

C A N A D A  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT  
(Class Actions)

---

N°: 500-06-001003-199

**JESSICA GAGNON**

**ALLA OLENITCH**

Plaintiffs

v.

**INTERVET CANADA CORP.**

**INTERVET GESMBH**

Defendants

---

**APPLICATION TO SEPARATE THE PLAINTIFFS' CLAIMS**

By the Defendants

On April 3, 2020

(Arts. 143 and 210 C.C.P.)

---

**TO THE HONOURABLE PIERRE-C. GAGNON, J.S.C., IN HIS CAPACITY AS CASE MANAGEMENT JUDGE HEREIN, THE DEFENDANTS SUBMIT THE FOLLOWING:**

**I. INTRODUCTION**

1. On May 17, 2019, the Plaintiffs filed a Motion to Authorize a Class Action in this matter, followed by a first Motion to Amend on June 11, 2019, a second Motion to Amend on June 19, 2019 (granted by consent), and a third Motion to Amend on March 11, 2020 (currently contested) (the "**Application**", as amended on June 19, 2019), as appears from the Court record.
2. The Application consists in fact of two applications to authorize two distinct class actions combined into a single procedure.
3. In summary, the Plaintiff Jessica Gagnon alleges that the veterinary prescription drug Bravecto caused her dog Snoopy to die from internal hemorrhages. Thus the basis of her class action is and can only be:

- a) that Bravecto would have anticoagulant properties and thus can cause internal hemorrhages, which in turn can lead to the animal's death;
  - b) that the Defendants knew or should have known that Bravecto has anticoagulant properties and thus can cause internal hemorrhages leading to death;
  - c) that the Defendants failed to warn veterinarians and pet owners that Bravecto has anticoagulant properties and thus can cause internal hemorrhages leading to death;
  - d) that, had her veterinarian or she known that Bravecto has anticoagulant properties and thus can cause internal hemorrhages leading to death, she would never have accepted to administer it to her pet; and
  - e) that she administered Bravecto to her dog Snoopy and as a result he passed away due to internal hemorrhages.
4. For her part, the Plaintiff Alla Olenitch alleges that Bravecto caused her dog Willy to lose his hair (a condition known as "alopecia") and suffer other ailments. Thus the basis of her class action is and can only be:
- a) that Bravecto can cause alopecia;
  - b) that the Defendants knew or should have known that Bravecto can cause alopecia;
  - c) that the Defendants failed to warn veterinarians and pet owners that Bravecto can cause alopecia;
  - d) that, had her veterinarian or she known that Bravecto can cause alopecia, she would never have accepted to administer it to her pet; and
  - e) that she administered Bravecto to her dog Willy and he suffered alopecia as a result.
5. The Plaintiffs have not made any allegation as to how their respective claims could be related to each other, and more particularly but without limiting the generality of the foregoing, as to how internal hemorrhages on the one hand and alopecia on

the other would be related such that it would be productive and proportionate, rather than counterproductive, disproportionate and a great source of confusion and waste of time, to join the claims of Ms. Gagnon and Ms. Olenitch in a single application.

6. Not a single question to be addressed in paragraph 3 above respecting the claim of Ms. Gagnon is common to a single question to be addressed in paragraph 4 above respecting the claim of Ms. Olenitch, and more particularly but without limiting the generality of the foregoing, these questions will require the administration of expert evidence that is entirely unrelated between the two claims.
7. Putative class members who would have claims that raise identical, similar or related issues of law or fact with the claim of Ms. Gagnon (article 575(1) C.C.P.) are an entirely different set of persons than putative class members who would have claims that raise identical, similar or related issues of law or fact with the claim of Ms. Olenitch.
8. As a result, the Plaintiffs have no choice but to propose common questions of law or fact that are so hopelessly overbroad as to become meaningless, as appears from paragraph 97 of their Re-amended Application:

97. Les questions communes que les requérantes entendent faire trancher par l'action collective envisagée sont :

- 1- Merck et Intervet GesmbH ont-elles commis de nombreuses fautes notamment :
  - a) de manquements au devoir général de ne pas causer de préjudice à autrui (art. 1457 C.c.Q.);
  - b) de manquements au devoir d'information du fabricant (art. 1468 et 1473 C.c.Q.);
  - c) de violations aux obligations d'un commerçant ou fabricant imposées par la L.p.c.
  - d) Merck a-t-elle sciemment voulu retarder, la notoriété des dangers reliés à l'ingestion du produit Bravecto ;

- e) de fausses représentations, des tromperies ;
- f) de la fausse publicité et publicité trompeuse;
- g) en cachant l'information ;
- h) en manquant de transparence ;
- i) en omettant de transmettre l'information pertinente sur le produit Bravecto à la population ;

2- Les requérantes et les Membres ont-ils subi des dommages ?

3- Si oui, quels sont les chefs de dommages ouverts et pour quels montants ?

9. According to article 574 C.C.P., an application for authorization to institute a class action is to be brought by “a” single person who acts as a representative of the proposed class, and “must state the facts on which it is based and the nature of the class action, and describe the class on whose behalf the person intends to act.”
10. According to article 210 C.C.P., when applications have been joined in the same proceeding, the Court, if it considers it advisable in order to protect the parties’ rights, may order that they be separated and dealt with in different proceedings.
11. The Plaintiffs have joined their unrelated claims into a single Application and seek to represent a single class, despite the fact that their allegations are based on different sets of facts and that each of their respective causes of action will require an independent analysis both at the authorization stage and on the merits.
12. The joinder of the Plaintiffs’ claims in the Application is disproportionate and creates inefficiencies and confusion in the proceedings.
13. The Defendants submit that in the circumstances this Court must separate the distinct actions brought respectively by Ms. Gagnon and Ms. Olenitch against the Defendants into different proceedings, as further explained below.

**II. THE PLAINTIFFS' CLAIMS ARE UNRELATED**

**A. The Alleged Symptoms Experienced by Each Plaintiff's Dog Are Completely Different**

14. According to the Application and the Plaintiffs' exhibits, Ms. Gagnon's dog Snoopy died on September 8, 2018, allegedly due to internal hemorrhages caused by his ingestion of a Bravecto tablet (paragraphs 10 and 16 of the Application and Exhibit R-6).
15. Ms. Olenitch, for her part, does *not* allege that her dog Willy's consumption of Bravecto caused anything resembling an internal hemorrhage. Rather, she principally alleges that Bravecto caused alopecia in Willy, who has since fully recovered (paragraphs 30 to 32 of the Application and Exhibits R-10, R-18 and R-22).
16. Snoopy and Willy's alleged symptoms are on their face completely unrelated and any evidence brought in relation to one tells this Court nothing respecting the other.
17. The Application does not attempt to resolve this discrepancy and, in particular, does not contain a single allegation explaining how Snoopy's alleged internal hemorrhages would be related to Willy's alleged alopecia in any way.

**B. The Alleged Cause of Each Dog's Alleged Symptoms Are Completely Different**

18. According to the Application and the Plaintiffs' exhibits, most notably the necropsy reports requested by Ms. Gagnon, Snoopy's alleged internal hemorrhages could have been related to a trauma suffered by Snoopy on the evening that he passed away, to a disease affecting the thymus in small dogs, to a derangement of the coagulation process, or to other possible etiologies.
19. According to veterinarian Dr. Jean Dodds, who is not a veterinary pathologist, never saw Snoopy's body and did not perform a necropsy herself, Snoopy would have died as a result of severe internal hemorrhage caused by Bravecto, which would have anticoagulant properties (Exhibit R-7). The entire basis of her claim that Bravecto would have anticoagulant properties is a 1999 research paper by scientists at the Dupont Pharmaceuticals Company: Quan, ML et al. *Design and Synthesis of Isoxazoline Derivatives as Factor Xa Inhibitors*. 2. J Med Chem 1999; 42:2760-2773 (Exhibit R-7 and paragraphs 68, 68.1 and 69 of the Application

which, based on Dr. Dodds' report, make the same claim) (in fact the Quan *et al.* paper does not deal with Bravecto).

20. On the other hand, Ms. Olenitch does not allege that Bravecto's purported anticoagulant properties were in any way responsible for Willy's alleged alopecia.
21. Ms. Olenitch does not advance any evidence as to *how* Bravecto could cause alopecia, but instead seeks to rely on post-marketing adverse drug reaction data ("**ADR data**") (paragraph 81.4 of the Application). This data is unsolicited, can be made by anybody, is very difficult to interpret, does not establish causation and is not intended to do so (see paragraph 25 of the affidavit of Ms. Françoise Blain, Director of Regulatory Affairs at Intervet Canada Corp.).
22. Thus, the analysis respecting the alleged cause of the symptoms suffered by Snoopy on the one hand, and Willy on the other hand, is entirely unrelated.

**C. Each Plaintiff Alleges a Different Fault**

23. Although the Application generically accuses the Defendants of misleading the public (at paragraph 56 and following), each Plaintiff is alleging a different fault.
24. Ms. Gagnon alleges that the Defendants committed a fault by failing to warn the public regarding Bravecto's purported propensity to cause internal hemorrhages as a result of its purported anticoagulant properties.
25. This alleged fault is completely foreign to Ms. Olenitch's cause of action, which would necessarily be based instead on the Defendants failing to warn the public regarding Bravecto's alleged propensity to cause alopecia.

**III. THE JOINDER OF THE PLAINTIFFS' UNRELATED ACTIONS IS DISPROPORTIONATE AND WILL DISRUPT THE EFFICIENT CONDUCT OF THE PROCEEDINGS**

26. The joinder of Ms. Gagnon's and Ms. Olenitch's unrelated claims into a single proceeding would require the presentation of completely separate evidence:
  - a) on the one hand, evidence regarding Snoopy's cause of death; whether Snoopy's death was caused by internal hemorrhages; Bravecto's propensity to cause internal hemorrhages as a result of its purported

anticoagulant effect; and the appropriateness of the Defendants representations regarding Bravecto's propensity to cause internal hemorrhages; and

- b) on the other hand, evidence regarding Willy's alopecia; Bravecto's propensity to cause alopecia; whether Willy's alopecia was caused by Bravecto; and the appropriateness of the Defendants' representations regarding Bravecto's propensity to cause alopecia.

- 27. Accordingly, the majority of the Plaintiffs' exhibits are relevant, if at all, to only one or the other of the Plaintiffs' claims.
- 28. The Plaintiffs attempt to gloss over the unrelated nature of their respective claims by hiding behind an overbroad class definition that includes all persons who administered Bravecto to their pets, as appears from paragraph 89 of the Application:

Toutes les personnes (...) ayant administré au Canada (subsidiairement au Québec), entre l'année 2014 et le 17 mai 2019, le produit commercialisé par Intervet Canada Corp., faisant affaires sous le nom de « Merck Santé animale », sous le nom de Bravecto, en comprimé orale [sic] de 112,5 mg à 1400 mg, à un animal leur appartenant et qui n'ont pas reçu de dédommagement monétaire de Merck, suite à l'administration de ce produit à leur animal.

[Underlined in original]

- 29. The sub-classes proposed by the Plaintiffs at paragraph 84 of the Application confuse the situation further by dividing class members according to the severity of their pets' alleged side effects without regards to the nature thereof.
- 30. The Plaintiffs also complicate their claims by levying completely irrelevant allegations against the Defendants, such as those relating to supposed seizures caused by Bravecto (paragraph 62 of the Application), despite the fact that neither Plaintiff alleges that their dog experienced a seizure, thereby introducing a *third* complex line of inquiry that is entirely unrelated to either the internal hemorrhaging or alopecia allegations purportedly caused by Bravecto as well.

31. The result of this confused litany of unrelated allegations is that the Plaintiffs' Application, as it is currently drafted, is a multi-headed hydra that seriously and unnecessarily complicates the analysis under article 575 C.C.P. and, should a class action be authorized, on the merits.

**IV. THE SEPARATION OF THE PLAINTIFFS' ACTIONS IS A PROPORTIONAL MEASURE IN THE CIRCUMSTANCES**

32. Separating each Plaintiff's claim into a separate application will allow for a better understanding of their respective causes of action.
33. In particular, such a separation will clarify the specific allegations that each Plaintiff is making with respect to Bravecto's propensity to cause the alleged symptoms experienced by their dog, and the appropriateness of the Defendants' representations relating thereto.
34. This measure will filter out allegations and evidence that are extraneous to each claim, which will in turn enable a more intelligent debate as to whether the authorization criteria are met in either case.
35. This measure will also allow this Court to determine whether there exists an actual class of persons that share the allegations by Ms. Gagnon that Bravecto would cause internal hemorrhaging, and another class of persons that share the allegations by Ms. Olenitch that Bravecto would cause alopecia. Those are two entirely unrelated classes of persons and the existence of one, as the case may be, does not imply the existence of the other.
36. Separating the Plaintiffs' claims will not delay the proceedings or cause prejudice to the Plaintiffs. It is simply a matter of reworking the Application into two distinct applications.
37. The present application is well-founded in fact and in law.

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

**TO GRANT** the Defendants' Application to Separate the Plaintiffs' Claims;



**TO SEPARATE** the action brought by Jessica Gagnon against the Defendants from the action brought by Alla Olenitch against the Defendants into different proceedings;

**THE WHOLE** with costs to follow suit.

Montreal, April 3, 2020

*Blake, Cassels & Graydon L.L.P.*

---

**BLAKE, CASSELS & GRAYDON LLP**

**M<sup>re</sup> Claude Marseille, Ad. E.**

**M<sup>re</sup> Ariane Bisailon**

Counsel for the Defendants

1 Place Ville-Marie, Suite 3000

Montréal, Québec H3B 4N8

[claudemarseille@blakes.com](mailto:claudemarseille@blakes.com)

[arianebisailon@blakes.com](mailto:arianebisailon@blakes.com)

Tel.: 514-982-5089 (M<sup>re</sup>. Marseille)

Tel.: 514-982-4137 (M<sup>re</sup>. Bisailon)

Fax: 514-982-4099

Our file: 00200318/000122

## **NOTICE OF PRESENTATION**

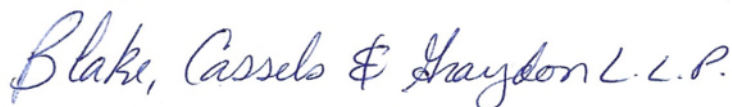
**TO: M<sup>re</sup>. Robert Eidinge**  
**M<sup>re</sup> Paule Lafontaine**  
Eidinge & Associés  
1350 Sherbrooke Street West  
Suite 920  
Montréal, Québec H3G 1J1  
[robert.eidinge@eidinge.ca](mailto:robert.eidinge@eidinge.ca)  
[paule.lafontaine@eidinge.ca](mailto:paule.lafontaine@eidinge.ca)

Counsel for Plaintiffs

**TAKE NOTICE** that the present *Application to Separate the Plaintiffs' Claims* will be presented for adjudication at the time and place to be determined by the Honourable Pierre C. Gagnon, J.S.C., acting as case management judge herein, sitting in and for the district of Montreal, at the Montreal Courthouse located at 1 Notre-Dame Street East, Montreal, Québec, H2Y 1B6.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montréal, April 3, 2020



---

**BLAKE, CASSELS & GRAYDON LLP**

**M<sup>re</sup> Claude Marseille, Ad. E.**

**M<sup>re</sup> Ariane Bisailon**

Counsel for the Defendants

1 Place Ville-Marie, Suite 3000

Montréal, Québec H3B 4N8

[claudemarseille@blakes.com](mailto:claudemarseille@blakes.com)

[arianebisailon@blakes.com](mailto:arianebisailon@blakes.com)

Tel.: 514-982-5089 (M<sup>re</sup>. Marseille)

Tel.: 514-982-4137 (M<sup>re</sup>. Bisailon)

Fax: 514-982-4099

Our file: 00200318/000122

N°: 500-06-001003-199

---

**SUPERIOR COURT**  
(Civil Division)  
**DISTRICT OF MONTREAL**

---

**JESSICA GAGNON**

-and-

**ALLA OLENITCH**

Plaintiffs

v.

**INTERVET CANADA CORP.**

**INTERVET GESMBH**

Defendants

---

**APPLICATION TO SEPARATE THE  
PLAINTIFFS' CLAIMS**

By the Defendants  
On April 3, 2020  
(Arts. 143 and 210 C.C.P.)

**AND NOTICE OF PRESENTATION**

---

**ORIGINAL**

---

The logo for the law firm Blakes, featuring the word "Blakes" in a stylized, cursive script.

**M<sup>tre</sup>. Claude Marseille, Ad. E.    BB-8098**

**M<sup>tre</sup>. Ariane Bisailon**

**BLAKE, CASSELS & GRAYDON LLP**

Barristers & Solicitors

1 Place Ville Marie, Suite 3000

Montréal, Québec H3B 4N8

Tel: 514 982-5089 / 514 982-4137

Fax: 514 982-4099

Email: [claudemarseille@blakes.com](mailto:claudemarseille@blakes.com)

[arianebisailon@blakes.com](mailto:arianebisailon@blakes.com)

Our File: 00200318-122