

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000507-109

(Class Action)
SUPERIOR COURT

E. LIVERMAN

and

S. VADISH

Petitioners

-vs.-

DEERE & COMPANY, legal person duly incorporated, having its head office at 1 Deere Place, Moline, Illinois, 61265, U.S.A.

and

JOHN DEERE LIMITED, legal person duly incorporated, having its head office at 295 Hunter Road, P.O. Box 1000, Grimsby, Ontario, L3M 4H5

and

TECUMSEH PRODUCTS COMPANY, legal person duly incorporated, having its head office at 100 East Patterson Street, Tecumseh, Michigan, 49286-2041, U.S.A.

and

TECUMSEH PRODUCTS OF CANADA LIMITED, legal person duly incorporated, having its head office at 185 Ashland Ave., P.O. Box 7305 London Station Main, London, Ontario, N5Y 5T1

and

BRIGGS & STRATTON CORPORATION, legal person duly incorporated, having its head office at

12301 West Wirth Street, Wauwatosa,
Wisconsin, 53222-2110, U.S.A.

and

BRIGGS & STRATTON CANADA INC.,
legal person duly incorporated, having its
head office at 6500 Tomken Road,
Mississauga, Ontario, L5T 2E9

and

KAWASAKI MOTORS CORP. USA,
legal person duly incorporated, having its
head office at 9950 Jeronimo Road,
Irvine, California, 92618-2014, U.S.A.

and

**CANADIAN KAWASAKI MOTORS
INC.**, legal person duly incorporated,
having its head office at 101 Thermos
Road, Toronto, Ontario, M1L 4W8

and

MTD PRODUCTS INC., legal person
duly incorporated, having its head office
at 5965 Grafton Road, Valley City, Ohio,
44280-9329, U.S.A.

and

MTD PRODUCTS LTD., legal person
duly incorporated, having its head office
at 97 Kent Ave., Kitchener, Ontario, N2G
3R2

and

THE TORO COMPANY, legal person
duly incorporated, having its head office
at 8111 Lyndale Avenue South,
Bloomington, Minnesota, 55420-1136,
U.S.A.

and

THE TORO COMPANY (CANADA), INC., legal person duly incorporated, having its head office at 44 Chipman Hill, Suite 1000, Saint John, New Brunswick, E2L 4S6

and

AMERICAN HONDA MOTOR COMPANY, INC., legal person duly incorporated, having its head office at 4900 Marconi Drive, Alpharetta, Georgia, 30005-2033, U.S.A.

and

HONDA CANADA INC., legal person duly incorporated, having its head office at 715 Milner Ave., Scarborough, Ontario, M1B 2K8

and

ELECTROLUX HOME PRODUCTS, INC., legal person duly incorporated, having its head office at 18013 Cleveland Parkway, Suite 100, Cleveland, Ohio, 44135-3235, U.S.A.

and

ELECTRULX CANADA CORP., legal person duly incorporated, having its head office at 5855 Terry Fox Way, Mississauga, Ontario, L5V 3E4

and

HUSQVARNA OUTDOOR PRODUCTS, INC., legal person duly incorporated, having its head office at 1030 Stevens Creek Road, Augusta, Georgia, 30907, U.S.A.

and

HUSQVARNA CANADA CORP., legal person duly incorporated, having its head office at 200 Hamford Street, Lachute, Quebec, J8H 4L2

and

KOHLER CO., legal person duly incorporated, having its head office at 444 Highland Drive, Kohler, Wisconsin, 53044, U.S.A.

and

KOHLER CANADA CO., legal person duly incorporated, having its head office at 1959 Upper Water Street, Suite 900, Halifax, Nova Scotia, B3J 2X2

and

SEARS, ROEBUCK AND CO., legal person duly incorporated, having its head office at 3333 Beverly Road B-5 317A, Hoffman Estates, Illinois, 60179-0001, U.S.A.

and

SEARS CANADA INC., legal person duly incorporated, having its head office at 290 Yonge Street, Suite 700, Toronto, Ontario, M5B 2C3

and

PLATINUM EQUITY, LLC, legal person duly incorporated, having its head office at 360 North Crescent Drive, South Building, Beverly Hills, California, 90210, U.S.A.

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 PETITIONERS
STATE AS FOLLOWS:

I. GENERAL PRESENTATION

A) THE ACTION

1. Petitioners wish to institute a class action on behalf of the following group, of which they are members, namely:
 - all residents in Canada who purchased a lawn mower containing a gas combustible engine up to 30 horsepower (“Lawn Mower”), where the Lawn Mower and/or engine of the Lawn Mower was manufactured or sold by the Respondents, since January 1, 1994 through to the present, or any other group to be determined by the Court;

Alternately (or as a subclass)

 - all residents in Quebec who purchased a lawn mower containing a gas combustible engine up to 30 horsepower (“Lawn Mower”), where the Lawn Mower and/or engine of the Lawn Mower was manufactured or sold by the Respondents, since January 1, 1994 through to the present, or any other group to be determined by the Court;
2. Petitioners contend that the Respondents have misrepresented and overstated the horsepower of their Lawn Mowers and Lawn Mower engines to class members;
3. Petitioners further contend that the Respondents have consorted so as to be able to advertise and sell their Lawn Mowers and Lawn Mower engines with a higher horsepower than the true horsepower of said products;
4. By reason of this unlawful conduct, Petitioners and the members of the class:
 - (a) purchased Lawn Mowers that were not as powerful as and did not contain the horsepower that the Respondents had represented to them;

- (b) paid higher prices for their Lawn Mowers than they would have otherwise paid;
- (c) were deprived of the opportunity to make informed purchasing decisions based on truthful information, including not purchasing the Respondents' Lawn Mowers;

B) THE RESPONDENTS

DEERE

- 5. Respondent Deere & Company ("Deere") is an American company. Respondent John Deere Limited ("Deere Canada") is a related company to Deere. These Respondents being collectively referred to as "Deere". Given their close ties, they are all solidarily liable for their acts and omissions of each other;
- 6. During the relevant period, Respondents Deere manufactured, marketed, advertised, sold, and/or distributed Lawn Mowers with engines manufactured by Respondents Briggs & Stratton, Honda, Kawasaki, Kohler to consumers throughout Canada, including the province of Quebec, either directly or indirectly through its predecessors, affiliates, and/or subsidiaries;

TECUMSEH

- 7. Respondent Tecumseh Products Company ("Tecumseh") is an American company. Respondent Tecumseh Products of Canada Limited ("Tecumseh Canada") is a related company to Tecumseh. These Respondents being collectively referred to as "Tecumseh". Given their close ties, they are all solidarily liable for their acts and omissions of each other;
- 8. During the relevant period, Respondents Tecumseh manufactured, marketed, advertised, sold, and/or distributed engines for installation in Lawn Mowers which were in turn sold by Respondents Sears, Electrolux, MTD, and Toro to consumers throughout Canada, including the province of Quebec, either directly or indirectly through its predecessors, affiliates, and/or subsidiaries;

BRIGGS & STRATTON

- 9. Respondent Briggs & Stratton Canada Inc. ("Briggs & Stratton") is an American company. Respondent Briggs & Stratton Canada Inc. ("Briggs & Stratton Canada") is a related company to Briggs & Stratton. These Respondents being collectively referred to as "Briggs & Stratton". Given their

close ties, they are all solidarily liable for their acts and omissions of each other;

10. During the relevant period, Respondents Briggs & Stratton manufactured, marketed, advertised, sold, and/or distributed engines for installation in Lawn Mowers which were in turn sold by Respondents Sears, Electrolux, MTD, Deere, and Toro to consumers throughout Canada, including the province of Quebec, either directly or indirectly through its predecessors, affiliates, and/or subsidiaries;

KAWASAKI

11. Respondent Kawasaki Motors Corp. USA (“Kawasaki”) is an American company. Respondent Canadian Kawasaki Motors Inc. (“Kawasaki Canada”) is a related company to Kawasaki. These Respondents being collectively referred to as “Kawasaki”. Given their close ties, they are all solidarily liable for their acts and omissions of each other;
12. During the relevant period, Respondents Kawasaki manufactured, marketed, advertised, sold, and/or distributed engines for installation in Lawn Mowers which were in turn sold by Respondents Electrolux, MTD, Deere, and Toro to consumers throughout Canada, including the province of Quebec, either directly or indirectly through its predecessors, affiliates, and/or subsidiaries;

MTD

13. Respondent MTD Products Inc. (“MTD”) is an American company. Respondent MTD Products Ltd. (“MTD Canada”) is a related company to MTD. These Respondents being collectively referred to as “MTD”. Given their close ties, they are all solidarily liable for their acts and omissions of each other;
14. During the relevant period, Respondents MTD manufactured, marketed, advertised, sold, and/or distributed Lawn Mowers under the brand names Cub Cadet, Troy Bilt, Yard-Man, Yard Machines, Bolens, and White Outdoor with engines manufactured by Respondents Briggs & Stratton, Honda, Kawasaki, Kohler, and Tecumseh to consumers throughout Canada, including the province of Quebec, either directly or indirectly through its predecessors, affiliates, and/or subsidiaries;

TORO

15. Respondent The Toro Company (“Toro”) is an American company. Respondent The Toro Company (Canada) Inc. (“Toro Canada”) is a related company to Toro. These Respondents being collectively referred to as

“Toro”. Given their close ties, they are all solidarily liable for their acts and omissions of each other;

16. During the relevant period, Respondents Toro manufactured, marketed, advertised, sold, and/or distributed Lawn Mowers under the brand names Toro, Lawn-Boy, and Exmark with engines manufactured by Respondents Briggs & Stratton, Honda, Kawasaki, Kohler, and Tecumseh to consumers throughout Canada, including the province of Quebec, either directly or indirectly through its predecessors, affiliates, and/or subsidiaries;

HONDA

17. Respondent American Honda Motor Company, Inc. (“Honda”) is an American company. Respondent Honda Canada Inc. (“Honda Canada”) is a related company to Honda. These Respondents being collectively referred to as “Honda”. Given their close ties, they are all solidarily liable for their acts and omissions of each other;

18. During the relevant period, Respondents Honda manufactured, marketed, advertised, sold, and/or distributed engines for installation in Lawn Mowers which were in turn sold by Respondents Electrolux, MTD, Deere, and Toro to consumers throughout Canada, including the province of Quebec, either directly or indirectly through its predecessors, affiliates, and/or subsidiaries;

ELECTROLUX

19. Respondent Electrolux Home Products, Inc. (“Electrolux”) is an American company. Respondent Electrolux Canada Corp. (“Electrolux Canada”) is a related company to Electrolux. These Respondents being collectively referred to as “Electrolux”. Given their close ties, they are all solidarily liable for their acts and omissions of each other;

20. During the relevant period, Respondents Electrolux manufactured, marketed, advertised, sold, and/or distributed Lawn Mowers under the brand name American Yard Products to consumers throughout Canada, including the province of Quebec, either directly or indirectly through its predecessors, affiliates, and/or subsidiaries;

21. Electrolux also did business as Husqvarna until June 2006. American Yard Products produced Lawn Mowers under the brand names Poulan, Poulan, Pro, Weed Eater, and Husqvarna with engines manufactured by Respondents Briggs & Stratton, Honda, Kawasaki, Kohler, and Tecumseh;

HUSQVARNA



22. Respondent Husqvarna Outdoor Products, Inc. (“Husqvarna”) is an American company. Respondent Husqvarna Canada Corp. (“Husqvarna Canada”) is a related company to Husqvarna. These Respondents being collectively referred to as “Husqvarna”. Given their close ties, they are all solidarily liable for their acts and omissions of each other;
23. During the relevant period, Respondents Husqvarna manufactured, marketed, advertised, sold, and/or distributed Lawn Mowers under the brand name Poulan, Poulan Pro, Weed Eater, Husqvarna, and Sears’ Craftsman to consumers throughout Canada, including the province of Quebec, either directly or indirectly through its predecessors, affiliates, and/or subsidiaries;

KOHLER

24. Respondent Kohler Co. (“Kohler”) is an American company. Respondent Kohler Canada Co. (“Kohler Canada”) is a related company to Kohler. These Respondents being collectively referred to as “Kohler”. Given their close ties, they are all solidarily liable for their acts and omissions of each other;
25. During the relevant period, Respondents Kohler manufactured, marketed, advertised, sold, and/or distributed engines for installation in Lawn Mowers which were in turn sold by Respondents Electrolux, MTD, Deere, and Toro to consumers throughout Canada, including the province of Quebec, either directly or indirectly through its predecessors, affiliates, and/or subsidiaries;

SEARS

26. Respondent Sears, Roebuck and Co. (“Sears”) is an American company. Respondent Sears Canada Inc. (“Sears Canada”) is a related company to Sears. These Respondents being collectively referred to as “Sears”. Given their close ties, they are all solidarily liable for their acts and omissions of each other;
27. During the relevant period, Respondents Sears manufactured, marketed, advertised, sold, and/or distributed Lawn Mowers under the brand name Craftsman, which were manufactured by Electrolux, to consumers throughout Canada, including the province of Quebec, either directly or indirectly through its predecessors, affiliates, and/or subsidiaries;
28. Craftsman Lawn Mowers contain engines manufactured by Respondents Briggs & Stratton, Honda, Kohler, and Tecumseh;

PLATINUM

29. Respondent Platinum Equity, LLC (“Platinum”) is an American company. Respondent Platinum acquired Respondent Tecumseh’s engine division in 2007.
30. During the relevant period, Respondent Platinum manufactured, marketed, advertised, sold, and/or distributed engines for installation in Lawn Mowers which were in turn sold to consumers throughout Canada, including the province of Quebec, either directly or indirectly through its predecessors, affiliates, and/or subsidiaries;

AGENTS

31. Respondents’ conduct was authorized, ordered, or done by Respondents’ officers, agents, employees, or representatives while actively engaged in the management and operations of the respective Respondents’ business;
32. Each Respondent acted as the principal agent, joint venturer of, or for other Respondents with respect to the acts, violations and common course of conduct as alleged herein;

C) THE SITUATION

BACKGROUND

33. The Respondents manufacture, market, advertise, sell, and/or distribute Lawn Mowers and the engines installed in Lawn Mowers to consumers throughout Canada, including the province of Quebec. The Respondents currently sell nearly six million lawn mowers per year to the public in the United States;
34. The Respondents have used the unit of horsepower to label, categorize, and market their Lawn Mowers and engines. The higher the horsepower, the more power the engine produces. The more horsepower generated by a Lawn Mower’s engine, the better and faster the lawn mower is able to perform;
35. The Respondents market and offer for sale at higher prices lawn mowers labelled or otherwise advertised with higher horsepower. The higher the horsepower, the higher the price the Respondents charge. Consumers pay more for lawn mowers labelled or otherwise represented by the Respondents as producing a higher horsepower;
36. The horsepower of a lawn mower is a material fact which is very important to a consumer and is the type of information upon which a buyer would be expected to rely upon in making a decision to purchase. Statements of

horsepower are factual representations that are likely to affect the lawn mower purchasing decisions or conduct of consumers;

RESPONDENTS' MISREPRESENTATION OF HORSEPOWER

37. The horsepower purportedly generated by the Respondents' Lawn Mowers is identified as a number on labels located on the Lawn Mowers or on the Lawn Mowers engines, and/or in the Respondents other advertising, including packaging materials, owner's manual, materials distributed with the Respondents' Lawn Mowers, Respondents' websites, and point-of-sale and other promotional materials disseminated or caused to be disseminated by or on behalf of the Respondents to the public throughout Canada, including the province of Quebec;
38. The Respondents have knowingly misrepresented and significantly overstated the horsepower of their Lawn Mowers and Lawn Mower engines. In fact, the true horsepower of Respondents Lawn Mowers and engines is significantly less than that which they have represented to the public;
39. In addition, the Respondents knowingly advertise, market, and sell engines with varying horsepower ratings and labels, thereby representing that these engines are different. In fact, these engines are identical on the basis of horsepower. The Respondents sell these identical, but differently and misleadingly labelled, engines at different prices – higher prices for engines which purport to have higher horsepower;
40. Since at least 1997, in the United States, small engine manufacturers have been required under the Federal Clean Air Act and the California Clean Air Act to submit the maximum horsepower ratings of their lawn mowers to the Environmental Protection Agency ("EPA") and the California Air Resources Board ("CARB"), respectively. The Respondents have reported the horsepower ratings of their engines to these governmental authorities at significantly lower than the inflated, false, misleading, and deceptive horsepower that they have represented in advertising, marketing, and selling of the Respondents' Lawn Mower engines;
41. For example, Respondent Tecumseh reported to the EPA that its LV195 lawn mower engine produces 3.67 horsepower, yet Tecumseh represented to the consuming public, on labels and elsewhere, that the same engine produces 6.75 horsepower – an overstatement of approximately 84%. Similarly, Briggs & Stratton reported to the EPA that its Model 125k lawn mower engine produces 3.6 horsepower, yet Briggs & Stratton represented to the consuming public, on labels and elsewhere, that the same engine produces 6.75 horsepower – an overstatement of approximately 88%;



42. The Respondents know that each others Lawn Mower engines do not produce the horsepower that is being represented. The Respondents have routinely tested other of the Respondents' engines and are aware that the other Respondents also misrepresent the horsepower of their engines. The Respondents have agreed between themselves to conceal, suppress, and fail to reveal other Respondents' misrepresentations and omissions relating to the horsepower of their Lawn Mowers and engines;

The Power Labeling Task Force

43. Respondents Deere, Tecumseh, Briggs & Stratton, Kawasaki, MTD, Toro, Honda, Electrolux, and Kohler are all members in a group called the "Power Labeling Task Force", which provides the Respondents with the means, opportunity, and cover to meet, discuss, conspire, conceal, and further their false and misleading horsepower representations;

The Outdoor Power Equipment Institute ("OPEI")

44. On or about 2001, members of the Power Labeling Task Force were able to have the OPEI place a "disclaimer" on their website entitled "Understanding Horsepower", which only helps to further mislead the public about the nature and understanding of horsepower rating information. The website attempts to justify the lower horsepower output of the Lawn Mowers by blaming it on outdoor weather conditions, such as heat, altitude, and humidity;

The Creation of and Amendment to SAE J1940

45. The Society of Automotive Engineers ("SAE") is an automotive industry organization that creates and publishes engineering standards that are voluntarily followed by manufacturers. Standards are promulgated through committees that include industry members. During the class period, Respondents Briggs & Stratton, Kohler, Tecumseh, Kawasaki, and Honda were members of the SAE Small Engine & Power Equipment Committee, responsible for lawn mower engines;

46. In the late 1980s, the Respondents were instrumental in having the SAE implement a "labelling standard" called "SAE J1940". This labelling standard was an attempt to give the Respondents a purportedly legitimate reason for labelling their engines with a horsepower representation different than what their test results achieved;

47. On or about 2000, the Power Labeling Task Force instructed its members, who were also members of the SAE Small Engine & Power Equipment Committee, to recommend that revisions to SAE J1940 be made to further conceal the Respondents' horsepower misrepresentations. The Power Labeling Task Force succeeded in having the SAE J1940 labelling standard

amended to allow for a “fudge factor” of up to 15% to be added to horsepower labels;

The Creation of SAE J1995

48. On or about 1990, several Respondents caused to be created, published, and disseminated SAE J1995, which is a “gross” horsepower testing protocol. “Gross” horsepower is the theoretical horsepower that an engine could achieve under ideal laboratory conditions with all of the legally required accessories removed from the engine, such as the air filter and exhaust mechanism. This was an entirely new definition of horsepower for lawn mowers and lawn mowers engines that is deceptive to consumers. Prior to 1990, Respondents used the “net” horsepower, which is the horsepower used in other industries, such as the auto industry;
49. “Gross” horsepower is inherently deceptive because by removing the necessary components, such as an exhaust system and air filters, which drain an engine of power, a higher horsepower can be achieved in a laboratory than in the actual field. However, no consumer will ever use a lawn mower without an exhaust, air filter, and all of the other necessary parts of an engine and which are also legal requirements for such products;
50. Throughout the class period, the Respondents labelled their engines with “gross” horsepower. In labelling their engines, the Respondents did not disclose to consumers what “gross” horsepower meant and certainly never disclosed that the horsepower that they use to label their engines differs from the horsepower used by other industries, such as the automobile industry;

Torque Power

51. Starting in 2007, several Respondents, including MTD and Briggs & Stratton, began labelling their Lawn Mowers engines with “torque”. Respondents point to the amended SAEJ1940 standard as the authority that allows them to label with “torque”, despite the fact that engineers assert that “torque” is not an appropriate quantifier of power and should not be used in power labelling. This technique is further confusing and misleading to consumers;

The Eagle Group

52. Respondents Briggs & Stratton, Kohler, and Tecumseh formed a private group called the “Eagle Group” to discuss common issues facing their companies. The Eagle group provides the means and opportunity to discuss horsepower overstatement and proposed means to conceal their misrepresentations;

Craftsman



53. Respondents Briggs & Stratton, Kohler, and Electrolux produce engines for Sears' Lawn Mowers sold under the brand Craftsman. During the class period, Sears sold the Craftsman Lawn Mowers with a purported higher horsepower than other brands on the market with the identical engine horsepower as other of the Respondents Lawn Mowers;

D) THE FOREIGN PROCEDURES

54. Several class action have been instituted in the United States based on the Respondents' conduct, the whole as appears more fully from a copy of said complaints, produced herein *en liasse* as **Exhibit R-1**;

55. The Canadian subsidiaries and/or related companies of the foreign Respondents participated in the conduct as alleged herein and received instructions from their respective parent and/or related companies, thereby acting as agents and are therefore liable for such acts;

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

Liverman

56. Petitioner purchased in Quebec a Tecumseh Lawn Mower, model number 12B 443F 500 (CD00207 ON), which indicated on the machine that it had a 4.5 horsepower engine, on or about June 2007;

57. Petitioner sincerely believed when he bought his Lawn Mower that he was paying a price which was reflective of the actual horsepower of the machine;

58. Due to the Respondents' conduct, Petitioner did not receive the benefit of his bargain, in that he did not receive a Lawn Mower that was as powerful as, and did not contain the horsepower, that was represented by the Respondent;

59. Petitioner would not have paid such a high price, which was inflated due to the Respondents' conduct, had he known the true horsepower of the Lawn Mower;

60. Petitioner would have chosen to do business with another company that did not falsely misrepresent the horsepower of their Lawn Mowers;

61. The conduct of the Respondents was not known to the Petitioner at the time that he purchased his Lawn Mower, nor could it have been discovered, even through the exercise of reasonable diligence;

62. Petitioner has since discovered that this situation is similar to that which has taken place in the United States and, further, that several class actions have been instituted in relation to this issue;

63. Petitioner's damages are a direct and proximate result of the Respondents' conduct;

64. In consequence of the foregoing, Petitioner is justified in claiming damages;

Vadish

65. Petitioner purchased in Quebec a Yard King Lawn Mower, model number 961470005, with an engine made by Briggs & Stratton, which indicated on the machine that it had a 5.5 horsepower engine, on or about June 2009;

66. Petitioner sincerely believed when he bought his Lawn Mower that he was paying a price which was reflective of the actual horsepower of the machine;

67. Due to the Respondents' conduct, Petitioner did not receive the benefit of his bargain, in that he did not receive a Lawn Mower that was as powerful as, and did not contain the horsepower, that was represented by the Respondent;

68. Petitioner would not have paid such a high price, which was inflated due to the Respondents' conduct, had he known the true horsepower of his Lawn Mower;

69. Petitioner would have chosen to do business with another company that did not falsely misrepresent the horsepower of their Lawn Mowers;

70. The conduct of the Respondents was not known to the Petitioner at the time that he purchased his Lawn Mower, nor could it have been discovered, even through the exercise of reasonable diligence;

71. Petitioner has since discovered that this situation is similar to that which has taken place in the United States and, further, that several class actions have been instituted in relation to this issue;

72. Petitioner's damages are a direct and proximate result of the Respondents' conduct;

73. 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

28. Every member of the class purchased a lawn mower containing a gas combustible engine up to 30 horsepower which had an engine manufactured or sold by one of the Respondents;
29. Each member of the class has paid an artificially inflated price for their Lawn Mowers, received a Lawn Mower with a horsepower which was substantially lower than that which was represented to them, and were deprived of their right to make an informed purchase decision including the possibility of doing business with another company;
30. All of the damages to the class members are a direct and proximate result of the Respondents' conduct;
31. In consequence of the foregoing, members of the class are justified in claiming damages;
32. As a result of their unlawful conduct, the Respondents have knowingly realized substantial revenues from the sales of their Lawn Mowers and engines and have, therefore, been unjustly enriched by their ill-gotten gains;

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
33. Lawn Mowers and Lawn Mower engines are in of widespread use in Quebec and Canada;
34. Petitioners are unaware of the specific number of persons who purchased these Lawn Mowers, however, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands);
35. Class members are numerous and are scattered across the entire province and country;
36. 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, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of Respondents would increase delay and expense to all parties and to the court system;
37. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having



contradictory judgements on questions of fact and law that are similar or related to all members of the class;

38. 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;
39. 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 Petitioners wish to have adjudicated upon by this class action
40. Individual questions, if any, pale by comparison to the numerous common questions that predominate;
41. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;
42. The recourses of the members raise identical, similar or related questions of fact or law, namely:
 - a. Did the Respondents misrepresent to class members the horsepower produced by the engines in the Lawn Mowers that they manufactured and/or sold?
 - b. Did the Respondents conceal, suppress, and/or fail to disclose to class members truthful information concerning the horsepower produced by the engines in the Lawn Mowers that they manufactured and/or sold?
 - c. Did the Respondents purposefully and/or negligently make any misrepresentations and/or omissions of material facts to class members concerning the horsepower produced by the engines in the Lawn Mowers that they manufactured and/or sold?
 - d. Did the Respondents advertise and sell Lawn Mowers containing identical engines as different products at different prices (higher prices for higher represented horsepower) without disclosing the fact that the engines contained in such products were identical?
 - e. Did the Respondents' conduct have the effect of fixing, raising, maintaining, or stabilizing the prices of the Lawn Mowers?



- f. Did the Respondents' conduct cause the prices of the Lawn Mowers to be sold at artificially inflated levels?
 - g. Were members of the class prejudiced by the Respondents' conduct, and, if so, what is the appropriate measure of these damages?
 - h. Are members of the class entitled to, among other remedies, injunctive relief, and, if so, what is the nature and extent of such injunctive relief?
 - i. Are the Respondents liable to pay compensatory, moral, punitive and/or exemplary damages to member of the class, and, if so, in what amount?
43. The interests of justice favour that this motion be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

44. The action that the Petitioners wish to institute on behalf of the members of the class is an action in damages;
45. The conclusions that the Petitioners wishes to introduce by way of a motion to institute proceedings are:

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

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

ORDER the Defendants to permanently cease from engaging in the unlawful acts and practices alleged herein;

ORDER the Defendants to permanently cease from continuing, maintaining, or renewing the combinations, agreement, understanding or concert of action, or adopting any practice, plan, program, or design having a similar purpose or effect in restraining competition;

ORDER the Defendants to permanently cease from misrepresenting to the consuming public any power ratings regarding their Lawn Mowers or engines;

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

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

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

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

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

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

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

46. Petitioners are members of the class;

47. Petitioners are ready and available to manage and direct the present action in the interest of the members of the class that they wish to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec and the *Fonds d'aide aux recours collectifs*, as the case may be, and to collaborate with his attorneys;

48. Petitioners have the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;

49. Petitioners have given the mandate to their attorneys to obtain all relevant information with respect to the present action and intend to keep informed of all developments;

50. Petitioners, with the assistance of their attorneys, are 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;

51. Petitioners are in good faith and have instituted this action for the sole goal

of having their rights, as well as the rights of other class members, recognized and protecting so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;

52. Petitioners understand the nature of the action;

53. Petitioners' interests are not antagonistic to those of other members of the class;

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

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

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

56. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

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

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

- all residents in Canada who purchased a lawn mower containing a gas combustible engine up to 30 horsepower ("Lawn Mower"), where the Lawn Mower and/or engine of the Lawn Mower was manufactured or sold by the Respondents, since January 1, 1994 through to the present, or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who purchased a lawn mower containing a gas combustible engine up to 30 horsepower ("Lawn Mower"), where the Lawn Mower and/or engine of the Lawn Mower was manufactured or sold by the Respondents, since January 1, 1994 through to the present, 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 misrepresent to class members the horsepower produced by the engines in the Lawn Mowers that they manufactured and/or sold?
- b. Did the Respondents conceal, suppress, and/or fail to disclose to class members truthful information concerning the horsepower produced by the engines in the Lawn Mowers that they manufactured and/or sold?
- c. Did the Respondents purposefully and/or negligently make any misrepresentations and/or omissions of material facts to class members concerning the horsepower produced by the engines in the Lawn Mowers that they manufactured and/or sold?
- d. Did the Respondents advertise and sell Lawn Mowers containing identical engines as different products at different prices (higher prices for higher represented horsepower) without disclosing the fact that the engines contained in such products were identical?
- e. Did the Respondents' conduct have the effect of fixing, raising, maintaining, or stabilizing the prices of the Lawn Mowers?
- f. Did the Respondents' conduct cause the prices of the Lawn Mowers to be sold at artificially inflated levels?
- g. Were members of the class prejudiced by the Respondents' conduct, and, if so, what is the appropriate measure of these damages?
- h. Are members of the class entitled to, among other remedies, injunctive relief, and, if so, what is the nature and extent of such injunctive relief?
- i. Are the Respondents liable to pay compensatory, moral, punitive and/or exemplary damages to member of the class, and, if so, in what amount?

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

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

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

ORDER the Defendants to permanently cease from engaging in the unlawful acts and practices alleged herein;

ORDER the Defendants to permanently cease from continuing, maintaining, or renewing the combinations, agreement, understanding or concert of action, or adopting any practice, plan, program, or design having a similar purpose or effect in restraining competition;

ORDER the Defendants to permanently cease from misrepresenting to the consuming public any power ratings regarding their Lawn Mowers or engines;

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

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

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

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

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

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

DECLARE that all members of the class that have not requested their exclusion, be bound by any judgement 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 judgement to be rendered herein;

ORDER the publication of a notice to the members of the class in accordance with article 1006 C.C.P. within sixty (60) days from the judgement to be rendered herein in LA PRESSE and the NATIONAL POST;

ORDER that said notice be available on the various Respondents' various websites with a link stating "Notice to Lawn Mower users";

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 publications fees.

Montreal, May 3, 2010

Me Jeff Orenstein
CONSUMER LAW GROUP INC.
Attorneys for the Petitioner