

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Class action)

No.: 500-06-001055-207

**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 ADDITIONAL RELEVANT  
EVIDENCE**

*(Art. 574(3) of the Code of civil procedure)*

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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:**

**I. INTRODUCTION**

1. 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 (the “**Application for authorization**”), which was amended on October 30, 2020 and on November 9, 2021;
2. As appears from the *Re-Amended Application for Authorization To Institute a Class Action and to Obtain the Status of Representative Plaintiff* (the “**Re-Amended Application for authorization**”), the Applicant seeks to represent the following Classes:

**Class:**

All Quebec consumers (as defined in the *Consumer Protection Act*) 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 Quebec consumers (as defined in the *Consumer Protection Act*) 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.

3. Ms. Wells’ proposed class action alleges that, throughout the class period, the Respondents directly participated in agreements to fix retail e-commerce prices;
4. Specifically, she contends that alleged 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;
5. 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”;
6. 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**

7. The proposed class action alleges causes of actions under three statutes:
  - a) The *Consumer Protection Act* (RLRQ, c. P-40.1), sections 12, 219 and 272;
  - b) The *Civil Code of Québec*; and
  - c) The *Competition Act* (RSC, 1985, c. C-34), sections 36, 45, 46.
8. Ms. Wells claims, for herself and on behalf of the putative class, compensatory and punitive damages, as well as costs for the investigation;

9. Respondents seek leave to adduce additional evidence to show that the Applicant's characterization of Respondents' alleged agreements with third-party sellers is manifestly incorrect in fact and law;
10. The additional evidence Respondents seek leave to adduce will assist the Court in determining whether the authorization criteria of article 575 CCP are met and, in particular, whether Applicant has shown an arguable case (para. 575 (2) CCP);

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

11. The Respondents seek to adduce the Competition Bureau's *Competitor Collaboration Guidelines* dated May 6, 2021, communicated herewith as **Exhibit D-7**;
12. The Competition Bureau (the "Bureau") is an independent federal law enforcement agency responsible for, among other things, the administration and enforcement of the *Competition Act*;
13. The *Competitor Collaboration Guidelines* describe the Bureau's approach to interpreting and applying the *Competition Act* to collaborations or agreements between competitors;
14. Respondents seek leave to adduce the *Competitor Collaboration Guidelines* to assist the Court in determining whether the alleged agreements between Respondents and third-party sellers alleged in the Application for authorization are agreements between competitors under section 45 of the *Competition Act*;
15. These *Competitor Collaboration Guidelines* show that neither Section S-4 of Amazon's Business Solutions Agreement with third-party sellers (Exhibits R-6, D-5 and D-6) nor Amazon's Fair Pricing Policy (Exhibit R-8) are the kind of anti-competitive agreement to which section 45 of the *Competition Act* applies;
16. The Respondents submit that the Court should take into consideration the Bureau's approach to interpreting and applying section 45 of the *Competition Act* in order to assess Ms. Well's Application for authorization under the criteria in art. 575 CCP and, in particular, para. 575(2) CCP;
17. The Respondents further submit that the *Competitor Collaboration Guidelines* demonstrate that the alleged agreements between Respondents and third-party sellers were *not* the type of conduct prohibited by s. 45 of the *Competition Act* — thereby directly contradicting Ms. Wells' allegations of unlawful conduct in her Application for authorization;
18. Accordingly, the Respondents' proposed additional relevant evidence will be useful to the Court in assessing the arguable case criterion pursuant to art. 575 CCP;
19. 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 Additional Relevant Evidence*;
- [B] **ALLOW** Respondents to file the Competition Bureau's *Competitor Collaboration Guidelines* dated May 6, 2021 as **Exhibit D-7**;
- [C] **THE WHOLE**, with costs to follow.

Montréal, March 25, 2022



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**Borden Ladner Gervais LLP**

Lawyers for the Respondents

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**AFFIDAVIT**

I, the undersigned, Karine Chênevert, practising my profession as a lawyer at Borden Ladner Gervais LLP, located at 1000 De La Gauchetière Street West, Suite 900, Montréal, Province of Québec, H3B 5H4, declare under oath that:

1. I am one of the lawyers for Respondents in the present proceedings;
2. I have read the Application for Leave to Adduce Additional Relevant Evidence and all the facts contained therein are true.

AND I HAVE SIGNED in Montréal, QC, on March 25, 2022:



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KARINE CHÊNEVERT

Declared under oath remotely before me by technological means  
in Ste-Julie, QC, on March 25, 2022



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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 additional 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.**

Montréal, March 25, 2022



**Borden Ladner Gervais LLP**

Lawyers for the Respondents

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## **RESPONDENTS' NEW 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;
- Exhibit D-7:** Copy of the *Competitor Collaboration Guidelines* dated May 6, 2021.

Montréal, March 25, 2022

*Borden Ladner Gervais LLP*

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**Borden Ladner Gervais LLP**

Lawyers for the Respondents

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## Angers, Nathalie

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**De:** Angers, Nathalie  
**Envoyé:** March 25, 2022 2:24 PM  
**À:** 'Jean-Michel Boudreau'  
**Cc:** Chênevert, Karine; Afeich, Amanda; François Goyer  
**Objet:** NOTIFICATION: Audrey Wells v. Amazon.com, Inc. et al. (500-06-001055-207) - Application for Leave to Adduce Additional Relevant Evidence and D-7  
**Pièces jointes:** 2022-03-25 Application for Leave to Adduce Additional Relevant Evidence (FINAL) (128268141.2).pdf; Exhibit D-7\_ Competitor Collaboration Guidelines(128024253.1).pdf

<b>Suivi:</b>	<b>Destinataire</b>	<b>Réception</b>
	'Jean-Michel Boudreau'	
	Chênevert, Karine	Remis: 2022-03-25 2:24 PM
	Afeich, Amanda	Remis: 2022-03-25 2:24 PM
	François Goyer	

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

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#### DATE:

Montréal, March 25, 2022

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#### SENDER:

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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 Additional Relevant Evidence and D-7**

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**Number of pages:** -9- (excluding exhibit)  
(attachments only)



**Nathalie Angers**

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AMAZON SERVICES CONTRACTS, INC.S

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

ORIGINAL

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