

(Class Action)
Superior Court

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO.: 500-06-000798-161

DATE: NOVEMBER 1, 2017

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

STEPHANIE J. BENABU

Applicant

v.

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

Defendants

JUDGMENT

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

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

Class:

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

Sub-class:

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

- [2] **CONSIDERING** the transaction executed between the Applicant and Defendant Netflix Inc. on October 27th and 30th, 2017 filed as Exhibit NET-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 Netflix Inc. for settlement purposes and to approve notices informing the Class Members that the Settlement Agreement will be submitted to the Court for approval;
- [5] **CONSIDERING** the proposed French and English versions of the pre-approval notice filed respectively *en liasse* as Exhibit NET-2 in support of the Consolidated Application;

- [6] **CONSIDERING** the submissions of counsel for the Applicant and counsel for the Defendant Netflix Inc. who consents to the Consolidated Application;
- [7] **CONSIDERING** that the criteria set out in article 575 of the *Code of Civil Procedure* to authorize a class action are applied with flexibility when the authorization of the class action is sought for settlement purposes¹;
- [8] **CONSIDERING** that the Court is of the opinion that the four criteria set out in article 575 of the *Code of Civil Procedure* to authorize a class action are met, namely that:

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

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

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

(...)

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

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

- (3) the composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings; and
 - (4) the class member appointed as representative plaintiff is in a position to properly represent the class members.
- [9] **CONSIDERING** articles 575, 576, 579, 580, 581 and 590 of the *Code of Civil Procedure*;

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

FOR THESE REASONS, THE COURT:

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

In English:**Class:**

All consumers residing in Québec who (i) started a subscription to the Netflix service during the Class Period, (ii) received a free trial, (iii) were automatically renewed at the regular price following the end of their Free Trial Period and (iv) subsequently cancelled their subscription to the Netflix service within two months following the end of their Free Trial Period;

(hereinafter the **“Settlement Class Members”**)

Sub-Class A:

Settlement Class Members who cancelled their Netflix service after September 18th, 2016;

Sub-Class B:

Settlement Class Members who cancelled their Netflix service on or before September 18th, 2016;

In French:**Groupe :**

Tous les consommateurs résidant au Québec qui (i) ont commencé un abonnement au service Netflix pendant la Période du recours, (ii) ont reçu un essai gratuit, (iii) ont été automatiquement renouvelés au prix régulier après la fin de leur période d'essai gratuite et (iv) par la suite annulé leur abonnement au service Netflix dans un délai de deux mois suivant la fin de leur période d'essai gratuite;

(les « **Membres du Groupe de Règlement** »)

Sous-Groupe A :


Les membres du Groupe de Règlement qui ont annulé leur service Netflix après le 18 septembre 2016;

Sous-Groupe B :

Les membres du Groupe de Règlement qui ont annulé leur service Netflix avant le 18 septembre 2016;

- [12] **AUTHORIZES** the bringing of a class action against Defendant Netflix 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 Netflix's alleged practice violate paragraph c of section 230 of the CPA, and, if so, are Class Members entitled to compensation?
- [15] **APPROVES** the form and content of the pre-approval email and notice to Class Members, in its French and English version, filed as Exhibit NET-2;
- [16] **ORDERS** the Defendant Netflix Inc. to notify the pre-approval notice (**Exhibit NET-2**) by email directly to each Class Member for whom it has an email address before January 31st, 2018;
- [17] **ORDERS** the Defendant Netflix Inc. to disseminate the pre-approval notice in French and English (**Exhibit NET-2**), via the Facebook Notice Campaign, for a period of twenty (20) days ending no later than January 31st, 2018, with a minimum budget for the Province of Quebec of \$10,000.00 before any applicable taxes, with a target audience corresponding to the Settlement Agreement, with emphasis on the following locations: Montreal, South Shore, Laval, Sherbrooke and Quebec City and potential Class members having identified the following interests: Netflix, Movies and TV shows;
- [18] **DECLARES** that Class Members who wish to object to Court approval of the Settlement Agreement must do so in the manner provided for in the pre-approval notice (**Exhibit NET-2**), on or before March 15th, 2018;
- [19] **DECLARES** that Class Members who wish to opt-out from the class action and the settlement thereof may do so by delivering a written notice confirming their intention to opt-out of this class action, in the manner provided for in the pre-approval notice (**Exhibit NET-2**) on or before March 15th, 2018;

- [20] **DECLARES** that all Class Members that have not requested their exclusion be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;
- [21] **DECLARES** that this Judgment, the authorization of the class action with respect to Defendant Netflix 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 Netflix Inc. in this action;
- [22] **APPOINTS** Collectiva Inc. as the Claim Administrator for the purposes of accomplishing the tasks that devolve to it pursuant to the Settlement Agreement;
- [23] **ORDERS** Defendant Netflix Inc. to provide the Claim Administrator such personal information regarding the Class Members as is necessary to implement the Settlement Agreement;
- [24] **SCHEDULES** the presentation of the Application for Approval of the Settlement Agreement filed as Exhibit NET-1 and for Approval of Class Counsel Fees on April 13th, 2018 at 09h00 in room 2.08 of the Montréal courthouse;
- [25] **WITHOUT COSTS.**



Stéphane Sansfaçon, J.C.S.

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Mtre Martin F. Sheehan
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