

**SUPERIOR COURT
(Class Actions)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No: 500-06-000780-169

DATE: February 11, 2020

PRESENT : THE HONORABLE CHANTAL TREMBLAY, J.S.C.

MICHAEL ATTAR
Representative Plaintiff

vs.

RED BULL CANADA LTD.

-and-

RED BULL GMBH
Defendants

-and-

FONDS D'AIDE AUX ACTIONS COLLECTIVES
Impleaded Party

-and-

LPC AVOCAT INC.
Representative Plaintiff's Attorney

**JUDGMENT
(ON APPLICATION TO APPROVE A
SETTLEMENT AGREEMENT AND CLASS COUNSEL FEES)**

[1] **CONSIDERING** that on July 23rd, 2019, the Court authorized the present class action for settlement purposes;

[2] **CONSIDERING** that the Plaintiff, Michael Attar, now brings before this Court an *Application to Approve a Class Action Settlement and for Approval of Class Counsel's Fees (Application for Approval)*;

[3] CONSIDERING that the Plaintiff alleged that Red Bull violated consumer protection legislation by:

- (a) Engaging in false advertising in the marketing and sale of its caffeinated energy drinks (CEDs); and
- (b) Failing to inform Canadians, on its website, about the warnings issued by Health Canada with respect to mixing CEDs with alcohol.

[4] CONSIDERING that Red Bull already made changes to its website and the labelling on its CEDs sold in Canada;

[5] CONSIDERING that the Settlement Agreement reached by the parties provides that:

- (a) An \$850,000 Settlement Fund be used to compensate class members who submit a valid online claim for a maximum amount \$10 each, calculated as follows: (i) the amount remaining in the Settlement Fund after deducting all notice and administration costs, Class Counsel Fees and disbursements awarded by the Court and the Plaintiff's indemnity, if awarded by the Court, divided by (ii) the number of valid claims;
- (b) On its Canadian website, Red Bull will add a hyperlink to Health Canada's website concerning the risks associated to mixing CEDs with alcohol.

[6] CONSIDERING all the exhibits filed, including Michael Attar's Affidavit and the Affidavit of Marc Rosenmayr, Chief Financial Officer and Executive Vice President, Finance, Operations and IT of Red Bull North America Inc.;

[7] CONSIDERING the guiding principles¹ for determining whether a settlement should be approved and the Court's findings that:

- a) The legal arguments on whether the representations were in violation of the consumer protection legislation and the consequences of the violations thereof are uncertain;
- b) Red Bull denies any liability or wrongdoing. Therefore, the parties would have entered into a contradictory debate involving experts;
- c) The risks, expenses, complexity and duration of further litigation weigh in favour of approval;
- d) The Settlement Agreement was reached by experienced fully informed counsels after arm's length negotiations following a class action settlement approved in the United States;

¹ *Halfon v. Moose International Inc.*, 2017 QCCS 4300.

- e) Following the pre-approval notice campaign, 195,987 people registered their emails with the Claims Administrator, no class members have registered any objections to the Settlement Agreement, and only one person has filed a valid notice to be excluded from the class action;
- f) There is no reason to believe that the parties did not act in good faith or colluded;
- g) The proposed settlement differs from the one approved in the United States. Here, the class members will be compensated up to a maximum amount of \$10 each whereas in the United States, class members who submitted a valid claim form could elect to receive either a cash reimbursement, in the form of a \$10 check, or free Red Bull products with a retail value of approximately \$15;
- h) For the following reasons, the Court is of the view that the difference between the settlement approved in the United States and the proposed Canadian consumers' settlement should not be a hindrance to the approval of such settlement:
 - (a) Class counsel is recommending the approval of the settlement after having reviewed the relevant information concerning Red Bull's Canadian sales figures during the Class Period;
 - (b) As represented by both parties' counsels, the settlement fund is proportionate to the settlement approved in the United States, taking into consideration population, sales and the shorter period during which the alleged false representations were made in Canada;
 - (c) The claim process is easy and no proof of purchase is required. Payments will be sent by e-transfer;
 - (d) The terms and conditions of the Settlement Agreement, including the amount offered are fair, reasonable and adequate and worthy of approval.

[8] CONSIDERING that Class Counsel claims an amount of \$250,000 plus applicable taxes in legal fees and an amount of \$15,000 plus applicable taxes in disbursements;

[9] CONSIDERING the role that the Court must play in determining the reasonableness of the fees claimed by Class Counsel;²

[10] CONSIDERING that Class Counsel remitted a print-out of the incurred fees to the Court;³

² *Option Consommateurs v. Banque Amex du Canada*, 2018 QCCA 305.

³ In a manner to safeguard confidentiality.

[11] CONSIDERING that for the following reasons an amount of \$200,000 (plus applicable taxes) is fair and reasonable to cover legal fees in the present matter:

- a) Plaintiff submits that the Mandate Agreement with Class Counsel provides for a calculation of fees as (i) all disbursements incurred and (ii) the greater of either thirty percent (30%) of the value of the settlement or a multiplier of 3.5 on hours works by the attorneys, plus applicable taxes;
- b) The Court is not bound by the terms of this Mandate Agreement, which was not filed in the present instance;
- c) The fees claimed are in excess of the time spent on the file.
- d) Me. Joey Zukran spent 608.40 hours on the file at a \$300 hourly rate whereas Me. Karine Zemokhol spent only 14 hours at a \$250 hourly rate for a total value of \$186,020.
- e) Additional time must be taken into consideration for post-settlement administration with the Claims Administrator and members;
- f) The Court is of the view that some of the work done by Me. Zukran should have been done by a junior lawyer or paralegal;
- g) Also, a significant portion of the time sheets relates to settlement discussions and its approval by the Court;
- h) Lastly, some charges could have been avoided. Indeed, after obtaining a favourable judgment authorizing amendments to the Motion to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff, Class counsel filed an Application to renounce to certain rights arising from such judgment;

[12] CONSIDERING that the amount of \$15,000 (plus applicable taxes) claimed in disbursements is reasonable and justified;

[13] CONSIDERING article 590 of the *Code of Civil Procedure*;

PAR CES MOTIFS, LE TRIBUNAL :	FOR THESE REASONS, THE COURT:
[1] ACCUEILLE la demande du Représentant en approbation de l'Entente de Règlement avec Red Bull Canada ltée et Red Bull GMBH ;	[1] GRANTS the Representative Plaintiff's Application to Approve a Class Action Settlement with Red Bull Canada LTD. and Red Bull GMBH;
[2] DÉCLARE que les définitions contenues dans l'Entente de Règlement s'appliquent et sont incorporées au présent jugement, et en conséquence en font partie	[2] DECLARES that the definitions set forth in the Settlement Agreement apply to and are incorporated into this judgment, and as a consequence shall form an integral part

<p>intégrante, étant entendu que les définitions lient les parties à l'Entente de Règlement ;</p>	<p>thereof, being understood that the definitions are binding on the parties to the Settlement Agreement;</p>
<p>[3] APPROUVE l'Entente de Règlement (« Settlement Agreement ») conformément à l'article 590 du <i>Code de procédure civile du Québec</i>, sous réserve du jugement rendu concernant le jugement rendu ce jour refusant l'indemnité de 5 000 \$ payable au demandeur et ORDONNE aux parties de s'y conformer ;</p>	<p>[3] APPROVES the Settlement Agreement as a transaction pursuant to article 590 of the <i>Code of Civil Procedure</i>, under reserve of the judgment rendered this day refusing the indemnity of \$5000 payable to the representative Plaintiff and ORDERS the parties to abide by it;</p>
<p>[4] DÉCLARE que l'Entente de Règlement (incluant son préambule et ses annexes) est juste, raisonnable et qu'elle est dans le meilleur intérêt des Membres du Groupe et qu'elle constitue une transaction en vertu de l'article 2631 du <i>Code civil du Québec</i> qui lie toutes les parties et tous les Membres du Groupe sauf pour une personne qui s'est exclue de l'action collective ;</p>	<p>[4] DECLARES that the Settlement Agreement (including its Preamble and its Schedules) is fair, reasonable and in the best interest of the Class Members and constitutes a transaction pursuant to article 2631 of the <i>Civil Code of Quebec</i>, which is binding upon all parties and all Class Members, except for one class member who has validly delivered a notice to exclude themselves from the class action;</p>
<p>[5] ORDONNE ET DÉCLARE que le présent jugement, incluant l'Entente de Règlement, lie chaque Membre du Groupe Visé par le Règlement ;</p>	<p>[5] ORDERS AND DECLARES that this judgment, including the Settlement Agreement, shall be binding on every Settlement Class Member;</p>
<p>[6] DÉCLARE que la clause F (Opt Out List) de l'Entente de Règlement ne trouve pas application puisqu'une seule personne s'est exclue de l'action collective ;</p>	<p>[6] DECLARES that clause F (Opt Out List) of the Settlement Agreement does not apply since only one class member validly excluded itself from the class action;</p>
<p>[7] ORDONNE à Velvet Payments, l'administrateur des réclamations : (1) d'afficher l'avis du règlement définitif (RB-6) sur le même site Web que celui sur lequel l'avis préalable à l'approbation du règlement a été publié et (2) de communiquer l'avis du règlement définitif par courrier électronique aux membres du groupe visés par le règlement qui lui ont déjà fourni leur adresse électronique, le tout dans les 15 jours suivant la date de ce jugement ;</p>	<p>[7] ORDERS Velvet Payments, the Claims Administrator: (1) to post the Final Settlement Notice (RB-6) on the same website upon which the Pre-Approval Settlement Notice was published, and (2) communicate the Final Settlement Notice by email to Settlement Class Members who have previously provided their email address to the Claims Administrator, the whole within 15 days of issuance of the present judgment;</p>

<p>[8] DÉCLARE que les membres du groupe qui reçoivent l'avis d'approbation et qui souhaitent soumettre une réclamation doivent le faire de la manière prévue dans l'avis d'approbation (pièce RB-6), au plus tard le 45^e jour suivant la date de ce jugement ;</p>	<p>[8] DECLARES that Class Members who receive the Approval Notice and who wish to submit a claim must do so in the manner provided for in the Final Settlement Approval Notice (Exhibit RB-6), within 45 days of the issuance of the present judgment;</p>
<p>[9] APPROUVE le paiement d'un montant de 200 000 \$ (taxes applicables en sus) aux Avocats du Groupe pour leurs honoraires extrajudiciaires et un montant de 15 000 \$ (taxes applicables en sus) pour leurs déboursés ;</p>	<p>[9] APPROVES the payment to Class Counsel of its extrajudicial fees in the amount of \$200,000 (plus applicable taxes) and disbursements in the amount of \$15,000 (plus applicable taxes) ;</p>
<p>[10] ORDONNE aux parties de faire rapport de l'exécution du jugement à l'expiration du délai prévu au paragraphe III.D.(e) de l'Entente de Règlement ;</p>	<p>[10] ORDERS the Parties, upon the expiry of the time specified at section III.D.(e) of the Settlement Agreement, to render account of the execution of the judgment;</p>
<p>[11] RÉSERVE le droit du <i>Fonds d'aide aux actions collectives</i> de formuler une demande au Tribunal pour réclamer une partie de tout reliquat après que les montants aient été distribués aux membres du groupe conformément à l'Entente de Règlement, le tout conformément à loi ;</p>	<p>[11] RESERVES the right of the <i>Fonds d'aide aux actions collectives</i> to apply to the Court to claim a portion of any amount remaining (reliquat) after the proceeds of the settlement have been distributed to class members pursuant to the Settlement Agreement, the whole in accordance with law;</p>
<p>[12] LE TOUT, sans frais de justice.</p>	<p>[12] THE WHOLE, without legal costs.</p>

Chantal Tremblay JSC
 CHANTAL TREMBLAY, J.S.C.

Me. Joey Zukran
 LPC AVOCAT INC.
 Me. Jeff Orenstein
 Me. Andrea Grass
 CONSUMER LAW GROUP INC.
 Attorneys for the Representative Plaintiff

Me Nick Rodrigo
DAVIES WARD PHILLIPS AND VINEBERG LLP
Attorney for Red Bull Canada Ltd. And Red Bull GMBH

Me David Pierre-Louis
Attorney for the Fonds d'aide aux actions collectives

Hearing date: December 17, 2019