

CANADA

(Class Action)
SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001373-253

T. VERGADOS
and
P. COMTOIS

Plaintiffs

-VS.-

CHOCMOD CANADA INC.

Defendant

**AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS
ACTION & TO APPOINT THE PLAINTIFFS AS REPRESENTATIVE PLAINTIFFS
(Art. 574 C.C.P and following)**

TO THE HONOURABLE JUSTICE ELENY YIANNAKIS OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PLAINTIFFS STATE AS FOLLOWS:

I. GENERAL PRESENTATION

A) The Action

1. The Plaintiffs wish to institute a class action on behalf of the following class, of which they are members, namely:
 - All persons residing in Canada who have purchased Truffettes de France Product(s) or any other group to be determined by the Court;

Alternatively,

 - All persons residing in Quebec who have purchased Truffettes de France Product(s) or any other group to be determined by the Court;
2. The “Truffettes de France Products” means any and all of the Defendant’s truffle products sold in Canada, including, but not limited to:

- a) Original Cocoa Truffles,
 - b) Milk Chocolate Truffles,
 - c) Milk & Hazelnut Truffles,
 - d) Milk & Almond Truffles,
 - e) Salted Caramel Cocoa Truffles,
 - f) Coffee Crunch Truffles,
 - g) Cognac Champagne Truffles,
 - h) Organic Original Truffles,
 - i) Organic Caramel Cocoa Truffles,
 - j) Raspberry Flavoured Cocoa Truffles,
 - k) French Mallows;¹
3. The Truffettes de France Products were falsely and prominently marketed, advertised, promoted, packaged, labelled, sold, and/or represented as being from France, when in fact, they originate in Canada. Specifically, the front label of the products contains a large logo of “Truffettes de France” logo, representing that the truffles are produced in, and imported from, France;



¹ The Defendant may discontinue offering some products and introduce new products that are also falsely and/or misleadingly marketed with the use of the Truffettes de France claim. The Defendant may also market additional substantially similar products of which the Plaintiffs are unaware at present. The Plaintiffs reserve the right to amend the list of products at issue as necessary.

- ## B) The Defendant

7. Defendant Chocmod Canada Inc. (“Chocmod”) is a Canadian corporation with its head office in Saint-Jean-sur-Richelieu, Quebec that conducts business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-1**;
8. Chocmod is the current owner of the trade-mark & Design “TRUFFETTES DE FRANCE” (TMA547401), which was registered on June 28, 2001, the whole as

appears more fully from a copy of the trade-mark from the CIPO database, produced herein as **Exhibit R-2**;

9. The Defendant is either directly or indirectly responsible for manufacturing, distributing, marketing, advertising, promoting, packaging, labelling, selling, and/or representing the Truffettes de France Products as being a product of France, throughout Canada, including within the province of Quebec;

C) The Situation

I. What are Chocolate Truffles?

10. Chocolate truffles are a confectionery product traditionally made with a ganache centre composed of chocolate and cream, often coated with cocoa powder, nuts, or chocolate shells. Originating in France, these delicacies are widely recognized for their rich, smooth texture and premium ingredients, and are commonly associated with artisanal or gourmet chocolate making traditions;



11. The earliest recorded truffle recipe was created by Louis Dufour, a pastry chef from Chambéry, France.² At Christmas time in 1895, when Dufour ran out of chocolate for his dessert, he used what he had – fresh cream, vanilla, and grated cocoa – to create what is now known as the chocolate truffle, the whole as appears more fully from a copy of an extract from the Fine Chocolate Industry Association website at chocolateglossary.com, produced herein as **Exhibit R-3**;
12. Chocolate truffles are deeply connected to France, both in name and in origin. They were first created in France in the 1890s and their name is inspired by the famous Périgord black truffle, a rare and prized fungus found in French cuisine. This association with luxury and French gastronomy has helped chocolate truffles to gain a reputation for sophistication and high quality;

² There is some dispute as to who created the truffle. Some people also believe that Auguste Escoffier, another famous French chef, may have also played a role in the creation of the truffle, but it is more commonly attributed to Louis Dufour.

13. In order to capitalize on consumer demand for authentic French truffles made in France, the Defendant markets and sells chocolate truffles under the name “Truffettes de France” in order to gain an advantage and to boost sales;

II. The Defendant’s Representations

14. The Truffettes de France Products were falsely and prominently marketed and labelled as being from France on the product packaging to which consumers cannot miss when they make their truffle purchasing decisions.
15. Specifically, the front label of the product labelling on all of the varieties “Truffettes de France”, which is a false and/or misleading representation such that consumers were misled and deceived:



16. Immediately above the “Truffettes de France” logo appears 1948, which reinforces the representation that the truffles are made in France;

17. The Defendant represents the following on its Truffettes de France website:

“Discover the Exquisite Taste of Truffettes de France – Luxury French Chocolate Truffles.”

“Founded 75 years ago, Chocmod has built a rich heritage of craftsmanship, combining tradition and innovation to create indulgent French confectionery, including truffles, marshmallows, and chocolates.”

The whole as appears more fully from a copy of an extract from the Defendant’s website at <https://thetruffettesdefrance.com>, produced herein as **Exhibit R-4**;

18. On this same website (Exhibit R-4), the Defendant features a video entitled “How to Eat Truffettes de France” where an American family is sitting down for Christmas and wanted to try French truffles, the following interesting statements were made (1:16-2:12):

“Well, I know that your son really liked those little truffle things from Dollar Tree. So, I saw this at Costco, and, it was a good price, and I thought, well, its real truffles, not the dollar store truffles...and it says it’s from France, so they’re the French ones...”

“Actually, these are the “Truffles de France”, so they’re from France, they walked a long way to get here from France, they had to cross the ocean...”

The whole as appears more fully from a copy of the video extracted from the Defendant’s website at <https://thetruffettesdefrance.com>, produced herein as **Exhibit R-5**;

19. On the “About Us” portion of the same website, the Defendant represents the following:

“At Truffettes de France, we believe that indulgence and responsibility can go hand in hand. For over 75 years, we have been crafting exquisite chocolate delicacies that celebrate the art of French gourmandise.”

“Since 1948, Truffettes de France has been a symbol of French elegance and savoir-faire.”

“Our chocolates are more than just treats—they are a celebration of the French art of living.”

The whole as appears more fully from a copy of an extract from the Defendant's website at <https://thetruffettesdefrance.com>, produced herein as **Exhibit R-6**;

III. The U.S. Class Action

20. A class action was filed in the U.S. on November 7, 2022 alleging substantially similar allegations regarding the Truffettes de France Products. It was subsequently amended on December 22, 2022, the whole as appears more fully from a copy of the Amended Class Action Complaint in Case No. 1:22-cv-01435-JLT-SKO, dated December 22, 2022, produced herein as **Exhibit R-7**;
21. The defendant's motion for a judgment on the pleadings was denied on March 28, 2025, with the Federal Court making the following remarks:

"The fatal flaw in Defendant's argument is that it discounts the notion that to the consumer, the truffles' place of origin matters. Indeed, it is possible that even a chocolate connoisseur may not be able to distinguish French-made from Canadian-made truffles. Nonetheless, each may carry economic differences in how much such a consumer would pay. This is precisely what Plaintiffs allege—that consumers are willing to pay more for French-made truffles due to their history and tradition, and thus, in reliance on Defendant's front label indicating that the truffles were "from France," Plaintiffs paid a premium price they would not have otherwise paid.

...

Here, the brand name "Truffettes de France," or "Truffles from France," is not ambiguous; this affirmative representation would plausibly mislead a reasonable consumer to conclude, without more information, that the truffles are, indeed, from France.

...

Here, by contrast, the front label makes more than a "mere reference" to France; it makes an "actual representation[] about [the truffles'] country of manufacture." ... In other words, by representing that the truffles are *from* France, the label refers to France as the geographic origin of the truffles.

...

This leads the Court to Defendant's argument that use of its "Truffettes de France" brand name is no different than identifying the style or recipe of a product by labeling them as French onion soup, French fries, Belgian chocolates, Mexican burritos, or Chinese chicken salad...

Unlike these cases, however, Defendant's front labels state that the truffles are "from France." ... Despite how Defendant chooses to

characterize the truffles, the front labels do not contain phrases such as “French-style truffles” or “French truffles.”

...

Guided by case law and common sense, the Court concludes “that a significant portion of the general consuming public or of targeted consumers, acting reasonably in the circumstances, could be misled” by Defendant’s front label to believe that its truffles are made in France.”

The whole as appears more fully from a copy of the Order Denying Defendant’s Motion for Judgment on the Pleadings in Case No. 1:22-cv-01435-JLT-SKO, dated December 22, 2022, produced herein as **Exhibit R-8**;

IV. Summative Remarks

22. Through the use of French branding, imagery, and representations, the Defendant has deliberately misled consumers into believing that the Truffettes de France Products are authentic French truffles made in France, thereby capitalizing on the reputation of French chocolate craftsmanship to increase sales;
23. Consumers reasonably rely on accurate labelling and marketing when making purchasing decisions, particularly as regards country of origin, which is often associated with quality, tradition, and authenticity. The Defendant’s misrepresentations have caused consumers to pay a premium for a product that does not originate in France, thereby violating consumer protection laws and engaging in unfair business practices;
24. This class action seeks to hold the Defendant accountable for its deceptive marketing, to ensure transparency in product labelling and to ensure fair competition in the marketplace. It also seeks compensation for consumers who were misled into purchasing the product under false pretenses;
25. The advertisements and representations made by the Defendant as set out above were and are false and/or misleading. The Defendant’s acts and practices, as alleged herein, constitute unfair or deceptive acts or practices, misbranding and the making of false statements;
26. As a result of the Defendant’s deceptive claims, consumers have purchased products that are substantially different from those that were represented;
27. The Plaintiffs and Class Members were among the intended recipients of the Defendant’s deceptive representations and omissions described herein. The Defendant’s misrepresentations and omissions, as described herein, are material in that a reasonable person would attach importance to such

information and would be induced to act upon such information in making purchasing decisions;

28. Consumers were induced into purchasing Truffettes de France Products through the use of false and misleading representations, thereby vitiating their consent and entitling them to claim a refund of the purchase price of those products;

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

Plaintiff Vergados

29. In the end of 2024, Plaintiff Vergados purchased a box of the Truffettes de France Original Product from the Costco located at 1015 Rue du Marché Central, in Montreal, Quebec;
30. The Truffettes de France Product was intended as a special holiday gift for his work colleague;
31. When making his purchase decision, Plaintiff Vergados believed, based on the Defendant's marketing and having read the product labelling, including the graphics, namely, the name "Truffettes de France", the words "depuis 1948" and the Eiffel Tower, that the Truffettes de France Products were manufactured in France, were a European product and were imported into Canada from France;
32. The French origin of the Truffettes de France Product was important to Plaintiff Vergados because he knew that France was renowned for its chocolate products and for truffles and he wanted something imported and a little bit different from standard Canadian chocolate to give as a gift to show that he cared. For that, he was willing to pay a premium price over other non-France imported truffles;
33. Plaintiff Vergados has since realized that the Truffettes de France Products are not actually produced in France or imported from France and he was very disappointed that what he had purchased as a special gift, did not originate from France, but was instead produced in Canada;

Plaintiff Comtois

- 33.1 During the holiday season in the end of 2024, Plaintiff Comtois purchased a box of the Truffettes de France Original Product from Costco;
- 33.2 The Truffettes de France Product was purchased as a dessert for a special dinner for his employers and invitees from France;

- 33.3 Plaintiff Comtois presented the Truffettes de France Product at the dinner as a French-origin product and his employers and invitees knew that it did not originate from France – he felt humiliated as what he thought was going to be a special surprise, instead made him look foolish, especially so since someone else had brought actual truffles from France;
- 33.4 When making his purchase decision, Plaintiff Comtois believed, based on the Defendant's marketing and having read the product labelling, including the graphics, namely, the name "Truffettes de France", the words "depuis 1948" and the Eiffel Tower, that the Truffettes de France Products were manufactured in France, were a European product and were imported into Canada from France;
- 33.4 The French origin of the Truffettes de France Product was important to Plaintiff Comtois because he knew that France was renowned for its chocolate products and for truffles and he wanted to impress his employers and invitees from France with a French product. For that, he was willing to pay a premium price over other non-France imported truffles;
34. In consequence, the Plaintiffs have realized that they had been misled by the Defendant; had they known the true facts, neither Plaintiff would have purchased the Truffettes de France Products, nor would not have purchased them at such a high price;
35. The damages suffered by the Plaintiffs are a direct and immediate consequence of the Defendant's conduct and its false and misleading advertising;
36. In view of the foregoing, the Plaintiffs are justified in claiming damages;

III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

37. Every member of the Class has purchased one or more Truffettes de France Products believing them to be of French origin as a result of the Defendant's marketing, advertising, labelling, and representations;
38. The Class Members were, therefore, induced into error by the Defendant's false and misleading conduct;
39. Had the Defendant disclosed the truth about the Truffettes de France Products, i.e. that they were not produced in France but in Canada, reasonable consumers would not have purchased them and/or would certainly not have paid such a high price for them;
40. In consequence of the foregoing, 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 Truffettes de France Product(s) or in the alternative, a portion of the purchase price of the Truffettes de France Product(s);
 - b. Punitive damages;
41. The Defendant has engaged in wrongful conduct, while at the same time obtaining substantial sums of money from Class Members under false pretences;
 42. All of these damages to the Class Members are a direct and proximate result of the Defendant's conduct and their false and misleading advertising;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

- A) The composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings
43. The Plaintiffs are not privy to the specific number of persons who purchased Truffettes de France Products in Canada; however, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands). Nevertheless, the Defendant's sales records could establish the size of the class to a reasonable degree of exactitude;
 44. Class Members are numerous and are scattered across the entire country;
 45. 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 Defendant. Even if the Class Members themselves could afford such individual litigation, it would place an unjustifiable burden on the courts and, at the very least, is not in the interests of judicial economy. Furthermore, individual litigation of the factual and legal issues raised by the conduct of the Defendant would increase delay and expense to all parties and to the court system;
 46. While certain Class Members may have suffered a substantial loss, it is expected that the majority have suffered small losses making it economically unfeasible to finance the litigation expenses inherent in any legal proceeding;
 47. This class action overcomes the dilemma inherent in an individual action whereby the legal fees alone would deter recovery and thereby in empowering the consumer, it realizes both individual and social justice as well as rectifies the imbalance and restore the parties to parity;
 48. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgments on questions of fact and law that are similar or related to all members of the Class;

49. 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 together in one action;
 50. In these circumstances, a class action is the only appropriate procedure and the only viable means for all of the members of the Class to effectively pursue their respective rights and have access to justice;
- B) The claims of the members of the Class raise identical, similar or related issues of law or fact
51. All consumers have been subjected to the same deceptive practices, namely, the marketing, advertising, promotion, packaging, labelling, sale, and/or representation of the Truffettes de France Products as originating from France;
 52. Individual issues, if any, pale by comparison to the common issues that are significant to the outcome of the litigation;
 53. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, the Defendant's misconduct;
 54. The claims of the members raise identical, similar or related issues of fact or law, namely:
 - a) Did the Defendant engage in unfair, false, misleading, or deceptive acts or practices regarding the manufacturing, distributing, marketing, advertising, representations, promotion, packaging, labelling, and/or sale of the Truffettes de France Products?
 - b) Is the Defendant liable to the Class Members for reimbursement of the purchase price of the Truffettes de France Products as a result of its misconduct?
 - c) Should an injunctive remedy be ordered to prevent the Defendant from continuing to perpetrate its unfair, false, misleading, and/or deceptive conduct?
 - d) Is the Defendant responsible to pay punitive damages to Class Members and in what amount?
 55. The interests of justice favour that this application be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

56. The action that the Plaintiffs wish to institute on behalf of the members of the Class is an action in damages, injunctive relief, and a declaratory judgment;

57. The conclusions that the Plaintiffs wish to introduce by way of an application to institute proceedings are:

GRANT the class action of the Plaintiffs and each of the members of the Class;

DECLARE that the Defendant has committed unfair, false, misleading, and/or deceptive conduct with respect to its manufacturing, importing, distributing, marketing, advertising, promoting, packaging, labelling, selling, and/or representing the Truffettes de France Products as being produced in, and imported from, France;

ORDER the Defendant to cease from continuing their unfair, false, misleading, and/or deceptive conduct by manufacturing, distributing, marketing, advertising, promoting, packaging, labelling, selling, and/or representing the Truffettes de France Products as being produced in, and imported from, France;

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

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

ORDER the Defendant 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 Defendant 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 Plaintiffs request that they be designated as representative of the Class

58. The Plaintiffs are members of the Class;

59. The Plaintiffs are ready and available to manage and direct the present action in the interest of the members of the Class that he 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 and the *Fonds d'aide aux actions collectives*, as the case may be, and to collaborate with his attorneys;

60. The Plaintiffs have the capacity and interest to fairly, properly, and adequately protect and represent the interest of the members of the Class;
61. The Plaintiffs have both given mandates to their attorneys to obtain all relevant information with respect to the present action and intend to keep informed of all developments;
62. The Plaintiffs, with the assistance of their 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;
63. The Plaintiffs have given instructions to their attorneys to put information about this class action on their website and to collect the coordinates of those Class Members that wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing;
64. The Plaintiffs are in good faith and has instituted this action for the sole goal of having their 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 Defendant's conduct;
65. The Plaintiffs understand the nature of the action;
66. The Plaintiffs' interests do not conflict with the interests of other Class Members and further, the Plaintiffs have no interest that is antagonistic to those of other members of the Class;
67. The Plaintiffs are prepared to be examined out-of-court on their allegations (as may be authorized by the Court) and to be present for Court hearings, as may be required and necessary;
68. The Plaintiffs have spent time researching this issue on the internet and meeting with their attorneys to prepare this file. In so doing, they are convinced that the problem is widespread;
- B) The Plaintiffs suggest that this class action be exercised before the Superior Court of Justice in the district of Montreal
69. A great number of the members of the Class reside in the judicial district of Montreal and in the appeal district of Montreal;
70. The Plaintiffs' attorneys practice their profession in the judicial district of Montreal;

71. The present application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present application;

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

APPOINT the Plaintiffs as representatives of the persons included in the Class herein described as:

- All persons residing in Canada who have purchased Truffettes de France Product(s) or any other group to be determined by the Court;

Alternatively,

- All persons residing in Quebec who have purchased Truffettes de France Product(s) or any other group to be determined by the Court;

IDENTIFY the principal issues of fact and law to be treated collectively as the following:

- a) Did the Defendant engage in unfair, false, misleading, or deceptive acts or practices regarding the manufacturing, distributing, marketing, advertising, representations, promotion, packaging, labelling, and/or sale of the Truffettes de France Products?
- b) Is the Defendant liable to the Class Members for reimbursement of the purchase price of the Truffettes de France Products as a result of its misconduct?
- c) Should an injunctive remedy be ordered to prevent the Defendant from continuing to perpetrate its unfair, false, misleading, and/or deceptive conduct?
- d) Is the Defendant 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 Plaintiffs and each of the members of the Class;

DECLARE that the Defendant has committed unfair, false, misleading, and/or deceptive conduct with respect to its manufacturing, importing,

distributing, marketing, advertising, promoting, packaging, labelling, selling, and/or representing the Truffettes de France Products as being produced in, and imported from, France;

ORDER the Defendant to cease from continuing their unfair, false, misleading, and/or deceptive conduct by manufacturing, distributing, marketing, advertising, promoting, packaging, labelling, selling, and/or representing the Truffettes de France Products as being produced in, and imported from, France;

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

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

ORDER the Defendant 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 Defendant 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 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 Class Members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

ORDER the publication of a notice to the members of the group in accordance with article 579 C.C.P. within sixty (60) days from the judgment to be rendered herein in The Globe and Mail, the National Post, the Vancouver Sun, *La Presse*, and the Montreal Gazette;

ORDER that said notice be available on the Defendant's website(s), as well as their Facebook page(s) and Twitter account(s) with a link stating "Notice to Truffettes de France 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 publication and dissemination fees.

Montreal, July 28, 2025



ACTIS LAW GROUP INC.

Per: Me Andrea Grass
Attorneys for the Plaintiffs

ACTIS LAW GROUP INC.
500 Place d'Armes, Suite 1800
Montreal, Quebec, H2Y 2W2
Telephone: (514) 495-5249
Fax: (514) 907-0786
Email: agrass@actislaw.org