

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000968-194

(Class Action)
SUPERIOR COURT

DAVID ZOUZOUT, [REDACTED]
[REDACTED]

Applicant

-VS-

CANADA DRY MOTT'S INC., legal person
having its head office at 30 Eglinton Avenue
West, Suite 600, Mississauga, Ontario, L5R
3E7

and

KEURIG DR PEPPER INC., legal person
having its corporate headquarters at 53 South
Avenue, Burlington, Massachusetts, 01803,
U.S.A.

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 THE HONOURABLE JUSTICE GARY D.D. MORRISON, OF THE SUPERIOR
COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT
STATES AS FOLLOWS:**

I. INTRODUCTION

1. The Applicant wishes to institute a class action on behalf of the following class of which he is a member, namely:

Class:

All consumers who purchased, in Canada (subsidiarily in Quebec), any Canada Dry Ginger Ale product marketed as

“Made from Real Ginger” or *“Fait à partir de vrai gingembre”*;

(hereinafter referred to as the “**Class**”)

or any other Class to be determined by the Court;

2. The Defendants produce, market, distribute and sell their Canada Dry Ginger Ale products to Class members as *“Made From Real Ginger”* and *“Fait à partir de vrai gingembre”*, Applicant disclosing *en liasse* pictures of ginger ale cans purchased in Montreal around December 2018 and January 2019 as **Exhibit P-1**;

3. The Defendants’ statement that their ginger ale is *“Made From Real Ginger”* and *“Fait à partir de vrai gingembre”* is misleading to consumers because it gives the false impression that Canada Dry ginger ale contains a functional amount of ginger, [...] when in reality the quantity of ginger extracting flavour contained in a can or bottle of Canada Dry ginger ale is negligible and does not support the representation that the product is “Made From Real Ginger”;

3.1 The Applicant communicates herewith as **Exhibit P-12** the November 8, 2019, expert report titled “Analysis of Ginger Content in Canada Dry Ginger Ale” prepared by MSEI MultiSciences Expertises Inc., which confirms that only a microscopic amount of ginger extracting flavour is used in Canada Dry’s ginger ale sold in Canada:

“Since a typical can of Ginger ale contains a total liquid volume of 355 ml (0.355 L), the actual amount of these two natural extracting flavours would be approximately 0.75 mg per can.

These concentrations represent less than 0.00021% of the total content of the Canada Dry Ginger Ale soft drink. In order to put this in perspective, the weight of a drop of water is fifty milligrams (50 mg). **So, each can of 355 ml of Ginger Ale contains less than 1/70th of a drop of Gingerol and Shogaol. It is therefore equivalent to one drop of Gingerol and Shogaol in 25 litres (approximately 70 cans) of Ginger Ale soft drinks.**

[Exhibit P-12, p. 8]

3.2 Therefore, the quantity of Gingerol and Shogaol in Canada Dry’s ginger ale (1 drop for every 70 cans) does not support the representation that the product is “Made from Real Ginger”, as the Applicant and your average credulous and inexperienced consumer would be under the impression that “Made from Real Ginger” means that the product contains more than just 1 drop of natural extracting flavour for every 70 cans;

4. The Defendants' internal documents show that they are well aware that many Class members purchase their products because they are under the false impression that their ginger ale products offer the health benefits of a product made from real ginger plant or root, Applicant disclosing the judgment dated June 26, 2018 from the United States District Court - Northern District of California as **Exhibit P-2** which finds the following:

Moreover, Dr. Pepper's internal documents show that Dr. Pepper thought the "Made From Real Ginger" claim was material. For example, in 2009, Dr. Pepper's internal documents revealed that 63% of people did not think ginger ale had ginger in it. Dkt. No. 180-21 at 14 (Exh. 18, DPS_001113). In the same exhibit, **it is shown that to capitalize on the alleged health halo ginger products have to consumers, Canada Dry would encourage people to believe that "Canada Dry Ginger Ale is a [carbonated soda drink] that fits into your healthy lifestyle because it is made from real ginger."** Id. at 15 (Exh. 18, DPS_001114). However, Canada Dry's internal documents reveal that **when respondents were asked their reasons for drinking Canada Dry five years later, the top five reasons were: (1) "I trust and respect the Canada Dry Brand (28%)", (2) "Drinking Canada Dry makes me feel better by soothing my stomach (26%)", (3) "Canada Dry is easy to find in stores (26%)", (4) "Canada Dry tastes good with food (25%)", and (5) "Canada Dry is made with real ginger (25%)".** Dkt. No. 184-23 (Exh. 22, DPS_047475) (emphasis added). Essentially, **Dr. Pepper's documents show that through its marketing, it orchestrated a change in consumer perceptions. Moreover, additional documents show that the purpose of the ginger claim was to make people believe that Canada Dry offers the health benefits of real ginger:**

[...]

Dkt. No. 180-21 at 16. Perhaps the piece of evidence that most **clearly shows that materiality of the ginger claim** is a Dr. Pepper Snapple Group Canada Dry 2011 Agency Briefing dated December 15, 2009, which provides:

2009 Canada Dry Renovation "Made From Real Ginger" program is working

- New news

- Strong POD and message relevant to target consumer

- Consumer awareness and brand equity increased

- ***Purchase frequency and volume growth escalated to +8.5%***

Dkt. No. 180-37 at 4 (Exh. 34, DPS_143308) (emphasis added).

5. This class action seeks the reimbursement of the amounts overpaid by Class members for their purchases of Canada Dry ginger ale because the Defendants [...] defrauded consumers by selling Canada Dry Ginger Ale using the misleading representation of [...] “Made From Real Ginger” and “Fait à partir de vrai gingembre” on its packaging, as well as punitive damages in the amount of \$15 million;

II. THE PARTIES

6. Applicant resides in the judicial district of Montreal and is a consumer within the meaning of article 1384 C.C.Q., as well as within the meaning of section 1(e) of the *Consumer Protection Act* (“CPA”);
7. The Defendant Canada Dry Mott’s Inc. is a merchant engaging in the manufacturing, distribution, sale, marketing and promotion of beverages in Canada, as it appears from an extract of the CIDREQ, **Exhibit P-3**;
8. The Defendant Canada Dry Mott’s Inc. appears to be the manufacturer, distributor, vendor, marketer and promoter of Canada Dry Ginger Ale in Canada, as it appears from the pictures of Canada Dry cans (already disclosed as Exhibit P-1);
9. Defendant Keurig Dr Pepper Inc. is the parent company of Canada Dry Mott’s Inc. and owner of the Canada Dry brand, Applicant disclosing a screen capture taken take from the Defendants’ website <https://www.canadadrymotts.ca/brands/canada-dry> as **Exhibit P-4**;
10. Given the close ties between the Defendants and considering the preceding, they are solidarily liable for the acts and omissions of the other;

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

A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT

11. Applicant believed the Defendants’ health claims that its Canada Dry Ginger Ale was “natural” and “*Made from Real Ginger*”, as it appears from the pictures of the

cans, Exhibit P-1, as well as from the Defendants' website, Exhibit P-4. This same false claim was also made in the Defendants' TV commercials, such as the ones disclosed as **Exhibit P-5** and **Exhibit P-9**;

- 11.1 The packaging on Canada Dry ginger ale products never adequately informed the Applicant that there was only a negligible quantity of ginger extracting flavour in the beverage (1 drop for every 70 cans according to Exhibit P-12);
12. Applicant would often drink Canada Dry Ginger Ale and has spent hundreds of dollars (if not more) purchasing the beverage both individually and in packs from grocery stores in Montreal in the last few years alone;
13. He would especially purchase and ingest Canada Dry Ginger Ale when he had a gastro or stomach ache because he was under the impression that Canada Dry offered natural health benefits (i.e. ginger root), which in reality it did not;
14. When making his purchases, Applicant was under the false impression that the Defendants' Canada Dry Ginger Ale was made with and contained more than just a non-negligible amount of [...] ginger extracting flavour [...];
15. In fact, Applicant would only purchase Canada Dry Ginger Ale and deliberately avoided purchasing other brands such as *Schweppes* or *President's Choice* ginger ale, because these other brands do not claim to be *made from real ginger*, Applicant disclosing *en liasse* pictures of the *Schweppes* and *President's Choice* ginger ale beverages as **Exhibit P-6** (it is interesting to note that *Schweppes* is distributed by Defendant Canada Dry Mott's Inc. and owned by Defendant Keurig Dr Pepper Inc.);
16. Had Applicant been aware that Canada Dry Ginger Ale [...] only contained a microscopic amount of ginger extracting flavour [...] he would have never purchased the Defendants' beverages;
17. On January 12, 2019, Applicant read a National Post article published online the night before titled "*Facing false advertising lawsuits, Canada Dry drops claim it is 'made from real ginger'*" and discovered that the Defendants' claims that Canada Dry is "*Made from Real Ginger*" is false and misleading, Applicant disclosing the news article as **Exhibit P-7**;
18. In reading this article Applicant learnt that under the proposed terms of an American class action settlement Canada Dry is offering refunds to consumers in the United States, but not to Canadian consumers, Applicant disclosing *en liasse* the Notice to class members and the Frequently Asked Questions as **Exhibit P-8**;
19. The Defendants have also publicly declared that they will remove the "*Made from Real Ginger*" claim from their Canada Dry Ginger Ale beverages, which for the Applicant constitutes an admission of the Defendants' heretofore illegal behavior;

19.1 Prior to learning about the filing of the present class action (filed on January 14, 2019), it appears that the Defendants did not intend on modifying the misleading “Made from Real Ginger” representation in Canada, Applicant disclosing the January 14, 2019 National Post article titled “Canada Dry will still tell Canadians it is ‘Made from Real Ginger’ — just not Americans” as **Exhibit P-10**;

19.2 However, it appears that several weeks later the Defendants decided to modify their labelling in Canada as well, Applicant disclosing the January 29, 2019 CBC article titled “Canada Dry planning to change labelling after ‘Made from Real Ginger’ lawsuits” as **Exhibit P-11**;

20. In Quebec, to this day, the Defendants continue to violate the following sections of the CPA:

221 (a)	No merchant, manufacturer or advertiser may, falsely, by any means whatever, hold out that goods or services include certain parts, components or ingredients;
228	No merchant, manufacturer or advertiser may fail to mention an important fact in any representation made to a consumer.
239 (a)	No merchant, manufacturer or advertiser may, by any means whatever, distort the meaning of any information, opinion or testimony;
239 (b)	No merchant, manufacturer or advertiser may, by any means whatever, rely upon data or analyses falsely presented as scientific.
40	The goods or services provided must conform to the description made of them in the contract.
41	The goods or services provided must conform to the statements or advertisements regarding them made by the merchant or the manufacturer. The statements or advertisements are binding on that merchant or that manufacturer.

21. Applicant reiterates that had he been informed of the fact that Canada Dry ginger ale only contains a microscopic and negligible amount of ginger extracting flavour [...] he would have never purchased this beverage and therefore requests the full reimbursement of his Canada Dry Ginger Ale purchases which totals no less than \$500.00 (Applicant stopped purchasing Canada Dry Ginger Ale after filing the present class action);

22. He also claims punitive damages pursuant section 272 CPA;

23. Applicant also claims damages pursuant to articles 1400, 1401 and 1407 C.C.Q.;

24. The Applicant’s damages are a direct and proximate result of Defendants’ misconduct;

25. Finally, Applicant benefits from an absolute presumption of prejudice because:

a) He is a consumer within the meaning of the CPA;

- b) Defendants are merchants within the meaning of the CPA;
- c) Defendants [...] claim that Canada Dry Ginger Ale is “Made from Real Ginger” is misleading within the meaning of the CPA and other Canadian legislation;
- d) Applicant saw the Defendants’ misleading claims on their product labelling;
- e) After seeing the Defendants’ misleading representations on Canada Dry Ginger Ale beverages, Applicant entered into a consumer contract by purchasing Canada Dry Ginger Ale;
- f) There existed a sufficient nexus between the content of the Defendants’ representations and the goods covered by the contract (the Defendants’ practice influenced the Applicant’s behavior with respect to the formation of the contract);

Applicant’s claims for punitive damages

- 26. The overall conduct of the Defendants before, during and after the violations, were lax, careless, passive and ignorant with respect to consumers’ rights and to their own obligations (they continued making the misleading claims even after being exposed publicly and sued in multiple jurisdictions);
- 27. The Defendants breach and continue to breach the CPA, without any explanation (other than to maximize profits), for a significant period;
- 28. This complete disregard for consumers’ rights and to their own obligations under the CPA is in and of itself an important reason for this Court to enforce measures that will punish the Defendants, as well as deter and dissuade other entities – both local and foreign - from engaging in similar reprehensible conduct to the detriment of Canadian consumers;
- 29. The reality is that the Defendants have likely generated millions of dollars in profits over the years by misleading consumers by stating that Canada Dry Ginger Ale was “*Made with Real Ginger*”, when the negligible amount of ginger extracting flavour it contains does not support this representation;
- 30. The punitive damages provided for in section 272 CPA have a preventive objective, that is, to discourage the repetition of such undesirable conduct;
- 31. The Defendants’ violations are intentional, calculated, malicious and vexatious;
- 32. Applicant is accordingly entitled to claim and does hereby claim from Defendants, on behalf of himself and all Class members, the sum of \$15 million on account of punitive damages, subject to adjustment;

33. The Defendants' patrimonial situations are so significant that the foregoing amount of punitive damages is appropriate in the circumstance (Keurig Dr Pepper Inc. is a publicly traded company (NYSE:KDP) with annual revenues of more than \$11 billion);

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

34. All Class members have a common interest both in proving the violations of the CPA by Defendants and in maximizing the aggregate of the amounts unlawfully paid for Canada Dry Ginger Ale [...];
35. In this case, the legal and factual backgrounds at issue are common to all Class members, namely whether the Defendants' "*Made from Real Ginger*" claims are objectively misleading;
36. The claims of every Class member are founded on very similar facts to the Applicant's claims;
37. By reason of Defendants' unlawful conduct, Applicant and every Class member has suffered damages, which they may collectively claim against the Defendants;
38. In taking the foregoing into account, all members of the Class are justified in claiming the sums which they unlawfully overpaid to Defendants, as well as punitive damages pursuant to section 272 CPA;
39. Each Class Member is justified in claiming the following as damages:
- Reimbursement of the purchase price for Canada Dry beverages that contained the misleading claim "*Made from Real Ginger*" or "*Fait à partir de vrai gingembre*"; and
 - Punitive damages in the aggregate amount of \$15 million, subject to adjustment;
40. All of the damages to the Class members are a direct and proximate result of the Defendants' misconduct;
41. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;
42. **The recourses of the Class Members raise identical, similar or related questions of fact or law, namely:**
- a) Does the Defendants "*Made from Real Ginger*" claim violate Title I and Title II of the CPA and, if so, are Class members entitled to compensatory and punitive damages?

- b) Do Defendants act in bad faith?
- c) When does prescription start for Class members and what are the factors common to the Class members regarding the impossibility in fact to act?

C) THE COMPOSITION OF THE CLASS

- 43. 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;
- 44. Canada Dry is the most popular ginger ale beverage and is consumed by, at the very least, thousands of people in Quebec and in Canada;
- 45. The size of the Class is conservatively estimated to include tens of thousands of members in the province of Quebec alone;
- 46. The names and addresses of all persons included in the Class are not known to the Applicant;
- 47. Class members are very numerous and are dispersed across the province, across Canada and elsewhere;
- 48. 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;
- 49. In these circumstances, a class action is the only appropriate procedure for all Class members 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

- 50. Applicant requests that he be appointed the status of representative plaintiff for the following main reasons:
 - a) he is a member of the Class and has a personal interest in seeking the conclusions that he proposes herein;
 - b) he is competent, in that they 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) his interests are not antagonistic to those of other Class members;
- 51. Additionally, Applicant respectfully adds that:
 - a) on January 12, 2019, he was flabbergasted to learn that he had been

deceived all these years by Defendants and shared the National Post article, Exhibit P-7, on his personal Facebook page to share the story with others;

- b) he mandated his attorney to file the present application for the sole purpose of having his rights, as well as the rights of other Class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of Defendants' illegal behavior and so that the Defendants can be held accountable for their misconduct;
 - c) he cooperates and will continue to fully cooperate with his attorney, who has experience in consumer protection-related class actions;
 - d) he understands the nature of the action;
52. As for identifying other Class members, Applicant draws certain inferences from the situation and realizes that by all accounts, there is a very important number of Class members that find themselves in an identical situation, and that it would not be any more useful for him to attempt to identify them given their sheer number;
- 52.1 Nonetheless, Applicant was able to identify more than 5000 class members who "signed up" to class counsel's website created for this class action: <https://lpclex.com/canadadry/> (English) and <https://lpclex.com/fr/canadadry/> (French);
53. For the above reasons, Applicant respectfully submits that his interest and competence are such that the present class action could proceed fairly and in the best interest of Class members;

IV. DAMAGES

54. During the Class Period, the Defendants have likely generated millions of dollars (if not more) from purchases made by Class members of Canada Dry Ginger Ale containing the misleading "*Made from Real Ginger*" claim;
55. Defendants' misconduct – which consists of misleadingly stating that their ginger ale is "*Made from Real Ginger*" (and therefore presumably healthier than other products) is reprehensible and to the detriment of vulnerable consumers;
56. Consequently, Defendants have breached several obligations imposed on them by the *Competition Act* (s. 52), as well as under consumer protection and trade practice legislation in Quebec and other Canadian provinces, including:
- a) Quebec's *Consumer Protection Act*, notably sections 40, 41, 221 a), 228, 239 a), 239 b) and 272;
 - b) The *Civil Code of Quebec*, notably articles 6, 7, 1400, 1401 and 1407;

- c) Alberta's *Fair Trading Act*, RSA 2000, c F-2, including sections 6, 7 and 13;
 - d) Saskatchewan's *The Consumer Protection and Business Practices Act*, SS 2014, c C-30.2, including sections 6-9 and 93;
 - e) Manitoba's *The Business Practices Act*, CCSM c B120, including sections 2, 3 and 23;
 - f) British Columbia's *Business Practices and Consumer Protection Act*, SBC 2004, c 2, including sections 4-10;
 - g) Ontario's *Consumer Protection Act*, 2002, SO 2002, c 30, Schedule A, including sections 11 and 14;
 - h) New Brunswick's *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1, including sections 4, 10, 15-18 and 23;
 - i) Nova Scotia's *Consumer Protection Act*, RSNS 1989, c 92, including sections 26 and 28A;
 - j) Prince Edward Island's *Business Practices Act*, RSPEI 1988, c B-7, including sections 2-4;
 - k) Newfoundland and Labrador's *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, including sections 7-10;
57. In light of the foregoing, the following damages may be claimed against the Defendants:
- a) compensatory damages, in an amount to be determined, on account of the damages suffered;
 - b) punitive damages in the amount of \$15 million for the breach of obligations imposed on Defendants pursuant to section 272 CPA (as well as the common law should a national class be authorized);

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

- 58. The action that the Applicant wishes to institute on behalf of the Class members is an action in damages;
- 59. The conclusions that the Applicant wishes to introduce by way of an originating application are:

GRANT the Representative Plaintiff's action against Defendants on behalf of all the Class members;

DECLARE the Defendants solidarily liable for the damages suffered by the

Applicant and each Class member;

CONDEMN the Defendants solidarily to pay the Representative Plaintiff and Class members compensatory damages in an amount to be determined and **ORDER** collective recovery of these sums;

CONDEMN the Defendants solidarily to pay Class members the sum of \$15 million on account of punitive damages, subject to adjustment, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants solidarily to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*;

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 solidarily to bear the costs of the present action at all levels, including the cost of all 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;

RENDER any other order that this Honourable Court shall determine;

60. The interests of justice favour that this Application be granted in accordance with its conclusions;

VI. JURISDICTION

61. Applicant respectfully requests that this class action be exercised before the Superior Court in the district of Montreal because he is a consumer domiciled and residing in the district of Montreal;

VII. PRESCRIPTION AND IMPOSSIBILITY TO ACT

62. Prescription should not run against Class members because it was impossible in fact for them to act;
63. Indeed, Class members could not have acted previously as they had no reason to suspect that Defendants were making misleading representations prior to Defendants publicly stating that they will remove the “*Made from Real Ginger*” claims from their Canada Dry Ginger Ale product labelling;
64. In the present case, the Defendants’ conduct (consisting of continuing to

manufacture, market and sell Canada Dry as “*Made from Real Ginger*”) misleads Class members and the Court has found that such conduct causes an impossibility to act.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **GRANT** the present application;
2. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages;
3. **APPOINT** the Applicant the status of Representative Plaintiff of the persons included in the Class herein described as:

Class:

All consumers who purchased, in Canada (subsidiarily in Quebec), any Canada Dry Ginger Ale product marketed as “*Made from Real Ginger*” or “*Fait à partir de vrai gingembre*”;

(hereinafter referred to as the “**Class**”)

or any other Class to be determined by the Court;

4. **IDENTIFY** the principle questions of fact and law to be treated collectively as the following:
 - a) Does the Defendants “*Made from Real Ginger*” claim violate Title I and Title II of the CPA and, if so, are Class members entitled to compensatory and punitive damages?
 - b) Do Defendants act in bad faith?
 - c) When does prescription start for Class members and what are the factors common to the Class members regarding the impossibility in fact to act?
5. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:
 - a) **GRANT** the Representative Plaintiff’s action against Defendants on behalf of all the Class members;
 - b) **DECLARE** the Defendants solidarily liable for the damages suffered by the Applicant and each Class member;
 - c) **CONDEMN** the Defendants solidarily to pay the Representative Plaintiff and Class members compensatory damages in an amount to be determined and **ORDER** collective recovery of these sums;

- d) **CONDEMN** the Defendants solidarily to pay Class members the sum of \$15 million on account of punitive damages, subject to adjustment, and **ORDER** collective recovery of these sums;
 - e) **CONDEMN** the Defendants solidarily to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*;
 - f) **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;
 - g) **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
 - h) **CONDEMN** the Defendants solidarily to bear the costs of the present action at all levels, including the cost of all 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;
 - i) **RENDER** any other order that this Honourable Court shall determine;
6. **DECLARE** that all members of the Class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;
7. **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 judgement to be rendered herein;
8. **ORDER** the publication of a notice to the members of the Class in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in the "News" sections of the Saturday editions of La Presse and the Montreal Gazette;
9. **ORDER** that said notice be published on the Defendants' various websites, Facebook pages and Twitter accounts, in a conspicuous place, with a link stating "Notice of a Class Action";
10. **RENDER** any other order that this Honourable Court shall determine;
11. **THE WHOLE** with legal costs, including publication fees.

Montreal, November 24, 2019

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Per: Me Joey Zukran

Attorney for Applicant

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Action)
SUPERIOR COURT

NO: 500-06-000968-194

DAVID ZOZOUT

Applicant

-vs-

CANADA DRY MOTT'S INC.

and

KEURIG DR PEPPER INC.

Defendants

AMENDED LIST OF EXHIBITS

- Exhibit P-1:** *En liasse*, pictures of ginger ale cans purchased in Montreal around December 2018 and January 2019 showing the “*Made From Real Ginger*” and “*Fait à partir de vrai gingembre*” claims;
- Exhibit P-2:** Judgment dated June 26, 2018, from the United States District Court - Northern District of California certifying the class action for the “*Made From Real Ginger*” claims;
- Exhibit P-3:** Extract of the CIDREQ for Canada Dry Mott's Inc.;
- Exhibit P-4:** Screen capture taken from the Defendants' website: <https://www.canadadrymotts.ca/brands/canada-dry>;
- Exhibit P-5:** USB containing the Canada Dry Ginger Ale TV commercial;
- Exhibit P-6:** *En liasse*, pictures of the Schweppes and President's Choice ginger ale beverages;
- Exhibit P-7:** Copy of January 11, 2019 National Post article titled “*Facing false advertising lawsuits, Canada Dry drops claim it is 'made from real ginger'*”;

- Exhibit P-8:** *En liasse*, copies of the Notice to Class members and Frequently Asked Questions in the settlement in *George v. Keurig Dr Pepper Inc.*;
- Exhibit P-9:** USB key containing video of Canada Dry's Jack Ginger Farm commercial;
- Exhibit P-10:** Copy of January 14, 2019 National Post article titled "Canada Dry will still tell Canadians it is 'Made from Real Ginger' — just not Americans;
- Exhibit P-11:** Copy of January 29, 2019 CBC article titled "Canada Dry planning to change labelling after 'Made from Real Ginger' lawsuits;
- Exhibit P-12:** Expert Report dated November 8, 2019 titled "Analysis of Ginger Content in Canada Dry Ginger Ale" prepared by MSEI MultiSciences Expertises Inc.;

These exhibits are available on request.

Montréal, November 24, 2019

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Per: Me Joey Zukran

Attorney for Applicant

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(Class Action)
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(ARTICLES 571 AND FOLLOWING C.C.P.)

ORIGINAL

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N/D : JZ-192
