

C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
N° : 500-06-001119-219

(Class Actions Division)  
**SUPERIOR COURT**

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**JOANNE PICARD**

Applicant

v.

**IRONMAN CANADA INC.**, legal person  
having an elected domicile at 26E-1501,  
McGill College Avenue, Montreal, province of  
Quebec, H3A 3N9, district of Montreal;

and

**WORLD TRIATHLON CORPORATION**,  
legal person having its head office at 3407,  
West Dr. Martin Luther King Jr. Blvd, Suite  
100, Tampa, Florida, 33607, United States of  
America;

Defendants

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**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO  
APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF**  
(Articles 574 and following C.C.P.)

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**TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN  
AND FOR THE DISTRICT OF MONTREAL, THE APPLICANT STATES AS FOLLOWS :**

**I. INTRODUCTION**

1. The applicant wishes to institute a class action on behalf of the following Class, of which she is herself a member, namely :

All persons residing in Quebec who have registered and paid a higher price than that announced to participate in the events organized by the defendants since July 25, 2017;

(hereinafter referred to as the "**Class**")

or any other Class to be determined by the Court;

## **II. THE PARTIES**

2. The applicant is a consumer within the definition provided for by the *Consumer Protection Act* (hereinafter the "**C.P.A.**") and the *Civil Code of Quebec* (hereinafter the "**C.C.Q.**");
3. The defendants are both merchants within the definition provided for by the C.P.A.;
4. The defendant Ironman Canada Inc. operates in the fields of entertainment and leisure services under the IRONMAN brand in Quebec, and is an entity affiliated with the defendant World Triathlon Corporation, as it appears from an extract of the Registraire des entreprises and an extract of the defendants' website [www.ironman.com](http://www.ironman.com), *en liasse*, produced herein as **Exhibit P-1**;
5. The defendant World Triathlon Corporation owns, operates and organizes multidisciplinary races, notably under its IRONMAN and Rock 'n' Roll brands throughout the world, including the IRONMAN 5i50 and Sprint Mont-Tremblant, the IRONMAN 70.3 Mont-Tremblant, the IRONMAN Mont-Tremblant triathlon and the Montreal Rock 'n' Roll races (hereinafter "**Events**");

## **III. THE FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT**

6. The applicant is an avid sportswoman and has participated in various multidisciplinary races and marathons in the last few years, including the IRONMAN Mont-Tremblant triathlon and the Rock 'n' Roll Montreal marathon;
7. The applicant is involved in another class action against the defendants under the file number 500-06-001093-208 following the defendants' refusal to refund the

registration fees for the IRONMAN 5i50 and Sprint Mont-Tremblant 2020, the IRONMAN 70.3 Mont-Tremblant 2020 and the IRONMAN Mont-Tremblant 2020 triathlon, which have been canceled or postponed without possibility of refund;

8. Following the filing of this class action, the applicant received a check in the amount of \$833.53 from the defendant Ironman Canada Inc., as it appears from the check dated December 18, 2020, produced herein as **Exhibit P-2**;
9. However, upon examining her order receipt, the applicant noticed that she was not offered a full refund of her registration fees, as it appears from the email dated August 21, 2019, produced herein as **Exhibit P-3**;
10. In fact, looking closely at said receipt, she realized that a processing fee of \$66.68 was not refunded to her :

Article	Prix
2020 Subaru IRONMAN Mont-Tremblant presented by Sportium - Inscription générale - Inscription individuelle - Volume	725,00
Joanne Picard	
T-shirt inclu - Femme	0,00
Contribution à Carbone Boréale - Non merci	0,00
<hr/>	
Sous-total :	725,00 \$
QST	72,28 \$
GST	36,25 \$
* Frais de traitement :	66,68 \$
Total général :	900,21 \$
Paielements précédents :	(657,34\$ )
Montant payé :	(242,87\$ )
Solde de la commande :	0,00 \$

11. Furthermore, by examining her order receipts for registrations to prior Events, the applicant noticed that she was systematically paying for processing fees of an amount varying between 9.2% to 14.48% of the registration price, as it appears from the emails, *en liasse*, produced herein as **Exhibit P-4**, extracts of which are reproduced below :

Article	Prix
2018 Subaru IRONMAN Mont-Tremblant présenté par Sportium - Payment Plan (3 entry fee payments + applicable taxes) - Payment 1 of 3	247,53
Joanne Picard	
Included t-shirt - Women's Small	0,00
Contribution Carbone Boréale - Non merci / No thank you	0,00
Sous-total :	247,53 \$
QST	24,70 \$
GST	12,38 \$
* Frais de traitement :	22,77 \$
Total général :	307,38 \$
Montant payé :	(307,38\$ )
Solde de la commande :	0,00 \$

Article	Prix
2018 Subaru IRONMAN Mont-Tremblant présenté par Sportium - Payment Plan (3 entry fee payments + applicable taxes) - Payment 2 of 3	233,33
Joanne Picard	
Included t-shirt - Women's Small	0,00
Contribution Carbone Boréale - Non merci / No thank you	0,00
Sous-total :	233,33 \$
QST	23,29 \$
GST	11,67 \$
* Frais de traitement :	21,46 \$
Total général :	289,75 \$
Montant payé :	(289,75\$ )
Solde de la commande :	0,00 \$

Article	Prix
2018 Subaru IRONMAN Mont-Tremblant présenté par Sportium - Payment Plan (3 entry fee payments + applicable taxes) - Payment 3 of 3	233,33
Joanne Picard	
Included t-shirt - Women's Small	0,00
Contribution Carbone Boréale - Non merci / No thank you	0,00
Sous-total :	233,33 \$
QST	23,29 \$
GST	11,67 \$
* Frais de traitement :	21,46 \$
Total général :	289,75 \$
Montant payé :	(289,75\$ )
Solde de la commande :	0,00 \$

Article	Prix
Marathon et Demi-Marathon Oasis Rock 'n' Roll de Montreal 2018 - Marathon- 23 Septembre - Marathon	69,00
Joanne Picard	
Quelle est votre taille de T-shirt? - Femme Small	0,00

Sous-total :	69,00 \$
* Frais de traitement :	9,99 \$
Total général :	78,99 \$
Montant payé :	(78,99\$ )
Solde de la commande :	0,00 \$

Article	Prix
2019 Subaru IRONMAN Mont-Tremblant présenté par Sportium - Inscription générale - Inscription générale - Volume	687,00
Joanne Picard	
T-shirt inclu - Femme petit	0,00

Sous-total :	687,00 \$
QST	34,35 \$
GST	68,56 \$
* Frais de traitement :	63,19 \$
Total général :	853,10 \$
Montant payé :	(853,10\$ )
Solde de la commande :	0,00 \$

Article	Prix
2020 Marathon International OASIS de Montreal - Marathon - 20 Septembre - Marathon	69,00
Joanne Picard	
Quelle est votre taille de T-shirt? - Femme Small	0,00

Sous-total :	69,00 \$
QST	6,88 \$
GST	3,45 \$
* Frais de traitement :	11,99 \$
Total général :	91,32 \$
Montant payé :	(91,32\$ )
Solde de la commande :	0,00 \$

12. In addition, the applicant also recalled a complaint that she had lodged with Rock 'n' Roll Montreal in November of 2018 concerning, among other things, these additional costs which were never disclosed, such as it appears from the email exchange produced herein as **Exhibit P-5**;

13. At no time before proceeding to checkout was the amount of these processing fees or the total purchase price including these fees disclosed, and this, for all the Events for which the applicant has registered, as shown by the video recording of a sample transaction, produced herein as **Exhibit P-6**, a still of which is reproduced below :

#### ORDER DETAILS

ITEMS		TOTAL
2021 IRONMAN Mont-Tremblant - IRONMAN Foundation - Individual Entry test test	Edit	CAD 1,400.00
Finisher t-shirt - Men's Medium		CAD 0.00
Coupon code		Subtotal
<input type="text"/>		CAD 1,400.00
<input type="button" value="APPLY"/>		GST
		CAD 70.00
		QST
		CAD 139.58
		Processing fee
		CAD 128.77
		What's this?
		Total
		CAD 1,738.35

The Active Network, Ltd will charge the amount above

14. Furthermore, it should be noted that the defendants are putting pressure on the athletes to complete their registrations quickly by various means :

- a. At the start of the registration process, a message appears indicating that “[y]ou may lose your registration spot if your browser session is idle for more than 15 minutes”, while the registration process is paradoxically lengthened due to the various questions submitted to the athletes, the need to accept various terms of use, as well as the choice offered to the athletes to add various extras to their package, including a commemorative jersey, an engraved medal, and photos and/or video recordings, as it appears from **Exhibit P-6**;
- b. The price of registration varies in function of different pricing tiers and increases automatically when the capacity of each tier is reached, as it appears from the screenshots of the website [www.ironman.com](http://www.ironman.com) for the IRONMAN 5i50 and IRONMAN 70.3 Mont-Tremblant events, *en liasse*, produced herein as **Exhibit P-7**;
- c. Athletes are continually sent emails from the defendants to inform them of upcoming Events, urging them to register early in order to take advantage

of the lower registration prices, as it appears from the various emails received by the applicant, *en liasse*, produced herein as **Exhibit P-8**;

15. Thus, the applicant paid for costs not included in the advertised prices, these costs not being added by the defendants until the final checkout;

16. The applicant is therefore entitled to claim a reduction of her obligations, in addition to punitive damages, for the violation of articles 12, 219, 224 c) and 228 of the C.P.A.;

#### **IV. THE FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH CLASS MEMBER**

17. The causes of action and the legal bases for the recourse of each Class member against the defendants are essentially the same as those of the applicant;

18. Each Class member is a consumer within the definition of the C.P.A. that has paid an additional amount in processing fees to register for one of the defendants' Events;

19. The violations committed by the defendants against each Class members, which are explained in more detail below, are the same as those committed against the applicant;

20. As a result of these violations, each Class member has suffered damages for which they are entitled to seek compensation collectively against the defendants;

21. To be more precise, each Class member is entitled to demand that their obligation be reduced as well as to claim punitive damages for the violations committed by the defendants;

22. The applicant is not, however, in a position to assess the overall amount of the damages suffered by all the Class members, since the information and financial data essential to do so are in the possession of the defendants;

#### **V. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION**

**A. The identical, similar or related questions of fact or law connecting each Class member to the defendants and which the applicant intends to have**

**decided by the class action**

23. The identical, similar or related questions of fact or law connecting each Class member to the defendants and which the applicant intends to have decided by the class action are as follows :

- a. Have the defendants violated any of their obligations imposed by the C.P.A. and/or the C.C.Q.?
- b. Are the applicant and Class members entitled to a reduction in their obligations equal to the sum of the processing fees they had to pay?
- c. Are the applicant and Class members entitled to punitive damages, and if so, how much is each Class member entitled to?
- d. Can the Class members' claims be recovered collectively?

24. The question of fact or law specific to each Class member is as follows :

- a. What is the amount of processing fees illegally charged to each Class member?

25. The proof of the violations alleged against the defendants will undoubtedly benefit all Class members;

26. It is therefore opportune to authorize the present class action on behalf of the Class members;

**B. The facts alleged appear to justify the conclusions sought**

27. The facts alleged generate liability on the part of the defendants;

28. The C.P.A. is a law of public order and the consumer cannot, according to its article 262, waive the rights it grants to them;

29. One of the main objectives of the C.P.A. is to allow consumers to form a complete picture before purchasing goods or services;

30. In addition, under article 224 c) of the C.P.A., merchants may not charge, by any means whatsoever, a price higher than that advertised;



31. For these purposes, the advertised price must include all payable fees, excluding applicable taxes, and clearly show the amounts of which it is composed, including, in this case, the processing fees;
32. However, the defendants failed to disclose and display the amount of the processing fees, the payment of which is mandatory, in a precise manner in the stages leading to the transaction;
33. By failing to disclose the processing fees before the final payment, the defendants failed to display at their first opportunity a price including all the costs that the consumer had to pay, thus violating article 224 c) of the C.P.A.;
34. This practice furthermore only serves to conceal the real price of the transaction and amounts to the exploitation of consumers, who are made unable to adequately assess the price of the goods and services they seek to procure;
35. In short, the applicant and the Class members were deprived of their right to a complete picture and were unable to make an informed decision before fully committing themselves at the final payment, and all this while also being under pressure to quickly finalize their registration process for the defendants' Events;
36. The damages suffered by the applicant are directly linked to the violations committed by the defendants;
37. As a consequence of these violations, the applicant and the Class members have suffered and continue to suffer damages;
38. The applicant and the Class members are therefore entitled, in accordance with article 272 of the C.P.A., to demand that their obligations be reduced as well as to claim punitive damages for the damages they have suffered;
39. In the case of the applicant, the compensation sought is equivalent to \$217.54 for five (5) Events organized by the defendants;
40. The applicant and the Class members are furthermore justified in claiming punitive damages since the defendants have adopted a behavior of ignorance, recklessness or neglect regarding their rights by failing to disclose elements essential to the transaction;

41. The punitive damages provided for in article 272 of the C.P.A. have a preventive aim, namely, to discourage the repetition of such undesirable conduct;
42. These violations depriving consumers of their right to a complete picture are serious, particularly as they relate to an essential element of the contract, namely the price of the transaction;
43. The defendants have the means and the capacity to announce a full price at their first opportunity, but instead mislead consumers, all in violation of the C.P.A.;
44. The attitude of the defendants shows that they are more concerned by the number of registrations obtained than by consumer rights under the C.P.A.;
45. It is moreover likely that the defendants generated an income of several million dollars by adopting this reprehensible behavior, since these processing fees represent approximately 10% of the registration price;
46. The applicant and the Class members are therefore entitled to claim from the defendants an amount of \$100 per member, per transaction, as punitive damages;

**C. The composition of the Class makes it difficult or impracticable to apply article 91 or 143 C.C.P.**

47. 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 for the reasons explained below;
48. The applicant does not know the exact amount of Class members, but estimates it at several thousands;
49. Furthermore, the applicant does not know the identity or the contact information of all these victims;
50. As a result, it is impossible and impracticable for the applicant to identify and contact each of the Class members to join them in a single action;
51. It would be equally impossible and impracticable for the applicant to obtain a mandate or a power of attorney from each Class member;

52. It would also be impractical and contrary to the interests of a sound administration of justice as well as the spirit of the *Code of Civil Procedure* for each Class member to bring individual actions against the defendants;

53. Indeed, the cost of such individual actions for each Class member would be disproportionate in comparison to the amount of their claims;

54. Thus, a class action is the most appropriate procedural vehicle to allow each Class member to make their claims arising from the facts alleged in the present request;

55. The choice to bring a class action also makes it possible to avoid a multiplication of potentially contradictory judgments on identical questions of fact or law;

**D. The applicant is able to ensure adequate representation of the Class members**

56. The applicant is able to ensure adequate representation of the Class members and therefore requests that the status of representative plaintiff be granted to her for the reasons below;

57. The applicant is a Class member and has personal interests in seeking the conclusions sought;

58. The applicant is competent, in that she would have had the potential to be the mandatory of the action had it proceeded under article 91 of the *Code of Civil Procedure*;

59. There is no conflict between the interests of the applicant and those of the Class members;

60. The applicant has an excellent knowledge of the case;

61. The applicant has taken steps to initiate these proceedings for the sole purpose of asserting her rights and those of the Class members so that they be compensated for the damages they have suffered and continue to suffer;

62. The applicant has tried personally and through her lawyer to identify other Class members in the same position as her;

63. The applicant has forwarded to her lawyer all the information at her disposal relevant to the present application and undertakes to continue to collaborate in this manner in the future;
64. The applicant has read this application as well as the related documents and fully understands the nature of the action;
65. The applicant also undertakes to cooperate fully with her lawyer and to make herself available so that the outcome of the present action may be satisfactory for all the Class members;
66. The applicant is prepared to devote the time required to properly represent the Class members in the context of the present action, during both the authorization and the merit stages;
67. In drafting this application, the applicant has shown great availability to her lawyer, communicating with him on several occasions by phone and email;
68. The applicant intends to represent the interests of the Class members with vigor and loyalty;
69. The applicant shows a keen interest in this case and expresses the desire to be kept informed at each stage of the process;
70. The applicant is therefore in an excellent position to adequately represent the Class members in the context of the present action;

**VI. NATURE OF THE ACTION**

71. The action that the applicant seeks to institute against the defendants on behalf of the Class members is :

An action in reduction of obligations and in punitive damages;

**VII. CONCLUSIONS SOUGHT**

72. The conclusions sought by the applicant are as follows :

- A. **GRANT** the applicant's action against the defendants on behalf of all Class members;
- B. **CONDEMN** the defendants to pay each Class member an amount in damages equivalent to the processing fees they had to pay, with interest at the legal rate and the additional indemnity provided for in article 1619 of the *Civil Code of Quebec* from the date of service of the present application;
- C. **CONDEMN** the defendants to pay each Class member an amount of \$100, per transaction, as punitive damages, with interest at the legal rate and the additional indemnity provided for in article 1619 of the *Civil Code of Quebec* from the date of service of the present application;
- D. **ORDER** the collective recovery of all amounts to the Class members;
- E. **ORDER** that the claims of each Class member be the object of collective liquidation if the proof permits and alternatively, of individual liquidation;
- F. **RENDER** any other order that this Honourable Court shall determine;
- G. **CONDEMN** the defendants to bear the costs of the present action, including legal costs, as well as expert and notice publication fees;

#### VIII. JURISDICTION OF THE ACTION

73. The applicant suggests that this class action be exercised before the Superior Court sitting in the judicial district of Montreal for the following reasons :

- A. The applicant is domiciled and resides in the district of Montreal;
- B. Many Class members are domiciled in the judicial district of Montreal or, more generally, in its appeal district;

- C. The defendant Ironman Canada Inc. has an elected domicile in this judicial district;
- D. The applicant's legal counsel practices in the district of Montreal;

**FOR THESE REASONS, MAY IT PLEASE THE COURT :**

**GRANT** the present Application;

**AUTHORIZE** the bringing of a class action in the form of :

An action in reduction of obligations and in punitive damages;

**APPOINT** the applicant, **JOANNE PICARD**, the status of representative plaintiff for the purpose of exercising a class action on behalf of the following Class of persons :

All persons residing in Quebec who have registered and paid a higher price than that announced to participate in the events organized by the defendants since July 25, 2017;

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

- A. Have the defendants violated any of their obligations imposed by the C.P.A. and/or the C.C.Q.?
- B. Are the applicant and Class members entitled to a reduction in their obligations equal to the sum of the processing fees they had to pay?
- C. Are the applicant and Class members entitled to punitive damages, and if so, how much is each Class member entitled to?
- D. Can the Class members' claims be recovered collectively?

**IDENTIFY** the main question of fact and law specific to each Class member as the following :

- A. What is the amount of processing fees illegally charged to each Class member?

**IDENTIFY** the conclusions sought by the class action as being the following :

- A. **GRANT** the applicant's action against the defendants on behalf of all Class members;
- B. **CONDEMN** the defendants to pay each Class member an amount in damages equivalent to the processing fees they had to pay, with interest at the legal rate and the additional indemnity provided for in article 1619 of the *Civil Code of Quebec* from the date of service of the present application;
- C. **CONDEMN** the defendants to pay each Class member an amount of \$100, per transaction, as punitive damages, with interest at the legal rate and the additional indemnity provided for in article 1619 of the *Civil Code of Quebec* from the date of service of the present application;
- D. **ORDER** the collective recovery of all amounts to the Class members;
- E. **ORDER** that the claims of each Class member be the object of collective liquidation if the proof permits and alternatively, of individual liquidation;
- F. **RENDER** any other order that this Honourable Court shall determine;
- G. **CONDEMN** the defendant to bear the costs of the present action, including legal costs, as well as expert and notice publication fees;

**DECLARE** that all Class members that have not requested their exclusion be bound by any judgment 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 Class members that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

**ORDER** the publication of a notice to the Class members in accordance with the terms and conditions that this Honourable Court shall determine;

**REFER** the file to the Chief Justice to determine the judicial district in which the class action will be brought and the Justice before whom it will be heard;

**ORDER** the Clerk of this Court, in the event that the class action is to be brought in another district, to forward the present record to the Clerk of the district so designated;

**THE WHOLE** with legal costs, including court and expert costs, and notice publication fees.

**MONTREAL**, January 8<sup>th</sup>, 2021

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**LAMBERT AVOCAT INC.**

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