

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000710-141

(Class Action)
SUPERIOR COURT

R. PETRELLA

Petitioner

-vs.-

OSRAM SYLVANIA, INC., legal person duly constituted, having its head office at 100 Endicott Street, City of Danvers, State of Massachusetts, 01923, U.S.A.

and

OSRAM SYLVANIA PRODUCTS, INC., legal person duly constituted, having its head office at 100 Endicott Street, City of Danvers, State of Massachusetts, 01923, U.S.A.

and

OSRAM SYLVANIA LTD., legal person duly constituted, having its head office at 2001 Drew Road, City of Mississauga, Province of Ontario, L5S 1S4

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 he is a member, namely:

- all residents in Canada who have purchased: (i) SilverStar ULTRA, SilverStar, XtraVision, or Cool Blue replacement headlamp capsules; (ii) SilverStar, XtraVision, or Cool Blue sealed beam headlamps; or (iii) SilverStar fog or auxiliary lights (collectively, “Automotive Lighting Products”), or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who have purchased: (i) SilverStar ULTRA, SilverStar, XtraVision, or Cool Blue replacement headlamp capsules; (ii) SilverStar, XtraVision, or Cool Blue sealed beam headlamps; or (iii) SilverStar fog or auxiliary lights (collectively, “Automotive Lighting Products”), or any other group to be determined by the Court;
2. “Headlamps¹” and/or “Headlights” include any and all SilverStar, XtraVision, or Cool Blue sealed beam headlamps;
 3. “Headlamp Capsules”, “Capsules”, “Headlamp Bulbs” and/or “Bulbs” include any and all SilverStar ULTRA, SilverStar, XtraVision, or Cool Blue replacement headlamp capsules;
 4. “Fog Lights” and/or “Auxiliary Lights” include any and all SilverStar fog or auxiliary lights;
 5. The Respondents’ Automotive Lighting Products were falsely, deceptively, and prominently packaged, marketed, advertised, promoted, labelled, represented, and/or sold as (i) being brighter, (ii) providing a wider beam, and (iii) enabling the user to see further down the road than standard automotive lighting products;
 6. The Respondents' marketing campaign is replete with indications that their representations regarding their Automotive Lighting Products have been scientifically measured and/or tested (for example, through the use of specific percentages); however, they omit to adequately disclose to

¹ In colloquial speech, it is common for the terms “headlamp” and “headlight” to be used interchangeably; however, headlamp is the technically correct term for the device itself. All regulations and technical specifications worldwide refer to headlamps, and not to “headlights”. All manufacturers of such devices consider themselves makers of headlamps, not “headlights”. “Headlight” properly refers to the light itself, produced and distributed by the headlamp(s).

consumers that their comparative “studies” are valueless and scientifically unsound;

7. Contrary to the Respondents’ representations, their Automotive Lighting Products are no different than standard automotive lighting products in terms of visibility;
8. In addition, the Respondents fail to disclose that their Automotive Lighting Products have a significantly reduced life span when compared to regular halogen automotive lighting products;
9. By reason of their actions and omissions, the Respondents induced consumers into purchasing their Automotive Lighting Products, which do not and cannot live up to their promised results and reasonable expectations, thereby causing Petitioner and the members of the class to suffer economic damages, upon which they are entitled to claim;

B) The Respondents

10. Respondent Osram Sylvania, Inc. (“Sylvania, Inc.”) is a Delaware corporation with its head office in Danvers, Massachusetts. It is a wholly-owned subsidiary of non-party Osram GmbH (a German corporation) and it is its North American head office. It is the parent company of Respondent Osram Sylvania Ltd./Ltée (“Sylvania Ltd.”). It is also the registrant of the trade-mark “SYLVANIA” (TMA459585) which was filed on January 12, 1993, the trade-mark “SYLVANIA” (TMA696524) which was filed on October 19, 2006, the trade-mark “COOL BLUE” (TMA552378) which was filed on October 15, 1995, and the trade-mark “XtraVision” (TMA610138) which was filed on October 10, 2000, the whole as appears more fully from copies of said trade-marks from the CIPO database, produced herein *en liasse* as **Exhibit R-1**;
11. Respondent Sylvania, Inc. manufactures and markets a wide range of lighting products for business and industry, for consumers, for the automotive industry, and for the computer, aerospace and other major industries worldwide. It is the largest automotive lighting supplier in the world;
12. Respondent Osram Sylvania Products, Inc. (“Sylvania Products”) is an American corporation with its head office in Danvers, Massachusetts;
13. Respondent Sylvania Ltd. is a Canadian corporation with its head office in Mississauga, Ontario. It is a wholly-owned subsidiary of Sylvania, Inc. that does business throughout Canada including within the province of Quebec,

the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-2²**;

14. All Respondents are either directly or indirectly responsible for packaging, marketing, advertising, promoting, labelling, representing, and/or selling the Automotive Lighting Products throughout Canada, including within the province of Quebec;
15. 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 “Sylvania” for the purposes hereof;

C) The Situation

i) The Importance of Headlamps

16. Headlamps are among the most important safety devices on automobiles today. Better headlamps, or those which afford superior illumination, allow drivers to see hazards more clearly and faster at night as well as during inclement weather, which in turn, allows drivers to react quicker and to prevent accidents. In consequence, headlamps which provide superior illumination are able to command a significant market premium;
17. More specifically, with all other variables being equal, the down-the-road visibility provided by headlamps, one measure of headlamp performance, determines the amount of time a driver has in order to react to obstacles;
18. For instance, a driver traveling at 50 km/h would have more than two (2) extra seconds to react to an obstacle with a beam that is 35% longer than the standard. It is entirely reasonable to predict that this extra time could and would save lives;
19. A driver moving at 110 km/h in darkness would have an extra 1.43 seconds to react to an obstacle with a beam 50% longer than average;
20. Sylvania, through its product packaging and advertisements, has systematically misrepresented the illumination benefits and performance characteristics of its Automotive Lighting Products including its Headlamps, Headlamp Capsules, and Fog Lights;
21. As a result of its misrepresentations, Sylvania has been able to sell its Automotive Lighting Products at a premium price that is between two (2) to four (4) times higher than the amount that it is able to charge for its standard halogen automotive lighting products;

² Numéro d'entreprise du Québec (« NEQ ») 1143724194.

22. The Respondents' practice of false representation and/or unsubstantiated and unattainable exaggeration has been highly lucrative for the company; it is a world-leading company in the lighting products category, proclaiming itself as the "second largest light and materials company in the world." Sylvania claims that it sets "clear and ambitious goals to stay ahead of the pack"; however, as is elaborated upon below, it has been staying "ahead of the pack" in part, due to its practice of false marketing and representation to consumers, the whole as appears more fully from a copy of an extract from the Respondents' website www.sylvania.com, produced herein as **Exhibit R-3**;
23. The Respondents' conduct of packaging, marketing, advertising, promoting, labelling, representing, and/or selling their Automotive Lighting Products with false representations and omissions, constitutes unlawful, unfair, and deceptive conduct, and is likely to deceive members of the public, is oppressive, and/or is substantially injurious to consumers;
24. As such, the Respondents' packaging, marketing, advertising, promoting, labelling, representing, and/or selling practices violate the *Consumer Protection Act*, CQLR c P-40.1 (hereinafter the "CPA")³, the *Competition Act*, R.S.C. 1985, c C-34 (hereinafter the "*Competition Act*"), and the *Consumer Packaging and Labelling Act*, R.S.C. 1985, c. C-38 (hereinafter the "*Consumer Packaging and Labelling Act*");
25. Attached hereto are three (3) useful charts, in both French and English, outlining the specific articles of the CPA⁴, the *Competition Act*⁵, and the *Consumer Packaging and Labelling Act*⁶ that the Respondents' advertising, marketing, promotional, labelling, selling and representation practices were and are in violation of and are produced herein *en liasse* as **Exhibit R-4**;

ii) Halogen Lamps - Explained

26. Standard halogen bulbs are technically incandescent light bulbs, albeit advanced – illumination is produced in both when a tungsten filament is heated sufficiently by an electrical current to emit light or "incandescence".

³ While the CPA applies only in Quebec, other Canadian provinces have similar consumer protection legislation including, but not limited to: the *Consumer Protection Act, 2002*, SO 2002, c 30, Schedule A at Sections 14, 15, 17, 18 & 100; the *Fair Trading Act*, RSA 2000, c F-2 at Sections 5-7, 7.2, 7.3, 9 & 13 ; the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 at Sections 4-9, 171 & 172; *The Business Practices Act*, CCSM, c B120 at Sections 2-9 & 23; the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 and the *Trade Practices Act*, RSNL 1990, c T-7 at Sections 5-7 & 14; the *Business Practices Act*, RSPEI 1988, c B-7 at Sections 2-4; the *Consumer Protection Act*, SS 1996, c C-30.1 at Sections 5-8, 14, 16 & 23-25; the *Consumer Product Warranty and Liability Act*, SNB 1978, c 18.1 at Sections 10-13, 15, 23 & 27; the *Consumer Protection Act*, RSNS 1989, c 92 at Sections 26-29 .

⁴ Namely, Arts. 41, 215, 216, 218-221, 228, 239, 253, 270 & 272.

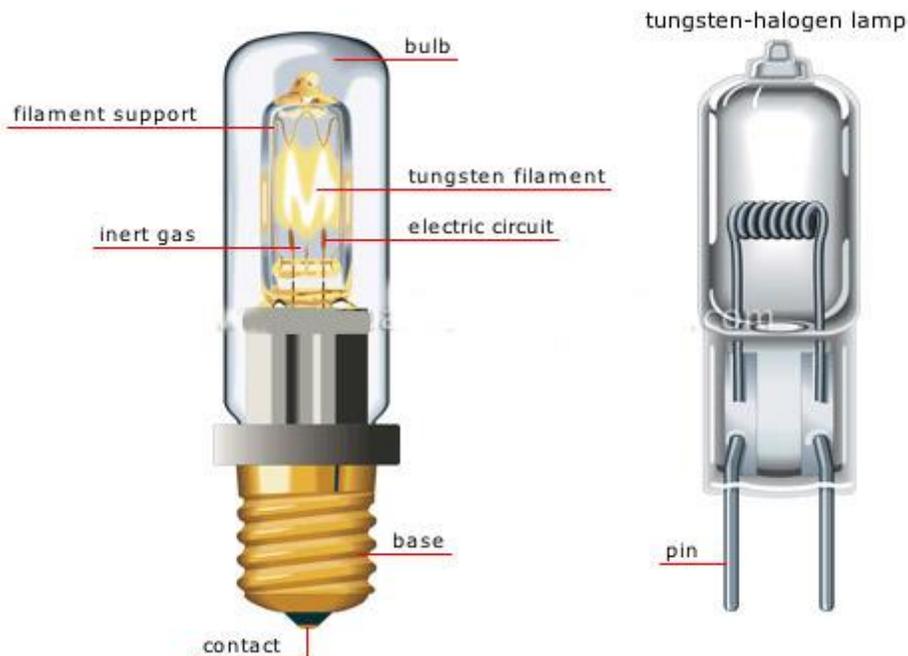
⁵ Namely, Arts. 36 & 52.

⁶ Namely, Arts. 7 & 9.



The difference between the two is in the composition of the glass envelope and the gas inside the envelope. A standard incandescent bulb has a heat sensitive glass envelope that contains an inert gas mixture, usually nitrogen-argon. When the tungsten filament is heated it evaporates and deposits metal on the cooler glass envelope (this is why incandescent bulbs appear black at the end of life). Eventually enough tungsten evaporates causing the filament to break;

27. Halogen light bulbs utilize a fused quartz envelope allowing for higher temperatures – at least 500°F. Inside the quartz envelope is a gas, usually bromine. The tungsten filament evaporates as usual; however, the higher temperatures are sufficient to cause the tungsten to mix with the gas vapour instead of depositing on the bulb as with incandescent light bulbs. Some of the evaporated tungsten is re-deposited on the filament. The combination of this “regenerative cycle” and higher filament temperature, holding all else constant, results in a bulb that has a longer expected life span and slightly higher efficiency than standard incandescent bulbs⁷. The higher temperature filament also produces the “white” light often associated with halogen bulbs, the whole as appears more fully from a copy of an extract from the Respondents’ website at www.sylvania.com, produced herein as **Exhibit R-5**;



⁷ Where factors such as differing lamp construction, the halogen additive used, whether dimming is normally expected for the type of halogen bulb, usage, and any colour coating on the light encasing are present this hypothesis may no longer hold true.



28. The market for automotive lighting products in Canada includes basic halogen replacement capsules made to original equipment manufacturer (“OEM”) standards priced below \$10 per capsule and “premium” capsules priced at two, three and four times that price;
29. For example, the SilverStar ULTRA Headlamps were sold for over twice the price of Sylvania standard headlamps;
30. At Canadian Tire’s online store, for instance, consumers can choose between a (generic) Certified Halogen Headlight Bulb for \$8.77, a Sylvania XtraVision Bulb for \$15.99, a Sylvania SilverStar Halogen Headlight Bulb for \$26.99, or a Sylvania SilverStar ULTRA Halogen Headlight Bulb for \$32.99, the whole as appears more fully from a copy of an extract from Canadian Tire’s website at www.canadiantire.ca, produced herein as **Exhibit R-6**;
31. The Respondents have misled and, continue to mislead, the Class by fabricating and/or exaggerating the qualities of their Automotive Lighting Products in their supposed comparisons with other standard halogen products and by pragmatically failing to disclose the reduced life expectancy of its Products –all in an effort to generate more revenues and profits at the expense and risk of safety and property to consumers;

iii) **Misleading Product Packaging**

32. Sylvania’s Automotive Lighting Products are strategically packaged with the knowledge that consumers see and read the representations on the packaging before making a purchasing decision;
33. Indeed, Sylvania’s packaging of its Automotive Lighting Products is specifically geared toward consumers looking to purchase a headlamp and who is making comparisons between the various competing manufacturers and/or products;
34. The Respondents designed the packaging for their Automotive Lighting Products with specific, numeric performance claims – expressed in percentages - prominently and clearly visible on the front side. By designing their Automotive Lighting Products packaging in this manner, Sylvania undoubtedly wanted consumers to rely on these claims when making their purchasing decisions;
35. Paradoxically, these precise percentages have been wholly inconsistent in the Respondents’ marketing campaign. By way of comparative illustration and, as appears below, on one package of SilverStar ULTRA 9005 headlamp capsules (on the left), the Respondents assert that they are up to 50% brighter, allow a driver to see up to 40% further down the road, and have up to 50% greater side road visibility than standard halogen headlamp



capsules, whereas on another package of SilverStar ULTRA 9005 headlamp capsules (on the right), the Respondents assert that they are up to 20% brighter, and allow a driver to see up to 25% further down the road than standard halogen headlamp capsules;



provide the “brightest and whitest light” and that they are up to 50% brighter, allow a driver to see up to 40% further down the road, and have up to 50% greater side road visibility than standard halogen headlamp capsules. Nowhere does Sylvania satisfactorily explain how it derived these comparisons;

39. Buried in a tiny, hidden font on the bottom of the packaging appears the text: “[r]eplacing worn standard bulbs provides:” as a preface to the measurable claimed superiority prominently displayed above. This is clearly inadequate to qualify the Respondents’ claims as only the most meticulous reader would even notice the small font, let alone read it and comprehend its meaning. The intended pretextual disclaimer is not prominent enough to circumvent the overall misleading impression described herein;



40. The back of the SilverStar ULTRA packaging contains additional graphics which serve to further mislead consumers instead of clarifying any of the information that appears prominently on the front of the packaging. For example, on the back of the SilverStar ULTRA packaging, at the top is a chart comparing various Sylvania Headlamps (XtraVision, Cool Blue,

SilverStar and SilverStar ULTRA) to standard halogen headlamps⁸. On the first line, the “Brightness” of each bulb is compared by the use of graphics consisting of solid bars. Because there is no description whatsoever on the packaging defining what a bar quantifies, the reasonable interpretation by the average consumer is that the Headlamp bulbs are between two (2) and five (5) times brighter than the Standard Halogen; the SilverStar ULTRA headlamp bulbs being five (5) times brighter. Likewise, the next two (2) lines in the chart, representing down road visibility and side road visibility, graphically indicate that the Headlamps are also between two (2) and five (5) times superior;

SYLVANIA

SILVERSTAR® ULTRA

9003/HB2
Also meets:
Compatible avec:
Compatible con:
H4

	STANDARD ~300K	XTRAVISION® ~3200K	COOL BLUE® ~3500K	SILVERSTAR® ~4000K	SILVERSTAR® ULTRA ~4100K
BRIGHTNESS	1 bar	2 bars	3 bars	4 bars	5 bars
DOWN ROAD	1 bar	2 bars	3 bars	4 bars	5 bars
SIDE ROAD	1 bar	2 bars	3 bars	4 bars	5 bars
LIFE	1 bar	2 bars	3 bars	4 bars	5 bars

STANDARD HALOGEN

Up to 50% brighter light
Lumière jusqu'à 50 p. cent
Luz más brillante hasta un 50%

SILVERSTAR® ULTRA

• SYLVANIA SilverStar® ULTRA lamps are engineered to achieve the highest performance possible, which results in product life that is less than standard lamps. SYLVANIA guarantees your complete satisfaction for up to 12 months from date of purchase. See www.sylvania.com/auto for details.
• Les lampes SilverStar® ULTRA de SYLVANIA sont conçues afin d'obtenir le meilleur rendement possible, ce qui résulte en une durée de vie de produit inférieure à celle des lampes courantes. SYLVANIA vous garantit une entière satisfaction pour une période pouvant atteindre 12 mois, à partir de la date d'achat. Voir www.sylvania.com/auto afin d'obtenir des détails.
• Luces SilverStar® ULTRA de SYLVANIA son fabricadas para alcanzar el mayor rendimiento posible, ocasionando que la vida del producto sea menor que las luces convencionales. SYLVANIA garantiza la completa satisfacción hasta por 12 meses a partir de la fecha de compra. Para más detalles consulte www.sylvania.com/auto.

Brightness comparison based on cool luminance measurements. / La luminosité est fondée suivant la luminosité du filament. / Brillantesz baseada en la luminosidad del filamento. Headlamps dim over time by 20% or more and timely replacement results in increased lighting performance. Claims based on measured comparisons between SilverStar® ULTRA product family at 100% light output and standard halogen bulbs at 80% light output. Actual performance may vary by product type, vehicle model and usage. / Les phares perdent 20 p. cent ou plus de leur intensité avec le temps et les remplacer à temps accroît le rendement de l'éclairage. Les données sont fondées suivant des comparaisons mesurées entre la famille de produits SilverStar® ULTRA à un flux lumineux de 100 p. cent et des lampes à halogène courantes à un flux lumineux de 80 p. cent. Le rendement réel peut varier suivant le type de produit, le modèle de véhicules et l'usage. / Los focos para faros se van atenuando a través del tiempo en un 20% o más y su reemplazo oportuno mejora notablemente la iluminación. Los datos presentados se basan en mediciones comparativas entre productos de la familia SilverStar® ULTRA a un 100% del flujo luminoso y focos halógenos estándar al 80% de su flujo luminoso. El funcionamiento actual puede variar por tipo de producto, vehículo, modelo y uso.
Bulbs with greater brightness may require replacement at more frequent intervals. / Il peut être nécessaire de remplacer les lampes affichant une luminosité supérieure à des intervalles plus fréquents. / Las lámparas con mayor luminosidad probablemente requieran ser reemplazadas con mayor frecuencia.

GLOBAL CARE
Global Care represents OSRAM SYLVANIA'S commitment to environmental and social responsibility.

Legal for on-road use
Legal pour usage sur route
Uso legal en carreteras

Made in Germany
Fabriqué en Allemagne
Hecha en Alemania

See vehicle owner's manual for installation and safety instructions.
Voir le manuel du propriétaire pour l'installation et les consignes de sécurité.
Consulte el manual del usuario para instrucciones de instalación y seguridad.

OSRAM SYLVANIA Products Inc.
Hillsboro, NH 03244
www.sylvania.com/auto
SYLVANIA is a registered trademark of OSRAM SYLVANIA INC.
SYLVANIA est une marque de commerce déposée de OSRAM SYLVANIA INC.
SYLVANIA es una marca registrada de OSRAM SYLVANIA INC.

SilverStar is a registered trademark of OSRAM GmbH used under license.
SilverStar est une marque de commerce déposée de OSRAM GmbH.
SilverStar es una marca registrada de OSRAM GMBH usada bajo licencia.
Imported by/Importé par:
OSRAM SYLVANIA LTD/LTÉE
Mississauga, Ontario L5S 1S4

0 46135 35601 8

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41. But buried in fine print on the back of the packaging, which is magnified below, Sylvania has a hidden disclaimer that they are comparing their Headlamp bulbs at “100% light output and standard halogen bulbs at 80% light output”. Specifically, Sylvania places the following text in small print on the back of the packaging:

⁸ The column labeled “STANDARD” represents a standard halogen headlight.

“Claims based on measured comparisons between SilverStar ULTRA product family at 100% light output and standard halogen bulbs at 80% light output”:

42. Because the Respondents’ disclaimer that it is comparing its SilverStar product at 100% light output and standard halogen headlamps at 80% light output is located on the back of the package, printed in type small enough to require reading glasses, and buried in other small type where only the most meticulous reader would read and understand it, the disclaimer is grossly insufficient to serve as a counter to the misleading representations placed prominently above. The disclaimer does nothing to circumvent the overall misleading impression described herein;
43. The Respondents’ misrepresentations regarding the life span of the SilverStar ULTRA Headlight Capsules will be described in detail below (see paragraph 52 and following);

b) SilverStar Headlamps and Headlamp Capsules

44. As is depicted below, on the front of the packaging for their SilverStar H6054 Headlamps, the Respondents claim that they provide the “brighter and whiter light” and that they are up to 20% brighter, you can see up to 25% further down road, and up to 25% wider, than standard halogen headlamps. Nowhere does Sylvania explain how it derived the comparisons and nowhere does Sylvania qualify them;



45. The back of the SilverStar H6054 packaging contains additional graphics which serve to further mislead consumers instead of clarifying any of the information that appears prominently on the front of the packaging. For example, on the back of the packaging is a chart comparing two (2) Sylvania Headlamps (XtraVision and SilverStar) to standard halogen headlamps. On the first line, the “Brightness” of each bulb is compared by the use of graphics consisting of solid bars. Because there is no description whatsoever on the packaging defining what a bar quantifies, a reasonable interpretation is that the Headlamp bulbs are four (4) times brighter than standard halogen and the down road visibility and side road visibility are three (3) times superior than standard halogen headlamps;



46. Nowhere on the packaging do the Respondents qualify or attempt to disclaim these claims;
47. As will be discussed below, the Respondents make no mention of the reduced life span of the SilverStar Headlamp products (see paragraph 52 and following);
- c) XtraVision Headlamps
48. As is depicted below, on the front of the packaging for their XtraVision H6024 Headlamp capsules, the Respondents claim that the bulbs provide the “brighter light” and that they are up to 30% brighter and have up to 25%

greater side road visibility than standard halogen headlamp capsules. Nowhere does Sylvania satisfactorily explain how it derived these comparisons;



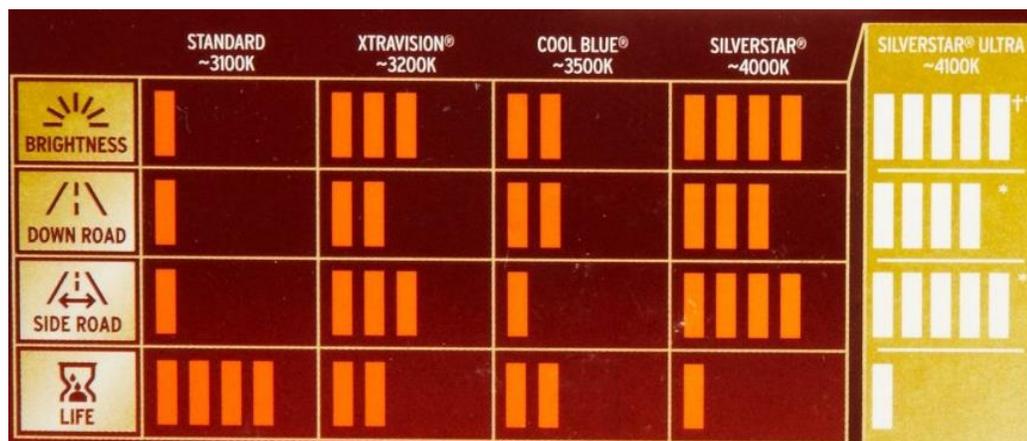
49. The back of the XtraVision H6024 Headlamp packaging contains additional graphics which serve to further mislead consumers instead of clarifying any of the information that appears prominently on the front of the packaging. For example, on the back of the packaging is a chart comparing two (2) Sylvania Headlamps (XtraVision and SilverStar) to standard halogen headlamps. On the first line, the “Brightness” of each bulb is compared by the use of graphics consisting of solid bars. The XtraVision Headlamp is represented as being three (3) times brighter than the standard halogen headlamp. Likewise, the next two (2) lines in the chart, representing down road visibility and side road visibility, graphically indicate that the Headlamps are two (2) times superior to standard halogen headlamps;



50. Nowhere on the packaging do the Respondents qualify these claims;
51. As will be discussed below, the Respondents make no mention of the reduced life span of the XtraVision Headlamp products (see paragraph 52 and following);
- d) Shorter Life Span for Respondents' Automotive Lighting Products
52. The Respondents' Automotive Lighting Products have a significantly shorter life span when compared to regular halogen lamps. This is, at least in part, due to the fact that the amethyst-coloured coating on the lamp glass traps heat inside the capsule, causing the filament to burn out more quickly, thus decreasing the life span;
53. When used in a daytime running lamp configuration, which is common in new vehicles, the Respondents' SilverStar line of Automotive Lighting Products will generally not last longer than six (6) months and the XtraVision and Cool Blue Automotive Lighting Products will generally not last longer than one (1) year. When not used in a daytime running lamp configuration, SilverStar Automotive Lighting Products will generally not last longer than one (1) year and XtraVision and Cool Blue Automotive Lighting Products will generally not last longer than two (2) years. As admitted by the Respondents on the SilverStar ULTRA packaging extract reproduced below, regular halogen automotive lighting products will generally last four (4) times



longer than SilverStar products and two (2) times longer than XtraVision and Cool Blue products;

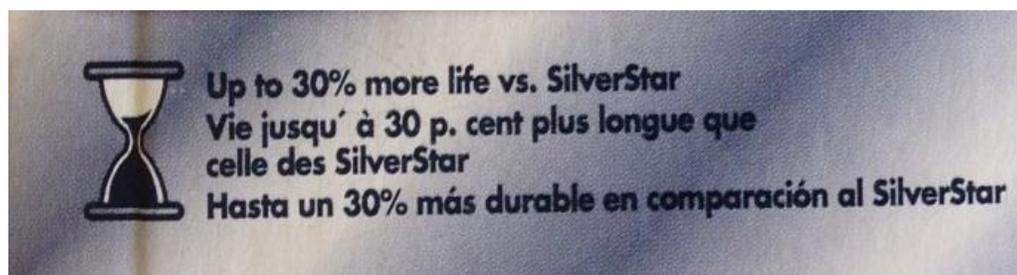


54. While some of the Respondents' packaging discloses the reduced life span of their Automotive Lighting Products, such as the SilverStar ULTRA packaging extract reproduced above, others simply make no mention of it (See Exhibit R-7);
55. Sylvania fails to disclose on much of its product packaging that its Automotive Lighting Products have a significantly reduced life when compared to standard automotive lighting products. On the back of the SilverStar ULTRA Headlamp package (reproduced above) is a chart comparing the various performance characteristics of "Standard" halogen headlamps to Sylvania products, including XtraVision, Cool Blue, SilverStar, and SilverStar ULTRA. On the fourth line, the "LIFE" of each bulb is compared by using graphics consisting of solid bars. The standard halogen is represented by four (4) bars while SilverStar and SilverStar ULTRA are represented by only one (1) bar. This admission of the life expectancy is quite relevant when compared to the packaging of other Automotive Lighting Products that ignores this negative characteristic altogether;
56. Much of the Respondents' packaging fails to disclose whatsoever that their Automotive Lighting Products have a significantly reduced life span when compared to regular halogen automotive lighting products. Other product packaging have wholly inadequate disclosures. For example, the only reference to product life span on the SilverStar H6054 packaging, reproduced below, is on the back of the packaging, in small 6 point-type, at the bottom of a paragraph that is also in small 6-point type, where only the most meticulous consumer would observe it. That disclaimer reads, "[b]ulbs with greater brightness may require replacement at more frequent intervals". This supposed disclaimer, if it is even noticed at all, is still misleading because it fails to disclose to the consumer that the Automotive Lighting Product will always have a significantly reduced product life span when compared to regular halogen lamps:



57.No such “LIFE” category exists on the SilverStar packaging extract reproduced above and instead of the necessary disclosure, is wholly ignored by the Respondents to the detriment of Class Members who were kept unaware;

58.Further, and perhaps most deplorable, the Respondents actually represent that their SilverStar ULTRA 9005 Headlamp Capsules have “up to 30% more life vs. SilverStar.” From the Respondents’ admissions on its newer SilverStar ULTRA packaging, it is clear that this is a blatant falsehood:



59.In sum, in terms of the Respondents’ disclosure of the reduced life span of their Automotive Lighting Products, it ranges from nothing at all, to vague and inchoate references, to a comparative chart that may or may not include a “LIFE” column and, most abhorrently, to a complete misrepresentation that its Automotive Lighting Products have a superior life span;

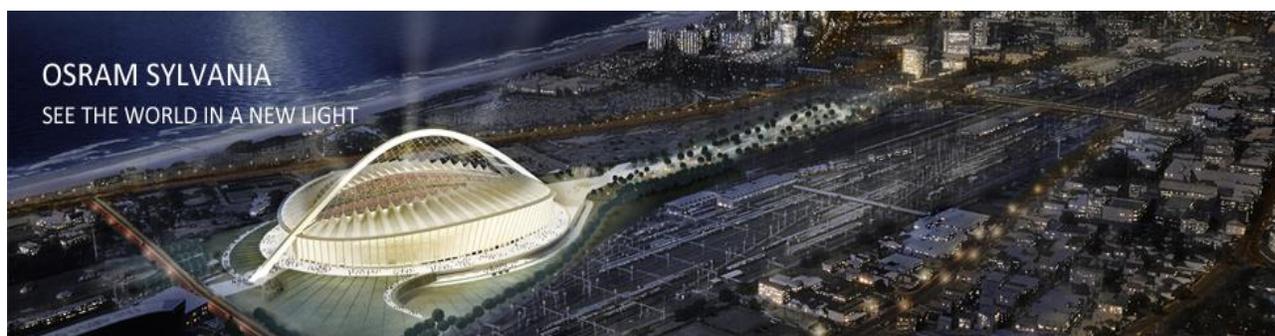
e) Summative Packaging Remarks

60.Sylvania lacks any scientific support showing that consumers are likely to achieve the maximum results promised under normal circumstances;

61. The Respondents' Automotive Lighting Products are halogen lamps; however, Sylvania does not disclose anywhere on the product packaging that its lamps are halogen lamps;
62. Furthermore, the published technical specifications that Sylvania makes available on its website for both Sylvania standard halogen headlamps and Sylvania SilverStar Headlamps shows that both products have the same light output. For example, and among others, 9004 Sylvania standard halogen headlamps and 9004 Sylvania SilverStar Headlamps have the exact same light output – 700 lumens for low beam and 1200 lumens for high beam with a +/- 15% margin of error, the whole as appears more fully from a copy of an extract from the Respondents' website at www.sylvania.com, produced herein as **Exhibit R-8**;
63. In sum, and despite various inconsistencies, the Respondents' clear message is that its Automotive Lighting Products are (i) significantly brighter, (ii) provide significantly wider, side road visibility, and (iii) provide significantly farther, down road visibility when compared to standard halogen automotive lighting products. The Respondents also conveniently fail to disclose that their Automotive Lighting Products have a significantly reduced life span when compared to standard halogen automotive lighting products;
64. The Respondents' representations, including their omissions, as described above, are without scientific support and are otherwise misleading. The packaging and the misleading nature of the representations contained therein are consistent with Sylvania's packaging of its entire Automotive Lighting Product line which, in all cases, is equally misleading;

iv) **Misleading Advertising**

65. The Respondents prominently represent that their Automotive Lighting Products, including the Headlamps, Headlamp Capsules and Fog Lights, are superior to standard halogen automotive lighting products. For example, the Respondents' website is cluttered with advertisements and representations designed to induce consumers into believing that their products provide specific illumination benefits. Two such advertisements follow which represent that the Respondents' Automotive Lighting Products will allow consumers to "See farther. See wider. See better" and to "See the world in a new light";



a) SilverStar ULTRA Automotive Lighting Products

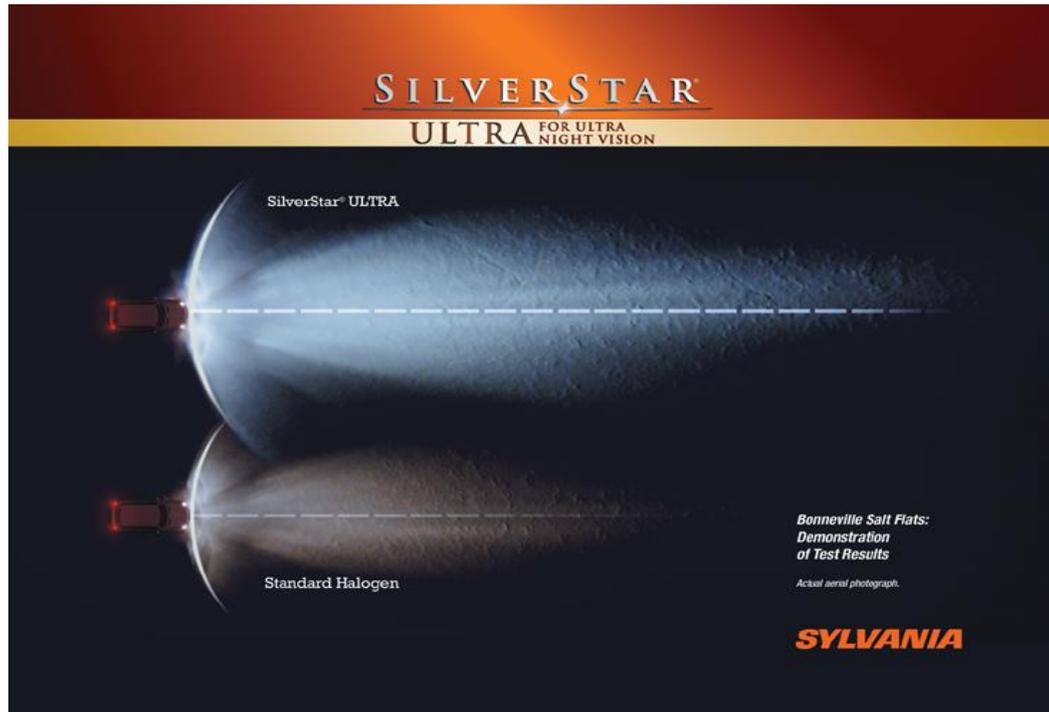
66. The Respondents claim that SilverStar ULTRA Headlamp Capsules are the “brightest halogen headlight on the market” and that “[b]y providing up to 50% greater brightness, they can increase visibility down the road by up to 40%, and peripheral visibility by up to 50%. This can equate to as much as 50 to 100 feet more visibility at night—so you can see farther, wider and better.” The Respondents repeat this idea in the “key features” of the bulb which include:

- The brightest headlight in our product line
- Up to 40% increased downroad visibility
- Increased peripheral visibility by up to 50%
- Up to 50% brighter light

The whole as appears more fully from a copy of an extract from the Respondents’ website at www.sylvania.com, produced herein as **Exhibit R-9**;

67. In addition, as is depicted below in two advertisements, the Respondents represent that the SilverStar ULTRA brand of Automotive Lighting Product provides “ultra night vision” and appears to compare their lamps with regular halogen lamps to substantiate this claim; however, as expounded above and below, these “tests” or comparisons were not performed scientifically at all

(with the regular halogen lights either at 80% output or otherwise worn) and the results advertised are therefore with any merit whatsoever;





b) SilverStar Headlamp Capsules

68. The Respondents claim that using SilverStar Headlamp Capsules allow drivers to “[s]ee better – and drive safer – with a better headlight bulb” and that the “key features” of the bulbs include:

- Up to 30% increased downroad visibility
- Increased peripheral visibility by up to 35%
- Up to 35% brighter light

The whole as appears more fully from a copy of an extract from the Respondents’ website at www.sylvania.com, produced herein as **Exhibit R-10**;

c) SilverStar Sealed Beam Headlamps

69. The Respondents claim that the SilverStar Sealed Beam Headlamps are “[t]he finest sealed beam halogen lights on the road” and that they “deliver up to 20% greater brightness, and up to 25% additional downroad and peripheral vision at night. And when you can see more of the road ahead and on either side—animals, debris, pedestrians, disabled vehicles and road signs—you drive safer.” The Respondents repeat this idea in the “key features” of the Headlamp which include:

- Up to 25% greater downroad and peripheral vision
- Up to 20% brighter



The whole as appears more fully from a copy of an extract from the Respondents' website at www.sylvania.com, produced herein as **Exhibit R-11**;

70. What the Respondents fail to adequately disclose regarding the above claims –to their financial benefit– is that these measured comparisons are not scientifically sound in that the Headlamps, Headlamp Bulbs and Fog Lights are compared to “**worn** standard halogen” (see Exhibits R-9, R-10 and R-11). Claiming that their Automotive Lighting Products are markedly superior to **worn** standard halogen is of no practical consequence whatsoever and the Respondents use this data, in combination with the ineffective dissemination of the specifics, as a misleading marketing ploy to attract consumers to purchase their product over other halogen products;
71. Further, even if the most intrepid consumer did in fact read the fine print, which explains that the specific, numeric performance claims prominently and clearly visible on the front are bogus, the information would likely not be understood correctly as it is nonsensical to compare lights at either different output levels to claim that one output level is superior to the other or to claim that a new light is superior to a used light;
72. The Respondents' website is littered with representations as to the superior brightness and visibility of its various Automotive Lighting Products and not all even have the inadequate disclaimer that appears on some of the packaging described above, which in any case are not prominent enough to circumvent the overall misleading impression described herein, the whole as appears more fully from a copy of an extract from the Respondents' website at www.sylvania.com, produced herein as **Exhibit R-12**;
73. As is depicted below, the Respondents claim that their various Automotive Lighting Products are between 25% and 50% brighter, that you can see between 25% and 40% further down the road and are between 35% and 50% wider than standard halogen lighting products. Yet again, nowhere is it explained how Sylvania derived the comparisons. Sylvania simply states, as if it were a fact, that its Automotive Lighting Products are measurably superior to other standard halogen products;

FOR VISIBILITY AND PERFORMANCE		
PRODUCT	COMPARISON PHOTOS	PRODUCT BENEFITS
<p>SILVERSTAR® ULTRA FOR ULTRA NIGHT VISION</p> <p>Replacing worn standard bulbs provides:</p> <p>UP TO 50% Increase in BRIGHTNESS</p> <p>UP TO 40% Further DOWN ROAD</p> <p>UP TO 50% Wider SIDE ROAD</p>		the best combination of Brightest and Whitest Light our best downroad and side road performer
<p>SILVERSTAR® HIGH PERFORMANCE LIGHTING</p> <p>Replacing worn standard bulbs provides:</p> <p>UP TO 35% Increase in BRIGHTNESS</p> <p>UP TO 30% Further DOWN ROAD</p> <p>UP TO 35% Wider SIDE ROAD</p>		a better combination of Brighter and Whiter Light a strong downroad and side road performer
<p>ecobright™ For A Cleaner Environment</p> <p>Replacing worn standard bulbs provides:</p> <p>UP TO 25% Increase in BRIGHTNESS</p> <p>Your environmental choice. Save energy - Save money. Reduce carbon dioxide (CO₂) emissions.</p>		Energy Saving
<p>XTRAVISION®</p> <p>Replacing worn standard bulbs provides:</p> <p>UP TO 30% Increase in BRIGHTNESS</p> <p>UP TO 25% Further DOWN ROAD</p>		Brighter Light color approx=standard
<p>COOL BLUE®</p> <p>Replacing worn standard bulbs provides:</p> <p>UP TO 25% Increase in BRIGHTNESS</p> <p>UP TO 25% Further DOWN ROAD</p>		Whiter Light brightness approx=standard
<p>Standard Halogen</p> <p>Replacing worn standard bulbs provides:</p> <p>---</p>		OEM Quality basic performance

Headlights dim over time. Always replace in pairs for a balanced and even beam pattern. Evaluate once a year for optimum performance.

*Brightness based on beam intensity. **Brightness based on coil luminance measurements.

74. In January of 2013, Consumer Reports tested the performance of eight (8) “premium” halogen bulbs, including SilverStar and SilverStar ULTRA, and compared them to the performance of two (2) standard, lower-priced bulbs. Consumer Reports observed that some of the premium bulbs had whiter light (up to 19 percent more output), but that “[n]one of the premium capsules allowed us to see farther on our headlight test course than standard or OE bulbs.” This result is explained by the fact that distance is determined more by the size and shape of the lamp's reflector or lens than by the bulb itself. Premium capsules, the organization concluded, were worth the cost only if the consumer was interested in a whiter and more intense light, but that there was no real change in the distance visibility, the whole as appears more fully from a copy of the Consumer Reports article entitled “Higher-priced lights shine more brightly but not farther” dated January 2013, produced herein as **Exhibit R-13**;

75. The Respondents’ ongoing practice of packaging, marketing, advertising, promoting, labelling, representing, and/or selling their Automotive Lighting Products as measurably superior when in fact, the Automotive Lighting

Products are equal to standard halogen lamps – is likely to deceive ordinary consumers who reasonably understood the labelling of the Automotive Lighting Products to mean what it says – that the lamps are specifically and qualitatively superior to standard halogen lamps;

76. In reliance upon the Respondents' claims that the Automotive Lighting Products are superior, Class Members sought out and were willing to pay more for the premium Automotive Lighting Products than similar products that do not claim to be superior, and in fact did purchase the Automotive Lighting Products and did pay a premium;
77. The advertisements and representations made by the Respondents as set forth herein were and are false and/or misleading. The acts and practices of the Respondents, as alleged herein, constitute unfair or deceptive acts or practices and the making of false statements;
78. As a result of the Respondents' deceptive claims, consumers have purchased a product that is substantially different than advertised. Moreover, the Respondents have been able to charge a significant price premium for their Automotive Lighting Products over other traditional, comparable halogen lamp products that do not make deceptive claims;
79. Consumers were induced into purchasing Automotive Lighting Products through the use of false and misleading representations, thereby vitiating their consent and entitling them to claim a refund for the purchase price of those products;

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

80. Petitioner purchased two (2) SilverStar H6054 Headlamps on or about the end of 2012/beginning of 2013, from Canadian Tire on St. Jacques in Montreal, Quebec for approximately \$30 plus taxes each;
81. Petitioner believed, from having seen the Respondents' marketing and having read the product labelling, that the SilverStar Headlamps were superior to standard halogen headlamps in that they would provide 20% greater brightness, 25% increased visibility down the road and 25% increased side road visibility;
82. After the Petitioner installed the Headlamps into his vehicle, he did not perceive any significant difference in brightness or visibility between the SilverStar Headlamps and his former headlamps;
83. Within a year after the Petitioner installed the SilverStar headlights into his vehicle, one of the Headlamps burned out;



84. The Petitioner was unaware that the SilverStar Headlamps that he had purchased had a reduced life expectancy when compared to regular halogen headlamps as the product that he purchased made no reference to a "Life" category on the chart placed on the packaging, nor was this fact otherwise disclosed (see picture of SilverStar H6054);
85. Petitioner recently discovered that the superior product claims of his SilverStar Headlamps were the subject of several class actions which allege that these claims were false and misleading were filed and subsequently settled in the United States, the whole as appears more fully from a copy of the Class Action Complaints and from a copy of the Class Action Settlement Agreement, produced herein *en liasse* as **Exhibit R-14**;
86. In consequence, Petitioner now realizes that his suspicions as to the effectiveness of his SilverStar Headlamps were justified and feels that he has been misled by the Respondents;
87. If the Petitioner had known that the SilverStar Headlamps were not noticeably brighter and that he could not see noticeably further than standard halogen head lamps, he would not have purchased them;
88. If the Petitioner had known that the SilverStar Headlamps had a significantly shorter life span compared to regular halogen headlamps, he would not have purchased them;
89. Petitioner's damages are a direct and proximate result of the Respondents' conduct and their false and misleading advertising;
90. 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

91. Every member of the class has purchased Automotive Lighting Products believing that they (i) were brighter, (ii) would provide a wider beam, and (iii) would enable the user to see further down the road than standard halogen products due to Respondents' packaging, marketing, advertising, promotion, labelling, and/or selling practices;
92. In addition, Class Members were unaware that the Automotive Lighting Products suffered from a significantly shorter life span than that of regular halogen headlamps;



93. The class members were, therefore, induced into error by the Respondents' false and misleading marketing and advertising;
94. Had the Respondents disclosed the truth about the Automotive Lighting Products, reasonable consumers would not have purchased them and/or certainly would not have paid as high a price;
95. Each member of the class is justified in claiming at least one or more of the following as damages:
- a) The purchase price of the Automotive Lighting Product(s);
 - b) Punitive damages;
96. Respondents engaged in wrongful conduct, while at the same time obtaining, under false pretences, significant sums of money from class members;
97. 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
98. Petitioner is unaware of the specific number of persons who purchased the Respondents' Automotive Lighting Products, however, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands);
99. Class members are numerous and are scattered across the entire country and province of Quebec;
100. 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 Respondents. Even if the class members themselves could afford such individual litigation, it would place an unjustifiable burden on the court system. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase delay and expense to all parties and to the court system;
101. 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;

102. 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;

103. 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 Respondents and that which the Petitioner wishes to have adjudicated upon by this class action

104. Individual questions, if any, pale by comparison to the numerous common questions that will significantly advance the litigation;

105. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, the Respondents' misconduct;

106. 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 Automotive Lighting Products?
- b) Are the Respondents liable to the class members for reimbursement of the purchase price of the Automotive Lighting Products as a result of their misconduct?
- c) Should an injunctive remedy be ordered to prohibit the Respondents from continuing to perpetrate their unfair, false, misleading, and/or deceptive conduct?
- d) Are the Respondents responsible to pay punitive damages to class members and in what amount?

107. The interests of justice favour that this motion be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT



108. The action that the Petitioner wishes to institute on behalf of the members of the class is an action in damages, injunctive relief and declaratory judgment;

109. 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;

DECLARE the Defendants have committed unfair, false, misleading, and/or deceptive conduct with respect to their packaging, marketing, advertising, promotion, labelling, representation, and sale of their Automotive Lighting Products;

ORDER the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct by packaging, marketing, advertising, promoting, labelling, representing, and/or selling their Automotive Lighting Products;

ORDER the Defendants to cease from representing that their Automotive Lighting Products are measurably superior, as expressed in percentages, to standard halogen products and ORDER the Defendants to visibly and accurately represent the actual life expectancy of their Automotive Lighting Products, as expressed in terms of hours;

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;

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 he be attributed the status of representative of the Class

110. Petitioner is a member of the class;

111. Petitioner is ready and available to manage and direct the present action in the interest of the members of the class that he wishes 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 his attorneys;

112. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;

113. Petitioner has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

114. Petitioner, with the assistance of his 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;

115. Petitioner is in good faith and has instituted this action for the sole goal of having his 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 Respondents' conduct;

116. Petitioner understands the nature of the action;

117. Petitioner's interests coincide with and are not antagonistic to those of the Class Members he seeks to represent;

B) The Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal

118. A great number of the members of the class reside in the judicial district of Montreal and in the appeal district of Montreal;

119. The Petitioner's attorneys practice their profession in the judicial district of Montreal;

120. 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, injunctive relief and declaratory judgment;

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

- all residents in Canada who have purchased: (i) SilverStar ULTRA, SilverStar, XtraVision, or Cool Blue replacement headlamp capsules; (ii) SilverStar, XtraVision, or Cool Blue sealed beam headlamps; or (iii) SilverStar fog or auxiliary lights (collectively, “Automotive Lighting Products”), or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who have purchased: (i) SilverStar ULTRA, SilverStar, XtraVision, or Cool Blue replacement headlamp capsules; (ii) SilverStar, XtraVision, or Cool Blue sealed beam headlamps; or (iii) SilverStar fog or auxiliary lights (collectively, “Automotive Lighting Products”), 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 Automotive Lighting Products?
- b) Are the Respondents liable to the class members for reimbursement of the purchase price of the Automotive Lighting Products as a result of their misconduct?
- c) Should an injunctive remedy be ordered to prohibit the Respondents from continuing to perpetrate their unfair, false, misleading, and/or deceptive conduct?
- d) Are the Respondents responsible to pay 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;

DECLARE the Defendants have committed unfair, false, misleading, and/or deceptive conduct with respect to their packaging, marketing, advertising, promotion, labelling, representation, and sale of their Automotive Lighting Products;

ORDER the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct by packaging, marketing, advertising, promoting, labelling, representing, and/or selling their Automotive Lighting Products;

ORDER the Defendants to cease from representing that their Automotive Lighting Products are measurably superior, as expressed in percentages, to standard halogen products and ORDER the Defendants to visibly and accurately represent the actual life expectancy of their Automotive Lighting Products, as expressed in terms of hours;

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;

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 in the NATIONAL POST;

ORDER that said notice be available on the Respondents' website as well as its Facebook page with a link stating "Notice to Sylvania Automotive Lighting Product purchasers";

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 publication fees.

Montreal, September 19, 2014

(S) Jeff Orenstein

CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein

Attorneys for the Petitioner