

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000824-165

(Class Action)
SUPERIOR COURT

ANTONIO BRAMANTE, [REDACTED]
[REDACTED]

Representative Plaintiff

vs.

**LES RESTAURANTS MCDONALD DU
CANADA LIMITÉE**, legal person having an
establishment at 1325, route Transcanadi-
enne, Dorval, district of Montréal, province of
Québec, H9P 2V5

Defendant

ORIGINATING APPLICATION
(Articles 141 and 583 C.C.P.)

THE REPRESENTATIVE PLAINTIFF RESPECTFULLY STATES THE FOLLOWING:

I. INTRODUCTION

1. The purpose of the present class action is to put an end to McDonald's illegal and influential practice of enticing children - a group that is most vulnerable to commercial manipulation - with Happy Meals and toys and to require indemnification for this illegal conduct;
2. The law specifically forbids commercial advertisement directed at persons under thirteen years of age subject to specific exceptions, which are inapplicable to the conduct of Defendant Les Restaurants McDonald du Canada Limitée (hereinafter "McDonald's");
3. No other fast food chains or restaurants advertise toys or children's books with their children's meals (using displays in front of the restaurant counters), making McDonald's the only restaurant in Quebec engaging in the prohibited practice;

4. On November 14th, 2018, the Honourable Justice Pierre-C. Gagnon, J.S.C., authorized the Representative Plaintiff to bring a class action for the benefit of the persons forming part of the group hereinafter described, namely:

English:

Every consumer pursuant to the Québec *Consumer Protection Act* who, since November 15th, 2013 purchased in Québec for a child under 13 years of age then present inside a McDonald's restaurant, a toy or Happy Meal, during an advertising campaign directed at children taking place inside the restaurant.

French:

Tout consommateur au sens de la *Loi sur la protection du consommateur* du Québec qui, depuis le 15 novembre 2013, a acheté au Québec pour un enfant de moins de 13 ans alors présent dans un restaurant McDonald, un jouet ou un Joyeux festin, durant une campagne publicitaire destinée aux enfants à l'intérieur de tel magasin.

5. The Honourable Justice Gagnon appointed the status of Representative Plaintiff to Mr. Antonio Bramante and identified the principal questions of law or fact to be dealt with collectively in the class action as follows:

English:

- a) Does McDonald's use inside its stores in Québec advertisements directed at children under 13 years or age?
- b) Do said advertisements directly incite a child to buy a toy or a Happy Meal? Or to urge another person to buy a toy or Happy Meal? Or to seek information about either?
- c) If so, what is the appropriate remedy?
- d) Are the class members entitled to compensatory damages? To punitive damages?
- e) Should an injunction be issued to order McDonald's to cease said advertisements?

French:

- a) McDonald's utilise-t-elle dans ses restaurants des messages publicitaires destinés à des enfants de moins de 13 ans ?
- b) Ces messages publicitaires incitent-ils directement un enfant à acheter un

jouet ou un Joyeux festin? Ou à inviter une autre personne à acheter tel jouet ou Joyeux festin? Ou à s'informer au sujet de l'un ou l'autre ?

- c) Si oui, quelle est la réparation appropriée ?
- d) Les membres du groupe ont-ils droit à des dommages-intérêts compensatoires ? À des dommages punitifs ?
- e) Y a-t-il un lien de prononcer une injonction pour ordonner à McDonald de cesser tels messages publicitaires ?

II. THE PARTIES

- 6. The Representative Plaintiff is a consumer within the meaning of Quebec's *Consumer Protection Act* (hereinafter the "**CPA**");
- 7. The Defendant McDonald's carries on in the business of restaurants (including with drive-throughs) without a liquor license, and also operates franchised restaurants, as it appears from an extract from the CIDREQ, disclosed herewith as **Exhibit P-1**;
- 8. There are 328 McDonald's restaurants in the province of Quebec, as it appears from the list disclosed as **Exhibit P-2**. It is currently impossible to know which of the 328 restaurants are owned by McDonald's and which are franchises since McDonald's refuses to provide this information to Representative Plaintiff (despite a written request);
- 9. Although officially registered as a restaurant operator, McDonald's sells more than just food and beverages. In the course of its business, McDonald's sells millions of dollars' worth of children's toys to consumers in Quebec and around the world; in order to promote the sale of the children's toys and Happy Meals, McDonald's advertises and markets the toys in its restaurants;
- 10. McDonald's is a merchant within the meaning of the CPA and its activities are governed by this legislation, among others;

III. BACKGROUND

- 11. During the Class Period, McDonald's unlawfully makes use of commercial advertising directed at persons under thirteen (13) years of age, in violation of sections 248 and 249 CPA and of paragraph e of section 91 of the *Regulation Respecting the Application of the Consumer Protection Act*, CQLR c P-40.1, r 3 (hereinafter the "**Regulations**");
- 12. McDonald's introduced its Happy Meal Program in Canada and Quebec in March 1994, as it appears from paragraph 3 of Michelle McIlmoyle's (Senior Manager, National Marketing for McDonald's) Amended Affidavit (the "McIlmoyle Affidavit"), disclosed herewith as **Exhibit P-3**;

13. At paragraphs 4 and 5 of the McIlmoyle Affidavit (Exhibit P-3), McDonald's admits that its Happy Meal Program in Quebec includes:
 - a. A children's portion-sized meal called the "Happy Meal";
 - b. A toy or other item which can be (but is not always) related to a recent cinematic release or a retail toy brand; and
 - c. Certain in-store advertising materials related to the Happy Meal such as a display, a container, a wrapping or a label.
14. From November 2013 to December 2016, there were 48 different advertising campaigns in Canada, including in the province of Quebec, related to the Happy Meal Program in McDonald's restaurants (see para. 20 of the McIlmoyle Affidavit, Exhibit P-3) and this Court found that these advertising campaigns targeted children (para. 82 of the authorization judgment);
15. McDonald's advertises and sells toys associated to the marketing of an existing television show, the release of a new movie and/or the promotion of a toy brand. Some of the toys advertised to children in their restaurants and sold by McDonald's during the Class Period include, but are not limited to:
 - *Minions*;
 - *Super Mario Bros*;
 - *Transformers*;
 - *My Little Pony*;
 - *Shopkins*;
 - *Trolls*;
 - *Batman*;
 - *Pierre Lapin (Peter Rabbit)*;
 - *Spiderman*;
 - *Hot Wheels*;
 - *Barbie*;
 - *Pokémon*;
 - *Lego Movie* and others.

The whole as appears from pictures of the displays in McDonald's restaurants disclosed *en liasse* as **Exhibit P-4**;

16. McDonald's sells these toys to Class Members individually for approximately \$1.99 plus tax (approximately \$2.29 tax included), or include these toys as a premium with the purchase of a McDonald's Happy Meal (which sells for approximately

- \$5.16 including taxes and which varies slightly according to the choice of foods);
17. Toys are an example of “*Premiums*”, defined by the United States Federal Trade Commission as “*specialty or premium items **other than food products** that are distributed in connection with the sale of any of the company’s food products, whether distributed by sale, by redemption of coupons, codes, or proofs of purchase, within food packages, **in conjunction with restaurant meals**, as prizes in contests or sweepstakes, or otherwise*”, the Representative Plaintiff disclosing a copy of the August 2014 issue brief titled “*Food Marketing: Using Toys to Market Children’s Meals*”, prepared by Dr. Jennifer J. Otten of the University of Washington, as **Exhibit P-5**;
 18. According to Dr. Otten, Exhibit P-5, there is evidence of are several harmful effects associated to marketing toys with food, a tactic used by McDonald’s to target children, notably:
 - a) Food marketing to children via toys is pervasive;
 - b) Eating out is a growing and problematic part of children’s diets;
 - c) Children’s restaurant meals - many of which use toys as a marketing technique - are of poor nutritional quality;
 - d) Parents do not support the use of toys to market fast food to their children;
 - e) Fast-food advertisements to children feature toys more often than foods;
 - f) Industry self-regulations often do not address toys and other premiums;
 19. Without advertising toys in their restaurants and distributing toys as premium, McDonald’s would not sell its *Happy Meals*, or certainly not sell as many;
 20. Similarly, without advertising individual toys in the restaurant displays (in which McDonald’s does not display any of the Happy Meal food and only displays toys), McDonald’s would sell a substantially lesser number of individual toys, if any at all;
 21. Even on its website, McDonald’s first emphasizes the toys it distributes and sells in conjunction with its Happy Meals and not the food that it sells therewith, by mentioning at the very top of the Happy Meal webpage “SEE THE TOYS” and by providing a hyperlink directly to the image of its selection of toys, the Representative Plaintiff disclosing *en liasse* screen captures of the www.McDonalds.ca website taken on November 14, 2016, as **Exhibit P-6**;
 22. As more fully detailed herein, McDonald’s advertisements directly incite children under 13 to buy or to urge another person to buy Happy Meals or toys from McDonald’s or to seek information about them;
 23. It is worth noting that during the authorization hearing held on November 6, 2018,

counsel for McDonald's plead that the authorization judge should refuse authorization because the issue in dispute was a pure question of law and counsel for McDonald's declared to the authorization Judge that he had everything he needed before him to render a final decision in this case;

24. The Court ultimately found that "*Des enfants ont pu être ciblés directement même si le langage et la teneur générale du message n'étaient pas explicites, exprès, « overt ». Le paragraphe e) utilise l'adverbe « directement/directly » et non « explicitement/explicitly »* (para. 83 of the authorization judgment);
25. To summarize, McDonald's admits that for the past 25 years it targets children in Quebec with their Happy Meal advertising displays inside their restaurants and via drive-throughs on their property, but that the law somehow does not apply to them, purportedly because their advertising is either indirect or not explicit (which the Court disagreed with);
26. Exhibit P-4 leaves no doubt that the McDonald's displays are both direct and express;
27. Without limiting the generality of the foregoing, the Representative Plaintiff discloses *en liasse* pictures of the toys advertised by McDonald's as of November 13, 2016, at its restaurant situated at 1300 Beaumont avenue, in Mont-Royal, Quebec, H3P 3E5, as well the advertising used by McDonald's therefor as **Exhibit P-7**;
28. As it appears from the pictures in Exhibit P-7, McDonald's incites children to "*Trollifiez votre tête!*";
29. A similar fixture was displayed at the McDonald's restaurant situated at 7570 Decarie Boulevard in Montreal, Quebec, H4P 2N1, as of November 13, 2016, and at many other McDonald's restaurants across the province of Quebec, Representative Plaintiff disclosing **Exhibit P-8**;
30. In the interactive fixture pictured in Exhibit P-8, the maximum height a child must be to fit under the blue troll is **37 inches** and **33 inches** to fit under the pink troll;
31. According to a 2014 chart published by the Dietitians of Canada, based on the World Health Organization (WHO) Child Growth Standards (2006) and WHO Reference (2007) adapted for Canada by the Canadian Paediatric Society (hereinafter the "Chart"), a 12-year old boy measures 53 to 64 inches and a 12-year old girl measures 54 to 64 inches, the Representative Plaintiff disclosing *en liasse* the charts for both genders as **Exhibit P-9**;
32. The Chart further illustrates that at a height of 33 and 37 inches respectively, the pink-haired and blue-haired troll displays are suitable and targeted for **2 to 4-year-old** boys and girls;
33. The items included in the toy packaging that appear in Exhibits P-7 and P-8 are toy Troll colour pencils that McDonald's markets and sells for \$1.99 plus tax (the

toy comes as a kit that includes a colour pencil, a toy troll, stickers and colour booklet, all clearly intended for children under the age of thirteen);

34. McDonald's advertises and sells its toys and *Happy Meals* in the province of Quebec with complete disregard to the CPA;
35. Quebec consumer law is a matter of protective public order and by employing these tactics, McDonald's continues to violate section 248 CPA;
36. Aggravating the matter is that by targeting young children, McDonald's shamelessly takes advantage of its iconic brand, which it very well knows can influence consumers;
37. In the Representative Plaintiff's submission, it is obvious that McDonald's willfully engages in the abovementioned prohibited business practices as a means of manipulating children to manipulate Class Members and consumers to purchase Happy Meals and toys;

IV. THE REPRESENTATIVE PLAINTIFF'S PERSONAL EXPERIENCE

38. When he filed his *Application to Authorize the Bringing of a Class Action* on November 15, 2016, Mr. Bramante's three children were all under the age 13 (two girls aged 5 and 10 respectively, as well as an 8-year old boy);
39. Prior to filing his *Application to Authorize the Bringing of a Class Action*, Mr. Bramante generally ate at McDonald's once every two weeks with at least one of his children, sometimes even more often;
40. Mr. Bramante would try to limit the frequency at which he visited McDonald's with his children, but the reality is that it facilitated his schedule and his children often requested that he take them to McDonald's over any other restaurant;
41. During the Class Period, Mr. Bramante spent hundreds of dollars (if not more), purchasing Happy Meals which were distributed with a toy as a premium, as well as on the purchase of individually packaged toys (purchased without a Happy Meal);
42. On September 2, 2014, Mr. Bramante posted a video to YouTube titled "Chiara Pony Pallouza Fest" (<https://www.youtube.com/watch?v=Uk3HLwv8Dt0>), in which his daughter displays her collection of pony figurines, several of which were purchased by Mr. Bramante from McDonald's in 2014, the video being disclosed herewith as **Exhibit P-10**;
43. It is important to note that September 27, 2014, marks the release of the animated film "*My Little Pony: Equestria Girls - Rainbow Rocks*", whose target audience are young girls under the age of thirteen, including Mr. Bramante's daughter;

44. Mr. Bramante had come to realize that McDonald's times the release of the newest toy it advertises and sells with the release of popular upcoming children's movies or cartoon series;
45. Mr. Bramante also realized that McDonald's generally markets and sells its toys in a series or set. Consequently, he has, on several occasions, purchased the set of toys (over the course of several visits to McDonald's) so that his children can "collect" the entire series;
46. Some of McDonald's intense advertisement campaigns that stand out to Mr. Bramante (because he purchased these toys for his children) are the Minions, Transformers, Super Mario Bros, and My Little Pony;
47. Mr. Bramante purchased Happy Meals and toys individually for his children because McDonald's: (i) made use of commercial advertising directed at his children (who were all under thirteen years of age); and (ii) directly incited his children to urge him to buy the toys or Happy Meals (or to seek information about the Happy Meals or toys);
48. But for the unlawful advertising targeting children under thirteen years of age used by McDonald's, Mr. Bramante would have either never purchased said Happy Meals or toys (or would have certainly not purchased as many during the Class Period);
49. Consequently, Mr. Bramante's damages are a direct and proximate result of McDonald's misconduct;

V. MCDONALD'S LIABILITY

50. McDonald's orchestrates, participates in, advertises for, designs, implements, collects payment (for corporate restaurants) and profits from (for both corporate restaurants and franchises) the commission of an illegal practice against Class Members;
51. At all relevant times, McDonald's is very well aware that their displays directly incite children to purchase Happy Meals and toys, otherwise they would not display them in their restaurants (in front of the counters);
52. By acting in this unlawful manner, McDonald's gains an unfair advantage over its competitors such as Burger King, Harvey's and Tim Hortons (to name only a few), all of whom offer children's meals but who do not display or advertise toys in front of their restaurant counters and at their drive-throughs;
53. McDonald's failed to fulfill the obligations imposed on it by Title II of the CPA, notably sections 248 and 249 and are thus liable to Class Members pursuant to section 272 CPA;

VI. COMPENSATORY DAMAGES

54. Mr. Bramante (and the Class Members) benefit from an absolute presumption of prejudice because:
 - a) He is a consumer within the meaning of the CPA;
 - b) McDonald's is a merchant within the meaning of the CPA;
 - c) McDonald's makes use of commercial advertising directed at persons under thirteen years of age and said advertisement directly incited his children to buy or to urge him to buy toys individually and/or Happy Meals from McDonald's (or to seek information about the toys and Happy Meals);
 - d) Mr. Bramante and his children saw the advertisements at the different McDonald's restaurants where they ate (including at one location that could not be avoided when Mr. Bramante would take his son to Karate lessons);
 - e) After seeing the advertisements made by McDonald's, Mr. Bramante entered into a consumer contract;
 - f) There existed a sufficient nexus between the content of the McDonald's advertisements and the toys and Happy Meals covered by the contract (McDonald's practice influenced Mr. Bramante's behavior with respect to the formation of the consumer contract);
55. Notwithstanding the above, the Supreme Court has stated that the Court must analyze whether McDonald's commercial advertisements targeting children objectively violate the CPA without considering Mr. Bramante's personal characteristics. Additionally, the Court of Appeal has repeatedly confirmed that the issue of whether there was a violation of certain sections of Title II of the CPA should be analyzed objectively (both on an individual and class basis) and it is respectfully submitted that the analysis of a section 248 CPA falls in this category;
56. For a violation of the CPA, the Supreme Court has already ruled that a merchant cannot argue the "absence of prejudice" to defend against a consumer whose rights under the CPA were violated;
57. Therefore, Mr. Bramante and Class Members benefit from an absolute presumption of prejudice in this case;
58. The prejudice is also the affront suffered because of a violation of Class Members' rights under the CPA. As such, Mr. Bramante and Class Members ought to be restored to the financial position they were in before being exposed to the illegal advertising, which would disgorge from McDonald's the amount of their Happy Meal and individual toy sales. Disgorgement would have the effect of returning McDonald's to its status prior to engaging in the prohibited practice;

59. Mr. Bramante conservatively estimates that he spent an approximate total of \$300.00 on Happy Meal purchases for his children (i.e. a Happy Meal with a toy, after seeing the displays in a McDonald's restaurant while inside with his children) between November 2013 and November 2016;
60. Mr. Bramante conservatively estimates that he spent an approximate total of \$50.00 on individual toy purchases for his children (i.e. a toy without a meal, after seeing the displays in a McDonald's restaurant while inside with his children) between November 2013 and November 2016;
61. Mr. Bramante hereby seeks compensation in the amount of \$350.00 caused by McDonald's complete disregard for section 248 CPA, as his damages are a direct result of McDonald's misconduct;

VII. PUNITIVE DAMAGES

62. McDonald's has been violating section 248 CPA since the introduction of its Happy Meal Program in March 1994 for financial gains;
63. McDonald's continued violating section 248 CPA after Mr. Bramante filed his Application to Authorize the Bringing of a Class Action on November 15, 2016;
64. McDonald's – defiantly – continues to violate section 248 CPA even after the authorization judgment was rendered on November 14, 2018, as it appears from pictures of the displays of the “*Spiderman*” and “*Pokémon*” Happy Meal campaigns that took place in McDonald's restaurants in the province of Quebec in December 2018 and January 2019 disclosed herewith *en liasse* as **Exhibit P-11**;
65. McDonald's subjected Mr. Bramante and Class Members to its prohibited business practice in several forms including inside its restaurants, at its drive-throughs outside its restaurants and via the McDonald's Canada website;
66. Considering the whole of McDonald's conduct prior to, at the time of and after the violations (as more detailed herein), the record shows that McDonald's:
 - a) willfully violated section 248 CPA from March 1994 until present date;
 - b) was careless and negligent overall with respect to its obligations and consumers' rights under the CPA;
67. One example of McDonald's willful blindness to its obligations under the CPA is that they claim that their in-restaurant displays “...*could only be an indirect incitation, which is not prohibited*”, as it appears from paragraph 46 of the *Plan of Argument in Contestation of the Application for Authorization* filed by McDonald's on October 29, 2018 disclosed as **Exhibit P-12**;
68. Mr. Bramante intends to have an expert testify at trial that McDonald's advertising (as detailed herein) is intended for direct incitement of young children;

69. The punitive damages provided for in section 272 CPA has a preventive objective, that is, to discourage the repetition of such undesirable conduct;
70. The duration of McDonald's violation (25 years), the vulnerability of their victims (young children), the scope (328 restaurants across the province) and the singularity (McDonald's being the only restaurant engaging in this prohibited practice) are all important reasons for this Court to severely punish McDonald's, as well as deter and dissuade other entities from engaging in similar reprehensible conduct to the detriment of Quebec consumers and children;
71. McDonald's violations are intentional and malicious;
72. Without restricting the generality of the preceding, the Representative Plaintiff discloses *en liasse* pictures taken at the McDonald's of Saint-Basile-le-Grand on February 3, 2019, as **Exhibit P-13** showing that this location was encouraging Class Members to sign up for a draw where the winner will receive the *Pokémon* display (with the set of toys);
73. Additionally, on January 9, 2019, McDonald's misinformed this Court by email stating that they "*no longer use QR Codes*" after Justice Gagnon requested that the notice to Class Members include a QR code giving Class Members access to the long form notice. This information was false because even before January 9, 2019 until present date, the backside of receipts given to customers making a purchase at McDonald's have a QR code that links to a survey, as it appears from **Exhibit P-14**;
74. McDonald's demonstrates through its behavior that it is more concerned about its bottom line than about its legal and moral obligations towards consumers and children under the CPA;
75. The present class action has received media attention across the province, the country and the world, including on Fox News in the United States, **Exhibit P-15** and the BBC in the United Kingdom, **Exhibit P-16**;
76. The BBC article (Exhibit P-16) makes reference to the British case known as "*McLibel*" in which the the Honourable Mr. Justice Bell found:

143. It follows that in my judgment the defamatory charge that the Plaintiffs use gimmicks to cover up the true quality of their food is not justified, **but the sting of the leaflet to the effect that the Plaintiffs exploit children by using them, as more susceptible subjects of advertising, to pressurise their parents into going to McDonald's is justified. It is true.**

144. **In my judgment McDonald's advertising and marketing makes considerable use of susceptible young children to bring in custom, both their own and that of their parents who must accompany them, by pestering their parents. It**

may be said that this is an inevitable result of advertising at all to children who cannot buy for themselves. So be it. McDonald's have, after all complained about the allegation.

77. In these circumstances, the Representative Plaintiff requests that this Honorable Court condemn McDonald's to pay each Class Member the sum of \$50.00, *sauf à parfaire*, on account of punitive damages, for ongoing violations of obligations imposed on McDonald's by section 248 CPA, pursuant to section 272 CPA;
78. McDonald's is a publicly traded company and its patrimonial situation is so significant that the foregoing amount of punitive damages is both appropriate and necessary in the circumstances;

VIII. THE PERSONAL CLAIMS OF EACH OF THE CLASS MEMBERS AGAINST MCDONALD'S:

79. Every Class Member purchased in Quebec for a child under 13 years of age then present inside a McDonald's restaurant, a toy or Happy Meal, during an advertising campaign directed at children taking place inside the restaurant;
80. All Class Members are entitled to expect that McDonald's respect the law, especially one that is of public order;
81. McDonald's manipulated and took advantage of the vulnerability of all Class Members, causing them financial losses which they now wish to recuperate;
82. As a result of McDonald's unlawful practice, each Class Member purchased either a Happy Meal or a toy for a child under 13, present inside the restaurant at the time, and is presumed to have suffered a prejudice as a result of McDonald's prohibited practices;
83. All Class Members saw the exact same advertising as the Representative Plaintiff (or saw one of the other 60 - or more - Happy Meal Program campaigns during the Class Period);
84. Furthermore, McDonald's continues the violation and subjects all Class Members to their prohibited practice up until this day (see, for instance, Exhibits P-4, P-11 and P-13);
85. Every Class Member has suffered damages equivalent to the amount of their toy or Happy Meal purchase for a child under 13 years of age then present inside a McDonald's restaurant, during an advertising campaign directed at children taking place inside the restaurant;
86. All of the damages to the Class Members are a direct result McDonald's misconduct;
87. By reason of McDonald's unlawful conduct, the Representative Plaintiff and Class

Members have suffered damages, which they may collectively claim against McDonald's;

88. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, McDonald's advertising and displays for Happy Meals and toys inside their restaurants directed at children under 13 years of age;
89. The Representative Plaintiff is accordingly entitled to claim and does hereby claim from McDonald's the following as damages on behalf of each Class Member:
 - a) Reimbursement of the amounts spent to purchase Happy Meals and individual toys for a child under 13 years of age then present inside a McDonald's restaurant, during an advertising campaign directed at children taking place inside the restaurant; and
 - b) The sum of \$50.00 per Class Member on account of punitive damages.

IX. INJUNCTION

90. In addition to the damages sought above, the Representative Plaintiff and Class Members are entitled to seek injunction relief against McDonald's in order to stop the illegal practice committed by it;
91. Indeed, as appears from the allegations above and the authorization judgment rendered November 14, 2018, McDonald's is violating section 248 CPA (once again, it was counsel for McDonald's who took the position at authorization that this matter was a pure question of law and that the authorization Judge had everything he needed before him to render a final decision in this case);
92. As such, the Representative Plaintiff is well-founded in asking for injunctive relief in order to bar McDonald's from continuing to commit a prohibited practice in its advertising and selling of Happy Meals and toys to children under 13 years of age.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **GRANT** the Representative Plaintiff's action against Defendant on behalf of all the members of the class;
2. **DECLARE** the Defendant liable for the damages suffered by the Representative Plaintiff and each of the members of the class;
3. **ORDER** the Defendant to cease making use of commercial advertisements directed at persons under 13 years of age, regarding the sale of Happy Meals and toys;
4. **CONDEMN** the Defendant to pay to each member of the class a sum to be

determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

5. **CONDEMN** the Defendant to pay the Representative Plaintiff \$350.00 in compensation of the damages suffered;
6. **CONDEMN** the Defendant to pay to each Class Member the sum of \$50.00 on account of punitive damages, and **ORDER** collective recovery of these sums;
7. **CONDEMN** the Defendant to pay legal interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*;
8. **ORDER** the Defendant to deposit in the office of this Court the totality of the sums which form part of the collective recovery, with interest and costs;
9. **ORDER** that the claims of individual class members be the object of collective liquidation if the proof permits or alternately, of individual liquidation;
10. **CONDEMN** the Defendant to bear the costs of the present action, including the cost of notices, the cost of administration of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;
11. **RENDER** any other order that the Court shall consider appropriate.

Montreal, February 12th, 2019

(s) *LPC Avocat Inc.*

LPC AVOCAT INC.

Per: Me Joey Zukran

Attorney for Representative Plaintiff

SUMMONS
(ARTICLES 145 AND FOLLOWING C.C.P.)

Filing of a judicial application

Take notice that the Representative Plaintiff has filed this Originating Application in the office of the Superior Court in the judicial district of **Montreal**.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at **1, Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Representative Plaintiff's lawyer or, if the Representative Plaintiff is not represented, to the Representative Plaintiff.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgment may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Representative Plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the Representative Plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Originating Application, the Representative Plaintiff intends to use the following exhibits:

- EXHIBIT P-1:** Extract of enterprise's information statement from the enterprise register (CIDREQ) for Les Restaurants McDonald du Canada Limitée;
- EXHIBIT P-2:** List of the 328 McDonald's restaurants in the province of Quebec;
- EXHIBIT P-3:** Copy of Michelle McIlmoyle's (Senior Manager, National Marketing for McDonald's) Amended Affidavit dated April 3, 2017;
- EXHIBIT P-4:** *En liasse*, pictures of displayed used in McDonald's restaurants;
- EXHIBIT P-5:** Copy of the August 2014 issue brief, prepared by Dr. Jennifer J. Otten of the University of Washington titled "Food Marketing: Using Toys to Market Children's Meals";
- EXHIBIT P-6:** *En liasse*, screen captures of the www.McDonalds.ca website taken on November 14th, 2016;

- EXHIBIT P-7:** *En liasse*, pictures of the toys being advertised at the McDonald's restaurant situated at 1300 Beaumont avenue, in Mont-Royal, Quebec, H3P 3E5, as of November 13th, 2016;
- EXHIBIT P-8:** Picture of the fixture displayed as of November 13, 2016, at the McDonald's restaurant situated at 7570 Decarie Boulevard, in Montreal, Quebec, H4P 2N1;
- EXHIBIT P-9:** *En liasse*, copies of a 2014 chart published by the Dietitians of Canada, adapted for Canada by the Canadian Paediatric Society, for boys and girls;
- EXHIBIT P-10:** Copy of video posted to YouTube by Applicant on September 2nd, 2014, titled "*Chiara Pony Pallouza Fest*";
- EXHIBIT P-11:** *En liasse*, pictures of the displays of the "Spiderman" and "Pokémon" Happy Meal campaigns that took place in McDonald's restaurants in the province of Quebec in December 2018 and January 2019;
- EXHIBIT P-12:** Copy of the *Plan of Argument in Contestation of the Application for Authorization* filed by McDonald's on October 29, 2018;
- EXHIBIT P-13:** *En liasse*, pictures taken at the McDonald's of Saint-Basile-le-Grand on February 3, 2019, showing a contest box and the *Pokémon* toys;
- EXHIBIT P-14:** Copy of McDonald's receipt showing a QR code on backside;
- EXHIBIT P-15:** Copy of Fox News article dated November 17, 2018, titled "*McDonald's being sued for marketing Happy Meals to kids*" (available online at: <https://www.foxnews.com/food-drink/mcdonalds-being-sued-for-marketing-happy-meals-to-kids>);
- EXHIBIT P-16:** Copy of BBC article dated November 20, 2018, titled "*Father sues McDonald's over 'advertising' of Happy Meals*" (available online at: <https://www.bbc.com/news/world-us-canada-46243072>).

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

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, February 12th, 2019

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Per: Me Joey Zukran

Attorney for Representative Plaintiff

500-06-000824-165

(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

ANTONIO BRAMANTE, [REDACTED]
[REDACTED]

Representative Plaintiff

vs.

**LES RESTAURANTS MCDONALD DU
CANADA LIMITÉE**, legal person having an estab-
lishment at 1325 route Transcanadienne, Dorval,
district of Montréal, province of Québec, H9P 2V5

Defendant

ORIGINATING APPLICATION
(Articles 141 and 583 C.C.P.)
Nature of Suit: Damages and Injunction

ORIGINAL

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BL 6059

N/D: JZ-126
