

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-001139-217

**SUPERIOR COURT
(CLASS ACTION CHAMBER)**

SHAWN FARIA

Petitioner

-vs.-

ESSILOR-LUXOTTICA S.A., legal person duly constituted, having its address of service at 147 rue de Paris, 94220 Charenton-Le-Pont, France

and

ESSILOR-LUXOTTICA CANADA INC., legal person duly constituted, having its address of service at 371 Rue Deslauriers, Montréal, Québec

and

LUXOTTICA RETAIL NORTH AMERICA, INC., legal person duly constitute, having its address of service at 1209 Orange St, Wilmington, New Castle, Delaware, United States of America, 19801

Respondents

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION &
TO OBTAIN THE STATUS OF REPRESENTATIVE PLAINTIFF**
(Art. 571 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER RESPECTFULLY ALLEGES AS FOLLOWS:

INTRODUCTION

1. Essilor-Luxottica is the world's largest eyewear company, controlling as much as 80% of the global eyewear market. Started as "Luxottica" in Italy in 1961, today it is a vertically integrated, multi-national behemoth, which designs, manufactures, distributes and sells eyewear wholesale and at retail to consumers. A major part of Luxottica's business is in producing and distributing eyewear for the world's fashion houses under exclusive licenses. Luxottica also promotes and sells its own famous brands, including Ray-Ban, Oakley and Persol, alongside those of its fashion house competitors, such as Armani, Prada, Chanel and Ralph Lauren.

2. Luxottica and the fashion houses are competitors. Luxottica and the fashion houses use their licensing agreements to exercise strategic control over the price and supply of eyewear. Luxottica and the fashion houses have manipulated the eyewear market for their mutual benefit to charge supra-competitive prices, in breach of the *Competition Act*, the *Civil Code of Quebec*, and the *Consumer Protection Act*.

CLASS DESCRIPTION

3. Petitioner seeks to institute a class action on behalf of the following group, of which he is a member, namely:

All persons in Canada, excluding residents of British Columbia, who purchased eyewear manufactured or sold by Luxottica between March 12, 2010 and the date this action is certified as a class proceeding. In particular, the Class Members include purchasers of prescription frames and sunglasses manufactured or sold by Luxottica, and an included subclass of persons who bought them for personal, family or household purposes.

(the "**Class**", "**Class Members**" and "**Class Period**")

DESCRIPTION OF THE RESPONDENTS

4. Essilor-Luxottica S.A. is a joint stock company incorporated under the laws of France, with a registered office at 147 rue de Paris, 94220 Charenton-Le-Pont, France ("**Essilor-Luxottica SA**") in the European Union, where it is subject to the Treaty on the Functioning of the European Union. Essilor-Luxottica SA was formed from the merger in 2018 of Luxottica

Group S.p.A. and Essilor International S.A. Essilor-Luxottica SA carries on business in Canada and worldwide. Report as **Exhibit P-1**.

5. EssilorLuxottica Canada, Inc. is a company incorporated under the laws of Canada, with an address for service at 371 Rue Deslauriers, Montréal QC ("**Luxottica Canada**"). Luxottica Canada is a wholly-owned subsidiary of Essilor-Luxottica SA. Luxottica Canada carries on business in Québec and across Canada. Luxottica Canada is the successor in interest to the former Luxottica of Canada Inc., Luxottica Retail Canada, Inc., Oakley Canada Inc., and Sunglass Hut of Canada Inc. Luxottica Canada is the registered owner of sole proprietorships registered in Québec for "Sunglass Hut", "Sunglass Hut International", "Pearle Vision", "Oakley", and in Ontario for "Lenscrafters Canada", "Luxottica Retail Canada", "Luxottica Retail Sunglass Hut" and "Sunglass Hut Canada". The whole as appears in Ministry of Ontario Business Names Report as **Exhibit P-2**.

6. Luxottica Retail North America, Inc. is a company incorporated under the laws of Delaware, with an address for service at 1209 Orange St, Wilmington, New Castle, Delaware, United States of America, 19801 ("**Luxottica Retail North America**"). Luxottica Retail North America is a wholly-owned subsidiary of Essilor-Luxottica SA. Luxottica Retail North America carries on business in Québec and across Canada, the whole as appears from State of Delaware website as **Exhibit P-3**.

7. Essilor-Luxottica SA, Luxottica Canada, and Luxottica Retail North America, are together "**Luxottica**". The Respondents functioned as a joint enterprise for the operation of Luxottica's business. Each of the Respondents was an agent of the other for the purposes of the design, manufacturing, distribution, marketing and/or sale of eyewear. Each Respondent is solidarily liable to Class Members for the conduct of other Respondents.

THE FACTS THAT GIVE RISE TO AN INDIVIDUAL ACTION ON BEHALF OF THE PETITIONER AGAINST THE RESPONDENTS, ARE AS FOLLOWS:

Unlawful Agreements

8. Luxottica has breached section 45 of the *Competition Act*, RSC 1985, c C-34, as amended from time to time. By means of Unlawful Agreements with Fashion Houses and Competing Manufacturers (terms defined below), Luxottica has conspired to: 1) fix, maintain, increase or control the supply of eyewear; 2) allocate sales, territories, customers or markets for

the supply of eyewear; and 3) fix, maintain, control, prevent, lessen or eliminate the supply of eyewear in Quebec and throughout Canada.

9. Through their Unlawful Agreements, in breach of article 1493 of the *Civil Code of Québec*, Luxottica has been enriched at the expense of Class Members, who have suffered a correlative impoverishment. There is no justification for the enrichment or the impoverishment.

10. In charging supra-competitive prices as a result of their Unlawful Agreement, Luxottica abused its dominant position in the eye wear industry, in breach of articles 6, 7, 1375, and 1457 and following of the *Civil Code of Québec* and also section 78 of the *Competition Act*.

11. Luxottica has breached the *Consumer Protection Act*, CQLR c P-40.1, and related enactments in other provinces. Through their conduct, Luxottica's actions constitute unfair and unconscionable business practices, which Luxottica knew or ought to have known. The disproportion between Luxottica and Class Members is so great that the Unlawful Agreements amount to exploitative, excessive, harsh and unconscionable transaction.

12. Class Members resident outside Quebec plead and rely on *inter alia*: *Consumer Protection Act*, RSA 2000, c C-26.3; *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2; *Consumer Protection Act*, CCSM c C200; *Consumer Protection Act, 2002*, SO 2002, c 30; *Consumer Protection Act*, RSNS 1989, c 92; *Consumer Protection Act*, RSPEI 1988, c C-19; *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1; *Consumers Protection Act*, RSY 2002, c 40; *Consumer Protection Act*, RSNWT 1988, c C-17; and *Consumer Protection Act*, RSNWT 1988 (Nu), c C-17; and all other related legislation in each Canadian province; each as amended from time to time and with regulations in force at material times.

Luxottica

13. Luxottica is the world's largest company in the eyewear industry.

14. Luxottica's predecessor, Luxottica Group S.p.A., was founded in 1961 in Agordo, Italy. The founder of Luxottica is Leonardo Del Vecchio. Luxottica is a vertically integrated company that designs, manufactures and distributes fashion, luxury, sports and performance eyewear. The whole as appears in a Luxottica corporate description document titled *A Fascinating History, An Unstoppable Journey* as **Exhibit P-4**, Luxottica At A Glance as **Exhibit P-5**, and **Exhibit P-6**, p 11.

15. Luxottica was listed on the New York Stock Exchange on January 24, 1990. Luxottica was listed on the Milan Stock Exchange in 2000. Luxottica voluntarily de-listed from the New York Stock Exchange in June 2017.

16. In January 2017, Luxottica announced a proposed merger with Essilor International S.A., a French company that produces ophthalmic lenses and optical equipment, the number one maker of lenses worldwide. In 2018, the merger was consummated. Essilor-Luxottica SA is publicly traded on the Euro-Next stock exchange. It has a market capitalization of about USD\$70-billion, as shown at **Exhibit P-7**, with annual revenues of €62-billion, as shown at **Exhibit P- 8**.

17. The largest shareholder of Essilor-Luxottica SA is Delfin S.à.r.l. ("**Delfin**"). Delfin is a Luxembourg company incorporated in 2006 as the holding company for the Del Vecchio family. Delfin holds about 30% of the shares of Essilor-Luxottica SA, as shown at **Exhibit P-6**, p 35; it previously held approximately 66% of Luxottica Group S.p.A., as shown at **Exhibit P-9**, p 59.

Luxottica's Business

18. Luxottica has developed a geographic footprint that spans 150 countries, all of which are covered by its wholesale distribution network. This is complemented by an extensive retail network of approximately 9,000 stores, with LensCrafters, Oakley and Pearle Vision in North America, and Sunglass Hut worldwide, as shown at **Exhibit P-10**.

19. Luxottica maintains a significant retail system for the sale of eyewear:

- a. in 1995, Luxottica acquired LensCrafters, a store-front retailer of eyewear;
- b. in 2001, Luxottica acquired Sunglass Hut, a store-front retailer of sunglasses. Sunglass Hut is the largest retailer of premium sunglasses in North America;
- c. in 2004, Luxottica acquired Cole National, which included the Pearle Vision, Sears Optical and Target Optical store chains; and
- d. in 2014, Luxottica acquired www.glasses.com, which sells eyewear over the internet

(together, Luxottica's "**Retail Outlets**", as shown at **Exhibit P-10**).

20. Luxottica sells eyewear directly to consumers through its Retail Outlets. Luxottica also sells through ophthalmic distributors and third-party retail channels (“**Third-Party Sellers**”).

21. Luxottica owns a number of eyewear brands:

- a. in 1990, Luxottica acquired *Vogue Eyewear*;
- b. in 1995, Luxottica acquired *Persol*;
- c. in 1999, Luxottica acquired *Ray-Ban*, maker of the Aviator sunglasses, and *Arnette*;
- d. in 2007, Luxottica acquired *Oakley* (Oakley, Inc.); and
- e. in 2012, Luxottica acquired *Alain Mikli*

(together, Luxottica’s “**Proprietary Brands**”, as shown at **Exhibit P-10**).

22. In addition to its Proprietary Brands, Luxottica has over 20 licensed brands in its portfolio, including the biggest names in fashion and luxury, as shown at **Exhibit P-10**. The list of licensed brands includes:

A | X
ARMANI EXCHANGE


Brooks Brothers

BVLGARI


COACH
NEW YORK

DOLCE & GABBANA

GIORGIO ARMANI

MIU MIU
EYEWEAR

Paul Smith
SPECTACLES

POLO
RALPH LAUREN

RALPH LAUREN

STARCK®
EYES

TORY BURCH

VERSACE

BURBERRY
London, England

CHANEL

DKNY

EMPORIO ARMANI

MICHAEL KORS

TIFFANY & CO.

VALENTINO

PRADA
EYEWEAR

(together, Luxottica's "Licensed Brands").

23. Luxottica sells both its Proprietary Brands and Licensed Brands in its Retail Outlets and through Third-Party Sellers. The whole as appears in Luxottica Screen Shot 2020 Luxottica.com as **Exhibit P-7**.

24. In its Retail Outlets, Luxottica does not identify for consumers that it is the exclusive licensee, manufacturer and distributor of all the eyewear it sells, including Licensed Brands.

25. Luxottica has operated in Canada for many years, as shown at **Exhibit P-11**:

- a. In 1985, Luxottica set up Luxottica Canada in Toronto, quickly gaining a 30% share of the Canadian market.
- b. Luxottica operates LensCrafters, Sunglass Hut, Pearle Vision and Sears Optical, and Oakley Retail Outlets in Québec and across Canada.
- c. Luxottica sells to Third-Party Sellers in Québec and across Canada, including to ophthalmologists, optometrists, opticians, and other eyewear retailers.

The Market for Eyewear

26. The Canadian retail market for eyewear was greater than \$4 billion in 2019. Eyewear is a distinct market as well as part of the fashion accessories market. Eyewear is further divided into spectacles, or regular glasses, as well as sunglasses. The spectacle sub-market is further divided into reading glasses, frames, and lenses. In 2019, Luxottica's retail sales value was 71.71% in reading glasses, 69.87% in lenses, and 62.71% in sunglasses. The whole as appears in Euromonitor data in Canada 2019 shown as **Exhibit P-12**.

27. There has been media commentary in the United States and elsewhere that Luxottica controls as much as 80% of the global eyewear market. The whole as appears in Forbes "Luxottica Sees Itself As King, Raising Questions About Brand Authenticity" November 27, 2012; Los Angeles Times "Consumer Confidential: Why Are Glasses So Expensive? The Eyewear Industry Would Prefer Keeping That Blurry" January 22, 2019, and "How badly are we being ripped off on eyewear? Former industry execs tell all" March 5, 2019 the whole shown as **Exhibit P-13**.

28. Some publicly available statistics report that Luxottica's share of retail net sales is greater than 73% in North America in 2018. The whole as appears in Statista.com shows as **Exhibit P-14**.

29. Québec and Canada are part of a North American and worldwide market for eyewear.

Licensing Agreements with Fashion Houses

30. Giorgio Armani S.p.A., Brooks Brothers (Retail Brand Alliance, Inc.), Anne Klein (Jones Apparel Group), Bulgari S.p.A., Chanel S.A., Gianni Versace S.p.A., Prada SA and Gruppo Prada, Paul Smith, Tiffany & Co., Donna Karan International Inc., Burberry Group plc, Ralph Lauren Corp., Stella McCartney Limited, Salvatore Ferragamo Italia S.p.A., Tory Burch LLC, Coach, Inc., Michael Kors Holdings Limited, Dolce & Gabbana S.r.l., Valentino S.p.A. are luxury fashion houses (together, "**Fashion Houses**").

31. Some Fashion Houses are private companies, while others are publicly-traded companies. Their products are clothing and accessories, including eyewear. The Fashion Houses collectively own and exploit their own names in addition to well-known brands and marques that they own, such as *CHANEL*, *D&G*, *PRADA*, *Valentino*, *Polo*, *DKNY*, *Miu Miu*, *TT*, *Emporio Armani*, and *A/X*.

32. The Fashion Houses are horizontal competitors of one another in the market for eyewear and fashion, as shown at **Exhibit P-15**.

33. The Fashion Houses are actual or potential horizontal competitors of Luxottica in the market for eyewear, as shown at **Exhibit P-15**.

34. At all material times, the Fashion Houses operated or had access to independent production facilities for the manufacture of eyewear. Each of the Fashion Houses either produced or had the ability to produce their own eyewear at all material times.

35. Since 1988, Luxottica has entered into a series of licensing agreements with the Fashion Houses, as follows:

1988	Giorgio Armani S.p.A.
1992	Brooks Brothers (Retail Brand Alliance, Inc.)
1996	Anne Klein (Jones Apparel Group, now Nine West Holdings)

1997	Bulgari S.p.A.
1999	Chanel S.A.
2003	Gianni Versace S.p.A.
2003	Prada SA part of Gruppo Prada
2006	Paul Smith
2006	Tiffany & Co.
2006	Donna Karan International Inc.
2006	Burberry Group plc
2007	Polo Ralph Lauren Corp.
2009	Stella McCartney Limited
2009	Salvatore Ferragamo Italia S.p.A.
2009	Tory Burch LLC
2012	Coach, Inc.
2015	Michael Kors Holdings Limited
2015	Dolce & Gabbana S.r.l.
2017	Valentino S.p.A.

The whole as appears in Press Release announcement as at **Exhibits P-16 to P-36**.

36. The license agreements between Luxottica and the Fashion Houses have certain basic terms. The license agreements are *inter alia* exclusive multi-year licenses for the design, manufacturing and worldwide distribution of eyewear, under the brands and marques of the Fashion Houses (“**Licensing Agreements**”). In exchange for the grant of the licenses, Luxottica pays the Fashion Houses royalties on the sales of eyewear, as shown at **Exhibit P-37**, p 36.

37. Under the Licensing Agreements, Luxottica is designated the agent of the Fashion Houses. In particular, pricing decisions are delegated to Luxottica. In the alternative, the Licensing Agreements include most-favoured nation and other price-coordination clauses, which result in the alignment, synchronisation and inflation of prices to supra-competitive levels for the benefit of Luxottica and the Fashion Houses collectively, as shown at **Exhibit P-38**, p 16. The details of these arrangements are well known to Luxottica and the Fashion Houses.

Sales Agreements

38. As well as selling its own products and products under Licensing Agreements in its Retail Outlets, Luxottica also sells products from other manufacturers. In particular, Luxottica

sells sunglasses in its Sunglass Hut locations manufactured by, among others, Marcolin S.p.A., Safilo S.p.A., Costa Del Mar, Inc. and Maui Jim, Inc.

39. Marcolin S.p.A., Safilo S.p.A., Costa Del Mar, Inc. and Maui Jim, Inc. are horizontal competitors of Luxottica in the manufacturing of eyewear ("**Competing Manufacturers**"), as shown at **Exhibit P-39**, **Exhibit P-40** and **Exhibit P-41**.

40. In addition, Luxottica sells sunglasses in its Sunglass Hut locations manufactured by the Competing Manufacturers under the *Gucci*, *Fendi*, *Dior*, *Guess* and *Tom Ford* brands. *Gucci* is owned by the Gucci Group NV, a subsidiary of Kering S.A. *Fendi* is owned by LVMH Moët Hennessy Louis Vuitton SE. *Dior* is owned by Christian Dior SE. *Guess* is owned by Guess?, Inc. *Tom Ford* is owned by Tom Ford International LLC. The whole as appears in SunGlass Hut website screenshot as at **Exhibit P-42**.

41. Kering S.A., LVMH Moët Hennessy Louis Vuitton SE, Christian Dior SE, Guess?, Inc., and Tom Ford International LLC are also fashion houses and competitors of Luxottica and the Fashion Houses in the market for eyewear, as shown at **Exhibit P-43** pp 33, 238 and **Exhibit P-44**, p 37.

42. The sales agreements between Luxottica and the Competing Manufacturers have certain basic terms. The sales agreements are *inter alia* multi-year licenses for the distribution and sale of eyewear ("**Sales Agreements**"). Under the Sales Agreements, Luxottica pays the Competing Manufacturers or the relevant Fashion Houses royalties or a portion of the sales on eyewear sold through Luxottica's Retail Outlets.

43. Under the Sales Agreements, Luxottica is designated the agent of the Competing Manufacturers or the Fashion Houses. In particular, pricing decisions for sales through its Retail Outlets are delegated to Luxottica. In the alternative, the Sales Agreements include most-favoured nation and other price-coordination clauses, which result in the alignment, synchronisation and inflation of prices to supra-competitive levels for the benefit of Luxottica, the Competing Manufacturers and the Fashion Houses collectively. The details of these arrangements are well known to Luxottica and the Competing Manufacturers.

Unlawful, Anti-Competitive Arrangements

44. The existence of the Licensing Agreements between Luxottica and each of the Fashion Houses, and the existence of the Sales Agreements, is and has always been known to each of

the Fashion Houses. The fact that Luxottica is a party to and privy to all of these Licensing Agreements is and has always been known to each of the Fashion Houses. The same is true of the Sales Agreements.

45. The Fashion Houses entered into the Licensing Agreements and Sales Agreements with Luxottica deliberately knowing the existence of substantially the same Licensing Agreements and Sales Agreements between Luxottica and the other Fashion Houses or the Competing Manufacturers.

46. The Fashion Houses and the Competing Manufacturers entered into the Licensing Agreements and Sales Agreements with Luxottica (and through it, their competitors) with the intention of benefitting from the coordination of distribution and pricing, access to information and especially pricing information, and the ability to charge supra-competitive prices for their eyewear, including through the payment of royalties by Luxottica.

47. Luxottica entered into the Licensing Agreements and Sales Agreements with these competitors with the intention of benefitting from the coordination of distribution and pricing, access to information and especially pricing information, and the ability to charge supra-competitive prices for its eyewear and to exercise control over the production and supply of eyewear.

48. The Licensing Agreements and Sales Agreements between Luxottica and the Fashion Houses and the Competing Manufacturers are contrary to the *Competition Act*, s 45 (“**Unlawful Agreements**”).

49. The Unlawful Agreements:

- a. fix, maintain, increase or control the price for the supply of eyewear;
- b. allocate sales, territories, customers or markets for the production or supply of eyewear; and
- c. fix, maintain, control, prevent or lessen the production or supply of eyewear

globally, including in Québec and Canada.

50. Luxottica and each of the Fashion Houses and the Competing Manufacturers have committed acts in furtherance of the Unlawful Agreements, including but not limited to:

- a. the exchange of contracts and agreements, and communications concerning the implementation of the Unlawful Agreements;
- b. the manufacturing, distribution, marketing and sale of eyewear pursuant to the Unlawful Agreements;
- c. the pricing of eyewear pursuant to the Unlawful Agreements; and
- d. the payment of royalties and the collection of sales receipts.

51. The Unlawful Agreements and their effects were felt directly by consumers in Québec and Canada.

52. The senior officers and directors of Luxottica were at all times fully aware of the Unlawful Agreements and took active steps to implement their terms. The Unlawful Agreements were in breach of Luxottica's own Code of Ethics, as shown at **Exhibit P-45**.

The Overcharge

53. Luxottica's control of pricing on behalf of itself, the Fashion Houses and the Competing Manufacturers permits Luxottica to charge supra-competitive prices for all eyewear it sells directly and indirectly to consumers.

54. In addition, or in the alternative, Luxottica benefits from control of the market for eyewear obtained as a result of the Unlawful Agreements because it can use its position to make preferential arrangements with Third-Party Sellers, thereby increasing its margins and market power.

55. In addition, or in the alternative, the supply of eyewear available to consumers is restricted by the Unlawful Agreements.

56. The Plaintiff and Class Members have purchased eyewear directly and indirectly from Luxottica. As a result of the Unlawful Agreements, the Plaintiff and Class Members have paid supra-competitive prices to Luxottica for that eyewear ("**Overcharge**").

57. Luxottica has collected the Overcharge from the Plaintiff and Class Members.

58. Luxottica is the ultimate recipient or beneficiary of part or all of the Overcharge from the sale of eyewear it sells directly and indirectly.

59. The Plaintiff and Class Members have an interest in the funds received from them by Luxottica as a result of the Overcharge.

60. Luxottica has willfully concealed the existence of the Overcharge from the Plaintiff and Class Members.

The Case of the Petitioner

61. The Petitioner purchased a pair of Luxottica connected sun glasses from Sunglass Hut in Montreal on August 21, 2019. He purchased further sunglasses and eyewear connected to Luxottica in February 9, 2017, June 6, 2020, and March 6, 2021, as shown at **Exhibit P-46**.

62. He is a resident of Quebec who lives in Montréal.

63. He is bringing the claim in good faith.

64. He does not have a conflict with other Class Members.

65. He understands the role of the representative plaintiff in the context of a class action law suit and will dedicate the necessary time to participating within and understanding his duty to other Class Members. He has the time and energy properly required for this endeavor.

66. He is in a position to collaborate with his lawyers to accomplish the necessary tasks to ensure that the rights of Class Members are fully considered.

THE FACTS THAT GIVE RISE TO AN INDIVIDUAL ACTION BY ALL CLASS MEMBERS, ARE AS FOLLOWS:

67. Class Members have been purchasing eyewear from Luxottica consistently throughout the Class Period, spending tens if not hundreds of millions of dollars during this time.

68. Luxottica's Licensing Agreements with Fashion Houses and their Sales Agreements with Competing Manufacturers are unlawful, anti-competitive arrangements that breach the *Competition Act*, the *Civil Code of Québec*, and the *Consumer Protection Act*.

69. Because of the Unlawful Agreements, Luxottica charged Class Members supra-competitive prices that resulted in Class Members paying unfair and unlawful amounts, the Overcharge, greater than they otherwise would have.

70. Class Members have an interest in the funds received from them by Luxottica as a result of the Overcharge.

71. The Defendants willfully concealed the fact of the Overcharge from the Plaintiff and Class Members, and the fact that the Overcharge was caused or contributed to by Luxottica's acts or omissions.

72. The Plaintiff and Class Members rely on the doctrines of postponement, discoverability and fraudulent per *Pioneer v Godfrey*, 2019 SCC 42 to postpone the running of the limitation period until the filing of this action. The Plaintiff and Class Members plead and rely on articles 2880 para. 2 and 2904 of the *Civil Code of Québec*.

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 IN THAT:

73. The size of the Class is estimated to be in the tens of thousands of people who purchased Luxottica controlled eyewear in Canada during the Class Period.

74. It is impossible for the Petitioner to contact and obtain mandates from every Class Member.

THE PETITIONER SEEKS TO HAVE THE FOLLOWING QUESTIONS OF FACT AND LAW, WHICH ARE IDENTICAL, SIMILAR OR RELATED AND UNITE EACH CLASS MEMBER, DECIDED BY A CLASS ACTION:

75. Did Luxottica breach the *Competition Act*?

76. Did Luxottica breach its duty of good faith under the *Civil Code of Quebec* and Canadian Case Law?

77. Did Luxottica breach the *Consumer Protection Act* and related enactments in the common law provinces?
78. Did Luxottica abuse its dominant position?
79. Have Class Members suffered prejudice as a result of Luxottica's actions?
80. Is Luxottica liable to Class Members for damages? If yes, then to whom, in what amount, and can the damages be aggregated?

IT IS APPROPRIATE TO AUTHORIZE A CLASS ACTION ON BEHALF OF CLASS MEMBERS FOR THE FOLLOWING REASONS:

81. Only the institution of a class action will provide Class Members with reasonable access to justice.
82. The cost of bringing individual actions would disproportionately exceed the amount sought by individual Class Members.
83. If Class Members exercised their rights through Canada, the sheer number of individual claims would lead to a multitude of individual actions instituted in a multitude of different jurisdictions against a multitude of different respondents, in varying combinations. This could lead to contradictory rulings on questions of fact and law that are for all intents and purposes identical to all Class Members. The judicial remedy herein would eliminate the overloading and unnecessary burden on the entire Canadian judicial system.

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

84. The Petitioner seeks to institute a class action in restitution, compensatory and other damages.
85. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the Petitioner's Motion on behalf of all Class Members;

DECLARE that the Respondents have breached the *Competition Act*, the *Civil Code of Québec*, and the *Consumer Protection Act*;

CONDEMN the Respondents to pay the Petitioner and Class Members restitution and compensatory damages;

ORDER the collective recovery of the claims;

ORDER the liquidation of the Class Members' individual claims;

THE WHOLE with costs, including costs of all experts, notices and expenses of the administrator, if any;

The Petitioner is apt to assume an adequate representation of the Class Members that he intends to represent for the following reasons.

86. The Petitioner is a Class Member. He has an honest desire to represent the interests of Class Members.

87. The Petitioner is willing to cooperate fully with his attorneys in order to diligently carry out the action.

88. The Petitioner is represented by attorneys who have experience in class action litigation.

The Petitioner requests and proposes that the class action be brought before the Superior Court, sitting in the district of Montreal, for the following reasons:

89. A large amount of the Class Members likely reside in or around Montreal.

90. The corporate headquarters of the Respondent Essilor-Luxottica Canada, Inc. is in Montreal.

91. The Petitioner's attorneys practice is in the District of Montreal.

FOR THESE MOTIVES, MAY IT PLEASE THE COURT:

GRANT the Petitioner's motion;

AUTHORIZE the class action hereinafter described as:

An action in restitution, compensatory, and other damages.

GRANT The Petitioner's Motion to obtain the Status of Representative of all Class Members forming part of the Class hereinafter defined as:

All persons in Canada, excluding residents of British Columbia, who purchased eyewear manufactured or sold by Luxottica between March 12, 2010 and the date this action is certified as a class proceeding. In particular, the Class Members include purchasers of prescription frames and sunglasses manufactured or sold by Luxottica, and an included subclass of persons who bought them for personal, family or household purposes.

IDENTIFY as follows the principle questions of fact and law to be determined collectively:

Did Luxottica breach the *Competition Act*?

Did Luxottica breach its duty of good faith under the *Civil Code of Quebec* and Canadian Case Law?

Did Luxottica breach the *Consumer Protection Act* and related enactments in the common law provinces?

Did Luxottica abuse its dominant position?

Have Class Members suffered prejudice as a result of Luxottica's actions?

Is Luxottica is liable to Class Members for damages? If yes, then to whom, in what amount, and can the damages be aggregated?

IDENTIFY as follows the conclusions sought in relation thereof:

GRANT the Petitioner's Motion on behalf of all Class Members;

DECLARE that the Respondents have breached the *Competition Act*, the *Civil Code of Quebec*, and the *Consumer Protection Act*;

CONDEMN the Respondents to pay the Petitioner and Class Members restitution, compensatory, and other damages;

ORDER the collective recovery of the claims;

ORDER the liquidation of the Class Members' individual claims;

THE WHOLE with costs, including costs and fees of all experts, notices and expenses of the administrator, if any;

ORDER the publication of a notice to the Class Members according to the terms to be determined by the Court;

REFER the present file to the Chief Justice for determination of the district in which the class action should be brought and to designate the Judge who shall preside over the hearing;

THE WHOLE with costs, including costs and fees of all experts, notices and expenses of the administrator, if any;

Montréal, March 22, 2021



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SUMMONS

(Articles 145 and following CCP)

Filing of a judicial application

Take notice that the Petitioner 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.

Defendants' answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame Est, Montreal, Québec, H2Y 1R6, 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 Petitioner's lawyer or, if the Petitioner is not represented, to the Petitioner.

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 case required by the Code, cooperate with the Petitioner 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

Exhibit P-1: Copy of EssilorLuxottica, Greffe du Tribunal de Commerce de Créteil, République Française

Exhibit P-2: Copy of Essilor Luxottica Canada Inc. Ontario Business Names Report

Exhibit P-3: Copy of Luxottica Retail North America Inc corporate filing in State of Delaware

Exhibit P-4: Copy of Luxottica's Corporate History – A Fascinating History An Unstoppable Journey

Exhibit P-5: Copy of Luxottica at A Glance

Exhibit P-6: Copy of Luxottica's Annual Report; dated December 31, 2010

Exhibit P-7: Copy of Yahoo Finance, Luxottica Market Cap, retrieved 17 Mar 2021

Exhibit P-8: 2020 Interim Financial Report, EssilorLuxottica

Exhibit P-9: Copy of Luxottica's Annual Report; dated December 31, 2018

Exhibit P-10: Screenshot of Luxottica.com Eyewear & Retail Brands

Exhibit P-11: Copy of *Luxottica 50 Years of Excellence*

- Exhibit P-12:** Copy of Euromonitor eyewear data in Canada, 2019.
- Exhibit P-13:** Forbes "Luxottica Sees Itself As King, Raising Questions About Brand Authenticity" November 27, 2012; Los Angeles Times "Consumer Confidential: Why Are Glasses So Expensive? The Eyewear Industry Would Prefer Keeping That Blurry" January 22, 2019, and "How badly are we being ripped off on eyewear? Former industry execs tell all" March 5, 2019
- Exhibit P-14:** Copy of screen shot of Statista Luxottica worldwide 2018 sales at <https://www.statista.com/statistics/241590/share-of-retail-net-sales-of-luxottica-by-geographical-area/>
- Exhibit P-15:** Ralph Lauren Corporation, Form 10-k (2017)
- Exhibit P-16:** Copy of the Luxottica & Burberry Press Release; dated October 7th, 2005
- Exhibit P-17:** Copy of the Luxottica & Polo Ralph Lauren Press Release; dated February 27th, 2006
- Exhibit P-18:** Copy of the Luxottica & Tiffany Press Release; dated December 5th, 2006
- Exhibit P-19:** Copy of the Luxottica & Stella McCartney Press Release, dated April 17th. 2008
- Exhibit P-20:** Copy of the Luxottica & Tory Burch Press Release; dated January 28th, 2009
- Exhibit P-21:** Copy of the Luxottica & Ferragamo Press Release; dated January 30th, 2009
- Exhibit P-22:** Copy of the Luxottica & Anne Klein Press Release; dated March 31st, 2010
- Exhibit P-23:** Copy of the Luxottica & Brooks Brothers Press Release; dated March 31st, 2010
- Exhibit P-24:** Copy of the Luxottica & Bulgari Press Release; dated May 27th, 2010
- Exhibit P-25:** Copy of the Luxottica & Coach Press Release; dated October 5th, 2010
- Exhibit P-26:** Copy of the Luxottica & Armani Press Release; dated June 8th 2012
- Exhibit P-27:** Copy of the Luxottica & Prada Press Release; dated December 5th 2012
- Exhibit P-28:** Copy of the Luxottica & Michael Kors Press Release; dated April 15th 2014
- Exhibit P-29:** Copy of the Luxottica & Chanel Press Release; dated July 24th, 2014
- Exhibit P-30:** Copy of the Luxottica & Tory Burch Press Release; dated December 19th, 2014
- Exhibit P-31:** Copy of the Luxottica & Prada Press Release; dated May 15th, 2015
- Exhibit P-32:** Copy of the Luxottica & Burberry Press Release; dated July 29th, 2015
- Exhibit P-33:** Copy of the Luxottica & Dolce & Gabbana Press Release; dated December 16th, 2015
- Exhibit P-34:** Copy of the Luxottica & Valentino Press Release; dated February 23rd, 2016
- Exhibit P-35:** Copy of the Luxottica & Ralph Lauren Press Release; dated December 22nd, 2016
- Exhibit P-36:** Copy of the Luxottica & Tiffany & Co. Press Release; dated December 14th, 2017

- Exhibit P-37:** Copy of Burberry Annual Report 2012
- Exhibit P-38:** Copy of Burberry Annual Report 2006 2007
- Exhibit P-39:** Copy of Safilo Group About Us page, retrieved 17 Mar 2021
- Exhibit P-40:** Copy of Maui Jim About Us page, retrieved 17 Mar 2021
- Exhibit P-41:** Copy of Marcolin Eyewear Company Info page, retrieved 17 Mar 2021
- Exhibit P-42:** Screenshots of Competitors products on SunglassHut.com
- Exhibit P-43:** Copy of Kering Universal Registration Document 2019
- Exhibit P-44:** Copy of Kering Eyewear page, retrieved 17 Mar 2021
- Exhibit P-45:** Copy of EssilorLuxottica Code of Ethics
- Exhibit P-46:** Copy of Receipts of Representative Plaintiff

The exhibits in support of the application are available upon 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.

Montréal, March 22, 2021



Liebman Légal Inc.
Attorneys for the Petitioner

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irwin@liebmanlegal.com

NOTICE OF PRESENTATION

(Articles 146 and 574 CCP)

TO:

ESSILOR-LUXOTTICA S.A.,
legal person duly constituted,
having its address of service at
147 rue de Paris, 94220
Charenton-Le-Pont, France

and

**ESSILOR-LUXOTTICA
CANADA INC.**, legal person duly
constituted, having its address of
service at 371 Rue Deslauriers,
Montréal, Québec

And

**LUXOTTICA RETAIL NORTH
AMERICA, INC.**, legal person
duly constitute, having its
address of service at 1209
Orange St, Wilmington, New
Castle, Delaware, United States
of America, 19801

TAKE NOTICE that Petitioner's Application for Authorization to Institute 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.

Montréal, March 22, 2021



Liebman Légal Inc.
Attorneys for the Petitioner

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CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-001139-217

**SUPERIOR COURT
(CLASS ACTION CHAMBER)**

SHAWN FARIA

Petitioner

-vs.-

ESSILOR-LUXOTTICA S.A.

and

**ESSILOR-LUXOTTICA CANADA
INC.**

and

**LUXOTTICA RETAIL NORTH
AMERICA, INC.**

Respondents

**ATTESTATION OF ENTRY IN THE NATIONAL CLASS ACTION REGISTER
(Article 55 of the Regulation of the Superior Court of Québec in civil matters Code of Civil
Procedure)**

The Petitioner, through his undersigned attorneys, attests that the *Application for Authorization to Institute a Class Action & Obtain the Status of Representative Plaintiff* will be entered in the National Class Action Registry.

Montréal, March 22, 2021



Liebman Légal Inc.
Attorneys for the Petitioner

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CANADA

SUPERIOR COURT
(Class Action Chamber)

N°.: 500-06-001139-217

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SHAWN FARIA

Petitioner

-vs.-

ESSILOR-LUXOTTICA S.A.

and

ESSILOR-LUXOTTICA CANADA INC.

and

LUXOTTICA RETAIL NORTH AMERICA, INC.

Respondents

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION & TO OBTAIN
THE STATUS OF REPRESENTATIVE PLAINTIFF (Art. 571 C.C.P. and following)**

ORIGINAL

BL 2520

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