

232962



No.  
New Westminster Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

JONATHAN PEZZENTE

PLAINTIFF

and

ESSILOR-LUXOTTICA S.A. fka LUXOTTICA GROUP S.p.A. / ESSILOR  
INTERNATIONAL S.A., ESSILORLUXOTTICA CANADA INC., AND LUXOTTICA  
RETAIL NORTH AMERICA, INC.

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

### **Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## **THE PLAINTIFF'S CLAIM**

### **Part 1: STATEMENT OF FACTS**

#### ***Overview***

1. Essilor-Luxottica is the world's largest eyewear company, controlling as much as 80% of the global eyewear market. Started as "Luxottica" in Italy in 1961, today it is a vertically integrated, multi-national behemoth, which designs, manufactures, distributes and sells eyewear wholesale and at retail to consumers. A major part of Luxottica's business is in producing and distributing eyewear for the world's fashion houses under exclusive licenses. Luxottica also promotes and sells its own famous brands, including Ray-Ban, Oakley and Persol, alongside those of its fashion house competitors, such as Armani, Prada, Chanel and Ralph Lauren.

2. Luxottica and the fashion houses are competitors. Luxottica and the fashion houses use their licensing agreements to exercise strategic control over the price and supply of eyewear. Luxottica and the fashion houses have manipulated the eyewear market for their mutual benefit to charge supra-competitive prices, in breach of the *Competition Act* and the common law. Through this suit, Canadian consumers seek to hold Luxottica accountable for its unlawful conduct.

#### ***The Parties***

3. Essilor-Luxottica S.A. is a joint stock company incorporated under the laws of France, with a registered office at 147 rue de Paris, 94220 Charenton-Le-Pont, France ("Essilor-Luxottica SA") in the European Union, where it is subject to the Treaty on the Functioning of the European Union. Essilor-Luxottica SA was formed from the merger in 2018 of Luxottica

Group S.p.A. and Essilor International S.A. Essilor-Luxottica SA carries on business in Canada and worldwide.

4. EssilorLuxottica Canada, Inc. is a company incorporated under the laws of Canada, with an address for service at 371 Rue Deslauriers, Montréal QC ("**Luxottica Canada**"). Luxottica Canada is a wholly-owned subsidiary of Essilor-Luxottica SA. Luxottica Canada carries on business in British Columbia and across Canada. Luxottica Canada is the successor in interest to the former Luxottica of Canada Inc., Luxottica Retail Canada, Inc., Oakley Canada Inc., and Sunglass Hut of Canada Inc. Luxottica Canada is the registered owner of sole proprietorships registered in British Columbia for "Sunglass Hut", "Sunglass Hut International", "Pearle Vision", "Oakley", and in Ontario for "Lenscrafters Canada", "Luxottica Retail Canada", "Luxottica Retail Sunglass Hut" and "Sunglass Hut Canada".

5. Luxottica Retail North America, Inc. is a company incorporated under the laws of Delaware, with an address for service at 1209 Orange St, Wilmington, New Castle, Delaware, United States of America, 19801 ("**Luxottica Retail North America**"). Luxottica Retail North America is a wholly-owned subsidiary of Essilor-Luxottica SA. Luxottica Retail North America carries on business in British Columbia and across Canada.

6. Essilor-Luxottica SA, Luxottica Canada, and Luxottica Retail North America, are together "**Luxottica**". The Defendants functioned as a joint enterprise for the operation of Luxottica's business. Each of the Defendants was an agent of the other for the purposes of the design, manufacturing, distribution, marketing and/or sale of eyewear.

7. The Plaintiff, Jonathan Pezzente, is a resident of North Vancouver, British Columbia. He is a customer of Luxottica and has purchased eyewear from Luxottica, including from Sunglass Hut.

8. The Plaintiff brings this claim on behalf of himself and all persons in Canada ("**Class Members**") who purchased eyewear manufactured or sold by Luxottica between March 12, 2010 and the date this action is certified as a class proceeding. In particular, the Class Members include purchasers of prescription frames and sunglasses manufactured or sold by Luxottica, and an included subclass of persons who bought them for personal, family or household purposes.

### ***Luxottica***

9. Luxottica is the world's largest company in the eyewear industry.
10. Luxottica's predecessor, Luxottica Group S.p.A., was founded in 1961 in Agordo, Italy. The founder of Luxottica is Leonardo Del Vecchio.
11. Luxottica is a vertically integrated company that designs, manufactures and distributes fashion, luxury, sports and performance eyewear.
12. Luxottica was listed on the New York Stock Exchange on January 24, 1990. Luxottica was listed on the Milan Stock Exchange in 2000. Luxottica voluntarily de-listed from the New York Stock Exchange in June 2017.
13. In January 2017, Luxottica announced a proposed merger with Essilor International S.A., a French company that produces ophthalmic lenses and optical equipment, the number one maker of lenses worldwide. In 2018, the merger was consummated. Essilor-Luxottica SA is publicly traded on the Euro-Next stock exchange. It has a market capitalization of about €46-billion.
14. The largest shareholder of Essilor-Luxottica SA is Delfin S.à.r.l. ("Delfin"). Delfin is a Luxembourg company incorporated in 2006 as the holding company for the Del Vecchio family. Delfin holds about 30% of the shares of Essilor-Luxottica SA; it previously held approximately 66% of Luxottica Group S.p.A.

### ***Luxottica's Business***

15. Luxottica has developed a geographic footprint that spans 150 countries, all of which are covered by its wholesale distribution network. This is complemented by an extensive retail network of approximately 9,000 stores, with LensCrafters, Oakley and Pearle Vision in North America, and Sunglass Hut worldwide.
16. Luxottica maintains a significant retail system for the sale of eyewear:
  - a. in 1995, Luxottica acquired LensCrafters, a store-front retailer of eyewear;

- b. in 2001, Luxottica acquired Sunglass Hut, a store-front retailer of sunglasses. Sunglass Hut is the largest retailer of premium sunglasses in North America;
- c. in 2004, Luxottica acquired Cole National, which included the Pearle Vision, Sears Optical and Target Optical store chains; and
- d. in 2014, Luxottica acquired www.glasses.com, which sells eyewear over the internet

(together, Luxottica's "**Retail Outlets**").

17. Luxottica sells eyewear directly to consumers through its Retail Outlets. Luxottica also sells through ophthalmic distributors and third-party retail channels ("**Third-Party Sellers**").

18. Luxottica owns a number of eyewear brands:

- a. in 1990, Luxottica acquired *Vogue Eyewear*;
- b. in 1995, Luxottica acquired *Persol*;
- c. in 1999, Luxottica acquired *Ray-Ban*, maker of the Aviator sunglasses, and *Arnette*;
- d. in 2007, Luxottica acquired *Oakley* (Oakley, Inc.); and
- e. in 2012, Luxottica acquired *Alain Mikli*

(together, Luxottica's "**Proprietary Brands**").

19. In addition to its Proprietary Brands, Luxottica has over 20 licensed brands in its portfolio, including the biggest names in fashion and luxury. The list of licensed brands includes:

A | X  
ARMANI EXCHANGE

  
*Bianchi Brothers*

BVLGARI

  
COACH  
NEW YORK

DOLCE & GABBANA

GIORGIO ARMANI

MIU MIU  
EYEWEAR

*Paul Smith*  
SPECTACLES

POLO  
RALPH LAUREN

RALPH LAUREN

STARCK®  
EYES

TORY  BURCH

VERSACE

BURBERRY  
*London, England*

CHANEL

DKNY

EMPORIO ARMANI

MICHAEL KORS

TIFFANY & CO.

VALENTINO

PRADA  
EYEWEAR

(together, Luxottica's "Licensed Brands").

20. Luxottica sells both its Proprietary Brands and Licensed Brands in its Retail Outlets and through Third-Party Sellers.
21. In its Retail Outlets, Luxottica does not identify for consumers that it is the exclusive licensee, manufacturer and distributor of all the eyewear it sells, including Licensed Brands.
22. Luxottica has operated in Canada for many years:
  - a. In 1985, Luxottica set up Luxottica Canada in Toronto, quickly gaining a 30% share of the Canadian market.
  - b. Luxottica operates LensCrafters, Sunglass Hut, Pearle Vision and Sears Optical, and Oakley Retail Outlets in British Columbia and across Canada.
  - c. Luxottica sells to Third-Party Sellers in British Columbia and across Canada, including to ophthalmologists, optometrists, opticians, and other eyewear retailers.

### *The Market for Eyewear*

23. The global market for eyewear was approximately \$155 billion in 2017.
24. Eyewear is a distinct market as well as part of the fashion accessories market.
25. Eyewear is further divided into sub-markets for prescription frames and sunglasses.
26. British Columbia and Canada are part of a North American and worldwide market for eyewear.
27. Luxottica controls as much as 80% of the global eyewear market. Luxottica controls about 60% of the global submarket for sunglasses, and almost 40% for optical goods stores (retail, including glasses stores, opticians' and optometrists' offices, and other ophthalmological retail). Luxottica directly and indirectly controls a similar or greater share of the eyewear market in Canada.

### *Licensing Agreements with Fashion Houses*

28. Giorgio Armani S.p.A., Brooks Brothers (Retail Brand Alliance, Inc.), Anne Klein (Jones Apparel Group), Bulgari S.p.A., Chanel S.A., Gianni Versace S.p.A., Prada SA and Gruppo Prada, Paul Smith, Tiffany & Co., Donna Karan International Inc., Burberry Group plc, Polo Ralph Lauren Corp., Stella McCartney Limited, Salvatore Ferragamo Italia S.p.A., Tory Burch LLC, Coach, Inc., Michael Kors Holdings Limited, Dolce & Gabbana S.r.l., Valentino S.p.A. are luxury fashion houses (together, “**Fashion Houses**”).

29. Some Fashion Houses are private companies, while others are publicly-traded companies. Their products are clothing and accessories, including eyewear. The Fashion Houses collectively own and exploit their own names in addition to well-known brands and marques that they own, such as *CHANEL*, *D&G*, *PRADA*, *Valentino*, *Polo*, *DKNY*, *Miu Miu*, *TT*, *Emporio Armani*, and *A/X*.

30. The Fashion Houses are horizontal competitors of one another in the market for eyewear.

31. The Fashion Houses are actual or potential horizontal competitors of Luxottica in the market for eyewear.

32. At all material times, the Fashion Houses operated or had access to independent production facilities for the manufacture of eyewear. Each of the Fashion Houses either produced or had the ability to produce their own eyewear at all material times.

33. Since 1988, Luxottica has entered into a series of licensing agreements with the Fashion Houses, as follows:

1988	Giorgio Armani S.p.A.
1992	Brooks Brothers (Retail Brand Alliance, Inc.)
1996	Anne Klein (Jones Apparel Group, now Nine West Holdings)
1997	Bulgari S.p.A.
1999	Chanel S.A.
2003	Gianni Versace S.p.A.
2003	Prada SA part of Gruppo Prada



2006	Paul Smith
2006	Tiffany & Co.
2006	Donna Karan International Inc.
2006	Burberry Group plc
2007	Polo Ralph Lauren Corp.
2009	Stella McCartney Limited
2009	Salvatore Ferragamo Italia S.p.A.
2009	Tory Burch LLC
2012	Coach, Inc.
2015	Michael Kors Holdings Limited
2015	Dolce & Gabbana S.r.l.
2017	Valentino S.p.A.

34. The license agreements between Luxottica and the Fashion Houses have certain basic terms. The license agreements are *inter alia* exclusive multi-year licenses for the design, manufacturing and worldwide distribution of eyewear, under the brands and marques of the Fashion Houses (“**Licensing Agreements**”). In exchange for the grant of the licenses, Luxottica pays the Fashion Houses royalties on the sales of eyewear.

35. Under the Licensing Agreements, Luxottica is designated the agent of the Fashion Houses. In particular, pricing decisions are delegated to Luxottica. In the alternative, the Licensing Agreements include most-favoured nation and other price-coordination clauses, which result in the alignment, synchronisation and inflation of prices to supra-competitive levels for the benefit of Luxottica and the Fashion Houses collectively. The details of these arrangements are well known to Luxottica and the Fashion Houses.

#### ***Sales Agreements***

36. As well as selling its own products and products under Licensing Agreements in its Retail Outlets, Luxottica also sells products from other manufacturers. In particular, Luxottica sells sunglasses in its Sunglass Hut locations manufactured by, among others, Marcolin S.p.A., Safilo S.p.A., Costa Del Mar, Inc. and Maui Jim, Inc.

37. Marcolin S.p.A., Safilo S.p.A, Costa Del Mar, Inc. and Maui Jim, Inc. are horizontal competitors of Luxottica in the manufacturing of eyewear. (“**Competing Manufacturers**”)

38. In addition, Luxottica sells sunglasses in its Sunglass Hut locations manufactured by the Competing Manufacturers under the *Gucci*, *Fendi*, *Dior*, *Guess* and *Tom Ford* brands. *Gucci* is owned by the Gucci Group NV, a subsidiary of Kering S.A. *Fendi* is owned by LVMH Moët Hennessy Louis Vuitton SE. *Dior* is owned by Christian Dior SE. *Guess* is owned by Guess?, Inc. *Tom Ford* is owned by Tom Ford International LLC.

39. Kering S.A., LVMH Moët Hennessy Louis Vuitton SE, Christian Dior SE, Guess?, Inc., and Tom Ford International LLC are also fashion houses and competitors of Luxottica and the Fashion Houses in the market for eyewear.

40. The sales agreements between Luxottica and the Competing Manufacturers have certain basic terms. The sales agreements are *inter alia* multi-year licenses for the distribution and sale of eyewear (“**Sales Agreements**”). Under the Sales Agreements, Luxottica pays the Competing Manufacturers or the relevant Fashion Houses royalties or a portion of the sales on eyewear sold through Luxottica’s Retail Outlets.

41. Under the Sales Agreements, Luxottica is designated the agent of the Competing Manufacturers or the Fashion Houses. In particular, pricing decisions for sales through its Retail Outlets are delegated to Luxottica. In the alternative, the Sales Agreements include most-favoured nation and other price-coordination clauses, which result in the alignment, synchronisation and inflation of prices to supra-competitive levels for the benefit of Luxottica, the Competing Manufacturers and the Fashion Houses collectively. The details of these arrangements are well known to Luxottica and the Competing Manufacturers.

#### ***Unlawful, Anti-Competitive Arrangements***

42. The existence of the Licensing Agreements between Luxottica and each of the Fashion Houses, and the existence of the Sales Agreements, is and has always been known to each of the Fashion Houses. The fact that Luxottica is a party to and privy to all of these Licensing Agreements is and has always been known to each of the Fashion Houses. The same is true of the Sales Agreements.

43. The Fashion Houses entered into the Licensing Agreements and Sales Agreements with Luxottica deliberately knowing the existence of substantially the same Licensing Agreements and Sales Agreements between Luxottica and the other Fashion Houses or the Competing Manufacturers.

44. The Fashion Houses and the Competing Manufacturers entered into the Licensing Agreements and Sales Agreements with Luxottica (and through it, their competitors) with the intention of benefitting from the coordination of distribution and pricing, access to information and especially pricing information, and the ability to charge supra-competitive prices for their eyewear, including through the payment of royalties by Luxottica.

45. Luxottica entered into the Licensing Agreements and Sales Agreements with these competitors with the intention of benefitting from the coordination of distribution and pricing, access to information and especially pricing information, and the ability to charge supra-competitive prices for its eyewear and to exercise control over the production and supply of eyewear.

46. The Licensing Agreements and Sales Agreements between Luxottica and the Fashion Houses and the Competing Manufacturers are contrary to the *Competition Act*, s 45 (“**Unlawful Agreements**”).

47. The Unlawful Agreements:

- a. fix, maintain, increase or control the price for the supply of eyewear;
- b. allocate sales, territories, customers or markets for the production or supply of eyewear; and
- c. fix, maintain, control, prevent or lessen the production or supply of eyewear

globally, including in British Columbia and Canada.

48. Luxottica and each of the Fashion Houses and the Competing Manufacturers have committed acts in furtherance of the Unlawful Agreements, including but not limited to:

- a. the exchange of contracts and agreements, and communications concerning the implementation of the Unlawful Agreements;
- b. the manufacturing, distribution, marketing and sale of eyewear pursuant to the Unlawful Agreements;
- c. the pricing of eyewear pursuant to the Unlawful Agreements; and
- d. the payment of royalties and the collection of sales receipts.

49. The Unlawful Agreements and their effects were felt directly by consumers in British Columbia and Canada.

50. The senior officers and directors of Luxottica were at all times fully aware of the Unlawful Agreements and took active steps to implement their terms.

*The Overcharge*

51. Luxottica's control of pricing on behalf of itself, the Fashion Houses and the Competing Manufacturers permits Luxottica to charge supra-competitive prices for all eyewear it sells directly and indirectly to consumers.

52. In addition, or in the alternative, Luxottica benefits from control of the market for eyewear obtained as a result of the Unlawful Agreements because it can use its position to make preferential arrangements with Third-Party Sellers, thereby increasing its margins and market power.

53. In addition, or in the alternative, the supply of eyewear available to consumers is restricted by the Unlawful Agreements.

54. The Plaintiff and Class Members have purchased eyewear directly and indirectly from Luxottica. As a result of the Unlawful Agreements, the Plaintiff and Class Members have paid supra-competitive prices to Luxottica for that eyewear ("**Overcharge**").

55. Luxottica has collected the Overcharge from the Plaintiff and Class Members.

56. Luxottica is the ultimate recipient or beneficiary of part or all of the Overcharge from the sale of eyewear it sells directly and indirectly.

57. The Plaintiff and Class Members have an interest in the funds received from them by Luxottica as a result of the Overcharge.

58. Luxottica has wilfully concealed the existence of the Overcharge from the Plaintiff and Class Members.

## **Part 2: RELIEF SOUGHT**

59. An order certifying this action as a class proceeding;

60. Damages under the *Competition Act*, s 36 in the full amount of the Overcharge;

61. General damages for the tort of conspiracy in the full amount of the Overcharge;

62. An accounting and restitution of the benefits received by Luxottica or, alternatively, disgorgement of the benefits received by Luxottica on account of its control of the market for eyewear in Canada;

63. Interest under the *Court Order Interest Act*, RSBC 1996, c 79; and

64. Such further and other relief as this Honourable Court may deem just.

## **Part 3: LEGAL BASIS**

### ***Breaches of the Competition Act***

65. The *Competition Act* applies to business transacted in Canada.

66. Luxottica has breached the *Competition Act*, s 45, as amended from time to time.

67. Luxottica, the Fashion Houses and the Competing Manufacturers are “competitors” within the meaning of the *Competition Act*, s-ss 45(1) and (8).

68. Eyewear is a “product” within the meaning of the *Competition Act*, ss 2 and 45(1).

69. British Columbia, Canada and the world are “territories” or “markets” within the meaning of the *Competition Act*, s 45(1)(b).

70. As set out above, by means of the Unlawful Agreements, Luxottica, the Fashion Houses and the Competing Manufacturers have conspired, agreed and arranged to:

- a. fix, maintain, increase or control the price for the supply of eyewear;
- b. allocate sales, territories, customers or markets for the supply of eyewear; and
- c. fix, maintain, control, prevent, lessen or eliminate the supply of eyewear.

71. As a result of Luxottica’s breaches of the *Competition Act*, s 45 the Plaintiff and Class Members have suffered loss and damage in the form of the Overcharge.

72. In addition, or in the alternative, Luxottica Canada and Luxottica Retail North America, implemented directives, instructions, intimations of policy or other communications from Essilor-Luxottica SA, which communication was for the purpose of giving effect to the Unlawful Agreements. These defendants therefore breached the *Competition Act*, s 46.

73. The Plaintiff and Class Members are entitled to recover from Luxottica 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.

#### ***Unjust Enrichment***

74. As set out above, Luxottica has been enriched by the collection of the Overcharge from the Plaintiff and Class Members.

75. The Plaintiff and Class Members have been deprived through the payment of the Overcharge to Luxottica.

76. There is no juristic reason why Luxottica should have received or should retain this benefit. Luxottica’s violations of the *Competition Act*, ss 45-46, the Treaty on the Functioning of

the European Union, Article 101, Luxottica's own corporate policies, and the doctrine of illegality, negate any juristic reason why Luxottica should have received or should retain this benefit, including any contract for the purchase of the eyewear. In particular, the contracts by which the Plaintiff and Class Members purchased eyewear are void and unenforceable.

77. As a result of its actions, Luxottica has been unjustly enriched by the benefits it received from the Plaintiff and Class Members.

78. The Plaintiff and Class Members are entitled to restitution of the benefits received by Luxottica from them in the form of the Overcharge. In the alternative, justice and good conscience require that Luxottica disgorge to the Plaintiff and Class Members an amount attributable to the benefit it receives on account of the Unlawful Agreements.

#### ***Civil Conspiracy***

79. As set out above, by means of the Unlawful Agreements, Luxottica, the Fashion Houses and the Competing Manufacturers have conspired to:

- a. fix, maintain, increase or control the price for the supply of eyewear;
- b. allocate sales, territories, customers or markets for the supply of eyewear; and
- c. fix, maintain, control, prevent, lessen or eliminate the supply of eyewear.

80. By their acts, Luxottica, the Fashion Houses and the Competing Manufacturers intended to cause damage to the Plaintiff and Class Members to benefit themselves.

81. In the alternative, the conduct of Luxottica, the Fashion Houses and the Competing Manufacturers was unlawful, in breach of the *Competition Act*, ss 45-46 and the Treaty on the Functioning of the European Union, Article 101, and Luxottica, the Fashion Houses and the Competing Manufacturers knew or ought to have known that their actions would injure the Plaintiff and Class Members.

82. The Plaintiff and Class Members have suffered loss through the payment of the Overcharge to Luxottica.

83. The Plaintiff and Class Members should be compensated for their losses.

***Breach of the Business Practices and Consumer Protection Act***

84. Luxottica has breached the *BPCPA*.

85. The Plaintiff and Class Members purchased eyewear for purposes that are primarily personal, family or household and are “consumers” within the meaning of s 1 of the *BPCPA*.

86. Eyewear, including prescription frames and sunglasses, are “goods” and “services” within the meaning of s 1 of the *BPCPA*.

87. Luxottica is a “supplier”, within the meaning of s 1 of the *BPCPA*. The *BPCPA* does not require privity of contract between suppliers and consumers.

88. The purchase and sale of eyewear, including prescription frames and sunglasses, is a “consumer transaction”, within the meaning of s 1 of the *BPCPA*.

89. By the conduct set out above, Luxottica has breached ss 8-9 of the *BPCPA*, and Luxottica’s actions constitute unfair and unconscionable business practices, and Luxottica knew or ought to have known that.

90. In particular, Luxottica’s actions have breached *inter alia* the *BPCPA*, s 8, whether or not the factors in ss 8(3) are present in any individual case, and under s-ss 8(3)(b).

91. Specifically, Luxottica took advantage of the inability of consumers per *BPCPA*, s-s 8(3)(b), including the Plaintiff and Class Members, to reasonably protect their own interests because of their ignorance or inability to understand the character or nature of the consumer transaction and Luxottica’s misconduct within it based on their total control over the service (including the Unlawful Agreements with the Fashion Houses and the Competing Manufacturers) and the lawfulness of the activity. There is a substantial inequality of bargaining power between the Plaintiff and Class Members and Luxottica in any consumer transaction for the purchase and sale of eyewear.



92. As a result of Luxottica's breaches of the *BPCPA*, the Plaintiff and Class Members are entitled to damages under the *BPCPA*, s 171 in the full amount of the Overcharge.

93. Class Members resident outside British Columbia plead and rely on *inter alia*: *Consumer Protection Act*, RSA 2000, c C-26.3; *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2; *Consumer Protection Act*, CCSM c C200; *Consumer Protection Act*, 2002, SO, c 30, Sch A; *Consumer Protection Act*, CQLR c P-40.1; *Consumer Protection Act*, RSNS 1989, c 92; *Consumer Protection Act*, RSPEI 1988, c C-19; *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1; *Consumers Protection Act*, RSY 2002, c 40; *Consumer Protection Act*, RSNWT 1988, c C-17; and *Consumer Protection Act*, RSNWT 1988 (Nu), c C-17; each as amended from time to time and with regulations in force at material times.

#### ***Limitation Period***

94. Luxottica willfully concealed the fact of the Overcharge from the Plaintiff and Class Members, and the fact that the Overcharge was caused or contributed to by Luxottica's acts or omissions.

95. The Plaintiff and Class Members rely on the doctrines of postponement, discoverability and fraudulent concealment per *Pioneer Corp. v. Godfrey* to postpone the running of the limitation period until the filing of this action. The Plaintiff and Class Members plead and rely on and the *Limitation Act*, SBC 2012, c 13, s 21(3) and the *Limitation Act*, RSBC 1996, c 266, s 6.

96. In the alternative, or in addition, the Plaintiff and Class Members rely on the *Limitation Act*, SBC 2012, c 13, s 30 and the *Limitation Act*, RSBC 1996, c 266.

97. In addition, the Plaintiffs and Class Members plead and rely on the *Emergency Program Act*, Ministerial Order No. M089 and related enactments to suspend the running of the limitation period from March 26, 2020.

**Service**

98. The Plaintiff and Class Members have the right to serve this Notice of Civil Claim on the Defendants pursuant to the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*), because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based.

99. The Plaintiff and Class Members rely on the following grounds, in that this action concerns:

- a. restitutionary obligations that, to a substantial extent, arose in British Columbia (*CJPTA*, s 10(f));
- b. a tort committed in British Columbia (*CJPTA*, s 10(g)); and
- c. a business carried on in British Columbia (*CJPTA*, s 10(h)).

Plaintiff's address for service:

Slater Vecchio LLP  
1800 - 777 Dunsmuir Street  
Vancouver, BC V7Y 1K4

Place of trial: New Westminster, BC

The address of the registry is:

651 Carnarvon St.  
New  
Westminster BC  
V3M 1C9

Date: November 10, 2020



Signature of lawyer for plaintiff

<b>Mathew P. Good</b>	<b>Anthony Vecchio QC</b>
Co-Counsel for the Plaintiff	Co-Counsel for the Plaintiff
<b>Good Barrister</b>	<b>Slater Vecchio LLP</b>

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION  
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Plaintiff claims the right to serve this pleading on the Defendants ESSILOR-LUXOTTICA S.A., LUXOTTICA RETAIL NORTH AMERICA, INC., AND ESSILORLUXOTTICA CANADA INC. outside British Columbia on the ground that the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*) applies because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based.

The Plaintiff relies on the following grounds, in that this action concerns:

- a. restitutionary obligations that, to a substantial extent, arose in British Columbia (*CJPTA*, s 10(f));
- b. a tort committed in British Columbia (*CJPTA*, s 10(g)); and
- c. a business carried on in British Columbia (*CJPTA*, s 10(h)).