

CANADA

(Class Action)
SUPERIOR COURTPROVINCE OF QUEBEC
DISTRICT OF MONTREAL

ARIANE KNAFO

N^o: 500-06-001202-221*Plaintiff*

v.

BARILLA CANADA INC.

Defendant

**RE-AMENDED APPLICATION FOR AUTHORIZATION TO INSTITUTE A
CLASS ACTION
(Art. 574 C.C.P. and following)**

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PLAINTIFF STATES THE FOLLOWING:

Introduction:

1. Plaintiff wishes to institute a class action on behalf of the following group, of which Plaintiff is a member, namely:

All residents of Quebec (...) who have purchased at least one of the Defendant's pasta products, which products were not produced in Italy but which bear the phrase "ITALY'S #1 BRAND OF PASTA" and/or "LA MARQUE de PÂTES No 1 EN ITALIE" and/or which display the Italian flag colors on the front label of the packaging, or any other group to be determined by the Court.

(hereinafter referred to as **Plaintiff(s)**”, the “Class Member(s)”, the “Class”, the “Group Member(s)”, the “Group”, or the “Consumer(s)”).

2. Defendant Barilla Canada Inc. is a Canadian corporation, headquartered in Markham, Ontario with its *fondé de pouvoir* in the District of Montreal, Province of Quebec, the whole as more fully appears from the *Registraire des entreprises* report regarding Defendant, communicated herewith as **Exhibit R-1** (hereinafter “**Defendant**” or “**Barilla Canada**”).

The situation:

3. Defendant markets, commercializes, distributes and sells its various well-known pasta products through many grocery stores across Canada, including Quebec.
4. The Defendant’s pasta products in issue in the present proceeding include without limitation the following products:
 - (a) Barilla® Classic Blue Box Pastas, including Angel Hair, Campanelle, Cellentani, Ditalini, Elbows, Farfalle, Fettuccine, Fideo Cut Spaghetti, Gemelli, Jumbo Shells, Large Shells, Linguine, Linguine Fini, Manicotti, Medium Shells, Mezzi Rigatoni, Mini Farfalle, Mini Penne, Mini Wheels, Mostaccioli, Orzo, Pastina, Penne, Pipette, Rigatoni, Rotini, Spaghetti, Spaghetti Rigati, Thick Spaghetti, Thin Spaghetti, Tri-Color Penne, Tri-Color Rotini, Wavy Lasagne, and Ziti;
 - (b) Barilla® Collezione Artisanal Pastas, including Bucatini, Casarecce, Orecchiette, Penne, Rigatoni, and Spaghetti;
 - (c) Barilla® Gluten Free Pastas, including Elbows, Fettuccine, Penne, Rotini, and Spaghetti;
 - (d) Barilla® Veggie Pastas, including Rotini, and Spaghetti;
 - (e) Barilla® Whole Grain Pastas, including Elbows, Lasagne, Linguine,

Penne, Rotini, Spaghetti, and Thin Spaghetti;

(hereinafter the "**Product(s)**").

5. Plaintiff files copies of the front and back labels of the Defendant's boxes of the following Barilla Products: **Spaghetti**, **Fettuccine**, **Penne Rigate**, and **Cut Macaroni**. These boxes include the phrase "ITALY'S #1 BRAND OF PASTA" and the phrase "LA MARQUE de PÂTES No 1 EN ITALIE" and display the **Italian flag colors (in a three leaves pattern)** on the front panel (and indicate and confirm that they are a **product of U.S.A.** on the side panel), (...) communicated herewith as **Exhibit R-2, en liasse**.

5.1. Plaintiff communicates herewith as **Exhibit R-9, en liasse**, copies of all labels of the Defendant's boxes of the following Barilla Products: **Spaghetti**, **Macaroni**, **Penne Rigate**, and **Orzo**. These boxes all include the phrase "ITALY'S #1 BRAND OF PASTA" and the phrase "LA MARQUE de PÂTES No 1 EN ITALIE" on the front panel (and indicate and confirm that they are **made in Canada** on the side panel). However, these products do not display the Italian flag colors on the front label of the packaging. As of the date of the present amendment, these R-9 Barilla pasta boxes are being sold in the Province of Quebec by the Defendant. Defendant only started selling these products with these new labels in the Province of Quebec after the institution of the present proceedings (at an unknown date).

5.2. Plaintiff communicates herewith as **Exhibit R-10, en liasse**, copies of all labels of the Defendant's boxes of the following Barilla Products: **Ditali**, **Conchiglie**, **Penne Lisce**, **Fettuccine**, **Spaghettoni**, **Linguine**, **Capellini**, **Cellentani**, **Rigatoni**, **Rotini**, and **Gemelli**. These boxes all include the phrase "ITALY'S #1 BRAND OF PASTA" and the phrase "LA MARQUE de PÂTES No 1 EN ITALIE" on the front panel (and indicate and confirm that they are a **product of U.S.A.** on the side panel). However, these products do not

display the Italian flag colors on the front label of the packaging. As of the date of the present amendment, these R-10 Barilla pasta boxes are being sold in the Province of Quebec by the Defendant. Defendant only started selling these products with these new labels in the Province of Quebec after the institution of the present proceedings (at an unknown date).

5.3. Plaintiff communicates herewith as **Exhibit R-11** a copy of all four labels of the Defendant's box of the Barilla Lasagne Product. This box includes the phrase "ITALY'S #1 BRAND OF PASTA" **and** the phrase "LA MARQUE de PÂTES No 1 EN ITALIE" **and** displays the **Italian flag colors (in a new three circles pattern)** on the front panel (and indicates and confirms that it is a **product of U.S.A.** on the side panel). As of the date of the present amendment, this R-11 Barilla pasta box is being sold in the Province of Quebec by the Defendant. Defendant only started selling this product with this new labelling and pattern in the Province of Quebec after the institution of the present proceedings (at an unknown date).

5.4. Plaintiff is not aware of the date on which Defendant started selling some of its Products with the Italian flag in a new three circles pattern (such as depicted in Exhibit R-11) as opposed to the three leaves pattern which is depicted in Exhibit R-2. However, Defendant purposely depicts both patterns in the Green, White and Red sequence of the Italian flag, in order further "suggest" to consumers and further convey the general impression that the Products are produced in Italy.

5.5. Plaintiff communicates herewith as **Exhibit R-12** a copy of all four labels of the Defendant's box of the Barilla Tagiatelle Product. This box includes the phrase "ITALY'S #1 BRAND OF PASTA" **and** the phrase "LA MARQUE de PÂTES No 1 EN ITALIE" **and** displays the **Italian flag colors (in the new three circles pattern)** on the front panel (and indicates and confirms that it is a **product of Italy** on the side panel). Defendant sells this product in the

Province of Quebec.

5.5. Accordingly, before the institution of these proceedings, Defendant sold and marketed its Barilla pasta Products in the Province of Quebec with boxes bearing the phrase "ITALY'S #1 BRAND OF PASTA" **and/or** the phrase "LA MARQUE de PÂTES No 1 EN ITALIE" **and/or** displaying the **Italian flag colors (in a three leaves pattern)**, for products made outside of Italy (namely in Canada or in U.S.A.) (Exhibit R-2).

5.6. After the institution of these proceedings (exact date unknown), Defendant started selling its Barilla pasta Products by sometimes removing the Italian flag colors altogether from the front panels of the boxes (Exhibits R-9 and R-10) and sometimes displaying the Italian flag colors in a new three circles pattern (Exhibit R-11).

5.7. However, and as appears when examining and comparing Exhibit R-11 and Exhibit R-12, Defendant purposely uses the same Italian flag depiction and "ITALY'S #1 BRAND OF PASTA" phrase on the front panel of its pasta boxes, whether the pasta is made in Italy or in another country. This is clearly and intentionally confusing for purchasers and consumers of Barilla Products who can find these items sitting side by side on the grocery store shelves.

6. Defendant primary marketing message for its pasta Products focuses on its "ITALY'S #1 BRAND OF PASTA" (and in French: "LA MARQUE de PÂTES No 1 EN ITALIE") claim and representation which appears prominently on the front label of each Product as depicted below for example:



7. As appears from Exhibits R-2 and R-9 to R-11, Defendant reinforces its deceiving message by sometimes replicating Italy's national flag's green, white, and red colors, in various shapes, perpetuating the notion that its Products are in fact produced in Italy, which is not in fact the case.
8. The wide range of Defendant's Products sold to Canadian Class Members are labeled as "Italy's #1 Brand of Pasta", although said Products are made outside of Italy, namely in the United States and/or in Canada, as appears from Exhibit R-2 and as appears from Exhibits R-9 to R-11.
9. Defendant's advertising and marketing campaign for the Products has been extensive and Defendant has spent a significant amount of money to convey its deceptive messages to Consumers, namely that its Products sold in Canada and Quebec are in fact produced in Italy.
10. Contrary to the labeling, the Products are not produced in Italy and are not manufactured with ingredients from Italy.
11. Defendant deliberately designed and executed a decades long marketing campaign to identify its Barilla brand, company, and Products at issue in this case, as authentic, genuine Italian pastas, made from ingredients sourced in Italy (like durum wheat) and manufactured in Italy.
12. Defendant's advertising is misleading since Defendant sought to take advantage of Consumers' desire for authentic Italian pasta in an effort to gain market share and increase sales.
13. In fact, Defendant knew that its target audience would be eager to accept claims that the Products are made in Italy since Italian products are generally viewed as a higher quality product. Defendant used this opportunity to lure Customers into buying the Products in the first place and/or paying a higher price for the Products, by making prominent misleading representations in

the marketing materials for the Products, most notably on the front labels for the Products.

14. The Consumer's general impression is therefore that each Product was made in Italy from ingredients sourced in Italy, as the front labels of the Barilla Product boxes clearly convey and "suggest".
15. Accordingly, Defendant has made deceptive claims about the Products, in various ways including in television, in magazines, on the Internet, and as mentioned on the front labels of the Products themselves, which is typically the first and sometimes only exposure Consumers will have to Defendant's claims and representations before purchasing the products.
16. In fact, Defendant's Canadian website, www.barilla.com, which serves all Canadian users, reiterates the same central marketing theme, and provides consumers access 24 hours a day, 7 days a week, to Defendant's deceptive advertising campaign for the Products.
17. For instance and in order to further reinforce this deceiving marketing scheme, Defendant describes itself as follows on its website: "an Italian family-owned food company" that is a "world leader in the markets of pasta and ready-to-use sauces in continental Europe, bakery products in Italy and crispbread in Scandinavia, the Barilla Group is recognized worldwide as a symbol of Italian know-how."; and at the top of the Classic Blue Box product line webpage, Defendant claims that Italians recognize the Barilla® brand Products merely from their signature dark blue box packaging and that Italians have favored the Products for more than one hundred years, representing that: "Italians know the familiar Blue Box means quality, perfectly al dente pasta every time. That's why Barilla has been an Italian favorite for over 140 years, and continues to be the #1 pasta in Italy today.", the whole as more fully appears from excerpts from Defendant's Canadian website, communicated herewith as **Exhibit R-3**.

18. Defendant's misleading labels and therefore its false advertising about the Products are also reiterated, circulated and promulgated by Defendant's own distributors, to Defendant's knowledge and with its approval. For instance, the well-known Walmart, IGA and amazon.ca websites each offer, depict and list some of Defendant's Products bearing the same "Italy's #1 Brand of Pasta" and Italian flag colors on the front labels, the whole as more fully appears from excerpts from the Walmart, IGA and amazon.ca websites, communicated herewith as **Exhibit R-4, *en liasse***. The same can be seen on other distributors selling the Defendant's Products online.
19. As a result of its deceptive conduct, Defendant sometimes charges a premium and/or inflated price for its Products, which premium Plaintiff and other Consumers paid, and many Consumers continue to pay, with the specific understanding, based upon Defendant false and misleading labeling, advertising, and representations, that said Products are from Italy (which vitiates their consent when purchasing the Barilla products in any case, regardless of the price).
20. These actions were and are intended to induce unsuspecting Consumers, including Plaintiff and Class Members, into purchasing and/or over-paying for what they think are Italian Products, but receive Products that are not from Italy.
21. In fact, these false claims served as the basis of Consumers' decisions to purchase the Products, instead of other pastas sold on the market, which do not purport to be Italian-made.
22. Until such time that Defendant cease to engage in deceptive and misleading advertising of the Products, Class Members will continue to suffer harm and prejudice, hence the injunctive relief being sought herein.

23. Defendant succeeded in its deceit and has in fact enjoyed massive profits from its deceptive campaigns. Such enormous profits would not have been as large but for Defendant's deceptive and misleading marketing and advertising campaign.
24. Defendant set the price and sometimes charged a premium for the Products. Plaintiff and the other Class Members would not have paid premium prices for the Products, or would not have bought them at all, had they not been exposed to Defendant's false and deceptive advertising about the Products and had, instead, known the truth regarding Defendant's deceptive marketing promises and omissions relating thereto.
25. Moreover, Plaintiff and other Class Members relied upon Defendant's representations and they believed that the Products were made in Italy from ingredients sourced in Italy. In reality, although Plaintiff and the other Class Members paid for the Barilla Products believing them to be products of Italy (...), they did not get what they paid or bargained for.
26. Finally, it appears that some of Defendant's related entities, in other countries, are also engaging in the same deceptive marketing and advertising schemes. In this regard, Plaintiff refers this Honorable Court to a US class action lawsuit alleging that Defendant's US sister-company (or affiliated entity) Barilla America Inc. has engaged in the same false advertising concerning the same Barilla branded pasta products being sold in the USA as well, the whole as more fully appears from the First Amended Class Action Complaint filed on July 20, 22 in the United States District Court Northern District of California, communicated herewith, as though recited at length herein, as **Exhibit R-5**, (hereinafter the "**US Class Action**").
27. On October 17, 2022, the Barilla America Inc. Motion to Dismiss the US Class Action was mostly dismissed by the United States District Court Northern District of California, the whole as more fully appears from the

October 17, 2022 Judgment, communicated herewith, as though recited at length herein, as **Exhibit R-6**.

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PLAINTIFF

28. Plaintiff has regularly purchased, from here local IGA store, Defendant's Products bearing the "Italy's #1 Brand of Pasta" tagline and displaying images of the Italian flag, for herself, her husband and five (5) daughters.
29. Although not having retained the sales receipts from those purchases, Plaintiff has spent over \$100 in 2022 (...) alone for said Products, which amount she claims from Defendant in addition to the punitive damages claimed herein.
30. Plaintiff only purchased the products in question after reading and believing the "Italy's #1 Brand of Pasta" tagline on the front labels, as detailed above, which gave her the impression that said Products were in fact produced in Italy.
31. In fact, Plaintiff also noticed that the labels displayed the Italian flag, which convinced her even more that said Products were indeed made in Italy.
- 31.1. As mentioned above, Plaintiff also refers to Exhibits R-9 to R-11, which evidence the fact that after the institution of the present class action proceedings, Defendant intentionally modified its pasta box labeling, including introducing a new shape for its Italian flag depiction in some cases, all the while still clearly conveying and "suggesting" that the Barilla Products come from Italy.
32. Plaintiff trusted and relied upon Defendant's representations and/or the general impression to the effect that the Products were made in Italy from

ingredients sourced in Italy.

33. In fact, the said claims on the labels of the Pasta Products convinced Plaintiff to purchase said products instead of any other similar pasta products.
34. Plaintiff would not have purchased the Defendant's Products at all if it were not for the false representations and false impressions made by Defendant on the labels of the boxes (as detailed above).

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

35. Each Class Member has purchased Defendant's Products.
36. Every Class Member's consent when purchasing the Products was vitiated as a result of the false and/or misleading statements made by Defendant, which are described hereinabove and which are prominently included on the front labels of the Products' boxes.
37. Every Class Member would not have purchased the Products at all, or would not have paid the inflated price paid for the Products, if it were not for Defendant's misleading marketing campaign, representations and claims described above regarding the Products.
38. For all of the reasons more fully detailed hereinabove, Plaintiff respectfully submits that Defendant intentionally promulgated and used its Products marketing in an abusive manner, making it liable to pay punitive and exemplary damages to the Class Members, in an amount to be determined by the Court.

39. Defendant's said actions show a malicious, oppressive and high-handed conduct that represents a marked departure from ordinary standards of decency when dealing with customers. In that event, punitive damages should be awarded to Class Members.
40. Furthermore, Defendant knowingly continued and continues to make such false representations to the Class Members, notwithstanding the U.S. Class Action proceeding filed.
- 40.1. In addition, Plaintiff communicates herewith as though recited at length, as **Exhibit R-8** *en liasse*, namely the publicly available records and documents posted on the Government of Canada's Canadian Intellectual Property Office ("**CIPO**") website, regarding the 2009 trademark application bearing #1428792, filed by Defendant's "affiliated entity" Barilla G. e R. Fratelli – Società per Azioni (hereinafter "**Barilla Italy**"), for the "proposed" Trademark "ITALY'S #1 BRAND OF PASTA", to be used in Canada regarding pasta products, including the Examiner's reports refusing said application (Defendant having failed to refer to or to file said documents in the context of the present proceedings).
- 40.2. As appears from Exhibit R-8, on October 26, 2009 (i.e. before Defendant Barilla Canada Inc. was constituted - Exhibit R-1), the CIPO's Examination Section, issued its "examiner's report" clearly indicating that:
- "The mark, which is the subject of this application, is considered to be **clearly descriptive or deceptively misdescriptive of the quality and the place of origine of the wares** since it is a laudatory epithet used in praise of the wares applied for, **which emanate from Italy**.
- In view of the provisions of paragraph 12(1)(b) of the *Trade-marks Act*, this mark does not appear registrable.". (Emphasis added)
- 40.3. Thereafter, on April 21, 2010, the CIPO examiner issued a further detailed and reasoned "examiner's report", stating the following (after having (...)

considered Barilla Italy's (...) correspondence of February 19, 2010 (which has been filed as **Exhibit R-8.1**) (...):

“The subject mark of this application is still considered to be either clearly descriptive or deceptively misdescriptive of the place of origin and quality of the wares, namely that the applicant’s pasta is Italy’s number one brand.”

A mark may be considered to be clearly descriptive of the place of origin of the wares if the mark is the geographical name of the place from which the associated wares originate.

The examiner must determine if, as a matter of **first impression**, a user of the services would perceive the trade-mark, whether depicted, written or sounded as the place of origin of the wares. If the examiner believes that the user of the wares would conclude, as a matter of **first impression** that the said services emanate from that geographical area, an objection is to be raised pursuant to paragraph 12(1)(b) of the *Trade-mark Act*.

(...)

With respect to the applicant’s statement that the trade-mark is susceptible to other ready meanings, the mark is a skillful allusion, rendering it suggestive, **the examiner respectfully submits that upon first impression the primary meaning, is easy to understand, self-evident and plain. The mark conveys to the average consumer of ordinary intelligence, that the pasta applied for by the applicant is “Italy’s #1 brand of pasta”.**

(...)

In the case at hand, a customer would link applicant’s pasta to Italy, and would assume that it is Italy’s #1 Brand. The numeral 1 is indicative of the word BEST in the market place, in that it indicates to consumers that there can be no better brand of pasta in Italy, it is #1.” (Emphasis added)

40.4. Accordingly, Defendant Barilla Canada Inc.’s affiliated entity in Italy, Barilla G. e R. Fratelli – Società per Azioni, applied in 2009 for the trademark “ITALY’S #1 BRAND OF PASTA”, for a proposed (i.e. future) use for sales of pasta products in Canada. The CIPO refused the trademark application confirming *inter alia* that it would be misleading to average consumers (for the same reasons as Plaintiff is alleging herein). Defendant nonetheless

knowingly and intentionally started and continued selling its pasta products in Canada all while including this misleading “trademark” on its packaging and marketing (and while including the indication “TM” next to this specific phrase on its packaging in order to give the further impression of a valid trademark - see Exhibit R-2 and Exhibits R-9 to R-11).

40.4.1. Plaintiff refers to the Exhibit R-8.1 February 19, 2010, letter sent to CIPO by the trade-mark agents representing Defendant’s affiliated entity Barilla Italy. In the R-8.1 letter, Barilla Italy clearly states, argues and admits the following (direct citations with emphasis added):

- a) “It is respectfully submitted that the trade-mark ITALY’S #1 BRAND OF PASTA, when used in association with pasta, tells a prospective consumer nothing about the wares apart from a **suggestion** that such wares have something to do with Italy and a brand of pasta.”;
- b) “Consequently, although **the mark may be suggestive**, it is not clearly descriptive.”
- c) “Furthermore, if a **trade-mark is susceptible of other ready meanings, the mark** is not clearly descriptive but **is a covert and skillful illusion to the character, quality or place of origin of the wares, rendering it merely suggestive**”;
- d) “... it is submitted that **the trade-mark ITALY’S #1 BRAND OF PASTA when used in association with pasta is susceptible of more than one meaning**.”;
- e) “Having regard to the foregoing, it is submitted that the trade-mark

does not clearly describe a quality of the wares. **The mark is only suggestive.** It is also **suggestive** that the product is the most famous brand of pasta in Italy.”;

- f) “The mark is not clearly descriptive of the place of origine of the wares. It **suggests** that the product is the number one brand in Italy”.

40.4.2. We respectfully submit that these many admissions in the R-8.1 letter to CIPO to the effect that the trademark has “other ready meanings” and that the trademark is “suggestive” in many regards to consumers, further confirms the Plaintiff’s arguable case that the general impression of a credulous and inexperienced consumer purchasing the Barilla pasta Products is that the pasta is a superior product from Italy (as clearly **suggested** by Defendant’s continued use of this same “trademark” on the front panels of its packaging after CIPO had clearly opposed and rejected Barilla Italy’s R-8 trademark application back in 2010).

40.5. This all confirms Defendant’s prior knowledge, intentional actions (for many years before and after the institution of the present proceedings), and bad faith in its false advertising, marketing and distribution of the Products, further justifying the claim for punitive damages herein.

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

41. The composition of the Group makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings (Article 575 (3) C.C.P.) for the following reasons.

42. Plaintiff is unaware of the specific number of persons who purchased the

Products. However, Defendant's Products are sold and distributed in most groceries stores in Quebec and Canada (for example at IGA) and through national department stores and websites (such as Walmart and amazon.ca). Accordingly, Plaintiff estimates that tens of thousands of people are included in the putative Class in Quebec and Canada.

43. Class Members are numerous and are scattered across the entire province and country.
44. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendant. Even if the Class Members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Defendant would increase delay and expense to all parties and to the court system.
45. Moreover, a multitude of actions instituted risks leading to contradictory judgments on questions of fact and law that are similar or related to all Class Members.
46. 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.
47. In these circumstances, a class action is the only appropriate procedure for all of the Class Members to effectively pursue their respective rights and have access to justice.
48. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely Defendant's misconduct and

false advertising.

49. The claims of the Class Members raise identical, similar or related issues of law and fact (Article 575 (1) C.C.P.), namely:

- a) Did Defendant engage in unfair, misleading, or deceptive acts or practices regarding the marketing and sale of the Products?
- b) Is Defendant liable to the Class Members for reimbursement of the purchase price of the Products (or portion thereof) as a result of this misconduct?
- c) Should injunctive relief be ordered to prohibit the Defendant from continuing to perpetrate their unfair, false, misleading, and/or deceptive conduct?
- d) Is Defendant responsible to pay compensatory and/or punitive/exemplary damages to the Class Member and in what amount?

50. The majority of the issues to be dealt with are issues common to every Class Member.

51. The interests of justice favor that this motion be granted in accordance with its conclusions.

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

52. The action that the Plaintiff wishes to institute for the benefit of the Class Members is an action in damages, consumer protection, restitution, and injunctive relief.

53. The facts alleged herein appear to justify the conclusions sought by the Plaintiff (Article 575 (2) C.C.P.), namely the following conclusions that Plaintiff wishes to introduce by way of an originating application:

GRANT the class action of the Representative Plaintiff and each of the Class Members;

ORDER Defendant to cease from continuing their unfair, false, misleading, and/or deceptive conduct concerning the Products;

ORDER Defendant to cease selling any products in Canada bearing the phrase "ITALY'S #1 BRAND OF PASTA" and/or the phrase "LA MARQUE de PÂTES No 1 EN ITALIE" and/or displaying the Italian flag colors, unless said products are produced in Italy;

DECLARE the Defendant liable for the damages suffered by the Representative Plaintiff and each of the Class Members;

CONDEMN the Defendant to pay to each of the Class Members a sum to be determined in compensation of the damages suffered, including the purchase price paid for the Products (or portion thereof), and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay to each of the Class Members a sum to be determined in punitive and/or exemplary damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay interest and additional indemnity on the above sums according to the Law from the date of service of the original Application for Authorization;

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, additional indemnity, 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 experts' fees and notice fees;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Class Members;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fee and publication fees to advise members.

54. Plaintiff suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:
- a. Many Class Members, including Plaintiff, are domiciled in the District of Montreal;
 - b. Defendant's *fondé de pouvoir* is in the District of Montreal;
 - c. The Plaintiff's legal counsel practice in the District of Montreal.
55. Plaintiff, who is requesting to be appointed as Representative Plaintiff, is in a position to properly represent the Class Members (Article 575 (4) C.C.P.)

since Plaintiff;

- a. is a member of the class who purchased the Products relying upon Defendant's false representations, as detailed above;
- b. understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Class Members;
- c. is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class Counsel in this regard;
- d. is ready and available to manage and direct the present action in the interest of the Class Members and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class Members;
- e. does not have interests that are antagonistic to those of other Class Members;
- f. has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intends to keep informed of all developments;
- g. has given the mandate to the undersigned attorneys to post the present matter on their firm website in order to keep the Class Members informed of the progress of these proceedings and in order to more easily be contacted or consulted by said Class Members. In this regard, Plaintiff communicates herewith, as though recited at length herein, *en liasse*, **confidentially and**

under seal for privacy concerns and without waiving professional secrecy, as **Exhibit R-7**, the various online submissions received by the undersigned attorneys from various Class Members since the institution of the present proceedings, for the purposes of further fulfilling the arguable case burden for authorization herein;

- h. is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Class Members and to keep them informed;

56. The present application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Application;

AUTHORIZE the institution of a class action in the form of an originating application in damages, consumer protection, restitution, and injunctive relief;

APPOINT the Plaintiff as the Representative Plaintiff representing all persons included in the Class herein described as:

All residents of Quebec (...) who have purchased at least one of the Defendant's pasta products, which products were not produced in Italy but which bear the phrase "ITALY'S #1 BRAND OF PASTA" and/or "LA MARQUE de PÂTES No 1 EN ITALIE" and/or which display the Italian flag colors on the front label of the packaging, or any other group to be determined by the Court.

IDENTIFY the principle issues of law and fact to be treated collectively as the following:

- a) Did Defendant engage in unfair, misleading, or deceptive acts or practices regarding the marketing and sale of the Products?
- b) Is Defendant liable to the Class Members for reimbursement of the purchase price of the Products (or portion thereof) as a result of this misconduct?
- c) Should injunctive relief be ordered to prohibit the Defendant from continuing to perpetrate their unfair, false, misleading, and/or deceptive conduct?
- d) Is Defendant responsible to pay compensatory and/or punitive/exemplary damages to the Class Member and in what amount?

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

GRANT the class action of the Representative Plaintiff and each of the Class Members;

ORDER Defendant to cease from continuing their unfair, false, misleading, and/or deceptive conduct concerning the Products;

ORDER Defendant to cease selling any products in Canada bearing the phrase "ITALY'S #1 BRAND OF PASTA" and/or the phrase "LA MARQUE de PÂTES No 1 EN ITALIE" and/or displaying the Italian flag colors, unless said products are produced in Italy;

DECLARE the Defendant liable for the damages suffered by the Representative Plaintiff and each of the Class Members;

CONDEMN the Defendant to pay to each of the Class Members a sum to be determined in compensation of the damages suffered, including the purchase price paid for the Products (or portion thereof), and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay to each of the Class Members a sum to be determined in punitive and/or exemplary damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay interest and additional indemnity on the above sums according to the Law from the date of service of the original Application for Authorization;

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, additional indemnity, 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 experts' fees and notice fees;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Class Members;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fee and publication fees to advise members;

DECLARE that all Class Members who have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

FIX the time limit for opting out of the class at thirty (30) days from the date of the publication or notification of the notice to the Class Members;

ORDER the publication and notification of a notice to the Class Members in accordance with Article 579 C.C.P., pursuant to a further order of the Court and

ORDER Defendant to pay for all said publication costs;

ORDER that said notice be available on the Defendant's websites, Instagram page(s), Facebook page(s), and X (formerly Twitter) account(s), with a link stating "Important notice to all past or present purchasers/users of Barilla pasta products";

THE WHOLE with costs including the Court filing fees herein and all costs related to the preparation, publication and dissemination of the notices to the Class Members.

MONTREAL, (...) APRIL 16, 2024

LEX GROUP INC.

(s) *Lex Group Inc.*

Per: David Assor

Attorneys for Plaintiff

David Assor

From: David Assor
Sent: April 16, 2024 11:45 AM
To: 'Brix Myriam'
Subject: NOTIFICATION - 500-06-001202-221 - Ariane Knafo vs. Barilla Canada Inc.
Attachments: R-8.1.pdf; R-9.pdf; R-10.pdf; R-11.pdf; R-12.pdf; Re-Amended Application for Authorization_April 16, 2024.pdf

Importance: High



David Assor
Attorney / Avocat
Lex Group Inc.
4101 Sherbrooke St. West, Westmount, (Québec), H3Z 1A7
T: 514.451.5500 ext. 101
F: 514.940.1605
www.lexgroup.ca

NOTICE: This e-mail and any attachment(s) are confidential and legally privileged. If you are not the intended recipient, please notify the sender at the telephone number shown above or by return e-mail and delete this message and any copies immediately. A detailed statement of the terms of use can be found at the following address: http://www.lexgroup.ca/termsfuse_email. Thank-you.

AVIS : Ce courriel et pièce(s) jointe(s) sont confidentiels et protégés par le secret professionnel. Si ce message vous est parvenu par erreur, vous êtes en conséquence prié de nous aviser immédiatement par téléphone ou par courriel. De plus, veuillez effacer ce message et toutes copies immédiatement. Une version détaillée des modalités et conditions d'utilisation se retrouve à l'adresse suivante: http://www.lexgroup.ca/termsfuse_email. Merci.

Please consider the environment before printing this e-mail. | Veuillez penser à l'environnement avant d'imprimer ce courriel.

NOTIFICATION PAR COURRIEL / NOTIFICATION BY EMAIL (Art. 110, 133 et 134 C.P.C. / C.C.P.) <i>S'il vous plaît transférer sans délai au destinataire / Please forward without delay to the addressee</i>			
Date	April 16, 2024	Heure/Time	Voir l'entête du courriel / See email header
EXPÉDITEUR / SENDER			
Nom/Name	Me David Assor	Cabinet / Firm	LEX GROUP INC.
Adresse courriel / Email Address	davidassor@lexgroup.ca		
Ligne directe / Direct Line	514-451-5500 (p./ext. 101)		
Télécopieur / Fax	514-940-1605		
DESTINATAIRES / ADDRESSEES			
Me Myriam Brix Lavery, de Billy, S.E.N.C.R.L. - L.L.P. 1, Place Ville Marie Suite 4000 Montreal, Quebec, H3B 4M4 <i>Attorneys for Defendant</i>			
NATURE DU DOCUMENT NOTIFIÉ / NATURE OF DOCUMENT NOTIFIED			

Numéro de Cour / Court Number	500-06-001202-221
Noms des parties / Name of the parties	Ariane Knafo vs. Barilla Canada Inc..
Nature du document notifié / Nature of Document notified	-RE-AMENDED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION (dated April 16, 2024) -EXHIBITS R-8.1, and R-9 to R-12 (which are already in your possession)

N^o.: 500-06-001202-221

**SUPERIOR COURT
(CLASS ACTION)**

**PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

ARIANE KNAFO

Plaintiff

-VS-

BARILLA CANADA INC.

Defendant

**RE-AMENDED APPLICATION FOR
AUTHORIZATION TO INSTITUTE A CLASS
ACTION**

ORIGINAL

Me David Assor

Lex Group Inc.
4101 Sherbrooke St. West
Westmount, (Québec), H3Z 1A7

T: 514.451.5500

F: 514.940.1605

@: davidassor@lexgroup.ca



BL 5606