

CANADA
 PROVINCE OF QUEBEC
 DISTRICT OF MONTREAL

NO: 500-06-000561-114

(Class Action)
 SUPERIOR COURT

D. MILLER

Petitioner

-vs.-

KABA ILCO INC., legal person duly incorporated, having its head office at 7301 Décarie Blvd., Montreal, Quebec, H4P 2G7

and

KABA ILCO CORP., legal person duly incorporated, having its head office at 400 Jeffreys Road, Rocky Mount, North Carolina, 27804-6624

and

KABA AG, legal person duly incorporated, having its head office at Mühlebühlstrasse 23, Kempten, 8623, Wetzikon, Switzerland

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 he is a member, namely:

- all residents in Canada who have purchased and/or own a pushbutton lock sold under the brand names Uican and Simplex with regard to their 1000 Series, 3000 Series, 5000 Series, 6200 Series, 7000 Series, 7100 Series, and any such other locks manufactured by the Respondents that are capable of being opened with a magnet (the “Locks”), or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who have purchased and/or own a pushbutton lock sold under the brand names Uican and Simplex with regard to their 1000 Series, 3000 Series, 5000 Series, 6200 Series, 7000 Series, 7100 Series, and any such other locks manufactured by the Respondents that are capable of being opened with a magnet (the “Locks”), or any other group to be determined by the Court;
2. The present action arises out of the sale of push button door locks which contain a defect in design that makes them susceptible to being opened by the use of a magnet that can be purchased at any hardware store and which is small enough to fit in the palm of one’s hand, thereby rendering the Locks ineffective and unfit to perform the safety function for which they were intended;

B) THE RESPONDENTS

3. Respondent Kaba AG (“Kaba Switzerland”) is a Swiss company. Kaba Switzerland is the parent company of the other two (2) Respondents, whether directly or indirectly. Kaba Switzerland developed, manufactured, distributed, and sold the Locks throughout Canada, including the province of Quebec, either directly or indirectly through its affiliates and/or subsidiaries, the other two (2) Respondents;
4. Kaba Ilco Corp. (“Kaba USA”) is an American company. Kaba USA developed, manufactured, distributed, and sold the Locks throughout Canada, including the province of Quebec, either directly or indirectly through its related entity, the Respondent Kaba Ilco Inc. In fact, many of the Locks in questions were state that they were “Made in USA”;
5. Kaba Ilco Inc. (“Kaba Canada”) is a federal Canadian company. Kaba Canada’s head office and principal place of business is in the province of Quebec, the whole as appears more fully from a copy of the *Registre des entreprises* report, produced herein as **Exhibit R-1**;

6. Kaba Switzerland and Kaba USA do business in Canada, including in the province of Quebec, through Kaba Canada. Kaba Canada has directly marketed the Locks in Canada as high-end security devices and has placed the Locks into the Canadian marketplace through its distribution channel of locksmiths and security shops;
7. Given the close ties between the Respondents and considering the preceding, all Respondents are solidarily liable for the acts and omissions of the other. Unless the context indicates otherwise, all Respondents will be referred to as “Kaba” for the purposes hereof;

C) THE SITUATION

8. Kaba is the market leader of mechanical pushbutton locks (“PBL”) that have increased in popularity in the last number of years. Instead of inserting a key, users enter a numeric code to open these locks. Authorization is then verified on a purely mechanical basis;
9. Kaba uses the names Unican and Simplex for its product lines of PBL’s, which includes its 1000 Series, 3000 series, 5000 Series, 6200 Series, 7000 Series, 7100 Series. These locks will hereinafter be referred to collectively as the “Locks”;
10. Kaba makes the following specific representations regarding the Locks, namely:
 - a) “Security – without the headache of key management”
 - b) “Mechanical pushbutton locks are a great solution for controlling access between public and private areas”
 - c) “The locks are ideal for locations with regular personnel turnover, like data processing centers, employee entrances, research labs, apartment complexes, and dormitories”
 - d) “They perform nicely in conjunction with other security access systems, or as stand-alone security alternatives in smaller building applications”
 - e) “Durable heavy-duty construction makes Simplex locks suitable for outdoor applications, while their attractive finishes complement any indoor setting”

- f) “With 40 years in the marketplace, Simplex mechanical pushbutton locks continue to be the durable, reliable choice for many facility managers today”
- g) “The locks are dependable, easy to maintain, and flexible to meet the needs of today’s fast-paced environment”
- h) “The latest addition to the line of mechanical pushbutton locks, the Simplex 5000 offers unparalleled strength, convenience, and flexibility. This extra heavy-duty lock contains internal drive parts of cast stainless steel and a clutch-free direct-drive design”
- i) “The 1000 family offers a tried and true way to protect your assets. The heavy-duty locks in this family are dependable, reliable, and flexible enough to fit any security need in airports, apartment buildings, college dorms, or manufacturing plants”
- j) “Kaba’s complete line of Simplex® light commercial and residential locks provide the same added security features you find in our complete line of heavy-duty locks”
- k) “The 7100 and 6200 series can also be used alone, or with another lock in residential applications. Optional model features include spring latch and deadbolt. The rugged all-metal construction is weather resistant, providing added strength and durability”

the whole as appears more fully from a copy a Kaba Mechanical Pushbutton Locks brochure, produced herein as **Exhibit R-2**;

11. As a result of a flaw in the design of these Locks, the Locks can be opened by affixing a magnet to the outside of the Locks, which manipulates the internal mechanism and allows the lock to be opened with ease and without inputting the necessary combination;
12. Pushbutton locks manufactured, marketed, and sold by the Respondents, including but not limited to the Locks, can be opened by use of a magnet small enough to fit in the palm of the hand, thus allowing any petty criminal or other interested person easy access to any area whose access is supposed to be restricted;
13. Kaba contends that they only became aware of the vulnerability of their Locks on August 15th 2010. Kaba further insists that this issue only arises when a “rare earth magnet” is used on its Locks, which can pull a mechanical component out of alignment and potentially bypass the locking mechanism. Nevertheless, Kaba claims to have integrated an upgrade into their Locks to

protect against this problem with respect to all Locks manufactured after September 19th 2010;

14. While Kaba has allegedly fixed the vulnerability going forward for the production of new Locks (the date of September 19th 2010 is not admitted herein), it has failed to issue a recall on their older Locks and have failed to inform locksmiths and their customers about this problem on the existing Locks;
15. It is being put forward herein that:
 - a) Kaba either knew or should have known that their Locks were susceptible to entry with a magnet much earlier than August 15th 2010;
 - b) the Locks are vulnerable to magnets that can be bought at a regular hardware store and can fit in the palm of a person's hands and not only to a huge "rare earth magnet";
 - c) production of new Locks were allegedly upgraded to correct this defect at some point, but it is not admitted that this date was September 19th 2010;
 - d) Kaba is attempting to "sweep the problem under the rug" by:
 - i. claiming that their Locks are vulnerable to "rare earth magnets" only,
 - ii. fixing the problem for the future only but doing nothing for these Locks manufactured and/or sold before the alleged upgrade, and
 - iii. not informing locksmiths or their own customers about this defect and issuing a recall of the Locks already in use;

D) THE FOREIGN PROCEDURES

16. At least eleven (11) class action actions have been instituted in the United States based on the Respondents' conduct, the whole as appears more fully from a copy of various of these Class Action Complaints, produced herein *en liasse* as **Exhibit R-3**;

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

17. Petitioner purchased a Kaba Simplex 1000 series pushbutton lock on or about the end of the year 2004 / beginning of the year 2005 from a locksmith in Montreal, Quebec for approximately \$250;

18. Petitioner's PBL is dated May 28th 2004 ("5 / 28 / 04") and was "MADE IN USA";
19. Petitioner proceeded to have the PBL installed at his residence as he thought he was buying a superior security product (as evidenced by the premium price of the lock), which would protect his family and belongings, and with the convenience of being keyless;
20. Petitioner has just recently had the lock removed and replaced after reading on the internet about its vulnerability to entry through the use of a simple magnet for a replacement cost of \$142.41, the whole as appears more fully from a copy of this invoice, produced herein as **Exhibit R-4**;
21. Petitioner has also learned of the institution of eleven (11) class actions filed in the United States regarding the facts as alleged in the present proceedings and that they have all been consolidated into the Northern District Court of Ohio, the whole as appears more fully from a copy the MDL order number 2220, produced herein as **Exhibit R-5**;
22. Petitioner's damages are a direct and proximate result of the Respondents' conduct;
23. 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

24. Every member of the class has either purchased or otherwise owns a Lock which now requires:
 - a) the defective Lock replaced or repaired, or otherwise
 - b) has already replaced the defective Lock;
25. Each member of the class is justified in claiming at least one or more of the following as damages:
 - a) Purchase price of the original Lock;
 - b) Loss (or reduced) value of the Lock;
 - c) Purchase price of new replacement lock;
 - d) Trouble and inconvenience, for having to deal with this problem on their own and without the help of Kaba, who is responsible for this defect;

e) Punitive damages;

26. All of these damages to the class members are a direct and proximate result of the Respondents' conduct and the defective Locks;

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

27. The sale of the Locks are widespread in Quebec and Canada;

28. Petitioner is unaware of the specific number of persons who have purchased or otherwise own the Locks, however, given their tremendous popularity, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands);

29. Class members are numerous and are scattered across the entire province and country;

30. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase the delay and expense to all parties and to the court system;

31. 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;

32. 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;

33. 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

34. Individual questions, if any, pale by comparison to the numerous common questions that predominate;
35. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;
36. The recourses of the members raise identical, similar or related questions of fact or law, namely:
- a) Are the Locks defectively designed?
 - b) Are the Locks unfit for their intended use?
 - c) Did Kaba fail to adequately warn and/or purposefully conceal from locksmiths and Class Members that the Locks could be opened with a simple magnet?
 - d) Is Kaba responsible for all related costs (including, but not limited to, the purchase price of the original Locks, their loss or reduction in value, the purchase price of a new replacement lock, trouble and inconvenience) to Class Members as a result of the defect associated with the Locks?
 - e) Should an injunctive remedy be ordered to force Kaba to recall, repair and/or replace Class Members' Locks free of charge?
 - f) Is Kaba liable to pay compensatory, moral, and/or punitive damages to Class Members, and, if so, in what amount?
37. The interests of justice favour that this motion be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

38. The action that the Petitioner wishes to institute on behalf of the members of the class is an action in damages;
39. 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 Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

ORDER the Defendants to recall, repair, and/or replace the Locks free of charge;

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

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

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

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

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

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

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

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

40. Petitioner is a member of the class;

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

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

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

44. Petitioner, with the assistance of his attorneys, are ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;
45. Petitioner is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other class members, recognized and protecting so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;
46. Petitioner understands the nature of the action;
47. 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
48. The head office and principal place of business of the Respondent Kaba Canada is in the judicial district of Montreal;
49. A great number of the members of the class reside in the judicial district of Montreal and in the appeal district of Montreal;
50. The Petitioner's attorneys practice their profession in the judicial district of Montreal;
51. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

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

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

- all residents in Canada who have purchased and/or own a pushbutton lock sold under the brand names Unican and Simplex with regard to their 1000 Series, 3000 Series, 5000 Series, 6200 Series, 7000 Series, 7100 Series, and any such other locks manufactured by the Respondents that are capable of being opened with a magnet (the "Locks"), or any other group to be determined by the Court;



Alternately (or as a subclass)

- all residents in Quebec who have purchased and/or own a pushbutton lock sold under the brand names Unican and Simplex with regard to their 1000 Series, 3000 Series, 5000 Series, 6200 Series, 7000 Series, 7100 Series, and any such other locks manufactured by the Respondents that are capable of being opened with a magnet (the “Locks”), 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) Are the Locks defectively designed?
- b) Are the Locks unfit for their intended use?
- c) Did Kaba fail to adequately warn and/or purposefully conceal from locksmiths and Class Members that the Locks could be opened with a simple magnet?
- d) Is Kaba responsible for all related costs (including, but not limited to, the purchase price of the original Locks, their loss or reduction in value, the purchase price of a new replacement lock, trouble and inconvenience) to Class Members as a result of the defect associated with the Locks?
- e) Should an injunctive remedy be ordered to force Kaba to recall, repair and/or replace Class Members’ Locks free of charge?
- f) Is Kaba liable to pay compensatory, moral, and/or punitive damages to Class Members, and, if so, in what amount?

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

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

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

ORDER the Defendants to recall, repair, and/or replace the Locks free of charge;

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

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

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

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

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

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

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

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

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

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

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

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

THE WHOLE with costs including publications fees.



Montreal, March 28, 2011

(s) Jeff Orenstein

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