

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
N° : 500-06-001093-208

(Class Actions Chamber)
SUPERIOR COURT

JOANNE PICARD

Applicant

v.

IRONMAN CANADA INC., legal person
having an elected domicile at 26E-1501,
McGill College Avenue, Montreal, province
of Quebec, H3A 3N9, district of Montreal;

and

WORLD TRIATHLON CORPORATION,
legal person having its head office at 3407,
West Dr. Martin Luther King Jr. Blvd, Suite
100, Tampa, Florida, 33607, United States
of America;

Defendants

**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO
APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF**
(Sections 574 and following *C.c.p.*)

**TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING
IN AND FOR THE DISTRICT OF MONTREAL, THE APPLICANT STATES AS
FOLLOWS :**

I. INTRODUCTION

1. The Applicant wishes to institute a class action on behalf of the following Class, of which she is herself a member, namely :

« All persons who have registered and paid to participate in the IRONMAN 5i50 and Sprint Mont-Tremblant 2020, the IRONMAN 70.3 Mont-Tremblant 2020 and the IRONMAN Mont-Tremblant 2020 triathlon, all of which were canceled or postponed without possibility of reimbursement »

(hereinafter referred to as the "**Class**")

or any other Class to be determined by the Court;

II. THE PARTIES

2. The Applicant is a consumer within the definition provided for by the *Consumer Protection Act* (hereinafter the "**C.P.A.**") and the *Civil Code of Quebec* (hereinafter the "**C.C.Q.**");
3. The Defendants are both merchants within the definition provided for by the C.P.A.;
4. The defendant Ironman Canada Inc. operates in the fields of entertainment and leisure services under the IRONMAN brand in Quebec, and is an entity affiliated with the defendant World Triathlon Corporation, as it appears from an extract of the *Registraire des entreprises* and an extract of the Defendants' website www.ironman.com, *en liaison*, produced herein as Exhibit **P-1**;
5. The defendant World Triathlon Corporation owns, operates and organizes multi-disciplinary races across the world using its IRONMAN brand, including the IRONMAN 5i50 and Sprint Mont-Tremblant, the IRONMAN 70.3 Mont-Tremblant and the IRONMAN Mont-Tremblant triathlon in Mont-Tremblant (hereinafter the "**Events**");

III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT

6. On August 21st, 2019, the Applicant registered and paid to participate in the

IRONMAN Mont-Tremblant triathlon set to take place on August 23rd, 2020 (hereinafter the “**Event**”) for the amount of \$900.21, as evidenced by the receipt from that order, produced herein as Exhibit **P-2**;

7. On or around March 11th, 2020, the World Health Organization declared the COVID-19 crisis to be a global pandemic;
8. On or around March 13th, 2020, the Government of Quebec declared a state of health emergency in the province, as it appears from the decree of March 13th, 2020, produced herein as Exhibit **P-3**;
9. On April 10th, 2020, the Government of Quebec requested the cancellation of all festivals as well as public sporting and cultural events until August 31st, 2020, as it appears from an extract from Services Quebec’s website, produced herein as Exhibit **P-4**;
10. On April 20th, 2020, the Applicant learned that the Event would not be held this year due to the COVID-19 pandemic, as it appears from the email of April 20th, 2020, produced herein as Exhibit **P-5**;
11. On the same day, the Applicant contacted the IRONMAN Mont-Tremblant Team to inquire about the terms of reimbursement for her registration, in accordance with the terms and conditions found on the website www.active.com, as it appears from the email of April 20th, 2020 and the document entitled "Terms of Use", *en liasse*, produced herein as Exhibit **P-6**;
12. On June 19th, 2020, the Applicant was informed of the various options available to her following the cancellation of the Event, namely a free transfer to one of the other IRONMAN events to take place in the United States later in 2020, or an automatic postponement of her registration for the following IRONMAN Mont-Tremblant triathlon set to take place on August 22nd, 2021, as it appears from the email of June 19th, 2020, produced herein as Exhibit **P-7**;
13. On August 17th, 2020, the Applicant contacted the IRONMAN Mont-Tremblant Team once again to request a full refund of her registration fees, but was informed that the Defendants were unable to offer her a refund, such as it appears from the exchange of emails, produced herein as Exhibit **P-8**;

14. On July 24th, 2020, the Applicant received an email informing her of the cancellation of her registration for the Event, as it appears from the email of July 24th, 2020, produced herein as Exhibit **P-9**;
15. In August 2020, the Applicant contacted the Office de la protection du consommateur, which informed her that the Defendants' actions were prohibited under section 16 of the C.P.A.;
16. The Applicant then contacted her undersigned lawyer in order to initiate the present class action, still not having been reimbursed by the Defendants nearly 5 months later;
17. Since April 2020, the Applicant has spent a considerable number of hours communicating with various people in order to obtain reimbursement for her registration fees, as it appears from Exhibits P-5 through P-8;
18. The Applicant would not have registered for the Event had she known that the Defendants would illegally withhold her money in this manner in the outcome of the Event's postponement or cancellation;
19. The Applicant has suffered and continues to suffer significant financial damages and stress as a result of the Defendants' unlawful and abusive refusal to provide reimbursement for her registration fees;
20. The Applicant is however entitled to a full reimbursement of her registration fees for the Event which was not ultimately held on the date initially scheduled at the time of registration;
21. The damages suffered by the Applicant are directly linked to the violations committed by the Defendants;
22. The Applicant is therefore entitled to a full refund of the registration fees paid for the Events;
23. The Applicant is also justified to claim punitive damages since the Defendants have adopted a lax and passive attitude, and have exhibited a behavior of ignorance, recklessness or serious neglect with regard to her rights and those of the other Class members;

24. The punitive damages provided for in section 272 of the C.P.A. have a preventive objective, namely to discourage the repetition of such undesirable conduct;
25. The attitude of the Defendants shows that they are more concerned with their income than with the rights of their customers, who are already going through stressful times due to the pandemic;
26. The Class members paid significant fees to participate in the Events in 2020, which were to be used to cover the operational costs of these Events;
27. However, since the Events were not ultimately held in 2020, the Defendants did not have to bear any such costs;
28. According to the Mont-Tremblant website, the Events host more than 7,400 participants, as it appears from extracts from said website, *en liasse*, produced herein as Exhibit **P-10**;
29. It is likely that the Defendants generated an income of several million dollars by withholding the fees paid by the members of the Class without justification or legal basis;
30. Moreover, the Defendants had and still have the means and the liquid assets to reimburse the Applicant and the other members of the Class, taking into account the public order requirement provided for in section 256 of the C.P.A., but they refuse or neglect to do so, thus illegally withholding the Class members' money;
31. As a result, the Defendants were unjustly enriched by their unlawful conduct;

IV. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH CLASS MEMBER

32. The causes of action and the legal bases of the recourses of each Class member against the Defendants are essentially the same as those of the Applicant;
33. Each Class member has registered for Events scheduled to take place in 2020, which were ultimately cancelled or postponed due to the pandemic, as it appears from extracts from the defendant's website, produced herein as Exhibit **P-11**;
34. No Class member has obtained reimbursement for their registration fees for the Events set in 2020;

35. Each Class member is therefore entitled to request a full refund of the registration fees paid for these Events, which were not held on the date initially scheduled at the time of registration;
36. The Class members would not have registered to participate in these Events had they known that they would not be reimbursed in full in the outcome of the Events' cancellation or postponement;
37. Moreover, several Class members will be unable or unwilling to participate in another IRONMAN event set in the United States and bear the additional transportation and accommodation costs;
38. Several Class members have also actively taken steps in order to obtain reimbursement, which however proved to be unsuccessful, similarly to those taken by the Applicant;
39. The Defendants are not justified to force the Class members to suffer financial damages as a result of the postponement or cancellation of the Events;
40. The violations committed by the Defendants against the Class members are the same as those committed against the Applicant, which are detailed above;
41. The illegal actions of the Defendants have caused and will continue to cause financial damages and significant stress to the Class members;
42. Each Class member is therefore entitled to request reimbursement for their Events registration fees, in addition to punitive damages;
43. Consequently, each Class member has a common interest in demonstrating the violations committed by the Defendants and in requesting restitution and punitive damages in accordance with the law;
44. The Applicant is not, however, in a position to assess the overall amount of the damages suffered by all Class members, since the required information and financial data is presumably in the possession of the Defendants;

V. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION

A. Identical, similar or related questions of fact or law connecting each Class member to the Defendants and which the Applicant intends to have decided by the class action

45. The identical, similar or related questions of fact or law connecting each Class member to the Defendants and which the Applicant intends to have decided by the class action are as follows :

- A. Are the Class members entitled to reimbursement for the registration fees paid to participate in the 2020 IRONMAN 5i50 and Sprint Mont-Tremblant, the 2020 IRONMAN 70.3 Mont-Tremblant and the 2020 IRONMAN Mont-Tremblant Triathlon?
- B. Have the Defendants violated any of their obligations imposed by the *Consumer Protection Act* and/or the *Civil Code of Quebec*?
- C. Are Class members entitled to punitive damages, and if so, how much is each Class member entitled to?

46. The proof of the violations alleged against the Defendants will undoubtedly benefit all Class members;

47. It is therefore opportune to authorize the present class action on behalf of the Class members;

B. The facts alleged appear to justify the conclusions sought

48. The facts alleged generate liability on the part of the Defendants;

49. The damages suffered by the Applicant and the Class members were caused by the negligence of the Defendants to fully reimburse the registration fees paid for the Events set to take place in 2020;

50. As a consequence of the violations committed by the Defendants, the Applicant and the Class members have suffered and continue to suffer damages;

51. The conclusions sought aim to grant each Class member the reimbursement of their registration fees as well as punitive damages to compensate the prejudice suffered as a result of the Defendants' violation of contractual and statutory obligations, notably those imposed by sections 16 and 40 of the C.P.A., as well as sections 1458, 1694, 2125 and 2129 of the C.C.Q.;
52. They also seek to condemn the Defendants to punitive damages in light of their unlawful and reckless conduct;

C. The composition of the Class makes it difficult or impracticable to apply sections 91 or 143 of the C.C.P.

53. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings for the reasons explained below;
54. The Applicant does not know the exact amount of Class members, but estimates it at several thousands;
55. However, the Applicant does not know the identity or the contact information of all these victims;
56. As a result, it is impossible and impracticable for the Applicant to identify and contact each of the Class members to join them in a single action;
57. It would be equally impossible and impracticable for the Applicant to obtain a mandate or a power of attorney from each Class member;
58. It would also be impractical and contrary to the interests of a sound administration of justice as well as the spirit of the *Code of Civil Procedure* (hereinafter the "C.C.P.") for each Class member to bring individual actions against the Defendants;
59. Indeed, the cost of such individual actions for each Class member would be disproportionate in comparison to the amount of the claims;
60. Thus, a class action is the most appropriate procedural vehicle to allow each Class member to make their claims arising from the facts alleged in the present request;

61. The choice to bring a class action also makes it possible to avoid a multiplication of potentially contradictory judgments on identical questions of fact or law;

D. The Applicant is able to ensure adequate representation of the Class members

62. The Applicant is able to ensure adequate representation of the Class members and therefore requests that the status of representative plaintiff be granted to her for the reasons below;

63. The Applicant is a Class member and has personal interests in seeking the conclusions sought;

64. The Applicant is competent, in that she would have had the potential to be the mandatory of the action had it proceeded under section 91 of the C.C.P.;

65. There is no conflict between the interests of the Applicant and those of the Class members;

66. The Applicant has an excellent knowledge of the case;

67. The Applicant has taken steps to initiate the present proceedings, after having contacted the Office de la protection du consommateur, with the sole aim of asserting her rights and those of the Class members, so that they be compensated for the damages they have suffered and continue to suffer;

68. The Applicant has tried personally and through her lawyer to identify other Class members in the same position as her;

69. The Applicant has forwarded to her lawyer all the information at her disposal relevant to the present application and undertakes to continue to collaborate in this manner in the future;

70. The Applicant has read this request as well as the related documents and fully understands the nature of the action;

71. The Applicant also undertakes to cooperate fully with her lawyer and to make herself available so that the outcome of the present action may be satisfactory for all the Class members;

72. The Applicant is prepared to devote the time required to properly represent the Class members in the context of the present action, during both the authorization and the merit stages;

73. In drafting this application, the Applicant has shown great availability to her lawyer, communicating with him on several occasions by phone and email, in the evenings and on weekends;

74. The Applicant intends to represent the interests of the Class members with vigor and loyalty;

75. The Applicant shows a keen interest in this case and expresses the desire to be kept informed at each stage of the process;

76. The Applicant is therefore in an excellent position to adequately represent the Class members in the context of the present action;

VI. NATURE OF THE ACTION

77. The action that the Applicant seeks to institute against the Defendants on behalf of the Class members is :

An action in restitution and in punitive damages;

VII. CONCLUSIONS SOUGHT

78. The conclusions sought by the Applicant are as follows :

- A. **GRANT** the Applicant's action against the Defendants on behalf of all Class members;
- B. **CONDEMN** the Defendants to pay each Class member the amounts paid for their registration fees for the IRONMAN 5i50 and Sprint Mont-Tremblant 2020, the IRONMAN 70.3 Mont-Tremblant 2020 and the IRONMAN Mont-Tremblant 2020 triathlon, with interest at the legal rate and the additional indemnity provided for in section 1619 of the *Civil Code of Quebec* from the date of service of the present application;

- C. **CONDEMN** the Defendants to pay each Class member the sum of \$300.00 as punitive damages, with interest at the legal rate and the additional indemnity provided for in section 1619 of the *Civil Code of Quebec* from the date of service of the present application;
- D. **CONDEMN** the Defendants to bear the costs of distribution of the above sums to Class members;
- E. **ORDER** the collective recovery of all amounts to the Class members;
- F. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternatively, by individual liquidation;
- G. **RENDER** any other order that this Honourable Court shall determine;
- H. **CONDEMN** the Defendant to bear the costs of the present action, including court costs, as well as expert and notice publication fees;

VIII. JURISDICTION

79. The Applicant suggests that this class action be exercised before the Superior Court sitting in the judicial district of Montreal for the following reasons :

- A. The Applicant is domiciled and resides in the district of Montreal;
- B. Many Class members are domiciled in the judicial district of Montreal or, more generally, in its appeal district;
- C. The Applicant's legal counsel practices in the district of Montreal;

FOR THESE REASONS, MAY IT PLEASE THE COURT :

GRANT the present Application;

AUTHORIZE the bringing of a class action in the form of :

An action in restitution and in punitive damages;

APPOINT the Applicant, **JOANNE PICARD**, the status of Representative Plaintiff for the purpose of exercising a class action on behalf of the following Class of persons :

« All persons who have registered and paid to participate in the IRONMAN 5i50 and Sprint Mont-Tremblant 2020, the IRONMAN 70.3 Mont-Tremblant 2020 and the IRONMAN Mont-Tremblant 2020 triathlon, all of which were canceled or postponed without possibility of reimbursement »

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

- A. Are the Class members entitled to reimbursement for the registration fees paid to participate in the 2020 IRONMAN 5i50 and Sprint Mont-Tremblant, the 2020 IRONMAN 70.3 Mont-Tremblant and the 2020 IRONMAN Mont-Tremblant Triathlon?
- B. Have the Defendants violated any of their obligations imposed by the *Consumer Protection Act* and/or the *Civil Code of Quebec*?
- C. Are Class members entitled to punitive damages, and if so, how much is each Class member entitled to?

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

- A. **GRANT** the Applicant's action against the Defendants on behalf of all Class members;
- B. **CONDAMN** the Defendants to pay each Class member the amounts paid for their registration fees for the IRONMAN 5i50 and Sprint Mont-Tremblant 2020, the IRONMAN 70.3 Mont-Tremblant 2020 and the IRONMAN Mont-Tremblant 2020 triathlon, with interest at the legal rate and the additional indemnity provided for in section 1619 of the *Civil Code of Quebec* from the date of service of the present application;

- C. **CONDEMN** the Defendants to pay each Class member the sum of \$300.00 as punitive damages, with interest at the legal rate and the additional indemnity provided for in section 1619 of the *Civil Code of Quebec* from the date of service of the present application;
- D. **CONDEMN** the Defendants to bear the costs of distribution of the above sums to Class members;
- E. **ORDER** the collective recovery of all amounts to the Class members;
- F. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternatively, by individual liquidation;
- G. **RENDER** any other order that this Honourable Court shall determine;
- H. **CONDEMN** the Defendant to bear the costs of the present action, including court costs, as well as expert and notice publication fees;

DECLARE that all Class members that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the Class members that have not exercised their means of exclusions will be bound by any judgment to be rendered herein;

ORDER the publication of a notice to the Class members in accordance with the terms and conditions that this Honourable Court shall determine;

REFER the file to the Chief Justice to determine the judicial district in which the class action will be brought and the Justice before whom it will be heard;

ORDER the Clerk of this Court, in the event that the class action is to be brought in another district, to forward the present record to the Clerk of the district so designated;

THE WHOLE with legal costs, including court and expert costs, and notice publication fees.

MONTREAL, September 21st, 2020

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