

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

C. COLLINS

Plaintiff

- and -

**OSRAM SYLVANIA, INC., OSRAM SYLVANIA PRODUCTS, INC., AND OSRAM
SYLVANIA, LTD.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: September 22, 2014

Issued by (S) signature
Local Registrar

Address of court office: 161 Elgin Street
2nd Floor
Ottawa, ON K2P 2K1

TO: Osram Sylvania, Inc.
100 Endicott Street
Danvers, Massachusetts, 01923
U.S.A.

Tel: 1 (978) 777-1900
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AND TO: Osram Sylvania Products, Inc.
100 Endicott Street
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AND TO: Osram Sylvania, Ltd.
2001 Drew Road
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Tel: 1 (905) 673-6171
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DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**Automotive Lighting Products**” or “**Lamps**” means the Defendants’ **Headlamps, Headlamp Capsules, and Fog Lights**;
- (b) “**Headlamp(s)**” means SilverStar, XtraVision, or Cool Blue sealed beam headlamps¹;
- (c) “**Headlamp Capsule(s)**”, “**Capsule(s)**”, “**Headlamp Bulb(s)**”, and “**Bulb(s)**” means SilverStar ULTRA, SilverStar, XtraVision, or Cool Blue replacement headlamp capsules/bulbs;
- (d) “**Fog Lights**” or “**Auxiliary Lights**” means SilverStar fog or auxiliary lights;
- (e) “**Class**” or “**Class Members**” means all residents in Canada, excluding 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 lamps;
- (f) “*Courts of Justice Act*” means the *Ontario Courts of Justice Act*, RSO 1990, c. C-43, as amended;

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).

- (g) “*Class Proceedings Act*” means the *Class Proceedings Act*, 1992, SO 1992, c. 6, as amended;
- (h) “*Sale of Goods Act*” means the *Sale of Goods Act*, R.S.O. 1990, c. S.1, as amended;
- (i) “*Consumer Packaging and Labelling Act*” means the *Consumer Packaging and Labelling Act*, R.S.C. 1985, c. C-38, as amended;
- (j) “*Consumer Protection Act*” means the *Consumer Protection Act, 2002*, SO 2002, c. 30, Schedule A, as amended;
- (k) “*Competition Act*” means the *Competition Act*, RSC 1985, c. C-34, as amended;
- (l) “**Consumer Protection Legislation**” means:
- (i) The *Consumer Protection Act, 2002*, SO 2002, c 30, Schedule A, as amended;
 - (ii) The *Fair Trading Act*, RSA 2000, c. F-2, as amended;
 - (iii) The *Business Practices and Consumer Protection Act*, SBC 2004, c. 2, as amended;
 - (iv) The *Business Practices Act*, CCSM, c. B120, as amended;
 - (v) The *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1, as amended, and *Trade Practices Act*, RSNL 1990, c. T-7, as amended;
 - (vi) The *Business Practices Act*, RSPEI 1988, c. B-7, as amended;
 - (vii) The *Consumer Protection Act*, SS 1996, c. C-30.1, as amended;
 - (viii) The *Consumer Product Warranty and Liability Act*, SNB 1978, c 18.1, as amended; and

(ix) The *Consumer Protection Act*, RSNS 1989, c 92, as amended;

(m) “**Defendants**” or “**Sylvania**” means Osram Sylvania, Inc., Osram Sylvania Products, Inc., and Osram Sylvania Ltd./Ltée;

(n) “**Plaintiff**” means C. Collins; and

(o) “**Representation**” means the **Defendants’** false, misleading or deceptive representations that their **Automotive Lighting Products** (a) have performance characteristics, uses, benefits and/or qualities which they did not possess, (b) are of a particular standard and/or quality that they are not, (c) are available for a reason that does not exist; and the **Defendants’** (d) use of exaggeration, innuendo and ambiguity regarding their (i) brightness level, (ii) beam width, and (iii) down road visibility as well as (e) use of exaggeration, innuendo and ambiguity in failing to disclose that the **Automotive Lighting Products** have a significantly reduced life span when compared to regular halogen automotive lighting products;

(p) “**Illumination Benefits**” means the benefits that the **Defendants** represented their **Automotive Lighting Products** to possess, namely: (i) being brighter, (ii) providing a wider beam, and (iii) enabling the user to see further down the road than standard halogen products;

CLAIM

2. The proposed Representative Plaintiff, C. Collins, claims on his own behalf and on behalf of the members of the Class of persons as defined in defined in paragraph 4 below (the “Class”) as against Osram Sylvania, Inc., Osram Sylvania Products, Inc., and Osram Sylvania Ltd./Ltée (the “Defendants”):

- (a) An order pursuant to the Class Proceedings Act certifying this action as a class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class Members;
- (b) A declaration that the present Statement of Claim is considered as notice given by the Plaintiff on his own behalf and on behalf of “person similarly situated” and is sufficient to give notice to the Defendants on behalf of all Class Members;
- (c) In the alternative, a declaration, if necessary, that it is in the interests of justice to waive the notice requirement under Part III and s. 101 of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation;
- (d) A declaration that the Representation constitutes an implied condition as to quality or fitness under s. 15 of the *Sale of Goods Act*;
- (e) A declaration that the Class is entitled to maintain an action for breach of warranty under ss. 51 and 55 of the *Sale of Goods Act*;

- (f) A declaration that the Representation was made in violation of s. 7 of the *Consumer Packaging and Labelling Act*;
- (g) A declaration that the Representation was made in violation of s. 9 of the *Consumer Packaging and Labelling Act*;
- (h) A declaration that the Representation was made in violation of s. 14 of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation;
- (i) A declaration that the Representation was made in violation of s. 15 of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation;
- (j) A declaration that the Representation was a false and misleading representation contrary to s. 52 of the *Competition Act*;
- (k) General damages in an amount to be determined in the aggregate for the Class Members to compensate them for the purchase price of the Defendants' Automotive Lighting Products;
- (l) Punitive, aggravated and exemplary damages in an amount that this Honourable Court deems appropriate;
- (m) A declaration that the Defendants are jointly and severally liable for any and all damages awarded;

- (n) In the alternative, an order for an accounting of revenues received by the Defendants resulting from the sale of their Automotive Lighting Products as a result of the Representation to the Plaintiff and to the Class Members;
- (o) A declaration that any funds received by the Defendants through the sale of their Automotive Lighting Products as a result of the Representation are held in trust for the benefit of the Plaintiff and Class Members;
- (p) Restitution and/or a refund of all monies paid to or received by the Defendants from the sale of their Automotive Lighting Products to members of the Class on the basis of unjust enrichment;
- (q) In addition, or in the alternative, restitution and/or a refund of all monies paid to or received by the Defendants from the sale of their Automotive Lighting Products to members of the Class on the basis of *quantum meruit*;
- (r) An order compelling the creation of a plan of distribution pursuant to ss. 23, 24, 25 and 26 of the *Class Proceedings Act*;
- (s) A permanent injunction restraining the Defendants from continuing any actions taken in contravention of the Consumer Protection Legislation, the *Sale of Goods Act*, the *Consumer Packaging and Labelling Act*, the *Consumer Protection Act* and the *Competition Act*;

- (t) Pre-judgment and post-judgment interest on the foregoing sums in the amount of 2% per month, compounded monthly, or alternatively, pursuant to ss. 128 and 129 of the *Courts of Justice Act*;
- (u) Costs of notice and administration of the plan of distribution of recovery in this action plus applicable taxes pursuant to s. 2 (9) of the *Class Proceedings Act*;
- (v) Costs of this action on a substantial indemnity basis including any and all applicable taxes payable thereon pursuant to the *Excise Tax Act*, R.S.C. 1990. C. E-15; and
- (w) Such further and other relief as counsel may advise and/or this Honourable Court may deem just and appropriate in the circumstances.

THE PARTIES

The Representative Plaintiff

3. The Plaintiff, C. Collins, is an individual residing in the City of Ingleside, in the Province of Ontario. In 2013, Mr. Collins purchased two (2) XtraVision H5006 Headlamps after being exposed to the Defendants' Representation.

The Class

4. The Plaintiff seeks to represent the following class of which he is a member (the "Proposed Class"):

All residents in Canada, excluding 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 lamps.

The Defendants

5. The Defendant, 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 Defendant 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.

6. 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;

7. The Defendant, Osram Sylvania Products, Inc. (“Sylvania Products”), is an American corporation with its principal place of business in Danvers, Massachusetts;

8. The Defendant, Sylvania Ltd., is a Canadian corporation with its principal place of business in Mississauga, Ontario. It is a wholly-owned subsidiary of Sylvania, Inc. that does business throughout Canada including within the province of Ontario.

9. The Defendants are residents in Ontario for the purpose of s. 2 of the *Consumer Protection Act*.

10. The Defendants are jointly and severally liable for the acts and omissions of each other.

THE NATURE OF THE CLAIM

11. The Defendants are and, have been at all relevant times, engaged in the business of manufacturing, packaging, marketing, advertising, promoting, labelling, representing, and/or selling the Automotive Lighting Products as superior to regular halogen automotive lighting products.

12. Specifically, the Defendants' 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 halogen headlamps, headlamp capsules and fog or auxiliary lights ("Illumination Benefits").

13. In addition, the Defendants failed to disclose that their Automotive Lighting Products have a significantly reduced life span when compared to regular halogen automotive lighting products.

14. These class proceedings concern the false, misleading and/or deceptive Representation made by the Defendants concerning the alleged measurable superiority and Illumination Benefits of their Automotive Lighting Products that were manufactured, packaged, marketed, advertised, promoted, labelled, and ultimately offered for sale to the public by the Defendants.

15. The Defendants made the Representation that their Automotive Lighting Products had been tested and proven to provide significant Illumination Benefits as defined above, more so than ordinary halogen lamps.

16. These claims were not supported by verified facts or by any scientific evidence at the time they were made, and presently, they continue to be unverified.

I. The Importance of Headlamps

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. The Defendants' 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.

24. The Defendants' 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.

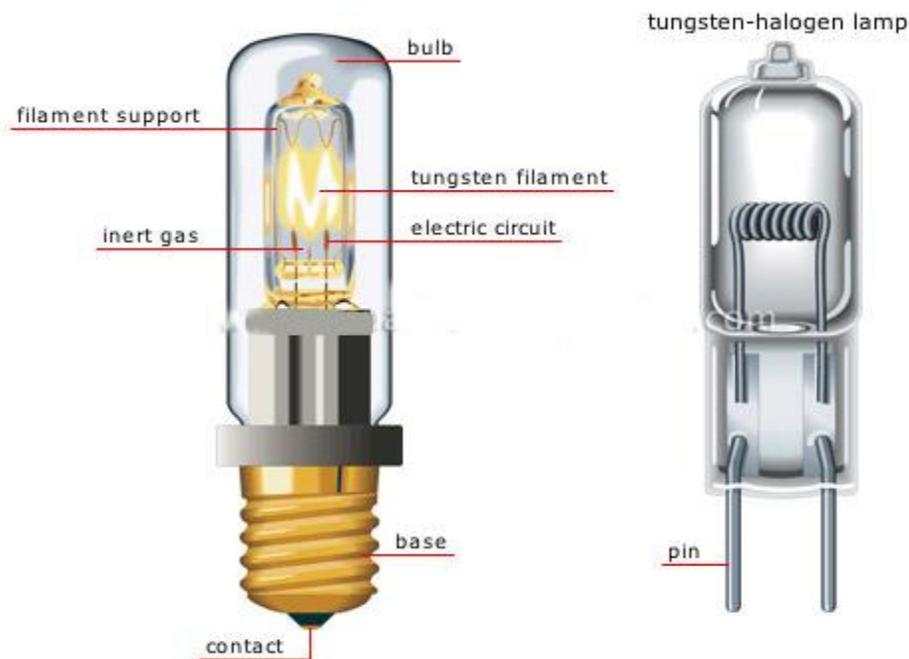
II. Halogen Lamps - Explained

25. 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". 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.

26. 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 bulbs². The higher temperature filament also produces the “white” light often associated with halogen bulbs.

² 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.



27. 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.

28. For example, the SilverStar ULTRA Headlamps were sold for over twice the price of Sylvania standard headlamps.

29. 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.

30. The Defendants 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

31. 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.

32. 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.

33. The Defendants 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.

34. Paradoxically, these precise percentages have been wholly inconsistent in the Defendants' marketing campaign. By way of comparative illustration and, as appears below, on one package of SilverStar ULTRA 9005 headlamp capsules (on the left), the Defendants 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 Defendants 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.





35. Further, as appears above, on one package of SilverStar ULTRA 9005 headlamp capsules (on the left), the Defendants admit that “the product life” “is less than standard lamps”, representing this by way of comparison that its SilverStar ULTRA Headlamps and SilverStar Headlamps have only 25% of the life of standard halogen lamps [i.e. 1 bars versus 4 bars]; however on another packaging (on the right), the Defendants claim that SilverStar ULTRA Headlamps have “up to 30% more life vs. SilverStar” Headlamps. The Defendants’ inconsistent representations serve to further demonstrate that these claims are unsubstantiated and are employed for the end purpose of luring consumer into purchasing their products regardless of their objectionable means.

a) SilverStar ULTRA Headlamp Capsules

36. As is depicted below, on the front of the packaging for their SilverStar ULTRA 9005 Headlamp capsules, the Defendants claim that their bulbs 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.

37. 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 Defendants’ 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.



38. 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 headlamps³. 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

³ The column labeled “STANDARD” represents a standard halogen headlight.

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: H4
 Compatible avec: H4

	STANDARD -3000K	XTRAVISION® -3500K	COOL BLUE® -3500K	SILVERSTAR® -4000K	SILVERSTAR® ULTRA -4000K
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

- SILVANIA 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/autofor 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/autofor 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 tu completa satisfacción hasta por 12 meses a partir de la fecha de compra. Para más detalles consulte www.sylvania.com/autofor.

Brightness comparison based on coil luminance measurements. / La luminosité est fondée suivant la luminance du filament. / Brillantez basada en la luminancia 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 produits, le modèle de véhicules et l'usage. / Las luces para faros se van atenuando a través del tiempo en un 20% o más y su remplazo 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 a 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 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/autofor
 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

01901901 DE

39. 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:

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

40. Because the Defendants' 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;

41. The Defendants' misrepresentations regarding the life span of the SilverStar ULTRA Headlight Capsules will be described in detail below (see paragraph 50 and following).

b) SilverStar Headlamps and Headlamp Capsules

42. As is depicted below, on the front of the packaging for their SilverStar H6054 Headlamps, the Defendants 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.



43. 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.



44. Nowhere on the packaging do the Defendants qualify or attempt to disclaim these claims.

45. As will be discussed below, the Defendants make no mention of the reduced life span of the SilverStar Headlamp products (see paragraph 50 and following).

c) XtraVision Headlamps

46. As is depicted below, on the front of the packaging for their XtraVision H5006 Headlamp capsules, the Defendants claim that the bulbs provide the “brighter light” and that they are up to 15% brighter and have up to 15% greater side road visibility than standard halogen headlamp capsules. Nowhere does Sylvania satisfactorily explain how it derived these comparisons.



47. The back of the XtraVision H5006 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.



48. Nowhere on the packaging do the Defendants qualify these claims.

49. As will be discussed below, the Defendants make no mention of the reduced life span of the XtraVision Headlamp products (see paragraph 50 and following).

d) Shorter Life Span for Defendants' Automotive Lighting Products

50. The Defendants' 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.

51. When used in a daytime running lamp configuration, which is common in new vehicles, the Defendants' 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 Defendants 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.

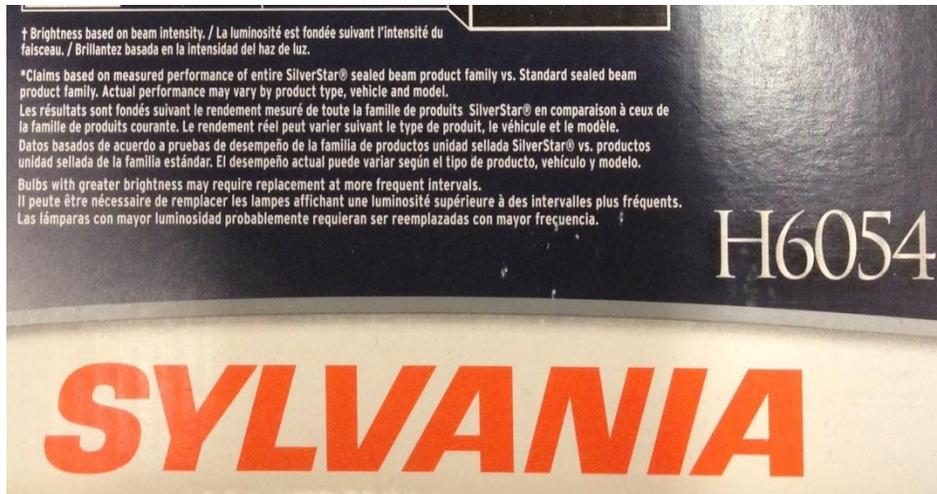


52. While some of the Defendants' packaging discloses the reduced life span of their Automotive Lighting Products, such as the SilverStar ULTRA packaging extract reproduced above, others simply make no mention of it.

53. 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

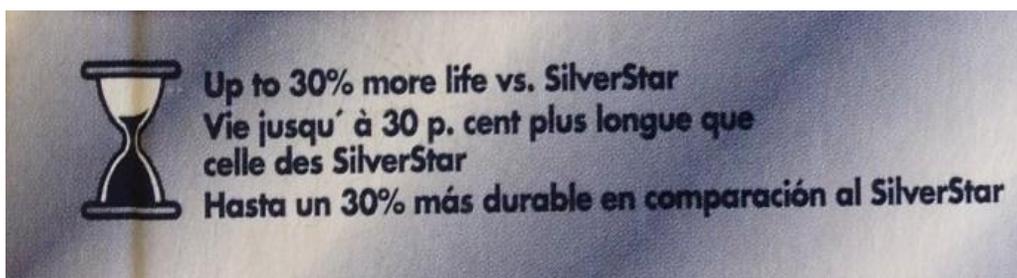
products. On the back of the SilverStar ULTRA Headlamp package (reproduced above) is a chart comparing the various performance characteristics of “Standard” halogen headlamps to Sylvania products, including XtraVision, Cool Blue, SilverStar, and SilverStar ULTRA. On the fourth line, the “LIFE” of each 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.

54. Much of the Defendants’ 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:



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

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



57. In sum, in terms of the Defendants’ 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

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

59. The Defendants’ Automotive Lighting Products are halogen lamps; however, Sylvania does not disclose anywhere on the product packaging that its lamps are halogen lamps.

60. 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.

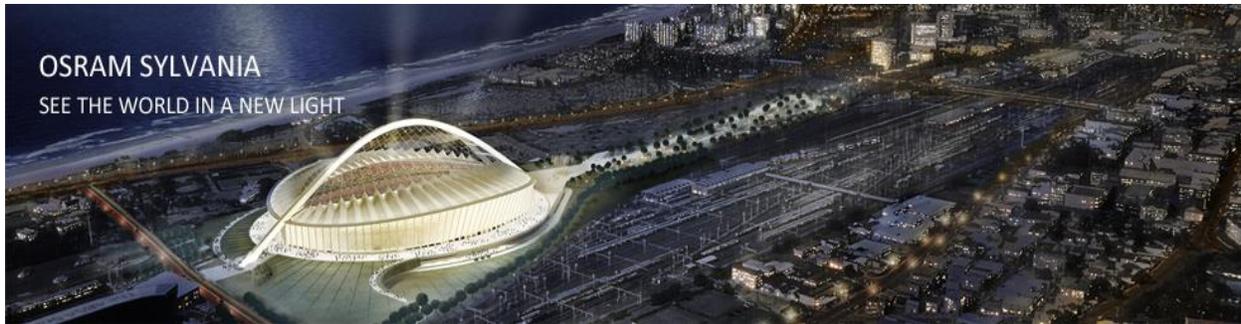
61. In sum, and despite various inconsistencies, the Defendants’ clear message is that its Automotive Lighting Products are (i) significantly brighter, (ii) provide significantly wider, side road visibility, and (iii) provide significantly farther, down road visibility when compared to standard halogen automotive lighting products. The Defendants also conveniently fail to disclose that their Automotive Lighting Products have a significantly reduced life span when compared to standard halogen automotive lighting products.

62. The Defendants' 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

63. The Defendants 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 Defendants' website is clustered 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 Defendants' 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

64. The Defendants 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 Defendants repeat this idea in the “key features” of the bulb which include:

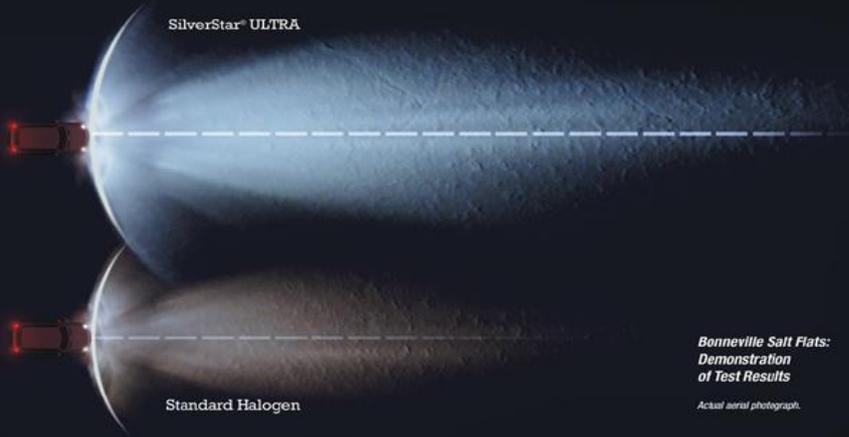
- The brightest headlight in our product line
- Up to 40% increased downroad visibility
- Increased peripheral visibility by up to 50%
- Up to 50% brighter light.

65. In addition, as is depicted below in two advertisements, the Defendants 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.

SILVERSTAR[®]

ULTRA FOR ULTRA NIGHT VISION

SilverStar[®] ULTRA



Standard Halogen

*Bonneville Salt Flats:
Demonstration
of Test Results*

Actual aerial photograph.

SYLVANIA

SilverStar[®] ULTRA

Soledad Canyon, CA



SYLVANIA
actual demonstration photo





b) SilverStar Headlamp Capsules

66. The Defendants 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.

c) SilverStar Sealed Beam Headlamps

67. The Defendants 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 Defendants repeat this idea in the “key features” of the Headlamp which include:

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

68. What the Defendants 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”. Claiming that their Automotive Lighting Products are markedly superior to **worn** standard halogen is of no practical consequence whatsoever and the Defendants 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.

69. 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.

70. The Defendants’ 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.

73. As is depicted below, the Defendants 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 with standard halogen 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>		<p>the best combination of Brightest and Whitest Light our best downroad and side road performer</p>
<p>SILVERSTAR® HIGH PERFORMANCE LIGHTING</p> <p>Replacing with standard halogen 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>		<p>a better combination of Brighter and Whiter Light a strong downroad and side road performer</p>
<p>ecobright™ For A Cleaner Environment</p> <p>Replacing with standard halogen provides:</p> <p>UP TO 25% Increase in BRIGHTNESS</p> <p>Your environmental choice. Save energy - Save money. Reduce carbon dioxide (CO₂) emissions.</p>		<p>Energy Saving</p>
<p>XTRAVISION®</p> <p>Replacing with standard halogen provides:</p> <p>UP TO 30% Increase in BRIGHTNESS</p> <p>UP TO 25% Further DOWN ROAD</p> <p>---</p>		<p>Brighter Light color approx=standard</p>
<p>COOL BLUE™</p> <p>Replacing with standard halogen provides:</p> <p>UP TO 25% Increase in BRIGHTNESS</p> <p>UP TO 25% Further DOWN ROAD</p> <p>---</p>		<p>Whiter Light brightness approx=standard</p>
<p>Standard Halogen</p> <p>Replacing with standard halogen provides:</p> <p>---</p>		<p>OEM Quality basic performance</p>

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.

71. 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.

72. The Defendants’ 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.

73. In reliance upon the Defendants’ 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.

74. Even though the Automotive Lighting Products do not provide the promised Illumination Benefits and are no different from standard halogen lamps, the Defendants’ Automotive Lighting Products has been a huge commercial success for the Defendants.

75. The advertisements and representations made by the Defendants as set forth herein were, and are, false or misleading. The acts and practices of the Defendants as alleged herein constitute unfair or deceptive acts or practices and the making of false statements.

76. As a result of the Defendants' deceptive claims, consumers have purchased a product that is substantially different than advertised. Moreover, the Defendants 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 Illumination Benefits claims.

77. Consumers were induced into purchasing the Defendants' 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 the product(s).

78. The Automotive Lighting Products were intended to be placed into the stream of commerce, to be distributed, offered for sale and sold to the Plaintiff and to the public in Ontario and in other Provinces and Territories within Canada.

79. Sylvania knew or ought to have known that purchasers of these Automotive Lighting Products would not be reasonably able to protect their interests, that such purchasers would be unable to receive a substantial benefit from the Automotive Lighting Products and that consumers would be relying on the Defendants' untrue statements to their detriment.

80. The Representation was made for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, the business interests of the Defendants. The Representation was made knowingly or recklessly. The

Representation was made to the public. The Representation was false or misleading in a material respect, namely as to the Illumination Benefits of the Defendants' Automotive Lighting Products.

81. The Class Members have suffered and will suffer injuries, losses or damages as a result of the Defendants' conduct.

82. Canadian consumers were never compensated for damages incurred as a result of purchasing the Defendants' Automotive Lighting Products in reliance upon the Representation.

83. The Defendants know or understand that the promotion and advertising of their Automotive Lighting Products in part targets consumers and customers in Canada.

84. The Defendants placed these Automotive Lighting Products into the stream of commerce in Ontario and elsewhere with the expectation that consumers, such as the Plaintiff and Class Members, would purchase the product based on their Representation.

THE REPRESENTATIVE PLAINTIFF

85. In 2013, the Plaintiff purchased two (2) XtraVision H5006 Headlamps (see packaging reproduced above) from Canadian Tire in Morrisburg, Ontario for approximately \$20 plus taxes each.

86. The Plaintiff purchased the Automotive Lighting Products based on the Defendants' marketing and after having read the product's labelling. Specifically, he believed that the XtraVision Headlamps were superior to standard halogen headlamps in that they would emit a

“brighter light” that would be up to 15% brighter and would enable him to see up to 15% further down the road than standard halogen lamps.

87. After the Plaintiff installed the Headlamps into his vehicle, he did not perceive any significant difference in brightness or visibility between the XtraVision Headlamps and his former headlamps.

88. Recently, within approximately a year and a half after the Plaintiff had installed the XtraVision headlights into his vehicle, one of the Headlamps burned out.

89. The Plaintiff was unaware that the XtraVision 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 XtraVision H5006 Headlamps).

90. The Plaintiff discovered, while researching online, that several class actions have been instituted in the United States and Canada due to this issue and that the U.S. class actions were subsequently settled out-of-court.

91. In consequence, Plaintiff now realizes that he has been misled by the Defendants; had he known the true facts, the Plaintiff would not have purchased the XtraVision Headlamps and would certainly not have paid such a high price for them.

92. The Plaintiff has suffered damages as a result of purchasing the Automotive Lighting Products, including the costs of purchasing these expensive Automotive Lighting Products.

CAUSES OF ACTION

A. Breach of Warranty

93. The Defendants are “merchants” in the business of selling Automotive Lighting Products to foreseeable consumers such as Plaintiff and the members of the Class, including, but not limited to Automotive Lighting Products of the kind sold to Plaintiff and the members of the Class in this Claim.

94. Plaintiff and the members of the Class purchased Defendants’ Automotive Lighting Products.

95. The Defendants expressly warranted that the Automotive Lighting Products would provide the various measurable Illumination Benefits specific to each Automotive Lighting Product of (i) being brighter, (ii) providing a wider beam, and (iii) enabling the user to see further down the road than standard halogen products. These express representations become a basis of the bargain, implicating the Defendants’ liability for breach thereof.

96. Further, the Defendants omitted to disclose the reduced life span of the Automotive Lighting Products at times, and, at others, expressly warranted that they had a superior life span (see picture of SilverStar ULTRA 9005 Headlamp).

97. The Automotive Lighting Products do not conform to these express representations because they do not and cannot provide these Illumination Benefits, nor do they have an increased or even equivalent life span to regular automotive lighting products. Thus, Defendants breached their express warranties.

98. As a direct and proximate result of the breach of said warranties, Plaintiff and the Class Members suffered and/or will continue to be harmed and to suffer economic loss.

99. Plaintiff and the Class Members did rely on the express warranties of the Defendants herein.

100. The Defendants knew or should have known that, in fact, said Representation and warranties were false, misleading, and untrue.

101. As a direct and proximate result of the foregoing acts and/or omissions, Plaintiff and the Class Members have suffered damages entitling them to compensatory damages, punitive damages and, in the alternative, equitable and declaratory relief as elaborated further below.

102. Further, and or in the alternative, the Defendants breached their implied warranties of fitness for a particular purpose, i.e. the Illumination Benefits and/or committed intentional misrepresentations of material fact which induced the Plaintiff and Class Members to purchase the Automotive Lighting Products in reliance.

103. Class Members were unable to receive a substantial benefit from the Automotive Lighting Products to their detriment.

B. Tort of Civil Fraud

104. The Defendants represented to the Plaintiff and to the Class Members that their Automotive Lighting Products had specific performance characteristics, i.e. the Illumination Benefits and life span omissions/representations.

105. Sylvania knew that the Representation was false at the time that it made them. Specifically, Sylvania knew that the Automotive Lighting Products did not and could not perform as represented.

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

107. Sylvania made the Representation herein alleged with the intention of inducing the Plaintiff and the Class Members to purchase their Automotive Lighting Products. Sylvania made these misrepresentations with the intention of depriving Plaintiff and the Class Members of property or otherwise causing injury.

108. The Plaintiff and the Class Members relied upon Sylvania's Representation and, in reliance upon them, purchased such Automotive Lighting Products. Said reliance was reasonable. The Plaintiff and the Class Members were without the ability to determine the truth of these statements on their own and could only rely on Sylvania's statements and Representation on its packaging.

109. The Plaintiff and Class Members suffered damages as a result of purchasing the Automotive Lighting Products.

110. Thus, the Tort of Civil Negligence can easily be made out as:

- (a) A false representation was made by the Defendants; i.e. the Representation;

- (b) The Defendants had knowledge of and/or were reckless as to the falsehood of the Representation;
- (c) The false Representation caused the Plaintiff and the Class to act; and
- (d) The Plaintiff's and the Class Member's actions resulted in a loss.

C. Tort of Negligence

111. The Defendants had a positive legal duty to use reasonable care to perform its legal obligations to the Plaintiff and Class Members;

112. The Defendants were aware that their customers (including Plaintiff and the Class) relied on it to provide truthful and accurate information about its products, including their Automotive Lighting Products.

113. It was certainly reasonably foreseeable that if the Defendants were negligent in its duty to provide accurate information about its Automotive Lighting Products, that customers would sustain injury and damages.

114. By its acts described herein, the Defendants failed to take reasonable care to ensure that its Representation were accurate and to ensure that its Automotive Lighting Products would perform as advertised.

115. Sylvania lacks scientific support showing that the majority of consumers can achieve the Illumination Benefits claimed on the Automotive Lighting Product packaging. Moreover,

Sylvania's own technical specifications flatly refute the Illumination Benefits claimed. Therefore, Sylvania's conduct in prominently displaying these claims on the packaging for the purpose of increasing sales offends established public policy, and is oppressive and substantially injurious to consumers.

116. The Defendants breached their duty of care to the Plaintiff and to the Class Members by offering for sale Automotive Lighting Products that were not fit for the particular purpose for which they were purchased, i.e. the purported Illumination Benefits and/or satisfactory/increased life span. The Defendants packaged, marketed, advertised, promoted, labelled, represented, and/or sold Automotive Lighting Products to the Class Members who purchased said products in reliance upon the Defendants' untrue Representation. Class Members were unable to receive a substantial benefit from the Automotive Lighting Products to their detriment.

117. This breach was a direct and proximate result of the Defendants' failure to use reasonable care in its marketing and advertising campaign.

118. By virtue of the acts and omissions described above, the Defendants were negligent and caused damage to the Plaintiff and to the Class Members.

D. Tort of Negligent Misrepresentation

119. The tort of negligent misrepresentation can easily be made out as:

- (a) There was a relationship of proximity in which failure to take reasonable care might foreseeably cause loss or harm to the Plaintiff and to the Class;

- (b) The Defendants made a Representation that was untrue, inaccurate and/or misleading;
- (c) The Defendants acted negligently in making the Representation;
- (d) The Representation were relied upon by the Plaintiff and by the Class reasonably;
and
- (e) The Plaintiff and the Class sustained damages as a result of their reliance.

120. Sylvania represented to the Plaintiff and the Class Members by means of its product packaging that its Automotive Lighting Products had specific performance characteristics (as previously alleged) when those products would not perform as advertised and when Sylvania had no substantiating scientific evidence to support those claims. Sylvania's Representation was untrue as set forth herein.

121. At the time Sylvania made the misrepresentations herein alleged, it had no reasonable grounds for believing the Representation to be true, as it possessed no competent or reliable scientific evidence to substantiate the representations set forth in detail above.

122. Sylvania made the Representation herein alleged with the intention of inducing Plaintiff and the Class Members to purchase its Automotive Lighting Products.

123. Plaintiff and the Class Members relied upon Sylvania's Representation and, in reliance upon it, purchased such Automotive Lighting Products. Said reliance was reasonable.

124. Plaintiff and the Class Members were without the ability to determine the truth of these statements on their own and could only rely on Sylvania's statements on its packaging.

125. Had Plaintiff and the Class Members known the true facts about the performance of Automotive Lighting Products, they would not have purchased the products and/or certainly would not have paid as high a price.

126. By reason of the foregoing, Plaintiff and each member of the Class are entitled to recover damages and other relief from Defendants.

CAUSATION

127. The acts, omissions, wrongdoings, and breaches of legal duties and obligations of the Defendants directly and proximately caused the Plaintiff's and Class Members' damages.

128. The Plaintiff pleads that by virtue of the acts, omissions and breaches of legal obligations as described above, they are entitled to legal and/or equitable relief against the Defendants, including damages, consequential damages, attorneys' fees, costs of suit and other relief as appropriate in the circumstances.

DAMAGES

Compensatory Damages (Economic Losses)

129. By reason of the acts, omissions and breaches of legal obligations of the Defendants, the Plaintiff and Class Members have suffered injury, economic loss and damages, the particulars of

which include the purchase price of the Automotive Lighting Products and other damages as described herein.

Punitive, Exemplary and Aggravated Damages

130. The Defendants has taken a cavalier and arbitrary attitude to its legal and moral duties to the Class Members.

131. At all material times, the conduct of the Defendants as set forth was malicious, deliberate and oppressive towards their customers and the Defendants conducted itself in a wilful, wanton and reckless manner.

132. In addition, it should be noted since the Defendants are parts of a highly-revered, multi-billion dollar corporation, it is imperative to avoid any perception of evading the law without impunity. Should the Defendants only be required to disgorge monies which should not have been retained and/or withheld, such a finding would be tantamount to an encouragement to other businesses to deceive their customers as well. Punitive, aggravated and exemplary damages are necessary in the case at hand to be material in order to have a general deterrent effect on other corporations as well as a specific deterrent to the Defendants themselves.

STATUTORY REMEDIES

133. The Defendants' packaging, marketing, advertising, promoting, labelling, representing, and/or selling practices violate the *Sale of Goods Act*, the *Consumer Packaging and Labelling Act*, the *Consumer Protection Act*⁴ and the *Competition Act*.

134. The Plaintiff pleads and relies upon consumer protection and trade legislation and common law, as it exists in this jurisdiction and the equivalent/similar legislation and common law in other Canadian provinces and territories. The Class Members have suffered injury, economic loss and damages caused by or materially-contributed to by the Defendants' inappropriate and unfair business practices, which includes the Defendants being in breach of applicable Consumer Protection laws.

A. Breach of the *Sale of Goods Act*

135. At all times relevant to this action, the Plaintiff and Class Members were "buyer[s]" within the meaning of that term as defined in s. 1 of the *Sale of Goods Act*.

136. At all times relevant to this action, the Defendants were "seller[s]" within the meaning of that term as defined in s. 1 of the *Sale of Goods Act*.

⁴ While the *Consumer Protection Act* applies only in Ontario, other Canadian provinces have similar consumer protection legislation including, but not limited to: the *Consumer Protection Act*, CQLR c P-40.1 at ss. 41, 215, 216, 218, 219, 220(a), 221(g), 228, 239, 253, 270 & 272; the *Fair Trading Act*, RSA 2000, c F-2 at ss. 5-7, 7.2, 7.3, 9 & 13; the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 at ss. 4-9, 171 & 172; *The Business Practices Act*, CCSM, c B120 at ss. 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 ss. 5-7 & 14; the *Business Practices Act*, RSPEI 1988, c B-7 at ss. 2-4; the *Consumer Protection Act*, SS 1996, c C-30.1 at ss. 5-8, 14, 16 & 23-25; the *Consumer Product Warranty and Liability Act*, SNB 1978, c 18.1 at ss. 10-13, 15, 23 & 27; the *Consumer Protection Act*, RSNS 1989, c 92 at ss. 26-29.

137. The transactions by which the Plaintiff and Class Members purchased their “goods” from the Defendants were “sale[s]” within the meaning of those terms as defined in s. 1 of the *Sale of Goods Act*.

138. The Defendants were aware that consumers purchased the Automotive Lighting Products for the particular purpose of the alleged Illumination Benefits based on their marketing and advertising and there is therefore an implied warranty or condition that the goods will be reasonably fit for such purpose. In addition, consumers purchased the Automotive Lighting Products for the purpose of its life span based on the Defendants’ omission to disclose the fact that it is reduced. There is therefore an implied warranty or condition that the goods will be reasonably fit for such purpose as well.

139. The Defendants committed a fault or wrongful act by breaching the implied condition as to quality or fitness for a particular purpose. By placing into the stream of commerce a product that was unfit for the purpose for which it was marketed and/or advertised, as per s. 15 of the *Sale of Goods Act*, the Defendants are liable. The Class is entitled to maintain an action for breach of warranty under ss. 51 and 55 of the *Sale of Goods Act*.

B. Breach of the *Consumer Packaging and Labelling Act*

140. At all times relevant to this action, the Defendants were “dealer[s]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

141. At all times relevant to this action, the Automotive Lighting Products were “prepackaged product[s]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

142. At all times relevant to this action, the Representation, including the Illumination Benefits and omissions regarding reduced lifespan that were made to the public on the Automotive Lighting Product Packaging, were “label[s]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

143. At all times relevant to this action, the Representation, including the Illumination Benefits and omissions regarding reduced lifespan that were made to the public on the Defendants’ website and otherwise, were “advertise[ments]” within the meaning of that terms as defined in s. 2 of the *Consumer Packaging and Labelling Act*.

144. The Defendants packaged, labelled, sold, imported into Canada and/or advertised the Automotive Lighting Products with false or misleading representations relating to the products in that they used descriptions and/or illustrations of the type, quality, performance, and/or function that may reasonably be regarded as likely to deceive the Plaintiff and Class Members.

145. In addition, the Defendants sold, imported into Canada, and/or advertised the Automotive Lighting Products which were packaged and/or labelled in such a manner that the Plaintiff and Class Members might, and were, reasonably be misled with respect to the quality of the product.

146. As such, the Defendants breached ss. 7 and 9 of the *Consumer Packaging and Labelling Act* and are liable to pay damages resulting therefrom.

C. Breach of the *Consumer Protection Act*

147. At all times relevant to this action, the Plaintiff and Class Members were “consumer[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

148. At all times relevant to this action, the Defendants were “supplier[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

149. The transactions by which the Plaintiff and Class Members purchased their Automotive Lighting Products from the Defendants were “consumer transaction[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

150. The Defendants have engaged in an unfair practice by making a Representation to Class Members which was and is “false, misleading or deceptive” and/or “unconscionable” within the meaning of ss. 14, 15 and 17 of the *Consumer Protection Act* as follows:

- (a) Representing that the Automotive Lighting Products have performance characteristics, uses, benefits and/or qualities, which they did not possess;
- (b) Representing that the Automotive Lighting Products are of a particular standard and/or quality that they are not;
- (c) Representing that the Automotive Lighting Products are available for a reason that does not exist; i.e. Illumination Benefits; and

- (d) Using exaggeration, innuendo and ambiguity as to a material fact or failing to state a material fact regarding their (i) brightness level, (ii) beam width, (iii) down road visibility; and (iv) reduced life span.

151. The Representation was and is unconscionable because *inter alia* the Defendants know or ought to know that consumers are unable to receive a substantial benefit from the subject-matter of the Representation.

152. The Plaintiff states that the Representation was and is false, misleading, deceptive and/or unconscionable such that it constituted an unfair practice which induced the Plaintiff and the Class to purchase the Automotive Lighting Products as a result of which they are entitled to damages pursuant to the *Consumer Protection Act*.

153. The Plaintiff and the Class Members relied on the Representation.

154. The reliance upon the Representation by the Plaintiff and Class Members is established by his or her purchase and/or use of the Automotive Lighting Products. Had the Plaintiff and Class Members known that the Representation was false and misleading they would not have purchased the Automotive Lighting Products and/or would not have paid such a high price.

D. Breach of the *Competition Act*

155. At all times relevant to this action, the Defendants' manufacturing, marketing and selling business was a "business" and the Automotive Lighting Products were "product[s]" within the meaning of that term as defined in s. 2 of the *Competition Act*.

156. The Defendants' acts are in breach of s. 52 of Part VI of the *Competition Act*, were and are unlawful, and render the Defendants liable to pay damages and costs of investigation pursuant to s. 36 of the *Competition Act*.

157. The Defendants made the Representation to the public and in so doing breached s. 52 of the *Competition Act* because the Representation:

- (a) Was made for the purpose of promoting, directly or indirectly, the use of a product or for the purpose of promoting, directly or indirectly, the business interests of the Defendants;
- (b) Was made to the public;
- (c) Was false and misleading in a material respect; and
- (d) Stated performance characteristics, uses, benefits and/or qualities of the Automotive Lighting Products that were false and not based on adequate and proper testing and represented that the Automotive Lighting Products are available for a reason that does not exist, i.e. the Illumination Benefits and life span.

158. The Plaintiff and Class Members relied upon the Representation by buying and/or using the Automotive Lighting Products and suffered damages and loss.

159. Pursuant to s. 36 of the *Competition Act*, the Defendants are liable to pay the damages which resulted from the breach of s. 52.

160. Pursuant to s. 36 of the *Competition Act*, the Plaintiff and Class Members are entitled to recover their full costs of investigation and substantial indemnity costs paid in accordance with the *Competition Act*.

161. The Plaintiff and Class Members are also entitled to recover as damages or costs, in accordance with the *Competition Act*, the costs of administering the plan to distribute the recovery in this action and the costs to determine the damages of each Class Member.

WAIVER OF TORT, UNJUST ENRICHMENT AND CONSTRUCTIVE TRUST

162. The Plaintiff pleads and relies on the doctrine of waiver of tort and states that the Defendants' conduct, including the alleged breaches of any of the *Sale of Goods Act*, *Consumer Packaging and Labelling Act*, the *Consumer Protection Act*, and/or the *Competition Act* constitutes wrongful conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

163. The Plaintiff reserves the right to elect at the Trial of the Common Issues to waive the legal wrongs and to have damages assessed in an amount equal to the gross revenues earned by the Defendants or the net income received by the Defendants or a percent of the sale of the Automotive Lighting Products as a result of the Defendants' false Representation which resulted in revenues and profit for the Defendants.

164. Further, the Defendants has been unjustly enriched as a result of the revenues generated from the sale of the Automotive Lighting Products and as such, *inter alia*, that:

- (a) The Defendants has obtained an enrichment through revenues and profits from the sale of the Automotive Lighting Products;
- (b) The Plaintiff and other Class Members have suffered a corresponding deprivation including the price of the Automotive Lighting Products; and
- (c) The benefit obtained by the Defendants and the corresponding detriment experienced by the Plaintiff and Class Members has occurred without juristic reason. Since the monies that were received by the Defendants resulted from the Defendants' wrongful acts, there is and can be no juridical reason justifying the Defendants retaining any portion of such monies.

165. Further, or in the alternative, the Defendants are constituted as constructive trustees in favour of the Class Members for all of the monies received because, among other reasons:

- (a) The Defendants were unjustly enriched by receipt of the monies paid for the Automotive Lighting Products;
- (b) The Class Members suffered a corresponding deprivation by purchasing the Automotive Lighting Products;
- (c) The monies were acquired in such circumstances that the Defendants may not in good conscience retain them;
- (d) Equity, justice and good conscience require the imposition of a constructive trust;

- (e) The integrity of the market would be undermined if the court did not impose a constructive trust; and
- (f) There are no factors that would render the imposition of a constructive trust unjust.

166. Further, or in the alternative, the Plaintiff claims an accounting and disgorgement of the benefits which accrued to the Defendants.

COMMON ISSUES

167. Common questions of law and fact exist for the Class Members and predominate over any questions affecting individual members of the Class. The common questions of law and fact include:

- (a) Did the Defendants advertise, represent or hold itself out as producing or manufacturing Automotive Lighting Products that would yield significant Illumination Benefits?
- (b) Did the Defendants omit to represent that their Automotive Lighting Products suffered from a reduced life span?
- (c) Did the Defendants possess competent and reliable scientific evidence to support their package/label and advertising claims made regarding their Automotive Lighting Products?

- (d) Did the Defendants engage in unfair, false, misleading, or deceptive acts or practices regarding the marketing and sale of its Automotive Lighting Products?
- (e) Did the Defendants breach their express or implied warranties as to the existence of the Illumination Benefits?
- (f) Did the Defendants breach their express or implied warranties in failing to disclose that the Automotive Lighting Products have a significantly reduced life span when compared to regular halogen automotive lighting products?
- (g) Did the Defendants commit a civil fraud when they represented that their Automotive Lighting Products had specific performance characteristics i.e. the Illumination Benefits and life span omissions/representations?
- (h) Did the Defendants commit the tort of negligent misrepresentation when they made the Representation?
- (i) Do the Defendants owe the Class members as duty to use reasonable care?
- (j) Did the Defendants act negligently in failing to use reasonable care to perform its legal obligations?
- (k) Did the Defendants intend that the Automotive Lighting Products be purchased by the Plaintiff and/or Class Members?

- (l) Did the Defendants intend or foresee that the Plaintiff and/or other Class Members would purchase the Automotive Lighting Products based on the Representation regarding the Illumination Benefits and/or life span?
- (m) Did the Defendants' negligence proximately cause loss or injury and damages?
- (n) Did the Defendants' acts or practices breach the *Sale of Goods Act*, the *Consumer Packaging and Labelling Act*, the *Consumer Protection Act*, the *Competition Act* and/or other similar/equivalent legislation?
- (o) Were the Defendants unjustly enriched?
- (p) Have Class Members been damaged by the Defendants' conduct and, if so, what is the proper measure of such damages?
- (q) Are the Defendants liable to the Class Members for reimbursement of the purchase price of the Automotive Lighting Products as a result of their misconduct and unfair business practices?
- (r) Should an injunctive remedy be ordered to prohibit the Defendants from continuing to perpetrate their unfair, false, misleading, and/or deceptive conduct?
- (s) Are the Defendants responsible to pay compensatory and/or punitive damages to class members and in what amount?

EFFICACY OF CLASS PROCEEDINGS

168. The members of the proposed Class potentially number in the hundreds of thousands if not more. Because of this, joinder into one action is impractical and unmanageable. Conversely, continuing with the Class Members' claim by way of a class proceeding is both practical and manageable.

169. Class counsel proposes to prosecute these claims on behalf of the Class through this Action and through other actions commenced by the offices of Consumer Law Group. These actions include *Petrella v. Osram Sylvania, Inc. et alli.*, an action commenced before the Superior Court of Quebec in Montreal (September 19, 2014, File No. 500-06-000710-141).

170. Members of the proposed Class have no material interest in commencing separate actions. In addition, given the costs and risks inherent in an action before the courts, and the small amount being claimed by each person, many people will hesitate to institute an individual action against the Defendants. 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 Defendants would increase delay and expense to all parties and to the court system.

171. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory and inconsistent judgments on questions of fact and law that are similar or related to all members of the class.

172. 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.

173. The Plaintiff has the capacity and interest to fairly and fully protect and represent the interests of the proposed Class and has given the mandate to his counsel to obtain all relevant information with respect to the present action and intends to keep informed of all developments. In addition, class counsel are qualified to prosecute complex class actions.

LEGISLATION

174. The Plaintiff pleads and relies on the *Class Proceedings Act*, the *Courts of Justice Act*, the *Sale of Goods Act*, the *Consumer Packaging and Labelling Act*, the *Consumer Protection Act*, the *Negligence Act*, the *Competition Act* and other Consumer Protection Legislation.

JURISDICTION AND FORUM

Real and Substantial Connection with Ontario

175. There is a real and substantial connection between the subject matter of this action and the province of Ontario because:

- (a) Defendant Osram Sylvania Ltd. has its head office in Ontario;
 - (b) The Defendants engage in business with residents of Ontario;
 - (c) The Defendants derive substantial revenue from carrying on business in Ontario;
- and

- (d) The damages of Class Members were sustained in Ontario.

176. The Plaintiff proposes that this action be tried in the City of Ottawa, in the Province of Ontario as a proceeding under the *Class Proceedings Act*.

DEFENDANTS' JOINT AND SEVERAL LIABILITY

177. The Plaintiff pleads that by virtue of the acts and omissions described above, the Defendants are liable in damages to himself and to the Class Members and that each Defendant is responsible for the acts and omissions of the other Defendants for the following reasons:

- (a) Each was the agent of the other;
- (b) Each companies' business was operated so that it was inextricably interwoven with the business of the other as set out above;
- (c) Each company entered into a common advertising and business plan to manufacture, market, advertise, promote, label, and sell the Automotive Lighting Products;
- (d) Each owed a duty of care to the other and to each Class Member by virtue of the common business plan to manufacture, market, advertise, promote, label, and sell the Automotive Lighting Products; and
- (e) The Defendants intended that their businesses be run as one global business organization.

178. The Plaintiff and the other Class Members are entitled to legal and equitable relief against the Defendants, including damages, consequential damages, attorneys' fees, costs of suit and other relief as appropriate.

179. The Plaintiff and Class Members are entitled to recover damages and costs of administering the plan to distribute the recovery of the action in accordance with the *Consumer Protection Act*.

SERVICE OUTSIDE ONTARIO

180. The originating process herein may be served outside Ontario, without court order, pursuant to subparagraphs (a), (c), (g), (h) and (p) of Rule 17.02 of the *Rules of Civil Procedure*. Specifically, the originating process herein may be served without court order outside Ontario, in that the claim is:

- (a) In respect of personal property situated in Ontario (rule 17.02(a));
- (b) For the interpretation and enforcement of a contract or other instrument in respect of personal property in Ontario (rule 17.02 (c));
- (c) In respect of a tort committed in Ontario (rule 17.02(g));
- (d) In respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (rule 17.02(h));

- (e) The claim is authorized by statute, the *Competition Act* and the *Consumer Protection Act* (rule 17.02(n)); and

- (f) Against a person carrying on business in Ontario (rule 17.02(p)).

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