

SUPERIOR COURT
(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000675-138

DATE: MAY 21, 2015

PRESENT: THE HONOURABLE JUSTICE MARIE GAUDREAU, J.S.C.

KELLY AMRAM

Petitioner

v.

WACOAL CANADA INC.

-and-

WACOAL AMERICA, INC.

Respondents

JUDGMENT

[1] On November 13, 2013, the Petitioner filed the Motion to Authorize the Bringing of a Class Action at to Ascribe the Status of Representative (the "**Motion**") against the Respondents Wacoal Canada Inc. and Wacoal America, Inc.;

[2] The group description proposed for the class action in the Motion is as follows:

All residents of Canada (or subsidiary Quebec) who have purchased a Wacoal Anti-Cellulite iPant shapewear product including but not limited to iPant Anti-Cellulite Mid-Thigh Shaper, iPant Anti-Cellulite long Leg Shaper, iPant Anti-Cellulite Hi-Waist Long Leg Shaper, iPant Anti-Cellulite Capri Legging and iPant Anti-Cellulite Shape Brief (hereinafter collectively the "iPant Products"), produced, marketed, advertised, sold and/or distributed by Respondents in Canada, or any other group to be determined by the Court.

[3] On October 27, 2014, this Court granted leave to Respondents to submit the affidavit of Mr. Robert Vitale into evidence and authorized the cross-examination by Petitioner of Mr. Vitale on his affidavit;

- [4] The cross-examination of Mr. Vitale was held on November 25, 2014;
- [5] Both the affidavit and the cross-examination of Mr. Vitale set forth the following facts:
- (a) Wacoal America Inc. only sold iPant shapewear products in Canada between January and June 2011;
 - (b) Wacoal Canada Inc. started to sell iPant shapewear products in Canada only in July 2011;
 - (c) The sales of iPant shapewear products by both Respondents in Canada since January 2011 have been marginal;
 - (d) Besides the Petitioner Amram and Madeleine Curelle Bougha, Petitioner to a similar class action instituted in Ontario in file number 13-59350 and discontinued as of March 17, 2015, the Respondents never received or heard of any complaint from Canadian customers about the iPant shapewear products;
 - (e) Some customers are satisfied and have attributed positive reviews and ratings to the iPant shapewear products on the Internet;
 - (f) Respondents no longer ship or provide iPant shapewear products in Canada. The last shipment of iPant products was on October 23, 2014;
 - (g) Some iPant products shipped prior to October 23, 2014 may still remain available in stores, but the tags representing that the products "*reduce cellulite*" (and/or other marketing claims that are in issue in this case) have been removed from the products;

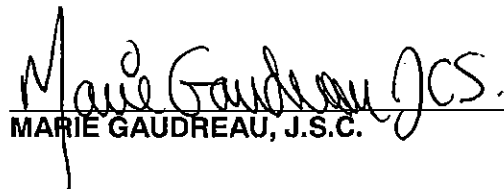
the whole as appears from the Court record;

- [6] Also, since the institution of the Motion, Respondents have agreed to reimburse the Petitioner and the six (6) other known Class Members for their purchase of the iPant shapewear products;
- [7] In addition, the Respondents have agreed and undertaken, without any admission of any kind, to create and put in place a voluntary Customer Satisfaction Program in Canada, which will allow any unsatisfied Canadian consumers (Class Member) to return or provide a sales receipt of the iPant Products they purchased in order to receive a refund;
- [8] The Petitioner and her attorney have discussed and analyzed the costs in both time and money versus:
- (a) the limited interest generated by the Motion from Class Members;
 - (b) the reimbursement to be received by the Petitioner, as well as by the other known proposed Class Members; and

(c) the creation of the Customer Satisfaction Program in Canada by Respondents;

and have made the joint decision not to pursue the present proceedings further;

- [9] Respondents Wacoal Canada Inc. and Wacoal America, Inc., through their attorneys, have agreed to the discontinuance of the present legal proceedings without costs;
- [10] The interests of any unknown Class Members are protected by and through the Customer Satisfaction Program in Canada;
- [11] **SEEING** the above-mentioned Motion, as well as, the affidavit in support thereof produced in the Court record;
- [12] **HEARING** the representations made by the parties' attorneys;
- [13] **GIVEN** the consent by the Respondents to the discontinuance without costs;
- [14] **GIVEN** that the Petitioner's attorney undertakes to place on the website www.lexgroup.ca indication that the present action has been discontinued and to inform the six (6) potential class member by email of such a discontinuance;
- [15] **CONSIDERING** that the Court finds the discontinuance to be in the interest of justice;
- [16] **FOR THE REASONS, THE COURT:**
- [17] **GRANTS** the Motion by Petitioner for Permission to Discontinue the Present Legal Proceedings;
- [18] **AUTHORIZES** the Petitioner to discontinue her Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative;
- [19] **ACKNOWLEDGES** the statement by the parties that the settlement governing the discontinuance provides for a contribution by Respondents of a lump sum towards legal disbursements and fees of the Petitioner;
- [20] **THE WHOLE WITHOUT COSTS.**


MARIE GAUDREAU, J.S.C.

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