

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001101-209

SUPERIOR COURT
(Class Actions)

ALAIN HAYON, 


Applicant

-vs-

RECOCHEM INC., legal person having its principal establishment and elected domicile at 850 Montée de Liesse Road, Montreal, Province of Quebec, H4T 1P4

Defendant

**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO
APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF
(ARTICLES 571 AND FOLLOWING C.C.P.)**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES:**

1. The Applicant seeks authorization to institute a class action on behalf of the following class of which he is a member, namely:

Class:

All legal and natural persons who, from or before 2000 until present, purchased Paint Thinners, Varsol or Mineral Spirits produced by Recochem.

(hereinafter referred to as the “**Class**”)

or any other Class to be determined by the Court;

2. The Defendant, Recochem Inc. (hereinafter “**Recochem**”), is a company incorporated under the British Columbia *Business Corporation Act*, SBC 2002, c 57, having its principal establishment and elected domicile in the judicial district of Montreal (at 850 Montée de Liesse Road, H4T 1P4), in the Province of Quebec. Recochem is in the industry of producing and selling chemical products, the whole

as it appears from an extract of the Quebec Business Registry disclosed herewith as **Exhibit P-1**;

3. This proposed class action seeks compensatory and punitive damages for the false representations that were made by Recochem while distributing for profit its solvent based products that were purchased across North America. The solvent based products, include: (a) Paint Thinners; (b) Varsol; and (c) Mineral Spirits (the "**Solvent Products**"). These mixtures have been intentionally mislabeled by Recochem.

I. Recochem History

4. Recochem was founded in 1951 in Montreal, and since that time has grown into a multi-national, privately held company with a diverse, global distribution capability;
5. Recochem is in the business of selling the Solvent Products directly to retailers throughout North America, who then sell those products to consumers who are individuals and companies, many of which purchase some of the products for paint related applications;
6. On its website (<http://www.recochem.com/about-us/mission/>), Recochem claims to have socially responsible business values and boasts that it maintains its integrity by "demonstrating honest, ethical behaviour in all our activities", Applicant disclosing **Exhibit P-2**;

II. Recochem – Solvent History

7. The Solvent Products are made from oil derivatives and have similar attributes, and are represented by Recochem as having different attributes and chemical mixtures. Varsol is a trademarked product manufactured by major oil producers, and the owner of the trademark is Imperial Oil Limited. Recochem is a licensee of Varsol;
8. In or about or prior to 2000, Recochem purchased the Solvent Products in bulk from major oil companies. The Solvent Products were delivered by rail car or tanker trucks to Recochem distribution facilities across North America where they were transferred into vessels for each different Solvent Product. From the different vessels, containers would be filled and then labelled according to which Solvent Product they contained: namely, Paint Thinner, Varsol or Mineral Spirits;
9. Recochem added no additional ingredients to the Solvent Products and the containers are filled only with what Recochem was provided by the oil companies;
10. Recochem fills the Solvent Product containers at the following distribution facilities:
 - (a) 9355 Henri-Bourassa E., Montréal, Quebec, Canada;

- (b) 8725 Holgate Crescent, Milton Ontario, Canada;
 - (c) 604 – 22nd Avenue, Nisku, Alberta, Canada;
 - (d) 1745 Kingsway Avenue, Port Coquitlam, British Columbia, Canada;
 - (e) Atlantic Canada distribution joint venture; and
 - (f) US contract packaging alliances.
11. The Solvent Products had different qualities and Recochem paid different amounts to the oil companies based on the different quality Solvent Products that had been purchased;
12. Recochem created labels for the different Solvent Products and placed them on the containers. The container labels identified which Solvent Product was in the container and included representations about the product along with the different product codes;
13. On the label of each Solvent Product, the primary use for that specific product was identified, which, *inter alia*, included:
- (a) **Solvable Painter Thinner (53-321)**: Ideal for the Toughest Cleaning Jobs, spotless removal of oil and grime, degreases tools and auto parts, fast cleaning for brushes, rollers and trays;
 - (b) **Solvable Paint Thinner with Mineral Spirits (13-321)**: Good for cleaning up after painting, improving flows and penetration;
 - (c) **Varsol (53-371)**: Premium Quality, Trusted by more Professional Contractors, easier paint clean up, fast degreasing and spot cleaning, smoother application of oil based paints, varnish and stains and premium quality; and
 - (d) **Solvable Mineral Spirits (53-341)**: Gentle Yet Effective on Multiple Surfaces, cleans multiple surfaces, removes grease, cleans paint brushes and rollers.
14. After the containers were labelled and filled, they were delivered to retailers across North America who then sold them to customers;
15. The retailers charged consumers different amounts for the different Solvent Products.

III. Recochem – Fraudulent Processing

16. In or around or prior to 2000, Recochem was looking for ways to increase profits, and decided it was going to purchase a single type of bulk solvent from the oil companies, which had the industry trade name of “solvent 3139”. Recochem then started filling its containers for all the Solvent Products with only solvent 3139;

17. Recochem continued to market the Solvent Products as being different, charging different prices based on the represented differences in the Solvent Products. In reality, all of the Solvent Products were exactly the same as they were all filled with only solvent 3139;
18. All of the Solvent Products Recochem sold were identical, but Recochem represented them as having a different chemical makeup and intended applications. For example, Recochem represented Varsol as having “Premium Quality” when in fact the quality was exactly the same as the other Solvent Products;
19. Recochem represented that one of its products was Solvable Paint Thinner with Mineral Spirits, when in reality Mineral Spirits was not an additional additive as the contents of the container were exactly the same as the other Solvent Products, it contained only the solvent 3139 mixture and nothing else;
20. Recochem’s representations about the Solvent Products can be found on the Solvent Product labels and on the Recochem website. These representations include those referenced in paragraph 18, as well as, *inter alia*:
 - (a) **Solvable Painter Thinner (53-321)**: “Solvable Professional Grade Paint Thinner is a **versatile** and adaptable thinner for cleaning, degreasing or achieving the optimal varnish or paint consistency. It’s ideal for clean-up jobs too tough for household cleaners. Solvable Paint Thinner leaves all your surfaces bright and shining”, Applicant disclosing **Exhibit P-3**;
 - (b) **Varsol (53-371)**: “Varsol™ paint thinner is a pure, **high quality** professional grade cleaner, degreaser and paint thinner formulated to the most exacting standards for the toughest jobs. Varsol™ paint thinner restores possessions and makes them look new again”, Applicant disclosing **Exhibit P-4**; and
 - (c) **Solvable Mineral Spirits (53-341)**: Solvable Professional Grade Mineral Spirits solvent is **strong** enough to get the job done but gentle and safe on your finishes. Derived from petroleum, this versatile thinner and cleaner has a moderate odour and low flammability making it safer to use indoors on wood, metal, tile and more”, Applicant disclosing **Exhibit P-5**;
 - (d) **Mineral Spirits (53-341)**: Gentle Yet Effective on Multiple Surfaces, cleans multiple surfaces, removes grease, cleans paint brushes and rollers.

IV. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (SECTION 575 C.C.P.):

A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT:

21. Around the summer of 2019, the Applicant purchased a 946 mL bottle of

Recochem's "Recordsol Paint Thinner with Mineral Spirits / Diluant à peinture avec essences minérales", as it appears from **Exhibit P-6**;

22. The Applicant purchased this product (Exhibit P-6) for approximately \$9.00 from the Réno-Dépôt in Marché Central, in Montreal, Quebec;
23. Prior to making his purchase, the Applicant believed and relied upon the representations on Recochem's product labelling (which appear in stores and on Recochem's website) that the Solvent Products were all of a different quality and price. Those representations were false, as all of the Solvent Products contain exactly the same chemical mixture;
24. The Applicant therefore paid a premium for what he thought was a superior grade and quality and Solvent Product;
25. Recochem wilfully failed to disclose and actively concealed the fact that the Solvent Products all contained exactly the same chemical mixture. Recochem's intentional misrepresentations constitutes a prohibited business practice;
26. The Applicant is entitled to claim and hereby does claim compensatory and punitive damages in an amount to be determined for breaches of the following sections of Quebec's *Consumer Protection Act* ("CPA"): 219, 220(a), 221(a),(c), (d), (g), 222(d), 228, 239, pursuant to section 253 and 272;

B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:

27. The recourses of the Class members raise identical, similar or related questions of fact or law, namely:
 - a) Did Recochem commit a prohibited business practice within the meaning of consumer protection legislation?
 - b) Did Recochem act in bad faith?
 - c) Did Recochem violate Canada's *Competition Act*?
 - d) If any of these questions are answered in the affirmative, are Class members entitled to compensatory and punitive damages, and, if so, in what amount?
28. All Class members are in the same position as the Applicant vis-à-vis the Defendants;

C) THE COMPOSITION OF THE CLASS

29. 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;

30. The Applicant conservatively estimates the number of persons included in the Class to be in the tens of thousands (the Solvent Products are sold in major retail stores across Canada);
31. Class members are very numerous and are dispersed across Canada and elsewhere;
32. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;
33. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS

34. The Applicant requests that he be appointed the status of representative plaintiff for the following main reasons:
 - a) He is a member of the Class and has a personal interest in seeking the conclusions that he proposes herein;
 - b) He is competent, in that he has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
 - c) His interests are not antagonistic to those of other Class members;
35. Additionally, the Applicant respectfully adds that:
 - a) He mandated his attorneys to file the present application for the sole purpose of having his rights, as well as the rights of other Class members, recognized and protected so that they can receive compensation according to the law;
 - b) He has the time, energy, will and determination to assume all the responsibilities incumbent upon him in order to diligently carry out the action;
 - c) He cooperates and will continue to fully cooperate with his attorneys;
 - d) He understands the nature of the present application;

V. DAMAGES

36. As a result of the conduct plead above, the Applicant and all Class Members have suffered damages corresponding to their overpayment for the Solvent Products;

37. The Class Members suffered financial loss due to the egregious nature of Recochem's conduct, including, without limiting the generality of the foregoing, deceiving the marketplace as to the true chemical mixture of the Solvent Products;
38. Class Members are entitled to recover compensatory and punitive damages. Recochem's conduct offends the moral standards of the community and warrants the condemnation of this Court;

VI. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

39. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages;
40. The conclusions that the Applicant wishes to introduce by way of an originating application are:

ALLOW the class action of the Representative Plaintiff and the members of the Class against the Defendant;

CONDEMN the Defendant to pay the Class members compensatory damages in an amount to be determined and **ORDER** that this condemnation be subject to collective recovery;

CONDEMN the Defendant to pay the Class members punitive damages in an amount to be determined and **ORDER** that this condemnation be subject to collective recovery;

CONDEMN the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action and **ORDER** that this condemnation be subject to collective recovery;

ORDER the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendant to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders.

VII. JURISDICTION

41. The Applicant requests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, because he is a consumer and resides in this district (art. 3149 C.C.Q.) and because many of the

Class members reside in Montreal;

42. Pursuant to art. 3148(1) C.C.Q., the Applicant has standing to represent an international class and the Superior Court of Quebec may be the appropriate forum.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

AUTHORIZE the bringing of a class action in the form of an originating application in damages;

APPOINT the Applicant the status of Representative Plaintiff of the persons included in the Class herein described as:

Class:

All legal and natural persons who, from or before 2000 until present, purchased Paint Thinners, Varsol or Mineral Spirits produced by Recochem.

or any other Class to be determined by the Court;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Did Recochem commit a prohibited business practice within the meaning of consumer protection legislation?
- b) Did Recochem act in bad faith?
- c) Did Recochem violate Canada's *Competition Act*?
- d) If any of these questions are answered in the affirmative, are Class members entitled to compensatory and punitive damages, and, if so, in what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

ALLOW the class action of the Representative Plaintiff and the members of the Class against the Defendant;

CONDEMN the Defendant to pay the Class members compensatory damages in an amount to be determined and **ORDER** that this condemnation be subject to collective recovery;

CONDEMN the Defendant to pay the Class members punitive damages in an amount to be determined and **ORDER** that this condemnation be subject to collective recovery;

CONDEMN the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action and **ORDER** that this condemnation be subject to collective recovery;

ORDER the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendant to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders.

DECLARE that all members of the Class 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;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

ORDER the publication of a notice to the members of the Class in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in the "News" sections of the Saturday editions of La Presse, the Journal de Montréal, the Montreal Gazette and any other appropriate newspaper;

ORDER that said notice be published on the Defendant's website, Facebook page and Twitter account, in a conspicuous place, with a link stating "Notice of a Class Action";

RENDER any other order that this Honourable Court shall determine;

THE WHOLE with costs including publication fees.

Montreal, November 13, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran

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

Filing of a judicial application

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff 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 Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement 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 Applicant 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 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 Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** Extract of the Quebec Business Registry for Recochem;
- Exhibit P-2:** Extract of the website <http://www.recochem.com/about-us/mission/>;
- Exhibit P-3:** Defendant's description of Solvable Painter Thinner (53-321);
- Exhibit P-4:** Defendant's description of Varsol (53-371);
- Exhibit P-5:** Defendant's description of Solvable Mineral Spirits (53-341);
- Exhibit P-6:** Picture of the Recochem product purchased by Applicant;

These exhibits 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, November 13, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran

Attorneys for the Applicant

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NOTICE OF PRESENTATION
(articles 146 and 574 al. 2 N.C.P.C.)

TO: RECOCHEM INC.
850 Montée de Liesse Road
Montreal, Quebec, H4T 1P4

Defendant

TAKE NOTICE that Applicant's *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

GOVERN YOURSELVES ACCORDINGLY.

Montreal, November 13, 2020

(s) LPC Avocat Inc.

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COPY FOR: RECOCHEM INC.

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