

Action No: T-3644-24

PROPOSED CLASS PROCEEDING

FEDERAL COURT
FILED: 23rd. Dec. 2024
Montreal, Qc

FEDERAL COURT

BETWEEN:

IBRAHIM EL BECHARA

PLAINTIFF

AND:

COSTCO WHOLESALE CANADA LTD.

DEFENDANT

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor representing you must prepare a defense in Form 171B of the Federal Courts Rules, serve it on the plaintiff's solicitor or, if the plaintiff has not retained a solicitor, on the plaintiff himself and file it, together with proof of service, at a local court office:

WITHIN THIRTY DAYS of being served with this statement of claim, if served in Canada or the United States;

WITHIN SIXTY DAYS from the date this statement of claim is served on you, if served outside Canada and the United States;

TEN ADDITIONAL DAYS are allowed for the service and filing of the defense in the event that you or a lawyer representing you serve and file a notice of intention to respond in accordance with Form 204.1 of the Federal Courts Rules;

Copies of the Federal Courts Rules, as well as information concerning the local offices of the Court and other useful information, may be obtained on request from the Administrator of the Court in Ottawa (telephone no. 613-992-4238), or from any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: December 23rd, 2024

Issued by: _____
(Registry Officer)

Address of local office: 30, rue McGill, Montréal, Québec H2Y 3Z7

TO:

Costco Wholesale Canada Ltd.
415 West Hunt Club Road
Ottawa, Ontario
K2E1C5

STATEMENT OF CLAIM

A. Overview of the Claims in this Class Proceeding

1. This statement of proposed class proceedings concerns allegations relating to two separate offences found in PART VI of the Competition Act, R.S.C. 1985, c. C-34 (the “**Competition Act**”).
2. Firstly, these proceedings are based on allegations of double labelling concerning several products offered by the defendant Costco Wholesale Canada Ltd. (the “**Defendant**”); these products being sold at a higher price online than in-store, in contravention of section 54 of the Competition Act.
3. Secondly, the proceedings denounce the Defendant's practice of presenting false or misleading indications concerning 1) the absence of other charges and 2) the absence of any indication during an online purchase to the effect that the product is also available in-store.
4. The plaintiff Ibrahim El Bechara (the “**Plaintiff**”) claims damages as well as the reimbursement of investigation and legal costs, in order to compensate for the harm suffered as a result of the Defendant's breaches of the provisions of the Competition Act.
5. In addition, he is seeking an interlocutory and/or permanent injunction enjoining the Defendant from immediately ceasing the commercial practices at issue.

B. Claims of the Plaintiff and the Class Members

6. The Plaintiff wishes to be appointed representative for the members of the following class:

« All persons in Canada who, since December 23rd, 2022, have purchased a product from Costco via its mobile application or the Costco.ca website and who have paid an amount greater than that displayed in Costco stores for the same product. »

(the « **Class** »)

7. The conclusions sought by the Plaintiff are as follows:
- a) An order of this Court authorizing this action as a class proceedings and providing all necessary directions for its conduct, including the appointment of the Plaintiff as representative, pursuant to Rules 334.16 (1) and 334.17 of the Federal Courts Rules (the “**Rules**”).
 - b) A declaration by this Court that:
 - i. The Defendant applies higher prices online than in-store for the same product, in contravention of section 54 of the Competition Act; and/or
 - ii. The Defendant communicates false or misleading information concerning the selling price of the products as well as the shipping and handling charges, in violation of sections 52 (1) and 52.01 (2) of the Competition Act;

- iii. The Defendant also contravenes sections 52(1) and 52.01(2) of the Competition Act by communicating false or misleading information by failing to respect its commitment to confirm to its customers when a product sold online is also available in-store.
- c) Damages, in accordance with section 36 of the Competition Act;
- d) An order for the global assessment of the pecuniary relief and its distribution to the Plaintiff and to the members of the Class, in accordance with articles 334.28 (1) and (2) of the Rules ;
- e) Reimbursement of investigation and prosecution costs, in accordance with section 36 of the Competition Act;
- f) An interlocutory and/or permanent injunction enjoining the Defendant from contravening sections 52(1), 52.01(2) and/or 54 of the Competition Act, pursuant to section 44 of the Federal Courts Act, R.S.C. 1985, c. F-7 (the “**Federal Courts Act**”);
- g) Pre- and post-judgment interest, pursuant to sections 36 and 37 of the Federal Courts Act;
- h) Such other measures as this Honourable Court may deem just and appropriate in the circumstances.

C. The Defendant

8. The Defendant is a corporation governed by the Canada Business Corporations Act (R.S.C. (1985) c. C-44), as appears from the Federal Corporations Information Sheet referred to as Exhibit P-1, which carries on business throughout Canada, as appears from the result of a search of the Canada Business Register referred to as Exhibit P-2.
9. The Defendant is, among other things, registered in Quebec and specializes in the wholesale and retail sale of general merchandise and food products in Canada, as appears from a statement of information from a legal person to the Quebec Enterprise Registrar, invoked as Exhibit P-3.
10. As part of its commercial activities, the Defendant operates stores and the Costco.ca website.

D. Claims against the Defendant

i. Facts relating to section 54 of the Competition Act

11. The Defendant publishes the following information on its Costco.ca website:

« Why are prices different on Costco.ca and in the warehouse?

It's true that the same item offered on Costco.ca and in the warehouse may not be sold at the same price. The difference is due to shipping and handling charges for home or business delivery. Please note that Costco.ca does not match prices displayed in a Costco warehouse or vice versa.

If an item is available online and in the warehouse, the following message will appear on the item page on Costco.ca: "This item may

be available at your local Costco warehouse for immediate purchase at cash and carry. (our underlining)

As appears from an excerpt from the costco.ca website, cited as Exhibit P-4.

12. The Defendant thus admits to contravening section 54 of the Competition Act and to practicing double labelling for some of its products in the course of its activities, a practice consisting of charging the consumer the higher of two or more clearly displayed prices.
13. The Defendant practices this double labelling in Quebec, but also in other provinces;
 - ii. Facts relating to sections 52(1) and 52.01(2) of the Competition Act
14. During a purchase transaction on its website, the Defendant confirms in steps b), c) and d) that shipping and handling costs are \$0.00:
 - a) Product description sheet and addition to shopping cart, as shown on the sheets for two products, invoked as Exhibit P-5, en liasse;
 - b) Consultation of the shopping cart, as it appears from a shopping cart invoked as Exhibit P-6;
 - c) Checkout, as evidenced by a checkout invoked as Exhibit P-7;
 - d) Confirmation of the order on the Web page and by e-mail, as appears from these confirmations cited as Exhibit P-8, en liasse.

(the « **Steps in a purchasing transaction** »)

15. However, at the time of an online order, the Defendant provides the following information on the product sheets:

« **Shipping and returns**

Standard delivery is provided by UPS shipping service and is included in the listed price. For more information, see UPS delivery details.»

as shown in Exhibit P-5.

16. This statement contradicts the information provided by the Defendant at the other stages of the purchase transaction (exhibits P-6, P-7 and P-8), which states that shipping and handling costs are \$0.00.
17. In the excerpt from the website (Exhibit P-4), the Defendant undertakes to explicitly inform consumers whenever a product can be purchased immediately, without delivery charges, from a local warehouse at cash prices.
18. However, the Defendant does not systematically broadcast this message when a consumer consults the product sheet for a product offered on its Web site, even though these products are available in stores at the same time, as appears from the descriptive sheets, P-5, and the photos of these products available in stores, submitted as Exhibit P-9.

E. Facts related to the Plaintiff

- i. Facts relating to section 54 of the Competition Act

19. On July 10th, 2024, the plaintiff made an online purchase on the costco.ca website for two products:

- a) A Ninja Professional 2.0 blender with Auto-IQ technology, item no. 3333667 for \$84.99, and;
- b) one set of ramen bowls with chopsticks, item no. 1761340 at a price of \$29.97,

for a total price before taxes of \$114.96, as shown on the order web page, cited as Exhibit P-10.

20. During the same period, while shopping at one of the Defendant's Laval stores, the Plaintiff noticed that the price of the Ninja professional 2.0 blender with Auto-IQ technology, item no. 3333667, was posted at \$79.99, or \$5.00 less than what he had paid online for the same product.

21. On October 9, 2024, the Plaintiff purchased the following products on the Defendant's website:

- a) Glasslock - Food Container Set, 26-piece, item #1379252, with a list price of \$44.99; and
- b) Foodsaver - Roll and bag set, item #404103, for the advertised price of \$48.99.

for a total price before taxes of \$93.98 for these two products, as appears from the e-mail order confirmation cited as Exhibit P-11.

22. At the same time, the same products were being displayed at lower prices in stores, as shown by photos taken at the Boucherville branch and filed as Exhibit P-12. The price differences for these products are:

Item Name	Item Number	Price in stores	Price online	Difference
<i>Glasslock</i>	1379252	\$34,99	\$44,99	\$10,00
<i>Foodsaver</i>	404103	\$39,99	\$48,99	\$9,00

23. Also on October 9, 2024, research was carried out on certain other products offered online and in-store, confirming that the majority of online products were sold at a higher price than those in-store, as shown in a shopping cart P-13 and in-store prices P-12. The price differences for these products are as follows:

Item Name	Item Number	Price in stores	Price online	Difference
<i>Rowenta Access</i> - Iron with retractable cord	189157	\$49,99	\$59,99	\$10,00
Crock-Pot - Electric lunch box, portable warmer for meals on the go, 591.5 ml (20 oz)	2178594	\$29,99	\$39,99	\$10,00
<i>Miu</i> - Stainless steel mixing	1819867	\$34,99	\$44,99	\$10,00

bowl set, 8 pieces				
<i>Kirkland Signature</i> - 2.3 L (10-cup) Lake jug with 2 filters	1304047	\$24,99	\$31,99	\$7,00
<i>Kirkland Signature</i> - Water filter cartridges, pack of 10	1276702	\$32,99	\$39,99	\$7,00
<i>Baker's Secret</i> - XL baking tray with grill, 2 pieces	1821985	\$28,99	\$19,99	\$9,00
<i>BRITA</i> - Champlain Lake 2.4 L (10 cups) with 2 filters	1652023	\$29,99	\$37,99	\$8,00

24. On November 9th, 2024, the Plaintiff purchased the following products on the costco.ca website:

- a) FoodSaver vacuum sealing system with portable sealant attachment, item no. 3248298, priced at \$139.99;
- b) *Kirkland Signature* – fully cushioned merino wool blend socks, 4 pairs, item # 7771320, priced at \$23.99 ;

for a total price before taxes of \$163.98, as appears from various stages of a purchase transaction for these products (exhibits P-5, P-6, P-7 and P-8).

25. However, at the same time, the same products were being displayed at lower prices in store, as can be seen from photos taken at the Marché Central

branch and already filed as Exhibit P-9. The price differences for these products are as follows:

Item Name	Item Number	Price in stores	Price online	Difference
FoodSaver vacuum sealing system with portable sealant holder	3248298	\$139,99	\$129,99	\$10,00
<i>Kirkland Signature</i> – fully cushioned merino wool blend socks, 4 pairs	7771320	\$19,99	\$23,99	\$4,00

ii. Facts relating to sections 52(1) and 52.01(2) of the Competition Act

26. As previously mentioned, at certain Stages of a purchase transaction (Exhibits P-6, P-7 and P-8), it is confirmed on several occasions to the Plaintiff that shipping and handling charges are \$0.00.

27. This information is false and misleading since, on the one hand, following the online purchase P-8, the Defendant charged the Plaintiff an additional amount of \$14.00 before taxes compared to the in-store price (Exhibit P-9) and, on the other hand, the Defendant explicitly states that this price difference “is explained by shipping and handling charges” (Exhibit P-4).

28. Consequently, the Defendant cannot say at the same time that the price difference (\$14.00 or other) is explained by the shipping and handling charges and that these shipping and handling charges are \$0.00.
29. These false and misleading representations in three of the four stages of a purchase transaction concern an important point, since it is essential that the public be correctly informed as to whether or not they are paying shipping and handling charges.
30. As a result of these false and misleading indications, the Plaintiff was misled into believing that the Defendant was not charging him any other fees, which proved to be false upon verification (exhibits P-8 and P-9).
31. Thus, when an order includes several products, it is impossible for a consumer to identify and distinguish between the different charges billed to him/her.
32. This is all the more true in the case of multiple copies of the same product, where the consumer ends up paying the same amount of shipping and handling fees (\$14.00 or other) several times over, while the Defendant persists in indicating that these fees are \$0.00, as shown in the transaction, Exhibit P-14, which includes ten copies of the same product, even though it is offered at a lower price in stores (P-12).
33. An investigation conducted by Plaintiff's counsel also revealed that, despite undertaking P-4 made by Defendant, its website fails to display the statement

“this item may be available at your local Costco store for immediate purchase at cash price without delivery” on the page of a product whose online price (Exhibit P-5) is higher than that offered in-store (Exhibit P-9).

34. In the absence of this message, the consumer is entitled to think that the product is only available online and to ignore the fact that he could buy it at a more advantageous price in a store.

F. Plaintiff and Class Members

35. The Plaintiff resides in the Province of Quebec and this action is brought on behalf of the following Class:

« All persons in Canada who, since December 23rd, 2022, have purchased a product from Costco via its mobile application or the Costco.ca website and who have paid an amount greater than that displayed in Costco stores for the same product. »

36. According to the “Statista” website, the Defendant's revenues were US\$33 billion in 2023, a significant percentage of which came from online sales, as appears from an excerpt from the website cited as Exhibit P-15.

37. The Class consists of thousands of persons who have suffered harm similar to that suffered by Plaintiff as a result of Defendant's violations of the Competition Act.

G. Plaintiff's claims

38. As explained above, the Defendant is in breach of sections 52(1), 52.01(2) and 54 of the Competition Act.
39. These contraventions cause damages to the Plaintiff and the members of the Class, who are entitled to avail themselves of section 36 (1) of the Competition Act to claim and recover an amount equal to the amount of these damages as well as the additional costs provided for by law.
40. With regard to the contravention of sections 52(1) and 52.01(2) of the Competition Act, the Plaintiff claims an amount equal to the price of the transport charged to him without his knowledge or as a result of false or misleading information from the Defendant.
41. With regard to the contravention of section 54 of the Competition Act, the Plaintiff claims an amount equal to the difference between the price of the same product sold simultaneously online and in stores.
42. The Plaintiff also claims the costs incurred for the investigation and prosecution of all the contraventions.

H. Jurisdiction and place of trial

43. The Federal Court is a competent court under section 36(3) of the Competition Act.
44. The Plaintiff wishes to bring this action in the District of Montreal, Province of Quebec.

Montreal, December 23rd, 2024

Perrier Avocats
Me Eric Perrier
Me Réjean Paul Forget
Me Jocelyn Ouellette
Me Francis Thibault-Ménard
Plaintiff's lawyers
10500, boul. Saint-Laurent
Montréal, Québec H3L 2P4
Tél. : 514 336-2769, poste 201
Télec. : 514 906-6132
ep@perrieravocats.com
rpf@perrieravocats.com
jo@perrieravocats.com
ftm@perrieravocats.com

Beloeil, December 23rd, 2024

Fortin Simard, Avocats inc.
Me Nancy Fortin
Plaintiff's lawyers
2020, rue André-Labadie, bureau PH503
Beloeil, Québec J3G0W6
Tél. : 450-906-3563
Télec. : 450-906-3564
nfortin@fortinsimardavocats.com