



S-190672

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

VICTOR CARDOSO

PLAINTIFF

AND:

CANADA DRY MOTT'S INC.

DEFENDANT

Brought under the *Class Proceedings Act*, RSBC 1996, c 50

NOTICE OF CIVIL CLAIM

Name and Address of each Plaintiff

Victor Cardoso
c/o Boughton Law Corporation
700 – 595 Burrard Street
Vancouver, BC V7X 1S8

Name and Address of each Defendant

Canada Dry Mott's Inc.
Suite 600 - 30 Eglinton Avenue West
Mississauga, Ontario, L5R 3E7

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

PART 1 STATEMENT OF FACTS

The Representative Plaintiff

1. The Plaintiff, Victor Cardoso, is an individual resident of British Columbia. Mr Cardoso makes this claim on his own behalf and on behalf of the Class (defined herein), pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50 (the "*CPA*").

The Defendant

2. The Defendant is a corporation duly incorporated pursuant to the laws of Ontario, Canada and has a registered and records office located at Suite 600 - 30 Eglinton, Avenue West, Mississauga, Ontario, L5R 3E7

Class Definition

3. The class is defined as:

Class members consist of the Plaintiff and all British Columbian resident persons who purchased any Canada Dry Ginger Ale product marketed as "Made from Real Ginger"

(hereinafter referred to as the "Class")

or any other Class to be determined by the Court.

Nature of Claim

4. The Defendant produces, markets, distributes and sells their Canada Dry Ginger Ale products to the Plaintiff and Class as being "*Made from Real Ginger*" and that statement is false because ginger is a plant and there is no ginger in Canada Dry Ginger Ale.

5. The Defendant's internal documents demonstrate that they used the false representation that their Canada Dry Ginger Ale was "*Made from Real Ginger*" in an effort to capitalize on the health benefits associated with the consumption of ginger.

6. The Plaintiff and the Class believed that the Defendant's health claims were true, and that Canada Dry Ginger Ale was "natural " and "*Made from Real Ginger*" due to the misrepresentations made by the Defendant on its' beverage containers, television commercials and website.

7. The Plaintiff over the past several years has on a monthly basis purchased Canada Dry Ginger Ale for himself, and his family, based on his belief in the misrepresentations that were made by the Defendant.

8. The Plaintiff consistently purchased Canada Dry Ginger Ale over competing products in the marketplace, and at times paid a premium, due to his believe that it was "*Made from Real Ginger*" and was a premium product that had medicinal benefits.

PART 2 RELIEF SOUGHT

1. The Plaintiff, on its own behalf, and on behalf of the Class, seeks the following orders:
 - (a) An order pursuant to the *CPA* certifying this action as a class proceeding against the Defendant and appointing the Plaintiff as the named representative of the Class;
 - (b) A declaration that the Defendant breached the contract as between the Plaintiff and the Class;
 - (c) A declaration that the Defendant breached a duty of care it owed to the Plaintiff and the Class;
 - (d) A declaration that the Defendant breached ss.4 and 8 of the *Business Practises and Consumer Protection Act*, S.B.C. 2004;
 - (e) A declaration that the Defendant breached ss.36, 52 and 74 of the *Competition Act*, RSC 1985 C-34 and is liable to pay damages and the investigation costs;
 - (f) An award of damages in an amount to be proven at trial comprised of one or more of the following:
 - (i) General damages;
 - (ii) Special damages; and
 - (iii) Punitive damages;
 - (g) An order directing an aggregate monetary award pursuant to section 29 of the *CPA*;
 - (h) An order allowing for the use of standard proof of claim forms or other documentary evidence that minimizes the burden on the Class or specifying such other procedures pursuant to section 32 of the *CPA*;
 - (i) An order all awarded damages be paid by the Defendant into a common fund and distributed to the Class in an appropriate manner, as directed by the court;

- (j) Pre-judgment interest and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996 c 79.
- (k) Costs of this action , including the costs of investigation and prosecution, on a full indemnity basis;
- (l) Costs of administering the plan of distribution of the recovery in this action; and
- (m) such further and other relief as this Honourable Court may deem just and appropriate in the circumstances.

PART 3 LEGAL BASIS

Breach of Contract

1. Pursuant to the facts described in paragraphs 4-8 of Part 2, the Defendant entered into a contract with each member of the Class, which included an implied term that the representations stating that Canada Dry Ginger Ale was "*Made from Real Ginger*" was true and formed part of the contractual relationship between the Defendant and the Class. In fact, Canada Dry Ginger Ale is not "*Made from Real Ginger*," which constitutes a breach of contract. The Plaintiff and Class has suffered damages as a result of the breach of contract.

Fraudulent Misrepresentation / Negligence

2. Pursuant to the facts described in paragraphs 4-8 of Part 2, the Defendant's reckless and negligent actions, misrepresentations and omissions caused damages to the Plaintiff and Class. The Defendant owed a duty of care to be accurate in its description of the contents of Canada Dry Ginger Ale, and breached the standard of care by stating that Canada Dry Ginger Ale was "*Made from Real Ginger*." The consequences of this misrepresentation, resulted in the Plaintiff and the Class, purchasing Canada Dry Ginger due to a false belief in the contents of the product, which has caused damages to the Plaintiff and the Class, all of which was foreseeable.

Breach of the *Business Practices and Consumer Protection Act*, S.B.C. 2004 (the "*BPCPA*")

3. The Plaintiff and Class purchased Canada Dry Ginger Ale, which falls within the definition of consumer "goods" within the meaning of s.1 of the *BPCPA*.

4. The Plaintiff and Class are a "consumer" within the meaning of s.1 of the *BPCPA*.
5. The Defendant is a "supplier" within the meaning of s.1 of the *BPCPA*.
6. The purchase of Canada Dry Ginger Ale by the Plaintiff and the Class is a "consumer transaction" within the meaning of s.1 of the *BPCPA*.
7. In the course of their business, the Defendant wilfully failed to disclose and actively concealed the fact that Canada Dry Ginger Ale was not "*Made from Real Ginger*" and intentionally falsely advertised that Canada Dry Ginger Ale was "*Made from Real Ginger*," which was an unlawful trade practise employing deception and concealment, of a material fact, with the intention that the Plaintiff and Class would rely upon the false representation in their decision making process to purchase Canada Dry Ginger Ale.
8. The Defendant knew, or ought to have known, that the false representation violated the *BPCPA*.
9. The Plaintiff and the Class suffered ascertainable loss as a result of the Defendant's breach of s.4 and s.8 of the *BPCPA*.

Breach of the *Competition Act*, RSC 1985 C-34 (the "*Competition Act*")

10. The Defendant, as a result of their conduct, are liable under ss. 36, 52 and 74 of the *Competition Act*, for knowingly or recklessly making representations to the Plaintiff and the Class, that were false or misleading in a material respect.
11. The Defendant, by making the misrepresentations to the public, as alleged herein, breached s.52 of the *Competition Act*, and thereby committed an unlawful act because the misrepresentations were:
 - (a) made for the purpose of promoting the business interests of the Defendant;
 - (b) made to the public; and

(c) were false and misleading in a material respect.

12. The Plaintiff and the Class suffered damages, as a result of the Defendant's unlawful breach of sections 52 and 74 of the *Competition Act*, and seek compensation for those damages, as well as, the costs of investigation pursuant to s.36 of the *Competition Act*.

Plaintiff's address for service: Boughton Law Corporation
700 – 595 Burrard Street
P.O. Box 49290
Vancouver, BC V7X 1S8
ATTN: Mark C. Canofari


Fax number address for service (if any): 604-683-5317

E-mail address for service (if any): N/A

Place of trial: Vancouver, BC

The address of the registry is: 800 Smithe Street
Vancouver, BC V6Z 2E1

Dated: January 21, 2019



Signature of Lawyer for Plaintiff

Mark C. Canofari

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

- (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
- (ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

PART 1 CONCISE SUMMARY OF NATURE OF CLAIM:

This claim is a class action involving the unauthorized disclosure and theft of personal information as a result of the Defendants' breach of contract, breach of statutory duties and negligence.

PART 2 THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

PART 3 THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

PART 4

1. *Class Proceedings Act*, RSBC 1996, c 50
2. *Competition Act*, RSC 1985 C-34
3. *Business Practices and Consumer Protection Act*, S.B.C. 2004
4. *Court Order Interest Act*, RSBC 1996, c 79
5. *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003 c 28

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Plaintiff and the Class claim to serve this pleading on the Defendant outside British Columbia on the ground that there is a real and substantial connection between British Columbia and the facts alleged in this proceeding pursuant to Section 10 of the *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003 c 28, because this proceeding:

10(e)(i) concerns contractual obligations that, to a substantial extent were to be performed in British Columbia;

10(e)(iii) concerns contractual obligations and the contract is for the purchase of the property, services or both, for use other than in the course of the purchaser's trade or profession and resulted from a solicitation of business in British Columbia by or on behalf of the seller;

10(g) concerns a tort committed in British Columbia;

10(h) concerns a business carried on in British Columbia; and

10(i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.