

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO: 500-06-001114-202

(Class Action)
SUPERIOR COURT

MIKAEL AZOULAY, domiciled at

[REDACTED]

Applicant

-vs-

STAPLES CANADA ULC (D.B.A. BUREAU EN GROS), having a principal establishment at 4141 Autoroute 440, Laval, district of Laval, Province of Quebec, H7P 4W6

Defendant

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

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

I. INTRODUCTION

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

All consumers within the meaning of Quebec's *Consumer Protection Act* who, from December 25th-29th, 2020 (the "**Class Period**"), purchased a computer from Bureau en Gros for a price higher than advertised;

or any other class to be determined by the Court.

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

2. The Applicant is a consumer within the meaning of Quebec's *Consumer Protection Act* ("**CPA**");

3. The Defendant is a corporation established under British Columbia's *Business Corporations Act*, S.B.C. 2002, c. 57, as it appears from an extract of the enterprise's information statement from the Quebec enterprise register, Applicant disclosing **Exhibit P-1**;
4. The Defendant does business in the province of Quebec under the name "Bureau en Gros" and runs the www.staples.ca website where consumers can purchase their products online. It is a merchant within the meaning of the CPA and its activities are governed by this legislation, among others;

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:

5. On December 26, 2020, the Applicant received a Bureau en Gros flyer in the Publisac bag, a copy of the flyer is disclosed herewith as **Exhibit P-2**;
6. The Publisac bag was delivered to the Applicant's residence in Côte St-Luc and distributed in the province of Quebec. It included flyers focusing on Boxing Day/Week promotions;
7. In its flyer, Bureau en Gros advertised an Asus M241 desktop computer for **\$208.99** and specified that this item was available for purchase at this price from December 25 to December 29, 2020 (Exhibit P-2), as it appears from the extracts below:



8. On December 28, 2020, the Applicant called Bureau en Gros' customer service in order to purchase two (2) Asus computers at the advertised price of \$208.99 plus taxes;

9. The Bureau en Gros customer service representative refused to sell the computers to the Applicant at the advertised price of \$208.99, claiming that this price was an error and that if he wished to purchase the Asus computers, he would have to pay **\$855.49** plus taxes per computer;
10. That same day, the Applicant then visited Bureau en Gros' website and the Asus computer was now advertised at the higher price of \$855.49, as it appears from a screen capture of the website disclosed herewith as **Exhibit P-3** (url: <https://www.staples.ca/products/2992409-en-asus-m241dat-rhr5t-ca-all-in-one-desktop-238-amd-ryzen-5-3500u-1-tb-hdd-256-gb-ssd-8-gb-ddr4-windows-10-home>);
11. Still on the same day, the Applicant used the "Chat" feature on Bureau en Gros' website to try to get them to honour the price advertised in their flyer, but they once again refused, as it appears for the chat transcript filed as **Exhibit P-4**;
12. The chat transcript between the Applicant and Bureau en Gros confirms the following (Exhibit P-4):
 - a) Bureau en Gros admitted to a pricing error and that it was caused by "*une erreur au niveau de l'impression*";
 - b) the Asus computer advertised was available for purchase ("*L'article est disponible pour la livraison uniquement*"); and
 - c) that other consumers were in the same situation as the Applicant ("*Il y avait des situations comme celle-ci*").
13. Although Bureau en Gros claims that there was a printing error, as of December 29, 2020, the Publisac website¹ still showed the Asus computer advertised for \$208.99, as it appears from a screen capture taken by the Applicant disclosed herewith as **Exhibit P-5**;
14. Despite his attempts to have Bureau en Gros honour the price it advertised both on the Publisac paper copy and the Publisac website from December 25-29, 2020, Bureau en Gros refused and insisted that he pay the higher price of \$855.49 plus taxes;
15. On December 29, 2020, the Applicant purchased two (2) Asus computers for \$854.99 plus taxes each, for a total of **\$1,967.20** tax included, as it appears from his purchase confirmation disclosed herewith as **Exhibit P-6**;
16. By refusing to honour its advertised price – which was still advertised on the

¹ url:

<https://www.publisac.ca/fr/circulaire/?flyer=aHR0cHM6Ly9jaXJjdWxhaXJlcy5wdWJsaXNhYy5jYS9idXJlYXUtZW4tZ3Jvcy9kZWMyNi9xdWVfYmIsLz9iYWNRX3VybD1hSFJwY0hNNkx5OTNkM2N1Y0hWaWJHbHpZV011WTJFdlpuSXZjbVZqYUdWeVkyaGxMMEOxY21WaGRTdGxiaXRuY205ekx5TmhOalExTTE4eCMxLw>

Publisac website at the time of the Applicant's purchase – Bureau en Gros violated section 224 c) of the CPA, which provides the following:

<p>224. Aucun commerçant, fabricant ou publicitaire ne peut, par quelque moyen que ce soit: ... c) exiger pour un bien ou un service un prix supérieur à celui qui est annoncé.</p>	<p>224. No merchant, manufacturer or advertiser may, by any means whatever, ... (c) charge, for goods or services, a higher price than that advertised.</p>
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17. The Applicant is therefore entitled to claim on his behalf and on behalf of all class members damages equivalent to the difference between the price charged of \$855.49 and the advertised price of \$208.99, plus taxes;
18. In the Applicant's case, the difference is \$1,293.00 (i.e. \$646.50 x 2 computers) plus taxes, for a total of **\$1,486.63**;
19. The Applicant is also entitled to claim punitive damages pursuant to section 272 CPA in the amount of \$250 per computer purchased per class member. Indeed, Bureau en Gros' conduct warrants such a condemnation because it refused to honour the advertised price despite the Applicant's multiple requests; it also failed to act diligently and to correct the information on the Publisac website;
20. Applicant's damages are a direct and proximate result of the Defendant's violation and, in these circumstances, the Applicant's claim for both compensatory and punitive damages against the Defendant is justified;

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

21. 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) Did Bureau en Gros violate paragraph c of section 224 CPA and, if so, are Class members entitled to compensation?
 - b) Are the Class members entitled to punitive damages and, if so, in what amount?

C) THE COMPOSITION OF THE CLASS

22. 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;
23. It is safe for Applicant to presume that Defendant has a very important number of customers across Quebec;

24. Applicant is unaware of the total number of Defendant's clients who purchased a computer at a price higher than advertised during the Class Period, but estimates that the number of persons included in the Class is likely in the hundreds;
25. Indeed, the Bureau en Gros representative on the telephone mentioned to him that there were many people who complained about the situation, and the "chat" representative confirmed that "*Il y avait des situations comme celle-ci*" (see Exhibit P-4).
26. The names and addresses of all the other consumers included in the Class are not known to the Applicant, however, are in the possession of Defendant since the orders must be placed online and delivered (see Exhibit P-4);
27. Class members are numerous and are dispersed across the province;
28. 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;
29. 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

30. The Applicant requests that he be appointed the status of representative plaintiff for the following main reasons:
 - a) He is a member of the Class and has a personal interest in seeking the conclusions that he proposes herein;
 - b) He is competent, in that he has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
 - c) His interests are not antagonistic to those of other Class members;

III. DAMAGES

31. The Defendant has breached several obligations imposed on it by consumer protection legislation in Quebec, notably:
 - a) Quebec's *CPA*, including sections 10, 41, 215, 219 and 224(c), thus rendering section 272 applicable;
32. In light of the foregoing, the following damages may be claimed against the Defendant:

- a) compensatory damages in the aggregate of the difference between the price charged minus the advertised price to all Class members during the Class Period; and
- b) punitive damages of \$250 per computer purchased per Class member for the breach of obligations imposed on Defendant pursuant to s. 272 CPA;

IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

- 33. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages;
- 34. The conclusions that the Applicant wishes to introduce by way of an originating application are:

GRANT the Plaintiff's action against Defendant;

CONDEMN the Defendant to pay Mikael Azoulay compensatory damages in the amount of \$1,486.63;

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

CONDEMN the Defendant to pay to the members of the Class \$250 per computer purchased in punitive damages, 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;

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

V. JURISDICTION

36. The Applicant suggests that this class action be exercised before the Superior Court in the district of Montreal because the Applicant is a consumer and he resides in this district.

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:

All consumers within the meaning of Quebec's *Consumer Protection Act* who, from December 25th-29th, 2020 (the "**Class Period**"), purchased a computer from Bureau en Gros for a price higher than advertised;

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) Did Bureau en Gros violate paragraph c of section 224 *CPA* and, if so, are Class members entitled to compensation?
- b) Are the Class members entitled to punitive damages and, if so, in what amount?

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

GRANT the Plaintiff's action against Defendant;

CONDEMN the Defendant to pay Mikael Azoulay compensatory damages in the amount of \$1,486.63;

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

CONDEMN the Defendant to pay to the members of the Class \$250 per computer purchased in punitive damages, 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;

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 notices to Class 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, the Montreal Gazette and in the Publisac;

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";

THE WHOLE with costs including publication fees.

Montreal, December 29, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Me Joey Zukran, attorney for Applicant
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SUMMONS
(ARTICLES 145 AND FOLLOWING C.C.P)

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 applicant.

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:** Extract of Quebec business register;
- Exhibit P-2:** Copy of the Bureau en Gros flyer for the period of December 25-29, 2020;
- Exhibit P-3:** Screen capture of Bureau en Gros' website;
- Exhibit P-4:** Copy of the chat transcript between the Applicant and Bureau en Gros;
- Exhibit P-5:** Screen capture of the Publisac website as of December 29, 2020;
- Exhibit P-6:** Purchase confirmation from Bureau en Gros.

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, December 29, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran

Attorney for the Applicant

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

TO: STAPLES CANADA ULC
4141 Autoroute 440
Laval, Quebec, H7P 4W6

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 YOURSELVES ACCORDINGLY.

Montreal, December 29, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran

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(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

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Applicant

-VS.-

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Defendant

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(ARTICLES 571 AND FOLLOWING C.C.P.)

COPY

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