

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Class action)

No.: 500-06-001055-207

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**AUDREY WELLS**

Applicant

v.

**AMAZON.COM, INC.**

and

**AMAZON.COM.CA, INC.**

and

**AMAZON.COM SERVICES LLC**

and

**AMAZON SERVICES INTERNATIONAL  
INC.**

and

**AMAZON SERVICES CONTRACTS, INC.**

Respondents

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**APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE**  
(Art. 574(3) CCP)

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**TO THE HONOURABLE JUSTICE SYLVAIN LUSSIER J.S.C., SITTING IN AND FOR  
THE DISTRICT OF MONTREAL, RESPONDENTS HEREBY PLEAD AS FOLLOWS:**

1. The present application is not an acquiescence or recognition of the jurisdiction of the Québec authorities in regard to the non-consumer class. It is only presented in the event that the Court dismisses the Respondent's *Application for Declinatory Exception and Referral to Arbitration*;
1. **Overview and Facts**
2. On April 1, 2020, the Applicant filed an *Application to Authorize the Bringing of a Class Action and to Obtain the Status of Representative Plaintiff* against the Respondents, which she then amended on October 30, 2020 (the "**Application for authorization**");
3. As appears from the Application for authorization, the Applicant seeks to represent the following Classes:

**Class:**

All persons residing in Quebec, both physical and legal, who, from June 1, 2010 to the present (the “**Class Period**”), purchased products on www.amazon.ca or www.amazon.com (the “**Amazon E-Commerce Class**”).

-and-

All persons residing in Quebec, both physical and legal, who, from June 1, 2010 to the present, purchased Amazon Products on any website other than www.amazon.ca or www.amazon.com (the “**Other E-Commerce Class**”)

“**Amazon Products**” means all categories of products that are sold by third-party sellers on www.amazon.ca or www.amazon.com.

4. Ms. Wells’ proposed class action alleges that, throughout the class period, the Respondents directly participated in agreements to fix retail e-commerce prices;
5. Specifically, she contends that contractual provisions between Amazon (as that term is defined in the Application for authorization) and third-party sellers providing that the latter may not sell products to consumers on another e-commerce platform at a price lower than they are sold on Amazon’s platform constitute an unlawful agreement;
6. Ms. Wells specifically alleges two “anticompetitive agreements” between Amazon and third-party sellers, namely what she calls the “most favoured nation provision” and Amazon’s “fair pricing policy”;
7. Ms. Wells alleges that she made purchases on www.amazon.ca and www.amazon.com from 2018 to 2020, from a third-party seller and/or one or some of the Respondents. She alleges that she paid artificially inflated prices when purchasing products from these websites or others during the class period;

**II. Causes of Action Alleged**

8. The proposed class action alleges causes of actions under three statutes:
  - a) *Consumer Protection Act*, sections 12, 219 and 282;
  - b) *Civil Code of Québec*; and
  - c) *Competition Act*, sections 36, 45, 46.
9. Accordingly, Ms. Wells claims, for herself and on behalf of the putative class, compensatory and punitive damages, as well as costs for the investigation;

10. As will be further detailed below, the Application for authorization does not provide a complete picture of the contractual relationships between (a) the Respondents and the non-consumer class, and (b) the Respondents and third-party sellers;
11. The Respondents' proposed relevant evidence therefore aims to fill those gaps and provide a more comprehensive contractual background to the Court for its assessment of the authorization criteria in art. 575 CCP;

### **III. Respondents' Proposed Relevant Evidence**

#### **A. Arbitration Agreements Applicable to the Non-Consumer Class**

12. At the outset, the Respondents seek to adduce evidence of arbitration agreements entered into between non-consumers and Amazon, as contained in the documents detailed as follows:
  - a) Conditions of Use for Amazon.ca, with the arbitration agreement effective prior to June 1, 2010, through October 23, 2014, communicated herewith as **Exhibit D-1**;
  - b) Conditions of Use for Amazon.ca, with the arbitration agreement effective from October 24, 2014, to present, communicated herewith as **Exhibit D-2**;
  - c) Conditions of Use for Amazon.com, with the arbitration agreement effective from August 19, 2011, to December 5, 2012, communicated herewith as **Exhibit D-3**;
  - d) Conditions of Use for Amazon.com, with the arbitration agreement effective from December 5, 2012 to May 3, 2021, communicated herewith as **Exhibit D-4**;
13. These arbitration agreements are essential and necessary for the Respondents to demonstrate that the authorization criteria are not met with regard to the non-consumer class, or alternatively, that the class definition should be amended to specifically exclude non-consumers, should the Court decide to dismiss the Respondents' *Application for Declinatory Exception and Referral to Arbitration*;

#### **B. Section S-4 of the Business Solutions Agreements**

14. The unlawful agreement between the Respondents and third-party sellers alleged in the proposed class action centers on what the plaintiff refers to as the "most favoured nation provision" in Amazon's Business Solutions Agreement with third-party sellers (the "**BSA**");
15. The Respondent will refer to this provision in the standard form BSA as the provision titled "Parity with Your Sales Channel" ("**section S-4 of the BSA**");
16. There were three (3) versions of section S-4 of the BSA during the class period;

17. Ms. Wells has filed, as Exhibit R-6, only one version of the wording of section S-4 of the BSA that existed during the class period, namely that which applied as of April 30, 2014;
18. The Respondents therefore seek to adduce as relevant evidence the two (2) other versions of the standard form of the BSA that first incorporated the new wording of section S-4 of the BSA during the class period:
  - a) a copy of the BSA in effect on or about April 15, 2010, as appears from a copy of the BSA communicated herewith as **Exhibit D-5**;
  - b) a copy of the BSA in effect on or about July 13, 2010, as appears from a copy of the BSA communicated herewith as **Exhibit D-6**;
19. Section S-4 of the BSA was eliminated from the BSA as of the version in effect on or about March 8, 2019 (Exhibit R-5);
20. The Respondents submit that a comprehensive picture of the various wordings of section S-4 of the BSA that existed throughout the class period is essential and necessary for the Court to assess Ms. Well's Application for authorization in light of the criteria in art. 575 CCP;
21. The Respondents further submit that providing all versions of section S-4 of the BSA applicable throughout the class period is essential and necessary to demonstrate that these were *not* unlawful, anticompetitive agreements—thereby directly contradicting Ms. Wells' allegations of unlawful conduct in her Application for authorization;

#### **IV. Conclusions**

22. The Respondents' proposed relevant evidence detailed in this application is essential to providing this Court with a comprehensive picture of the contractual relationships between (a) the Respondents and the non-consumer class, and (b) the Respondents and third-party sellers, which are at the heart of Ms. Wells' alleged personal cause of action and proposed class action;
23. Accordingly, the Respondents' proposed relevant evidence will be useful for the Court in assessing the arguable test criterion pursuant to art. 575 CCP, namely the arguable case criterion and the scope of the class;
24. The present application is well-founded in fact and in law;

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

- [A] GRANT** the present *Application for Leave to Adduce Relevant Evidence*;
- [B] ALLOW** Respondents to file **Exhibits D-1 to D-6**;

[C] THE WHOLE, with costs to follow.

Montréal, June 4, 2021

*Borden Ladner Gervais S.E.N.C.R.L., S.R.L.*

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**Borden Ladner Gervais LLP**

Lawyers for the Respondents

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**AFFIDAVIT**

I, the undersigned, Larry Matthew Raibourn, practicing my profession in the City Renton, in the State of Washington, in the United States of America, declare under oath that:

1. I am the Category Leader of Amazon.ca's Consumer Electronics business at the Respondent Amazon.com.ca, Inc. ("Amazon.ca", collectively with the other Respondents, "Amazon").
2. I have been working at Amazon in various roles in the US and Canadian consumer business teams since July 2007. As such, I have personal knowledge of the facts to which I hereinafter depose, except where such knowledge is based upon information and belief, in which case I confirm the source of my information and verily believe such information to be true.
3. Regarding the allegations at paragraph 12 of the Respondents' *Application for Leave to Adduce Relevant Evidence*, I can attest that:
  - a) The arbitration clause in the Conditions of Use for Amazon.ca, Exhibit D-1, was in effect prior to June 1, 2010, through October 23, 2014;
  - b) The arbitration clause in the Conditions of Use for Amazon.ca, Exhibit D-2, has been in effect from October 24, 2014, to present;
  - c) The arbitration clause in the Conditions of Use for Amazon.com, Exhibit D-3, was in effect from August 19, 2011, to December 5, 2012;
  - d) The arbitration clause in the Conditions of Use for Amazon.com, Exhibit D-4, was in effect from December 5, 2012 to May 3, 2021;
4. Regarding the allegations at paragraph 18 of the Respondents' *Application for Leave to Adduce Relevant Evidence*, I can attest that:
  - a) The Amazon standard form Business Solutions Agreement, Exhibit D-5, was in effect on or about April 15, 2010;
  - b) The Amazon standard form Business Solutions Agreement, Exhibit D-6, was in effect on or about July 13, 2010;

AND I HAVE SIGNED in Renton, State of Washington, this June 4, 2021:

DocuSigned by:  
*Matt Raibourn*

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LARRY MATTHEW RAIBOURN

Declared under oath remotely before me by technological means  
in Ste-Julie, QC, this June 4, 2021

DocuSigned by:

*Nathalie Angers*

Nathalie Angers

Commissioner for Oaths for Québec and for outside  
of Québec # 137908

**NOTICE OF PRESENTATION**

**ADDRESSEE:**

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Attorneys for the Applicant

**TAKE NOTICE** that the foregoing *Application of the Respondents for leave to adduce evidence* will be presented for hearing and adjudication before the Honourable justice Sylvain Lussier, J.S.C. of the Superior Court, sitting in and for the District of Montréal, at the Montréal Courthouse, in a room to be determined by the Court.

**KINDLY GOVERN YOURSELF ACCORDINGLY.**

Montreal, June 4, 2021

*Borden Ladner Gervais S.E.N.C.R.L., S.R.L.*

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**BORDEN LADNER GERVAIS LLP**  
Lawyers for Respondents



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## RESPONDENTS' LIST OF EXHIBITS

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- Exhibit D-1:** Conditions of Use for Amazon.ca, with the arbitration agreement effective prior to June 1, 2010, through October 23, 2014;
- Exhibit D-2:** Conditions of Use for Amazon.ca, with the arbitration agreement effective from October 24, 2014, to present;
- Exhibit D-3:** Conditions of Use for Amazon.com, with the arbitration agreement effective from August 19, 2011, to December 5, 2012;
- Exhibit D-4:** Conditions of Use for Amazon.com, with the arbitration agreement effective from December 5, 2012 to May 3, 2021;
- Exhibit D-5:** Copy of the standard form BSA in effect on or about April 15, 2010;
- Exhibit D-6:** Copy of the standard form BSA in effect on or about July 13, 2010.

Montreal, June 4, 2021

*Borden Ladner Gervais S.E.N.C.R.L., S.R.L.*

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**BORDEN LADNER GERVAIS LLP**  
Lawyers for Respondents

## Angers, Nathalie

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**De:** Angers, Nathalie  
**Envoyé:** June 7, 2021 3:35 PM  
**À:** 'Jean-Michel Boudreau'  
**Cc:** Chênevert, Karine; Hebert, Alexandra  
**Objet:** TR: NOTIFICATION: 500-06-001055-207 / Audrey Wells v. Amazon.com, Inc. et al. / Application for Leave to Adduce Relevant Evidence and Exhibits D-1 to D-6  
**Pièces jointes:** Exhibits D-1 to D-6 (Application for Leave to Adduce Relevant Evidence).zip; Application for Leave to Adduce Relevant Evidence.pdf

### NOTIFICATION BY ELECTRONIC COURIER TRANSMISSION SLIP (ARTICLE 134 C.P.C.)

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#### DATE:

Montréal, June 7, 2021

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#### SENDER:

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**Our file:** 564644.000013

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**Your file:** 5472-1

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#### COURT FILE NUMBER AND NATURE OF THE NOTIFIED DOCUMENT:

**Record number:** 500-06-001055-207

**Parties:** Audrey Wells v. Amazon.com, Inc. et al.  
**Nature of the document:** Application for Leave to Adduce Relevant Evidence and Exhibits D-1 to D-6

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**Number of pages:** -11- (excluding exhibits)  
(attachments only)



**Nathalie Angers**

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Respondents

**APPLICATION FOR LEAVE TO ADDUCE  
RELEVANT EVIDENCE  
(Art. 574(3) C.C.P.)**

**Amount: \$**

**Nature:**

**Code:**

ORIGINAL

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