

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000700-142

(Class Action)
SUPERIOR COURT

D. CORDA

Petitioner

-vs.-

**TODD CHRISTOPHER
INTERNATIONAL, INC.**, doing business
under the trade-name VOGUE
INTERNATIONAL, having its head office
at 4027 Tampa Road, Suite 3200, City
of Oldsmar, State of Florida, 34677

and

**TODD CHRISTOPHER
INTERNATIONAL LLC**, legal person
duly constituted, having its head office
at 2600 McCormick Drive, Suite 320,
City of Clearwater, State of Florida,
33759

and

VOGUE INTERNATIONAL LLC, legal
person duly constituted, having its head
office at 2600 McCormick Drive, Suite
320, City of Clearwater, State of Florida,
33759

Respondents

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
&
TO ASCRIBE THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following)**

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

I. GENERAL PRESENTATION

A) The Action

1. Petitioner wishes to institute a class action on behalf of the following group, of which she is a member, namely:
 - all residents in Canada who have purchased Organix Products or any other group to be determined by the Court;

Alternately (or as a subclass)

 - all residents in Quebec who have purchased Organix Products or any other group to be determined by the Court;
2. “Organix Products” or the “Products” include any and all hair care products, including, but not limited to shampoos, conditioners and styling products as well as any and all skin care products sold under the “Organix” brand name, including, but not limited to moisturisers, sunscreens, sun care products, sunscreen lotion; moisturisers, moisturising lotion, and skin care products for the treatment of acne, eye serum, body lotion, body moisturizer, body butter, night cream, skin spot treatment, pore scrub, lip balm and hand sanitizers sold under the “Organix” brand name;
3. Organix Products were falsely and prominently marketed and labelled as “Organix”, a name which was chosen to look like and to phonetically sound like the word “organics” in order to misrepresent to consumers that the ingredients inside the packaging are organic;
4. In addition, the Respondents’ marketing materials for the Organix Products are littered with statements that represent that the Products are organic and the front and back labels of many of the Organix Products state that they actually contain organic ingredients;
5. Contrary to the Respondents’ representations, the Organix Products are composed almost entirely from ingredients that are not organic;
6. By reason of their actions and omissions, the Respondents induced consumers into purchasing Organix Products that does not live up to their reasonable expectations, thereby causing Petitioner and the members of the class to suffer economic damages, which they are entitled to claim;

B) The Respondents

7. Respondent Todd Christopher International, Inc. dba Vogue International is an American corporation with its head office in Oldsmar, Florida. It is a leading manufacturer and distributor of hair care and other personal care products;
8. Respondent Todd Christopher International LLC is an American corporation with its head office in Clearwater, Florida. It is a leading manufacturer and distributor of hair care and other personal care products in Canada and in Quebec;
9. Respondent Vogue International LLC is an American corporation with its head office in Clearwater, Florida. It is a leading manufacturer and distributor of hair care and other personal care products. It is the registrant of the trade-mark ORGANIX (TMA866044) which was filed on November 13, 2007, the whole as appears more fully from a copy of said trade-mark from the CIPO database, produced herein as **Exhibit R-1**;
10. All Respondents are either directly or indirectly responsible for advertising, marketing, promoting, labelling, selling and representing the Organix Products as organic throughout Canada, including within the province of Quebec;
11. Given the close ties between the Respondents and considering the preceding, all Respondents are solidarily liable for the acts and omissions of the other;

C) The Situation

i) “Organic” – Defined

12. Organic products are produced through organic farming and agriculture; in other words, through the use of organically grown plants. As such, organic ingredients are produced without the use of chemical fertilizers, synthetic pesticides, synthetic veterinary drugs, genetically modified organisms, preservatives, and other harmful or potentially harmful substances, the whole as appears more fully from a copy of the Aménagement et nature article entitled « L’agriculture biologique: un ‘prototype’ au service de l’agriculture conventionnelle pour un développement durable » dated March 1999, produced herein as **Exhibit R-2**;
13. The principle behind organic farming is simple – it rests on strict compliance between the natural links and equilibrium between soil, plants and animals: or the « respect strict des liens et des équilibres naturels entre sol (le milieu), plantes (la culture) et animaux (l’élevage)¹ »;

¹ Exhibit R-2 at page 6.

14. In order to grow organic crops which can in turn be used to produce organic products, a strict regimen must be followed by farmers. As such, production costs are significantly higher and these costs usually become absorbed by the ultimate consumer. It is in this way that consumers have become accustomed to paying a premium for organic products;
15. Despite this cost premium, Canada's organic market grew to \$3.5 billion in 2012 with \$41.1 million sales relating to personal care products. More than 20 million Canadians, a majority of approximately 58%, report the purchase of organic products every week, the whole as appears more fully from a copy of Canada Organic Trade Association's "The National Organic Market: Growth, Trends & Opportunities, 2013" dated November 2013, produced herein as **Exhibit R-3**;



The Canada Organic Trade Association (COTA) represents Canadian farmers, handlers, processors, distributors and retailers across the organic supply chain. COTA works to promote and protect organic in Canada. For more information, visit cota-canada.ca

16. Growing concerns over the use of harmful chemicals in the production of non-organic products, together with a desire for more healthy lifestyles, have spurred the popularity of organic products. One of the fastest growing markets for organic products is that of organic personal care products. Consumers such as the Petitioner and the other members of the Class are willing to pay more for organic personal care products such as skin care,

hair care, and body care in order to avoid harmful chemicals in favour of more natural ingredients;

17. The Respondents take advantage of this segment of consumers by marketing, advertising, labelling, selling and representing the Organix Products as being organic when in fact, the Organix Products contain significant amounts of non-organic ingredients. In fact, the vast majority of the ingredients in the Organix Products are not organic;
18. In Canada, there are strict regulations on production, packaging and labelling of organic food and drink. For example, the *Organic Products Regulations*, 2009 SOR/2009-176, which applies only to food and drink², requires that all products labelled as “organic” be certified as such³ and specifies that a label may not contain the words “organic”, including abbreviations of, symbols for and phonetic renderings of those words — unless the product is organic or it contains at least 95% organic contents⁴;
19. Unfortunately, similar regulations on the use of the word “organic”, or any derivations thereof, do not yet exist for personal care or cosmetic products in Canada. Labelling of personal care or cosmetic products is governed by Health Canada and it has published *Guidelines for Cosmetic Advertising and Labelling Claims* which was revised in February 2006 (hereinafter the “Guidelines”), the whole as appears more fully from a copy of Health Canada’s *Guidelines for Cosmetic Advertising and Labelling Claims*, produced herein as **Exhibit R-4**;
20. Under the Guidelines (Exhibit R-4), the Respondents’ practices of labelling the Organix Product as organic is an “Unacceptable Claim” as the “net impression” that the Products are organic is misleading;
21. The Respondents’ conduct of advertising, marketing, promoting, labelling, selling and representing the Organix Products as organic, when in reality, such Products are composed mainly of non-organic ingredients, constitutes unlawful, unfair, and deceptive conduct, is likely to deceive members of the public, is unethical, oppressive, unscrupulous, and/or substantially injurious to consumers, and harms the organic industry;
22. As such, the Respondents’ advertising, marketing, promotional, labelling, selling and representation practices violate the *Consumer Protection Act*, CQLR c P-40.1 (hereinafter the “CPA”)⁵, the *Competition Act*, R.S.C. 1985, c

² *Organic Products Regulations*, 2009 SOR/2009-176, s. 2.

³ *Ibid.*, s. 1.

⁴ *Ibid.*, at s. 24.

⁵ While the CPA applies only in Quebec, other Canadian provinces have similar consumer protection legislation including, but not limited to: the *Consumer Protection Act*, 2002, SO 2002, c 30, Schedule A at Sections 14, 15, 17, 18 & 100; the *Fair Trading Act*, RSA 2000, c F-2 at Sections 5-7, 7.2, 7.3, 9 & 13 ; the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 at Sections 4-9, 171 & 172; *The*

C-34 (hereinafter the “*Competition Act*”), and the *Consumer Packaging and Labelling Act*, R.S.C. 1985, c. C-38 (hereinafter the “*Consumer Packaging and Labelling Act*”);

23. Attached hereto are three (3) useful charts, in both French and English, outlining the specific articles of the *CPA*⁶, the *Competition Act*⁷, and the *Consumer Packaging and Labelling Act*⁸ that the Respondents’ advertising, marketing, promotional, labelling, selling and representation practices were and are in violation of and are produced herein *en liasse* as **Exhibit R-5**;

ii) Background Facts

24. In 2006, the Respondents introduced their “Organix” line of Products. Although the Organix Products contain only very small quantities of organic ingredients, Respondents selected a brand name that looks nearly identical to, and sounds identical to, the word “organics”, in order to exploit the growing consumer demand for organic products;

25. As is depicted below, to further ensure that consumers made the association between “Organix” and “organics”, the Respondents also emblazoned the word “organic” on the front label of many of the Organix Products in bold type and littered their advertising materials with references to the alleged organic nature of the Organix Products. Nevertheless, the Organix Products are largely composed of ingredients which the Respondents know are not organic;

Business Practices Act, CCSM, c B120 at Sections 2-9 & 23; the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 and the *Trade Practices Act*, RSNL 1990, c T-7 at Sections 5-7 & 14; the *Business Practices Act*, RSPEI 1988, c B-7 at Sections 2-4; the *Consumer Protection Act*, SS 1996, c C-30.1 at Sections 5-8, 14, 16 & 23-25; the *Consumer Product Warranty and Liability Act*, SNB 1978, c 18.1 at Sections 10-13, 15, 23 & 27; the *Consumer Protection Act*, RSNS 1989, c 92 at Sections 26-29 .

⁶ Namely, Arts. 41, 215, 216, 218-221, 228, 239, 253, 270 & 272.

⁷ Namely, Arts. 36 & 52.

⁸ Namely, Arts. 7 & 9.





26. The Respondents' scheme to exploit consumer demand for organic products by falsely advertising the Organix Products as organic has been extraordinarily successful. Since the brand's inception in 2006, annual dollar sales of the Organix Products have increased from almost \$9 million in 2007, to over \$30 million in 2008, to over \$40 million in 2009, to over \$50 million in 2010, to over \$60 million through the first half of 2011 and to \$250 million in 2012;
27. In or about May 10, 2007, Respondent Todd Christopher International, Inc. submitted two initial applications to the United States Patent and Trademark Office (hereinafter the "USPTO") to register the Organix trade name⁹. Both of these applications were refused and then ultimately abandoned on March 4, 2008 and on September 23, 2008 respectively, for the following reasons detailed in chronology:
- a) On August 30, 2007 with respect to both applications: the USPTO determined that:
 - i) The proposed trade-mark Organix "so resembles the mark [U.S. Organix¹⁰] as to be likely to cause confusion, to cause mistake, or to deceive",
 - ii) "'ORGANIC" is defined as "developing naturally: occurring or developing gradually and naturally, without being forced or

⁹ USPTO Serial Nos. 77178023 & 77177861.

¹⁰ USPTO Serial No: 2710198.

contrived”. www.onelook.com. In this case, the term ORGANIC describes a characteristic of the goods, that they are developed naturally. **A novel spelling of a merely descriptive term is also merely descriptive if purchasers would perceive the different spelling as the equivalent of the descriptive term”, and**

- iii) “The current identification of goods is unacceptable because the terms are overly broad and indefinite;
- b) On February 29, 2008, Respondent Todd Christopher International, Inc. responded to the August 30, 2007 refusal letter with respect to application 77177861 that *inter alia*, “there is no indication here that the chemical that made these programs are “organic” in origin” and “[t]here is no notation and/or indication that the goods ... are of a natural origin. Therefore, in viewing Applicant’s mark, **it cannot be assumed that the ingredients contained therein are natural and in seeing the name, ORGANIX, one cannot naturally assume that this denotes that the products are organic in natural (sic).**”
- c) On March 21, 2008 with respect to application 77177861, the USPTO determined that:
- i) “...[T]he proposed mark consists of or includes deceptive¹¹ matter in relation to the identified goods” as:
- The “mark includes the wording “ORGANIX”, which indicates that the goods contain organic ingredients”,
 - “This feature or ingredient is important to a purchasing decision because consumers find organic ingredients desirable”,
 - “...[T]he proposed mark will deceive the public as to an important factor in its purchasing decision”,
 - “Use of a term that is the phonetic equivalent of a deceptive term is also deceptive...Thus, that the proposed mark is spelled ORGANIX as opposed to ORGANICS does not obviate the deceptiveness of the proposed mark”,
- ii) “...[T]he proposed mark is deceptively misdescriptive”¹² as:
- “[T]he description conveyed by the mark is both false and plausible”,

¹¹ “A mark is deceptive if the following criteria are met: (1) The proposed mark consists of or contains a term that misdescribes the character, quality, function, composition, or use of the goods or services; (2) Prospective purchasers are likely to believe that the misdescription actually describes the goods or services; and (3) The misdescription is likely to affect the decision to purchase the goods or services.” See p. 3.

¹² The test for deceptive misdescriptiveness has two parts: (1) whether the mark misdescribes a characteristic, quality, function, composition or use of the goods or services; and if so, (2) would consumers be likely to believe the misrepresentation.

- “In this case, it appears that applicant’s goods do not contain organic ingredients. Therefore, use of the proposed mark ORGANIX misdescribes the goods”, and
- “Also, because organic ingredients are highly sought after by consumers and other goods similar to applicant’s goods contain organic ingredients, it is reasonable to infer that in this case, consumers would believe that applicant’s goods are composed of organic materials.”

The whole as appears more fully from a copy of the US trade-mark record for the word “Organix” [77178023], from a copy of the USPTO refusal letter dated August 30, 2007 [77178023], from a copy of the US trade-mark record for the word “Organix” [77177861], from a copy of the USPTO refusal letter dated August 30, 2007 [77177861], from a copy of the Respondent’s Response to Office Action – Amendment and Response dated February 29, 2008 [77177861], from a copy of the second USPTO refusal letter dated March 21, 2008 [77177861], and from a copy of the Notice of Abandonment dated November 19, 2008 [77177861], produced herein *en liasse* as **Exhibit R-6**;

28. It is interesting to note that in Respondent Todd Christopher International, Inc.’s Response to Office Action – Amendment and Response dated February 29, 2008 [77177861] (Exhibit R-6), it is argued that the Organix trade-mark is not deceptive or deceptively misdescriptive due to the fact that there is no explicit claim that the ingredients are organic. As will be uncovered in the proceeding paragraphs, in response, Respondent Todd Christopher International, Inc. first attempted to slightly alter the design of its trade-mark and then, simply altered the description of goods to include the word “organic” by 2009;
29. In or about October 16, 2008, Respondent Todd Christopher International, Inc. submitted another application to the USPTO to register the Organix trade name, this time stylizing the “X” at the end of “Organix” in an attempt to differentiate its mark. The registration of this application was initially refused by the USPTO because the stylized “X” was not sufficiently distinct to remove the impression that Organix contained organic ingredients:

“A novel spelling of a merely descriptive term is also merely descriptive if purchasers would perceive the different spelling as the equivalent of the descriptive term” and the Respondents’ mark is a “novel spelling of the word “organics.” The definition of “organic” is “Of, marked by, or involving the use of fertilizers or pesticides that are strictly of animal or vegetable origin: organic vegetables; an organic farm” and **“the degree of stylization in this case is not sufficiently striking, unique or distinctive so**

as to create a commercial impression separate and apart from the unregistrable components of the mark”,

The whole as appears more fully from a copy of the USPTO refusal letter dated January 23, 2009 [77594140], produced herein as **Exhibit R-7**;

30. The USPTO refusal letter (Exhibit R-7) also stated that if Respondent Todd Christopher International, Inc. “uses, or intends to use, the mark on goods other than those that are organic, such use would be deceptive”. The USPTO concluded that Respondent Todd Christopher International, Inc. must amend the identification of the products to be organic goods, but that it must not “amend the identification to include goods that are not within the scope of the goods set forth in the present identification” in that it may only identify the Products as organic if they are in fact, organic;
31. In response to the USPTO’s refusal of its application, on January 26, 2009, Respondent Todd Christopher International, Inc. amended the identification of goods on its application to limit use of the trade-mark Organix on “organic” personal care products by listing their ingredients as organic as appears from the Respondents’ following description of goods:

“**Organic** hair care products, namely, hair shampoos, hair conditioners, hair gels, hair mousses, hair sprays, hair care preparations, hair care lotions, hair creams, hair waving lotions, non-medicated hair serums, hair dressings, hair emollients, hair nourishers, hair oils, hair relaxers, nonmedicated hair repair treatments, non-medicated hair care treatments.”

This amended application was accepted by the USPTO, the whole as appears more fully from a copy of Respondent Todd Christopher International, Inc.’s Response to Office Action dated January 26, 2009 [77594140], from a copy of the Amended Application dated July 27, 2009 [77594140], from a copy of the USPTO certificate of registration dated July 20, 2010 [77594140], and from a copy of the US trade-mark record for the word “Organix” [77594140], produced herein *en liasse* as **Exhibit R-8**;

32. Although Respondent Todd Christopher International, Inc. changed the description of Organix goods to secure USPTO approval of the trade-mark by adding the word “organic” to the description of the Organix Products (Exhibit R-8), the formulation of the Organix Products was never altered to be in line with this new, acceptable description. In fact, the Organix Products all contain less than 10 percent organic ingredients – in most instances, far less;
33. Similarly to the U.S. trade-mark struggle outlined above, in Canada, the Respondents filed three (3) separate applications with CIPO for the trade-

mark “ORGANIX” on November 13, 2007, two (2) of which were abandoned, likely due to the US refusals and one (1) of which was accepted (Exhibit R-1), the whole as appears more fully from a copy of the abandoned trade-mark ORGANIX (Application No. 1371809) and from a copy of the abandoned trade-mark ORGANIX (Application No. 1371811), produced herein *en liasse* as **Exhibit R-9**;

34. Interestingly, neither of the abandoned trade-marks for ORGANIX (Application No. 1371809) and (Application No. 1371811) (Exhibit R-9), which was presumably based on the refused US trade-mark [77178023] described the “wares” or products as organic. It was only when Respondent Vogue International LLC described the wares as “organic” that the trade-mark was accepted and registered (Exhibit R-1):

“(1) Hair care products, namely hair shampoos and hair conditioners **containing organic ingredients**.

(2) Hair gels, hair mousses, hair sprays, hair care preparations, hair care lotions, hair creams, hair waving lotions, non-medicated hair serums, hair dressings, hair emollients, hair nourishers, hair oils, hair relaxers, non-medicated hair repair treatments, non-medicated hair care treatments, **all containing organic ingredients**.”;

35. Even more audacious than the misrepresentations of the Organix Products as being organic, members of the class would be surprised to find out that the Respondents actually sell some of its products with harmful additives such as Cocamide DEA¹³, an additive that the International Agency for Research on Cancer (hereinafter the “IARC”) has listed as an IARC Group 2B carcinogen, which identifies this chemical as possibly carcinogenic to humans, the whole as appears more fully from a copy of an extract from the Center for Environmental Health’s website entitled “Personal Care Products Containing Cocamide DEA” and from a copy of the International Agency for Research on Cancer Monographs on the Evaluation of Carcinogenic Risks to Humans, produced herein *en liasse* as **Exhibit R-10**;
36. The representation of the Organix Products as organic, especially through the use of the brand name and trade-mark “Organix”, has been highly lucrative and increasingly so as the market for organic products has expanded. Even after the California-based Center for Environmental Health (hereinafter the “CEH”) filed a lawsuit against the Respondents for false labelling, they still would not readily change the brand name: “They did not want to increase the use of organic (ingredients) and they didn’t want to change their name. We quickly realized that name was a goldmine for this

¹³ Cocamide diethanolamine, is a diethanolamide made by reacting the mixture of fatty acids from coconut oils with diethanolamine.

company”, the whole as appears more fully from a copy of the TriplePundit article entitled “Center for Environmental Health: Organic Products Need Better Federal Regulation” dated July 15, 2013, produced herein as **Exhibit R-11**;

37. According to the CEH (Exhibit R-11), “[c]onsumers believe they are getting something better because it is organic...They believe they are getting something safer. They believe they are getting something healthier. They believe they are getting something more pure and natural. The word organic connects all of those things and that’s why it’s big business”;
38. Since the Consent Judgment rendered pursuant to the CEH Complaint (Exhibit R-14), the Respondents have been enjoined from using the word “Organix” on their Products in California and are now emblazoning “OGX” on their Products sold in that state instead. Unfortunately, the Organix Products continue to be sold outside of California and in Canada with the same emblazoned “Organix” representation, while adding some newer Products displaying the “OGX” brand name as well;

iii) The “Organix” Marketing Advantage and Profitability

39. The Respondents advertise, market, promote, label, sell, and represent the Organix Products as organic, primarily, in order to increase their profit margins by selling their Products to consumers seeking organic products. In recognition of the fact that consumers will pay more for organic products, the Respondents prominently display the word “Organix” on the front label of every Organix Product. The Respondents advertise the Organix Products within the Organix line as organic by use of the Organix brand name and by inclusion of the word “organic” on the Products’ front and/or back labels and/or in Organix Product advertising;
40. While the Organix Products are marketed in various blends (or “flavours” – for example, “Coconut Milk” or “Teatree Mint”), in any given promotional cycle or year, the Respondents employ uniform containers, packaging, marketing, and advertising materials for the Organix Products regardless of blend/flavour, the whole as appears more fully from a copy of an extract from the Respondents’ website at www.organixhair.com, produced herein as **Exhibit R-12**;
41. While continuing to use the basic “Organix” theme, the Respondents have, at times, updated and changed their containers, packaging, marketing, and advertising to appeal to prevailing market trends and attracting new customers who may not have been drawn to their products previously, while maintaining the interest of the existing customer base. Accordingly, the Class size has increased over time as have the resulting damages attributable to the sales of “Organix” branded products;

42. Since the brand's inception, the Respondents have continued to push and to expand its use of the "Organix" concept in various ways to ever increase its market share and resulting profits. Due to concerns regarding the effect of non-organic chemicals on their own bodies, consumers who embrace the "organic lifestyle" pursue such a lifestyle by purchasing organic products. By misleading consumers about its Organix Products, the Respondents undermine those efforts, misleading consumers to purchase the non-organic Organix Products in lieu of truly organic ones;
43. Each year, the Respondents have issued new and updated "Organix"-themed advertising in print and on its website, blog, Facebook page and Twitter account, as well as in other promotions and promotional tie-ins. For example, in addition to noting the organic attributes of the Respondents' Products, such "Organix"-themed advertising has, at different times, focused on "green packaging," the environment, nature, natural elements of the products, and the planet, all of which the Respondents have used to both retain and to attract more consumer interest;
44. As an example, the Respondents have focused on indulgence and nature in order to drive sales, using the slogan "indulge your hair the way nature intended" as is depicted below:



organix®
beauty pure and simple

indulge your hair the way nature intended.



organix®
beauty pure and simple

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45. Over the years, the Respondents' have *inter alia* made the following false and misleading claims:

- a) "We developed the Organix line of products not necessarily for those who have made a commitment to an organic lifestyle, but rather a mass appeal brand designed for those who want to make better choices and are more aware of the integrity of the ingredients"
- b) "Organix products contain organic active ingredients",
- c) "Nature's secret to silky perfection", and
- d) "Organix formulas contain organic active ingredients",

The whole as appears more fully from a copy of three (3) extracts from the Respondents' website at www.organixhair.com, produced herein *en liasse* as **Exhibit R-13**;



46. While prominently displaying the word “Organix” on the front label of every Organix Product, the Respondents also include an ingredient list in small print on the back label of each Organix Product. The list of ingredients is in a substantially smaller font than the text on the front label as well as the descriptions on the back labels. Despite the representations that the Organix Products are organic or that they contain organic ingredients, no ingredients are designated as organic or as non-organic on the miniscule ingredient list. Thus, there is no way for even the most discerning consumer who pores over every detail on the ingredient list to determine whether all or none of the ingredients are organic;
47. The Respondents’ ongoing practice of advertising, marketing, promoting, labelling, selling and representing the Organix Products as organic – when in fact, the Organix Products contain minimal, if any, organic ingredients – is likely to deceive ordinary consumers who reasonably understood the labelling of the Organix Products to mean what it says – that the Organix Products are entirely or predominantly made with organic ingredients. In reliance upon the Respondents’ claims that the Organix Products are organic, Class Members sought out and were willing to pay more for the Organix Products than similar products that do not claim to be organic, and in fact did purchase the Products and did pay a premium;
48. The advertisements and representations made by the Respondents as set forth above were and are false and/or misleading. The acts and practices of the Respondents, as alleged herein, constitute unfair or deceptive acts or practices and the making of false statements;
49. As a result of the Respondents’ deceptive claims, consumers have purchased a product that is substantially different than advertised in that it is not organic. In addition, the Respondents have been able to charge a significant price premium for Organix Products over other traditional, comparable personal care/cosmetic products that do not make deceptive claims;
50. Consumers were induced into purchasing Organix Products through the use of false and misleading representations, thereby vitiating their consent and entitling them to claim a refund for the purchase price of those products;

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

51. Petitioner purchased many Organix Products over the past several years, including, but not limited to “Teatree Mint Shampoo” and “Teatree Mint Conditioner”, “Coconut Milk Shampoo” and “Coconut Milk Conditioner” from various stores including, but not limited to Walmart, Pharmaprix and Jean Coutu for approximately \$8.99 plus taxes per bottle;

52. Petitioner believed, from having seen the Respondents' marketing and having read the product labelling, that the Organix Products were organic;
53. Petitioner has recently discovered that these product claims are false and misleading and that the Center for Environmental Health (the "CEH") sued the Respondents for this same reason in 2011 and it was subsequently settled. Also, that a class action was filed, amended and settled in the United States for this same product due to false advertising. The whole as appears more fully from a copy of the CEH Complaint dated June 16, 2011, from a copy of the Consent Judgment dated September 13, 2012, from a copy of the Class Action Complaint dated August 9, 2013 and from a copy of the Class Action Stipulation of Settlement and its accompanying exhibits executed in August 2013, produced herein *en liasse* as **Exhibit R-14**;
54. In consequence, Petitioner now realizes that she has been misled by the Respondents; had she known the true facts, the Petitioner would not have purchased the Organix Products and would certainly not have paid such a high price for them;
55. Petitioner's damages are a direct and proximate result of the Respondents' conduct and their false and misleading advertising;
56. 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

57. Every member of the class has purchased Organix Products believing that they were made with organic ingredients due to Respondents' marketing, advertising, and labelling;
58. The class members were, therefore, induced into error by the Respondents' false and misleading advertising;
59. Had the Respondents disclosed the truth about Organix Products, reasonable consumers would not have purchased them and certainly would not have paid as high a price;
60. Each member of the class is justified in claiming at least one or more of the following as damages:
- a) The purchase price of the Organix Product(s);
 - b) Punitive damages;

61. Respondents engaged in wrongful conduct, while at the same time obtaining, under false pretences, significant sums of money from class members;

62. All of these damages to the class members are a direct and proximate result of the Respondents' conduct and their false and misleading advertising;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical

63. Petitioner is unaware of the specific number of persons who purchased Organix Products, however, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands);

64. Class members are numerous and are scattered across the entire province of Quebec and country;

65. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the class members themselves could afford such individual litigation, it would place an unjustifiable burden on the court system. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase delay and expense to all parties and to the court system;

66. 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;

67. 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;

68. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice;

B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondents and that which the Petitioner wishes to have adjudicated upon by this class action



69. Individual questions, if any, pale by comparison to the numerous common questions that predominate;
70. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;
71. The recourses of the members raise identical, similar or related questions of fact or law, namely:
- a) Did the Respondents engage in unfair, false, misleading, or deceptive acts or practices regarding the marketing and sale of the Organix Products?
 - b) Are the Respondents liable to the class members for reimbursement of the purchase price of the Organix Products as a result of their misconduct?
 - c) Should an injunctive remedy be ordered to prohibit the Respondents from continuing to perpetrate their unfair, false, misleading, and/or deceptive conduct?
 - d) Are the Respondents responsible to pay punitive damages to class members and in what amount?
72. The interests of justice favour that this motion be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

73. The action that the Petitioner wishes to institute on behalf of the members of the class is an action in damages, injunctive relief and declaratory judgment;
74. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

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

DECLARE the Respondents have committed unfair, false, misleading, and/or deceptive conduct with respect to their advertising, marketing, promoting, labelling, selling and representing the Organix Products as organic;

DECLARE the Respondents have committed unfair, false, misleading, and/or deceptive conduct by using the trade-name "Organix", as well as, explicitly or implicitly claiming that their products are organic;

ORDER the Respondents to cease from continuing their unfair, false, misleading, and/or deceptive conduct by advertising, marketing, promoting, labelling, selling and representing the Organix Products as organic;

ORDER the Respondents to cease using the trade-name "Organix", as well as, explicitly or implicitly claiming that their products are organic;

DECLARE the Respondents solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

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

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

CONDEMN the Respondents 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 she be attributed the status of representative of the Class

75. Petitioner is a member of the class;

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

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

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

79. Petitioner, with the assistance of her attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;

80. Petitioner is in good faith and has instituted this action for the sole goal of having her rights, as well as the rights of other class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;

81. Petitioner understands the nature of the action;

82. Petitioner's interests are not antagonistic to those of other members of the class;

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

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

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

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

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages, injunctive relief and declaratory judgment;;

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

- all residents in Canada who have purchased Organix Products or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who have purchased Organix Products or any other group to be determined by the Court;

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

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

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

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

DECLARE the Respondents have committed unfair, false, misleading, and/or deceptive conduct with respect to their advertising, marketing, promoting, labelling, selling and representing the Organix Products as organic;

DECLARE the Respondents have committed unfair, false, misleading, and/or deceptive conduct by using the trade-name “Organix”, as well as, explicitly or implicitly claiming that their products are organic;

ORDER the Respondents to cease from continuing their unfair, false, misleading, and/or deceptive conduct by advertising, marketing, promoting, labelling, selling and representing the Organix Products as organic;

ORDER the Respondents to cease using the trade-name “Organix”, as well as, explicitly or implicitly claiming that their products are organic;

DECLARE the Respondents solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

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

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

CONDEMN the Respondents 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 group in accordance with article 1006 C.C.P. within sixty (60) days from the judgement to be rendered herein in LA PRESSE and the GLOBE & MAIL;

ORDER that said notice be available on the Respondents' website as well as its Facebook page and Twitter account with a link stating "Notice to Organix Product Purchasers";

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

THE WHOLE with costs, including all publications fees.

Montreal, July 24, 2014

(S) Jeff Orenstein

CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein

Attorneys for the Petitioner