protection Act* and *Competition Act*? And if so, in what amount?

g) Whether collective recovery of compensatory and punitive damages is appropriate?

[56] **IDENTIFIES** as follows the conclusions sought:

a. **GRANTS** the class action of the Plaintiff;

b. **CONDEMNS** the Defendant to pay the amount of $10 million in compensatory damages to the class as defined above, *sauf à parfaire*, the whole bearing interest at the legal rate and the additional indemnity from the date of filing of the present proceedings;

c. **CONDEMNS** the Defendant to pay the amount of $100 per class member in punitive damages to the class as defined above the whole bearing interest at the legal rate and the additional indemnity from the date of filing of the present proceeding;

d. **ORDERS** the collective recovery of these amounts;

e. **DECLARES** that Defendant is in breach of the provisions of the *Consumer Protection Act*, the *Competition Act*, and the *Civil Code of Quebec*;

f. **ORDERS** that the Defendant conform to and respect the provisions of the *Consumer Protection Act*, the *Competition Act* and the *Civil Code of Quebec*;

g. **THE WHOLE** with costs, including expert and notice costs;

[57] **ORDERS** the publication of a notice to class members in accordance with article 579 CCP, pursuant to a further order of the Court;

[58] **FIXES** the delay for a class member to opt out of the class at 60 days from the date of the publication of the notice to the members and **DECLARES** that all members of the class who have not requested their exclusion from the class in the prescribed delay will be bound by any judgment to be rendered on the class action to be instituted;

[59] **THE WHOLE**, with legal costs.

Chantal Tblay JSC
CHANTAL TREMBLAY, J.S.C.

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Attorneys for the Defendants

Hearing date: December 16, 2019