

# SUPERIOR COURT

(Class Action)

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

N° : 500-06-000921-185

DATE : February 10, 2022

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BY THE HONOURABLE DONALD BISSON, J.S.C.

(JB4644)

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**FELICE PICCOLO**

Plaintiff / Class Representative

v.

**JOHNSON & JOHNSON INC.**

Defendant

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## JUDGMENT

(Settlement Approval and Class Counsel Fee Approval – Art. 590 and 593 CCP)

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[1] **WHEREAS** the Plaintiff is seeking the approbation of a transaction executed between the parties on or about August 22, 2021 and filed as Exhibit R-1 (the "Settlement Agreement");

[2] **CONSIDERING** the Sworn declaration of M<sup>e</sup> Andrea Grass of January 26, 2022 and accompanying Exhibits R-1 to R-5;

[3] **WHEREAS** on April 5, 2018, the Plaintiff filed an Application to Authorize the Bringing of a Class Action & to Appoint the Petitioner as Representative Plaintiff pursuant to Art. 574 and following of the *Code of Civil Procedure* ("CCP") against the Defendant;

[4] **WHEREAS** the proposed class was defined as follows:

All persons residing in Canada who have purchased Aveeno Active Naturals Product(s) or any other group to be determined by the Court;

Alternately (or as a subclass)

All persons residing in Quebec who have purchased Aveeno Active Naturals Product(s) or any other group to be determined by the Court;

[5] **WHEREAS** Plaintiff asserted claims under the law *inter alia* for fraudulent, deceptive, false advertising, sales and marketing practices regarding Defendants' Aveeno Active Naturals Products advertised as "Active Naturals";

[6] **WHEREAS** by judgment dated September 28, 2021<sup>1</sup>, this Court *inter alia*:

(i) Authorized the class action for the purposes of settlement only on behalf of the following class described as:

« Toutes les personnes qui ont acheté des Produits visés au Canada à la date du jugement approuvant les Avis d'action collective ou avant cette date et chacun de leurs conjoints, exécuteurs testamentaires, héritiers, successeurs, syndics de faillite, tuteurs, enfants en tutelle, mandataires et ayants droit, ainsi que toutes les personnes qui réclament par leur intermédiaire ou qui font valoir des demandes de réparation en double pour leur compte.

Sont exclus du Groupe lié par le Règlement : (i) les personnes qui ont acheté les Produits visés aux fins de revente; (ii) les personnes qui présentent des réclamations pour des blessures corporelles découlant de l'utilisation des Produits visés; (iii) les Défenderesses ainsi que leurs dirigeants, administrateurs et employés, actuels ou anciens, ou les membres de leur famille immédiate; (iv) les personnes qui déposent une Demande d'exclusion valide en temps opportun; et (v) le juge saisi de la présente Action et les membres de sa famille immédiate »

"All persons who purchased Covered Products within Canada at any time on or before the date of the judgment approving the Class Notices and each of their spouses, executors, heirs, successors, bankruptcy trustees, guardians, wards, agents, and assigns, and all those who claim through them or who assert duplicative claims for relief on their behalf.

Excluded from the Settlement Class are: (i) those who purchased Covered Products for purpose of resale; (ii) those with claims for bodily injuries arising from the use of Covered Products; (iii) Defendants and their current or former officers, directors and employees or members of their immediate families; (iv) any person who files a valid and timely Request for Exclusion; and (v) the Judge to whom this Action is assigned and any members of his/her immediate family.

<sup>1</sup> *Piccolo c. Johnson & Johnson inc.*, 2021 QCCS 3980.

(ii) Approved the Class Notices to be published and disseminated in accordance with the Notice Program. This was accomplished on November 12, 2021;

(iii) Appointed Angeion Group as the Settlement Administrator;

(iv) Approved the Opt-Out Form and set the Opt-Out Deadline as 45 days following the publication of the Class Notice. There were no valid opt outs at any time; however, the Claims Administrator did receive and respond to 4 emails inquiring on the method to not be contacted again regarding this case – not having yet completed the steps to do so and the time limit has expired;

(v) Set the Objection Deadline as no later than 30 days prior to the Final Hearing Date. There were no objections at any time before or after this date;

[7] **CONSIDERING** therefore that the appropriate notices were published in French and in English and that no objections were made;

[8] **CONSIDERING** that there were no formal exclusions or opt-outs;

[9] **CONSIDERING** that Defendant consented to a National class out of Quebec;

[10] **CONSIDERING** the submissions of counsel for the Plaintiff and counsel for the Defendant who consent to this Judgment, except with respect to the Attorneys' Fees and Expenses regarding on which the Defendant takes no position;

[11] **CONSIDERING** the products covered by the Settlement Agreement, which are listed in the Annex to the present judgment:

[12] **CONSIDERING** the key terms of the Settlement Agreement:

(i) Settlement Fund and Cash Payments:

The Defendant shall establish the Settlement Fund in the amount of \$675,000.00 US, less the Notice and Claim Administration Expenses already paid by the Defendant, to be held in an interest-bearing escrow account within 30 days of the Final Judgment Approving Settlement.

Settlement Class Members are eligible to receive \$3.15 CA for each purchase of a Covered Product for up to a maximum of 20 Covered Products (up to \$63.00 CAD) purchased during the Class Period, without the need to present a proof of purchase. However, the actual amount paid to individual claimants will depend upon the number of valid claims made;

These awards may be subject to a pro rata adjustment, upward (up to a maximum of \$126.00 CA per household) or downward, depending on the number of claims approved;

(ii) Claims Process:

To receive a payment award, a Settlement Class Member must submit a valid and timely Claim Form to the Settlement Administrator by the Claims Deadline of March 11, 2022 (120 days after the Class Notice Date of November 12, 2021). Claim Forms are available at the Settlement Website and can be submitted electronically or by mail;

(iii) Injunctive Relief:

As part of the consideration for the Agreement, the Defendant agrees to remove the term "Active Naturals" from the front label of all in-market Covered Products, where applicable, and if the term "Active Naturals" remains on the back or side of the label and if the product is not comprised entirely of naturally-derived ingredients, the Defendant agrees to include language on the back or side of the label that the Covered Products contain both naturally derived and non-naturally derived ingredients;

Given the logistics of designing and implementing label changes for the large number of Covered Products, they will be updated on a rolling basis from March 1, 2021 to June 30, 2023;

The Settlement Agreement does not preclude the Defendant from making further changes to the advertising and marketing of any of its product labels or marketing as the Defendant sees fit, provided that those changes do not conflict with the provisions of the Settlement Agreement;

[13] **CONSIDERING** Article 590 of the *Code of Civil Procedure*;

[14] **CONSIDERING** that, as of February 1<sup>st</sup>, 2022, an amount of 30,039 claims were already made by class members in Canada;

[15] **CONSIDERING** that the Court finds that the Settlement Agreement is fair and reasonable and in the best interest of Class Members<sup>1</sup>;

[16] **CONSIDERING** that, in accordance with the Settlement Agreement and the Class Notice, Attorneys' Fees and Expenses are being requested in amount of \$202,500.00 US plus applicable taxes, representing 30 % of the Settlement Fund;

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<sup>1</sup> *Pellemans c. Lacroix*, 2011 QCCS 1345, par. 20; *Gillich c. Mercedes-Benz West Island*, 2020 QCCS 1602, par. 10.

[17] **CONSIDERING** that in the present matter, the fees requested by Class Counsel are fair and reasonable<sup>2</sup> and are therefore approved;

[18] **CONSIDERING** that the Fonds d'aide aux actions collectives has no specific objection to the Settlement Agreement and that it asked that the conclusion in Paragraph 31 of the present judgment be made, which the Court and the parties accept;

**PAR CES MOTIFS, LE TRIBUNAL :**

**FOR THESE REASONS, THIS COURT:**

[19] **ACCORDE** la présente Demande; **GRANTS** the present Application;

[20] **ORDONNE** que, pour les fins du Jugement, les définitions énoncées à l'Entente de règlement, R-1, s'appliquent et y sont incorporées par renvoi;

**ORDERS** that for the purposes of this Judgment, the definitions contained in the Settlement Agreement, R-1, shall apply and are incorporated by reference;

[21] **ORDONNE** qu'en cas de conflit entre le présent Jugement et l'Entente de règlement, ce Jugement prévaudra;

**ORDERS** that in the event of a conflict between this Judgment and the Settlement Agreement, this Judgment shall prevail;

[22] **DÉCLARE** que l'Entente de règlement est valide, juste, raisonnable et dans le meilleur intérêt des Membres du Groupe;

**DECLARES** that the Settlement Agreement is valid, fair, reasonable and in the best interest of the Settlement Class Members;

[23] **APPROUVE** l'Entente de règlement conformément à l'article 590 du *Code de procédure civile*;

**APPROVES** the Settlement Agreement pursuant to Article 590 of the *Code of Civil Procedure*;

[24] **DÉCLARE** que l'Entente de règlement constitue une transaction au sens des articles 2631 et suivants du *Code civil du Québec* et que le présent jugement ainsi que l'Entente de règlement lient toutes les Parties et tous les Membres du Groupe qui ne se sont pas exclus en temps utile;

**DECLARES** that the Settlement Agreement is a transaction within the meaning of articles 2631 and following of the *Civil Code of Quebec* and that this Judgment and the Settlement Agreement are binding on all parties and all Settlement Class Members who have not excluded themselves in a timely manner;

[25] **DÉCLARE** qu'aux fins de l'administration et de l'exécution de l'Entente de règlement et du présent jugement, cette Cour conservera un rôle de surveillance continue et la Défenderesse reconnaît la compétence de cette Cour uniquement aux fins de l'approbation, de la mise en œuvre, de

**DECLARES** that for purposes of administration and enforcement of the Settlement Agreement and of this Judgment, this Court will retain an ongoing supervisory role and the Defendant acknowledges the jurisdiction of this Court solely for the purpose of approving, implementing, administering

<sup>2</sup> As per Art. 593 CCP and the criteria in *Dupuis c. Polyone Canada inc.*, 2016 QCCS 2561, par. 37.

l'administration et de l'application de l'Entente and enforcing the Settlement Agreement and de règlement et ce Jugement, sous réserve this Judgment, and subject to the terms and des modalités et conditions énoncées dans conditions set out in the Settlement l'Entente de règlement; Agreement;

[26] **DÉCLARE** que la présente action **DECLARES** that the present action is collective est réglée hors cours sans frais hereby settled out-of-court without legal de justice; costs;

[27] **APPROUVE** le paiement aux **APPROVES** the payment to Class Counsel Procureurs du Groupe de leurs honoraires of its extrajudicial fees and disbursements extrajudiciaires et des débours de 202 of US\$202,500.00 plus applicable taxes as 500, 00\$US plus les taxes applicables provided for in the Settlement Agreement; conformément à l'Entente de règlement;

[28] **APPROUVE** le paiement aux **APPROVE** the payment to Class Counsel Procureurs du Groupe de leurs débours of its disbursements in the amount of d'un montant de 2 715,00\$ plus les taxes \$2,715.00 plus applicable taxes; applicables;

[29] **ORDONNE** que les prélèvements **ORDERS** that the levies for the *Fonds* du Fonds d'aide aux action collectives *d'aide aux action collectives* as provided for prévus à l'Entente de règlement soient in the Settlement Agreement be remitted remis conformément à la *Loi sur le fonds according be remitted according to the Act d'aide aux actions collectives* et à l'article *respecting the Fonds d'aide aux actions collectives* and s.1(1) of the *Regulation 1(1) du Règlement sur le pourcentage respecting the percentage withheld by the prélevé par le Fonds d'aide aux actions Fonds d'aide aux actions collectives*;

[30] **DÉCLARE** qu'en cas de conflit **DECLARES** that in the event of a conflict entre la version française et la version between the French version and the anglaise du présent Jugement, la version English version of this Judgment, the anglaise prévaudra; English version shall prevail;

[31] **ORDONNE** aux parties de rendre **ORDERS** the parties to diligently render compte avec diligence de l'exécution de account of the execution of the present présent jugement, et **INDIQUE** que le Judgment, and **INDICATES** that the Court Tribunal restera saisie de l'exécution de will stay seized of the execution of the l'Entente de règlement, Pièce R-1, jusqu'à Settlement Agreement, R-1, until it has ce qu'il ait rendu un jugement de clôture; rendered a "*Jugement de clôture*";

[32] **LE TOUT**, sans frais de justice. **THE WHOLE**, without judicial costs.

  
DONALD BISSON, J.S.C.

M<sup>e</sup> Jeffrey Orenstein and M<sup>e</sup> Andrea Grass  
CONSUMER LAW GROUP  
Attorneys for Petitioners

M<sup>e</sup> Robert Torralbo (absent) and M<sup>e</sup> Simon Seida  
BLAKE, CASSELS & GRAYDON S.E.N.C.R.L.  
Attorneys for the Defendant

M<sup>e</sup> Nathalie Guilbert (absent)  
Attorney for the Fonds d'aide aux actions collectives (not formerly mis en cause)

Hearing date: February 2, 2022

**ANNEX – COVERED PRODUCTS**

AVEENO Daily Moisturizing body yogurt vanilla and oats lotion  
AVEENO Positively Ageless Rejuvenating Scrub  
AVEENO Daily Moisturizing body yogurt apricot and honey lotion  
AVEENO Positively Radiant Intensive Night Cream  
AVEENO Positively Ageless Skin Strength Hand Cream  
AVEENO Positively Radiant 60sec In-Shower Facial  
AVEENO Positively Ageless Skin Strength Body Cream  
AVEENO Positively Radiant Cleanser  
AVEENO Creamy Moisturizing Oil  
AVEENO Positively Radiant Sheer Daily Moisturizer SPF 30  
AVEENO Daily Moisturizing Lotion Hand Cream/Tube/Pump  
AVEENO Positively Radiant Daily Moisturizer SPF 15  
AVEENO Positively Radiant Dark Spot Correction  
AVEENO Positively Radiant make up removing Wipes  
AVEENO Positively Radiant Lotion  
AVEENO Positively Radiant Makeup Remover Cleanser  
AVEENO Daily Moisturizing Lotion SPF15 Pump  
AVEENO Positively Radiant Moisturizer with SPF 30  
AVEENO Daily Moisturizing Lotion Sheer Hydration  
AVEENO Positively Radiant Eye CC Cream Light  
AVEENO Intense Relief Hand Cream  
AVEENO Positively Radiant Toner  
AVEENO Intense Relief Moisture Repair Cream  
AVEENO Skin Brightening Daily Scrub  
AVEENO Intense Relief Overnight Cream  
AVEENO Positively Radiant overnight hydrating facial moisturizer  
AVEENO Skin Relief Hand Cream  
AVEENO Positively Radiant Skin Brightening Daily Scrub  
AVEENO Skin Relief Fragrance Free Lotion  
AVEENO Positively Radiant Eye CC Cream Medium



AVEENO Skin Relief Moisturizing Cream  
AVEENO Positively Radiant CC Cream SPF30 Fair-Light  
AVEENO Skin Relief Moisturizing Lotion  
AVEENO Positively Radiant CC Cream SPF30 Medium  
AVEENO Skin Relief Gentle Scent Coconut Moisturizing Lotion  
AVEENO Positively Radiant Targeted Tone Correction  
AVEENO Skin Relief Gentle Scent Chamomile Moisturizing Lotion  
AVEENO Positively Radiant Intensive Night Cream  
AVEENO Skin Relief Diabetes Dry Skin Moisture Lotion  
AVEENO Ultra Calming Day SPF30  
AVEENO Stress Relief Moisturizing Lotion  
AVEENO Ultra Calming Night Cream  
AVEENO Daily Moisturizing Yogurt Body Was Vanilla and Oats  
AVEENO Ultra-Calming Daily Moisturizer SPF15  
AVEENO Daily Moisturizing Yogurt Body Wash Apricot and Honey  
AVEENO Ultra-Calming Foaming Cleanser  
AVEENO Daily Moisturizing Body Wash  
AVEENO Ultra Calming hydra cleanser  
AVEENO Active Naturals Purifying Body Wash Sea Kelp & Nourishing Oatmeal  
AVEENO Ultra-Calming Gentle Makeup Removing Wipes  
AVEENO Active Naturals Uplifting Body Wash Peach & Ginger  
AVEENO Baby Sensitive Skin Wipes  
AVEENO Calming Body Wash Lavender & Chamomile  
AVEENO Baby Soothing Relief Diaper Rash Cream  
AVEENO Hydrating Body Wash Fig & Shea Butter  
AVEENO Baby Calming Comfort Bath  
AVEENO Invigorating Body Wash Grapefruit  
AVEENO Baby Calming Comfort Lotion  
AVEENO Invigorating Body Wash  
AVEENO Baby Daily Moisturizing Lotion  
AVEENO Skin Relief Gentle Scent Coconut Body Wash

AVEENO Baby Eczema Care Moisture Cream  
AVEENO Skin Relief Gentle Scent Chamomile Body Wash  
AVEENO Baby Eczema Care Night Balm  
AVEENO Skin Relief Body Wash  
AVEENO Baby Eczema Care Wash  
AVEENO Skin Relief Fragrance Free Body Wash  
AVEENO Baby Gentle Conditioner & Shampoo  
AVEENO Positively Radiant Exfoliating Body Wash  
AVEENO Baby Soothing Baby Bath Treatment  
AVEENO Smoothing Body Wash Pomegranate & Rice  
AVEENO Baby Soothing Relief Creamy Wash  
AVEENO Stress Relief Body Wash  
AVEENO Baby Soothing Relief Moisture Cream  
AVEENO Eczema Care Itch-Relief Balm  
AVEENO Baby Soothing Relief Wash  
AVEENO Anti-itch Lotion  
AVEENO Baby Wash & Shampoo  
AVEENO Daily Moisturizing Bath  
AVEENO Calming Comfort Baby Bath  
AVEENO Eczema Care Hand Cream  
AVEENO Baby Calming Comfort Lotion  
AVEENO Eczema Care Body Wash  
AVEENO Mom & Baby Gift Set  
AVEENO Eczema Care Moisturizing Cream  
AVEENO Baby Gift Set  
AVEENO Moisturizing Bar - Dry Skin  
AVEENO Protect +Hydrate Sun Lotion for Face and Body SPF30  
AVEENO Positively Smooth Shave Gel  
AVEENO Protect +Hydrate Sun Lotion for Face and Body SPF45  
AVEENO Shower & Bath Oil  
AVEENO Protect +Hydrate Sun Lotion Face SPF60

AVEENO Skin Relief Shave Gel  
AVEENO Baby Sensitive Skin SPF 50  
AVEENO Soothing Bath Treatment  
AVEENO Baby Sensitive Skin Face Sun Stick SPF50  
AVEENO Stress Relief Foaming Bath  
AVEENO Baby Sunscreen lotion with SPF 55  
AVEENO Positively Radiant Wipes  
AVEENO Baby Sunscreen lotion with SPF 50  
AVEENO Absolutely Ageless Daily Moisturizer SPF 30  
AVEENO Active Naturals Living Color Preserving Conditioner Med-Thick Hair  
AVEENO Absolutely Ageless Night Cream  
AVEENO Active Naturals Living Color Preserving Conditioner Fine Hair  
AVEENO Absolutely Ageless Eye Cream  
AVEENO Active Naturals Living Color Preserving Shampoo Med-Thick Hair  
AVEENO Absolutely Ageless Intense Serum  
AVEENO Active Naturals Living Color Preserving Shampoo Fine Hair  
AVEENO Absolutely Ageless Nourishing Cleanser  
AVEENO Positively Nourishing Condition Treatment  
AVEENO Absolutely Ageless Leave-on Mask Lotion  
AVEENO Positively Nourishing Moisturize Conditioner  
AVEENO Clear Complexion Foaming Cleanser  
AVEENO Positively Nourishing Moisturize Shampoo  
AVEENO Clear Complexion Cream Cleanser  
AVEENO Positively Nourishing Revitalize Conditioner  
AVEENO Clear Complexion Daily Moisturizer  
AVEENO Positively Nourishing Revitalize Shampoo  
AVEENO Clear Complexion Foaming Cleanser  
AVEENO Positively Nourishing Shine Conditioner  
AVEENO Fresh Essentials Daily Moist SPF 30  
AVEENO Positively Nourishing Shine Shampoo  
AVEENO Fresh Essentials Night Cream

AVEENO Positively Nourishing Volumize Conditioner

AVEENO Fresh Essentials Scrub

AVEENO Positively Nourishing Volumize Shampoo

AVEENO Positively Ageless Daily Exfoliating Cleanser

AVEENO Positively Nourishing Dandruff Ctrl Shampoo

AVEENO Positively Ageless Daily Moisturizer (SPF30)

AVEENO Pure Renewal Conditioner

AVEENO Positively Ageless Eye Cream

AVEENO Pure Renewal Shampoo

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