

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
LOCALITY OF MONTREAL

NO: 500-06-000798-181

(Class Action)
SUPERIOR COURT

STEPHANIE J. BEMABOU

Applicant

v.

VIDEOTRON S.E.N.C.

VIDEOTRON LTEE

NETFLIX INC.

BELL CANADA

(...)

(...)

ROGERS COMMUNICATIONS INC.

(...)

AUDIBLE INC.

APPLE INC.

LINKEDIN IRELAND

GOOGLE INC.

SHOMI PARTNERSHIP

ROGERS MEDIA INC.

(...)

SIRIUS XM CANADA INC.

SPOTIFY CANADA INC.

AFFINITAS GMBH

SETTLEMENT AGREEMENT

MATCH.COM LP
Defendants

-and-

WHEREAS on July 4th, 2018, the Applicant filed an Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff (the "Application to Authorize the Bringing of a Class Action") against Spotify AB and twenty-four (24) other defendants (collectively referred to hereinafter as the "Defendants") on behalf of the following proposed class and subclass:

"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");

(hereinafter referred to as the "Class")

Subclass:

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

(hereinafter referred to as "Subclass")

or any other Class to be determined by the Court;

WHEREAS the Applicant subsequently modified its Application to replace Spotify AB with Spotify Canada Inc. (together with Spotify AB hereinafter "Spotify") as a defendant;

- a) "Applicant" means Stephanie J. Banabou;
- b) "Application to Authorize the Bringing of a Class Action" means the Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff filed by the Applicant on July 4th, 2016;
- c) "Approval Hearing" means the hearing before the Court for the purpose of determining whether to issue an Approval Judgment;
- d) "Approval Notice" means the notice that will be approved by the Court as part of the Approval Judgment, which, subject to the Court's approval, will be substantially in the form of Schedule B;
- e) "Approval Judgment" means the judgment of the Court approving this Settlement Agreement;
- f) "Class" means consumers residing in Quebec who (i) started a subscription to the Spotty service during the Class Period, (ii) received a free or discounted trial, and (iii) were automatically renewed at the regular price following the end of their free or discounted trial;
- g) "Class Counsel" means the law firm L.P.C. Avocat Inc.;
- h) "Class Member" means a member of the Class who did not exclude himself or herself in accordance with the provisions of article 580 of the Code of Civil Procedure;

1. Preamble. The preamble forms an integral part of this Settlement Agreement.
2. Definitions. The following terms and expressions are defined for the purposes of the preamble and this Settlement Agreement as follows:

WHEREFORE the parties hereto have agreed as follows:

to the terms and conditions hereof.

WHEREAS the Applicant and Spotty (the "Parties") wish to settle the litigation without prejudice or admission of liability whatsoever, by way of mutual concessions, pursuant to the terms and conditions hereof.

WHEREAS on August 24th, 2016, Spotty filed an Answer stating its intention to contest the Application to Authorize the Bringing of a Class Action.

WHEREAS Spotty denies that its business practices contravene the CPA or that Class and Subclass members are entitled to compensatory or punitive damages.

WHEREAS Spotty denies that its business practices contravene the CPA or that Class and Subclass members are entitled to compensatory or punitive damages pursuant to section 272 of the CPA.

WHEREAS the Defendants, including Spotty, are carrying on their business in violation of paragraph c of section 250 of the Consumer Protection Act, C.P.A. (the "CPA") and that Class and Subclass members are justified in claiming compensatory and punitive damages pursuant to section 272 of the CPA.

- j) "Class Period" means:
- (a) for all Class Members and Settlement Class Members except the Rogers Settlement Class Members, July 4, 2013 until October 31, 2017;
- (b) for the Rogers Settlement Class Members, July 4, 2013 until July 31, 2018.
- j) "Court" means the Superior Court of Quebec;
- k) "Credit" means, for each Settlement Class Member and Rogers Settlement Class Member, a one month free period of Spotty Premium service that each Settlement Class Member and Rogers Settlement Member is entitled to receive from Spotty subject to the terms and conditions of this Settlement Agreement;
- l) "Final" means, when used in relation to a judgment or order, the time at which said judgment or order has been entered and all rights of appeal therefrom have been exhausted, such that the judgment or order has acquired the status of *res judicata*;
- m) "Free or Discounted Trial" means the offer to eligible consumers that they may use the Spotty service free of charge or for a discounted price for a limited period of time and then automatically be charged thereafter unless they advise Spotty that they wish to cancel the service;
- n) "Free or Discounted Trial Period" means, for each individual consumer, the period starting from the beginning of their respective Free or Discounted Trial to the end of their respective Free or Discounted Trial;
- o) "Litigation" means the legal proceedings in Court file 500-06-000798-161 against Spotty Canada Inc., amongst others, pending in the Superior Court of Quebec, district of Montreal;
- p) "Opt-Out Period" means the delay following the Pre-Approval Notice or the Approval Notice during which potential Class Members may choose to opt out of the settlement, as determined by the Court in the Pre-Approval judgment or the Approval judgment;
- q) "Parties" means, collectively, the Applicant and Spotty Canada Inc.;
- r) "Pre-Approval Hearing" means the hearing before the Court for the purpose of determining whether to issue a Pre-Approval judgment;
- s) "Pre-Approval Notice" means the notice that will be subject to approval by the Court, substantially in the form of Schedule A;

- t) "Pre-Approval Judgment" means the judgment of the Court authorizing the class action proposed in the Application to Authorize the Bringing of a Class Action for the sole purpose of giving effect to the settlement that has been reached by the Parties and for the approval of the Pre-Approval Notice;
- u) "Released Claims" means any and all claims, demands, rights, liabilities, and causes of action of any nature whatsoever, known or unknown, matured or not, at law, whether extrac contractual, contractual, or under any other right at law, existing under federal or provincial law, that either of the Applicant, or any Class Member, has or may have against the Released Persons arising out of an alleged violation of the CPA alleged in the Litigation;
- v) "Released Persons" means Spotty Canada Inc., Spotty AB and their past and present partners, affiliates, and predecessors, successors, assigns, parents, subsidiaries, insurers, officers, directors and employees;
- w) "Rogers Settlement Class" means Settlement Class members residing in Québec who registered to the Spotty service through Rogers Canada Inc. as part of their Share Everything or Share Everything + plans during the Class Period;
- x) "Setting Parties" means, collectively, the Released Persons, the Applicant and all Class Members;
- y) "Settlement Class" means Class Members residing in Québec who (i) started a subscription to the Spotty service during the Class Period, (ii) received a Free or Discounted Trial, (iii) were automatically renewed at the regular price following the end of their Free or Discounted Trial Period, and (iv) subsequently cancelled their subscription to the Spotty service within one month following the end of their Free or Discounted Trial Period;
- z) "Spotty" means Spotty Canada Inc. and Spotty AB;
- aa) "Spotty Premium" means the Spotty Premium service offered by Spotty subject to the applicable terms and conditions to such service;
- 3. Recitals and Definitions Included. The Recitals and Definitions form an integral part of this Settlement Agreement.
- 4. Nullity if not Approved. If this Settlement Agreement is not approved by the Court, the Settlement Agreement is terminated, and it will become null and void, with the exception of sections 5, 24 and 25; it will not generate any other rights or obligations either for the Parties or the Class Members. In such case, the Setting Parties will be restored to their respective positions in the Litigation before the Settlement Agreement was executed.

5. No Admission of Liability. Spotify denies the factual allegations and legal claims asserted in the Application to Authorize the Bringing of a Class Action, including any and all charges of wrongdoing or liability arising out of any of the conduct, business practice, statements, acts or omissions alleged in the Application to Authorize the Bringing of a Class Action. Neither the Settlement Agreement, nor anything contained herein, shall be interpreted as a concession or admission of wrongdoing or liability on the part of Spotify.
6. Application for Pre-Approval Judgment. Upon signature of the present Settlement Agreement, Spotify and the Applicant will apply to the Court for the Pre-Approval Judgment.
7. Identification of the Class Members. Spotify will identify Class Members based on subscriber data.
8. Communication of the Pre-Approval Notice. Within fifty (50) days after the Pre-Approval Judgment, Spotify will send an email containing the Pre-Approval Notice to Class Members at the email address they use for their Spotify account and make the Pre-Approval Notice accessible to Class Members through the Spotify app.
9. Application for Approval Judgment. Following the Pre-Approval Judgment and within thirty (30) days after communication of the Pre-Approval Notice to Class Members, Spotify and the Applicant will apply to the Court for the Approval Judgment and request that the Court:
 - a) declare that this Settlement Agreement is fair, reasonable, and in the best interests of the Class Members;
 - b) approve this Settlement Agreement and order the Parties and all Class Members to comply with it;
 - c) order that the Approval Notice be communicated by email to Class Members to the email address used for their Spotify account as well as make it accessible to Class Members through the Spotify app; and
 - d) declare that the litigation is settled out of Court.
10. Communication of the Approval Notice. Within fifteen (15) days after the Approval Judgment, Spotify shall:
 - a) Email to Settlement Class Members: email a copy of the Approval Notice to Settlement Class Members to the email address used for their Spotify account;
 - b) In-App Notification: make the Approval Notice accessible to Settlement Class Members through the Spotify app.

11. Consequences of a failure to opt out in a timely and proper manner. All Class Members who do not timely and properly opt out of the Class within the Opt-Out Period will irrevocably be bound by all the terms and conditions of this Settlement Agreement following the Approval Judgment.
12. Releases. Upon the Approval Judgment becoming final, the Applicant and each of the Class Members will be deemed to have, and by operation of the Approval Judgment will have, fully, finally, and forever released, relinquished and discharged the Released Persons from all Released Claims.
13. Compensation to Settlement Class Members. As full and final compensation for the Released Claims, each Settlement Class Member shall receive a free one month period of Spotty Premium service from Spotty within thirty (30) days of the Approval Notice.
14. One Credit Only. Each Settlement Class Member shall be entitled to a maximum of one Credit, regardless of the number of times that they have subscribed to the Spotty service during the Class Period or of the number of times that they have cancelled their subscription to the Spotty service within one month of the end of a Free or Discounted Trial Period.
15. Complete Satisfaction of the Settlement for Settlement Class Members. After forty-five (45) days from the date of the distribution of the Credits to Settlement Class Members by Spotty, excluding Rogers Settlement Class Members, Spotty shall present an application, which Applicant undertakes to support, seeking the Court's confirmation that Spotty has fully satisfied all its obligations pursuant to the Settlement for Settlement Class Members, excluding Rogers Settlement Class Members.
16. Complete Satisfaction of the Settlement for Rogers Settlement Class Members. On or about April 17, 2019, Spotty shall present an application, which Applicant undertakes to support, seeking the Court's confirmation that Spotty has fully satisfied all its obligations pursuant to the settlement with regards to Rogers Settlement Class Members.
17. Discontinuance of Free or Discounted Trials in Quebec. Spotty agrees to discontinuance of Free or Discounted Trials in Quebec by November 1, 2017 for the Spotty service for Quebec subscribers except for the Rogers Class Members. Spotty also commits to discontinue Free or Discounted Trials in Quebec for the Rogers Class Members on January 31st, 2019.
- No admission of liability can be inferred from this discontinuance and Class Counsel shall not, in any manner or any time, assert that the discontinuance of Free or Discounted Trials in Quebec amounts to an admission of liability on the part of Spotty.

Furthermore, this agreement does not prevent Spotty from, at any point in the future, introducing or re-introducing any business model or technical solution that it deems compliant with the Quebec legislation.

18. Honorarium to the Applicant: Spotty shall pay a compensation of \$2,000 to the Applicant as part of this Settlement Agreement for the time effort and disbursements incurred for this Litigation and for any compensation that she may be entitled to pursuant to this Settlement Agreement. Payment of this compensation shall be remitted to Class Counsel within thirty (30) days after the Approval Judgment becomes Final.

19. Class Counsel Fees: Spotty shall pay fees of \$150,000 to the Class Counsel plus the applicable taxes in full and final compensation of its judicial or extrajudicial fees, disbursements or costs (including court stamp and bailiff fees). Spotty shall pay such fees to Class Counsel within thirty (30) days after Class Counsel has obtained the approval of the Court with regards to the payment of such fees.

Class Counsel shall be responsible for filing and presenting an application before the Court requesting approval of payment of its fees.

This Settlement Agreement is in no way conditional upon the approval of Class Counsel's fees by the Court. Any order or proceeding relating to Class Counsel's fees, or any appeal from any order relating thereto or reversal or amendment thereof, shall not operate to terminate or cancel the Settlement Agreement.

20. Consent to Authorization and Identical, Similar or Related Question of Law and Fact: Spotty consents to the authorization of the class action proposed in the Application to Authorize the Bringing of a Class Action for the sole purpose of this Settlement Agreement. The Parties agree that the authorized class action, subject to the Court's approval, will be based solely on the following identical, similar or related question of law or fact:

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

21. Other Costs: Spotty will not be liable to pay any other costs or fees to the Applicant, to Class Members, or to Class Counsel, other than the compensation as provided by section 13 (for Settlement Class Members), 18 (for the Applicant) and 19 (for Class Counsel) herein.

22. Cooperation and Best Efforts: The Parties agree to cooperate to the extent reasonably necessary to give effect to and implement all terms and conditions of this Settlement Agreement and to exercise best efforts to fulfill the terms and conditions of this Settlement Agreement.

23. **Negotiated Agreement.** The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them. The Parties agree that the consideration provided to the Class Members and the other terms and conditions of this Settlement Agreement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

24. **Not Admissible as Evidence.** Neither this Settlement Agreement, nor anything contained herein, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out this Settlement Agreement shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, regulatory or administrative action or proceeding against the Released Persons.

Notwithstanding the above, this Settlement Agreement may be referred to or offered as evidence in a proceeding to approve or enforce this Settlement Agreement, to defend against the assertion of Released Claims, and as otherwise required by law.

25. **No Press Release.** The Parties agree that they will not issue any press release, whether joint or individual, concerning this Settlement Agreement or anything related thereto. The Parties further agree that they will not otherwise seek to obtain media coverage in relation to the Settlement Agreement, with the exception that Class Counsel will post this Settlement Agreement on his website. Subject to Class Counsel's obligations under section 17 of this Settlement Agreement, the Parties will have the right to comment on the settlement if solicited by the press.

26. **Notices.** Any notification, request, introduction or other document to be given by one Party to the other (other than class-wide notification) shall be in writing (including email) and transmitted to:

If to Spotify:
c/o Me Martin F. Sheehan
Fasken Martineau Dumoulin LLP
Stock Exchange Tower
800 rue du Square-Victoria, Suite 3700
Montreal, Quebec, H4Z 1E9
msheehan@fasken.com


If to the Applicant:
c/o Me Joey Zukran
LPC Avocat Inc.
5800 Cavendish Blvd., Suite 411
Montreal, Quebec, H4W 2T5
jzukran@pdclex.com


- a) All time periods in this Settlement Agreement shall be computed in calendar days unless expressly provided otherwise. Also, unless otherwise provided in this Settlement Agreement, in computing any period of time in this Settlement Agreement, the day of the act or event shall not be included, and the last day of the period shall be included, unless it is a Saturday, a Sunday or a statutory holiday, or when the act to be done is a Court filing, in which case the period shall run until the end of the next day that is not one of the aforementioned days.
- b) The plural of any defined term in this Settlement Agreement includes the singular and the singular of any defined term in this Settlement Agreement includes the plural, as the case may be.
- c) All of the Schedules to this Settlement Agreement are material and integral parts hereof and are fully incorporated by this reference.
- d) This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties.
- e) This Settlement Agreement and the Schedules attached hereto constitute the entire agreement among the Parties, and supersedes, prior exchanges, oral or in writing, between Spottly's counsel and Class Counsel.
- f) Each counsel or other person executing this Settlement Agreement or any of its Schedules on behalf of any Party hereby warrants that such person has the full authority to do so.
- g) This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. A complete set of original counterparts will be filed with the Court.

27. Jurisdiction of the Superior Court of Quebec. The Court will retain jurisdiction with respect to the implementation and enforcement of the terms and conditions of this Settlement Agreement and all Parties hereto submit to jurisdiction of the Court for purposes of implementation and enforcement of this Settlement Agreement.
28. Transaction and Governing Law. This Settlement Agreement is a transaction pursuant to articles 2631 and following of the *Civil Code of Quebec* and shall be governed, construed and enforced in accordance with the laws of the Province of Quebec.
29. Miscellaneous Provisions.

h) The Parties hereby acknowledge that they have requested that this Settlement Agreement be drafted in English. Les Parties reconnaissent avoir exigé que la présente transaction soit rédigée en anglais.

AND THE PARTIES HAVE SIGNED:

In Montreal, this 19 day of October 2017

LPC AVOCAT INC.
Per: Mtre Joey Zukran, Class Counsel

In Stockholm, this 23 day of October 2017

Name: _____
Title: _____
Duly authorized representative of Spotify
Canada Inc.