

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF QUÉBEC

NO : 200-06-000225-188

(Class actions)
SUPERIOR COURT

LAURY HARVEY, residing and domiciled at
3, rue Noël, Plessisville, Québec, G6L 2Y4

Applicant

v.

ARCTIC CAT INC., legal person having its
head office at 601, Brooks Avenue, Thief
River Falls, Minnesota, 56701, États-Unis

and

ARCTIC CAT SALES, INC., legal person
having a place of business at 1010, Dale
Street North, Saint-Paul, Minnesota, 55117-
5603, U.S.A., has a proxyholder, *Lavery, De
Billy, S.E.N.C.R.L.* having a place of business
at 925, rue Grande-Allée Ouest, bureau 500,
Québec (Québec), G1S 1C1

et

TEXTRON, INC., legal person having its head
office at 40 Westminster Street,
Providence, Rhode Island, 02903, U.S.A.

et

YAMAHA CORPORATION, legal person
having its head office at 10-1, Nakazawacho,
Naka-ku Hamamatsu-shi, Shizuoka, 430-
8650, Japan

et

YAMAHA MOTEUR DU CANADA LTÉE,
legal person having a place of business at
480, Gordon Baker Road, Toronto, Ontario,
M2H 3B4, has a proxyholder, *Borden Ladner*

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disparity between this translation and the original French version, the original French version shall prevail.

SISKINDS, DESMEULES, AVOCATS

S.E.N.C.R.L.
(67-209)

Gervais, S.E.N.C.R.L., S.R.L., having a place of business at 1000, rue de la Gauchetière Ouest, bureau 900, Montréal (Québec) H3B 5H4

et

YAMAHA MOTOR CORPORATION, U.S.A., legal person having a place of business at 6555, Katella Avenue, Cypress, California, 90630, U.S.A.

and

YAMAHA MOTOR CO., LTD., legal person having its head office at 2500 Shingai, Iwata, Shizuoka, 438-8501, Japan

Defendants

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO
APPOINT THE STATUT OF REPRESENTATIVE PLAINTIFF REAMENDED**

(Sections 571 C.C.P. and following)

(N/D : 67-209/Snowmobiles)

TO ONE OF THE HONOURABLE JUSTICES OF THE QUEBEC SUPERIOR COURT,
SITTING IN AND FOR THE DISTRICT OF QUEBEC, THE APPLICANT STATES AS
FOLLOW:

1. GENERAL PRESENTATION

A) THE CLASS ACTION

1. The Applicant wishes to institute a class action on behalf of the following class, of which he is a member :

“ All persons in Canada who purchased and/or rented a snowmobile with a 7000 or 1049cc engine designed, developed, manufactured, commercialised and/or sold by one of the Defendants (the “**Affected snowmobiles**” **).

**The Affected snowmobiles are the following models, for the years 2014 to 2018 :

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- From Arctic Cat :
 - ZR 7000 LXR
 - ZR 7000 Sno Pro
 - ZR 7000 Limited
 - ZR 7000 El Tigre
 - ZR 7000 RR
 - Pantera 7000
 - Pantera 7000 Limited
 - M 7000 Sno Pro
 - XF 7000 Cross Country
 - XF 7000 Crosstour
 - XF 7000 High Country
 - XF 7000 Limited
 - XF 7000 LXR
 - XF 7000 Sno Pro
 - XF 7000 Cross Country Sno Pro
- From Yamaha:
 - The Viper series (hereinafter the “**Class**”)

or such other class definition as may be approved by the Court; ”

2. This action arises out of the fact that the Defendants did not meet their warranty of quality on the Affected snowmobiles, because their starters have a latent defect that makes them unfit for which they were intended;
3. Specifically, this latent defect leads to, among other things, the impossibility or difficulties of starting the Affected snowmobiles, because of a problem related to, without limitation, the starter;
4. Many failed attempts to correct the problem were made by the Defendants, but did not provide a permanent solution;
5. Among other things, to correct this problem, reprogramming to reduce kickbacks at start-up was offered by the Arctic Cat Defendant, the whole as it appears from Arctic Cat's Service Bulletin dated November 7, 2016, produced as **Exhibit P-1**;
6. This problem, as well as the lack of improvement following the failed attempts of corrections were, many times, reported by Class members, the whole as it appears from a copy of different forum pages, produced as **Exhibit P-2**;

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B) THE DEFENDANTS

7. The Defendants manufactured, commercialised sold and/or rented the Affected snowmobiles, the Affected snowmobiles' starter and/or parts of the Affected snowmobiles' starter;

ARCTIC CAT

8. The Defendant Arctic Cat, Inc. is an American corporation having its head office at Thief River Falls, Minnesota;
9. The Defendant Arctic Cat Sales, Inc. is an American corporation having its principal place of business in Saint-Paul, Minnesota;
10. Arctic Cat Sales, Inc. is a subsidiary under the control of Arctic Cat, Inc.;
11. Arctic Cat Sales, Inc. has a proxyholder in Québec, *Lavery, De Billy, S.E.N.C.R.L.*, having a place of business at 925, rue Grande-Allée Ouest, bureau 500, Québec (Québec), G1S 1C1;
12. In March 2017, Textron Inc. announced the acquisition of Arctic Cat Inc. by way of merger, the whole as it appears from a copie of the press release dated March 6, 2017, produced as **Exhibit P-3**;
13. Arctic Cat, Inc., Arctic Cat Sales, Inc. and Textron Inc. are hereinafter collectively called "**Arctic Cat**";

YAMAHA

14. The Defendant Yamaha Corporation is a Japanese corporation having its head office in Shizuoka, Japan;
- 14.1 The Defendant Yamaha Motor Co, Ltd. is a Japanese corporation having its head office in Shizuoka, Japan;
15. Yamaha Moteur du Canada Ltée. is a Canadian corporation with an address for service in Toronto, Ontario;
16. Yamaha Moteur du Canada Ltée. is a subsidiary under the control of Yamaha Corporation;
17. Yamaha Moteur du Canada Ltée. has a proxyholder in Québec, *Borden Ladner Gervais, S.E.N.C.R.L., S.R.L.*, having a place of business at 1000, rue de la Gauchetière Ouest, bureau 900, Montréal, Canada;

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18. Yamaha Motor Corporation U.S.A. is an American corporation having a place of business in Cypress, California;
19. Yamaha Motor Corporation U.S.A is a subsidiary under the control of [...] Yamaha Motor Co, Ltd.;
20. Yamaha Corporation, Yamaha Motor Co, Ltd., Yamaha Moteur du Canada Ltée and Yamaha Motor Corporation U.S.A. are hereinafter collectively called "**Yamaha**";
21. In February 2013, Arctic Cat Media Relations announced a supply agreement of motors between Yamaha Motor Corporation and Arctic Cat Inc., the whole as it appears from a copy of the press release on this subject, produced as **Exhibit P-4**;
22. Arctic Cat and Yamaha are hereinafter collectively called the "**Defendants**";

C) CAUSE OF ACTION

a. Obligation of warranty of quality

23. The Defendants breached their obligation related to the warranty of quality regarding the Affected snowmobiles;
24. The Affected snowmobiles are affected by a latent defect, considering the starter's problem makes them unfit for the use for which they were intended;

b. Duty to inform

25. The Defendants breached their duty to inform regarding the Affected Snowmobiles;
26. The Defendants issued many recalls on the Affected Snowmobiles, alleging that new corrections would put an end or would considerably reduce the impact of the latent defects, which did not happen;
27. Moreover, these recalls were generally not directly transmitted to Class members, but were rather transmitted to their dealerships, who only advised the Class members who contacted them, the whole as it appears from the copy of some messages written on forums, previously of the recalls produced as Exhibit P-2;
28. Also, a representative of the Defendant Arctic Cat admitted that Arctic Cat was aware of the starting problem, but that they did not have a solution yet, the whole as it appears from a copy of the email from Arctic Cat's customer service addressed to the Applicant, dated February 23, 2018, produced as **Exhibit P-5**;
- 28.1 In December 5, 2018, another recall regarding the Affected Snowmobiles was sent to dealers, the whole as it appears from Arctic Cat's Service Bulletin, produced as **Exhibit P-7**;

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c. Fault

29. The Defendants failed in their legal and statutory obligations, including their obligations under the *Québec Consumer Protection Act* and other Canadian consumer protection acts;
30. In addition to the above, the Applicant alleges that the Defendants also failed to comply with their general obligations under the *Civil Code of Québec* and, more specifically, to those concerning their duty of warranty of quality;
31. In any event, and without limiting the foregoing, the conduct of the Defendants constitutes a fault for which they are liable;

d. Causation

32. The Applicant and the others Class members have suffered damages that are a direct and immediate consequence arising from the foregoing;
33. The Applicant and the Class members would not have purchased the Affected Snowmobiles or would not have paid such a high price if they would have been properly informed of the latent defect on the Affected snowmobiles;

D) DAMAGES

34. The Affected Snowmobiles have a latent defect that causes a starting problem;
35. At this time, the Affected snowmobiles have been recalled a few times in Canada, including in Québec;
36. Many Affected snowmobiles are no longer covered by the manufacturer's warranty;
37. Because of the starting problem on the Affected snowmobiles encountered by the Applicant and the Class members, they suffered pecuniary and non-pecuniary damages, such as reparation, additional warranty, towing and accommodation fees, as well as troubles and inconveniences associated with the inability to start their snowmobiles;
38. Also, the resale value of the Affected snowmobiles was greatly affected by the recurrent starting problems;
39. Despite the many recalls, and as demonstrated by Exhibit P-5 previously produced, at this time, there is no efficient solution to resolve this starting problem caused by the Defendants;
40. The Applicant is unaware if a corrective can be provided for the Affected snowmobiles;

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41. Moreover, if a corrective can be provided, the Applicant and the Class members would be deprived of their snowmobiles for a certain time, thus causing loss of time, hassles and other resulting damages;
42. The Applicant and the proposed Class members therefore seek compensation for the moral and material damages arising from the foregoing;
43. The Applicant and the proposed Class members seek punitive and/or exemplary damages, if applicable;

II FACTS GIVING RISE TO THE APPLICANT'S PERSONAL CLAIM

44. The Applicant is an individual residing in Plessisville, in the province of Québec;
45. On October 22, 2015, the Applicant purchased a Pantera 7000 snowmobile, of the year 2015, from the Arctic Cat brand, the whole as it appears from a copy of his purchase contract, produced as **Exhibit P-5.1**;
46. On September 20, 2016, because of the starter's problems encountered by his friend who is also a Class member, on his Arctic Cat snowmobile, the Applicant acquired an additional insurance on his snowmobile;
47. On November 7, 2016, Arctic Cat issued a Service Bulletin regarding the recall to be initiated, previously produced as Exhibit P-1;
48. In February 2017, a few months following the issuance of the Service Bulletin by Arctic Cat produced as Exhibit P-1, the Applicant, when he showed up to his dealership, was advised of the recall on his snowmobile;
49. On February 14, 2017, the Applicant's snowmobile was recalled to find a solution to the starting problem, and then was returned to him;
50. On February 13, 2018, the starter of the Applicant's snowmobile broke, resulting in important repair, towing and accommodation fees, as well as troubles, inconveniences and losses;
51. On February 22, 2018, the Applicant formally required Arctic Cat to proceed to a permanent repair of the starting problem or, otherwise, to reimburse the purchase price of his snowmobile, the whole as it appears from a copy of this letter of formal notice transmitted by the Applicant, produced as **Exhibit P-6**;
52. Arctic Cat did not follow up on the letter of formal notice from the Applicant, but only replied with February 23, 2018's email, previously produced as Exhibit P-5;

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53. In consequence of the Defendants conduct described herein, the Applicant suffered and will continue to suffer damages;
54. If the Applicant had been advised of the Affected snowmobiles, he would have never purchased his snowmobile;
55. If it wasn't for the Defendants' conduct, the Applicant would not have suffered the damages, the inconveniences and the losses previously alleged;

III FACTS GIVING RISE TO THE CLASS MEMBERS' PERSONAL CLAIM

56. The facts giving rise to each class member's personal claim against the Defendants are listed in the following paragraphs:
- a) Each Class member purchased and/or leased one or more Affected snowmobiles;
 - b) Each Class member has suffered and will continue to suffer losses and damages;
 - c) The damages suffered by each Class member were directly caused by the defendants' fault;
 - d) Thus, the Applicant and the Class members are justified to claim reimbursement of all damages suffered due to the Defendants' fault;

IV CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

57. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings, with respect to provision 575 (3) of the *Civil Code of Procedure* (hereinafter "C.C.P. ") , for the following reasons :
- a. The Applicant is unaware of how many persons are covered by this action, which are located throughout Canada;
 - b. The number of persons who can be part of the Class is estimated at over a thousand individuals;
 - c. The names and addresses of the persons composing the Class are unknown to the Applicant;
 - d. All facts alleged in the previous paragraphs make it difficult, if not impossible, to find each and every one of those involved in this action and to contact each member to obtain mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;

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58. The questions of fact and law raised by this action which are identical, similar or related and which relate each Class members to the Defendants and which the Applicant seeks to resolve by his class action are :
- a) Did the Defendants commit a fault when designing, developing, producing, manufacturing, (...), commercialising, distributing and/or selling the Affected snowmobiles and/or the Affected snowmobiles starters?
 - b) Are the Affected snowmobiles affected by a latent defect?
 - c) Have the Defendants breached their obligations regarding their warranty of quality?
 - d) Have the Defendants breached their obligations regarding their information duty?
 - e) Did the Defendants otherwise commit a fault involving their civil liability?
 - f) Did the Defendants breach their obligations under the *Consumer Protection Act* and the *Civil Code of Québec*?
 - g) Did the conduct of the Defendants have or will result in losses to Class members and, if so, do such losses constitute a damage for each Class members?
 - h) Are the Class members entitled to claim compensation for the moral and material damages arising from the foregoing?
 - i) Are the Class members entitled to claim punitive and/or exemplary damages, if applicable?

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

59. The action that the Applicant wishes to institute for the benefit of the Class members is an action in damages;
60. The conclusions that the Applicant wishes to introduce by way of an application to institute proceedings are :

GRANT the Applicant's action;

GRANT the Applicant's class action on behalf of all the Class members;

CONDEMN the Defendants severally to pay damages to Class members temporarily evaluated at \$100 000 000,00, to be enhanced;

CONDEMN the Defendants severally to pay punitive and/or exemplary damages to Class members temporarily evaluated at \$ 50 000 000,00, to be enhanced;

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ORDER the collective recovery of the claims of the Class members;

CONDEMN the Defendants severally to pay to Class members the cost of distributing the funds received to the members;

THE WHOLE with the legal interest and the additional indemnity provided for in article 1619 of the *Civil Code of Québec* and with all legal costs, as described in article 339 C.C.P., plus the costs of notices;

61. The Applicant suggests that this class action be exercised before the Superior Court in the district of Québec for the following reasons :
- a) The Defendant Arctic Cat Sales, Inc. has a proxyholder located in the judiciary district of Québec;
 - b) Even though he resides in Plessisville, the Applicant's lawyers practice in the judicial district of Québec;
 - c) Several Class members reside in the judicial district of Québec or, more generally, in the appeal district of Québec;
62. The Applicant, who seeks to obtain the status of representative, is able to adequately represent the Class members for the following reasons:
- a) He purchased an Affected snowmobile;
 - b) He suffered and will continue to suffer damages;
 - c) He understands the nature of the action;
 - d) He is available to dedicate the necessary time for an action and to collaborate with the Class members;
 - e) He already got in touch with certain Class members;
63. The present motion is well-founded in facts 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;

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ASCRIBE the Applicant the status of representative of the persons included in the Class herein described as :

“ All persons in Canada who purchased and/or rented a snowmobile with a 7000 or 1049cc engine designed, developed, manufactured, commercialised and/or sold by one of the Defendants (the “**Affected snowmobiles**” **).

**The Affected snowmobiles are the following models, for the years 2014 to 2018 :

- From Arctic Cat :
 - ZR 7000 LXR
 - ZR 7000 Sno Pro
 - ZR 7000 Limited
 - ZR 7000 El Tigre
 - ZR 7000 RR
 - Pantera 7000
 - Pantera 7000 Limited
 - M 7000 Sno Pro
 - XF 7000 Cross Country
 - XF 7000 Crosstour
 - XF 7000 High Country
 - XF 7000 Limited
 - XF 7000 LXR
 - XF 7000 Sno Pro
 - XF 7000 Cross Country Sno Pro
- From Yamaha:
 - The Viper series (hereinafter the “**Class**”)

or such other class definition as may be approved by the Court; ”

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

- a) Did the Defendants commit a fault when designing, developing, producing, manufacturing, (...) , commercialising, distributing and/or selling the Affected snowmobiles and/or the Affected snowmobiles starters?
- b) Are the Affected snowmobiles affected by a latent defect?
- c) Have the defendants breached their obligations regarding their warranty of quality?

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- d) Have the defendants breached their obligations regarding their information duty?
- e) Did the Defendants otherwise commit a fault involving their civil liability?
- f) Did the Defendants breached their obligations under the *Consumer Protection Act* and the *Civil Code of Québec*?
- g) Did the conduct of the Defendants have or will result in losses to Class members and, if so, do such losses constitute a damage for each Class members?
- h) Are the Class members entitled to claim compensation for the moral and material damages arising from the foregoing?
- i) Are the Class members entitled to claim punitive and/or exemplary damages, if applicable?

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

GRANT the Applicant's action;

GRANT the Applicant's class action on behalf of all the Class members;

CONDEMN the Defendants severally to pay damages to Class members temporarily evaluated at \$100 000 000,00, to be enhanced;

CONDEMN the Defendants severally to pay punitive and/or exemplary damages to Class members temporarily evaluated at \$ 50 000 000,00, to be enhanced;

ORDER the collective recovery of the claims of the Class members;

CONDEMN the Defendants severally to pay to Class members the cost of distributing the funds received to the members;

DECLARE that all Class members that have not requested their exclusion from the Class in the prescribed delay will be bound by any judgment to be rendered on the class action to be instituted;

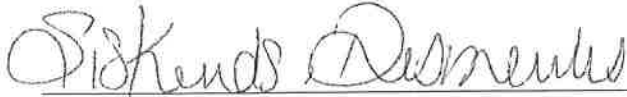
FIX the delay of exclusion at 30 days from the date of publication of the notice to Class members;

ORDER the publication of a notice to Class members in accordance with article 576 C.C.P.;

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THE WHOLE with the legal interest and the additional indemnity provided for in article 1619 of the *Civil Code of Québec* and with all legal costs, as described in article 339 C.C.P., plus the costs of notices;

Québec, March 19, 2019



SISKINDS, DESMEULES, AVOCATS
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