

CANADA

(Class Action)
SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

D. TANNER

NO: 500-06-000429-080

Petitioner

-vs.-

NISSAN CANADA INC., legal person
duly incorporated, having its principal
place of business at 18109, Trans
Canada Highway, city of Kirkland,
Province of Quebec, H9J 3K1

Respondent

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION &
TO ASCRIBE THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following)**

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

GENERAL PRESENTATION

The Action

1. Petitioner wishes to institute a class action on behalf of the following groups, of which he is a member, namely:

National Class

- all residents in Canada, excluding British Columbia, who presently own or lease a Nissan or Infinity from the year 2004 to the date of final judgement;

Quebec Sub-Class

- all residents in Quebec who presently own or lease a Nissan or Infinity from the year 2004 to the date of final judgement;

United States and British Columbia

2. The paragraphs to follow appear more fully from various Class Action Complaints instituted in the United States:
 - a. District Court for the Central District of California on November 30th 2007;
 - b. District Court for the Northern District of California on July 25th 2007;
 - c. District Court for the Eastern District of Michigan November 27th 2007;
 - d. District Court for the Eastern District of Pennsylvania on November 14^h 2007;
 - e. District Court for the Eastern District of Texas on November 16th 2007;

Copies of which are attached hereto as **Exhibit R-1** *en liasse*;

3. Further, an action was taken in the Supreme Court of British Columbia on January 22nd 2008; a copy of which is attached hereto as **Exhibit R-2**;
4. In these actions, the class contends that the Defendant designed, manufactured, distributed, marketed and sold motor vehicles under the brand names Nissan and Infinity with an odometer which inflates the represented distance travelled by a factor of at least 2.0%;
5. In so doing, the Defendant has deprived class members of:
 - a) the full benefit of the standard warranties;
 - b) the full benefit of any extended warranties;
 - c) the full benefit of any used warranties;
 - d) the full benefit of their allotted kilometer allowance under a lease;
 - e) a reduction in the resale value of their vehicles
6. Therefore, the Class members have suffered damages as they would not have purchased the motor vehicle's with a defective odometer or would not have paid such a high price;

Canada and Quebec

7. Petitioner contends that the same defective and over-stating odometers have been installed and used in the Nissans and Infinitis in Canada and Quebec;
8. By reason of Defendant's acts and omissions, Petitioner and the members of the group suffered damages that they wish to claim;

The Defendants

9. Defendant Nissan Canada Inc. is a wholly owned subsidiary of the Japanese Company Nissan Motor Company, Ltd. and the American Company Nissan North America, Inc., the whole as more fully appears from a copy of the Quebec Inspector General of Financial Institutions Report attached hereto as **Exhibit R-3**;
10. Defendant Nissan Canada Inc. is the Canadian arm which puts the motor vehicles Nissan and Infiniti onto the marketplace in Canada and Quebec;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

11. Petitioner purchased a 2005 Nissan Ultima 2.5L Special;
12. Petitioner received the basic 60,000 kilometer warranty with his vehicle;
13. Defendant impliedly warranted to Plaintiff that the vehicle's odometer would accurately record the number of kilometers driven; Petitioner has discovered that the odometer does not;
14. Petitioner would not have purchased the vehicle or would not have paid such a high price had he known about the defect;
15. In consequence of the foregoing, Petitioner is justified in claiming damages;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

16. Every member of the group has either purchased or leased a Nissan or Infiniti since the year 2004;
17. None of the members of the class were aware of the defect to the odometer at the time of purchase;
18. Each member of the group is justified in claiming for damages;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

19. The composition of the group makes the application of article 59 or 67 C.C.P. impracticable for the following reasons:
 - a) The number of persons included in the group is estimated at over 1000;

- b) The names and addresses of persons included in the group are not known to the Petitioner;
 - c) All the facts alleged in the preceding paragraphs make the application of articles 59 or 67 C.C.P. impossible;
20. The recourses of the members raise identical, similar or related questions of fact or law, namely:
- a) Did the Defendant knowingly or negligently fail to design the odometer to accurately record the kilometers traveled?
 - b) Did the Defendant knowingly or negligently fail to manufacture the odometer to accurately record the kilometers actually traveled;
 - c) Did the Defendant fail to design and conduct tests or failed to disclose the results of such tests that would have disclosed the defect?
 - d) Did the Defendant knowingly or negligently incorporate materials and parts into the design and manufacture of the odometer that were inappropriate for its intended use?
 - e) Did the Defendant knowingly or negligently set a tolerance standard in the defective odometers that allows errors which inflate the kilometers driven?
 - f) Did the Defendant knowingly or negligently distribute, market, sell, and/or service a product that they knew or ought to have known was defective?
21. The interests of justice favour that this motion be granted in accordance with its conclusions;

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

22. The action that Petitioner wishes to institute for the benefit of the members of the class is an action in liability;
23. The conclusions that Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT Plaintiffs motion;

CONDEMN Defendants to pay to each member of the group damages temporarily evaluated at \$1,000, à parfaire;

GRANT the class action of Petitioner on behalf of all the members of the group;

ORDER the treatment of individual claims of each member of the group in accordance with articles 1037 to 1040 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

24. Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal for the following reasons:
- a) A great number of the members of the group resides in the judicial district of Montreal and in the appeal district of Montreal;
 - b) Defendant has its principal place of business in the district of Montreal;
 - c) Their attorneys practice their profession in the judicial district of Montreal;
25. Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the members of the group for the following reason:
- a) He has purchased a Nissan vehicle during the class period;
 - b) He understands the nature of the action;
 - c) He is available to dedicate the time necessary for an action and to collaborate with members of the group;
 - d) His interests are not antagonistic to those of other members of the group;
26. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Petitioner the status of representative of the persons included in the groups herein described as:

National Class

- all residents in Canada, excluding British Columbia, who presently own or lease a Nissan or Infinity from the year 2004 to the date of final judgement;

Quebec Sub-Class

- all residents in Quebec who presently own or lease a Nissan or Infinity from the year 2004 to the date of final judgement;

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

- Did the Defendant knowingly or negligently fail to design the odometer to accurately record the kilometers traveled?
- Did the Defendant knowingly or negligently fail to manufacture the odometer to accurately record the kilometers actually traveled;
- Did the Defendant fail to design and conduct tests or failed to disclose the results of such tests that would have disclosed the defect?
- Did the Defendant knowingly or negligently incorporate materials and parts into the design and manufacture of the odometer that were inappropriate for its intended use?
- Did the Defendant knowingly or negligently set a tolerance standard in the defective odometers that allows errors which inflate the kilometers driven?
- Did the Defendant knowingly or negligently distribute, market, sell, and/or service a product that they knew or ought to have known was defective?

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

GRANT Plaintiffs motion;

CONDEMN Defendants to pay to each member of the group damages temporarily evaluated at \$1,000, à parfaire;

GRANT the class action of Petitioner on behalf of all the members of the group;

ORDER the treatment of individual claims of each member of the group in accordance with articles 1037 to 1040 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

DECLARE that all members of the group that have not requested their exclusion from the group in the prescribed delay to be bound by any judgement to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the members;

ORDER the publication of a notice to the members of the group in accordance with article 1006 C.C.P.;

THE WHOLE, with costs to follow.

Montreal, March 31, 2008

(s) Jeff Orenstein

CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein
Attorneys for the Petitioner