

SUPERIOR COURT

(Class Action)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No: 500-06-000629-127

DATE: July 8, 2016

PRESIDING: THE HONOURABLE MARIE GAUDREAU, J.S.C.

EMILY CUNNING
Plaintiff / Class Representative

v.

FITFLOP LIMITED
Defendant

JUDGMENT

[1] Plaintiff seeks to approve the form and content of the Pre-Approval Notice, for approval of the method of dissemination of the Pre-Approval Notice (the "Notice Plan"), to approve the form and content of the Claim Form, and to approve the form and content of the Opt-Out Form (the "**Motion**").

[2] The present motion arises in the context of an Amended Motion to Authorize the Bringing of a Class Action & to Ascribe the Status of Representative (the "**Motion for Authorization**"), which was authorized by the Court on February 20, 2014.

[3] In its authorization judgment, this Court authorized and described the class as follows: "all residents of Quebec who purchased FitFlop Footwear (*toutes les personnes résidant au Québec qui ont achetés des chaussures FitFlop*)".

[4] The parties, through their respective counsel, entered into good faith settlement discussions and have drafted a settlement agreement (the "**Settlement Agreement**") whereby they have agreed to resolve all judicial claims, without any admissions whatsoever, and subject to various terms and conditions, including the approval by this Court.

[5] The Settlement Agreement purports to settle this action as well as a parallel class action proceeding pending before the Ontario Superior Court of Justice under file number 14-60155.

[6] Approval of the Settlement Agreement by the Superior Court of Quebec (the "**Quebec Court**") and a discontinuance of the class proceeding before Ontario Superior Court of Justice (the "**Ontario Court**") are explicit conditions of the settlement.

[7] The Settlement Agreement defines the proposed class as follows:

- All residents of Canada who have purchased FitFlop Footwear up to and including the date of the Pre-Approval Order.

[8] Accordingly, the Plaintiff seeks leave to publish a Pre-Approval Notice advising Class Members of the fact that a Settlement Agreement has been reached, that this Settlement Agreement will be submitted for approval on a date to be specified by this Court, that they may voice an objection to the proposed settlement, how to opt-out of the settlement and how to file a valid claim form.

[9] The Plaintiff submits that the proposed Pre-Approval Notice conforms with the requirements of the *Code of Civil Procedure*.

[10] The Pre-Approval Notice, if approved by this Court will be:

- Published in the form of a 1/3-page advertisement in a weekly edition of *La Presse+* (in French) and *The Globe and Mail* (In English);
- Posted on a specially-designated website maintained by the claims administrator selected by the parties;
- Posted on the website of Plaintiff's counsel;
- Posted on the Plaintiff's counsel Facebook page;
- Released in French and English via Newswire;

[11] FOR THESE REASONS, THE COURT:

[12] ACCUEILLE la requête;	[12] GRANTS the Motion;
<p>[13] DÉCRIT le Groupe pour les fins de l'Avis de préapprobation comme :</p> <ul style="list-style-type: none"> • Tous les résidents du Canada qui ont acheté des chaussures Fitflop jusqu'à et y compris la date de l'Ordonnance d'approbation préalable; 	<p>[13] DESCRIBES as follows the Class for the purposes of the Pre-Approval Notice:</p> <ul style="list-style-type: none"> • All residents of Canada who have purchased FitFlop Footwear up to and including the date of the Pre-Approval Order;
[14] ORDONNE que, sauf indication contraire ou modification par le présent jugement, les termes en capitales utilisés dans les présentes aient le sens qui leur est attribué dans la Convention de règlement, pièce R-1;	[14] ORDERS that, except as otherwise specified in, or as modified by this Judgment, capitalized terms used herein shall have the meaning ascribed in the Settlement Agreement, Exhibit R-1;
[15] APPROUVE l'Avis de préapprobation, pièce R-2;	[15] APPROVES the Pre-Approval Notice attached hereto as Exhibit R-2;
<p>[16] ORDONNE que l'Avis de préapprobation soit diffusé par :</p> <ul style="list-style-type: none"> ➤ une parution, dans un format 1/3 de page publicitaire, dans une édition hebdomadaire de <i>La Presse+</i> (en français) et du <i>Globe and Mail</i> (en anglais); ➤ un communiqué de presse via Canadian Newswire, en français et en anglais; ➤ son affichage sur le site Web des Procureurs du groupe à www.clg.org; ➤ son affichage sur la page Facebook des Procureurs du groupe; 	<p>[16] ORDERS that the Pre-Approval Notice be disseminated by having it:</p> <ul style="list-style-type: none"> ➤ Published once in the form of a 1/3-page advertisement in a weekly edition of <i>La Presse+</i> (in French) and <i>The Globe and Mail</i> (In English); ➤ Released via Canadian Newswire in French and in English; ➤ Posted on Class Counsel's website at www.clg.org; ➤ Posted on Class Counsel's Facebook Page; ➤ Posted on the Settlement Website at www.fitflopsettlement.ca;

<p>➤ son affichage sur le site Web du Règlement à www.fitflopsettlement.ca;</p>	
<p>[17] ORDONNE que Kurtzman Carson Consultants (KCC) soient nommés provisoirement Administrateur des réclamations aux fins de la coordination du Plan de notification, de l'administration des griefs, des formulaires d'exclusion, des formulaires de réclamation et des tâches connexes, y compris l'établissement du site Web du Règlement aux fins de l'affichage de l'Avis de préapprobation, de la Convention de règlement et de tous les documents connexes;</p>	<p>[17] ORDERS that Kurtzman Carson Consultants (KCC) shall be provisionally appointed as Claims Administrator for the purposes of coordination of the Notice Plan, administration of objections, opt-out forms, claim forms and related tasks, including establishing the Settlement Website for purposes of posting the Pre-Approval Notice, Settlement Agreement and all related documents;</p>
<p>[18] ORDONNE que, conformément aux termes de la Convention de règlement, l'Administrateur des réclamations paie les coûts associés à l'Avis de préapprobation à partir du Compte;</p>	<p>[18] ORDERS that, in accordance with the terms of the Settlement Agreement, the Claims Administrator shall pay the costs associated with the Pre-Approval Notice approved herein from the Account;</p>
<p>[19] APPROUVE le Formulaire de Réclamation, pièce R-3;</p>	<p>[19] APPROVES the Claim Form attached hereto as Exhibit R-3;</p>
<p>[20] APPROUVE le Formulaire d'exclusion, pièce R-4;</p>	<p>[20] APPROVES the Opt-Out Form attached hereto as Exhibit R-4;</p>
<p>[21] FIXE la date limite de toute opposition à la Convention de règlement par un Membre du groupe au plus tard 10 jours avant l'audience d'approbation du règlement;</p>	<p>[21] SETS the deadline for Class Members to object to the Settlement Agreement as no later than 10 days before the hearing to approve the Settlement Agreement;</p>
<p>[22] FIXE la « Date d'effet » comme étant celle tombant 30 jours après la date la plus tardive entre celle à laquelle une ordonnance d'approbation du Règlement a été rendue par la Cour au Québec et celle où une ordonnance de désistement</p>	<p>[22] SETS the "Effective Date" as the date which is 30 days after the later date on which a settlement-approval order has been signed and entered by the Quebec Court and a discontinuance order has been signed and entered by the Ontario</p>

<p>a été rendue par la Cour en Ontario, à condition qu'aucun appel n'ait été introduit ou, si un appel a été introduit, la date tombant 30 jours après qu'un tel appel aura été tranché de manière finale afin de permettre la réalisation du règlement, conformément aux termes et conditions de la Convention de règlement;</p>	<p>Court, provided that no appeal has been brought or, if any appeal has been brought, the date which is 30 days after such an appeal is finally resolved so as to permit the consummation of the settlement in accordance with the terms and conditions of the Settlement Agreement;</p>
<p>[23] FIXE la date limite du dépôt d'une réclamation au plus tard 60 jours après la Date d'effet;</p>	<p>[23] SETS the deadline for filing a claim as no later than 60 days after the Effective Date;</p>
<p>[24] FIXE la date limite d'exclusion au plus tard 45 jours après l'Ordonnance d'approbation;</p>	<p>[24] SETS the deadline for opting-out as no later than 45 days following the Approval Order;</p>
<p>[25] ORDONNE que l'Audience d'approbation du règlement soit tenue le 24 août 2016, à 9h00, en salle 2.08 [ou dans toute autre salle d'audience, qui sera indiquée dans un avis affiché à l'extérieur de la salle 2.08], au palais de justice de Montréal, 1, rue Notre-Dame Est, au cours de laquelle cette Cour devra déterminer :</p> <ul style="list-style-type: none"> a) s'il convient d'approuver la Convention de règlement comme étant juste, raisonnable et dans le meilleur intérêt des Membres du groupe; b) si la requête des Procureurs du groupe relativement aux frais, débours et taxes applicables devrait être accordée; c) s'il convient d'accorder une rémunération incitative aux Représentantes du groupe; et d) toutes autres questions qu'elle jugera appropriées; 	<p>[25] ORDERS that the Settlement Approval Hearing is to be held on August 24, 2016, at 9:00 a.m., in room 2.08 [or any other courtroom, which will be indicated by the posting of a sign outside of courtroom 2.08] at the Montreal Courthouse, 1 Notre-Dame Street East, at which time this Court will be asked to decide:</p> <ul style="list-style-type: none"> a) whether to approve the Settlement Agreement as fair, reasonable and in the best interest of the Class Members; b) whether Class Counsel's application for fees, disbursements and applicable taxes should be granted; c) whether to grant an honorarium award to the Class Representatives; and d) any other matters as the Court may deem appropriate;

<p>[26] ORDONNE que la date et l'heure de l'Audience d'approbation du règlement soient énoncées dans l'Avis de préapprobation, mais qu'elles puissent être reportées par la Cour, sans autre avis aux Membres du groupe que celui qui sera affiché sur le site Web du Règlement;</p>	<p>[26] ORDERS that the date and time of the Settlement Approval Hearing shall be set forth in the Pre-Approval Notice, but may be subject to adjournment by the Court without further publication notice to the Class Members other than such notice which will be posted on the Settlement Website;</p>
<p>[27] LE TOUT sans frais de justice.</p>	<p>[27] THE WHOLE without legal costs.</p>



 MARIE GAUDREAU, J.S.C.

Mtre Jeff Orenstein
 Mtre Andrea Grass
 CONSUMER LAW GROUP INC.
 Attorneys for the Plaintiff / Class Representative

Mtre Jean Lortie
 MCCARTHY TÉTRAULT LLP
 Attorneys for the Defendant

Hearing Date: July 7, 2016