

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

(Class Action)  
SUPERIOR COURT

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NO: 500-06-000780-169

MICHAEL ATTAR

Applicant

-vs-

RED BULL CANADA LTD.

and

RED BULL GMBH

Defendants

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

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**TO THE HONOURABLE CHANTAL TREMBLAY, J.C.S., DESIGNATED TO HEAR THE PRESENT CLASS  
ACTION, YOUR APPLICANT STATES AS FOLLOWS:**

**I. GENERAL PRESENTATION**

**A) THE ACTION**

1. The Applicant is a consumer within the meaning of Quebec's *Consumer Protection Act* (hereinafter "**CPA**"), as well as within the meaning of the consumer protection and trade practice legislation in other Canadian jurisdictions;
2. The Defendants are merchants within the meaning of the *CPA*, as well as the consumer protection and trade practice legislation in other Canadian provinces, and their activities are governed by these legislation and the *Competition Act*, among others;
3. Defendants produce, market, distribute and/or sell their Caffeinated Energy Drink ("CED") products across Canada under various names including, but not limited to Red Bull Energy Drink, Red Bull Sugarfree, Red Bull Total Zero, Red Bull Editions, Red Bull Red Edition, Red Bull Blue Edition, Red Bull Lime Edition, Red Bull Yellow Edition and Red Bull

Orange Edition;

4. On its website, the *Canadian Food Inspection Agency* describes CEDs as follows, Applicant disclosing **Exhibit P-1**:

Caffeinated energy drinks (CEDs) are pre-packaged, ready-to-consume water-based beverages with a high caffeine content. They generally feature health claims related to their capacity to restore energy and alertness in the individual consuming the product. There is no standard for CEDs in the Food and Drug Regulations (FDR), however; in general they contain caffeine in combination with other ingredients such as taurine, glucuronolactone, B vitamins, minerals, various herbal ingredients and other bioactive ingredients.

5. Many of these so-called “*health claims*” concerning CEDs are false, and most of the industry players, including Red Bull, have removed health claims on their CEDs related to their capacity to restore energy and alertness in the individual consuming the product;
6. According to the *Canadian Food Inspection Agency*, CEDs cannot contain alcohol, as it appears from Exhibit P-1;
7. Even without being mixed with alcohol, CEDs can cause serious adverse health effects;
8. Health Canada’s Vigilance Adverse Reaction Online Database contains information about suspected adverse reactions (also known as side effects) to health products. A search on the “*Canada Vigilance Adverse Reaction Online Database*” (<http://www.hc-sc.gc.ca/dhp-mps/medeff/databasdon/index-eng.php>) generated the following number of adverse reaction reports, including **4 deaths**, based on the following search criteria related to the CEDs produced, marketed, distributed and/or sold:

<b>Search Criteria</b>	<b># of Adverse Reaction Reports</b>	<b># of Deaths</b>	<b>Applicant Disclosing Exhibit</b>
Red Bull	30	3	<b>Exhibit P-2</b>
Monster	17	1	<b>Exhibit P-3</b>
Rockstar	16	0	<b>Exhibit P-4</b>
Full Throttle	3	0	<b>Exhibit P-5</b>
NOS High Performance Energy Drink	7	0	<b>Exhibit P-6</b>
<b>TOTALS:</b>	<b>73</b>	<b>4</b>	

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

All current and former residents of Canada (subsidiarily Quebec) who have purchased Red Bull;

or any other group to be determined by the Court;

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

II. 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

Applicant’s Claim against Red Bull

10. Defendants Red Bull Canada LTD. and Red Bull GMBH (hereinafter “Red Bull”) have made and continue to make false and misleading representations to Group members across Canada concerning the supposed superior effects of Red Bull Energy Drinks or CEDs;
11. Applicant has been purchasing and ingesting Red Bull since at least 2012;
12. Applicant has regularly purchased Red Bull at gas stations, convenience stores and night clubs in Montreal and Laval;
13. Most of Applicant’s purchases were made prior to starting his shifts at work, or at night clubs where he would mix Red Bull Energy Drinks with alcohol;
14. Applicant was misled by Red Bull, from having seen Red Bull’s marketing online and having read their product labelling, that: (i) there were no health risks in mixing Red Bull Energy Drinks with alcohol; and (ii) drinking Red Bull Energy Drinks would give him increased performance and superior functionality (in contrast to consuming other, less costly, sources of energy, such as a cup of coffee or even a chocolate bar);

Representations seen by Applicant regarding mixing Red Bull CEDs with Alcohol:

15. When ingesting Red Bull at night clubs, it was common for Applicant to ingest Red Bull Energy Drinks with alcoholic beverages;
16. Based on the representations he saw, made by Defendants on the labelling of their cans, Applicant was under the impression that it merely wasn’t **recommended** to mix Red Bull with alcohol, not that there existed **serious health risks** associated thereto (as

confirmed by the warnings issued by Health Canada);

17. The cautionary statement concerning alcohol on Red Bull cans is as follows:

**“Not recommended for children, pregnant or breast-feeding women, caffeine sensitive persons or to be mixed with alcohol. Usage: 2 cans max daily.**

[emphasis in bold].

18. Despite this **recommendation**, Applicant always noticed everyone around him at night clubs mixing their alcoholic beverages with Red Bull Energy Drinks;

19. Applicant was always served by the bartenders and barmaids when ordering Red Bull Energy Drinks with alcohol at night clubs and was never once warned by anyone serving him that mixing Red Bull with alcohol was very dangerous;

20. Had Applicant been aware of the true risks and dangers inherent to the combination of the two, he would have never ingested alcohol with Red Bull CEDs;

21. Both on its website and on its labelling, Red Bull failed in its obligation to mention the following important facts to Applicant concerning these serious health risks:

a) Since 2005, Health Canada has warned Canadians “**Do not mix Red Bull Energy Drink with alcohol**” and that “*Excessive drinking of “energy drinks” or mixing them with alcohol can have serious health effects*”, Applicant disclosing **Exhibit P-7;**

b) In **August 2010**, Health Canada updated its “*Safe use of Energy Drinks*” publication and warned henceforth that “*Excessive drinking of energy drinks or mixing them with alcohol can have serious health effects*”, Applicant disclosing **Exhibit P-8;**

c) In **May 2015**, the Canadian Food Inspection Agency published on its website (<http://www.inspection.gc.ca/food/non-federally-registered/product-inspection/caffeinated-energy-drinks/eng/1377613077840/1377613161282>) that: “**Health Canada continues to advise consumers not to mix CEDs with alcohol and will continue to restrict their use as an ingredient in pre-mixed alcoholic beverages. In addition, Health Canada is requiring all CEDs to display the statement “Do not mix with alcohol” on the label**, as it appears from Exhibit P-1 (see warning on page 7 of 10);

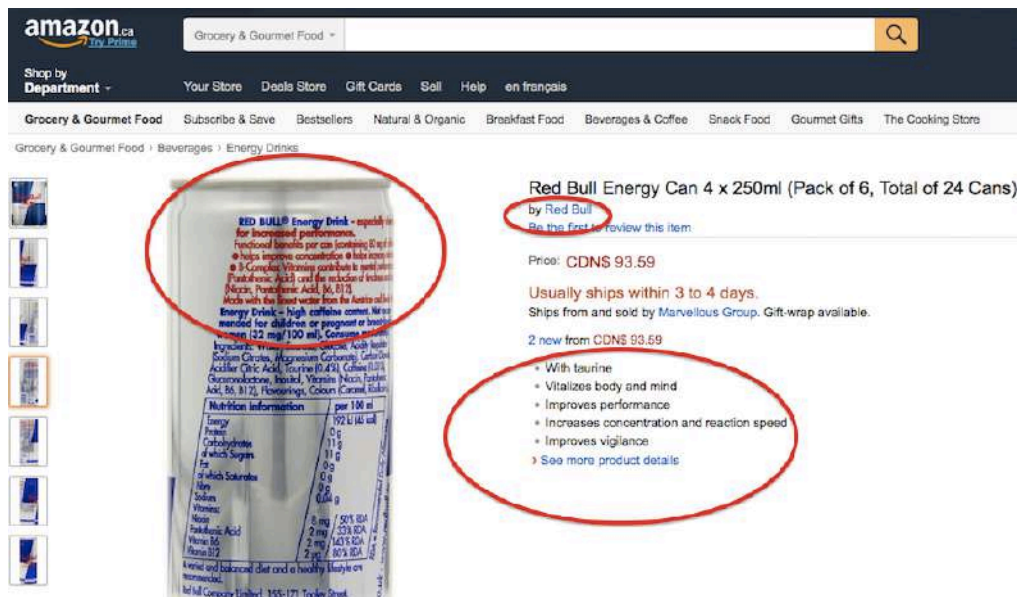
22. Had Red Bull divulged these extremely important and true facts, as is their legal and contractual duty under section 228 CPA and 52 of the *Competition Act*, Applicant would have never purchased Red Bull CEDs;

**Representations seen by Applicant Concerning the Functionality of Red Bull Energy Drinks:**

23. Although he does not remember the precise wording of the representations he saw on each of the dozens of Red Bull cans he purchased over the years, Applicant does specifically recall reading on the Red Bull cans which he purchased, claims made by Red Bull that drinking Red Bull Energy Drinks increases performance (in French, that ingesting the product will “*améliorer la performance*”);
24. The representations which Applicant saw on his Red Bull cans regarding the purported superiority of Red Bull (as they appear at paragraphs 149 and 150 below), is what set Red Bull apart from other caffeine products, as the most efficient way to gain energy quickly and to increase his performance and functionality;
25. Applicant was under the false impression, from having seen the Red Bull marketing and having read their product labelling, that ingesting Red Bull Energy Drinks prior to working, for instance, would enable him to perform and function better (than had he drank a cup of coffee, for example);
26. Unbeknownst to him, the “*scientific studies*” backing these claims were false;
27. Red Bull has since removed the false representations from its Red Bull Energy Drink cans, as well as from their websites (as more fully detailed below at paragraph 152);
28. Applicant’s damages are a direct and proximate result of Red Bull’s misconduct, including its false and misleading advertising, as well as its intentional omissions;
29. [...];
30. By reason of Red Bull’s unlawful conduct, Applicant has purchased Red Bull Energy Drinks under false pretences and paid higher prices for goods, causing damages which he is now justified in claiming;
- (i) **Applicant’s claim for compensatory and punitive damages (arts. 41, 219, 228, 239 (b) and 272 CPA)**
31. There exists no objective, credible and scientific evidence supporting Red Bull’s claims of receiving superior functionality by consuming Red Bull CEDs (compared to other caffeine products);
32. In the article “*Do Energy Drinks Contain Active Components Other Than Caffeine?*”, published in the reputable scientific journal *Nutrition Reviews*, Applicant disclosing **Exhibit P-9**, author Dr. Tom McLellan finds:

With the exception of some weak evidence for glucose and guaraná extract, there is an overwhelming lack of evidence to substantiate claims that components of EDs, other than caffeine, contribute to the enhancement of physical or cognitive performance

33. Moreover, Red Bull intentionally omits to inform Canadians about the warnings issued by Health Canada with respect to mixing Red Bull Energy Drinks with alcohol. Red Bull is aware that a significant number of its consumers mix Red Bull with alcohol and even encourages them to do so (for instance, see paragraph 186 containing a publicity for “Red Bull PUR Vodka” at the Casino de Montréal). Once Canadian consumers become aware of the inherent dangers, a number of them will likely stop purchasing Red Bull;
34. Red Bull demonstrates through its behavior (before, during and after the violations) that it is more concerned about its bottom line than about: (i) consumers’ rights, (ii) the health, safety and well-being of Canadians; and (iii) their own obligations under Canadian consumer protection legislation and Canada’s *Competition Act*;
35. In fact, Red Bull seems to completely disregard its obligations towards Canadians;
36. As of September 16<sup>th</sup>, 2016, Red Bull still listed the false “functional benefits” of its CEDs on the **Canadian** version of Amazon’s website (<https://www.amazon.ca/Red-Bull-Energy-250ml>), Plaintiff disclosing a screenshot as **Exhibit P-10**:



- 36.1 It appears that at some point after September 16<sup>th</sup>, 2016, the Canadian Web address in question (<https://www.amazon.ca/Red-Bull-Energy-250ml>) is no longer a functioning page on Amazon.ca’s website;
37. However, the exact same item “Red Bull Energy Drink, 8.4 Fl Oz Cans (6 Packs of 4, Total 24 Cans)” appears on the **American** version of Amazon’s website

(<https://www.amazon.com/Red-Bull-Energy-Drink-Packs>) with the updated and more accurate product description and labelling, Applicant disclosing **Exhibit P-11**:



- 37.1 It appears that at some point after September 16<sup>th</sup>, 2016, the American Web address in question (<https://www.amazon.com/Red-Bull-Energy-Drink-Packs>) was removed from Amazon.com's website;
38. Applicant believes that Red Bull would have acknowledged the importance of conveying accurate information to Canadian consumers had Red Bull been liable to Canadian consumers in the same manner in which they were liable to American consumers, as part of the settlement of the class actions filed in the United States;
39. Red Bull's use of such prohibited business practices results in the Applicant and Group members not having the chance to make an informed decision or to give an informed consent before purchasing and consuming Red Bull;
40. Red Bull's widespread marketing campaigns were devised to mislead the Applicant and Group members;
41. By disseminating false and misleading information about Red Bull Energy Drinks (as well as by failing to mention an important fact about its CEDs), Applicant was induced by Red Bull into purchasing, at a premium price, approximately **three hundred (\$300.00)** dollars worth of Red Bull since 2012 (which he would have never purchased had he been aware);

42. Had he been aware of the true functionality of Red Bull CEDs and the warnings issued by Health Canada from 2004 to date, Applicant would not have purchased Red Bull CEDs;

43. [...];

44. Red Bull's omissions and covering up of Health Canada's warnings is in and of itself an important reason for this Court to enforce measures that will punish Red Bull, as well as deter and dissuade them, and others, from engaging in similar undesirable conduct to the detriment of Quebec and Canadian consumers;

45. [...];

**Absolute Presumption of Prejudice in Favor of Applicant (s. 272 CPA):**

46. Applicant benefits from an **absolute presumption of prejudice** because:

- a) Applicant is a consumer within the meaning of the CPA;
- b) Red Bull is a merchant within the meaning of the CPA;
- c) Red Bull misrepresented its energy drinks and failed to inform the Applicant of an important fact (a fact/topic that was important enough for Red Bull to dedicate an entire section to on its websites);
- d) Applicant saw Red Bull's representations concerning the recommendations about mixing the product with alcohol, as well as the "results" of the "scientific studies" concerning the functionality of Red Bull Energy Drinks on Red Bull's cans **prior to purchasing** Red Bull;
- e) After seeing Red Bull's representations concerning its energy drink's "functionality", Applicant purchased Red Bull Energy Drinks and entered into consumer contracts;
- f) There existed a sufficient nexus between the content of Red Bull's representations and the goods covered by the contract (Red Bull's practice influenced the Applicant's behavior with respect to the formation of the consumer contract);

47. In these circumstances, Applicant's claim for both compensatory and punitive damages against Red Bull is justified;



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

48. Defendants have made various false and unlawful representations to all Group members about the purported superior nature and functionality of their CEDs;
49. Defendants disseminated false information to Group members;
50. Although Defendants rely upon "*scientific studies*" which purport to substantiate the product claims, independent researchers and industry experts have found otherwise (and Defendants have since dissociated themselves from some of these false product claims);
51. All Group members have a common interest both in proving the commission of a prohibited business practice by the Defendants and in maximizing the aggregate of the amounts unlawfully charged to them by Defendants;
52. [...];
53. The same legal issues are present in the action of the Applicant and of each Group member against the Defendants (the Defendants faces more or less the same issues regarding the interpretation and application of sections 41, 219, 228 and paragraph b of 239 CPA, as well as section 52 of the *Competition Act*);
54. The claims of every member of the Group are founded on very similar facts to the Applicant's claims;
55. [...];
56. Every member of the Group purchased at least one CED from Red Bull (and perhaps more) which advertised functionality benefits that were false;
57. Every Group member would not have purchased CEDs, or would not have paid the inflated price for CEDs, if it was not for Defendants' misleading marketing campaigns and omissions, regarding the purported functionality of their CEDs, including but not limited to the enhancement of physical or cognitive performance;
58. By reason of Defendants' unlawful conduct, Applicant and members of the Group have suffered damages, which they may collectively claim against the Defendants;
59. [...];
60. [...];
61. Every member of the Group has suffered damages, in an amount to be determined;

62. The questions of fact and law raised and the recourse sought by this Application are identical with respect to each member of the Group;
63. In taking the foregoing into account, all members of the Group are justified in claiming the sums which they unlawfully overpaid to Defendants, as well as punitive damages;
64. Each member of the Group is justified in claiming at least one or more of the following as damages:
- Reimbursement of the CEDs purchased under false pretenses;
  - Trouble and inconvenience;
  - Moral damages; and
  - Punitive damages;
65. All of the damages to the Group members are a direct and proximate result of the Defendants' misconduct;
66. Individual questions, if any, pale by comparison to the numerous common questions that are significant to the outcome of the present Application;
67. The damages sustained by the Group members flow, in each instance, from a common nucleus of operative facts, namely, Defendants' failure to inform Group members of an important fact and their dissemination of false information in the production, marketing, distribution and/or selling of their CEDs;
68. The recourses of the Group members raise identical, similar or related questions of fact or law, namely:
- a) **Did Defendants engage in unfair, false, misleading, or deceptive acts or practices regarding the marketing, distribution and/or the sale of their CEDs?** (Est-ce que les défenderesses se sont engagées dans des actes ou des pratiques injustes, fautifs, mensongers ou trompeurs concernant la commercialisation, la distribution et/ou la vente de leurs boissons énergisantes contenant de la caféine ?)
  - b) **Are Defendants liable to the Group members for reimbursement of the purchase price of their CEDs as a result of their misconduct?** (Les défenderesses sont-elles sujettes envers les membres du groupe au remboursement du prix d'achat de leurs boissons énergisantes contenant de la caféine suite à leurs fautes ?)
  - c) **Did Defendants conceal, or fail to mention an important fact in any of the representations they made to Canadian consumers concerning their CEDs?** (Est-

ce que les défenderesses ont passé sous silence un fait important, ou ont manqué à leur obligation d'information dans une représentation qu'elles ont faite aux consommateurs canadiens concernant leurs boissons énergisantes contenant de la caféine ?)

- d) **Are Defendants liable to the Group members for reimbursement of the purchase price of their CEDs as a result of their concealment or failure to inform?** (Les défenderesses sont-elles sujettes envers les membres du groupe au remboursement du prix d'achat de leurs boissons énergisantes contenant de la caféine pour leur manquement à l'obligation d'information ou du fait d'avoir passé sous silence un fait important ?)
- e) **Should an injunctive remedy be ordered to prohibit the Defendants from continuing to perpetrate their unfair, false, misleading, and/or deceptive conduct, as well as their concealment of important facts?** (Une action en injonction devrait-elle être ordonnée afin d'interdire aux défenderesses de continuer à perpétuer leur comportement injuste, fautif, trompeur et/ou mensonger, ainsi que de passer sous le silence un fait important ?)
- f) **Are Defendants responsible to pay compensatory, moral and/or punitive damages to Group members and in what amount?** (Les défenderesses devraient-elles payer des dommages compensatoires, moraux et/ou punitifs aux membres du groupe et pour quel montant ?)

### **C) THE COMPOSITION OF THE GROUP**

69. The composition of the Group 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;
70. The Applicant is unaware of the exact number of Group members contemplated by this Application, but Defendants boast on their website that they have **sold over 60 billion cans of Red Bull worldwide**;
71. [...];
72. Based on these figures, the number of persons included in the Group is likely in the **hundreds of thousands** in the province of Quebec and likely in the **millions** across Canada;
73. The names and addresses of all persons included in the Group are not known to the Applicant, however, Defendants are likely to possess data regarding sales and distribution figures;
74. In addition, given the costs and risks inherent in an action before the Courts, many

people will hesitate to institute an individual action against the Defendants. Even if the Group members themselves could afford such individual litigation, the Court system could not as it would be overburdened. Furthermore, individual litigation of the factual and legal issues raised by the conduct of the Defendants would increase delays and expenses to all parties and to the Court system;

75. Moreover, a multitude of actions instituted in different jurisdictions, both territorial and judicial districts, risks having contradictory judgments on questions of fact and law that are similar or related to all members of the Group;
76. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Group member to obtain mandates and to join them in one action;
77. In these circumstances, a class action is the only appropriate procedure for all of the Group members to effectively pursue their respective rights and have access to justice without overburdening the court system;

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

78. Applicant is a member of the Group;
79. Applicant has purchased and consumed CEDs, notably Red Bull Energy Drinks, often multiple times per week (with and without alcohol), over several years, the whole as a result of the Defendants' misleading marketing strategies and concealment of important facts;
80. Applicant worked as a Financial Service Representative at the Canadian Imperial Bank of Commerce from about February 2014 through April 2015. Applicant would often drink a can of Red Bull Energy Drink before his long shifts, because Red Bull gave him the false impression that it would increase his performance at work;
81. Applicant almost always purchased Red Bull Energy Drinks to mix with his alcoholic beverages when socializing at night clubs;
82. Applicant was not given the chance to make an informed decision and to give an informed consent before purchasing and consuming Red Bull, again due to the Defendants' misleading marketing strategies and concealment of important facts;

**Applicant's Discovery of Red Bull's False Representations and Omissions and Interest in Initiating this Class Action:**

83. In early 2016 Applicant discovered, while researching online, that:

- a) Red Bull's claims concerning the functionality of Red Bull Energy Drinks have not been scientifically proven;
  - b) Red Bull has since removed these false claims from its website;
  - c) Red Bull has replaced the false claims it makes on its product cans; and that
  - d) two class actions were filed and settled in the United States against Red Bull alleging, *inter alia*, false advertising of Red Bull Energy Drinks;
84. Applicant felt misled and taken advantage of by Red Bull and contacted his attorneys, who practice in consumer class actions, to find out how he can claim his fair share of the settlement;
85. Shortly thereafter, Applicant was informed by his attorneys that, as a Canadian consumer of Red Bull Energy Drinks, he and all other Canadians were not eligible to receive compensation as part of the settlements in the United States;
86. It was at this point that Applicant realized that it was obvious that there is a significant number of Canadians in his shoes and mandated his attorneys to undertake the present class action on his behalf and for the benefit of all Canadian consumers of Red Bull Energy Drinks who did not receive compensation as part of the settlements in the United States (based on similar allegations);
87. Applicant's discovery of Red Bull's failure to inform Canadians that Health Canada staunchly warns that mixing alcohol with CEDs is dangerous, came after the filing of the originating *Application*, while he and his attorneys were investigating and researching representations made by Red Bull to Canadians;
88. Applicant was flabbergasted to learn that Red Bull minimized and concealed the health risks associated to mixing CEDs with alcohol and basically fooled him and others into believing that there was no evidence of negative effects of doing so, despite the huge red flags waved by Health Canada for over a decade! This new fact further motivates Applicant to persevere and use the present action as a means of informing other Canadian consumers of Health Canada's warnings;
89. Applicant now realizes that in addition to the compensatory aspect of this claim, the **Defendants are causing a serious public health issue** akin to the one created by the tobacco industry in the 1980s and 1990s;
90. By just thinking about either the number of people he has seen at night clubs mixing Red Bull Energy Drinks with alcohol, or of the number of his friends/acquaintances who have previously told him that they believed Red Bull offered superior functionality, Applicant drew certain inferences and concluded that there are hundreds of thousands (and likely more) consumers ingesting CEDs under false pretenses and in an unsafe

manner (according to Health Canada standards);

91. Applicant's inferences were further confirmed when researching online and coming across a January 16<sup>th</sup>, 2013, video clip by ABC news reporters Diane Sawyer and Lisa Stark confirming that in one study sample, 42% of energy drink-related visits to the emergency room involved cases where the victim mixed an energy drink with alcohol or other substance, Applicant disclosing a copy of the video of the news report as **Exhibit P-54** and the transcript thereof as **Exhibit P-54-A**, which includes the following:

**Transcript for Emergency Room Cases Involving Energy Drinks Increase**

A new report out tonight contains a real surprise. In just four years, the **number of people who go to the emergency room after drinking energy drinks has doubled, from 10,000 to more than 20,000 people in the E.R.** So, what has changed? And what are the drinks doing? Abc's Lisa Stark has a caffeine experiment of her own. Reporter: On YouTube, downing these energy drinks is a game. Lots of fun. Go! Reporter: **But this new government study calls consumption of energy drinks a rising public health problem. Of those 20,000 energy room visits in 2011, 42% reportedly had mixed the energy drink with another stimulant, or with alcohol.** But 58% reportedly used energy drinks alone. So, what's going on? **Blood pressure goes up, heart rate goes up, and then they'll start to feel the effects. Heart racing, heart skipping, panic attack symptoms, irregular heart rhythms...**

92. Prior to filing the present class action, Applicant realized that by all accounts, there is a very important number of **consumers** that find themselves in an identical situation as himself, and that it would not be useful for him – in the context of this consumer class action – to attempt to identify them given their obvious number;

93. Applicant wants others to be aware of the serious health risks associated to consuming CEDs, because he inadvertently wound up becoming one of the people referred to by Health Canada in its 2005 publication, Exhibit P-7, in which Health Canada states:

People drink them to keep up their energy during periods of intense physical activity or drink them after exercise to quench their thirst. **But rather than re-hydrating their bodies, these drinks may actually lead to dehydration”**

94. Applicant is a member of the *Association pour la santé publique du Québec* (hereinafter the “**ASPQ**”), a non-profit organisation who has been very active monitoring product labelling of CEDs and the sale thereof to minors in the interest of preserving public health in Québec;

95. The ASPQ has been kept abreast of developments in the present class action and have collaborated with the Applicant and his attorneys by sharing research and information;

96. Applicant has the support of the ASPQ;
97. Applicant is ready and available to manage and direct the present action in the interest of the members of the Group that he wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the Group, as well as, to dedicate the time necessary for the present action and to collaborate with his attorneys;
98. Applicant has the capacity and interest to fairly and adequately protect and represent the interest of the members of the Group;
99. Applicant has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
100. Applicant, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Group and to keep them informed;
101. Indeed, since the filing of the originating Application, the Applicant has kept himself informed of the progress of his file and has assisted his attorneys with some of the research in the present file;
102. Specifically, when Applicant explained to his attorneys that he recalled seeing representations on Red Bull Energy Drinks that made reference to the product being created to “*améliorer la performance*” (increase performance), he made it his duty to find Red Bull cans sold in Canada over the past few years. This task was particularly challenging because, as Applicant learnt, Red Bull Energy Drinks have expiry dates and are generally not kept on store shelves past these dates;
103. As part of his efforts, Applicant posted a message on his Facebook page asking if any of his 900 contacts or so would have kept an old can of Red Bull Energy Drink. One person from Toronto responded, but her can had an August 26<sup>th</sup>, 2016 expiry;
104. Applicant then looked on Amazon’s Canadian website and discovered that, on Amazon, Red Bull still makes the same false claims about the so-called functional benefits of its Energy Drinks, which they have since removed from the Red Bull websites (after settlement of the American class actions), but which remained active, up until at least September 16<sup>th</sup> 2016, on Amazon’s Canadian website;
105. Applicant inquired with Amazon Canada’s customer service to verify who was making these representations concerning Red Bull Energy Drinks on Amazon’s Canadian website and received confirmation that these false representations were coming from Red Bull, Applicant disclosing a transcript of his chat with an Amazon.ca customer service agent as **Exhibit P-13**;
106. Applicant also took the initiative to locate an old Red Bull can being sold on eBay’s

Canada website ([www.ebay.ca](http://www.ebay.ca)), where he found a can of Red Bull being sold by an eBay seller located in the judicial district of Joliette, Quebec;

107. On July 10<sup>th</sup>, 2016, Applicant purchased the can of Red Bull Energy Drink (eBay item #272160298225) from eBay's Canadian website [www.ebay.ca](http://www.ebay.ca) for \$8.50 USD, Applicant disclosing the actual 473 ml Red Bull can with the inscription 07-23-14/k 2 1251902/01:07 as Exhibit P-14;
108. Because Applicant heard that Canada Post may be going on strike, he took the time on the following day, July 11<sup>th</sup>, 2016, to drive to Joliette (Saint-Gabriel-de-Brandon), which is about 100KM each way from his domicile;
109. On July 11<sup>th</sup>, 2016, Applicant drove a total of 200KM and spent 4 hours on the road so that he could pick up the Red Bull Energy Drink can in question, Exhibit P-14, and file it with this Amended Application (Applicant had asked the eBay seller to ship the can via UPS but was told that this would be too complicated and to just come pick it up in Joliette because the seller had never shipped using UPS);
110. Applicant has already taken steps to locate Group members and is prepared to be active on social media in this regard;
111. Applicant is able to work with his attorneys and considers his attorneys competent;
112. Applicant is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other Group members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Defendants' conduct and so that they can be aware of the serious warnings issued by Health Canada concerning CEDs;
113. Applicant understands the nature of the action;
114. Applicant's interests are not antagonistic to those of other members of the Group;
115. Applicant's interest and competence are such that the present class action could proceed fairly;

### III. THE DEFENDANTS AND THEIR VIOLATIONS:

116. Defendants subject many Canadians to their prohibited business practices in several forms including, without limitation, through their websites, social media (Red Bull has more than 44 million fans on its Facebook page and has received more than 100 million views on its YouTube videos), on television, in print media, by the distinctive design on its cans and promotions, on clothing and other merchandise (such as tents, coolers and umbrellas) and at sporting and entertainment events sponsored and/or organized by Red Bull (such as *Red Bull Crashed Ice* recently held in Quebec and on race cars at the



*Formula One Grand Prix* held annually in Montreal);

117. Defendants have spent tens of millions of dollars on advertising and sporting sponsorships and have successfully conveyed an image to the general public that drinking CEDs is a “cool” style of living (similar to the tactics employed by the tobacco companies in the 70s, 80s and 90s);
118. There are many articles, publications and research readily available online comparing the Defendants’ *modus operandi* with the tobacco companies’, Applicant disclosing **Exhibit P-15**, a precise and concise August 31<sup>st</sup>, 2013 *Los Angeles Times* article titled “Tobacco wars’ senators take aim at energy drinks”, in which Alexei Koseff writes:

And at a recent hearing, the trio of Democratic senators — Durbin, Edward J. Markey of Massachusetts and Richard Blumenthal of Connecticut — **grilled executives from an industry they said was selling an unhealthy product and an unsafe message to young people.**

**But the subject of their ire was not tobacco. It was energy drinks** — sweetened beverages with large doses of stimulants for quick energy boosts. They have become increasingly popular over the last decade, particularly with high school and college students who often use them to study late into the night.

[...]

Medical professionals tend to agree that **energy drinks are unsafe for minors**, who are more vulnerable to adverse health effects from large amounts of caffeine. The energy drink industry disputes those claims, arguing that caffeine has been studied for decades and is safe for consumption.

[...]

**The senators are still disturbed by common promotional tactics of the energy drink industry:** buying advertising on youth-oriented networks such as MTV, funding development programs for teenage athletes, and **sponsoring concerts, sporting and gaming events** that attract adolescents.

**Blumenthal likened the strategy to tobacco companies’** use of mascots, such as cowboys and cartoon characters, that young people might find **cool...**

119. Defendants disseminated false information as to the functionality of their CEDs and engaged in prohibited business practices;
120. Under consumer protection and trade practice legislation in Quebec and other Canadian provinces, the prohibited behaviour is against public order;

121. Group members benefit from the legal presumption in the *CPA* that comes into effect when a merchant makes use of a prohibited business practice, that had the Group member been aware, he/she would never had purchased CEDs, or would not have paid such a high price for CEDs;
122. Defendants have a legal obligation to provide Group members with correct information in their representations concerning their CEDs, as well as to inform them of important facts;
123. The Defendants have engaged in unlawful conduct to the detriment of all the Group members, which constitutes prohibited business practices as defined in the *CPA* and false or misleading representations under the *Competition Act*, which applies uniformly across Canada;
124. It is evident that the Defendants engage in the abovementioned prohibited business practices as a means of convincing Group members and consumers to purchase and to pay a premium for the CEDs they manufacture, market, distribute, promote and/or sell;
125. All of the damages to the Group members are a direct and proximate result of the Defendants' misconduct;
126. to 140 [...];
141. Defendant, Red Bull GMBH, is a company organized and existing under the laws of Austria, and offers various goods and services, notably energy drinks, in over 160 countries, including Canada, and sponsors many entertainment and sports-related events;
142. Defendant, Red Bull Canada Ltd., is primarily engaged in wholesale dealing in non-alcoholic beverages and the distribution of carbonated beverages, as it appears from an extract of the enterprise's information statement from the Quebec enterprise register (CIDREQ), **Exhibit P-20**;
143. Defendant Red Bull GMBH offers Red Bull in Canada through Defendant Red Bull Canada Ltd;
144. Defendants Red Bull GMBH and Red Bull Canada Ltd. operate the website <http://www.redbull.com>, Applicant disclosing the Terms and Conditions page of said site as **Exhibit P-21**;

**Disseminating false information**

145. During the class period, including the years during which Applicant was purchasing and ingesting Red Bull CEDs, Red Bull marketed and sold Red Bull Energy Drinks containing false information on their cans;

146. Even worse, on its websites and CED cans, Red Bull falsely presented this information as scientific and makes certain promises to consumers on its CEDs product labelling;
147. A research article titled *“Debunking the Effects of Taurine in Red Bull Energy Drinks”* concluded that the claimed improvement in cognitive capabilities and muscular performance were more plausibly related to caffeine alone rather than the purported unique combination of Red Bull’s key ingredients of caffeine, taurine and glucuronolactone, Applicant disclosing **Exhibit P-22**:

**Caffeine**

It seems more plausible that any muscular function enhancement from Red Bull is derived from its caffeine content. Numerous studies have shown caffeine to have an inotropic effect on the body and improve one’s endurance (7,8). Due to such effects, the IOC (International Olympics Committee) ban caffeine concentrations higher than 12 mg/mL (8). Studies show that caffeine ingestion results in an increase in epinephrine, plasma lactate, and cortisol levels (7). Plasma beta-endorphin levels almost double in some studies following caffeine intake (7). The molecular mechanism of caffeine involves blockage of adrenergic receptors leading to an increase in cAMP concentration and inhibition of cAMP catabolism (8). Thus it can be concluded that caffeine is an ergogenic aid that stimulates muscular performance, and may well be the only active compound in Red Bull to produce the supposed invigorating sensations.

[...]

The Red Bull Company claims that drinking Red Bull improves one’s cognitive capabilities and muscular performance (1). The company attributes these enhancements to the unique combination of the ingredients including key components such as caffeine, taurine and glucuronolactone. **However, it seems more plausible that most of the effects observed when drinking Red Bull come principally from caffeine.** Red bull contains about the same amount of caffeine (80 mg) as a cup of coffee. However, because coffee takes time to cool, it is ingested over a longer period of time than it takes to consume Red Bull. Drinking Red Bull brings into the body a large dose of caffeine in a short amount of time, resulting in a sharp rise of plasma caffeine concentration. **In addition, a psychosomatic placebo effect of having consumed an “energy drink” may compound the chemical’s actual effects. Thus it seems that drinking a cold cup of coffee may induce the same “energizing and refreshing” effects of drinking Red Bull – and best of all, at one-third the cost.**

148. More recently, an article titled *“Energy Drinks Promised Edge, but Experts Say Proof is Scant”*, reported by the New York Times on January 1, 2013, claimed that: *“interviews with researchers and a review of scientific studies show: the energy drink industry is*

based on a brew of ingredients that, apart from caffeine, have little, if any benefit for consumers”, Applicant disclosing **Exhibit P-23**. The author further found that:

**Promoting a message beyond caffeine has enabled the beverage makers to charge premium prices.** A 16-ounce energy drink that sells for \$2.99 a can contains about the same amount of caffeine as a tablet of NoDoz that costs 30 cents. Even Starbucks coffee is cheap by comparison; a 12-ounce cup that costs \$1.85 has even more caffeine.

➤ **2012 Red Bull Cans**

149. A Red Bull Energy Drink can with the expiry date of **2012-08-26** (located underneath the can), displays the following false information, Applicant disclosing the 250 ml Red Bull can with the inscription “2012-08-26/H#6 1209426/11:13” as **Exhibit P-24**;

Recommended use or purpose: Developed for periods of increased mental and physical exertion, helps temporarily restore mental **alertness** or wakefulness when experiencing fatigue or drowsiness.

L’usage ou les fins recommandés: Conçue pour des périodes d’intenses efforts mentaux et physiques cette boisson permet de stimuler temporairement les capacités d’éveil ou de **vigilance** en cas de fatigue ou de somnolence.

➤ **2014, 2015, 2016 Red Bull Cans**

150. A Red Bull Energy Drink can with the expiry date of **2015-08-31** (located underneath the can), displays the following false information, Applicant disclosing the 250 ml Red Bull can with the inscription “2015-08-31/L#6 1313544/22:35” as **Exhibit P-25**;

**RED BULL Energy Drink®** - especially developed for increased mental performance. Caffeine **helps improve concentration** and **increases alertness**.

Spécialement conçu pour **améliorer la performance mentale**. La caféine aide à **améliorer la concentration** et à **accroître la vigilance**.

151. On **July 11<sup>th</sup>, 2016** the Applicant was able to purchase a Red Bull can in the judicial district of Joliette, Quebec, Exhibit P-14, which displayed the following false representations:

**RED BULL® Energy Drink**

- Improves performance, especially during times of increased stress or strain
- Increases endurance
- **Increases**

**concentration and improves reaction speed • Stimulates metabolism**

152. In fact, sometime after March 2015 (coinciding with Red Bull's settlement of two class actions filed against them in the United States alleging similar claims), Red Bull changed the labelling on its cans, removing all references to increased performance (as well as "vigilance" in French), Applicant disclosing a 250 ml can of Red Bull with the inscription 2018-02-06/G 5 1453251/23:25 as Exhibit P-26, which more truthfully now advertises:

**RED BULL Energy Drink® - appreciated worldwide by top athletes, students, busy professionals and travellers on long journeys.**

153. The above modifications by Red Bull to its product labelling at some point after 2015 is an admission, it is suggested, of Red Bull's heretofore unlawful, improper and misleading behaviour;

154. Red Bull's claim that Red Bull is a superior source of energy and provides other benefits worthy of a premium price is unsupported by objective, credible and scientific evidence to substantiate such claims, which is why Red Bull's website and cans now only mention that Red Bull Energy Drinks could be "appreciated";

155. Red Bull did not perform as promised and advertised by Defendants;

156. Defendants thus unlawfully relied upon data, falsely presented as scientific to Group members, in order to charge a premium for their CEDs;

157. In reality, there are other caffeine only products, such as a cup of coffee or caffeine tablets, that are as effective as Red Bull and would cost Group members a fraction of the price (most CEDs retail in the \$2.99 to \$3.99 per can price range), but with far fewer serious health risks associated;

158. Defendants' business practices are unlawful and misleading because they intentionally deceive consumers into believing that they are obtaining a product that provides more benefit to consumers than other caffeine products, including but not limited to the enhancement of physical or cognitive performance;

### **Red Bull's Website**

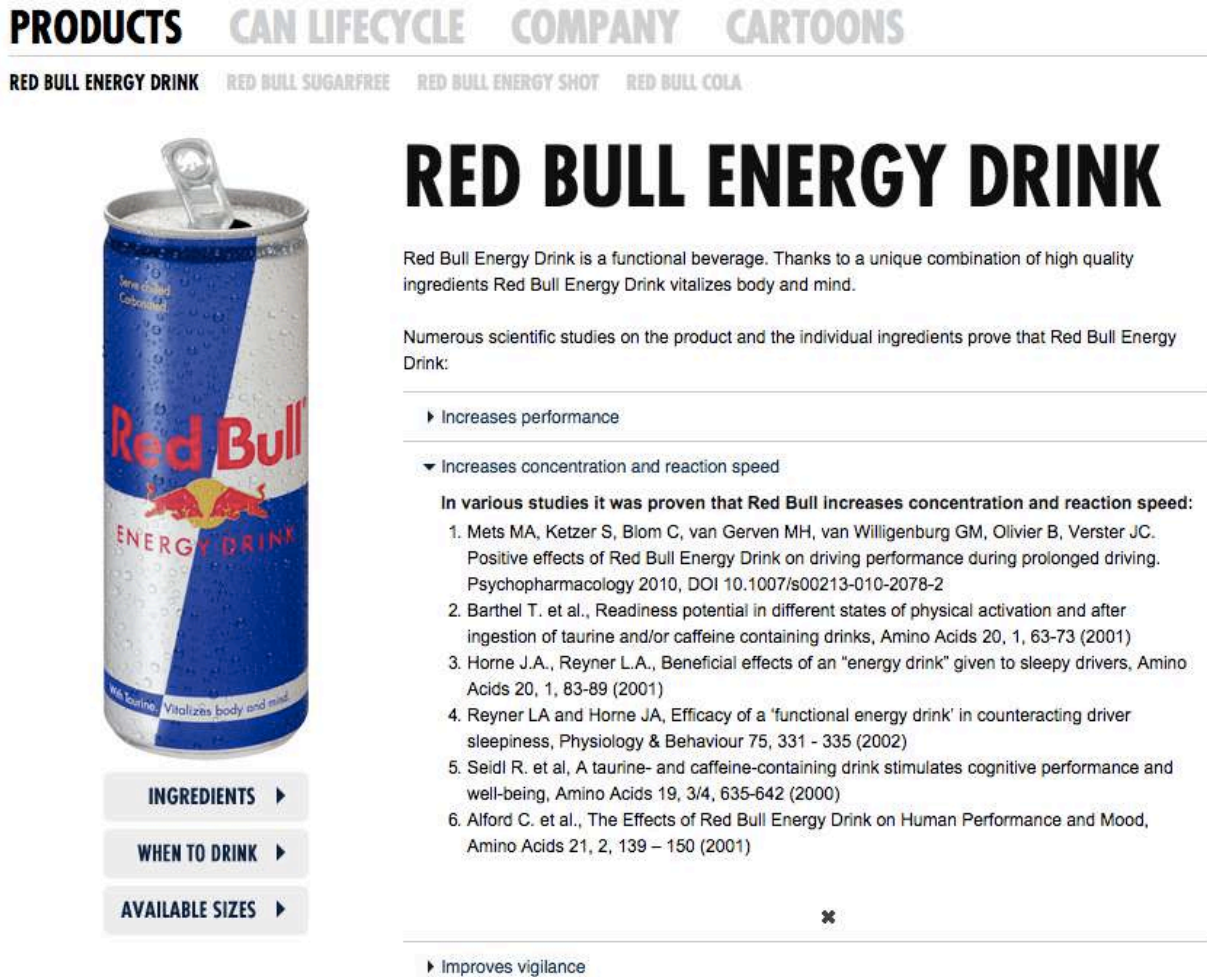
159. Up until at least **March 25, 2015**, Red Bull falsely claimed on its website that "*numerous scientific studies*" on Red Bull "*prove*" its superiority;

160. Red Bull listed a total of 26 "*scientific studies*" during several years on their website, as it appears from screen captures of Red Bull's website from March 2011 through March 2015, Applicant disclosing *en liasse* **Exhibit P-27**;

161. Defendants intentionally misinform Group members leading them to believe that the

product they were paying for had qualities that in reality it did not have;

162. The webpages appearing on Red Bull's website referring to so-called "*scientific studies*", one of which is reproduced below, have all been removed from Red Bull's website sometime after March 25, 2015:



The screenshot shows the Red Bull website's product page for Red Bull Energy Drink. At the top, there are navigation tabs for 'PRODUCTS', 'CAN LIFECYCLE', 'COMPANY', and 'CARTOONS'. Below these, there are sub-tabs for 'RED BULL ENERGY DRINK', 'RED BULL SUGARFREE', 'RED BULL ENERGY SHOT', and 'RED BULL COLA'. The main heading is 'RED BULL ENERGY DRINK'. Below the heading, there is a description: 'Red Bull Energy Drink is a functional beverage. Thanks to a unique combination of high quality ingredients Red Bull Energy Drink vitalizes body and mind.' This is followed by a list of scientific studies proving the product's benefits. The studies listed are:

- Increases performance
- Increases concentration and reaction speed
  - In various studies it was proven that Red Bull increases concentration and reaction speed:
    - Mets MA, Ketzer S, Blom C, van Gerven MH, van Willigenburg GM, Olivier B, Verster JC. Positive effects of Red Bull Energy Drink on driving performance during prolonged driving. *Psychopharmacology* 2010, DOI 10.1007/s00213-010-2078-2
    - Barthel T. et al., Readiness potential in different states of physical activation and after ingestion of taurine and/or caffeine containing drinks, *Amino Acids* 20, 1, 63-73 (2001)
    - Horne J.A., Reyner L.A., Beneficial effects of an "energy drink" given to sleepy drivers, *Amino Acids* 20, 1, 83-89 (2001)
    - Reyner LA and Horne JA, Efficacy of a 'functional energy drink' in counteracting driver sleepiness, *Physiology & Behaviour* 75, 331 - 335 (2002)
    - Seidl R. et al, A taurine- and caffeine-containing drink stimulates cognitive performance and well-being, *Amino Acids* 19, 3/4, 635-642 (2000)
    - Alford C. et al., The Effects of Red Bull Energy Drink on Human Performance and Mood, *Amino Acids* 21, 2, 139 - 150 (2001)
- Improves vigilance

On the left side of the screenshot, there is an image of a Red Bull Energy Drink can with a pull tab. Below the can are three buttons: 'INGREDIENTS', 'WHEN TO DRINK', and 'AVAILABLE SIZES', each with a right-pointing arrow.

163. The above constitutes, it is suggested, a further admission on behalf of Red Bull as to its heretofore improper and misleading behaviour and establishes the fundamental facts underpinning the present application;

164. Moreover, the Applicant discloses herewith, *en liasse*, the "Class Action Complaint" filed before the United States District Court, Central District of California, in *Wolf et al. v. Red Bull GmbH, et al*, Court file No. CV13-01444-MWF(JCGx) and the "First Amended Class Action Complaint", filed before the United States District Court, Southern District of New York, in *Benjamin Careathers v. Red Bull North America, Inc.*, Court file No. 1:13-CV-0369-VM, which describe in great detail the nature and extent of the misleading advertising by Red Bull in the United States concerning Red Bull, **Exhibit P-28**;

165. The abovementioned consumer class action lawsuits were consolidated in the United States District Court for the Southern District of New York and is currently the subject of a settlement between the parties of that action, notably with the Defendant Red Bull GMBH;
166. Applicant hereby discloses the following documents from the *Careathers, Wolf et al.* Consolidated Class Action:
- a) the Amended Stipulation of Settlement, signed by the parties on or about April 30, 2015, **Exhibit P-29**;
  - b) the Order Granting Preliminary Approval of Class Action Settlement (including Conditional Certification of Settlement Class, and providing for Notice and Scheduling Order), **Exhibit P-30**;
  - c) Legal Notice of Settlement to Class Members, **Exhibit P-31**, which provides *inter alia* that: “Red Bull further confirms that **all future claims** about the functional benefits of its products will be medically and/or scientifically supported”;
167. In Canada, Red Bull engaged in similar if not identical deceptive behaviour, as they had done in the United States, by disseminating false and misleading claims about the functional benefits of Red Bull, which they knew were not medically or scientifically supported;
168. Red Bull knew or ought to have known that both their Canadian and the American advertising campaigns, as well as the information unlawfully reported as “scientific” on Red Bull’s website (www.redbull.com), were capable of influencing the behaviour of the Applicant and Group members with respect to the formation of consumer contracts;
169. And yet, the Overview Of The Settlement webpage indicates in bold: “**You must be a resident of the United States to participate in this settlement**”, Applicant disclosing **Exhibit P-32**;
170. Defendants have not offered any compensation to Canadian Group members or consumers, despite settling the *Careathers, Wolf et al.* consolidated Class Action in the United States;
171. Red Bull continues to operate in Canada with complete disregard to ensuring that the correct information about their CEDs is conveyed to consumers. As of the eve of the filing of this Amended Application, Red Bull continues to make the exact same false representations when selling their products at retail directly to Canadian consumers. For instance, Red Bull continued to make the same so-called scientific-backed functional benefits concerning Red Bull Energy Drinks on Amazon’s Canadian website (see paragraphs 36 and 37 above), Exhibit P-10;

**Red Bull's Failure to Mention Important Facts in Representations it Makes to Consumers:**

172. It is extremely dangerous, as Health Canada has stated, to ingest Red Bull CEDs with alcohol, because mixing CEDs with alcohol may mask the level of alcohol intoxication and lead to dehydration;
173. Applicant (and certainly others) mixed Red Bull CEDs with alcohol because Red Bull hid from them and mislead them about the adverse health risks associated thereto;
174. Applicant ingested "**Red Bull Vodka**" because Red Bull promotes drinking its CEDs as a "cool" lifestyle, often advertising the mixing of its CEDs with Vodka in public places (these advertisements, such as the one listed at paragraph 186 below, give consumers the false impression that it is safe to consume CEDs with alcohol);
175. Up until this day, Red Bull fails to mention important facts in the representations it makes to consumers on its website, notably under one of the headings appearing on their "Q & A" page (<http://energydrink-ca.redbull.com/en/red-bull-facts>), Applicant disclosing an extract from Red Bull's Canadian website as of July 9<sup>th</sup>, 2016, listing the different Q & A topics as **Exhibit P-55**;

**Heading #1: Is it Safe to Drink Red Bull with Alcohol?**

176. To this date (November 4<sup>th</sup>, 2016) on Red Bull's Canadian website, under the heading "**Is it safe to drink Red Bull with alcohol?**" (<http://energydrink-ca.redbull.com/en/red-bull-and-alcohol>), Red Bull makes the following misleading representation, Applicant disclosing **Exhibit P-33**;

*Is it safe to drink Red Bull with alcohol?*

Red Bull Energy Drink is a non-alcoholic beverage. There is no indication that Red Bull Energy Drink has any specific effect (negative or positive) related to alcohol consumption. This was confirmed by leading global authorities like the European Food Safety Authority (EFSA), which concluded in 2015 that it is unlikely that caffeine interacts adversely with other typical constituents of energy drinks or with alcohol.

- 176.1 This aforementioned URL is part of Red Bull's Canadian website, not their European or UK sites despite Red Bull's reference to the European Safety Authority (2015) and the UK Committee on Toxicity (2012);



177. **On September 10<sup>th</sup>, 2015**, the same Red Bull website URL provided Canadian consumers with the following different, but equally misleading representations, Applicant disclosing **Exhibit P-34**:

*Is it safe to drink Red Bull with alcohol?*

There is no indication that Red Bull Energy Drink has any specific effect (negative or positive) related to alcohol consumption. This was confirmed by the UK Committee on Toxicity (2012) which concludes that "the current balance of evidence does not support a harmful toxicological or behavioural interaction between caffeine and alcohol".

178. Red Bull's representation above, in both Exhibit P-33 and Exhibit P-34, that *"There is **no indication** that Red Bull Energy Drink has any specific effect (negative or positive) related to alcohol consumption"* is false and misleading in a material respect and **fails to inform Group members** about a very important fact (as more fully detailed herein at paragraphs 177 to 179 below);
179. Moreover, Red Bull intentionally and recklessly omits to mention Health Canada's far different conclusions with respect to the **negative effects** of mixing Red Bull Energy Drinks with alcohol (see paragraphs 181 to 184 below);
180. By referring **Canadian consumers** exclusively to the conclusions made by the European Food Safety Authority in 2016, Exhibit P-33, and to the UK Committee on Toxicity in 2015, Exhibit P-34, (on a site operated by Defendant Red Bull **Canada**), Red Bull intentionally fails to mention an extremely important fact to its Canadian consumers (who are the ones predominantly consuming Red Bull in Canada) both on its labelling and on its Canadian website: <http://energydrink-ca.redbull.com/en/red-bull-and-alcohol> (as it appears from Exhibits P-33 and P-34);
181. This important and far more relevant fact to its target audience (i.e. Canadian consumers of Red Bull) is that, since at least **2005**, **Health Canada** has warned Canadians *"Do not mix Red Bull Energy Drink with alcohol"* and that *"Excessive drinking of "energy drinks" or mixing them with alcohol can have serious health effects"* (see Exhibit P-7 and P-8);
182. In the same "Safe use of Energy Drinks" publications, Exhibits P-7 and P-8, Health Canada further identifies that (the language in Exhibit P-7 reproduced below):

The problems with "energy drinks" arise when too many are consumed **or when they are mixed with alcohol**. For example, they have become

popular at all-night dance parties, bars and **clubs**.

183. Health Canada has been warning Canadians against mixing CEDs (such as Red Bull Energy Drinks) with alcohol since 2005 until the present date, as it appears from Exhibit P-1 (at page 7 of 10):

**Health Canada continues to advise consumers not to mix CEDs with alcohol** and will continue to restrict their use as an ingredient in pre-mixed alcoholic beverages. In addition, Health Canada is requiring all CEDs to display the statement "**Do not mix with alcohol**" on the label.

[emphasis in bold].

184. Consequently, Red Bull's representations, in 2016 and prior thereto, that "There is **no indication** that Red Bull Energy Drink has any specific effect (**negative** or **positive**) related to alcohol consumption" are **dangerously false and conceal important facts** (that were issued publicly on several occasions by Health Canada) which Red Bull Canada (and likely Red Bull GMBH) were very well aware of;

185. Red Bull is also well aware that it is extremely common for consumers of Red Bull Energy Drinks to mix their products with Vodka or other alcoholic beverages; "Vodka Red Bull" is a very common mixer at night clubs and bars, Plaintiff disclosing a 2013 news article published in the Daily Mail titled "Why Red Bull and vodka is a recipe for trouble: Mixing alcohol and energy drinks" as Exhibit P-35;

186. For instance, the following "PUR Red Bull Vodka" publicity is displayed at several of the bars at the Casino de Montréal, Applicant disclosing Exhibit P-36:



187. It is more than likely that Red Bull approved this publicity and is aware that its products are being advertised to consumers in Quebec as a cocktail with alcohol;

188. A consumer news article published online on August 16<sup>th</sup>, 2012, titled “**Clubbers Downing “Red Bull and Vodka” Are 600% More Likely to Suffer Heart Palpitations**” (<http://www.medicaldaily.com/clubbers-downing-red-bull-and-vodka-are-600-more-likely-suffer-heart-palpitations-241992>), mentions the following, Applicant disclosing the article as **Exhibit P-37**:

*However, scientists are finding more evidence that these caffeine-charged alcoholic cocktails are hazardous to one's health. Researchers found that while the combination cocktail of uppers and downers can reduce some of alcohol's sedating effects, they also found that mixing alcohol with energy drinks can lead to a range of serious health problems like heart palpitations, sleeping difficulties as well as jolt and crash episodes – 600% more likely.*

189. Red Bull fails in its obligation to mention an important fact to all Group members by concealing the warnings issued by Health Canada (for more than a decade), concerning the adverse health risks of mixing Red Bull Energy Drinks with alcohol;

### Conclusion: Red Bull

190. Defendants know or ought to know that there is no greater benefit of ingesting Red Bull Energy Drinks than ingesting an equivalent dose of caffeine and have intentionally caused Group members to have a misconception with respect to the functionality of Red Bull Energy Drinks (in fact, Red Bull has since modified the labelling on its cans and the information on its websites);

191. Red Bulls knows or ought to know of Health Canada’s warnings against mixing Red Bull Energy Drinks with alcohol, but choose to misguide Canadian consumers by providing them with less conclusive data coming from European sources, which are in fact irrelevant to Canadian consumers in this particular case. Furthermore, since the adoption of the July 7<sup>th</sup>, 2016 Resolution by the European Parliament, there is an apparent rift between European governing bodies when it comes to regulating CEDs;

192. The general impression that Red Bull’s representations convey to a credulous and inexperienced consumer is that: (i) Red Bull is “cool”; and (ii) it is **scientifically proven** that ingesting Red Bull increases performances, increases concentration and reaction speed, improves vigilance, stimulates metabolism, and makes one feel more energetic and thus improves one’s well-being;

193. The general impression that Red Bull’s representations convey to consumers concerning the ingesting of Red Bull Energy Drinks with alcohol is – **very dangerously** – that there

exists no specific effect related to the simultaneous consumption of the two;

194. to 223 [...];

224. Defendants unlawfully operate intentionally and with complete disregard to their obligations not to:

- a) make false or misleading representations about their CEDs to Group members, by any means whatever;
- b) falsely ascribe certain special advantages to their CEDs;
- c) falsely hold out that their CEDs are of a specified standard;
- d) falsely represent that their CEDs are of a particular category or type;
- e) falsely ascribe certain characteristics of performance to their CEDs;
- f) fail to mention an important fact in representations they make to Group members;
- g) distort the meaning of the information they address to the Group members;
- h) rely upon data falsely presented as scientific;

225. Defendants violate sections 52 of the *Competition Act* and the *CPA*, notably sections 41, 219, 228 and paragraph *b* of 239;

226. In these circumstances, Group members are entitled to claim both compensatory and punitive damages solidarily against the Defendants;

### DAMAGES

227. On its webpage <http://energydrink-ca.redbull.com/en/how-much-caffeine-in-red-bull>, Red Bull now acknowledges the fact that: “*One 8.4 fl oz can of Red Bull Energy Drink contains 80 mg of caffeine, **about the same amount as in a cup of coffee***” and list several other caffeine products in comparison, as it appears from Applicant’s **Exhibit P-38**;

228. By Red Bull’s own admission, as it appears from Exhibit P-38, Group members would benefit from virtually the same amount of caffeine by ingesting other (less expensive) products, such as:

Product	Caffeine
Filter coffee (250 ml)	69–127 mg
Black tea (250 ml)	26–116 mg
Instant coffee (250 ml)	63–90 mg
Dark Chocolate Bar (100 grams)	18-123mg
Cola drink (355 ml)	30-60 mg

229. For instance, a medium coffee at Tim Hortons contains 205 mg of caffeine (more than 2.5 times the caffeine than in a can of Red Bull Energy Drink) and costs **\$1.60** plus taxes, compared to an 8.4 fl oz can of Red Bull Energy Drink that generally retails for **\$2.99** plus taxes;
230. A cup of instant coffee that could be made at one's own home would cost less than **\$0.30** per cup (and provides roughly the same amount of caffeine as a can of Red Bull Energy Drink);
231. Defendants intentionally omit to disclose important facts and disseminate false information as to the functionality of their CEDs as a means of attracting and convincing Group members to purchase and pay a premium for their CEDs (which consumers would otherwise likely not pay had they known the truth);
232. During the class period, the Defendants have generated **billions of dollars** while intentionally choosing to ignore the laws in Quebec and Canada;
233. The Defendants' misconduct is reprehensible and to the detriment of vulnerable Quebec and Canadian consumers;
234. 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*, including sections 41, 219, 220(a), 221(c), (d) and (g), 228, 239 and 272;
  - b) Alberta's *Fair Trading Act*, RSA 2000, c F-2, including sections 6, 7 and 13;
  - c) Saskatchewan's *The Consumer Protection and Business Practices Act*, SS 2014, c C-30.2, including sections 6-9 and 93;

- d) Manitoba's *The Business Practices Act*, CCSM c B120, including sections 2, 3 and 23;
- e) British Columbia's *Business Practices and Consumer Protection Act*, SBC 2004, c 2, including sections 4-10;
- f) Ontario's *Consumer Protection Act*, 2002, SO 2002, c 30, Schedule A, including sections 11 and 14;
- g) New Brunswick's *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1, including sections 4, 10, 15-18 and 23;
- h) Nova Scotia's *Consumer Protection Act*, RSNS 1989, c 92, including sections 26 and 28A;
- i) Prince Edward Island's *Business Practices Act*, RSPEI 1988, c B-7, including sections 2-4;
- j) Newfoundland and Labrador's *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, including sections 7-10;

235. Moreover, Defendants failed in their obligation and duty to act in good faith in their representations and in the performance of their obligations;

236. 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; and
- b) punitive damages, in an amount to be determined, 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);

#### **NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

237. The action that the Applicant wishes to institute on behalf of the members of the Group is an action in damages and an injunctive remedy;

238. The conclusions that the Applicant wishes to introduce by way of an originating application are:

**GRANT** Plaintiff's class action against Defendants;

**GRANT** the class action of the Plaintiff on behalf of all of the members of the Group;

**DECLARE** the Defendants solidarily liable for the damages suffered by the Plaintiff and each of the members of the Group;

**ORDER** the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct, as well as their concealment of important facts;

**CONDEMN** the Defendants solidarily to pay to each member of the Group a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants solidarily to pay to each of the members of Group punitive damages, in an amount to be determined, 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 a class action;

**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 Group 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 including the cost of 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;

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

#### **IV. JURISDICTION:**

240. The Applicant suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:

- a) A great number of the members of the Group reside in the judicial district of Montreal;
- b) Most of Applicant's purchases were made in the judicial district of Montreal;
- c) Red Bull Canada Ltd. has a place of establishment for the distribution of its Red Bull Energy Drinks in Eastern Canada at 481 Viger avenue West, Montreal,

province of Quebec, in the judicial district of Montreal;

- d) Defendants do business in - and have a substantial connection to - the judicial district of Montreal;
- e) The Applicant's attorneys practice their profession in the judicial district of Montreal.
- f) There exists a real and substantial connection between the province of Quebec and the damages suffered by the Applicant and the Group members;

**V. NATIONAL CLASS (SUBSIDIARILY A PROVINCIAL CLASS):**

241. Applicant wishes to represent a national class (subsidiarily a provincial class), for the following reasons:

- a) A multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgments on questions of fact and law that are similar or related to all members of the Group;
- b) In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendants. Even if the Group members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the Defendants' misconduct, concerning their CEDs, would increase delays and expenses to all parties and to the court system;
- c) The facts and legal issues of the present action support a proportional approach to class action standing that economizes judicial resources and enhances access to justice;
- d) A search on the National Class Action Registry confirms that no other class actions have been instituted to date against the Defendants in any other Canadian province on behalf of the Group members;
- e) The principal purposes of most class actions for damages are: (i) compensation for victims; (ii) efficiency for victims; and (iii) the enhanced deterrence arising from the availability of class actions. If this Court authorizes a national class, the Defendants would ultimately face liability towards *all* Canadian victims of their misconduct, which would deter the Defendants and others from engaging in similar reprehensible conduct;



- f) All consumers living anywhere in the United States were entitled to receive compensation from Red Bull as part of their class action settlement in the American cases. Canadian consumers should be entitled to same;
- g) There is a real and substantial connection to the province of Quebec because **Defendant Red Bull Canada Ltd.** has more than just a place of establishment in Montreal, but in fact a distribution center for Eastern Canada at 481 Viger avenue West, in the judicial district of Montreal, in the province of Quebec;
- h) [...];
- i) Under section 36 of the *Competition Act*, private parties can commence legal action in the Federal Court or in a provincial court of superior jurisdiction to recover losses or damages incurred as a result of conduct contrary to section 52 of the *Competition Act*. Considering that the *Competition Act* is a federal legislation that is in force across Canada, any decision by the Superior Court of Quebec concerning section 52 of the *Competition Act* could apply and be enforced uniformly across Canada, should a national class be authorized;

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present application;

**AUTHORIZE** the bringing of a class action in the form of an originating Application in damages;

**APPOINT** the Applicant the status of representative plaintiff of the persons included in the Group herein described as:

**Group:**

All current and former residents of Canada (subsidiarily Quebec) who have purchased Red Bull;

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

or any other Class to be determined by the Court;

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

- a) Did Defendants engage in unfair, false, misleading, or deceptive acts or practices regarding the marketing, distribution and/or the sale of their CEDs? (Est-ce que les défenderesses se sont engagées dans des actes ou des pratiques injustes, fautifs, mensongers ou trompeurs concernant la commercialisation, la distribution et/ou la vente de leurs boissons

énergisantes contenant de la caféine ?)

- b) Are Defendants liable to the Group members for reimbursement of the purchase price of their CEDs as a result of their misconduct? (Les défenderesses sont-elles sujettes envers les membres du groupe au remboursement du prix d'achat de leurs boissons énergisantes contenant de la caféine suite à leurs fautes ?)
- c) Did Defendants conceal, or fail to mention an important fact in any of the representations they made to Canadian consumers concerning their CEDs? (Est-ce que les défenderesses ont passé sous silence un fait important, ou ont manqué à leur obligation d'information dans une représentation qu'elles ont faite aux consommateurs canadiens concernant leurs boissons énergisantes contenant de la caféine ?)
- d) Are Defendants liable to the Group members for reimbursement of the purchase price of their CEDs as a result of their concealment or failure to inform? (Les défenderesses sont-elles sujettes envers les membres du groupe au remboursement du prix d'achat de leurs boissons énergisantes contenant de la caféine pour leur manquement à l'obligation d'information ou du fait d'avoir passé sous silence un fait important ?)
- e) Should an injunctive remedy be ordered to prohibit the Defendants from continuing to perpetrate their unfair, false, misleading, and/or deceptive conduct, as well as their concealment of important facts? (Une action en injonction devrait-elle être ordonnée afin d'interdire aux défenderesses de continuer à perpétuer leur comportement injuste, fautif, trompeur et/ou mensonger, ainsi que de passer sous le silence un fait important ?)
- f) Are Defendants responsible to pay compensatory, moral and/or punitive damages to Group members and in what amount? (Les défenderesses devraient-elles payer des dommages compensatoires, moraux et/ou punitifs aux membres du groupe et pour quel montant ?)

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

**GRANT** Plaintiff's class action against Defendants;

**GRANT** the class action of the Plaintiff on behalf of all of the members of the Group;

**DECLARE** the Defendants solidarily liable for the damages suffered by the Plaintiff and each of the members of the Group;

**ORDER** the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct, as well as their concealment of important facts;

**CONDEMN** the Defendants solidarily to pay to each member of the Group a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants solidarily to pay to each of the members of Group punitive damages, in an amount to be determined, 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 a class action;

**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 Group 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 including the cost of 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;

**DECLARE** that all members of the Group 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;

**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 Group that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

**ORDER** the publication of a notice to the members of the Group 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, the National Post and the MONTREAL GAZETTE;

**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 to Caffeinated Energy Drink Consumers in Canada”;

**ORDER** the Defendants to send an Abbreviated Notice by e-mail to each Group member, to their last known e-mail address, with the subject line "Notice of a Class Action";

**RENDER** any other order that this Honourable Court shall determine;

**THE WHOLE** with costs including publications fees.

Montreal, April 7<sup>th</sup>, 2017

*(s) Joey Zukran*

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**LPC AVOCAT INC.**

Per: Me Joey Zukran

Attorney for Applicant

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

(Class Action)  
SUPERIOR COURT

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NO: 500-06-000780-169

MICHAEL ATTAR

Applicant

-VS-

RED BULL CANADA LTD. ET ALS.

Defendants

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**AMENDED LIST OF EXHIBITS**

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- EXHIBIT P-1:** Copy of document listed the of Canadian Food Inspection Agency website dated May 2015 “Transition of Caffeinated Energy Drinks from NHPs to Food Using Temporary Market Authorization Letters (TMAL)”, online: <http://www.inspection.gc.ca/food/non-federally-registered/product-inspection/caffeinated-energy-drinks/eng/1377613077840/1377613161282>
- EXHIBIT P-2:** Summary of Reported Adverse Reactions for “Red Bull” from the *Canada Vigilance Adverse Reaction Online Database*;
- EXHIBIT P-3:** Summary of Reported Adverse Reactions for “Monster” from the *Canada Vigilance Adverse Reaction Online Database*;
- EXHIBIT P-4:** Summary of Reported Adverse Reactions for “Rockstar” from the *Canada Vigilance Adverse Reaction Online Database*;
- EXHIBIT P-5:** Summary of Reported Adverse Reactions for “Full Throttle” from the *Canada Vigilance Adverse Reaction Online Database*;
- EXHIBIT P-6:** Summary of Reported Adverse Reactions for “NOS High Performance Energy Drink” from the *Canada Vigilance Adverse Reaction Online Database*;
- EXHIBIT P-7:** Copy of Health Canada bulletin dated June 2005 titled: “*SAFE USE OF ENERGY DRINKS*”;

- EXHIBIT P-8:** Copy of updated Health Canada bulletin dated August 2010 titled: “SAFE USE OF ENERGY DRINKS”;
- EXHIBIT P-9:** Copy of the abstract of an article titled “Do Energy Drinks Contain Active Components Other Than Caffeine?”, published in Nutrition Reviews, by Dr. Tom McLellan;
- EXHIBIT P-10:** Copy of a screen capture of the Amazon.ca (Canada) website still showing the “scientific studies” for CEDs sold by Red Bull (4 x 250 ml);
- EXHIBIT P-11:** Copy of a screen capture of the Amazon.com (USA) website showing the modified description for Red Bull Energy Drink, 8.4 Fl Oz Cans (6 Packs of 4, Total 24 Cans);
- EXHIBIT P-12:** [...];
- EXHIBIT P-13:** Copy of the transcript of a “chat” between Applicant and an Amazon.ca customer service agent;
- EXHIBIT P-14:** 473 ml can of Red Bull with the inscription 07-23-14/k 2 1251902/01:07;
- EXHIBIT P-15:** Copy of August 31<sup>st</sup>, 2013 Los Angeles Times article titled “Tobacco wars’ senators take aim at energy drinks”, by Alexei Koseff;
- EXHIBIT P-16:** to Exhibit P-19 [...];
- EXHIBIT P-20:** Copy of the extract of the enterprise’s information statement from the Quebec enterprise register (CIDREQ) of Red Bull Canada LTD;
- EXHIBIT P-21:** Terms and Conditions from the <http://www.redbull.com> website;
- EXHIBIT P-22:** Research article titled “Debunking the Effects of Taurine in Red Bull Energy Drinks” by Woojae Kim;
- EXHIBIT P-23:** The New York Times article by Barry Meier titled “Energy Drinks Promised Edge, but Experts Say Proof is Scant”, reported on January 1, 2013;
- EXHIBIT P-24:** 250 ml can of Red Bull with the inscription “2012-08-26/H#6 1209426/11:13”;
- EXHIBIT P-25:** 250 ml can of Red Bull with the inscription “2015-08-31/L#6 1313544/22:35”;
- EXHIBIT P-26:** 250 ml can of Red Bull with the inscription 2018-02-06/G 5 1453251/23:25;

- EXHIBIT P-27:** *En liasse*, screen captures of Red Bull’s website from October 2012 through March 2015;
- EXHIBIT P-28:** *En liasse*, copies of the “Class Action Complaint” in *Wolf et al. v. Red Bull GmbH, et al*, Court file No. CV13-01444-MWF(JCGx) and the “First Amended Class Action Complaint”, in *Benjamin Careathers v. Red Bull North America, Inc.*, Court file No. 1:13-CV-0369-VM;
- EXHIBIT P-29:** Copy of the “Amended Stipulation of Settlement” signed by the parties from the *Careathers, Wolf et al.* Consolidated Class Action against Red Bull;
- EXHIBIT P-30:** Copy of the “Order Granting Preliminary Approval of Class Action Settlement” (including Conditional Certification of Settlement Class, and providing for Notice and Scheduling Order) from the *Careathers, Wolf et al.* Consolidated Class Action against Red Bull;
- EXHIBIT P-31:** Copy of the “Legal Notice of Settlement to Class Members” from the *Careathers, Wolf et al.* Consolidated Class Action against Red Bull;
- EXHIBIT P-32:** Copy of the Overview Of The Settlement webpage;
- EXHIBIT P-33:** Screen capture of Red Bull’s webpage titled “Is it safe to drink Red Bull with alcohol?” (<http://energydrink-ca.redbull.com/en/red-bull-and-alcohol>);
- EXHIBIT P-34:** Screen capture of Red Bull’s webpage titled “Is it safe to drink Red Bull with alcohol?” (<http://energydrink-ca.redbull.com/en/red-bull-and-alcohol>) taken from September 10<sup>th</sup>, 2015;
- EXHIBIT P-35:** Copy of the 2013 news article published in the Daily Mail (<http://www.dailymail.co.uk/health/article-2419579/Why-Red-Bull-vodka-recipe-trouble-Mixing-alcohol-energy-drinks-harmful-previously-thought.html>)
- EXHIBIT P-36:** Copy of the “PUR Red Bull Vodka” publicity displayed at several bars at the Casino de Montréal;
- EXHIBIT P-37:** Copy of August 16<sup>th</sup>, 2012 article titled “Clubbers Downing “Red Bull and Vodka” Are 600% More Likely to Suffer Heart Palpitations”;
- EXHIBIT P-38:** Extract from the Defendants’ website confirming that “One 8.4 fl oz can of Red Bull Energy Drink contains 80 mg of caffeine, about the same amount as in a cup of coffee”: <http://energydrink-ca.redbull.com/en/how-much-caffeine-in-red-bull>;

**EXHIBIT P-39:** to Exhibit P-53 [...];

**EXHIBIT P-54:** Copy of the January 16<sup>th</sup>, 2013, video clip by ABC news reporters Diane Sawyer and Lisa Stark;

**EXHIBIT P-54-A:** Copy of the transcript of the January 16<sup>th</sup>, 2013, video clip by ABC news reporters Diane Sawyer and Lisa Stark;

**EXHIBIT P-55:** Extract from Red Bull's Canadian website listing the different Q & A topics;

The exhibits in support of the application are available on request.

Montreal, April 7<sup>th</sup>, 2017

*(s) Joey Zukran*

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**LPC AVOCAT INC.**

Per: Me Joey Zukran

Attorney for Applicant



N<sup>o</sup>: 500-06-000780-169

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(Class Action)  
SUPERIOR COURT  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

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MICHAEL ATTAR

Applicant

-vs-

RED BULL CANADA LTD.

- and -

RED BULL GMBH

Defendants

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APPLICATION FOR AUTHORIZATION  
TO RENOUNCE TO CERTAIN RIGHTS  
ARISING FROM A JUDGMENT AND TO  
REVISE CERTAIN PARAGRAPHS  
(Arts. 333 and 585 C.C.P.)

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ORIGINAL

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