

CANADA

(Class Action)
SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001338-249

M.T.
and
M. HAMEL

Plaintiffs

-vs.-

CHURCH & DWIGHT CANADA CORP.
and
CHURCH & DWIGHT CO., INC.

Defendants

**RE-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 MR. JUSTICE LUCASZ GRANOSIK 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 Quebec who have purchased Trojan Ultra Thin Condoms for Ultra Sensitivity (the "Trojan Condoms") or any other group to be determined by the Court;



2. Condoms are a widely-recognized form of contraception designed for safe sexual intercourse and to reduce the risk of sexually-transmitted infections and unplanned pregnancies;
3. The present class action involves Trojan-brand male condoms that were independently tested and found to contain per- and polyfluoroalkyl substances (“PFAS”), also known as toxic “forever chemicals”, meaning that they can last for years and even decades inside the human body;
4. Many studies have shown that exposure/absorption of PFAS can cause a number of toxicological health effects and are linked to *inter alia* thyroid disorders, immune system damage, various types of cancer, liver damage, decreased fertility/reproductive issues, lowered birth weight, endocrine disruption, thyroid disruption, allergies, diabetes, infections, high blood pressure, and asthma;
5. The Defendants design, manufacture, import/export, market, package, label, distribute, and sell condoms that were and are unfit for their intended purpose (being safe sex) because they contain such PFAS that get absorbed into the human body;
6. To make matters worse, because the intended purpose of condoms is to put them on and into the most sensitive areas of the human body (genitalia), to which are incredibly vascular areas, and to then create friction-induced additional heat and blood flow in a moist environment, it makes their absorption all the more dangerous. In other words, the site and the mechanism of absorption and permeability in this case is quite concerning;

7. By reason of its actions and omissions, the Defendants induced consumers into purchasing Trojan condoms that do not live up to their reasonable expectations of safety, thereby causing the Plaintiffs and the members of the Class to suffer *inter alia* economic damages, upon which they are entitled to claim;

B) The Defendants

8. Defendant Church & Dwight Canada Corp. (“C&D Canada) is a Canadian corporation with its head office listed as in Halifax, Nova Scotia. It is a wholly-owned subsidiary of Defendant Church & Dwight Co., Inc. 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* and from a copy of an extract from the Defendants’ website at www.trojan.ca, produced herein *en liasse* as **Exhibit R-1**;
9. Defendant Church & Dwight Co., Inc. (C&D USA) is an American Corporation with its head office in Ewing, New Jersey. It is the parent company of Defendant C&D Canada that is listed as the “manufacturer” of Trojan Ultra Thin condoms in Canada;
10. The Defendants operate in three segments: Consumer Domestic, Consumer International, and Specialty Products Division. The Consumer Domestic and Consumer International segments market a variety of personal care and household products and over-the-counter products, including the Trojan Condoms, the whole as appears more fully from a copy of the 2023 Annual Report of C&D USA, produced herein as **Exhibit R-2**;
11. Defendant C&D Canada is the registrant of the website www.trojan.ca, which was registered on November 1, 2022, the whole as appears more fully from a copy of the domain registration information for the website, produced herein as **Exhibit R-3**;
12. Defendant C&D USA owns License Number 7861 for “Trojan Ultra Thin” with Health Canada, with the first issue date of July 13, 1999, with the following device identifiers, and issues dates¹:
 - 61700-92651 – September 8, 2011
 - 61700-92652 – September 8, 2011
 - 61700-99166 – October 22, 2018
 - 61700-99929 – May 5, 2020

¹ In Canada, condoms are considered medical devices and are therefore regulated by Health Canada.

C&D USA also owns License Number 104701 for “Trojan Ultra Thin” with Health Canada, with the first issue date of June 1, 2020, with the following device identifiers and issues dates:

- 61700-99929 – June 1, 2020
- 61700-92651 – July 2, 2020
- 61700-92652 – July 2, 2020
- 61700-99166 – July 2, 2020
- 72022446 – April 25, 2022

The whole as appears more fully from a copy of the Active licence listing from Health Canada for medical devices and from copies from the Archived device name search results for both licenses, produced herein *en liasse* as **Exhibit R-4**;

13. Defendant C&D USA is the registrant of *inter alia* the trade-mark TROJAN (TMA233439), which was filed on July 18, 1978, the whole as appears more fully from a copy of the trade-mark from the CIPO database, produced herein as **Exhibit R-5**;
14. The Defendants primarily sell their condoms through third-party retailer rather than directly to consumers. The Trojan Condoms are widely-available in pharmacies, grocery stores, and online marketplaces. While they may engage in direct-to-consumer marketing, the sales typically occur through various retail channels, including, but not limited to: Jean Coutu, Pharmaprix (Shoppers Drug Mart), Walmart, Familiprix, Uniprix, Metro, well.ca, Amazon, and other similar retail stores, the whole as appears more fully from a copy of an extract from the Defendants’ website at www.trojan.ca, produced herein as **Exhibit R-6**;
15. Both Defendants are either directly or indirectly responsible for designing, manufacturing, importing/exporting, marketing, advertising, packaging, labelling, and selling the Trojan Condoms throughout Canada, including within the province of Quebec;
16. Given the close ties between the Defendants and considering the preceding, both Defendants are solidarily liable for the acts and omissions of the other;

C) The Situation

I. PFAS – “Forever Chemicals”

17. Per- and Polyfluoroalkyl Substances (PFAS) are toxic, man-made chemicals that contain carbon-fluorine bonds that have dangerous effects on the environment and our health. They have been linked to cancer, reproductive harm, immune

system damage and other serious health problems, even at low levels, the whole as appears more fully from a copy of an extract from the UN Environment Programme website at www.unep.org, from a copy of an extract from the Stockholm Convention on Persistent Organic Pollutants (POPs) website at www.pops.int, and from a copy of the UN Environment Programme Factsheet entitled “Per- and Polyfluoroalkyl Substances (PFASs) and the Stockholm Convention on POPs”, produced herein *en liasse* as **Exhibit R-7**;

18. PFAS are a diverse group of over 4,700 synthetic chemicals that have a fluorinated carbon chain structure. They include both Perfluoroalkyl Substances and Polyfluoroalkyl Substances. Perfluoroalkyl Substances have fully fluorinated carbon chains. Perfluoroalkyl Substances include PFOS (Perfluorooctane sulfonate) and PFOA (Perfluorooctanoic acid), and Polyfluoroalkyl Substances include F53B, a formulation that contains various PFAS and GenX, a replacement for PFOA in some applications, the whole as appears more fully from a copy of an extract from the Government of Canada website entitled “Per- and polyfluoroalkyl substances (PFAS) in Canadians” at www.canada.ca, produced herein as **Exhibit R-8**;
19. PFAS resist grease, oil, water, and heat and therefore persist in the environment and accumulate in the human body due to its resistance to heat, water, and oil. Some typical uses of PFAS include as surfactants, lubricants, and repellents (for dirt, water, and grease). PFAS can be found in certain industrial and consumer products, including, firefighting foams, food packaging, drugs, cosmetics, sunscreens, pesticides, textiles (for example, carpets, furniture, and clothing), non-stick cookware (Teflon), vehicles, and electronics, the whole as appears more fully from copies of extracts from the Government of Canada website at www.canada.ca entitled “Per-and polyfluoroalkyl substances (PFAS)” and entitled “Per- and polyfluoroalkyl substances (PFAS) and your health”, and from a copy of the Agency for Toxic Substances and Disease Registry’s Toxicological Profile for Perfluoroalkyls released May 2021, produced herein *en liasse* as **Exhibit R-9**;
20. PFAS were first used in the 1940s and are now used in a wide range of industrial and consumer products including stain- and water-resistant fabrics and carpeting, cleaning products, paints, and fire-fighting foams, the whole as appears more fully from a copy of an extract from the U.S. Food & Drug Administration website at www.fda.gov entitled “Per- and Polyfluoroalkyl Substances (PFAS)”, produced herein as **Exhibit R-10**;
21. While PFAS can vary from one to the next, they are all characterized by the presence of carbon-fluorine bonds, which are among the strongest in organic chemistry, making PFAS highly resistant to degradation. This has resulted in PFAS contaminating the air, water, and soil. This persistence in the environment and in living organisms has led to the nickname “forever chemicals” (Exhibit R-10);

22. Due to their persistence and accumulation over time, PFAS are harmful even in very small quantities. Research has demonstrated various toxicological effects in laboratory studies, and these substances have been linked to thyroid disorders, immune system issues, increases in cholesterol levels, lower antibody/immune response, changes in liver enzymes/liver effects, different types of cancer, and adverse pregnancy outcomes, the whole as appears more fully from copies of extracts from the Agency for Toxic Substances and Disease Registry (ATSDR) website at www.atsdr.cdc.gov, from a copy of the ATSDR's Toxicological Profile for Perfluoroalkyls, undated, from a copy of an extract from the Toxic Substances Portal for Perfluoroalkyls, and from a copy of the Public Health Agency of Ontario publication entitled "Per-and Poly-Fluoroalkyl Substances (PFAS)" dated May 2023, produced herein *en liasse* as **Exhibit R-11**;
 23. Much testing has been conducted on the presence of PFAS in foods and other consumables since 2019; however, the same attention has not been brought to the intimate products industry – until now;
 24. What we are talking about is chemicals used in cookware and food packaging, that is present in the Defendants' intimate devices intended for use on and in your private parts;
 - 24.1 Perhaps, the most famous application of PFAS was in non-stick Teflon pans;
 - 24.2 There are many links between PFAS and cancer of *inter alia* the liver, testicles, mammary glands (breasts), kidney, thyroid, prostate, bladder, ovaries, and pancreas. The strongest link between PFAS and cancer is for kidney and testicular cancer. According to Kirsten Moysich, PhD, Professor of Oncology, Cancer Prevention & Control at Roswell Park Comprehensive Cancer Center:

“Studies in populations exposed to PFAS contaminated water have identified increased cholesterol levels, changes in liver enzymes, changes in thyroid hormones, difficulties in becoming pregnant, high blood pressure during pregnancy, low birth weight and developmental delays, weak reaction to vaccines, kidney cancer and testicular cancer to be higher in these populations compared to the general public,”
- The whole as appears more fully from a copy of the Roswell Park article entitled ““Forever chemicals” and cancer” dated August 4, 2023 and from a copy of the American Cancer Society article on its website at www.cancer.org entitled “PFOA, PFOS, and Related PFAS Chemicals”, produced herein *en liasse* as **Exhibit R-49**;
25. On April 24, 2021, the Canadian Government published a “Notice of intent to address the broad class of per- and polyfluoroalkyl substances” under the *Environmental Protection Act*, RSO 1990, c E.19 in order to address the issue of

PFAS as a class to better address the situation, the whole as appears more fully from a copy of the Department of the Environment notice entitled “Canada Gazette, Part I, Volume 155, Number 17: GOVERNMENT NOTICES” dated April 24, 2021, produced herein as **Exhibit R-12**;

26. In June 2022, the U.S. EPA issued a lifetime health advisory regarding PFAS. While this advisory is not a formal regulation, it acts as informal technical guidance to aid government officials. The advisory establishes lifetime health advisory levels of 0.004 parts per trillion (ppt) for PFOA and 0.02 ppt for PFOS. These thresholds are lower than the detection limits of most measurement tools, indicating that any detectable levels of PFOA or PFOS are considered to exceed the lifetime health advisory level, the whole as appears more fully from a copy of the U.S. EPA News Release entitled “EPA Announces New Drinking Water Health Advisories for PFAS Chemicals, \$1 Billion in Bipartisan Infrastructure Law Funding to Strengthen Health Protections” dated June 15, 2022, from a copy of the U.S. Federal Register/ Vol. 87, No. 118 entitled “Lifetime Drinking Water Health Advisories for Four Perfluoroalkyl Substances” dated June 21, 2022, and from a copy of the Washington State Department of Health release entitled “2022 EPA Health Advisory Levels for Four PFAS” dated October 21, 2022, produced herein *en liasse* as **Exhibit R-13**;
27. In May 2023, the Government of Canada published a Draft State of Per- and polyfluoroalkyl substances (PFAS) Report with a 60-day comment period. Comments were received and then an Updated Draft State of Per- and Polyfluoroalkyl Substances (PFAS) Report and a Revised Risk Management Scope for Per- and Polyfluoroalkyl Substances (PFAS) was published in July 2024 – the Defendants is notably absent from any of this discussion, the key players being listed in the Summary of Public Comments, the whole as appears more fully from a [copy of the Draft State of Per- and polyfluoroalkyl substances \(PFAS\) Report](#) dated May 2023, from a copy of the [Summary of public comments received on the draft state of per- and polyfluoroalkyl substances report and the risk management scope for per- and polyfluoroalkyl substances](#), from a copy of the [Updated Draft State of Per- and Polyfluoroalkyl Substances \(PFAS\) Report](#), and from a copy of the [Revised Risk Management Scope for Per- and Polyfluoroalkyl Substances \(PFAS\)](#) dated July 2024, produced herein *en liasse* as **Exhibit R-14** (a copy of the final report and any other relevant documentation will be attached hereto by amendment after publication);
28. The Updated Draft State of Per- and Polyfluoroalkyl Substances (PFAS) Report (Exhibit R-14 c) describes and defines PFAS as follows:

“The common chemical characteristic of PFAS is their perfluoroalkyl moiety, which is extremely stable in the environment, to the extent that PFAS have often been termed “forever chemicals.” Simple PFAS are highly persistent, whereas more complex molecules transform into stable PFAS. In this report, PFAS refers to the broad chemical definition by the

- Organisation for Economic Co-operation and Development (OECD), which is: “fluorinated substances that contain at least one fully fluorinated methyl or methylene carbon atom (without any H/Cl/Br/I atom attached to it), i.e., with a few noted exceptions, any chemical with at least a perfluorinated methyl group (–CF₃) or a perfluorinated methylene group (–CF₂–) is a PFAS”.
29. There is an increasing body of evidence that exposure to other PFAS can lead to adverse effects on the environment and human health. Cumulative effects from co-exposure to multiple PFAS may also occur (Exhibit R-14 c);
 30. PFAS are currently regulated in Canada under the *Prohibition of Certain Toxic Substances Regulations*, 2012, [SOR/2012-285](#) under the *Canadian Environmental Protection Act*, 1999, [SC 1999, c 33](#). PFOS (and its salts), PFOA, and long-chain perfluorocarboxylic acids (LC-PFCAs), are currently listed as toxic substances in [Schedule 1](#) of the *Canadian Environmental Protection Act* (the Toxic Substances List);
 - 30.1 On February 28, 2024, the U.S. FDA announced the PFAS could no longer be used in grease-proofing food packaging in the U.S. (e.g. fast-food wrappers, microwave popcorn bags, take-out paperboard containers, the whole as appears more fully from a copy of the FDA News Release entitled “FDA, Industry Actions End Sales of PFAS Used in US Food Packaging” dated February 28, 2024 and from a copy of the FDA Constituency Update entitled “FDA Announces PFAS Used in Grease-Proofing Agents for Food Packaging No Longer Being Sold in the U.S.” dated February 28, 2024, produced herein *en liasse* as **Exhibit R-50**;

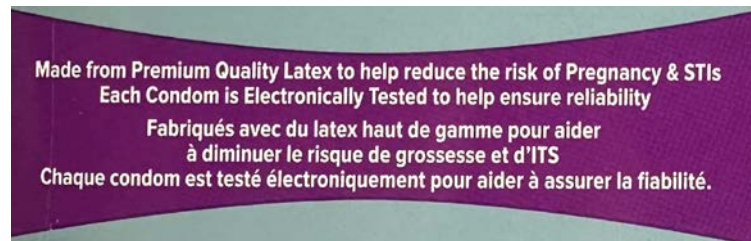
II. The Defendants’ Representations

31. The Defendants design, manufacture, import/export, market, advertise, package, label, distribute, and sell Trojan-branded condoms internationally in a variety of different forms, including the Trojan Condoms in question;
32. The Defendants represent their condoms as “Canada’s #1 Condom” and that they have been “trusted for over 100 years” and are “triple tested” on the front of the product packaging itself;





33. In addition, the Defendants indicate on the side of the product packaging that the Trojan Condoms are made from “Premium Quality Latex”;



34. Neither on the product packaging, nor in their advertisements, nor on their websites do the Defendants disclose the presence of PFAS chemicals in the Trojan Condoms;

35. On its website, the Defendants represents the following:

- The TROJAN™ Brand promotes a safe, healthy, and fun sex life
- Made from premium quality latex to help reduce the risk of pregnancy and STIs
- Each condom is electronically tested to help ensure reliability
- CANADA’S #1 CONDOM BRAND

The whole as appears more fully from copies of extracts from the Defendants’ website at www.trojan.ca, produced herein *en liasse* as **Exhibit R-15**;

III. PFAS in the Defendants’ Trojan Condoms

36. On February 6, 2024, Mamavation, a consumer advocacy group focused on consumer health and safety, released the results of a consumer study on condoms and lubricants with raw laboratory results on PFAS “forever chemical” indicators as part of their efforts to raise awareness about harmful chemicals in everyday products, the whole as appears more fully from a copy of an extract from the Mamavation website at www.mamavation.com, produced herein as **Exhibit R-16**;

37. 25 condoms and 4 lubricants from 19 brands were tested for the presence of PFAS “forever chemical” indicators at an EPA-certified third-party laboratory. The results indicated (Exhibit R-16):
- 14% of total condom & lubricants tested had indications of PFAS “forever chemicals.” 4 detections from 29 reproductive health products (condoms & lubricants) had organic fluorine above 10 parts per million (ppm) according to our lab,
 - Broken down by category, 12% of condoms tested had indications of PFAS “forever chemicals.” Specifically, 3 out of 25 condoms had detectable levels of organic fluorine above 10 ppm,
 - 25% of lubricants had indications of PFAS “forever chemicals.” Specifically, 1 out of 4 lubricants had detectable levels of organic fluorine above 10 ppm,
 - Ranges of organic fluorine, a marker of PFAS, were from 13 ppm to 68 ppm;
38. The testing revealed that Trojan Ultra Thin Condoms for Ultra Sensitivity contain 13 parts per million (ppm) of organic fluorine, which confirms the presence of PFAS (Exhibit R-16);
39. Organic fluorine or organofluorine is a marker for PFAS because all PFAS chemicals are carbon-based compounds that contain fluorine;
40. Fluorine is a chemical element with symbol F and atomic number 9 that is used, along with its compounds, in producing uranium, the whole as appears more fully from a copy of an extract from the National Library of Medicine website at pubchem.ncbi.nlm.nih.gov entitled “Flourine”, produced herein as **Exhibit R-17**;
41. In chemistry, the term “organic” refers to compounds that contain carbon. Organic fluorine is formed through chemical bonds between carbon and fluorine atoms. The strong bond between carbon and fluorine characterizes PFAS chemicals and contributes to their widespread use;
42. The measurement of total organic fluorine or total fluorine analysis as a proxy for total PFAS contamination provides concentration of organic fluorine, which is representative of the presence or absence of PFAS, the whole as appears more fully from a copy of an extract from the Bureau Veritas North America article entitled “PFAS Analysis Toolkit: LC/MS/MS, Total Oxidizable Precursors (TOPS) and Total Organic Fluorine (TOF)” dated February 12, 2021, produced herein as **Exhibit R-18**;
43. Organic fluorine testing is a powerful tool that yields highly accurate results for PFAS in a sample. This type of testing exclusively measures fluorine that is bonded to a carbon backbone isotope. As a result, it does not detect other forms of fluorine, such as inorganic fluorine (for example, the more commonly known

substance, fluoride), the whole as appears more fully from a copy of the [Phys.Org](#) article entitled “Scientists use carbon isotopes to track ‘forever chemicals’” dated August 7, 2024, from a copy of the Science Daily article entitled “Forever chemical pollution can now be tracked” dated August 7, 2024, and from a copy of the Environment International article entitled “Extractable organofluorine analysis: A way to screen for elevated per- and polyfluoroalkyl substance contamination in humans?” dated 2022, produced herein *en liasse* as **Exhibit R-19**;

44. The presence of PFAS in the Defendants’ Trojan Condoms raises serious concerns about their effects on human health. PFAS can be absorbed into the body during sexual intercourse through skin contact. Genital areas, both male and female, consist of sensitive tissues that are more susceptible to absorbing chemicals as compared to other parts of the body;
45. Furthermore, an increase in body temperature during sexual activity can enhance the transfer of PFAS through the skin;

IV. The Science

46. Many scientific studies over the years have linked exposure to PFAS to serious health conditions, including:
 - (a) Hillary L. Shane et al., “Immunotoxicity and allergenic potential induced by topical application of perfluorooctanoic acid (PFOA) in a murine model” (2020) 136, Food and Chemical Toxicology, produced herein as **Exhibit R-20**;
 - (b) Oddný Ragnarsdóttir et al., “Dermal uptake: An important pathway of human exposure to perfluoroalkyl substances?” (2022) 307, Environmental Pollution, produced herein as **Exhibit R-21**;
 - (c) Nicolas van Larebeke et al., “Per- and polyfluoroalkyl substances (PFAS) and immune system-related diseases: results from the Flemish Environment and Health Study (FLEHS) 2008–2014” (2023) 35:28, Environmental Sciences Europe, produced herein as **Exhibit R-22**;
 - (d) Ying Li et al., “Associations between perfluoroalkyl substances and serum lipids in a Swedish adult population with contaminated drinking water” (2020) 19:33, Environmental Health, produced herein as **Exhibit R-23**;
 - (e) Taylor M. Etzela et al., “Associations of Serum Perfluoroalkyl Substance and Vitamin D Biomarker Concentrations in NHANES, 2003–2010” (2019) 222(2) 262-269, Int J Hyg Environ Health, produced herein as **Exhibit R-24**;
 - (f) Joseph J. Shearer et al., “Serum Concentrations of Per- and Polyfluoroalkyl Substances and Risk of Renal Cell Carcinoma” (2021) 113(5), JNCI J Natl Cancer Inst, produced herein as **Exhibit R-25**;

- (g) Sverre Wikström et al., “Early pregnancy serum levels of perfluoroalkyl substances and risk of preeclampsia in Swedish women” (2019) 9:9179, Scientific Reports, produced herein as **Exhibit R-26**;
- (h) Zeyan Liew et al., “Maternal Plasma Perfluoroalkyl Substances and Miscarriage: A Nested Case–Control Study in the Danish National Birth Cohort” (2020) 128(4) Environmental Health Perspectives, produced herein as **Exhibit R-27**;
- (i) Sverre Wikström et al., “Maternal serum levels of perfluoroalkyl substances in early pregnancy and offspring birth weight” (2019) 87:1093-1099, Pediatric Research, produced herein as **Exhibit R-28**;
- (j) Mei Yu et al., “The association between mixed exposure to per- and polyfluoroalkyl substances (PFAS) and the risk of diabetes” (2024) Archives of Medical Science, produced herein as **Exhibit R-29**;
- (k) Young Seok Sohn et al., “Effect of Multiple Exposure to Perfluorinated Chemicals on Thyroid Function among Adults in the US: The National Health and Nutrition Examination Survey 2007-2008 and 2011-2012” (2020) 13(1): 19-29 Int J Thyroidol, produced herein as **Exhibit R-30**;
- (l) Elizabeth Costello et al., “Exposure to per-and Polyfluoroalkyl Substances and Markers of Liver Injury: A Systematic Review and Meta-Analysis” (2022) 130(4) Environmental Health Perspectives, produced herein as **Exhibit R-31**;
- (m) Jesse A Goodrich et al., “Exposure to perfluoroalkyl substances and risk of hepatocellular carcinoma in a multiethnic cohort” (2022) JHEP Reports, produced herein as **Exhibit R-32**;
- (n) Yiyi Xu et al., “High exposure to perfluoroalkyl substances in drinking water is associated with increased risk of osteoporotic fractures - A cohort study from Ronneby, Sweden” (2023) 217 Environmental Research, produced herein as **Exhibit R-33**;
- (o) Jian-Chao Qiao et al., “Associations of per- and polyfluoroalkyl substances (PFAS) and their mixture with risk of rheumatoid arthritis in the U.S. adult population” (2024) 23:38 Environmental Health, produced herein as **Exhibit R-34**;
- (p) Katrine Kielson et al., “Antibody Response to Booster Vaccination with Tetanus and Diphtheria in Adults Exposed to Perfluorinated Alkylates” (2016) 13(2): 270-273 J Immunotoxicol, produced herein as **Exhibit R-35**;
- (q) A. Impinen et al., “Maternal levels of perfluoroalkyl substances (PFASs) during pregnancy and childhood allergy and asthma related outcomes and

- infections in the Norwegian Mother and Child (MoBa) cohort” (2019) 462-472 Environmental International, produced herein as **Exhibit R-36**;
- (r) Philippe Grandjean et al., “Severity of COVID-19 at elevated exposure to perfluorinated alkylates” (2020) 15(12) PLoS ONE, produced herein as **Exhibit R-37**;
 - (s) S.J. Genuis et al., “Human detoxification of perfluorinated compounds” (2010) 367-375 Public Health, produced herein as **Exhibit R-38**;
 - (t) Sung Kyun Park et al., “Per- and polyfluoroalkyl substances and incident diabetes in midlife women - the Study of Women’s Health Across the Nation (SWAN)” (2022) 65:1157-1168 Diabetologia, produced herein as **Exhibit R-39**;
 - (u) Ning Ding et al., “Per- and Polyfluoroalkyl Substances and Incident Hypertension in Multi-Racial Ethnic Women - The Study of Women’s Health Across the Nation” (2022) 79:1876-1886 Hypertension, produced herein as **Exhibit R-40**;
 - (v) Pheruza Tarapore and Bin Ouyang, “Perfluoroalkyl Chemicals and Male Reproductive Health: Do PFOA and PFOS Increase Risk for Male Infertility?” (2021) 18, 3794 International Journal of Environmental Research and Public Health, produced herein as **Exhibit R-41**;
 - (w) Haley von Holst et al., “Perfluoroalkyl substances exposure and immunity, allergic response, infection, and asthma in children: review of epidemiologic studies” (2021) 7 Heliyon, produced herein as **Exhibit R-42**;
 - (x) H.E. Kvaalem et al., “Perfluoroalkyl substances, airways infections, allergy and asthma related health outcomes – implications of gender, exposure period and study design” (2020) 134 Environment International, produced herein as **Exhibit R-43**;
 - (y) Maria Averina et al., “Serum perfluoroalkyl substances (PFAS) and risk of asthma and various allergies in adolescents. The Tromsø study Fit Futures in Northern Norway” (2019) 169:114-121 Environ Res., produced herein as **Exhibit R-44**;
 - (z) Maria Averina et al., “Exposure to perfluoroalkyl substances (PFAS) and dyslipidemia, hypertension and obesity in adolescents. The Fit Futures study” (2021) 195 Environ Res., produced herein as **Exhibit R-45**;
 - (aa) Stephanie J. Frisbee et al., “The C8 Health Project: Design, Methods, and Participants” (2009) 117:1873-1882 Environ Health Perspect, produced herein as **Exhibit R-46**;

- (bb) Oddný Ragnarsdóttir et al., “Dermal bioavailability of perfluoroalkyl substances using in vitro 3D human skin equivalent models” (2024) 188 Environment International, produced herein as **Exhibit R-47**;
- (cc) Mark P. Purdue et al., “A Nested Case–Control Study of Serum Per- and Polyfluoroalkyl Substances and Testicular Germ Cell Tumors among U.S. Air Force Servicemen” (2023) 131(7) Environmental Health Perspectives, produced herein as **Exhibit R-51**;
- (dd) Klaus Abraham and Bernhard H. Monien, “Transdermal absorption of 13C4-perfluorooctanoic acid (13C4-PFOA) from a sunscreen in a male volunteer – What could be the contribution of cosmetics to the internal exposure of perfluoroalkyl substances (PFAS)?” (2022) Environment International 169, produced herein as **Exhibit R-52**;
- (ee) Mohamed Abou-Elwafa Abdallah, Stuart Hammad, “Dermal contact with furniture fabrics is a significant pathway of human exposure to brominated flame retardants” (2018) 188 Environmental International 26-33, produced herein as **Exhibit R-53**;
- (ff) Pawar, Gopal et al., “Dermal bioaccessibility of flame retardants from indoor dust and the influence of topically applied cosmetics” (2017) 27 Journal of Exposure Science & Environmental Epidemiology, 100–105, produced herein as **Exhibit R-54**;

V. The U.S. Class Action

- 47. A class action was filed in the U.S. on September 9, 2024 alleging substantially similar allegations regarding the Trojan Condoms, the whole as appears more fully from a copy of the U.S. Complaint dated September 9, 2024, produced herein as **Exhibit R-48**;
- 47.1 The plaintiff in the U.S. sent the Trojan Condoms to an independent lab for testing, the results of which confirmed the presence of organic fluorine and therefore, PFAS;

VI. Summative Remarks

- 48. Through their deceptive practice of designing, manufacturing, importing/exporting, marketing, packaging, labelling, distributing, and/or selling the Trojan Condoms as safe despite the lack of any foundation of truth to this, the Defendants have been able to gain significant brand recognition, reputation, and market share for their Trojan Condoms by deceiving consumers about the attributes of the Trojan Condoms and differentiating them from other traditional, comparable condoms that are actually safe;

49. These brand attributes have enabled the Defendants to command a premium price for its Trojan Condoms – above and beyond that of the competition and generic brands;
50. The Defendants’ ongoing practice of designing, manufacturing, importing/exporting, marketing, packaging, labelling, distributing, and/or selling the Trojan Condoms as safe for use on and in the intimate parts of the human body – is likely to deceive ordinary consumers who reasonably understood that the Trojan Condoms were safe in such a manner – as a result, Class Members sought out and purchased the Trojan Condoms;
51. The representations made by the Defendants as set forth above were and are false and/or misleading. The acts and practices of the Defendants, as alleged herein, constitute unfair or deceptive acts or practices and the marking of false statements;
52. As a result of the Defendants’ deceptive claims, consumers have purchased products that are substantially different than represented and have unknowingly and unwittingly subjected themselves to serious health risks. In addition, the Trojan Condoms are a hazard to the environment;
53. Had the Defendants disclosed that its Trojan Condoms contain dangerous PFAS, no consumer would have purchased or used them;
54. The Plaintiffs and the other Class Members were among the intended recipients of the Defendants’ deceptive representations and omissions described herein. The Defendants’ deceptive representations 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 purchase decisions;
55. As a result of the Defendants’ failure to disclose the risks associated with using Trojan Condoms, as well as their false and misleading claims, the Plaintiffs and Class Members were misled into purchasing them, which they otherwise would not have purchased;
56. The Plaintiffs and the Class Members that they seek to represent have suffered *inter alia* economic damages by purchasing the Trojan Condoms; they did not receive the benefit of the bargain and are therefore entitled to damages;

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

A) Plaintiff M.T.

57. Approximately four years ago, Plaintiff M.T. purchased a box of Trojan Condoms in Montreal, Quebec and he used them with his partner at the time;

58. Plaintiff M.T. believed, from having seen the Defendants' marketing and having read the product packaging/ labelling, that the Trojan Condoms were safe for use on his private parts and in his partners private parts, when used as directed;
59. After some time and after using the Trojan Condoms several times, Plaintiff M.T. experienced serious dermatitis symptoms on his genital area and he stopped using the condoms as a result – the infection went away after about a year through the use of several topical medications;
60. Plaintiff M.T. has recently discovered that the Trojan Condoms contain high levels of PFAS, a factor that he had not been made aware of by the Defendants and to which he has learned can cause dermatitis;
61. In consequence, Plaintiff M.T. now realizes that he has been misled by the Defendants; had he known the true facts – i.e that the Trojan Condoms contained PFAS – he would not have even considered using the Trojan Condoms at all due to dangers associated with PFAS and consequently, would not have purchased them;
62. Plaintiff M.T.'s damages, i.e., the purchase price of the Trojan Condoms, are a direct and proximate result of the Defendants' conduct and their false and misleading advertising;

B) Plaintiff Hamel

- 62.1 From approximately 2010 and for over 10 years, Plaintiff Hamel purchased and used the Trojan Condoms with his wife several times per week;
- 62.2 He would normally purchase the Trojan Condoms at the Walmart Supercentre or at the Jean Coutu in Saint-Therèse, Rosemère, or in Saint-Jerôme – though also at other locations on occasion;
- 62.3 He purchased and used the Trojan Condoms based on his belief that they were safe for their intended use, meaning, that using them would result in safe sex;
- 62.4 In the end of June/early July 2021, Plaintiff Hamel discovered a lump in his left testicle and he went to go see his family doctor at Centre Médical Samson (GMF) in Laval, Quebec;
- 62.5 On July 29, 2021, he underwent an ultrasound and, upon analysis, it was determined that the lump in his testicle was highly likely to be a neoplastic malignant tumor;
- 62.6 He was then given an emergency reference to see a urologist at the Hospital of Saint-Eustache to confirm the diagnosis and to treat his medical condition;

- 62.7 Plaintiff Hamel underwent an orchiectomy surgery on August 17, 2021 at the Hospital of Saint-Eustache, whereby his testicle was surgically removed;
- 62.8 On August 26, 2021, he underwent a computed tomography (CT) scan to verify whether the cancer was gone or whether it had metastasized (spread to other parts of his body);
- 62.9 On September 8, 2021, the results of the CT scan were available, and he received a phone call from his urologist that the cancer had metastasized to his abdominal region;
- 62.10 He then got referred to an oncologist at the Hospital Saint-Jérôme – Hematology-Oncology Outpatient Clinic for treatment;
- 62.11 On November 16, 2021, he underwent a position emission tomography (PET) scan and he was thereafter diagnosed with stage 2B cancer, meaning, that the cancer had spread to his lymph nodes in his abdomen;
- 62.12 Plaintiff Hamel was prescribed chemotherapy by his oncologist and he began the BEP regimen (bleomycin, etoposide, and cisplatin), which consisted of undergoing intravenous chemotherapy for 3 weeks – every weekday for 1 week (approx. 7-8 hours per day) and then on Mondays for the second and third weeks – at the Hospital Saint-Jérôme – Hematology-Oncology Outpatient Clinic;
- 62.13 Plaintiff Hamel then underwent another 3-week BEP regimen, which again consisted of undergoing the same intravenous chemotherapy program;
- 62.14 After the second dose, Plaintiff Hamel needed a week to allow his immune system to regenerate and then he underwent a third round of chemotherapy, again, under the BEP regimen and again, under the same schedule;
- 62.15 After he had finished his third round of chemotherapy, Plaintiff Hamel had another CT scan and on March 21, 2022, his cancer was determined to be in remission (and it still is today);
- 62.16 Currently, he must consult with his urologist and with his oncologist every 6 months for medical monitoring;
- 62.17 Plaintiff Hamel has recently discovered that the Trojan Condoms contain high levels of PFAS, a factor that he had not been made aware of by the Defendants and to which he has learned can cause cancer;
- 62.18 Plaintiff Hamel had never made the connection between the Trojan Condoms and his cancer until most recently, when he saw an article published in the Journal de Montréal;

- 62.19 Had Plaintiff Hamel not seen or read the article, he would never have made the connection between the Trojan Condoms and cancer;
- 62.20 In consequence, Plaintiff Hamel now realizes that he has been misled by the Defendants; had he known the true facts – i.e that the Trojan Condoms contained PFAS – he would not have even considered using the Trojan Condoms at all due to dangers associated with PFAS and consequently, would not have purchased or used them and he is certainly no longer using them today;
- 62.21 Plaintiff Hamel suffered damages including, but not limited to, physical and mental/emotional injuries, including developing cancer, undergoing an operation whereby an important part of his body was removed, undergoing 3 rounds of chemotherapy, hair loss, lost wages, time lost arranging to receive Employment Insurance (EI), missing family events (including Christmas), nausea, general fatigue, persistent tinnitus, peripheral neuropathy, pain, suffering, anxiety, fear, loss of quality and enjoyment of life, the apportioned cost of related medications, and, the damages based on the Defendants' misrepresentations that are being claimed in the present class action, the purchase price of the Trojan Condoms;
- 62.22 Plaintiff Hamel's damages, i.e., the purchase price of the Trojan Condoms, are a direct and proximate result of the Defendants' conduct and their false and misleading advertising;
63. In consequence 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 CLASS

64. Every member of the Class has purchased Trojan Condoms believing that they were safe for use on their private parts and for the environment, due to Defendants' marketing, packaging, labelling, and/or representations;
65. The Class Members were, therefore, induced into error by the Defendants' false and misleading statements;
66. Had the Defendants disclosed the truth about the Trojan Condoms, consumers would not have purchased them or would not have paid such a high price;
67. 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 Trojan Condoms;
 - b. Punitive damages;
68. The Defendants engaged in wrongful conduct, while at the same time obtaining, under false pretences, significant sums of money from Class Members;

69. All of these damages to the Class Members are a direct and proximate result of the Defendants' conduct and its 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

70. The Plaintiffs are not privy to the specific number of persons who purchased the Trojan Condoms; however, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands). Nevertheless, a combination of the Defendants' online sales records and those of third-party merchants for online and in-store purchases such as, but not limited to: Amazon, Walmart, Well.ca, Shoppers Drug Mart/Pharmaprix, Metro, Jean Coutu, Familiprix, UniPrix, and others could establish the size of the class to a reasonable degree of exactitude; the Defendants would certainly have an exact list of sales;
71. Class Members are numerous and are scattered across the entire province of Quebec and country;
72. 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 Defendants. 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 Defendants would increase delay and expense to all parties and to the court system;
73. 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;
74. Also, a multitude of actions instituted in different judicial districts, risks having contradictory judgments on questions of fact and law that are similar or related to all members of the Class;
75. 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;
76. 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

77. All consumers were subjected to the same deceptive actions – the Defendants’ marketing, advertising, packaging, labelling, selling, and/or representation of the Trojan Condoms as safe for use for their intended purposes;
78. Individual issues, if any, pale by comparison to the common issues that are significant to the outcome of the litigation;
79. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, the Defendants’ misconduct;
80. The claims of the members raise identical, similar or related issues of fact or law, namely:
 - a) Do the Trojan Condoms contain PFAS?
 - b) Did the Defendants fail to adequately test the Trojan Condoms for both before and/or after placing on the market?
 - c) Did the Defendants know, or should they have known, that their Trojan Condoms contain PFAS?
 - d) Did the Defendants fail to adequately and sufficiently advise Class Members about the presence of PFAS in the Trojan Condoms?
 - e) Did the Defendants engage in unfair, false, misleading, or deceptive acts or practices regarding the design, manufacturing, importing/exporting, marketing, packaging, labelling, distribution, sale, and/or representing the Trojan Condoms as safe for their intended use?
 - f) Do the Trojan Condoms pose a health risk to consumers?
 - g) Are the Defendants liable to the Class Members for reimbursement of the purchase price of the Trojan Condoms?
 - h) Should an injunctive remedy be ordered to requiring the Defendants to (i) recall the Trojan Condoms, (ii) cease selling the Trojan Condoms without design changes; and/or (iii) add labelling to all future Trojan Condoms warning consumers of the dangers associated with their use?
 - i) Are the Defendants responsible to pay aggravated and/or punitive damages to Class Members and, if so, in what amount?
81. The interests of justice favour that this application be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

82. 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;
83. 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 Defendants have committed unfair, false, misleading, and/or deceptive conduct with respect to the design, manufacture, import/export, marketing, packaging, labelling, distribution, sale, and/or representing the Defendants Trojan Condoms as safe for their intended use;

ORDER the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct of designing, manufacturing, marketing, packaging, labelling, selling, and/or representing the Defendants Trojan Condoms as safe for their intended use;

DECLARE that the Defendants failed to provide adequate warnings that the Trojan Condoms exposed users to unsafe levels of PFAS;

DECLARE the Defendants solidarily liable for the damages suffered by the Plaintiffs and each of the members of the Class;

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 punitive damages to each of the members of the Class, 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 application 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;

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 Plaintiffs request that they be designated as representatives of the Class

84. The Plaintiffs are members of the Class;

85. 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 their attorneys;
86. The Plaintiffs have the capacity and interest to fairly, properly, and adequately protect and represent the interest of the members of the Class;
87. The Plaintiffs have given the mandate to their attorneys to obtain all relevant information with respect to the present action and intend to keep informed of all developments;
88. 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;
89. 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 authorization hearing;
90. Both Plaintiffs are 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 protected so that they may be compensated for the damages that they have suffered as a consequence of the Defendants' conduct;
91. The Plaintiffs understand the nature of the action;
92. 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;
93. 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;
94. 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
95. A great number of the members of the Class reside in the judicial district of Montreal and in the appeal district of Montreal;

96. The Plaintiffs' attorneys practice their profession in the judicial district of Montreal;

97. 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 Quebec who have purchased Trojan Ultra Thin Condoms for Ultra Sensitivity (the "Trojan Condoms") 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) Do the Trojan Condoms contain PFAS?
- b) Did the Defendants fail to adequately test the Trojan Condoms for both before and/or after placing on the market?
- c) Did the Defendants know, or should they have known, that their Trojan Condoms contain PFAS?
- d) Did the Defendants fail to adequately and sufficiently advise Class Members about the presence of PFAS in the Trojan Condoms?
- e) Did the Defendants engage in unfair, false, misleading, or deceptive acts or practices regarding the design, manufacturing, importing/exporting, marketing, packaging, labelling, distribution, sale, and/or representing the Trojan Condoms as safe for their intended use?
- f) Do the Trojan Condoms pose a health risk to consumers?
- g) Are the Defendants liable to the Class Members for reimbursement of the purchase price of the Trojan Condoms?
- h) Should an injunctive remedy be ordered to requiring the Defendants to (i) recall the Trojan Condoms, (ii) cease selling the Trojan Condoms without design changes; and/or (iii) add labelling to all future Trojan Condoms warning consumers of the dangers associated with their use?

- i) Are the Defendants responsible to pay aggravated 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 Plaintiffs and each of the members of the Class;

DECLARE that the Defendants have committed unfair, false, misleading, and/or deceptive conduct with respect to the design, manufacture, import/export, marketing, packaging, labelling, distribution, sale, and/or representing the Defendants Trojan Condoms as safe for their intended use;

ORDER the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct of designing, manufacturing, marketing, packaging, labelling, selling, and/or representing the Defendants Trojan Condoms as safe for their intended use;

DECLARE that the Defendants failed to provide adequate warnings that the Trojan Condoms exposed users to unsafe levels of PFAS;

DECLARE the Defendants solidarily liable for the damages suffered by the Plaintiffs and each of the members of the Class;

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 punitive damages to each of the members of the Class, 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 application 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;

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 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 La Presse, the Montreal Gazette, Le Soleil, Le Journal de Montréal, and le Journal de Québec;

ORDER that said notice be available on the Defendants website(s), as well as their Facebook page(s), Twitter/(X) account(s) and Threads with a link stating “Notice to Trojan Condom 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, February 3, 2025



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