

SUPERIOR COURT

(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000574-117
500-06-000596-128

DATE: DECEMBER 20, 2012

IN THE PRESENCE OF THE HONOURABLE NICOLE-M. GIBEAU, J.S.C.

500-06-000574-117

KATIEN LONG
Petitioner

v.

BEIERSDORF CANADA INC.
Respondent

500-06-000596-128

ILANA DRAY
Petitioner

v.

BEIERSDORF CANADA INC.
Respondent

JUDGMENT

[1] **THESE MOTIONS** made by Petitioners Katien Long and Ilana Dray against Beiersdorf Canada Inc. ("Respondent") for approval of the Settlement Agreement attached hereto and authorization of the Actions as class proceedings, for settlement

purposes only, subject to the terms of the Settlement Agreement and upon certain conditions being met, approving the class notice, and approving the method of dissemination of the class notice, were heard on December 20, 2012 in Montreal, Quebec, in the presence of Me Jeff Orenstein and Me Emmanuelle Saucier;

[2] **ON READING** the material filed including the Settlement Agreement and the affidavits of Katien Long and Ilana Dray dated December 17, 2012, and on hearing the submissions of counsel for the Petitioners and Respondent, and upon being advised that the Settlement Agreement provides for the release of the Released Claims against the Released Parties, some of which have not been named as respondents in the Class Actions, and upon further being advised of the consent of NPT Ricepoint Class Action Services Inc. to act as Administrator.

[3] **FOR THESE REASONS, THE COURT:**

[4] **ORDERS AND DECLARES** that, in addition to the definitions used elsewhere in this Judgment, for the purposes of this Judgment the definitions set out in the Settlement Agreement apply to this Judgment and are incorporated into this Judgment and form an integral part thereof.

[5] **AUTHORIZES** the Class Actions for settlement purposes only, subject to the terms of the Settlement Agreement and the conditions set out below;

ORDERS that the Class be defined as follows:

"All persons resident in Canada who purchased the Products in Canada at any time to the date hereof."

[6] **ORDERS** that the Settlement Class be defined as follows:

"All members of the Class who do not opt out of the Class in accordance with the Settlement Agreement."

[7] **DECLARES** that the Settlement Agreement is valid, equitable, reasonable, in the best interest of the Class and constitutes a transaction pursuant to Article 2631 of the *Civil Code of Quebec*, binding on the parties and all the members therewith described;

[8] **DECLARES** that the Settlement Agreement and its Exhibits were prepared in English and translated into French and that in the event of any inconsistencies between the English and French versions of the Agreement and / or the Exhibits, the English version of the Agreement and of its Exhibits shall prevail;

[9] **ORDERS** that the Settlement Agreement is hereby approved pursuant to Article 1025 of the *Code of Civil Procedure* and **DECLARES** that it must be acted upon in compliance with its terms and those of this Judgment;

[10] **ORDERS** that if the Settlement Agreement is terminated for any reason, or any specified condition to the Settlement Agreement is not satisfied or the parties to the Settlement Agreement seek to terminate it pursuant to its terms:

- a) this Judgment shall be set aside, be of no further force or effect, and be without prejudice to any party;
- b) the Settlement Agreement and all proceedings in connection therewith shall be null and void, except insofar as expressly provided in the Settlement Agreement, and without prejudice to the status quo ante rights of the Petitioners and Respondent;
- c) the authorization of the Class Actions shall immediately be annulled as a class proceeding without prejudice to the Petitioners' ability to reapply for authorization; and
- d) each party to the Class Actions shall be restored to his, her or its respective position as it existed immediately prior to the execution of the Settlement Agreement;

[11] **ORDERS** that any authorization under this Judgment is for settlement purposes only and shall not constitute, nor be construed as, an admission on the part of the Respondent that this or any authorization for any other proposed or authorized class action is appropriate for any other purpose;

[12] **ORDERS** that entry of this Judgment is without prejudice to the rights of the Respondent to terminate the Settlement Agreement as provided in the Settlement Agreement;

[13] **ORDERS** that the Final Notice attached hereto as **Exhibits R-3** is hereby approved and **DECLARES** that it fully complies with article 1006 of the *Code of civil procedure* and due process, constitutes the best notice practicable under the circumstances and is due and sufficient notice to all persons entitled to notice of the settlement in the Class Actions;

[14] **ORDERS** that NPT Ricepoint Class Action Services Inc. be appointed as the Settlement Administrator. Responsibilities of the Settlement Administrator include the following: (a) accepting and maintaining documents sent from members of the Class, including claim forms, Opt-Out Forms, and other documents relating to administration of

the Settlement Agreement; (b) administering Claims for payments, in accordance with the terms of the Settlement Agreement; and (c) all other responsibilities designated to the Settlement Administrator in the Settlement Agreement or this Judgment;

[15] **ORDERS** that Vizeum Canada Inc. be appointed as the Publisher. Responsibilities of the Publisher include the following: (a) publishing a summary version of the Final Notice; (b) certifying by affidavit to the Court that the Final Notice was published; (c) certifying the dates that the Final Notice was actually published by each source, providing a true copy of each Final Notice in each publication, and providing any other information relevant to the publication and mailing of notices;

[16] **ORDERS** that within ten (10) days of the Judgment being granted, notice to the Settlement Class shall commence and be disseminated by the Publisher as follows:

The English version of the Final Notice shall be published once in the Montreal Gazette, in The Globe and Mail, and in the National Post. The French version of the Final Notice shall be published once in La Presse.

[17] **ORDERS** that Class Counsel is to post the full text version of the Notice on the website of Class Counsel at: www.clg.org;

[18] **ORDERS** that Counsel for the Petitioners in the Class Action shall provide copies of the Final Notice to all persons who contacted him and indicated that they might be members of the Class;

[19] **ORDERS** that the costs of preparing, printing, publishing, mailing and otherwise disseminating the Final Notice shall be paid by Respondent in accordance with the Settlement Agreement;

[20] **OPT-OUT RIGHTS**

[21] **ORDERS** that any member of the Class who wishes to be excluded from the Settlement Class as provided by Article 1007 C.C.P. shall mail a fully completed Request for Exclusion Form to the Settlement Administrator, postmarked on or before the expiry of the Opt-Out Period (which is 30 days following the date of first publication of the Final Notice), which date is to be inserted into the Final Notice prior to publication; upon receipt, the Administrator shall mail a copy of the Request for Exclusion Form to the Clerk of the Superior Court, District of Montréal, at 1 Notre-Dame East Street, Montreal, Quebec H2Y 1B6;

[22] **ORDERS** that the fully completed Request for Exclusion Form shall be delivered by mail to the Settlement Administrator at the following address:

NPT Ricepoint Class Action Services
633 Colborne Street, Suite 300
London, Ontario N6B 2V3

[23] **ORDERS** that any person who validly opts out of the Settlement Class in accordance with this Judgment and the Settlement Agreement shall be excluded from the Settlement Class, shall not be bound by the Agreement, shall have no rights with respect to the Agreement and shall receive no payments as provided in the Agreement;

[24] **ORDERS** that the initial determination that each Request for Exclusion Form complies with the opt-out procedures in the Settlement Agreement will be made by the Administrator. The Administrator shall disallow any request for exclusion that fails to comply with the provisions of this Judgment and the Settlement Agreement;

[25] **ORDERS** that prior to the expiry of the Opt-Out Period, the Administrator shall confirm receipt of valid Request for Exclusion Forms to the person(s) who delivered such valid forms;

[26] **ORDERS** that any member of the Class who does not, prior to the Opt-Out Period, mail to the Settlement Administrator a valid and complete Request for Exclusion Form that is in strict compliance with the Settlement Agreement and this Judgment shall be automatically included in the Settlement Class;

[27] **ORDERS** that the Settlement Administrator shall forward copies of all opt-out requests to Counsel for Respondent and to Class Counsel no later than seven (7) days after the deadline for the Settlement Class Members to submit such requests;

[28] **DISMISSAL AND RELEASE**

[29] **ORDERS** that the Class Actions be immediately dismissed, with prejudice and without costs;

[30] **ORDERS** that this Judgment is binding upon each Settlement Class member;

[31] **ORDERS** that on the Effective Date each Settlement Class member shall consent and shall be deemed to have consented to the dismissal as against the Released Parties of any other actions he, she or it has commenced, without costs and with prejudice;

[32] **ORDERS** that Petitioners and all Settlement Class members are permanently enjoined and barred from commencing or continuing any proceeding asserting any of the Released Claims, either directly, representatively, derivatively, or in any other capacity, whether by a complaint, counterclaim, defense, or otherwise, in any court, or in any agency or other authority or forum wherever located;

[33] **ORDERS** that Respondent shall have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement and, except for payments to Settlement Class members up to a maximum of \$100 per claimant, payment of Class Counsel Fees in the amount of \$237,500 plus applicable taxes, and payment of Notice and Administration costs.

[34] **OTHER PROVISIONS**

[35] **ORDERS** that each and every term and provision of the Settlement Agreement (except as expressly modified by this Judgment) is incorporated into this Judgment as if expressly set forth and shall have the full force and effect of an order of the Court;

[36] **ORDERS** that neither this Judgment nor the Settlement Agreement, nor any negotiations, statements, or proceedings in connection therewith, shall be construed as or be deemed to constitute any evidence of, an admission or concession by any Respondent or Released Parties of any wrongdoing or liability by them, or that the claims and defences that have been, or could have been, asserted in the litigation are or were not meritorious, and neither the Settlement Agreement or any such communications or documents shall be offered or received in evidence in any action or proceeding against any one or more of the Released Parties;

[37] **ORDERS** that the Respondent may communicate with Class members regarding the provisions of the Settlement Agreement, so long as such communications are not inconsistent with the Final Notice or such other agreed upon communications concerning the Settlement Agreement. The Released Parties may refer potential Class members to the Settlement Administrator or Class Counsel. In addition, nothing herein or in the Agreement shall, or shall be interpreted or deemed to, prevent or impact in any way any Released Parties ability to communicate with their customers, business contacts, and members of the public in the ordinary course of business;

[38] **ORDERS** the Settlement Administrator to conform with Article 1(3)(a) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux recours collectifs* (R.R.Q., c R-2.1, r. 2) and, therefore, **ORDERS** that, for Quebec residents who submit a Tier 1 Claim and/or a Tier 2 Claim (collectively "Cash Claims") the Settlement Administrator shall:

- a) deduct an amount of 2% from the Cash Claims otherwise payable to them for Tier 1 Claims and/or Tier 2 Claims (the "2% Payable to the *Fonds*"), for greater certainty, Quebec residents who submit such Cash Claims under Tier 1 Claims and/or Tiers 2 Claims will receive the remaining 98% of such liquidated claims provided for in the Settlement Agreement;
- b) pay the 2% Payable to the *Fonds* in the same way as provided for by Article 18 of the Settlement Agreement;

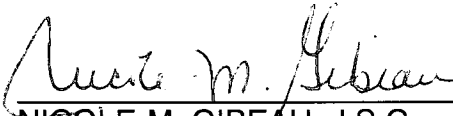
[39] **DECLARES** that the 2% Payable to the *Fonds* does not increase the amount payable by Respondent pursuant to the Settlement Agreement, and more particularly, Section 17 and 20 of the Settlement Agreement;

[40] **DECLARES** that the 2% Payable to the *Fonds* will not apply to Tier 3 Claims or to any Unclaimed Funds;

[41] **DECLARES** that there are no additional amounts payable to the *Fonds d'aide aux recours collectifs* than the one mentioned hereinabove;

[42] **ORDERS** that this Judgment shall be declared null and void in the event that the Settlement Agreement is terminated in accordance with its terms.

[43] **THE WHOLE** without costs.



NICOLE-M. GIBEAU, J.S.C.

Me Jeffrey Orenstein
Me Andrea Grass
Consumer Law Group
Lawyers for Petitioner

Me Emmanuelle Saucier
Me Elisa Henry
McMillan S.E.N.C.R.L., s.r.l.
Lawyers for Respondent

Date of hearing: December 20, 2012

Exhibit F

NIVEA MY SILHOUETTE!TM AND GOOD-BYE CELLULITE CLASS ACTIONS

FINAL NOTICE OF COURT APPROVAL OF A SETTLEMENT

THIS NOTICE MAY AFFECT YOUR RIGHTS PLEASE READ ALL OF IT CAREFULLY

ATTENTION: ALL PERSONS IN CANADA WHO PURCHASED NIVEA MY SILHOUETTE!TM OR NIVEA GOOD-BYE CELLULITE

Please take notice that, on December 20, 2012, the Superior Court of Quebec authorized the institution of a class action in court files number 500-06-000574-117 and 500-06-000596-128, filed respectively by Long and Dray (the "Petitioners") against Beiersdorf Canada Inc (the "Respondent") and approved the settlement agreement reached in the class action (the "Authorization Judgment"). The following class was authorized for settlement purposes only:

All residents of Canada who purchased My Silhouette! or Good-Bye Cellulite products up to December 20, 2012.

The lawsuits alleged that the Respondent made certain representations in the advertising for and packaging of the Products, which were misleading. Respondent does not admit or accept any wrongdoing or liability, including any and all claims of liability or wrongdoing and all charges and allegations that have been asserted against it in the Class Actions

The Court has not taken any position as to the truth or merits of the claims or defences asserted by either side. The allegations made by the Petitioners have not been proven in Court.

If you are resident in Canada and purchased *NIVEA My Silhouette!TM or Good-Bye Cellulite* products up to December 20, 2012, you are a member of the Class and your rights will be affected.

SUMMARY OF THE SETTLEMENT AGREEMENT

Without any admission of liability or wrongdoing, a Settlement Agreement has been reached. The Settlement Agreement provides for:

1. Payment to Class Members, as follows:
 - a. Tier 1 Claim: Class Members who submit a claim supported by cash register receipts or similar documentation that identifies the Product, its retail price, date and location of purchase can receive 85% of the actual retail purchase price of a Product, up to a maximum of six (6) packages.
 - b. Tier 2 Claim: Class Members who submit a claim supported by a solemn declaration that identifies the (i) Product(s) purchased, (ii) approximate retail price of each such purchase, and (iii) location(s) of the purchase(s) can receive 70% of the actual retail purchase price of a Product, up to a maximum of four (4) packages.
 - c. Tier 3 Claim: Class Members who submit claim supported by a solemn declaration affirming the purchase of a Product can receive one (1) Certificate in the amount of \$2.00 for each purchase of a Product, up to a maximum of three (3) Certificates. The Certificates will be good only for the purchase of any product distributed by Beiersdorf Canada Inc. and shall expire no sooner than 6 months after the date that they are mailed by the Settlement Administrator.
 - d. Any member of the Settlement Class may submit claims under one or more tiers subject to a total maximum recovery of \$100.
2. Eligibility for payment under the Settlement Agreement will be determined on an individual basis by the Settlement Administrator appointed by the Court, namely NPT Ricepoint Class Action Services Inc., upon an analysis of individual Class Members' claims and records. Eligibility for payment will require proof by Class Members that they purchased *NIVEA My Silhouette!™* or *Good-Bye Cellulite*. The eligibility to receive payment will be determined by the Settlement Administrator appointed by the Court on the basis of evidence submitted by the Class Members;
3. The decision of the Settlement Administrator is subject to an appeal before the Court;
4. The costs associated with this Notice and all administration costs, as well as Class Counsel fees and disbursements, which must be approved by the Quebec Court, will be paid out by the Respondent.
5. The Settlement may be terminated, before February 18, 2013, by the Respondent or by Class Counsel if the number of Class Members who opt-out of the Settlement or the value of the claims filed after this Notice exceeds the thresholds agreed upon by the Parties.

OPTING-OUT

If you are a member of the Class you will be bound by the terms of the Settlement Agreement and you will not be able to bring or maintain any other claim or legal proceedings against the Respondent in connection with the purchase of *NIVEA My Silhouette!*TM or *Good-Bye Cellulite* products in Canada up to December 20, 2012, unless you exclude yourself from the Settlement Class ("Opt Out"). If you are a member of the Class and wish to Opt-Out, **you must fully complete and submit an Request for Exclusion Form to the Administrator by the Opt-Out Deadline of January 28, 2013** at the following address:

NPT Ricepoint Class Action Services
633 Colborne Street, Suite 300
London, Ontario, N6B 2V3

Opt-Out Forms are available at <http://www.gbcmssettlement.ca> or may be requested by mail or telephone by contacting Class Counsel (contact information provided below). If you Opt Out, you will **NOT** be able to make a claim under the Settlement.

CLAIMS DEADLINE

In order to be eligible for payment, **you must submit a Claim Form and any related documentary evidence to the Administrator on or before February 25, 2013**. Claim Forms are available at <http://www.gbcmssettlement.ca> or may be requested by mail or telephone by contacting Class Counsel (contact information provided below). The completed Claim Form must be submitted to the following address:

NPT Ricepoint Class Action Services
633 Colborne Street, Suite 300
London, Ontario, N6B 2V3

LEGAL FEES

The Quebec Superior Court has approved the payment of legal fees and expenses to Class Counsel in the total amount of \$237,500. Claimants may, but are not obliged to, retain their own lawyers, other than Class Counsel, to assist them in making individual claims under the Settlement Agreement. Claimants are responsible for paying the legal fees and costs of any other lawyer they retain.

FURTHER INFORMATION

Additional information may be obtained at the Settlement website at <http://www.gbcssettlement.ca>. You may also contact Class Counsel, whose contact information is the following:

Me Jeff Orenstein

Consumer Law Group Inc.
1123 Clark Street, 3rd floor
Montreal (Quebec) H2Z 1K3
Telephone: (514) CONSUMER [266-7863] Ext. 220
Toll Free: 1-888-909-7863
Fax: (514) 868-9690
Email: jorenstein@clg.org
Website: www.clg.org

Please do not contact the Court.

A complete copy of the Settlement Agreement and the detailed instruction package and instructions on how to obtain a Claim Form necessary to file a Claim for benefits under the settlement or Opt-Out Form necessary to opt out of the class are available at <http://www.gbcssettlement.ca> or by contacting Quebec Class Counsel. If there is a conflict between the provisions of this Notice and the Authorization Judgment, the Authorization Judgment shall prevail.

This Authorization Notice has been approved by the Superior Court of Quebec.