

CANADA

(Class Action)
SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

H. COURTEMANCHE

NO: 500-06-000601-126

Petitioner

-vs.-

HONDA CANADA INC., legal person
duly constituted, having its principal
place of business at 1750, rue Eiffel, City
of Boucherville, Province of Quebec, J4B
7W1

and

HONDA MOTOR CO., LTD., legal
person duly constituted, having its
principal place of business at 1-1 Minami
Aoyama, 2 Chome, Minato-Ku, Tokyo,
Japan, 107-8556

Respondents

**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:

I. GENERAL PRESENTATION

A) The Action

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

- all residents in Canada who currently own or lease, or have previously owned or leased, a HONDA Civic Hybrid model years 2003 through 2009 (“the Vehicles”), or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who currently own or lease, or have previously owned or leased, a HONDA Civic Hybrid model years 2003 through 2009 (“the Vehicles”), or any other group to be determined by the Court;
2. Petitioner contends that the Respondents marketed and sold Honda Civic Hybrid vehicles through the use of false or misleading advertisements and representations regarding their fuel economy estimates;
 3. Petitioner also contends that the Integrated Motor Assist battery system (“IMA battery system”) in the model years 2006-2008 Honda Civic Hybrids is defective and that a software product update issued by the Respondents on or about July 2010 adversely affects the performance and fuel efficiency of the 2006-2008 Honda Civic Hybrids;
 4. By reason of these actions and omissions, the Respondents induced consumers into purchasing Honda Civic Hybrids that do not live up to their promised results, thereby causing Petitioners and the members of the class to suffer economic damages, which they are entitled to claim;

B) The Respondents

5. Respondent Honda Motor Co. Ltd. is a Japanese automotive company;
6. Respondent Honda Canada Inc. is an affiliate of Respondent Honda Motor Co. Ltd. and is involved in the importation, distribution, and manufacturing of automobiles throughout Canada, including the province of Quebec, the whole as appears more fully from a copy of the Quebec Inspector General of Financial Institutions report, produced herein as **Exhibit R-1**;
7. Both Respondents have either directly or indirectly designed, manufactured, marketed, distributed, imported and/or sold the Vehicles throughout Canada, including the Province of Quebec;
8. Given the close ties between the Respondents and considering the preceding, all Respondents are solidarily liable for the acts and omissions of the other. Unless the context indicates otherwise, all Respondents will be referred to as “Honda” for the purposes hereof;

C) The Situation

9. Honda is responsible for placing into the stream of commerce the vehicle model Honda Civic Hybrid;
10. Honda has represented that the Vehicles have a fuel economy of:
 - a) For model year 2003 – 7.9 litres per 100 kilometres city driving and 5.9 (or 5.7 depending) litres per 100 kilometres highway driving for manual cars and 8.1 litres per 100 kilometres city driving and 5.8 (or 6.0 depending) litres per 100 kilometres highway driving for automatic cars;
 - b) For model years 2004 and 2005 – 4.9 litres per 100 kilometres city driving and 4.6 litres per 100 kilometres highway driving;
 - c) For model years 2006, 2007, 2008, and 2009 – 4.7 litres per 100 kilometres city driving and 4.3 litres per 100 kilometres highway driving;

The whole as appears more fully from a copy of the Respondent's website www.honda.ca, produced herein as **Exhibit R-2**;

2. In its marketing and advertising campaign, Honda has emphasized the excellence and reliability of the Vehicles, but failed to disclose material facts about the significantly reduced fuel economy such vehicles could obtain;
3. Honda has admitted that most customers only obtain a fuel economy of an average percentage difference of 25-30 percent less than was uniformly represented to consumers in print, television, Internet-based and other advertising. This results in additional gas expenditures of several thousand dollars per consumer over the estimated useful life of the Vehicles, in addition to the several thousand dollar premium Honda charged for the Vehicles;
4. The reason for the material discrepancy between Honda's representations and what consumers actually experienced was that Honda used a flawed method for calculating estimated kilometres per litre for the Vehicles, using the same method for calculating gas consumption in conventional gas-powered vehicles and not accounting for the material differences between the two;
5. Honda failed to disclose to consumers that in order to get anything close to the fuel economy that Honda advertised, a driver would have to drive their vehicle in an entirely unrealistic manner;

6. An article in Car and Driver magazine stated in part that although Honda represents that the Vehicles will provide significant fuel economy, “it’s such a short span of time under such specific and not-often-encountered conditions that the fuel savings are likely minuscule”, and “[y]ou’ll need to curb some of your speedy habits and learn some new driving skills to achieve their fuel-economy claims...In a hybrid, the trick is to drive like a grandmother”, the whole as appears more fully from a copy of the article entitled “Honda Civic Hybrid – Road Test” dated January 2006, produced herein as **Exhibit R-3**;
7. Honda now claims through its 800 Customer Service number that:
 - The tests performed for calculating gas mileage were developed over 30 years ago and do not reflect real driving situations, let alone driving habits of consumers in the modern day;
 - These tests do not take the characteristics of Hybrid vehicles into consideration, and hybrid vehicle estimates are inflated based on the test procedures;
 - Hybrid vehicles are more dramatically affected by outside influences such as air conditioning, radio, windshield wipers, driving habits, windows up/down, and vehicle load than normal gas combustion engine vehicles; and
 - Hybrids require a particular driving style in order to be fuel efficient, and short trips penalize hybrid efficiency more so than regular cars;
8. No such limitations on Honda’s fuel efficiency representations were made by Honda prior to the purchase of such Vehicles;
9. Honda also failed to disclose the problems associated with the IMA battery system, including premature battery deterioration, the repair of which have further reduced the fuel efficiency of the Vehicles;
10. According to the Technical Service Bulletin issued by Honda in August 2010, the IMA battery system has an increased likelihood of failure before Honda’s warranty for the battery expires, the whole as appears more fully from a copy of the Respondents’ Technical Service Bulletin No. 10-034 dated July 23, 2010, produced herein as **Exhibit R-4**;
11. Because of the battery deterioration, Honda released a purported software patch to redress battery failure and prolong the life of the IMA battery system. This software patch resulted in diminished vehicle performance by reducing fuel efficiency and leading to acceleration problems;

12. Given that a significant factor in a consumer's decision to purchase a hybrid vehicle is fuel economy, Honda's misrepresentations and/or omissions of material fact induced consumers to purchase the Vehicles at a premium price over and above other gasoline engine cars (for example, a functionally identical Honda Civic) ;
13. Honda used these claims regarding the alleged fuel economy of the Vehicles to persuade consumers to believe that it would significantly reduce their gas expenditures, without any mention of the necessity of employing any particular driving style;
14. The marketing and representations made by the Respondents as set forth herein were, and are, false or misleading. The acts and practices of the Respondents as alleged herein constitute unfair or deceptive acts or practices and the making of false advertisements;
15. The Respondents' false and misleading representations allowed it to reap millions of dollars of profit at the expense of the consumers it has misled into believing that the Vehicles were materially more fuel efficient than in reality and when it failed to disclose the problems with the IMA battery system;

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

16. Petitioner leased a Honda Civic Hybrid model year 2008 in June 2008 from Longueuil Honda at 3551 chemin de Chambly, in Longueuil, Quebec based on a purchase value of approximately \$28,600;
17. Petitioner believed, based on Honda's marketing, that the Honda Civic Hybrid was a highly fuel efficient vehicle and would yield a fuel economy of 4.7 litres for 100 kilometres in the city and 4.3 litres for 100 kilometres on the highway, resulting in significantly reduced fuel expenditures;
18. Petitioner has since discovered that the Honda Civic Hybrid is far less fuel efficient than was represented to her;
19. At no time was Petitioner informed that there were material flaws in the way Honda had calculated the anticipated fuel efficiency or about the problems associated with the IMA battery system, including premature battery deterioration and decreased fuel efficiency;
20. On or about March 2011, Petitioner was asked to bring her car in for a software update related to the IMA battery system; she did. However, since then, her vehicle's fuel efficiency has not improved, in fact, it has in her opinion become worse;



21. In consequence, Petitioner feels that she has been misled by Honda and that had she known the true facts, the Petitioner would not have leased the Honda Civic Hybrid, and certainly she would not have paid the premium that she did;
22. In addition, Petitioner was never made aware that the vehicle had to be driven differently than another car would normally be driven in order to achieve the advertised fuel economy;
23. Petitioner has become aware of a class action filed in the United States for this same product due to the false advertising relating to the fuel efficiency, as well as, the decreased vehicle performance relating to the premature battery deterioration, the whole as appears more fully from a copy of said Class Action Complaint, produced herein as **Exhibit R-5**;
24. Petitioner's damages are a direct and proximate result of the Respondents' conduct and the companies' false and misleading advertising;
25. In consequence of the foregoing, Petitioner is justified in claiming damages;

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

26. Every member of the class has purchased a Honda Civic Hybrid believing that it had a superior fuel efficiency, due to the Respondents' marketing and advertising, as well, they were unaware that the battery was subject to premature deterioration;
27. The class members were, therefore, induced into error by the Respondents' false and misleading advertising;
28. Had the Respondents disclosed the truth about the Vehicles, that the gas consumption was based on unrealistic driving conditions and was therefore significantly less fuel efficient, as well, that the battery was subject to premature deterioration, reasonable consumers would not have purchased them and certainly would not have paid a premium for such Vehicles;
29. Each member of the class is justified in claiming at least one or more of the following as damages:
 - a. Diminished value of the Vehicles in terms of an overpayment for the purchase price or lease payments;
 - b. Increased fuel expenditures associated with less fuel efficiency;
 - c. Punitive damages;



30. Respondents engaged in wrongful conduct, while at the same time obtaining, under false pretences, significant sums of money from class members;
31. All of these damages to the class members are a direct and proximate result of the Respondents' conduct and their false and misleading advertising;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

- A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical
32. Petitioner is unaware of the specific number of persons who purchased and/or leased the Vehicles, however, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands). The Respondents, on the other hand, should have this information readily available to them;
33. Class members are numerous and are scattered across the entire province and country;
34. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondent. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondent would increase delay and expense to all parties and to the court system;
35. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgments on questions of fact and law that are similar or related to all members of the class;
36. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the class to obtain mandates and to join them in one action;
37. 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;
- B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondent and that which the Petitioner wishes to have adjudicated upon by this class action

38. Individual questions, if any, pale by comparison to the numerous common questions that predominate;
39. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;
40. The recourses of the members raise identical, similar or related questions of fact or law, namely:
- a) Did the Respondents engage in unfair, false, misleading, or deceptive acts or practices regarding the marketing and sale of the Honda Vehicles?
 - b) Did the Respondents misrepresent or fail to disclose the significant limitations in how Honda calculated the average fuel efficiency in such Vehicles?
 - c) Did the Respondents misleadingly advertise and promote its Honda Vehicles in terms of fuel efficiency?
 - d) Did the Respondents fail to adequately disclose and remedy this discrepancy in the fuel efficiency of its Honda Vehicles?
 - e) Did the Respondents fail to adequately disclose material defects in the IMA battery system, and that, when repaired, would decrease the fuel efficiency performance of the Honda Vehicles?
 - f) Are the Respondents responsible for all related costs (including, but not limited to, the diminished value of the Vehicles and increased fuel expenditures) to class members as a result of their misconduct?
 - g) Should an injunctive remedy be ordered to prohibit the Respondents from continuing to perpetrate their unfair, false, misleading, and/or deceptive conduct?
 - h) Are the Respondents responsible to pay compensatory and/or punitive damages to class members and in what amount?
41. The interests of justice favour that this motion be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

42. The action that the Petitioner wishes to institute on behalf of the members of the class is an action in damages and an injunctive remedy;

43. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioner and each of the members of the class;

ORDER the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants 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 Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

A) The Petitioner requests that she be attributed the status of representative of the Class

44. Petitioner is a member of the class;

45. Petitioner is ready and available to manage and direct the present action in the interest of the members of the class that they wish to represent and is

determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec and the *Fonds d'aide aux recours collectifs*, as the case may be, and to collaborate with her attorneys;

46. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;
 47. Petitioner has given the mandate to her attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
 48. Petitioner, with the assistance of her attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;
 49. Petitioner is in good faith and has instituted this action for the sole goal of having her rights, as well as the rights of other class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondent's conduct;
 50. Petitioner understands the nature of the action;
 51. Petitioner's interests are not antagonistic to those of other members of the class;
- B) The Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal
52. A great number of the members of the class reside in the judicial district of Montreal and in the appeal district of Montreal;
 53. The Petitioner's attorneys practice their profession in the judicial district of Montreal;
 54. 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 and for injunctive relief;



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

- all residents in Canada who currently own or lease, or have previously owned or leased, a HONDA Civic Hybrid model years 2003 through 2009 (“the Vehicles”), or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who currently own or lease, or have previously owned or leased, a HONDA Civic Hybrid model years 2003 through 2009 (“the Vehicles”), or any other group to be determined by the Court;

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

- a) Did the Respondents engage in unfair, false, misleading, or deceptive acts or practices regarding the marketing and sale of the Honda Vehicles?
- b) Did the Respondents misrepresent or fail to disclose the significant limitations in how Honda calculated the average fuel efficiency in such Vehicles?
- c) Did the Respondents misleadingly advertise and promote its Honda Vehicles in terms of fuel efficiency?
- d) Did the Respondents fail to adequately disclose and remedy this discrepancy in the fuel efficiency of its Honda Vehicles?
- e) Did the Respondents fail to adequately disclose material defects in the IMA battery system, and that, when repaired, would decrease the fuel efficiency performance of the Honda Vehicles?
- f) Are the Respondents responsible for all related costs (including, but not limited to, the diminished value of the Vehicles and increased fuel expenditures) to class members as a result of their misconduct?
- g) Should an injunctive remedy be ordered to prohibit the Respondents from continuing to perpetrate their unfair, false, misleading, and/or deceptive conduct?
- h) Are the Respondents responsible to pay compensatory and/or punitive damages to class members and in what amount?



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

GRANT the class action of the Petitioner and each of the members of the class;

ORDER the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants 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 Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

DECLARE that all members of the class 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 members of the class 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 members of the group in accordance with article 1006 C.C.P. within sixty (60) days from the judgment to be rendered herein in LA PRESSE and the NATIONAL POST;

ORDER that said notice be available on the Respondent's website with a link stating "Notice to owners and lessees of a 2003 to 2009 Honda Civic Hybrid";

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

THE WHOLE with costs, including all publications fees.

Montreal, March 16, 2012

(S) Jeff Orenstein

CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein

Attorneys for the Petitioner