

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Action)
SUPERIOR COURT

NO: 500-06-000968-194

DAVID ZOUZOUT

Applicant

-vs-

CANADA DRY MOTT'S INC.

and

KEURIG DR PEPPER INC.

Defendants

**CONSOLIDATED APPLICATION TO AUTHORIZE A CLASS ACTION FOR
SETTLEMENT PURPOSES, FOR APPROVAL OF NOTICES TO CLASS MEMBERS
OF A SETTLEMENT APPROVAL HEARING AND TO APPOINT A CLAIMS
ADMINISTRATOR**

(Articles 25, 49, 576, 579, 581, 585 and 590 C.C.P.)

**TO THE HONORABLE GARY D.D. MORRISON OF THE SUPERIOR COURT OF
QUEBEC, ACTING AS THE DESIGNATED JUDGE IN THE PRESENT CASE, THE
APPLICANT SUBMITS THE FOLLOWING:**

I. PROCEDURAL CONTEXT

1. The Applicant's *Amended Application to Authorize the Bringing of Class Action and to Appoint the Status of Representative Plaintiff* (November 24th, 2019) was filed against the Defendants (collectively "**Canada Dry**") on behalf of the following class:

All consumers who purchased, in Canada (subsidiarily in Quebec¹), any Canada Dry Ginger Ale product marketed as "Made from Real Ginger" or "Fait à partir de vrai gingembre";

or any other Class to be determined by the Court;

¹ The parties have since agreed to a Quebec class only. A national class action settlement (excluding Quebec) was approved in the Supreme Court of British Columbia in *Cardoso v. Canada Dry Mott's Inc.*, Docket: S190672 (see *Cardoso v Canada Dry Mott's Inc.*, [2020 BCSC 1569](#), para. 9).

2. The Applicant alleged that Canada Dry used or published certain labelling and advertising material across Quebec that contained false or misleading information;
3. An authorization hearing was scheduled for September 14-15, 2020. The parties exchanged argument plans and finally settled the case on the eve of the authorization hearing;

II. PROPOSED SETTLEMENT

4. The Applicant and Canada Dry have reached an agreement to settle the present matter, as it appears from a copy of the Settlement Agreement filed herewith as **Exhibit C-1**;
5. Pursuant to the Settlement Agreement (section III.A.(b)), Canada Dry shall make available and pay up to a total maximum amount not to exceed \$650,000 (which total maximum amount includes all taxes, fees, disbursements, levies, interest, and costs), to be used to: (i) make available to the Claims Administrator the Settlement Benefits for payment to the Settlement Class Members; (ii) make available to the Claims Administrator the amount of the Fonds Levy for payment to the Fonds; (iii) pay the Claims Administrator Expenses including without limitation all costs related to publication of required settlement-related notices to the Settlement Class, including the Pre-Approval Settlement Notice and the Final Settlement Notice; (iv) pay Class Counsel Fees applied for and ultimately awarded by the Court; (v) reimburse to Class Counsel the amount of the Fonds Disbursement, which Class Counsel undertakes to reimburse to the Fonds; (vi) pay the Representative Plaintiff's disbursements and honorarium, subject to Court approval;
6. As detailed at its section III.D.(e), the Settlement Agreement provides that each class member who submits a valid claim can receive a maximum of up to \$7.50 per valid claim, calculated as follows: (i) the amount remaining from the Total Settlement Cap after deducting all applicable fees, disbursements, costs, expenses and taxes including (1) all of the Claims Administrator Expenses, (2) Class Counsel Fees in the amount approved by the Court, (4) the Fonds Disbursement, (5) the Fonds Levy, (6) the Representative Plaintiff's disbursements and honorarium, if approved by the Court; divided by (ii) the number of valid claims;

III. OBJECT OF THIS APPLICATION

7. The parties are asking this Court to:
 - a) authorize a modification to the class description (to make it a Quebec class only);
 - b) authorize the proposed class action for settlement purposes only against Canada Dry Motts Inc. and Keurig Dr Pepper;
 - c) appoint David Zouzout as Representative Plaintiff of the Class for settlement purposes only;

- d) approve the form and content of the pre-approval notice to Class Members, including the objection and/or opt-out deadlines; and
- e) appoint Velvet Payments Inc. as the Claims Administrator pursuant to the terms of the Settlement.

IV. AUTHORIZATION FOR SETTLEMENT PURPOSES ONLY CANADA DRY MOTTS INC. AND KEURIG DR PEPPER

8. The parties having agreed to an amended Class description, Applicant requests this Court to authorize the class action for settlement purposes against Canada Dry Motts Inc. and Keurig Dr Pepper on behalf of the following modified Class:

In English:

All consumers who purchased in Quebec any Canada Dry Ginger Ale product marketed as “Made from Real Ginger” or “Fait à partir de vrai gingembre” at any time between January 14, 2016 and until November 11, 2020.

In French:

Tous les consommateurs ayant acheté au Québec un produit de soda gingembre Canada Dry commercialisé comme étant « Made From Real Ginger » ou « Fait à partir de vrai gingembre » à un moment quelconque entre le 14 janvier 2016 et le 11 novembre 2020.

9. Canada Dry consents to the authorization of the proposed class action for settlement purposes only, on the basis of the following collective issue:

Did Canada Dry mislead consumers in the marketing and selling of its soft drinks, and, if so, are Class Members entitled to compensation?

V. APPOINTMENT OF THE REPRESENTATIVE PLAINTIFF

- 10. The Applicant, David Zouzout, will fairly and adequately protect and represent the interests of the Class Members;
- 11. Mr. Zouzout has been involved throughout the proceedings and actively involved in the settlement negotiations;
- 12. Mr. Zouzout does not have any conflicts of interest with the other Class Members;

VI. NOTICE TO CLASS MEMBERS

13. The parties intend to file a joint application for the approval of the Settlement Agreement and of class counsel fees;
14. However, before the Court can approve the Settlement Agreement, the members of the Class must be advised that a hearing will take place on the matter;
15. The proposed Long Form Pre-Approval Settlement Notice, filed herewith in its French and English versions as **Exhibit C-2**, has a specific purpose to inform the Class Members of the following, in conformity with articles 579 and 590 of the *Code of civil procedure* ("**CCP**"):
 - a) the judgment authorizing the class action for the sole purpose of the settlement and the description of the Class;
 - b) the existence of the Settlement Agreement and the fact that it will be submitted to the Court for approval, specifying the date and place of the approval hearing;
 - c) the nature of the settlement, including the compensation offered to Class Members and the payment of Class counsel fees;
 - d) the contact information of the Representative Plaintiff's lawyer, as well as the district in which the class action is to proceed;
 - e) the consequences and effects of the approval of the Settlement Agreement by the Court with respect to the release and discharge of Canada Dry from Class Members;
 - f) the possibility for the Class Members to make objections or other representations at the hearing for the approval of the Settlement Agreement;
 - g) the right of Class Members to opt-out of the class action and the procedure and time limit for doing so; and
 - h) the right of Class Members to seek intervenor status in the class action and stating that no Class Member other than the Representative Plaintiff or an intervenor may be required to pay legal costs arising from the class action.
16. The parties have also agreed to short form Pre-Approval Settlement Notice, communicated herewith as **Exhibit C-3**;
17. The parties have agreed that the pre-approval notices required pursuant to articles 579 and 590 CCP will be disseminated to Class Members as detailed at section III.D.(a) of the Settlement Agreement and summarized below:

- a) The Settlement Agreement (Exhibit C-1), the long form Pre-Approval Settlement Notice (Exhibit C-2) and the short form Pre-Approval Settlement Notice (Exhibit C-3) will be posted on the Settlement Website www.canadadrysettlement.ca and on class counsel's website www.lpclex.com/canadadry;
 - b) The Claims Administrator will email the short form version of the Pre-Approval Settlement Notice to each of the potential Class Members that have registered on Class Counsel's website (www.lpclex.com/canadadry) up until the date of the Notice Approval Order, within thirty (30) days of the judgment ordering such notice or by the date fixed by the Court for the sending of such a notice;
 - c) Class counsel will disseminate the press release, communicated herewith as **Exhibit C-4**, by email to major provincial media outlets containing a hyperlink to the Settlement Website; and
 - d) Class Counsel will post a link to the Pre-Approval Settlement Notice on the firm's LinkedIn/Facebook pages.
18. The parties therefore request that this Court approve the form and content of the pre-approval notices (Exhibits C-2 and C-3) and the press release (Exhibit C-4), in both their English and French versions, and their proposed modes of dissemination;
 19. The parties request that this Court set the time limit for Class Members to file objections to Court approval of the Settlement Agreement at thirty (30) days after the last date on which the pre-approval notices were published;
 20. The parties request that this Court set the time limit for Class Members to opt-out of the class action at thirty (30) days after the last date on which the pre-approval notices were published;

VII. THE APPOINTMENT OF THE CLAIMS ADMINISTRATOR

21. In order to effect publication of the notices and then to process and transmit the compensation provided for under the Settlement, it will be necessary for the Court to appoint a Claims Administrator;
22. Velvet Payments Inc. has agreed to act as Claims Administrator pursuant to the Settlement and is prepared to faithfully abide by the terms of the Settlement acting in that capacity, subject to the supervision of the Court;
23. The parties respectfully ask the Court to appoint Velvet Payments Inc. as the Claims Administrator;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **AUTHORIZE** the Applicant, for the purpose of settlement, to amend as follows the Class description in the “*Amended Application to Authorize the Bringing of Class Action and to Appoint the Status of Representative Plaintiff*”:

In English:

All consumers who purchased in Quebec any Canada Dry Ginger Ale product marketed as “Made from Real Ginger” or “Fait à partir de vrai gingembre” at any time between January 14, 2016 and until November 11, 2020.

In French:

Tous les consommateurs ayant acheté au Québec un produit de soda gingembre Canada Dry commercialisé comme étant « Made From Real Ginger » ou « Fait à partir de vrai gingembre » à un moment quelconque entre le 14 janvier 2016 et le 11 novembre 2020.

2. **AUTHORIZE** the bringing of a class action against Defendants Canada Dry Motts Inc. and Keurig Dr Pepper for settlement purposes;
3. **APPOINT** Applicant David Zouzout the status of Representative Plaintiff for settlement purposes;
4. **IDENTIFY** for the purposes of settlement only, the common question to be dealt with collectively as follows:

Did Canada Dry mislead consumers in the marketing and selling of its soft drinks, and, if so, are Class Members entitled to compensation?
5. **APPROVE** the form, content and mode of dissemination of the pre-approval notice to Class Members, in their French and English versions (**Exhibits C-2 and C-3**);
6. **APPROVE** the form and content of the press release in its French and English version (**Exhibit C-4**);
7. **APPOINT** Velvet Payments Inc. as the Claim Administrator for the purposes of accomplishing the tasks that devolve to it pursuant to the Settlement Agreement;
8. **DECLARE** that the Parties to the Settlement Agreement have no responsibility for the administration of the settlement and shall not have any liability or financial obligation whatsoever with respect to any acts, negligence or malfeasance of the Claims Administrator, nor in relation to the investment, distribution or

administration of monies once they have been remitted to the Claims Administrator;

9. **ORDER** the Claims Administrator to publish and make accessible the Pre-Approval Settlement Notice, together with a copy of the Settlement Agreement, via the URL www.canadadrysettlement.ca, no later than thirty (30) days after the judgment on the present application is rendered by the Court, and to keep the Pre-Approval Settlement Notice and Settlement Agreement posted on this website until ninety (90) days after the date that Settlement Benefits have been transmitted by the Claims Administrator to Settlement Class Members or until this Settlement Agreement is terminated by its terms, whichever is earlier;
10. **DECLARE** that Class Members who wish to object to Court approval of the Settlement Agreement must do so in the manner provided for in the pre-approval notice (Exhibit C-2), on or before the date that is 30 days after notice publication and issuance of the press release;
11. **DECLARE** that Class Members who wish to opt-out from the class action and the settlement thereof may do so by delivering a written notice confirming their intention to opt-out of this class action, in the manner provided for in the pre-approval notice (Exhibit C-2), on or before the date that is 30 days after notice publication and issuance of the press release;
12. **DECLARE** that all Class Members 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;
13. **SCHEDULE** the presentation of the Application for Approval of the Settlement Agreement and of Class Counsel Fees on a date to be determined by this Honourable Court;
14. **THE WHOLE** without legal costs.

Montreal, November 11, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Per: Mtre. Joey Zukran
Attorney for Applicant

C A N A D A

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KEURIG DR PEPPER INC.

Defendants

LIST OF EXHIBITS

- Exhibit C-1:** Draft Settlement Agreement to be executed between the parties;
- Exhibit C-2:** Copies of the proposed Long Form Pre-Approval Settlement Notice in English and French;
- Exhibit C-3:** Copies of the proposed Short Form Pre-Approval Settlement Notice in English and French;
- Exhibit C-4:** Copy of the press release.

Montreal, November 11, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Per: Me Joey Zukran
Attorney for Applicant

NOTICE OF PRESENTATION

TO: Me Bogdan Catanu
Woods LLP
bcatanu@woods.qc.ca

Attorneys for Canada Dry Motts Inc. and Keurig Dr Pepper

TAKE NOTICE that the present *Consolidated Application to Authorize a Class Action for Settlement Purposes, for Approval of Notices to Class Members of a Settlement Approval Hearing and to Appoint a Claims Administrator* shall be presented for adjudication before the Honourable Gary D.D. Morrison, J.S.C., at the Montreal Courthouse, situated at 1 Notre-Dame Street East, Montréal (Quebec), H2Y 1B6, on **November 11, 2020 at 9:00 a.m. in room 14.07.**

Montreal, November 11, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Per: Mtre. Joey Zukran
Attorney for Applicant

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TO APPOINT A CLAIMS ADMINISTRATOR
(ARTS. 25, 49, 576, 579, 581, 585 AND 590 C.C.P.)

ORIGINAL

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