

SUPERIOR COURT
(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N^o: 500-06-000333-068

DATE: January 30, 2015

BY:
THE HONOURABLE MADAM JUSTICE LUCIE FOURNIER, S.C.J.

MICHAEL ROYER-BRENNAN
and
JASON HERMAN
Petitioners

vs.

APPLE COMPUTER, INC.
and
APPLE CANADA INC.
Respondents

JUDGMENT ON DISCONTINUANCE

[1] On February 1, 2006, the present Motion to Authorize the Bringing of a Class Action & to Ascribe the Status of Representative (Art. 1002 C.C.P. and following) was filed [the "Motion for Authorization"];

[2] Subsequent to various amendments to the Motion for Authorization, the two (2) Petitioners each seek to represent a different proposed group;

[3] Petitioner Royer-Brennan seeks to represent the proposed class described as:

“all residents in Canada who were the age of majority when they purchased and/or used any IPOD designed, manufactured, distributed, sold, or otherwise put onto the marketplace by the Respondents, or any other group to be determined by the Court;

Alternately (or as a subclass)

all residents in Quebec who were the age of majority when they purchased and/or used any IPOD designed, manufactured, distributed, sold, or otherwise put onto the marketplace by the Respondents, or any other group to be determined by the Court;”

[4] Petitioner Herman seeks to represent the proposed class described as:

“all residents in Canada who were minors when they purchased and/or used any IPOD designed, manufactured, distributed, sold, or otherwise put onto the marketplace by the Respondents, or any other group to be determined by the Court;

Alternately (or as a subclass)

all residents in Quebec who were minors when they purchased and/or used any IPOD designed, manufactured, distributed, sold, or otherwise put onto the marketplace by the Respondents, or any other group to be determined by the Court;”

[5] On September 10, 2014, the Petitioners filed a Motion for Discontinuance seeking permission to desist from the present legal proceedings (Art. 1016 C.C.P.);

[6] On September 11, 2014, the above-mentioned Motion was heard by the Court;

[7] The reasons alleged in the above-mentioned Motion to support the discontinuance are:

- a) THAT over the course of the eight (8) years since the Petitioners have instituted the Motion for Authorization, the iPod and the earbuds have evolved considerably, changing the factual context;
- b) THAT the Respondents have provided the Petitioners with documentary evidence that it has already put parental volume control functions into place as well as provided warnings about hearing loss to

its customers, which the Petitioners consider as sufficient, thereby satisfying the injunctive portion of the Motion for Authorization;

- c) THAT damages will be difficult to demonstrate and to quantify as there is a lack of tangible facts in the record that demonstrate that the Petitioners actually suffer from noise-induced hearing loss;
- d) THAT it may prove difficult in any event for the Petitioners to demonstrate that an iPod is a “toy” within the meaning of the *Hazardous Products Act* or the *Canada Consumer Product Safety Act*;
- e) THAT the U.S. action, which has influenced the present one, was dismissed on a Motion to Dismiss by order dated June 13, 2008 with prejudice and this dismissal was upheld in the United States Court of Appeals for the Ninth Circuit on December 30, 2009 (Exhibit R-1 herein); and
- f) THAT the present class action has not generated that much interest from class members. Only 52 persons (43 from Quebec, 9 from the rest of Canada) filled out the form to join the class action at www.clg.org;

[8] SEEING the above-mentioned Motion, as well as, the Exhibit in support thereof produced in the Court record;

[9] HEARING the representations made by the Petitioners’ attorneys;

[10] GIVEN the consent by the Respondents to the discontinuance without costs notwithstanding their contribution of a lump sum towards legal disbursements and fees of the Petitioners;

[11] GIVEN that the Petitioners’ attorneys placed a notice on the website www.clg.org and has emailed the 52 potential class members who had previously expressed interest in joining the present class action of the Petitioners’ intention to discontinue as well as the date, time, and place of the hearing of the present Motion;

[12] CONSIDERING that the Court finds the discontinuance to be in the interest of justice;

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

[14] **GRANTS** the present Motion;

[15] **AUTHORIZES** the Petitioners to discontinue their Motion for Authorization of a Class Action;

[16] **ORDERS** the publication of the full text of the present Judgment to be placed on the website www.clg.org for a period of ninety (90) consecutive days following the date of the present Judgment;

[17] **ORDERS** that the full text of the present judgment is to be forwarded by mail and by email to all individuals residing in Canada who identified themselves on the Petitioners' attorneys' website in connection with these proceedings;

[19] **WITHOUT COSTS.**

A handwritten signature in black ink, appearing to read 'Lucie Fournier', is written over a horizontal line. The signature is stylized and cursive.

LUCIE FOURNIER, S.C.J.

Me Jeff Orenstein
Me Andrea Grass
CONSUMER LAW GROUP INC.
Attorneys for the Petitioners

Me Kristian Brabander
MCCARTHY TÉTRAULT LLP
Attorneys for the Respondents