

(Class Action)
Superior Court

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO.: 500-06-000798-161

DATE: NOVEMBER 1, 2017

PRESENT: THE HONORABLE STÉPHANE SANSFAÇON, J.S.C.

STEPHANIE J. BENABU

Applicant

v.

**VIDÉOTRON S.E.N.C.
VIDÉOTRON LTÉE
NETFLIX INC.
BELL CANADA
ROGERS COMMUNICATIONS INC.
APPLE INC.
LINKEDIN IRELAND
GOOGLE INC.
SHOMI PARTNERSHIP
ROGERS MEDIA INC.
SIRIUS XM CANADA INC.
SPOTIFY CANADA INC.
AFFINITAS GMBH
MATCH.COM LLC
AUDIBLE INC.**

Defendants

JUDGMENT

(ON A CONSOLIDATED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AGAINST SPOTIFY CANADA INC. FOR SETTLEMENT PURPOSES AND FOR APPROVAL OF NOTICES TO CLASS MEMBERS OF A SETTLEMENT APPROVAL HEARING)

- [1] **CONSIDERING** the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* filed on July 4th, 2016 against Spotify Canada Inc. and twenty-four (24) other defendants on behalf of the following proposed Class and Subclass (the "Class Members"):

Class:

Every consumer, pursuant to the terms of Quebec's Consumer Protection Act ("CPA"), who since July 4th, 2013 (the "Class Period"), was provided services or goods at a reduced price (the "Reduced Price"), for a fixed period (the "Fixed Period"), by any of the Defendants, and who, after the Fixed Period, was required to send a notice to any of the Defendants indicating that he/she does not wish to obtain the services or goods at the regular price (the "Regular Price");

Subclass:

Every consumer, pursuant to the terms of Quebec's Consumer Protection Act ("CPA"), who since July 4th, 2013 (the "Class Period"), was provided services or goods free of charge, for a fixed period (the "Fixed Period"), by any of the Defendants, and who, after the Fixed Period, was required to send a notice to any of the Defendants indicating that he/she does not wish to obtain the services or goods at the regular price (the "Regular Price");

- [2] **CONSIDERING** the transaction executed between the Applicant and Defendant Spotify Canada Inc. on October 19th and 23rd, 2017 filed as Exhibit SFY-1 (the "**Settlement Agreement**");
- [3] **CONSIDERING** the *Consolidated Application for Authorization to Institute a Class Action for Settlement Purposes and for Approval of Notices to Class Members of a Settlement Approval Hearing* (the "**Consolidated Application**");
- [4] **CONSIDERING** that pursuant to the Consolidated Application, the Applicant is asking the Court to authorize the class action against Defendant Spotify Canada Inc. for settlement purposes and to approve notices informing the Class Members that the Settlement Agreement will be submitted to the Court for approval;

- [5] **CONSIDERING** the proposed French and English versions of the pre-approval notices filed *en liasse* as Exhibit SFY-2 in support of the Consolidated Application;
- [6] **CONSIDERING** the submissions of counsel for the Applicant and counsel for the Defendant Spotify Canada Inc. who consents to the Consolidated Application;
- [7] **CONSIDERING** that the criteria set out in article 575 of the *Code of Civil Procedure* to authorize a class action are applied with flexibility when the authorization of the class action is sought for settlement purposes¹;
- [8] **CONSIDERING** that the Court is of the opinion that the four criteria set out in article 575 of the *Code of Civil Procedure* to authorize a class action are met, namely that:

- (1) the claims of the members of the class raise identical, similar or related issues of law or fact, as those consumers would have similar claims;
- (2) the facts alleged appear to justify the conclusions sought.

The Applicant alleges that the Defendants offered services free for a certain period of time, before charging the regular price if the members did not take steps to indicate that they do not wish to obtain the services after the said period, and that in doing so, it acted in violation of paragraph *c* of section 230 of Quebec's *Consumer Protection Act*, which provides that :

Art. 230 (c) : No merchant, manufacturer or advertiser may, by any means whatever,

(...)

(c) require that a consumer to whom he has provided services or goods free of charge or at a reduced price for a fixed period send a notice at the end of that period indicating that the consumer does not wish to obtain the services or goods at the regular price.

Therefore, the arguable case has been made at this stage;

- (3) 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; and
 - (4) the class member appointed as representative plaintiff is in a position to properly represent the class members.
- [9] **CONSIDERING** articles 575, 576, 579, 580, 581 and 590 of the *Code of Civil Procedure*;

¹ *Dupuis c. Polyone Canada inc.*, 2016 QCCS 2561 (CanLII), par. 9.

FOR THESE REASONS, THE COURT:

- [10] **GRANTS** the *Consolidated Application for Authorization to Institute a Class Action for Settlement Purposes and for Approval of Notices to Class Members of a Settlement Approval Hearing*;
- [11] **AUTHORIZES** Applicant, for the purpose of settlement against Defendant Spotify Canada Inc., to amend as follows the Class description in the "*Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*":

In English:**Class:**

All consumers residing in Québec who (i) started a subscription to the Spotify Premium service between July 4, 2013 and October 31, 2017 (the "**Class Period**", (ii) received a free trial, (iii) were automatically renewed at the regular price following the end of their free trial period and (iv) subsequently cancelled their subscription to the Spotify Premium service within one month following the end of their free trial period;

(the "**Settlement Class Members**")

Sub-Class

Settlement Class members residing in Québec who registered to the Spotify service between July 4, 2013 and July 31, 2018 through Rogers Canada Inc. as part of their Share Everything or Share Everything + plans;

(the "**Rogers Settlement Class Members**")

In French:**Groupe :**

Tous les consommateurs résidant au Québec qui (i) se sont abonnés au service Spotify Premium entre le 4 juillet 2013 et le 31 octobre 2017, (ii) ont reçu un essai gratuit ou à prix réduit, (iii) ont vu leur abonnement être automatiquement renouvelé au prix courant après la fin de leur période de l'essai gratuit ou à prix réduit, et (iv) ont par la suite annulé leur abonnement au service Spotify Premium dans une période d'un mois suivant la fin de leur période d'essai gratuit ou à prix réduit;

(le « Groupe visé par le règlement »)

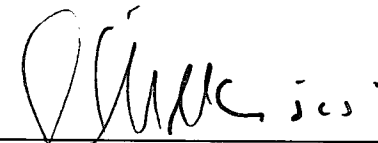
Sous-Groupe :

Les Membres du groupe visés par le règlement qui résident au Québec et qui se sont inscrits au service Spotify entre le 4 juillet 2013 et le 31 juillet 2018 par l'intermédiaire de Rogers Canada Inc. dans le cadre de leur forfait Partagez tout ou Partagez tout + pendant la période visée par l'action collective;

(le « Groupe visé par le règlement de Rogers »)

- [12] **AUTHORIZES** the bringing of a class action against Defendant Spotify Canada Inc. for settlement purposes;
- [13] **APPOINTS** the Applicant Stephanie J. Benabu the status of Representative Plaintiff for settlement purposes;
- [14] **IDENTIFIES** the principal question of fact and law to be treated collectively as the following:
- During the Class Period, did Spotify's alleged practice violate paragraph c of section 230 of the CPA, and, if so, are Class Members entitled to compensation?
- [15] **APPROVES** the form and content of the pre-approval notice to Class Members, in its French and English version, filed as Exhibit SFY-2;
- [16] **ORDERS** the Defendant Spotify Canada Inc. to notify the pre-approval notice (**Exhibit SFY-2**) by email directly to each Class Member for whom it has an email address, by March 1st, 2018;
- [17] **ORDERS** the Defendant Spotify Canada Inc. to make the Pre-Approval Notice accessible to Class Members through the Spotify mobile application for a period of 20 days ending no later than March 1st, 2018;
- [18] **DECLARES** that Class Members who wish to object to Court approval of the Settlement Agreement must do so in the manner provided for in the pre-approval notices (**Exhibit SFY-2**), on or before April 1st, 2018;
- [19] **DECLARES** that Class Members who wish to opt-out from the class action and the settlement thereof may do so by delivering a written notice confirming their intention to opt-out of this class action, in the manner provided for in the pre-approval notices (**Exhibit SFY-2**) on or before April 1st, 2018;

- [20] **DECLARES** that all Class Members 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;
- [21] **DECLARES** that this Judgment, the authorization of the class action with respect to Defendant Spotify Canada Inc. and the appointment of the Applicant Stephanie J. Benabu as Representative Plaintiff for settlement purposes shall be entirely without prejudice to the rights and defences of the Defendants other than Spotify Canada Inc. in this action;
- [22] **SCHEDULES** the presentation of the Application for Approval of the Settlement Agreement filed as Exhibit SFY-1 and for Approval of Class Counsel Fees on April 13th, 2018 at 09h00 in room 2.08 of the Montréal courthouse;
- [23] **WITHOUT COSTS.**



Stéphane Sansfaçon, J.C.S.

Mtre Joey Zukran
LPC Avocat Inc.
Attorney for the Applicant

Mtre Martin Sheehan
Mtre André Durocher
Fasken Martineau DuMoulin s.e.n.c.r.l.
Attorneys for Defendant Spotify Canada Inc.