

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001195-227

S U P E R I O R C O U R T
(Class Actions)

EVA BITTON

Applicant

v.

AMAZON.COM.CA, INC.

and

AMAZON CANADA FULFILLMENT
SERVICES, INC.

and

AMAZON.COM, INC.

and

AMAZON.COM LLC

and

WAYFAIR LLC

and

HOME DEPOT OF CANADA INC.

Defendants

**AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF
(ARTICLES 571 AND FOLLOWING C.C.P.)**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
AND FOR THE DISTRICT OF MONTREAL, THE APPLICANT STATES:**

1. The Applicant seeks authorization to institute a class action on behalf of the

following class of which she is a member:

Amazon Class:

All consumers who, since February 7, 2019, purchased an extended warranty on goods from the Amazon mobile application(s) and/or website(s).

(hereinafter the "**Amazon Class**")

Home Depot Class:

All consumers who, from February 7, 2019 to September 30, 2022, purchased an extended warranty on goods from the Home Depot mobile application(s) and/or website(s).

(hereinafter the "**Home Depot Class**")

Wayfair Class:

All consumers who, from February 7, 2019 to October 31, 2022, purchased an extended warranty on goods from the Wayfair mobile application(s) and/or website(s).

(hereinafter the "**Wayfair Class**")

or any other class to be determined by the Court;

THE PARTIES:

2. The Applicant is a consumer within the meaning of Quebec's *Consumer Protection Act* (the "**CPA**");
3. The Amazon Defendants (collectively referred to herein as "**Amazon**") operate retail websites (www.amazon.ca and www.amazon.com) and the mobile application(s) for physical and digital goods and services, as it appears from the extract of the Quebec Enterprises Register communicated as **Exhibit P-1**;
4. Defendant Wayfair LLC (hereinafter "**Wayfair**") operates retail websites (www.wayfair.ca and www.wayfair.com) and the mobile application(s) for goods and claims to be one of the world's largest home retailers, as it appears from **Exhibit P-2**;
5. Defendant Home Depot of Canada Inc. (hereinafter "**Home Depot**") operates physical stores and retail websites (including www.homedepot.ca) and the mobile application(s) for goods and services, as it appears from the extract of the Quebec Enterprises Register communicated as **Exhibit P-3**;
6. During the Class Period, Amazon, Wayfair and Home Depot sold and continue to

sell consumer electronics and home appliances and – for an additional cost – they sell extended warranties for these items;

7. The sale of extended warranties to Quebec consumers is rigorously governed by the CPA, which defines an extended warranty contract as follows:

<p>1(e.1) “contract of additional warranty” means a contract under which a merchant binds himself toward a consumer to assume directly or indirectly all or part of the costs of repairing or replacing goods or a part thereof in the event that they are defective or malfunction, otherwise than under a basic conventional warranty given gratuitously to every consumer who purchases the goods or has them repaired;</p>	<p>1(e.1) « contrat de garantie supplémentaire » : un contrat en vertu duquel un commerçant s’engage envers un consommateur à assumer directement ou indirectement, en tout ou en partie, le coût de la réparation ou du remplacement d’un bien ou d’une partie d’un bien advenant leur défectuosité ou leur mauvais fonctionnement, et ce autrement que par l’effet d’une garantie conventionnelle de base accordée gratuitement à tout consommateur qui achète ou qui fait réparer ce bien;</p>
---	--

8. The law imposes on merchants selling extended warranties to consumers in Quebec the obligation to inform consumers of the existence and nature of Quebec’s legal warranty provided for in sections 37 and 38 CPA *before* proposing the purchase of a contract that *includes* an additional warranty on goods:

<p>228.1 Before proposing to a consumer to purchase a contract that includes an additional warranty on goods, the merchant must inform the consumer orally and in writing, in the manner prescribed by regulation, of the existence and nature of the warranty provided for in sections 37 and 38.</p> <p>In such a case, the merchant must also inform the consumer orally of the existence and duration of any manufacturer’s warranty that comes with the goods. At the request of the consumer, the merchant must also explain to the consumer orally how to examine all of the other elements of the warranty.</p> <p>Any merchant who proposes to a consumer to purchase a contract that includes an additional warranty on goods without first providing the information</p>	<p>228.1 Le commerçant doit, avant de proposer au consommateur de conclure, à titre onéreux, un contrat comprenant une garantie supplémentaire relative à un bien, l’informer verbalement et par écrit, de la manière prescrite par règlement, de l’existence et du contenu de la garantie prévue aux articles 37 et 38.</p> <p>Dans un tel cas, il doit également, le cas échéant, l’informer verbalement de l’existence et de la durée de la garantie du fabricant offerte gratuitement à l’égard de ce bien. À la demande du consommateur, il doit aussi l’informer verbalement de la façon pour lui de prendre connaissance de l’ensemble des autres éléments de cette garantie.</p> <p>Le commerçant qui propose à un consommateur de conclure un contrat</p>
---	---

<p>mentioned in this section is deemed to have failed to mention an important fact, and therefore to have used a practice prohibited under section 228.</p>	<p>comprenant une garantie supplémentaire relative à un bien sans lui transmettre préalablement les informations prévues au présent article est réputé passer sous silence un fait important et, par voie de conséquence, se livrer à une pratique interdite visée à l'article 228.</p>
--	--

9. The *Regulation respecting the application of the Consumer Protection Act*, P-40.1, r. 3 (the “**Regulation**”), provides the specific language that the merchant must use to inform consumers of Quebec’s legal warranty:

<p>91.9 Before proposing the conclusion of a contract for valuable consideration including an additional warranty on goods, the merchant must give the consumer a document in paper form containing only the following compulsory notice:</p> <p>“NOTICE CONCERNING THE LEGAL WARRANTY</p> <p>The Consumer Protection Act gives a warranty on all goods you purchase or lease from a merchant.</p> <p>The goods must be usable</p> <ul style="list-style-type: none">· for the purposes for which they are ordinarily used (section 37 of the Act) and· in normal use for a reasonable length of time, which may vary according to the price paid, the terms of the contract and the conditions of use (section 38 of the Act). <p>For more information on this legal warranty, go to the website of the Office de la protection du consommateur at www.opc.gouv.qc.ca.”</p>	<p>91.9 Avant de proposer de conclure à titre onéreux un contrat comprenant une garantie supplémentaire relative à un bien, le commerçant doit remettre au consommateur, sur support papier, un document sur lequel apparaît exclusivement l’avis obligatoire suivant:</p> <p>« AVIS SUR LA GARANTIE LÉGALE</p> <p>La Loi sur la protection du consommateur accorde une garantie sur tous les biens que vous achetez ou louez d’un commerçant.</p> <p>Le bien doit pouvoir servir:</p> <ul style="list-style-type: none">· à l’usage auquel il est normalement destiné (article 37 de la Loi);· à un usage normal pendant une durée raisonnable, qui peut varier selon le prix payé, les dispositions du contrat et les conditions d’utilisation (article 38 de la Loi). <p>Pour plus de renseignements sur cette garantie légale, consultez le site de l’Office de la protection du consommateur au www.opc.gouv.qc.ca.»</p>
<p>91.10 The notice provided for in section 91.9 must contain, on the front,</p>	<p>91.10 L’avis prévu à l’article 91.9 doit montrer au recto:</p>

<p>(a) the heading, in bold capital type of at least 14 points;</p> <p>(b) below the heading, the following text in type of at least 14 points in a rectangle: “The law provides a warranty on the goods you purchase or lease: they must be usable for normal use for a reasonable length of time.”;</p> <p>(c) below that rectangle, the following text in italic type of at least 12 points: “(The merchant is required to read you the above text)”;</p> <p>(d) the first two paragraphs, in type of at least 14 points in a rectangle;</p> <p>(e) the third paragraph, in type of at least 12 points.</p>	<p>a) la rubrique, en caractères majuscules gras d’au moins 14 points;</p> <p>b) au-dessous de la rubrique, la mention suivante en caractères d’au moins 14 points dans un encadrement: «La loi accorde une garantie sur le bien que vous achetez ou louez: il doit pouvoir servir à son usage normal pendant une durée raisonnable.»;</p> <p>c) au-dessous de cet encadrement, la mention suivante en caractères italiques d’au moins 12 points: «(Le commerçant a l’obligation de vous lire le texte ci-dessus)»;</p> <p>d) les deux premiers paragraphes, en caractères d’au moins 14 points dans un encadrement;</p> <p>e) le troisième paragraphe, en caractères d’au moins 12 points.</p>
<p>91.11 For the purposes of section 228.1 of the Act, before proposing the making of a contract referred to in that section, the merchant must read to the consumer the text prescribed in paragraph <i>b</i> of section 91.10.</p>	<p>91.11 Aux fins de l’application de l’article 228.1 de la Loi, avant de proposer de conclure un contrat visé par cet article, le commerçant doit lire au consommateur la mention prescrite par le paragraphe <i>b</i> de l’article 91.10.</p>

10. Section 91.12 of the Regulation provides for how the notice must be given for online purchases, such as the purchases made by the Class members on the Defendants’ websites: www.amazon.ca, www.amazon.com, www.wayfair.ca, www.wayfair.com and www.homedepot.ca, as well as on their mobile applications:

<p>91.12 When the proposal to make a contract referred to in section 228.1 of the Act is made in writing from a distance:</p> <p>(a) the notice prescribed in section 91.9 may not comply with section 91.10 and may be sent to the consumer otherwise than in paper form, on the following conditions:</p> <p>i. the notice is brought expressly to the</p>	<p>91.12 Lorsque la proposition de conclure un contrat visé par l’article 228.1 de la Loi est formulée par écrit à distance:</p> <p>a) l’avis prescrit par l’article 91.9 peut ne pas respecter l’article 91.10 et être transmis au consommateur autrement que sur support papier aux conditions suivantes:</p> <p>i. l’avis est porté expressément à la</p>
---	---

<p>attention of the consumer;</p> <p>ii. the notice is presented legibly;</p> <p>iii. the notice is presented in a manner that ensures that the consumer is able to easily retain it and print it;</p> <p>(b) the merchant is exempt from the obligation provided for in the first paragraph of section 228.1 of the Act to inform the consumer verbally of the existence and nature of the warranty provided for in sections 37 and 38 of the Act and of the obligation provided for in section 91.11;</p> <p>(c) the merchant is exempt from the obligation under the second paragraph of section 228.1 of the Act of informing the consumer verbally of the elements of the manufacturer's warranty, provided that</p> <p>i. the information is brought expressly to the attention of the consumer; and</p> <p>ii. the information is presented legibly.</p>	<p>connaissance du consommateur;</p> <p>ii. l'avis est présenté de manière lisible;</p> <p>iii. l'avis est présenté de façon à garantir que le consommateur puisse aisément le conserver et l'imprimer sur support papier;</p> <p>b) le commerçant est exempté de l'obligation prévue au premier alinéa de l'article 228.1 de la Loi d'informer le consommateur verbalement de l'existence et du contenu de la garantie prévue aux articles 37 et 38 de la Loi et de l'obligation prévue à l'article 91.11;</p> <p>c) le commerçant est exempté de l'obligation prévue au deuxième alinéa de l'article 228.1 de la Loi d'informer le consommateur verbalement des éléments relatifs à la garantie du fabricant aux conditions suivantes:</p> <p>i. ces informations sont portées expressément à la connaissance du consommateur;</p> <p>ii. ces informations sont présentées de manière lisible.</p>
--	---

11. As more fully detailed herein, Amazon, Wayfair and Home Depot are retail giants who sell extended warranties to consumers in Quebec without ever notifying them of Quebec's legal warranty, thereby completely ignoring their obligations under the CPA and the Regulation and, as such, are deemed to have committed a prohibited practice under section 228 CPA;

11.1 Several months after the initial authorization application was filed on July 26, 2022 and then served, Defendants Wayfair and Home Depot modified their business practices and started informing consumers about Quebec's legal warranty as required by law (it is for this reason that their class definitions are now closed), as it appears from the screen captures filed respectively as **Exhibits P-18 and P-19;**

11.2 Unlike Defendants Wayfair and Home Depot who promptly modified their business practices to comply with Quebec law following service of these proceedings, the Amazon Defendants have not modified their practice and still completely and

defiantly ignore their legal obligations under Quebec law when selling extended warranties to Quebec consumers;

12. It appears that the other major retailers selling extended warranties in Quebec do adequately provide the required notice under the CPA, meaning that Amazon, Wayfair and Home Depot's violations can only be qualified as intentional and insouciant. The Applicant communicates screen captures of the CPA notice provided by the following major retailers on their Canadian websites *en liasse* herewith as **Exhibit P-4**: www.walmart.ca, www.costco.ca, www.bestbuy.ca, www.renodelpot.com, www.rona.ca, www.staples.ca and www.thebrick.com, www.thesource.ca;
13. The purpose of the present class action is to ensure that Amazon, Wayfair and Home Depot comply with the CPA and to obtain compensatory and punitive damages for the class members;

I. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (S. 575 C.C.P.):

A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT:

14. The Applicant is a consumer who has been purchasing goods on the www.amazon.ca website for several years;
15. On June 14, 2022, the Applicant purchased the "Numark Scratch | Two-Channel DJ Scratch Mixer for Serato DJ Pro (included) With Innofader Crossfader, DVS license, 6 Effect Selectors and 24-Bit Sound" (the "**DJ Mixer**") for \$549.00 plus taxes, as it appears from the invoice communicated as **Exhibit P-5**;
16. The Applicant purchased the DJ Mixer as a birthday present for her husband;
17. On the DJ Mixer product page, Amazon also offered a "3 Year PC Peripheral Protection Plan" (the "**Extended Warranty**") for \$59.99 and attracts consumers to purchasing this Extended Warranty by using blue and red colour fonts, as it appears from **Exhibit P-6** (this screen capture was taken on July 26, 2022 as a simulation of the Applicant's purchase process for this item);
18. According to Amazon's website, the Extended Warranty includes the following extended coverage: "... *Malfunctions covered after the manufacturer's warranty*", as it appears from a screen capture of the pop-up that appears after clicking on the blue "3 Year PC Peripheral Protection Plan" hyperlink on the product page (https://www.amazon.ca/dp/B07SNQXMLZ/ref=cm_sw_r_api_i_TY3PXDH4N0BY59VV43S6_0) communicated as **Exhibit P-7**;
19. The Applicant purchased the Extended Warranty from Amazon and paid Amazon an additional \$59.99 for the Extended Warranty, as it appears from **Exhibit P-8**;
20. The Applicant purchased these items on www.amazon.ca using her credit card in

a single transaction (she purchased the extended warranty by checking off the box on the DJ Mixer product page); Amazon then charged the Applicant's credit card for these items separately, as it appears from a redacted version of her credit card transactions communicated as **Exhibit P-9**;

21. On June 14, 2022, the Applicant received a separate email from "Asurion Protection Plan Team", communicated as **Exhibit P-10**. The Extended Warranty that she purchased from Amazon's website is "from Asurion Consumer Solutions of Canada Corp" (hereinafter "**Asurion**");
22. The email from Asurion contains a blue hyperlink where the Applicant can "Download terms & conditions" of the Extended Warranty. The Applicant communicates a copy of the terms of the Extended Warranty as **Exhibit P-11**;
23. The extended warranty document (Exhibit P-11) is titled "**Contract of Additional Warranty**" (i.e. the same term used by the Quebec legislator at section 1(e) CPA);
24. At no point in time prior to (or even after) her purchase, did Amazon refer the Applicant (or any Class member) to the notice required pursuant to section 91.9 of the Regulation despite clearly selling her a contract of additional warranty, contrary to section 91.12 of the Regulation. As such, Amazon committed a prohibited business practice within the meaning sections 228 and 228.1 CPA;
25. The Applicant emphasizes that she contracted directly with Amazon and paid Amazon directly for the "3 Year PC Peripheral Protection Plan" offered by Asurion (as it appears from Exhibits P-8 and P-9);
26. It is worth here noting that the Asurion extended warranty is also sold on the [Walmart.ca](https://www.walmart.ca) and [Costco.ca](https://www.costco.ca) websites, but that the Walmart and Costco websites do expressly refer consumers to the notice required under section 91.9 of the Regulation, as it appears from Exhibit P-1 (relevant portions reproduced below):

Source: <https://www.walmart.ca/en/ip/protection-for-tvs-priced-300-39999/6000201680995>



3-Year Protection Plan

POWERED BY **asurion**

For Quebec residents only

NOTICE CONCERNING THE LEGAL WARRANTY

The Consumer Protection Act gives a warranty on all goods that you purchase or lease from a merchant.

The Act provides a warranty on all goods that you purchase or lease: They must be usable for normal use for a reasonable length of time.

The goods must be usable:

- for the purposes for which they are ordinarily used (section 37 of the Act) and
- in normal use for a reasonable length of time, which may vary according to the price paid, the terms of the contract and the conditions of use (section 38 of the Act).

(merchant has the obligation to read you the above text)

For more information on this legal warranty, go to the website of the Office de la protection du consommateur at www.opc.gouv.qc.ca.

Source: <https://www.costco.ca/excellenceplus%2b4-year-warranty.-no-deductibles-and-no-additional-fees-for-tvs-1%2c500-and-over.---quebec-only.product.4000025656.html>

The screenshot shows the Costco website interface. At the top, there is a search bar and navigation tabs for Shop, Grocery, Same-Day, Business Centre, Pharmacy, Services, Photo, Travel, Optical, and Tires. Below the navigation, the user's location is set to Beucherville, and the store is identified as J4G. The main product is a television with a 6-year warranty, priced at \$129.99. The warranty is described as 'ExcellencePlus+ 4-year warranty. No deductibles and no additional fees for TVs 1,500 and over - Quebec Only'. A legal notice on the right side of the page states: 'NOTICE CONCERNING THE LEGAL WARRANTY. The Consumer Protection Act provides a warranty on the goods you purchase or lease: they must be usable for normal use for a reasonable length of time. The Consumer Protection Act gives a warranty on all goods you purchase or lease from a merchant. The goods must be usable: For the purposes for which they are ordinarily used (Section 37 of the Act); and In normal use for a reasonable length of time, which may vary according to the price paid, the terms of the contract and the conditions of use (Section 38 of the Act). For more information on this legal warranty, go to the website of the Office de la protection du consommateur at www.opc.gouv.qc.ca.'

27. Therefore, there is no doubt that, unlike its competitors who do comply with the notice requirement of section 228.1 CPA, Amazon intentionally fails to inform consumers of an important fact and must be held accountable;
28. Pursuant to section 272 CPA, the Applicant is entitled to and hereby claims from Amazon a reimbursement of \$59.99, as well as \$100 in punitive damages, because Amazon intentionally commits a prohibited business practice (violation of s. 228.1 CPA and the Regulation). The Applicant also seeks injunctive relief ordering Amazon to cease the prohibited practice;
29. Punitive damages are also appropriate – and important – in this case, especially when comparing Amazon’s conduct with that of other major retailers in Quebec selling extended warranties to consumers and who do respect the notice requirement of section 228.1 CPA and the Regulation when they sell extended warranties online to consumers residing in Quebec (see Exhibit P-1);
30. Selling extended warranties is extremely profitable for merchants such as Amazon, as highlighted in an article published on CAA Quebec’s website titled “*Garantie prolongée : à prendre ou à laisser?*”, communicated as **Exhibit P-12**:

« Selon le magazine Protégez-vous, de **40 à 75 % des appareils électroniques seraient vendus avec une garantie prolongée au Québec!**

...
L’employeur en profite également. Selon le magazine américain *Consumer Reports*, **les taux de profit des commerçants sur ces produits dérivés varient de 40 à 80 % !**
Pas étonnant : la majorité des biens tombent en panne seulement une fois la garantie expirée. »

31. Amazon’s patrimonial situation is significant enough that punitive damages of \$100 per member is appropriate in the circumstances;

Wayfair and Home Depot

32. Although the Applicant does not have a legal relationship with the other Defendants herein, it is well established law that she has standing to name Wayfair and Home Depot as Defendants in the present class action authorization application, given that the situations of the other Class Members are identical vis-à-vis Wayfair and Home Depot;

Wayfair

33. Indeed, up until the practice change which it implemented after being served with the initial authorization application, when selling its extended warranties on its websites (www.wayfair.com and www.wayfair.ca) and mobile application(s), Wayfair failed to inform class members about Quebec's legal warranty, as it appears from a simulation of the purchase process on www.wayfair.ca communicated as **Exhibit P-13**;
34. On its webpage titled "Protection Plans", Wayfair states: (https://www.wayfair.ca/help/article/protection_plans?rtype=7&redir=extended+warranty) "*If your product also has a manufacturer's warranty, coverage for product defects and mechanical or electrical failures begins the day the manufacturer's warranty expires*", as it appears from **Exhibit P-14**;
35. This same webpage (Exhibit P-14) states that Wayfair sells at least 3 different brands of extended warranties to Quebec consumers, namely: Warrantech, Allstate and Uniter. A copy of Wayfair's extended warranty titled "EXTENDED WARRANTY CONTRACT – Canada" is communicated as **Exhibit P-15**;
- 35.1 On or around October 31, 2022, Wayfair modified its business practice and now informs Class members of Quebec's legal warranty as required by law, as appears from Exhibit P-18 (taken on November 5, 2022);

Home Depot

36. Similarly, up until the practice change which it implemented after being served with the initial authorization application, Home Depot also failed to inform Class members about Quebec's legal warranty when selling its extended warranties on its website (and presumably in its stores) and mobile application(s), as it appears from a simulation of the purchase process on www.homedepot.ca communicated herewith as **Exhibit P-16**;
37. According to its "Terms and Conditions" webpage, the extended warranty sold by Home Depot is called "Allstate Protection Plans", which is "serviced by square trade, an Allstate company", Applicant communicating **Exhibit P-17**;
- 37.1 On or around September 30, 2022, Home Depot modified its business practice and now informs Class members of Quebec's legal warranty as required by law,

as appears from Exhibit P-19 (taken on November 5, 2022);

38. The same damages can therefore be claimed from Wayfair and Home Depot pursuant to s. 272 CPA on behalf of each class member, namely the reimbursement of the price paid for the extended warranty and \$100 each in punitive damages. The same injunctive relief is also sought against Wayfair and Home Depot, ordering them to cease the prohibited practice;

B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:

39. The Court of Appeal has recently ruled that a violation of section 228.1 CPA and the Regulation concerning the notice requirement (i.e. whether the Defendants failed in their duty to inform prior to selling an extended warranty to consumers) requires an objective analysis and is not analysed from one consumer to another: either the Defendants comply with the requirements of the law or they commit a prohibited practice within the meaning of section 228 CPA;

40. The evidence filed in support of the present application leaves no doubt that the Wayfair and Home Depot Defendants systemically failed to comply with s. 228.1 CPA and that the Amazon Defendants continue to fail to comply with s. 228.1;

- 40.1 Applicant submits that all Class members have a common interest both in proving the commission of a prohibited business practice (the violations of s. 228.1 CPA and its Regulations) by the Defendants and in maximizing the aggregate of the amounts unlawfully charged to them by the Defendants;

- 40.2 The damages to the Class members can be calculated and claimed as an aggregate amount based on the following formula:

$$\underline{[\text{total \# of extended warranties sold}] \times [\text{\$ for warranties}] = \text{aggregate damages}}$$

- 40.3 Class members are also entitled to claim an aggregate amount in punitive damages to be determined on the merits based on the Defendants' total sales (the current request is \$100 per Class member). Punitive damages are appropriate in this case where the Defendants are sophisticated retailers and are well aware that they should be informing Class members about Quebec's legal warranty before profiting from the sale of extended warranties;

41. The recourses of the class members raise identical, similar or related questions of fact or law, namely:

- a) Did Amazon, Wayfair or Home Depot fail in their duty to inform in their representations to Quebec consumers regarding the extended warranties they sell, in violation of section 228.1 CPA?
- b) In the absence of adequate information when representing the extended warranties to Quebec consumers, are the latter entitled to the remedies

provided for under section 272 CPA and, if so, which ones?

- c) Should Amazon, Wayfair or Home Depot pay compensatory and/or punitive damages to class members and in what amount?
- d) Should an injunctive remedy be ordered to prohibit Amazon [...] from continuing to perpetrate their prohibited conduct, as well as their concealment of important facts?

C) THE COMPOSITION OF THE CLASS

- 42. 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;
- 43. The Applicant conservatively estimates the number of persons included in the class to be in the thousands or more;
- 44. The present action includes all extended warranty brands sold to Class Members by the Defendants, including but not limited to: **(i)** on Amazon: Asurion, Fire TV and Echo dot (by SquareTrade) and SmartGuard (AMT Warranty); **(ii)** on Wayfair: Warrantech, Allstate and Uniters; and **(iii)** from Home Depot: Allstate Protection Plans, serviced by square trade;
- 45. The names and addresses of all persons included in the Class are not known to the Applicant, however, are all in the possession of Amazon, Wayfair and Home Depot since they receive the payment for the purchase of the extended warranties;
- 46. Class members are very numerous and are dispersed across the province;
- 47. 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;
- 48. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS

- 49. The Applicant requests that she be appointed the status of representative plaintiff for the following main reasons:
 - a) She is a member of the Class and has a personal interest in seeking the conclusions that he proposes herein;

- b) She is competent, in that he has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
- c) Her interests are not antagonistic to those of other Class members;

50. Additionally, the Applicant respectfully adds that:

- a) She has mandated her attorney to file the present application for the sole purpose of having her rights, as well as the rights of the other members, recognized and protected, and so that Amazon, Wayfair and Home Depot comply with the law in Quebec;
- b) She has the time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action;
- c) She cooperates and will continue to fully cooperate with her attorney;
- d) She has read this Application prior to its court filing;
- e) She understands the nature of the action;

II. DAMAGES

- 51. A breach of s. 228.1 CPA gives rise to an absolute presumption of prejudice under s. 272 CPA;
- 52. In light of the foregoing, the Applicant claims aggregate damages on her behalf and on behalf of each class member, pursuant to s. 272 CPA, in the aggregate amount of the purchase price paid to the Defendants for the extended warranties, plus \$100 per member on account of punitive damages;

III. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

- 53. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages, punitive damages and injunctive relief;
- 54. The conclusions that the Applicant wishes to introduce by way of an originating application are:

ALLOW the class action of the Representative Plaintiff and all class members against the Defendants;

ORDER the Defendants to cease engaging in any prohibited practices and to cease failing to disclose important information when selling extending warranties;

CONDEMN the Defendants to pay the Class members an amount to be determined on the merits pursuant to s. 272 CPA and **ORDER** that this condemnation be subject to collective recovery;

CONDEMN the Defendants to pay the Class members \$100.00 per member on account of punitive damages and **ORDER** that this condemnation be subject to collective recovery;

CONDEMN the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action and **ORDER** that this condemnation be subject to collective recovery;

ORDER the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest 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 Defendants to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

IV. JURISDICTION

55. The Applicant requests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, because she is a consumer and resides in this district.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages, punitive damages and for injunctive relief;
2. **APPOINT** the Applicant the status of Representative Plaintiff of the persons included in the Class herein described as:

Amazon Class:

All consumers who, since February 7, 2019, purchased an extended warranty on goods from the Amazon mobile application(s) and/or website(s).

(hereinafter the "**Amazon Class**")

Home Depot Class:

All consumers who, from February 7, 2019 to September 30, 2022, purchased an extended warranty on goods from the Home Depot mobile application(s) and/or website(s).

(hereinafter the “**Home Depot Class**”)

Wayfair Class:

All consumers who, from February 7, 2019 to October 31, 2022, purchased an extended warranty on goods from the Wayfair mobile application(s) and/or website(s).

(hereinafter the “**Wayfair Class**”)

3. **IDENTIFY** the principal questions of fact and law to be treated collectively as the following:
 - a) Did Amazon, Wayfair or Home Depot fail in their duty to inform in their representations to Quebec consumers regarding the extended warranties they sell, in violation of section 228.1 CPA?
 - b) In the absence of adequate information when representing the extended warranties to Quebec consumers, are the latter entitled to the remedies provided for under section 272 CPA and, if so, which ones?
 - c) Should Amazon, Wayfair, or Home Depot pay compensatory and/or punitive damages to class members and in what amount?
 - d) Should an injunctive remedy be ordered to prohibit Amazon [...] from continuing to perpetrate their prohibited conduct, as well as their concealment of important facts?

4. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:
 1. **ALLOW** the class action of the Representative Plaintiff and all class members against the Defendants;
 2. **ORDER** the Defendants to cease engaging in any prohibited practices and to cease failing to disclose important information when selling extending warranties;
 3. **CONDEMN** the Defendants to pay the Class members an amount to be determined on the merits pursuant to s. 272 CPA and **ORDER** that this condemnation be subject to collective recovery;
 4. **CONDEMN** the Defendants to pay the Class members \$100.00 per member on account of punitive damages and **ORDER** that this condemnation be subject to collective recovery;
 5. **CONDEMN** the Defendants to pay interest and the additional indemnity

on the above sums according to law from the date of service of the Application to authorize a class action and **ORDER** that this condemnation be subject to collective recovery;

6. **ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
7. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
8. **CONDEMN** the Defendants to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;
5. **ORDER** the publication 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** the Defendants to pay for said publication costs;
6. **FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;
7. **DECLARE** that all members of the Class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;
8. **RENDER** any other order that this Honourable Court shall determine;
9. **THE WHOLE** with costs including publication fees.

Montreal, November 7, 2022

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran

Attorney for the Applicant

276 Saint-Jacques Street, Suite 801

Montréal, Québec, H2Y 1N3

Telephone: (514) 379-1572

Telecopier: (514) 221-4441

Email: jzukran@lpclex.com

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

S U P E R I O R C O U R T
(Class Actions)

NO: 500-06-001195-227

EVA BITTON

Applicant

v.

AMAZON.COM.CA, INC.
ET ALS.

Defendants

AMENDED LIST OF EXHIBITS

- Exhibit P-1:** Extract of the Quebec Enterprises Register for Amazon;
- Exhibit P-2:** Screen capture of Wayfair's about us webpage <https://www.aboutwayfair.com/>;
- Exhibit P-3:** Extract of the Quebec Enterprises Register for Home Depot Canada Inc.;
- Exhibit P-4:** *En liasse*, screen captures of the CPA notice on the following websites: www.walmart.ca, www.costco.ca, www.bestbuy.ca, www.renodepot.com, www.rona.ca, www.staples.ca and www.thebrick.com, www.thesource.ca;
- Exhibit P-5:** Copy of the June 14, 2022 purchase confirmation from Amazon;
- Exhibit P-6:** Screen capture of Amazon's webpage: https://www.amazon.ca/dp/B07SNQXMLZ/ref=cm_sw_r_api_i_TY3_PXDH4N0BY59VV43S6_0;
- Exhibit P-7:** Screen capture of Amazon's webpage showing the description for the Extended Warranty;
- Exhibit P-8:** Copy of the June 14, 2022 purchase confirmation for the Extended Warranty;

- Exhibit P-9:** Redacted copy of Applicant's credit card transactions;
- Exhibit P-10:** Copy of June 14, 2022 email sent from Asurion;
- Exhibit P-11:** Copy of the Applicant's "Contract of Additional Warranty" from Asurion;
- Exhibit P-12:** Copy of the article published on CAA Quebec's website titled "Garantie prolongée : à prendre ou à laisser,"
- Exhibit P-13:** *En liasse*, screen captures of the purchase simulation on www.wayfair.ca;
- Exhibit P-14:** Wayfair webpage titled "Protection Plans": https://www.wayfair.ca/help/article/protection_plans?rtype=7&redir=extended+warranty;
- Exhibit P-15:** Copy of Wayfair's extended warranty titled "EXTENDED WARRANTY CONTRACT – Canada";
- Exhibit P-16:** *En liasse*, screen captures of the purchase simulation on www.homedepot.ca;
- Exhibit P-17:** Copy of the "Terms and Conditions" webpage for Home Depot's extended warranty (French version);
- Exhibit P-18:** *En liasse*, screen captures of the purchase simulation on www.wayfair.ca after the practice change;
- Exhibit P-19:** *En liasse*, screen captures of the purchase simulation on www.homedepot.ca after the practice change.

These exhibits are available on request.

Montreal, November 7, 2022

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran

Attorney for the Applicant

276 Saint-Jacques Street, Suite 801

Montréal, Québec, H2Y 1N3

Telephone: (514) 379-1572

Telecopier: (514) 221-4441

Email: jzukran@lpclex.com

500-06-001195-227

(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

EVA BITTON

Applicant

v.

AMAZON.COM.CA, INC.,
ET ALS

Defendants

**AMENDED APPLICATION TO AUTHORIZE THE
BRINGING OF A CLASS ACTION AND TO APPOINT
THE STATUS OF REPRESENTATIVE PLAINTIFF**
(ARTICLES 571 AND FOLLOWING C.C.P.)

ORIGINAL

Mtre Joey Zukran
LPC AVOCAT INC.
276 Saint-Jacques Street, Suite 801
Montréal, Québec, H2Y 1N3
Telephone: (514) 379-1572 • Fax: (514) 221-4441
Email: jzukran@lpclex.com

BL 6059

N/D: JZ-240
