

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-06-000946-182

SUPERIOR COURT  
(Class Action Chambers)

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PANAGIOTIS LEVENTAKIS, residing  
and domiciled at [REDACTED]  
[REDACTED]

Applicant

v.

**AMAZON.COM, INC.**, legal person,  
having its head office at 410 Terry  
Avenue North, City of Seattle, State of  
Washington, 98109, USA

and

**AMAZON SERVICES  
INTERNATIONAL, INC.**,

legal person, having an address for  
service at Corporation Service  
Company, 251 Little Falls Drive,  
Wilmington, Delaware, 19807, USA

and

**AMAZON.COM.CA, INC.**, legal person,  
having an address for service at  
Corporation Service Company, 300  
Deschutes Way SW, Suite 304,  
Tumwater, Washington, 98501, USA

Defendants

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APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO  
OBTAIN THE STATUS OF REPRESENTATIVE

(Art 574 C.C.P. and following)

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TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING  
IN THE CLASS ACTION CHAMBERS IN THE DISTRICT OF MONTREAL, YOUR  
APPLICANT STATES AS FOLLOWS:

## I. GENERAL PRESENTATION

1. The Applicant wishes to institute a class action on behalf of the class hereinafter described, and of which the Applicant is a member, namely:

*“All persons, entities, partnerships or organizations in Québec who purchased new books, videos, music or DVDs through [www.amazon.ca](http://www.amazon.ca), or any other group to be determined by the Court, between 2000 and the date this action is authorized as a class action.”*

### A. Overview

2. Amazon is the world’s largest online retailer. It operates a vast online marketplace where it hosts third-party sellers and where it competes against them for sales. In breach of the *Competition Act* Amazon has agreed with third-party sellers not to compete for sales of new books, music, movies and DVDs. By foreclosing competition in this market, Amazon overcharges consumers for its own benefit. Consumers of all other products get the benefits of competitive prices, through the competition between Amazon and third-party sellers. Americans also get the benefits of competition, because Amazon has already stopped its unlawful conduct in the United States; only Canadians suffer. Through this suit, Québec consumers seek to hold the Defendants accountable for this unlawful conduct and to recover damages and the overcharge.

### B. The Parties

3. Amazon.com, Inc. is a company incorporated under the laws of Delaware, USA, with a principal place of business at 410 Terry Avenue North, Seattle, Washington, 98109-5210, USA and an address for service at Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware, USA (“**Amazon.com**”). Amazon.com carries on business in Québec, across Canada and worldwide, as appears from the corporate search results for Amazon.com, Inc. disclosed as **Exhibit P-1**.
4. Amazon Services International, Inc. is a company incorporated under the laws of Delaware, USA, with an address for service at Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware, USA (“**Amazon Services**”). Amazon Services is a wholly-owned subsidiary of Amazon.com. Amazon Services carries on business in Québec, across Canada and worldwide, as appears from the corporate search results for Amazon Services International, Inc., disclosed as **Exhibit P-2**.

5. Amazon.com and Amazon Services are together “**Amazon**”. Each is solidarily liable for the acts and omissions of the other.
6. Amazon.com.ca, Inc. is a company incorporated under the laws of Delaware, USA, with an address for service at Corporation Service Company, 300 Deschutes Way SW, Suite 304, Tumwater, Washington 98501 USA (“**Amazon.ca**”). Amazon.ca is a wholly-owned subsidiary of Amazon.com. Amazon.ca carries on business in Québec and across Canada, as appears from the corporate search results for Amazon.com.ca, Inc., disclosed as **Exhibit P-3**.
7. The Applicant, Panagiotis “Peter” Leventakis, is a resident of [REDACTED]. He is a customer of Amazon and has purchased new books and other products through [www.amazon.ca](http://www.amazon.ca).
8. The Applicant brings this claim on behalf of himself and customers of Amazon (“**Class Members**”) who during the period from 2000 to the present (“**Class Period**”) purchased new books, videos, music or DVDs through [www.amazon.ca](http://www.amazon.ca).

### ***C. Amazon’s Business Model***

9. Amazon is the world’s largest online retailer.
10. Amazon.com operates one of the world’s largest online marketplaces at [www.amazon.com](http://www.amazon.com).
11. Amazon.com also operates through other websites and geographically-focused marketplaces, including [www.amazon.ca](http://www.amazon.ca) for Canada. Amazon generated over \$3.5 billion in sales in 2016 through [www.amazon.ca](http://www.amazon.ca), the whole as appears from a June 2017 article in the Financial Post and Amazon’s Annual Report for 2017 disclosed, *en liasse*, as **Exhibit P-4**.
12. Amazon sells consumer products through its websites and marketplaces.
13. Third-party sellers (“**Third-Party Sellers**”) also sell consumer products through Amazon’s websites and marketplaces.
14. Amazon has a dual aspect: it operates a marketplace but also sells products in that marketplace. Amazon is therefore both a platform and a retailer that uses the platform.
15. Amazon’s platform competitors include eBay, Google Shopping, Walmart and other major retailers that sell third-party consumer products.

16. Amazon's retail competitors include any company that sells any of the same classes of products as sold by Amazon. Amazon's retail competitors may sell on Amazon, on their own or others' online platforms or in bricks-and-mortar stores. Amazon's retail competitors include Third-Party Sellers.

#### ***D. Third-Party Sellers***

17. In about 1999, Amazon agreed to open its marketplace to Third-Party Sellers.

18. Third-Party Sellers sell products that Amazon also sells. Third-Party Sellers can also sell products that Amazon itself does not sell. Third-Party Sellers are horizontal competitors of Amazon and Amazon.ca for products that Amazon and Amazon.ca sell.

19. Third-Party Sellers may sell only through Amazon or may also sell on other platforms or in the offline world.

20. Third-Party Sellers now account for as much as 40% of Amazon's sales revenues from its websites and marketplaces.

21. Third-Party Sellers enter into agreements and arrangements with Amazon to govern their access to Amazon's marketplaces, including [www.amazon.ca](http://www.amazon.ca).

22. Third-Party Sellers contract with Amazon Services to sell on [www.amazon.ca](http://www.amazon.ca).

#### ***E. The Buy Box***

23. A significant element of Amazon's business strategy is the "**Buy Box**".

24. On its websites and marketplaces, including [www.amazon.ca](http://www.amazon.ca), the Buy Box is the box on a product detail page where customers can begin the purchasing process by adding items to their shopping carts, using the "Add to Cart" button, as appears from a screenshot of [www.amazon.ca](http://www.amazon.ca) disclosed as **Exhibit P-5**. Customers can also see additional purchasing options, identified variously as "More Buying Choices", as appears from an excerpt of [www.amazon.com](http://www.amazon.com) disclosed as **Exhibit P-6**, "See all [] formats and editions" or "Other Offers" ("**Other Offers**"). Accessing these Other Offers requires additional effort by a customer and navigation to a different area or webpage, whereas the Buy Box is immediately available and accessible.

25. The Buy Box accounts for as much as 80% of Amazon's total sales revenues from its websites and marketplaces. The Buy Box may account for an even greater percentage of Amazon's total sales revenue for sales made on mobile devices because of the visual format of that medium. The Buy Box has been called "the

Internet's \$80 Billion Button", as appears from a publication by Multichannel Merchant dated October 7, 2014 disclosed as **Exhibit P-7**.

26. The Buy Box is a market or sales territory within the larger Amazon marketplace and within the public markets for products, offline and online.
27. Other Offers are a market or sales territory within the larger Amazon marketplace and within the public markets for products, offline and online.
28. Amazon agreed to let Third-Party Sellers compete for the Buy Box for certain products starting in about 2000. One of the main determinants for who controls the Buy Box is price: the seller with the lowest price stands a significantly-improved chance of capturing the Buy Box for that item.
29. The Buy Box can be controlled by Amazon or a Third-Party Seller. Whoever controls the Buy Box usually gets the sale from a customer. Competition for control of the Buy Box is good for consumers, because it results in lower prices from Amazon and Third-Party Sellers.

#### ***F. Product Categories***

30. The products for sale on Amazon's websites and marketplaces are divided by categories. Books, video, music and DVDs (together "**Books**") are popular categories.
31. On [www.amazon.ca](http://www.amazon.ca) Third-Party Sellers sell new and used Books.
32. Amazon itself does not sell used Books.

#### ***G. Unlawful Agreement***

33. In order to sell in the Amazon marketplace, including on [www.amazon.ca](http://www.amazon.ca), Third-Party Sellers enter into contractual arrangements with Amazon. The contractual arrangements between Amazon and Third-Party Sellers include *inter alia* the "Amazon Services Business Solutions Agreement", disclosed as **Exhibit P-8**, as well as various "Service Terms" and "Program Policies", examples of which are disclosed, *en liasse*, as **Exhibit P-9**. These arrangements operate as a single agreement or, alternatively, as a series of interlocking and interrelated agreements. Third-Party Sellers agree to be bound by and respect the terms of those contractual arrangements to get access to the Amazon marketplace. The Amazon Services Business Solutions Agreement, the Service Terms and Program Policies apply equally to all Third-Party Sellers for all types of products.

34. At all material times, Amazon has maintained Service Terms or Program Policies covering access to and the operation of the Buy Box. Those terms applied to products sold through [www.amazon.ca](http://www.amazon.ca).
35. At all material times, Amazon's Service Terms or Program Policies have carved out new Books from inclusion in the Buy Box, as appears from a screenshot of [www.amazon.ca](http://www.amazon.ca) and an Amazon webpage on How the Buy Box Works disclosed, *en liasse*, as **Exhibit P-10**. No other products that are otherwise permitted to be sold in the Amazon marketplace are subject to this exception.
36. At all material times, Third-Party Sellers have accepted and complied with Amazon's Service Terms or Program Policies concerning the Buy Box. In particular, Third-Party Sellers on [www.amazon.ca](http://www.amazon.ca) have agreed with Amazon that Third-Party Sellers will not compete for the Buy Box for new Books.
37. Third-Party Sellers that sell new Books are actual or potential competitors of Amazon and Amazon.ca for those products.
38. Third-Party Sellers agree not to compete with Amazon and Amazon.ca in the Buy Box for new Books to gain access to the larger marketplace for new Books and other products.
39. This means that only Amazon sells new Books through the Buy Box, including on [www.amazon.ca](http://www.amazon.ca).
40. The agreement between Amazon and Third-Party Sellers not to compete for the Buy Box for new Books is contrary to the *Competition Act*, s 45 ("**Unlawful Agreement**") or is at minimum an attempt to commit acts contrary to the *Competition Act*, s 45.
41. Amazon and Third-Party Sellers have committed acts in furtherance of the Unlawful Agreement, including but not limited to:
  - a. the exchange of contracts and agreements and communications concerning the implementation of the Unlawful Agreement;
  - b. the listing for sale of new Books on [www.amazon.ca](http://www.amazon.ca) in accordance with the terms of the Unlawful Agreement; and
  - c. Amazon has assisted Third-Party Sellers in listing their products, other than new Books, for sale on [www.amazon.ca](http://www.amazon.ca) and, in particular, in the Buy Box, to obtain the benefits of the Unlawful Agreement.

42. When shopping for new Books on [www.amazon.ca](http://www.amazon.ca), the Buy Box does not indicate to consumers that Amazon has exclusive control of the Buy Box.
43. The senior officers and directors of Amazon and Amazon.ca were, at all times, fully aware of the Unlawful Agreement and took active steps to implement its terms. In the alternative, the senior officers and directors of Amazon and Amazon.ca were reckless or willfully blind to the Unlawful Agreement and took active steps to implement its terms.

#### ***H. The Overcharge***

44. As a result of the Unlawful Agreement, only Amazon has access to the Buy Box for new Books on [www.amazon.ca](http://www.amazon.ca).
45. Amazon's exclusive control of the Buy Box on [www.amazon.ca](http://www.amazon.ca) permits Amazon to charge supra-competitive prices for all new Books sold through that channel because it does not face any competition from Third-Party Sellers.
46. Amazon charges an unlawful premium on new Books sold through the Buy Box on [www.amazon.ca](http://www.amazon.ca).
47. In addition, or in the alternative, Amazon benefits from control of the Buy Box to sell new Books because it can use its exclusive position to make preferential arrangements with publishers or other suppliers for that sales channel, thereby increasing Amazon's margins on new Books.
48. In addition, or in the alternative, the supply of new Books available to consumers is restricted as a result of the Unlawful Agreement.
49. The Applicant and Class Members have purchased new Books through the Buy Box on [www.amazon.ca](http://www.amazon.ca). As a result of the Unlawful Agreement, the Applicant and Class Members have paid supra-competitive prices to Amazon for those new Books. The difference between what the Applicant and Class Members paid and what they should have paid in the absence of the Unlawful Agreement was an illegal, anti-competitive overcharge ("**Overcharge**").
50. Amazon.ca has collected the Overcharge from the Applicant and Class Members.
51. Amazon is the ultimate recipient or beneficiary of part or all of the Overcharge from the sale of new Books on [www.amazon.ca](http://www.amazon.ca).
52. The Applicant and Class Members have an interest in the funds received from them by Amazon as a result of the Overcharge.

53. At all material times, Amazon.ca has had full knowledge of the Unlawful Agreement and the existence of the Overcharge and has permitted Amazon to perpetrate its misconduct towards the Applicant and Class Members through [www.amazon.ca](http://www.amazon.ca).

54. Amazon and Amazon.ca have wilfully concealed the existence of the Overcharge from the Applicant and Class Members.

***I. Changes on [www.amazon.com](http://www.amazon.com)***

55. Until about May 2017, Amazon and Third-Party Sellers on [www.amazon.com](http://www.amazon.com) in the United States maintained the same type of unlawful agreement concerning competition for the Buy Box for new Books. In May 2017, Third-Party Sellers began to compete for the Buy Box for new Books on [www.amazon.com](http://www.amazon.com), as appears from an article in The New Republic dated May 10, 2017, an article in Huffington Post updated on May 5, 2017, as well as a screenshot of Amazon.com's "How the Buy Box Works", disclosed, *en liasse*, as **Exhibit P-11**.

56. At the time this application is filed, the misconduct continues on [www.amazon.ca](http://www.amazon.ca).

***J. The Defendants' Liability***

57. The *Competition Act* applies to business transacted in Canada, including sales made over the internet.

58. The Defendants have breached s 45 of the *Competition Act*, as amended from time to time.

59. Amazon and Third-Party Sellers are "competitors" within the meaning of the *Competition Act*, ss 45(1) and (8).

60. Books are "products" within the meaning of the *Competition Act*, s 2 and 45(1). The delivery of Books over the internet is a "service" within the meaning of the *Competition Act*, s 2 and 45(1).

61. The Amazon marketplace and the Buy Box are "territories" or "markets" within the meaning of the *Competition Act*, s 45(1)(b).

62. As set out above, by means of the Unlawful Agreement, Amazon and Third-Party Sellers have conspired, agreed and arranged to:

- a. fix, maintain, increase or control the price for the supply of new Books;
  - b. allocate sales, territories, customers or markets for the supply of new Books;
- and



c. fix, maintain, control, prevent, lessen or eliminate the supply of new Books.

63. Said actions are ongoing.

64. As a result of the Defendants' breaches of the *Competition Act*, s 45, the Applicant and Class Members have suffered loss and damage in the form of the Overcharge.

65. In addition, or in the alternative, Amazon Services implemented directives, instructions, intimations of policy or other communications from its American parent companies, which communication was for the purpose of giving effect to the Unlawful Agreement, in breach of the *Competition Act*, s 46. This Defendant therefore breached the *Competition Act*, s. 46.

66. The Applicant and Class Members are entitled to recover from the Defendants an amount equal to the loss or damage suffered by them in the full amount of the Overcharge, under the *Competition Act*, s 36(1)(a), as well as the costs of investigation.

67. Through their actions as set out above, the Defendants also breached and continue to breach article 219 of the *Consumer Protection Act* by making false or misleading representations with regard to the true price of the new Books.

68. The Defendants' actions constitute unfair and unconscionable business practices.

69. In addition to the remedies provided for under the *Consumer Protection Act*, said conduct warrants the award of punitive damages under article 272 of the *Consumer Protection Act*.

70. Furthermore, the Defendants breached and continue to breach their obligations under the *Civil Code of Québec* such as, and without limiting the generality of the foregoing, their good faith obligation and their duty not to cause injury to another.

### **Punitive Damages**

71. The Applicant is justified in requesting punitive damages in light of the Defendants' malicious, calculated and intentional conduct, said conduct departing to a marked degree from ordinary standards of decent behaviour and violating the trust of their customers.

72. The Defendants' actions are part of a pattern of willful disregard for customers' rights by the Defendants and other technology companies. The Defendants' actions also constitute an intentional violation of their obligations. As such, an award of punitive damages should be made against the Defendants.

### **Unjust Enrichment**

73. As set out above, each of the Defendants has been enriched by the collection of the Overcharge from the Applicant and Class Members.

74. The Applicant and Class Members have been deprived through the payment of the Overcharge to the Defendants. As such, there is a correlation between the Defendants' enrichment and the Applicant and Class Members' impoverishment.

75. There is no justification as to why the Defendants should have received or should retain this benefit. The violations of their legal obligations as set out above, as well as of the *Criminal Code*, s 463 (attempt) and s 380(2) (affecting the public market), render void or unenforceable any alleged reason for the Defendants' conduct and negate any justification as to why they should have received or should retain this benefit, including any contract for the purchase of the new Books. In particular, the contracts by which the Applicant and Class Members purchased new Books are void and unenforceable.

76. As a result of their actions, the Defendants have been and continue to be unjustly enriched by the benefits they received from the Applicant and Class Members. This

warrants an order that the Defendants disgorge all profits that they gained in benefitting from the breaches set out above.

## II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT

77. The facts on which the Applicant's personal claim against the Defendants is based, are as follows:

- a. The Applicant is a business analyst for a telecommunications company;
- b. At all material times, the Applicant made several purchase orders for new books and movies from [www.amazon.ca](http://www.amazon.ca). For example, in 2010, 2014, 2015 and 2016, the Applicant purchased new books and movies as further detailed in the screenshots of his order details for said items, disclosed, *en liasse*, as **Exhibit P-12**;
- c. The Applicant was deprived of transactions in a non-manipulated market as a consequence of the Defendants' actions with regard to the price of the items he purchased and paid an Overcharge on said items;
- d. The Defendants' illegal actions were camouflaged and were not brought to the attention of the Applicant;
- e. The Applicant did not and could not know that the Defendants were taking part in illegal actions and breaching their obligations;
- f. The Applicant was not aware that the prices of the new Books had been illegally fixed, maintained, increase or otherwise controlled by the Defendants;
- g. Had the Applicant been aware of the Unlawful Agreement and/or the Overcharge, he would not have purchased the items listed above and not agreed to pay the Overcharge.

78. The Applicant's damages are a direct result of the Defendants' conduct.

79. In consequence of the foregoing, the Applicant is justified in claiming damages.

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

80. The facts giving rise to personal claims by each of the members of the Class against the Defendants are as follows:

- a. Every member of the Class has purchased new Books through [www.amazon.ca](http://www.amazon.ca), on which they paid an Overcharge;
- b. The Class Members were deprived of their money by the Defendants' unlawful, unfair, anti-competitive and/or misleading acts and practices;
- c. The Defendants' illegal actions were not disclosed to the Class Members;
- d. The Class Members did not know and could not have known that the Defendants were involved in unlawful, unfair, anti-competitive and/or misleading acts and practices and they did not know and could not have known that the price paid for the new Books had been illegally fixed, maintained, increased and/or controlled by the Defendants;
- e. The Class Members each suffered damages as a result of the Overcharge;
- f. In consequence of the foregoing, each member of the Class is justified in claiming compensatory, moral and/or punitive damages.

81. All of these damages to the Class Members are a direct result of the Defendants' conduct.

### 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***

82. The Applicant is not privy to the specific number of persons in Québec who purchased new Books from Amazon and were overcharged. However, given that Amazon is the number one e-commerce retailer in Canada, it is safe to estimate that the number is at least in the tens of thousands. Further, Amazon's database could easily establish the number of Class Members and even all of those Class Members' exact coordinates.

83. Class Members are numerous and are scattered across the entire province.

84. 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.

85. By their very nature, Overcharges affect many individuals and any discrepancies tend to be quite small – if it were not for the class action mechanism which facilitates access to justice, these types of claims would never be heard.

86. 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.

87. 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 restores the parties to parity.

88. Also, a multitude of actions instituted in either the same or different judicial districts, risks having contradictory judgments on questions of fact and law that are similar or related to all members of the Class.

89. 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 into one action.

90. 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 legal 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***

91. Individual issues, if any, pale by comparison to the numerous common issues that are significant to the outcome of the litigation.

92. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, Defendants' misconduct.

93. The claims of the members raise identical, similar or related issues of fact or law, namely:

- a. Did the Defendants enter into an agreement with Third-Party Sellers not to compete for the Buy Box for new Books?
- b. In so doing, did the Defendants unduly restrict competition in the sale of new Books and if so, during what period were the Applicant and Class Members affected?
- c. Did the Defendants take advantage of their dominant position?
- d. Did the Defendants engage in unfair, false and misleading conduct regarding the marketing and sale of new Books?
- e. As a result of the Defendants' actions, did the Applicant and Class Members pay an Overcharge for the purchase of new Books?
- f. Through their actions, did the Defendants breach their obligations towards the Applicant and Class Members and this under the *Competition Act*, the *Consumer Protection Act* and/or the *Civil Code of Québec*?
- g. Did the Applicant and Class Members suffer damages as a result of the Defendants' actions and/or omissions?
- h. If so, what is the nature of the damages suffered by the Applicant and the Class Members?
- i. Were the Defendants unjustly enriched and if so, should the Defendants disgorge their profits?
- j. Are the Defendants liable to the Applicant and the Class Members for reimbursement of the purchase price of new Books as a result of their misconduct?
- k. What is the amount of damages owing to the Applicant and the Class Members?
- l. Are the Defendants liable to pay punitive damages to the Class Members and if so, in what amount?
- m. Are the Applicant and Class members justified in claiming the reimbursement of the costs incurred in the present matter, namely the costs of investigation, the extrajudicial fees and disbursements of Attorneys for the Applicant?

- n. Are the Applicant and Class Members entitled to, among other remedies, injunctive relief, and, if so, what is the nature and extent of such injunctive relief?

## V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

94. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages and injunctive relief;

95. The conclusions that the Applicant wishes to introduce by way of an application to institute proceedings are:

- a. **GRANT** the class action of the Applicant and each of the members of the Class;
- b. **ORDER** the Defendants to permanently cease from continuing their unlawful, unfair, anti-competitive and/or misleading conduct;
- c. **CONDEMN** the Defendants, jointly and solidarily, to pay to each of the members of the Class a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of those sums;
- d. **CONDEMN** the Defendants, jointly and solidarily, to pay to each of the members of the Class punitive damages, in an amount to be determined by the Court, and **ORDER** collective recovery of those sums;
- e. **CONDEMN** the Defendants, jointly and solidarily, to pay interest and the additional indemnity on the above sums according to the law from the date of service of the application to authorize a class action;
- f. **ORDER** the Defendants to deposit in the office of this Court the totality of the sums which form part of the collective recovery, with interest and costs;
- g. **ORDER** that the claims of individual Class Members be the object of collective liquidation if the proof permits and, alternately, by individual liquidation;
- h. **CONDEMN** the Defendants, jointly and solidarily, to bear the costs of the present action including expert and notice fees;
- i. **RENDER** any other order that this Honourable Court shall determine and that is in the interests of the members of the Class.

***A. The Applicant requests that he be attributed the status of representative of the Class***

96. The Applicant is a member of the Class.
97. The Applicant is 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 action 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.
98. The Applicant has the capacity and interest to fairly, properly and adequately protect and represent the interest of the members of the Class.
99. The Applicant 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.
100. The Applicant, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Class and to keep them informed.
101. The Applicant has given instructions to his 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.
102. The Applicant 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 protected so that they may be compensated for the damages that they have suffered as a consequence of the Defendants' conduct.
103. The Applicant understands the nature of the action.
104. The Applicant's interests do not conflict with the interests of other Class Members and further Applicant has no interest that is antagonistic to those of other members of the Class.
105. The Applicant is prepared to be examined out-of-court on his allegations (as may be authorized by the Court) and to be present for Court hearings, as may be required and necessary.



106. The Applicant has spent time researching this issue on the internet and meeting with his attorneys to prepare this file. In so doing, he is convinced that the problem is widespread.

***B. The Applicant suggests that this class action be exercised before the Superior Court in the district of Montréal***

107. A great number of the members of the Class reside in the judicial district of Montréal.

108. The Applicant's attorneys practice their profession in the judicial district of Montréal.

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

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** the present application;

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

**DESIGNATE** the Applicant, Panagiotis Leventakis, as representative of the persons included in the Class herein described as:

*"All persons, entities, partnerships or organizations in Québec who purchased new books, videos, music or DVDs through [www.amazon.ca](http://www.amazon.ca), or any other group to be determined by the Court, between 2000 and the date this action is authorized as a class action."*

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

- a. Did the Defendants enter into an agreement with Third-Party Sellers not to compete for the Buy Box for new Books?
- b. In so doing, did the Defendants unduly restrict competition in the sale of new Books and if so, during what period were the Applicant and Class Members affected?
- c. Did the Defendants take advantage of their dominant position?
- d. Did the Defendants engage in unfair, false and misleading conduct regarding the marketing and sale of new Books?

- e. As a result of the Defendants' actions, did the Applicant and Class Members pay an Overcharge for the purchase of new Books?
- f. Through their actions, did the Defendants breach their obligations towards the Applicant and Class Members and this under the *Competition Act*, the *Consumer Protection Act* and/or the *Civil Code of Québec*?
- g. Did the Applicant and Class Members suffer damages as a result of the Defendants' actions and/or omissions?
- h. If so, what is the nature of the damages suffered by the Applicant and the Class Members?
- i. Were the Defendants unjustly enriched and if so, should the Defendants disgorge their profits?
- j. Are the Defendants liable to the Applicant and the Class Members for reimbursement of the purchase price of new Books as a result of their misconduct?
- k. What is the amount of damages owing to the Applicant and the Class Members?
- l. Are the Defendants liable to pay punitive damages to the Class Members and if so, in what amount?
- m. Are the Applicant and Class members justified in claiming the reimbursement of the costs incurred in the present matter, namely the costs of investigation, the extrajudicial fees and disbursements of Attorneys for the Applicant?
- n. Are the Applicant and Class Members entitled to, among other remedies, injunctive relief, and, if so, what is the nature and extent of such injunctive relief?

The interests of justice favour that this motion be granted in accordance with its conclusions;

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

- **GRANT** the class action of the Applicant and each of the members of the Class;

- **ORDER** the Defendants to permanently cease from continuing their unlawful, unfair, anti-competitive and/or misleading conduct;
- **CONDEMN** the Defendants, jointly and solidarily, to pay to each of the members of the Class a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of those sums;
- **CONDEMN** the Defendants, jointly and solidarily, to pay to each of the members of the Class punitive damages, in an amount to be determined by the Court, and **ORDER** collective recovery of those sums;
- **CONDEMN** the Defendants, jointly and solidarily, to pay interest and the additional indemnity on the above sums according to the 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 form 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, jointly and solidarily, 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 interests of the members of the Class.

**DECLARE** that all members of the Class that have not requested their exclusion, within the specified timeframe, 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 Class in accordance with articles 576 and 579 C.C.P. within sixty (60) days from the judgment to be rendered herein in *La Presse*, the *Montreal Gazette* and *Le Soleil*;


**ORDER** that said notice be sent directly to all Class Members through the use of the Defendants' customer database, as well as posting the said notice on the Defendants' website at [www.amazon.ca](http://www.amazon.ca), Facebook page(s) and twitter accounts with a link stating

"Notice to persons who have purchased new books, videos, music or DVDs through [www.amazon.ca](http://www.amazon.ca)";

**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 fees.

Montréal, September 28, 2018



**Klein Avocats Plaideurs Inc.**  
500, Place d'Armes, suite 1800  
Montréal, Québec, H2Y 2W2  
**Attorneys for the Applicant**

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Klein Avocats Plaideurs Inc.

## **SUMMONS**

(articles 145 and following C.C.P.)

### **Filing of a judicial application**

Take notice that the applicant has filed this originating application in the office of the Superior Court in the judicial district of Montréal.

### **Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the Montréal courthouse situated at 1, Notre-Dame Est, Montréal, Québec, H2Y 1B6 within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the applicant's lawyer or, if the applicant is not represented, to the applicant.

### **Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

### **Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

## Change of judicial district

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the applicant.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

## Transfer of application to Small Claims Division

If you qualify to act as an applicant under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the applicant's legal costs will not exceed those prescribed for the recovery of small claims.

## Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

## Exhibits supporting the application

In support of the originating application, the Applicant intends to use the following exhibits:

EXHIBIT P-1:	Corporate search results for Amazon.com, Inc.
EXHIBIT P-2:	Corporate search results for Amazon Services International, Inc.
EXHIBIT P-3:	Corporate search results for Amazon.com.ca, Inc.
EXHIBIT P-4:	June 2017 article in the Financial Post and Amazon's Annual Report for 2017 <i>en liasse</i>
EXHIBIT P-5:	Screenshot of <a href="http://www.amazon.ca">www.amazon.ca</a> regarding the Add to Cart button

EXHIBIT P-6	Excerpt of <a href="http://www.amazon.com">www.amazon.com</a> regarding More Buying Choices
EXHIBIT P-7:	Publication by Multichannel Merchant dated October 7, 2014
EXHIBIT P-8:	Amazon Services Business Solutions Agreement
EXHIBIT P-9:	Examples of Amazon Policies such as Prohibited Seller Activities and Actions, Selling Policies and Seller Code of Conduct and Category, product, and listing restrictions, <i>en liasse</i>
EXHIBIT P-10:	Screenshot of <a href="http://www.amazon.ca">www.amazon.ca</a> and an Amazon webpage on How the Buy Box Works
EXHIBIT P-11:	Article in The New Republic dated May 10, 2017, article in Huffington Post updated on May 5, 2017 and screenshot of <a href="http://www.amazon.com">www.amazon.com</a> regarding How the Buy Box works, <i>en liasse</i>
EXHIBIT P-12:	Screenshots of the Applicant's Amazon order details for new books and movies purchases in 2010, 2014, 2015 and 2016

These exhibits are available on request.

### **Notice of presentation of an application**

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-06-000946-182

SUPERIOR COURT  
(Class Action Chambers)

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**PANAGIOTIS LEVENTAKIS**, residing  
and domiciled at [REDACTED]  
[REDACTED]

Applicant

v.

**AMAZON.COM, INC.**, legal person,  
having its head office at 410 Terry  
Avenue North, City of Seattle, State of  
Washington, 98109, USA

and

**AMAZON SERVICES  
INTERNATIONAL, INC.**,

legal person, having an address for  
service at Corporation Service Company,  
251 Little Falls Drive, Wilmington,  
Delaware, 19807, USA

and

**AMAZON.COM.CA, INC.**, legal person,  
having an address for service at  
Corporation Service Company, 300  
Deschutes Way SW, Suite 304,  
Tumwater, Washington, 98501, USA

Defendants

**NOTICE OF PRESENTATION  
(ART 146 and 574 al. 2 C.C.P.)**

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**TO :** **AMAZON.COM, INC.**  
having its head office at 410 Terry Avenue North,  
City of Seattle, State of Washington, 98109, USA



**AMAZON SERVICES INTERNATIONAL, INC.**

having an address for service at Corporation Service Company,  
251 Little Falls Drive, Wilmington, Delaware, 19807, USA

**AMAZON.COM.CA, INC.**


having an address for service at Corporation Service Company,  
300 Deschutes Way SW, Suite 304, Tumwater, Washington, 98501, USA

**Defendants**

**TAKE NOTICE** that the *Application for authorization to institute a class action and to obtain the status of representative* will be presented before one of the honourable judges of the Superior Court at the Montréal Courthouse located at 1, Notre-Dame Est, at a date and time to be determined by the Class Action Chambers coordinator.

**GOVERN YOURSELVES ACCORDINGLY.**

Montréal, September 28, 2018

  
**Klein Avocats Plaideurs Inc.**  
Attorneys for the Applicant

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Klein Avocats Plaideurs Inc.

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-06-000946-182

SUPERIOR COURT  
(Class Action Chambers)

---

PANAGIOTIS LEVENTAKIS

Applicant

v.

AMAZON.COM, INC.

and

AMAZON SERVICES INTERNATIONAL,  
INC.

and

AMAZON.COM.CA, INC.

Defendants

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**ATTESTATION OF ENTRY IN THE NATIONAL CLASS ACTION REGISTER**  
(ART 55 of the *Regulation of the Superior Court of Québec in civil matters*)

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The Applicant, through his attorneys, attests that the *Application for authorization to institute a class action and to obtain the status of representative* will be entered into the national class action register.

Montréal, September 28, 2018

  
**Klein Avocats Plaideurs Inc.**  
Attorneys for the Applicant

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Klein Avocats Plaideurs Inc.