

(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 LLP
AUDIBLE INC.**

Defendants

JUDGMENT

(ON A CONSOLIDATED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AGAINST
AUDIBLE 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;
- [2] **CONSIDERING** the transaction executed between the Applicant and Defendant Audible Inc. on October 20th and 23rd, 2017 filed as Exhibit AUD-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 Audible Inc. for settlement purposes and to approve notices informing the putative settlement class members as defined in the Settlement Agreement that the Settlement Agreement will be submitted to the Court for approval;
- [5] **CONSIDERING** the proposed French and English versions of the email and pre-approval notices filed *en liasse* as Exhibit AUD-2 in support of the Consolidated Application;
- [6] **CONSIDERING** the submissions of counsel for the Applicant and counsel for the Defendant Audible 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 and at a reduced cost 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,

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

(...)

(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*;

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 Audible 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:

Every consumer, pursuant to the terms of Quebec's Consumer Protection Act, who since July 4th, 2013, was provided services by Audible Inc. through an Eligible Account at a reduced price or free of charge, for a fixed period, and who, after the fixed period, was required to send a notice to Audible Inc. indicating that he/she does not wish to obtain the services at the regular price;

Eligible Account means an Audible.com account that meets the following cumulative criteria: a) was opened by a natural person physically residing in the province of Québec during the Class Period further to signing up for a 30-day trial on Audible.com while

continuing to physically reside within the province of Québec; and b) has actually paid membership fees as a result of maintaining their membership for at least thirty (30) days after the date of signing up (the “putative settlement class members”);

In French:

Tout consommateur, au sens de la Loi sur la protection du consommateur du Québec, qui, depuis le 4 juillet 2013 a reçu de la part d’Audible inc., par le biais d’un compte admissible, des services à un prix réduit ou gratuitement, pour une période déterminée, et à qui, au terme de la période déterminée, on a exigé d’envoyer un avis à Audible inc. indiquant qu’il ne souhaite pas obtenir les services au prix courant;

Un Compte admissible signifie un compte qui rencontre les critères cumulatifs suivants : a) a été ouvert par une personne physique résidant dans la province de Québec durant la Période de la classe après s’être inscrite pour un essai gratuit de 30 jours sur Audible.com en continuant de résider dans la province de Québec; et b) a effectivement payé des frais d’adhésion résultant du fait de maintenir son adhésion pour au moins trente (30) jours après la date d’inscription (les « membres de la classe putative de règlement »);

[12] **AUTHORIZES** the bringing of a class action against Defendant Audible Inc. for settlement purposes;

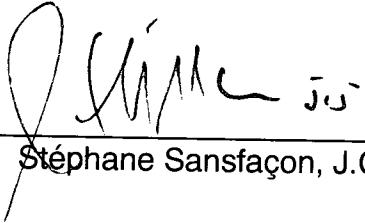
[13] **APPOINTS** the Applicant Stephanie J. Benabu the status of Representative Plaintiff for settlement purposes;

[14] **IDENTIFIES** the principal question of fact and law to be treated collectively as the following:

During the Class Period, did Audible’s alleged practice violate paragraph c of section 230 of the CPA, and, if so, are Putative Class Members entitled to compensation?

[15] **APPROVES** the form and content of the email and pre-approval notice to putative settlement class members, in its French and English version, filed as Exhibit AUD-2;

- [16] **ORDERS** the Defendant Audible Inc. to notify by email the pre-approval notice (**Exhibit AUD-2**) directly to each putative settlement class member, no later than forty (40) days after the present judgment is rendered;
- [17] **DECLARES** that putative settlement 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 AUD-2**), on or before the thirtieth (30th) day following the notification by email of said pre-approval notices;
- [18] **DECLARES** that putative settlement 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 AUD-2**) on or before the thirtieth (30th) day following the notification by email of said pre-approval notices;
- [19] **DECLARES** that all putative settlement class members that have not requested their exclusion be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;
- [20] **DECLARES** that this Judgment, the authorization of the class action with respect to Defendant Audible 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 Audible Inc. in this action;
- [21] **SCHEDULES** the presentation of the Application for Approval of the Settlement Agreement filed as Exhibit AUD-1 and for Approval of Class Counsel Fees on April 13th, 2018 at 09h00 in room 2.08 of the Montréal courthouse;
- [22] **WITHOUT COSTS.**



Stéphane Sansfaçon, J.C.S.

Mtre Joey Zukran
LPC Avocat Inc.
Attorney for the Applicant

Mtre Paule Hamelin
Gowling WLG (Canada), s.e.n.c.r.l.
Attorneys for Defendant Audible Inc.