S-236558

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

HARDEEP DHALIWAL

PLAINTIFF

and

JOHNSON & JOHNSON INC., PROCTER & GAMBLE INC., GLAXOSMITHKLINE CONSUMER HEALTHCARE ULC, RB HEALTH (CANADA) INC., SHOPPERS DRUG MART INC., WAL-MART CANADA CORP., AMAZON.COM.CA INC., LONDON DRUGS LIMITED AND LOBLAW COMPANIES LIMITED / LES COMPAGNIES LOBLAW LIMITEE

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 PRONOUCED 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. Canadians rely on the Defendants for Cold Medicines that provide the therapeutic relief promised on their labelling. The Defendants have violated this trust by selling oral cold and flu medicines that cannot provide the nasal decongestant benefits that the Defendants represented because the purported active ingredient, the nasal decongestant phenylephrine, metabolizes in the stomach before it reaches the nasal cavity. The Defendants have misled Canadians as to the value of their oral cold and flu medicines.

2. In manufacturing and/or selling oral cold and flu medicines containing phenylephrine as an active ingredient, the Defendants have breached the *Competition Act*, RSC 1985, c C-34 (the "***Competition Act***"), the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 (the "***BPCPA***") and related provincial enactments, and have been unjustly enriched.

The Plaintiff and Class Members

3. The Plaintiff, Hardeep Dhaliwal, is a resident of British Columbia. For approximately the last 20 years, the Plaintiff routinely purchased, for personal use, Benylin Extra Strength Cold and Sinus Night, Vicks DayQuil Cold & Flu Multi-Symptom Relief Liquicaps and NeoCitran Cold & Sore Throat Night at Shoppers Drug Mart during the winter and spring months.

4. At all material times, Johnson & Johnson represented that Benylin Extra Strength Cold and Sinus Night contained five milligrams of phenylephrine and would relieve nasal congestion. Procter & Gamble represented that Vicks DayQuil Cold & Flu Multi-Symptom Relief Liquicaps contained five milligrams of phenylephrine and would relieve nasal congestion. Glaxo represented that NeoCitran Cold & Sore Throat Night contained 10 milligrams of phenylephrine and would relieve nasal congestion. None of the Cold Medicines purchased by the Plaintiff provided the nasal decongestant benefits represented on the products' labels.

5. The Plaintiff brings this action on their own behalf and on behalf of:

> all persons in Canada, excluding Quebec, who purchased any of the Cold Medicines listed in Schedule A to this notice of civil claim between December 31, 1989 and the date this case is certified as a class action, including a subclass of individuals who purchased one or more such product for primarily personal, family or household use (the "**Consumer Subclass**" and "**Consumer Subclass Members**"),

but excluding all persons who purchased one or more of the Cold Medicines for the purposes of resale,

(the "**Class**", "**Class Members**" and "**Class Period**").

The Retail Defendants

6. The Defendant Shoppers Drug Mart Inc. ("**Shoppers**") is a company federally incorporated pursuant to the laws of Canada with an address for service at 22 St. Clair Avenue East, Toronto, ON, M4T 2S5, Canada.

7. The Defendant Wal-Mart Canada Corp. ("**Wal-Mart**") is a company incorporated pursuant to the laws of Nova Scotia with an address for service at 1300-1969 Upper Water Street, Halifax, NS, B3J 3R7, Canada.

8. The Defendant Amazon.com.ca Inc. ("**Amazon**") is a company incorporated pursuant to the laws of Delaware with an address for service at 251 Little Falls Drive, Wilmington, DE, 19808, United States.

9. The Defendant London Drugs Limited ("**London Drugs**") is a company incorporated pursuant to the laws of British Columbia with an address for service at 1800-510 West Georgia Street, Vancouver, BC, V6B 0M3, Canada.

10. The Defendant Loblaw Companies Limited / Les Compagnies Loblaw Limitee ("**Loblaws**") is a company federally incorporated pursuant to the laws of Canada with an address for service of 800-22 St. Clair Avenue East, Toronto, ON, M4T 2S5, Canada.

11. Shoppers, Wal-Mart, Amazon, London Drugs and Loblaws are the "**Retail Defendants**".

The Manufacturer Defendants

12. The Defendant Johnson & Johnson Inc. ("**Johnson & Johnson**") is a company federally incorporated pursuant to the laws of Canada with an address for service at 88 McNabb Street, Markham, ON, L3R 5L2, Canada.

13. The Defendant Procter & Gamble Inc. ("**Procter & Gamble**") is a company federally incorporated pursuant to the laws of Canada with an address for service at 4711 Yonge Street, North York, ON, M2N 6K8, Canada.

14. The Defendant GlaxoSmithKline Consumer Healthcare ULC ("**Glaxo**") is a company incorporated pursuant to the laws of British Columbia with an address for service at 3500-1133 Melville Street, Vancouver, BC, V6E 4E5, Canada.

15. The Defendant RB Health (Canada) Inc. ("**RB Health**") is a company incorporated pursuant to the laws of British Columbia with an address for service at 2300-555 Burrard Street, Vancouver, BC, V6C 2B5, Canada.

16. Johnson & Johnson, Procter & Gamble, Glaxo and RB Health are the "**Manufacturer Defendants**".

17. Each of the Retail Defendants entered into a contract or contracts with one or more of the Manufacturer Defendants for the supply of Cold Medicines listed in Schedule A to this Notice of Civil Claim (the "**Cold Medicines**"). The Retail Defendants, or some of them, passed on a portion of the sale price paid by the Plaintiff and Class Members for the Cold Medicines to some, or all, of the Manufacturer Defendants. Further or in the alternative, the Retail Defendants, or some of them, did not pass on a portion of the purchase price paid by the Plaintiff and Class Members for the Cold Medicines to the Manufacturer Defendants but were otherwise compensated by some, or all, of the Manufacturer Defendants for the supply of the Cold Medicines.

Phenylephrine is Not Effective When Consumed Orally

18. Phenylephrine hydrochloride ("**phenylephrine**") is a nasal decongestant that temporarily narrows blood vessels and reduces swelling in the nasal passage. It is an ingredient in each of the Cold Medicines.

19. Phenylephrine is usually administered through nasal sprays or through oral consumption of tablets, soft gels, liquids or powders. When administrated as a spray through the nasal passage, phenylephrine is applied directly to, and absorbed by, membranes in the nasal cavity. This delivery method is effective at reducing swelling and providing therapeutic relief.

20. When administered orally, phenylephrine is first metabolized by the gut before being absorbed into and carried through the bloodstream to the nasal cavity. This delivery method is ineffective at administering phenylephrine's therapeutic effects because phenylephrine is heavily metabolized in the gut, leaving very little or no phenylephrine available to be absorbed into the bloodstream through which it is then delivered to the nasal cavity where it reduces inflammation. When consumed orally, the quantity of phenylephrine that is delivered to the nasal cavity, if any, is significantly less than the amount of phenylephrine ingested, and is insufficient to provide therapeutic benefits.

The Defendants Knew or Ought to Have Known that Phenylephrine Consumed Orally is Ineffective at Reducing Nasal Congestion

21. In 1982, the United States Food and Drug Administration (the "**FDA**") published a report of the Advisory Review Panel on OTC Oral Cavity Drug Products which reviewed data on the safety and effectiveness of two oral nasal decongestants, including phenylephrine. The Advisory Panel found that the available data was insufficient to determine that phenylephrine was safe and effective, classifying the ingredient as Category III and recommending that more testing be conducted to determine if phenylephrine in oral form was an effective nasal decongestant.

22. In 2006, researchers from the University of Florida reviewed thirteen studies and concluded that phenylephrine in oral form was unlikely to relieve nasal stuffiness when taken at the maximum FDA-approved dose of 10 milligrams. These results were published in a peer-reviewed letter to the editor in the July 2006 issue of "The Journal of Allergy and Clinical Immunology". After conducting a subsequent systematic review of the literature on phenylephrine, which supported their previous findings published in 2006, the researchers submitted a citizen's petition to the FDA on February 1, 2007

advising that oral consumption of phenylephrine in 10 milligrams dosages was ineffective at relieving nasal congestion.

23. In March 2007, the researchers who authored the 2007 citizen's petition to the FDA released a systematic review and meta-analysis of the efficacy and safety of oral phenylephrine, concluding that "[t]here is insufficient evidence that oral phenylephrine is effective for nonprescription use as a decongestant" and that "[t]he Food and Drug Administration should require additional studies to show the safety and efficacy of phenylephrine."

24. An environmental exposure unit study published in 2009 titled "Efficacy of loratadine-montelukast on nasal congestion in patients with seasonal allergic rhinitis in an environmental exposure unit" examined the efficacy of oral therapies at relieving nasal congestion. Patients suffering from ragweed pollen exposure were randomly given one of loratadine-montelukast, phenylephrine or a placebo to treat their nasal congestion. The researchers concluded that while loratadine-montelukast was effective at reliving congestion, there was no statistically significant difference between the effectiveness of phenylephrine consumed orally and the placebo.

25. A 2015 study titled "Oral Phenylephrine HCl for Nasal Congestion in Seasonal Allergic Rhinitis: A Randomized, Open-label, Placebo-controlled Study" examined the effectiveness of phenylephrine in oral form when taken every four hours at doses of 10 milligrams (the FDA's maximum approved dosage), 20 milligrams, 30 milligrams and 40 milligrams (four times the FDA's maximum approved dosage). The researchers concluded that oral phenylephrine consumed at doses of up to 40 milligrams every four hours is "not significantly better than placebo at relieving nasal congestion in adults with [seasonal allergic rhinitis]". The researchers also found that consuming phenylephrine at this dose led to participants developing adverse health effects such as headaches and chest pain. As a result of the inefficiency of oral phenylephrine and associated adverse health effects, the researchers recommended that the FDA revise the monographs of over-the-counter cold, cough, allergy, bronchodilator and antiasthmatic products.

26. The researchers who petitioned the FDA in 2007 to review the effectiveness of oral phenylephrine submitted a second citizen's petition to the FDA in 2015 requesting that oral phenylephrine be removed from the Final Monograph for over-the-counter nasal decongestant products based on studies demonstrating that these products are ineffective at reducing nasal congestion.

27. A 2016 study titled "Phenylephrine hydrochloride modified-release tablets for nasal congestion: a randomized, placebo-controlled trial in allergic rhinitis patients" assessed whether 30 milligram modified-release tablets of phenylephrine could relieve nasal congestion. The researchers administering the study concluded that 30 milligram modified-release tablets of phenylephrine ingested every twelve hours for seven days were not more efficacious at reliving nasal congestion than a placebo.

28. In April 2022, the American Academy of Allergy, Asthma & Immunology and the American College of Allergy, Asthma & Immunology released a statement in support of the 2015 citizen's petition to the FDA, therein affirming that the current evidence supports removing oral phenylephrine from the list of OTC nasal decongestant products approved by the FDA:

> The low bioavailability of pharmacologically active oral PE explains the lack of nasal therapeutic efficacy and cardiovascular effects. It is extensively metabolized in the gut mucosa causing insufficient systemic PE levels to produce vasoconstriction of nasal and other blood vessels. Available data do not support whether a dose greater than 40mg of oral PE would be effective or safe. Furthermore, the American Academy of Allergy, Asthma & immunology and the American College of Allergy, Asthma & Immunology in their role as patient advocates have concluded that keeping oral phenylephrine over-the-counter does a disservice to patients who might be prone to taking higher doses than recommended due to lack of effect and/or delay their visit to their primary care clinician or a specialist who could help resolve their symptoms. [citation omitted]

29. Despite their knowledge of numerous studies (including others not described above) demonstrating that oral phenylephrine is ineffective at reliving nasal congestion, the Defendants continued to manufacture and/or sell the Cold Medicines with phenylephrine and market these products as being effective nasal decongestants.

An Independent Committee of the FDA Unanimously Held that Phenylephrine Consumed Orally is Not Effective as a Nasal Decongestant

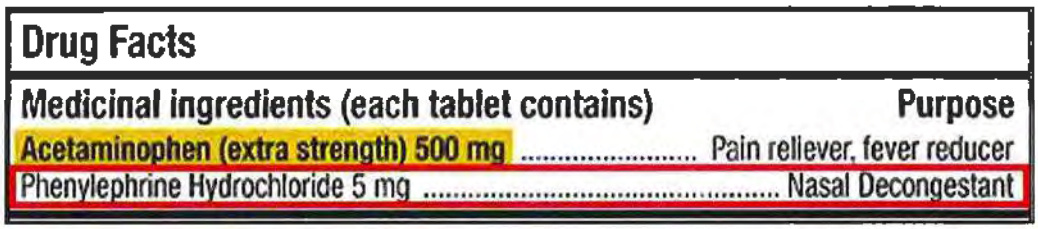
30. On September 12, 2023, the FDA's independent Nonprescription Drug Advisory Committee (the "**NDA Committee**") unanimously voted that oral phenylephrine is ineffective at relieving nasal congestion when consumed at the monograph dosage of 10 milligrams every four hours. The NDA Committee further stated that oral phenylephrine was ineffective even when consumed at a dose of 40 milligrams every four hours, four times the monograph dosage. The NDA Committee concluded that finding an effective oral dose of phenylephrine that is also safe is not feasible due to the negative health impacts of consuming oral phenylephrine at doses over 40 milligrams.

31. The NDA Committee's conclusions reveal that little, if any, phenylephrine consumed orally is bioavailable to provide therapeutic effects when it reaches the nasal cavity. This is the case for the Cold Medicines in this action. The Cold Medicines have not and cannot provide relief from nasal congestion.

The Defendants Misrepresent the Efficacy of the Cold Medicines

32. The Defendants market and advertise that the Cold Medicines contain prescribed quantities of phenylephrine and are nasal decongestants, as set out in, but not limited to, Schedule B to this Notice of Civil Claim. For example:

a) the label on Johnson & Johnson's "Extra Strength Tylenol Sinus Daytime", which is offered for sale through London Drugs, states that this product contains five milligrams of phenylephrine per capsule and is a nasal decongestant:

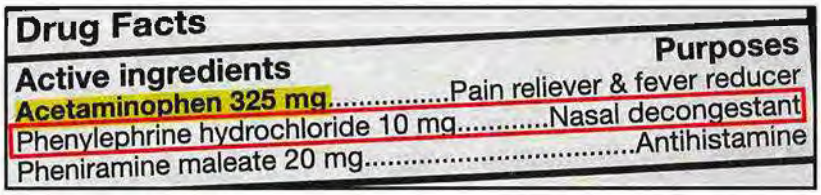


The red outline was added to this Notice of Civil Claim to highlight the Defendants' representations that this Cold Medicine contains the nasal decongestant phenylephrine (the yellow highlight is original to the product's label).

b) the label on Procter & Gamble's "DayQuil Complete", which is offered for sale through Shoppers, states that this product contains 10 milligrams of phenylephrine per capsule and is a nasal decongestant:

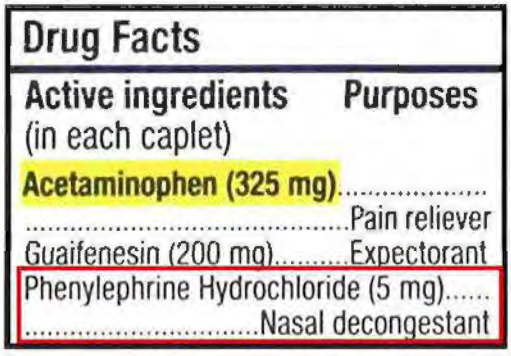
The red outline was added to this Notice of Civil Claim to highlight the Defendants' representations that this Cold Medicine contains the nasal decongestant phenylephrine.

c) the label on Glaxo's "NeoCitran Cold & Sore Throat Night", which is offered for sale through Amazon and Loblaws, states that this product contains 10 milligrams of phenylephrine per capsule and is a nasal decongestant:



The red outline was added to this Notice of Civil Claim to highlight the Defendants' representations that this Cold Medicine contains the nasal decongestant phenylephrine (the yellow highlight is original to the product's label).

d) the label on RB Health's "Mucinex Multi-Action Congestion, Cold & Cough", which is offered for sale through Wal-Mart, states that this product contains 5 milligrams of phenylephrine per capsule and is a nasal decongestant:



The red outline was added to this Notice of Civil Claim to highlight the Defendants' representations that this Cold Medicine contains the nasal decongestant phenylephrine (the yellow highlight is original to the product's label).

33. Each of the Cold Medicines contains a representation as to the quantity of phenylephrine in the Cold Medicine and that the Cold Medicine is a "nasal decongestant" or a "decongestant".

The Defendants' Misconduct

34. At all material times, the Manufacturer Defendants designed, manufactured, labelled, marketed, sold, distributed and/or placed into the stream of commerce one or more of the Cold Medicines.

35. At all materials times, the Retail Defendants marketed, sold, distributed and/or placed into the stream of commerce one or more of the Cold Medicines.

36. At all material times, the Defendants represented, expressly or by implication, that:

a) the quantity of phenylephrine in the Cold Medicines that would reach the nasal cavity would equal, or nearly equal, the quantity of phenylephrine prescribed on the labels of the Cold Medicines; and/or

b) the Cold Medicines would provide decongestive benefits,

and omitted to represent that:

c) there was little, or zero, bioavailable phenylephrine in the Cold Medicines

(the "**Misrepresentations**").

37. At all material times, the Defendants knew or were reckless or willfully blind to the fact that the Misrepresentations were false or misleading in a material respect.

38. At all material times, the Manufacturer Defendants knew or ought to have known that phenylephrine in oral form metabolizes rapidly in the stomach and that, as a result:

a) the quantity of phenylephrine in the Cold Medicines that reached the nasal cavity was less than the amount the Defendants represented on the Cold Medicines' labels;

b) the Cold Medicines could not provide decongestive benefits; and

c) there was little, or zero, bioavailable phenylephrine in the Cold Medicines.

39. At all material times, the Manufacturer Defendants exercised total control over the design, manufacturing and labelling of the Cold Medicines.

40. At all material times, there existed a cognitive asymmetry between the Manufacturer Defendants and the Plaintiff and Class Members as to how the Cold Medicines were designed, manufactured and labelled.

41. At all material times, the reasonable expectations of the Plaintiff and Class Members regarding the Cold Medicines included, *inter alia*, that:

a) the quantity of phenylephrine in the Cold Medicines that would reach the nasal cavity would equal, or nearly equal, the quantity of phenylephrine prescribed on the labels of the Cold Medicines; and/or

b) the Cold Medicines would provide decongestive benefits.

42. At all material times, the material terms and conditions of the bargain for the Cold Medicines included, *inter alia*, that:

a) the quantity of phenylephrine in the Cold Medicines that reached the nasal cavity was less than the amount the Defendants represented on the Cold Medicines' labels;

b) the Cold Medicines could not provide decongestive benefits; and/or

c) there was little, or zero, bioavailable phenylephrine in the Cold Medicines.

43. At all material times, the terms and conditions of the bargain for the Cold Medicines violated the reasonable expectations of the Plaintiff and Class Members.

44. The Defendants obtained a portion, or all, of the purchase price paid by the Plaintiff and Class Members for the Cold Medicines as a result of the Defendants' breaches of the *Competition Act* and/or *BPCPA* and related provincial consumer protection legislation.

45. The Plaintiff and Class Members were the source of some, or all, of the money acquired by the Defendants, in the form and quantity of some, or all, of the purchase price paid by them for the Cold Medicines.

46. The Plaintiff and Class Members each have an interest in some, or all, of the funds received from them by the Defendants, directly or indirectly, for the Cold Medicines.

47. The Plaintiff has sent a letter to each of the Defendants advising therein that Consumer Subclass Members in Ontario seek damages, or in the alternative restitution, as well as punitive damages pursuant to the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched. A (the "***Ontario CPA***") and that Consumer Subclass Members in Prince Edward Island seek damages, or in the alternative restitution, as well as punitive damages pursuant to the *Business Practices Act*, RSPEI 1988, c B-7 (*"**PEI BPA**"*) due to the Defendants' misconduct, as particularized in this Notice of Civil Claim. This notice was sent on behalf of all Consumer Subclass Members in Ontario and all Consumer Subclass Members in Prince Edward Island. In the alternative, the notice requirement is fulfilled by the filing of this Notice of Civil Claim. In the further alternative, the interests of justice warrant dispensing of the notice requirement for Consumer Subclass Members in Ontario pursuant to section 18(15) of the *Ontario CPA*.

48. The Defendants offered the Cold Medicines for sale at the purchase price, and the Plaintiff and Class Members accepted the Defendants' offers by paying the purchase price for the Cold Medicines.

49. The Defendants have collectively been enriched by the receipt of some, or all, of the purchase price paid by the Plaintiff and Class Members and received by the Defendants, directly or indirectly, for the Cold Medicines. The Plaintiff and Class Members have been correspondingly deprived of some, or all, of the purchase price paid by them and received by the Defendants, directly or indirectly, for the Cold Medicines.

Harm to the Plaintiff and Class Members

50. As a result of the Defendants' breaches of the *Competition Act* and/or the *BPCPA* and related enactments, the Plaintiff and Class Members have suffered loss and/or damage in an amount equal to some, or all, of the price they paid for the Cold Medicines. The Defendants' conduct in breach of the *Competition Act* and/or the *BPCPA* and related enactments has caused the Plaintiff and Class Members to acquire less value than they expected to acquire when purchasing the Cold Medicines.

51. Further, the Defendants have been unjustly enriched by the receipt of some, or all, of the purchase price paid by the Plaintiff and Class Members and received by the Defendants, directly or indirectly, for the Cold Medicines, and the Plaintiff and Class Members have suffered a corresponding deprivation equal to this amount. The Plaintiff and Class Members are entitled to claim and recover, based on equitable and restitutionary principles, the amount received, directly or indirectly, by each of the Defendants equal to the corresponding deprivation of the Plaintiff and Class Members.

52. The damages suffered by the Plaintiff and Class Members arising from the Defendants' breaches of the *Competition Act* and/or the *BPCPA* and related provincial consumer protection legislation, and/or the amounts by which the Defendants have been unjustly enriched, are capable of being quantified on an aggregate basis in the quantity of some, or all, of the payments made by the Class Members for the Cold Medicines. All amounts payable to the Class on account of damages and/or disgorgements should be calculated on an aggregate basis pursuant to section 29 of the *Class Proceedings Act,* RSBC 1996, c. 50 (the "***Class Proceedings Act***"), or otherwise.

Part 2: RELIEF SOUGHT

53. The Plaintiff claims on their own behalf and on behalf of the Class Members:

a) an order certifying this action as a class proceeding under the *Class Proceedings Act*;

b) a declaration that the Defendants have engaged in conduct contrary to Part VI of the *Competition Act*;

c) damages pursuant to section 36 of the *Competition Act*;

d) costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*;

e) a declaration that the Defendants have each been unjustly enriched by the receipt of some, or all, of the purchase price paid by the Plaintiff and Class Members and received by the Defendants, directly or indirectly, for the Cold Medicines;

f) an order that the Defendants account for and make restitution to the Plaintiff and Class Members equal to the amount by which the Defendants have been found to be unjustly enriched, or alternatively disgorgement;

g) punitive damages;

h) pre-judgment and post-judgment interest under the *Court Order Interest Act*, RSBC 1996, c 79; and

i) such further and other relief as this Honourable Court may deem just.

54. In addition, the Plaintiff claims on their own behalf and on behalf of the Consumer Subclass Members:

a) a declaration under section 172(1)(a) of the *BPCPA* that the Retail Defendants have breached sections 4-5 of the *BPCPA*;

b) a declaration under section 172(1)(a) of the *BPCPA* that the Manufacturer Defendants have breached sections 4-5 and/or 8-9 of the *BPCPA*;

c) an injunction under section 172(1)(b) of the *BPCPA* to restrain further breaches of the *BPCPA* in the Defendants' pricing practices by requiring that the Defendants represent on the labelling of the Cold Medicines that:

i. the quantity of phenylephrine in the Cold Medicines is less than the quantity of phenylephrine represented on the labelling of the Cold Medicines;

ii. the Cold Medicines cannot provide decongestive benefits; and/or

iii. there was little, or zero, bioavailable phenylephrine in the Cold Medicines.

d) damages pursuant to section 171 of the *BPCPA* in an amount equal to some, or all, of the price paid by the Plaintiff and Consumer Subclass Members in British Columbia for the Cold Medicines;

e) in the alternative to damages under section 171, a restoration order under section 172(3)(a) in an amount equal to some, or all of the price paid by the Plaintiff and Consumer Subclass Members in British Columbia and received by the Defendants, directly or indirectly, for the Cold Medicines;

f) relief for contraventions of extra-provincial consumer protection legislation, as follows:

i. damages equal to some, or all, of the price paid by the Consumer Subclass Members in Alberta for the Cold Medicines, or in the alternative restitution of some, or all, of the price paid by them and received by the Defendants, directly or indirectly, for the Cold Medicines, as well as punitive damages pursuant to subsections 7(1), 7(3), 7.2(1), 13(2) and/or 142.1(2) of the Alberta *Consumer Protection Act*, RSA 2000, c. C-26.3;

ii. damages equal to some, or all, of the price paid by the Consumer Subclass Members in Saskatchewan for the Cold Medicines, or in the alternative restitution of some, or all, of price paid by them and received by the Defendants, directly or indirectly, for the Cold Medicines, as well as punitive damages pursuant to subsection 93(1) of the Saskatchewan *Consumer Protection and Business Practices Act*, SS 2014, c. C-30.2;

iii. damages equal to some, or all, of the price paid by the Consumer Subclass Members in Manitoba for the Cold Medicines, or in the alternative repayment of some, or all, of the price paid by them and received by the Defendants, directly or indirectly, for the Cold Medicines, as well as punitive damages pursuant to subsections 23(2) and/or 23(4) of the Manitoba *Business Practices Act*, CCSM, c. B120;

iv. damages equal to some, or all, of the price paid by the Consumer Subclass Members in Ontario for the Cold Medicines, or in the alternative restitution of some, or all, of price paid by them and received by the Defendants, directly or indirectly, for the Cold Medicines, as well as punitive damages pursuant to subsections 18(1), 18(2) and/or 18(11) of the *Ontario CPA*;

v. damages equal to some, or all, of the price paid by the Consumer Subclass Members in Prince Edward Island for the Cold Medicines, or in the alternative restitution of some, or all, of price paid by them and received by the Defendants, directly or indirectly, for the Cold Medicines, as well as punitive damages pursuant to subsections 4(1) and/or 4(2) of the *PEI BPA*; and

vi. damages equal to some, or all, of the price paid by the Consumer Subclass Members in Newfoundland and Labrador for the Cold Medicines, or in the alternative repayment of some, or all, of price paid by them and received by the Retail Defendants, directly or indirectly, for the Cold Medicines pursuant to subsection 10(2) of the Newfoundland and Labrador *Consumer Protection and Business Practices Act,* SNL 2009, c. C-31.1.

Part 3: LEGAL BASIS

55. The Plaintiff and Class Members plead and rely on the *Class Proceedings Act*; the *Limitation Act*, SBC 2012, c 13; the *Court Order Interest Act*, RSBC 1996, c 79; the *Competition Act,* RSC 1985, c C-34; the *Business Practices and Consumer Protection Act*,

SBC 2004, c 2 and related enactments; the *Food and Drugs Act*, RSC 1985, c F-27; the *Criminal Code*, RSC 1985, c C-46; the *Supreme Court Civil Rules*, BC Reg 168/2009; and related enactments.

Breaches of the Competition Act

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

57. The Defendants have breached section 52 of the *Competition Act*, as amended from time to time.

58. The Cold Medicines are each a "product" within the meaning of sections 2 and 52 of the *Competition Act.*

59. The Defendants breached section 52(1) of the *Competition Act* by making the Misrepresentations when the Defendants knew or were reckless or willfully blind to the fact that the Misrepresentations were false or misleading in a material respect.

60. The Misrepresentations were false or misleading in a material respect because:

a) the quantity of phenylephrine in the Cold Medicines that reached the nasal cavity was less than the amount the Defendants represented on the Cold Medicines' labels;

b) the Cold Medicines could not provide decongestive benefits; and

c) there was little, or zero, bioavailable phenylephrine in the Cold Medicines.

61. This conduct was done for the purpose of promoting, directly or indirectly, the supply or use of the Cold Medicines and/or the Defendants' business interests in attracting customers to purchase the Cold Medicines from them.

62. The Misrepresentations were expressed on the Cold Medicines' wrapper or container and/or anything accompanying the Cold Medicines, whether from Canada or from outside Canada. The Defendants, singly or in combination, caused the Misrepresentations to be so expressed to the public by manufacturing, packaging, labelling, selling, distributing and/or marketing the Cold Medicines.

63. As a result of the Defendants' breaches of section 52 of the *Competition Act,* the Plaintiff and Class Members acquired a product, namely the Cold Medicines, which had less value than the Plaintiff and Class Members expected by virtue of their therapeutic inefficacy.

Breaches of the Business Practices and Consumer Protection Act

64. The Defendants have breached the *BPCPA*.

65. The Plaintiff and Consumer Subclass Members in British Columbia are "consumers" within the meaning of section 1 of the *BPCPA.*

66. The Cold Medicines are "goods" within the meaning of section 1 of the *BPCPA.*

67. The Defendants are "suppliers" within the meaning of section 1 of the *BPCPA.*

68. The sale and supply of the Cold Medicines in British Columbia is a "consumer transaction" within the meaning of section 1 of the *BPCPA*.

Breaches of Sections 4-5

69. By the conduct set out herein, the Defendants have breached sections 4-5 of the *BPCPA.* The Defendants' actions constitute deceptive acts or practices. The Defendants knew or ought to have known that their conduct was deceptive.

70. Section 5 of the *BPCPA* prohibits suppliers from engaging in deceptive acts or practices in respect of consumer transactions. Once it is alleged that a supplier committed or engaged in a deceptive act or practice, the burden of proof that the deceptive act or practice was not committed or engaged in is on the supplier.

71. The Manufacturer Defendants engaged in conduct contrary to sections 4-5 of the *BPCPA* by designing and manufacturing the Cold Medicines with phenylephrine when the Manufacturer Defendants knew or ought to have known that the Cold Medicines could not provide decongestive benefits because little, if any, of the phenylephrine in the Cold Medicines could reach the nasal cavities due to the rate at which phenylephrine metabolizes in the stomach.

72. By making the Misrepresentations, the Defendants engaged in conduct contrary to, *inter alia*, subsections 4(3)(a)(i)-(ii) and (b)(vi) of the *BPCPA.*

73. The Manufacturer Defendants' design and manufacturing of the Cold Medicines, and/or the Defendants' Misrepresentations, had the capability or tendency of deceiving or misleading the Plaintiff and Consumer Subclass Members in British Columbia because:

a) the quantity of phenylephrine in the Cold Medicines that reached the nasal cavity was less than the amount the Defendants represented on the Cold Medicines' labels;

b) the Cold Medicines could not provide decongestive benefits; and/or

c) there was little, or zero, bioavailable phenylephrine in the Cold Medicines.

74. The Defendants' conduct breached sections 4-5 of the *BPCPA* irrespective of whether it was contrary to any of the factors enumerated under subsection 4(3) because, pursuant to subsection 4(1)(a), the Defendants' conduct had the capability, tendency or effect of deceiving or misleading the Plaintiff and Consumer Subclass Members in British Columbia.

Breaches of sections 8-9

75. By the conduct set out herein, the Manufacturer Defendants have breached sections 8-9 of the *BPCPA*. The Manufacturer Defendants' actions constitute unconscionable acts or practices. The Manufacturer Defendants knew or ought to have known that their conduct was unconscionable.

76. Section 9 of the *BPCPA* prohibits suppliers from engaging in unconscionable acts or practices in respect of consumer transactions. Once it is alleged that a supplier committed or engaged in an unconscionable act or practice, the burden of proof that the unconscionable act or practice was not committed or engaged in is on the supplier.

77. That the above-described conduct constitutes an unconscionable act or practice is informed by the circumstances enumerated under section 8(3) of the *BPCPA,* and in particular subsections 8(3)(b) and/or (e). However, the Manufacturer Defendants'

conduct breached sections 8-9 of the *BPCPA* irrespective of whether it was contrary to any of the factors enumerated under subsection 8(3) because, pursuant to subsections 8(2)-(3), whether an act or practice is unconscionable depends on the entirety of the surrounding circumstances of which the supplier knew or ought to have known.

78. The Manufacturer Defendants' total control over the design, manufacturing and labelling of the Cold Medicines created a cognitive asymmetry whereby the Plaintiff and Consumer Subclass Members in British Columbia could not understand or appreciate some of the important terms and conditions of the bargain for the Cold Medicines, namely that:

a) the quantity of phenylephrine in the Cold Medicines that reached the nasal cavity was less than the amount the Defendants represented on the Cold Medicines' labels;

b) the Cold Medicines could not provide decongestive benefits; and/or

c) there was little, or zero, bioavailable phenylephrine in the Cold Medicines.

79. This cognitive asymmetry between the Manufacturer Defendants misled the Plaintiff and Consumer Subclass Members in British Columbia as to the terms and conditions of the transaction for the Cold Medicines, amounting to an inequality of bargaining power.

80. The terms and conditions of the bargains for the Cold Medicines were inequitable and/or excessive because they violated the reasonable expectations of the Plaintiff and Consumer Subclass Members in British Columbia including, *inter alia,* that:

a) the quantity of phenylephrine in the Cold Medicines that would reach the nasal cavity would equal, or nearly equal, the quantity of phenylephrine prescribed on the labels of the Cold Medicines; and/or

b) the Cold Medicines would provide decongestive benefits.

81. The inequality of bargaining power resulting from the cognitive asymmetry between the Manufacturer Defendants and the Plaintiff and Consumer Subclass

Members in British Columbia as to the terms and conditions of the transactions for the Cold Medicines created the potential for the Manufacturer Defendants to confer an undue advantage, and for the Plaintiff and Consumer Subclass Members in British Columbia to confer an undue disadvantage. This potential was realized when the Manufacturer Defendants leveraged the cognitive asymmetry between the parties to represent that the Cold Medicines were more valuable than they actually were due to the rate at which the phenylephrine in the Cold Medicines metabolizes before it reaches the nasal cavity.

82. The terms and conditions of the bargain for the Cold Medicines, the falsehood of which the Plaintiff and Consumer Subclass Members in British Columbia were ignorant to as a result of the cognitive asymmetry, resulted in the bargain for the Cold Medicines being improvident by virtue of the lack of efficacy of the Cold Medicines as nasal decongestants.

Remedies for Breaches of the *BPCPA*

83. As a result of the Retail Defendants' breaches of sections 4-5 of the *BPCPA,* and/or the Manufacturer Defendants' breaches of sections 4-5 and/or 8-9 of the *BPCPA*, the Plaintiff and Consumer Subclass Members in British Columbia acquired less value than they expected to acquire when purchasing the Cold Medicines.

84. The Plaintiff and Consumer Subclass Members in British Columbia have an interest in, and were the source of, the funds paid by them and received by the Defendants, directly or indirectly, for the Cold Medicines due to the Defendants' breaches of the *BPCPA.*

85. The Plaintiff and Consumer Subclass Members in British Columbia are entitled to a declaration under section 172(1)(a) of the *BPCPA* that the Retail Defendants have breached sections 4-5 of the *BPCPA* and/or that the Manufacturer Defendants have breached sections 4-5 and/or 8-9 of the *BPCPA.*

86. The Plaintiff and Consumer Subclass Members in British Columbia are entitled to an injunction under section 172(1)(b) of the *BPCPA* to restrain further breaches of the

BPCPA by requiring that the Defendants represent on the labels of the Cold Medicines that:

a) the quantity of phenylephrine in the Cold Medicines is less than the quantity of phenylephrine represented on the labelling of the Cold Medicines;

b) the Cold Medicines cannot provide decongestive benefits; and/or

c) there was little, or zero, bioavailable phenylephrine in the Cold Medicines.

87. As a result of the Retail Defendants' breaches of sections 4-5 of the *BPCPA,* and/or the Manufacturer Defendants' breaches of sections 4-5 and/or 8-9 of the *BPCPA*, the Plaintiff and Consumer Subclass Members in British Columbia have suffered loss and/or damage and are entitled to damages under section 171 of the *BPCPA* in an amount equal to some, or all, of the price they paid for the Cold Medicines.

88. In the alternative to damages under section 171, the Plaintiff and Consumer Subclass Members in British Columbia are entitled to restoration of some, or all, of the price paid by them and received by the Defendants, directly or indirectly, for the Cold Medicines pursuant to section 172(3)(a) of the *BPCPA*.

89. Consumer Subclass Members resident outside of British Columbia plead and rely on the equivalent provisions of the consumer protection legislation in their respective provinces and territories, namely: *Consumer Protection Act*, RSA 2000, c C-26.3; *Consumer Protection and Business Practices Act*, SS 2013, c C-30.2; *Business Practices Act*, CCSM, c. B120; *Ontario CPA*; *PEI BPA*; and *Consumer Protection and Business Practices Act,* SNL 2009, c. C-31.1, each as amended from time to time and with regulations in force at material times, as set out in Schedule C to this Notice of Civil Claim.

Unjust Enrichment

90. Each of the Cold Medicines is a "drug" within the meaning of section 2 of the *Food and Drugs Act*, RSC 1985, c F-27 (the "***Food and Drugs Act***").

91. Section 9(1) of the *Food and Drugs Act* prohibits a person from labelling, packaging, treating, processing, selling or advertising any drug in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety. For the purpose of section 9(1), a "person" includes a "company" pursuant to section 2 of the *Food and Drugs Act* and section 2 of the *Criminal Code*, RSC 1985, c C-46.

92. By making the Misrepresentations, the Defendants violated subsection 9(1) of the *Food and Drugs Act.*

93. The Manufacturer Defendants' labelling, packaging, selling and/or advertising of the Cold Medicines, and/or the Retail Defendants' selling and/or advertising of the Cold Medicines, was therefore false, misleading, deceptive and/or likely to create an erroneous impression regarding the character, value, quantity and/or composition of the Cold Medicines because:

a) the quantity of phenylephrine in the Cold Medicines that reached the nasal cavity was less than the amount the Defendants represented on the Cold Medicines' labels;

b) the Cold Medicines could not provide decongestive benefits; and

c) there was little, or zero, bioavailable phenylephrine in the Cold Medicines.

94. Due to the Defendants' breaches of section 9 of the *Food and Drugs Act*, the Cold Medicines should never have been offered for sale in Canada.

95. As set out above, the Defendants have been enriched by the amounts received from the Plaintiff and Class Members, directly or indirectly, through the sale of the Cold Medicines. The Plaintiff and Class Members suffered a corresponding deprivation of this same amount.

96. There is no juristic reason for the Defendants to retain these benefits. The contracts between the Retail Defendants and the Plaintiff and Class Members, and those between the Manufacturer Defendants and the Retail Defendants, for the Cold Medicines are illegal, void and/or voidable due to the Defendants' breaches of the

Competition Act and/or because the Cold Medicines should never have been offered for sale in Canada given the Defendants' breach of the *Food and Drugs Act.*

97. As a result of their actions, the Defendants have been unjustly enriched. The Plaintiff and Class Members are entitled to restitution of the benefits received by the Defendants, directly or indirectly, from the Plaintiff and Class Members through the sale of the Cold Medicines.

98. In the alternative, justice and good conscience require that the Defendants disgorge to the Plaintiff and Class Members an amount attributable to the benefits received by them, directly or indirectly, from the Plaintiff and Class Members through the sale of the Cold Medicines.

Punitive Damages

99. The Manufacturer Defendants' conduct in repeatedly, over a period of greater than fifteen years, and contrary to academic and authoritative scientific literature, misrepresenting that the phenylephrine in the Cold Medicines would relieve nasal decongestion and manufacturing the Cold Medicines containing phenylephrine when the Manufacturer Defendants knew or ought to have known that little, if any, of the phenylephrine in the Cold Medicines would reach the nasal cavities and that the Cold Medicines could not relieve nasal congestion was high-handed, outrageous, reckless and predatory. Given the reprehensible misconduct by the Manufacturer Defendants, they are liable to pay punitive damages to the Plaintiff and Class Members.

Joint and Several Liability

100. The Defendants are jointly and severally liable for the actions and damages allocable to any of them.

Limitation Periods

101. The Plaintiff and Class Members rely on the doctrines of postponement, discoverability and fraudulent concealment. The Plaintiff and Class Members could not reasonably have known that loss or damage had occurred, that it was caused or contributed to by the acts of the Defendants or that a court proceeding would be an

appropriate means to seek to remedy the injury until September 12, 2023. The harm is ongoing.

102. The equitable doctrine of fraudulent concealment applies to postpone the running of any otherwise applicable limitation period where it would be, for any reason, unconscionable for a defendant or defendants to rely on the advantage gained by having concealed the existence of a cause of action or an aspect of a claim.

103. The Defendants' unconscionable conduct occurred through active concealment and a failure to disclose that there was little to no bioavailable phenylephrine in the Cold Medicines that would reach the nasal cavity, and that the Cold Medicines could not relieve nasal congestion, which constitute material facts.

104. As a result of the Defendants' fraudulent concealment of the quantity of phenylephrine in the Cold Medicines that would reach the nasal cavity and that the Cold Medicines could not provide relief from nasal congestion, the Plaintiff and Class Members were unable to identify that they suffered loss and/or damages arising from the fact that the Cold Medicines had less value than they expected, and consequently that the Plaintiff and Class Members had a right of action against the Defendants for the misconduct described in this Notice of Civil Claim.

105. As a consequence of the fraudulent concealment by the Defendants, the applicable limitation period did not commence running with respect to the Plaintiff and Class Members' claims under the *Competition Act, BPCPA* and related provincial enactments and in unjust enrichment, or in the alternative was tolled against the Defendants, until September 12, 2023 when the NDA Committee unanimously voted that phenylephrine cannot relieve nasal congestion when consumed orally. It would be unconscionable for the Defendants to rely on the advantage gained by having concealed the existence of the Plaintiff and Class Members' claims under the *Competition Act* and *BPCPA* and related provincial enactments and in unjust enrichment.

106. The Plaintiff and Class Members plead and rely on and the *Limitation Act*, SBC 2012, c 13, and in particular sections 8 and 21(3). In the alternative, or in addition, the

Plaintiff and Class Members rely on section 30 of the *Limitation Act*, SBC 2012, c 13, and the *Limitation Act*, RSBC 1996, c 266.

Service on the Defendants

107. The Plaintiff and Class Members have the right to serve this Notice of Civil Claim on the Defendants pursuant to section 10 the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28 (the "***CJPTA***"), because there is a real and substantial connection between British Columbia and the facts alleged in this proceeding pursuant to sections 10(f), (h) and/or (i) of the *CJPTA* as this action:

a) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;

b) concerns a business carried on in British Columbia; and/or

c) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Plaintiff's address for service:

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

Fax number for service: 604.682.5197

Email address for service: service@slatervecchio.com

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: September 22, 2023

Signature of lawyer for plaintiff

Anthony A. Vecchio, KC
Saro J Turner
Sam Jaworski
Justin Giovannetti

Slater Vecchio LLP

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 JOHNSON & JOHNSON INC., PROCTER & GAMBLE INC., SHOPPERS DRUG MART INC., WAL-MART CANADA CORP., AMAZON.COM.CA INC. and LOBLAW COMPANIES LIMITED / LES COMPAGNIES LOBLAW LIMITEE 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 alleged in this proceeding pursuant to sections 10(f), (h) and/or (i) of the *CJPTA* as this action:

d) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;

e) concerns a business carried on in British Columbia; and/or

f) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Appendix

[*The following information is provided for data collection purposes only and is of no legal effect.*]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is a proposed class proceeding regarding the false and/or misleading labelling of Cold Medicines as reliving nasal congestion.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[*Check one box below for the case type that best describes this case.*]

A personal injury arising out of:

[ ] a motor vehicle accident

[ ] medical malpractice

[x] another cause

A dispute concerning:

[ ] contaminated sites

[ ] construction defects

[ ] real property (real estate)

[ ] personal property

[ ] the provision of goods or services or other general commercial matters

[ ] investment losses

[ ] the lending of money

[ ] an employment relationship

[ ] a will or other issues concerning the probate of an estate

[ ] a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[*Check all boxes below that apply to this case*]

[x] a class action

[ ] maritime law

[ ] aboriginal law

[ ] constitutional law

[ ] conflict of laws

[ ] none of the above

[ ] do not know

Part 4:

Limitation Act, SBC 2012, c 13, *Court Order Interest Act*, RSBC 1996, c 79

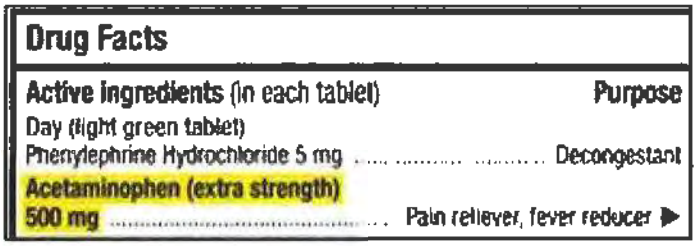
SCHEDULE A

Manufacturer	Product Name	DPN	Dosage
Johnson & Johnson Inc.	Benylin Extra Strength Cold & Sinus Day	02273462	5mg
Johnson & Johnson Inc.	Benylin Extra Strength Cold & Sinus Night	02306409	5mg
Johnson & Johnson Inc.	Extra Strength Tylenol Cold Daytime	02276186	5mg
Johnson & Johnson Inc.	Extra Strength Tylenol Cold Nighttime	02276259	5mg
Johnson & Johnson Inc.	Extra Strength Tylenol Flu Daytime	02275996	5mg
Johnson & Johnson Inc.	Extra Strength Tylenol Sinus Daytime	02276003	5mg
Johnson & Johnson Inc.	Extra Strength Tylenol Sinus Nighttime	02276038	5mg
Procter & Gamble Inc.	DayQuil Cold & Flu	02300842	10mg
Procter & Gamble Inc.	DayQuil Complete	02503638	10mg
Procter & Gamble Inc.	DayQuil Complete + Vicks Vapocool	02481936	5mg
Procter & Gamble Inc.	DayQuil Complete + Vicks Vapocool Cold & Flu Liquid	02482428	10mg
Procter & Gamble Inc.	DayQuil Cough DM + Congestion	02503247	10mg
Procter & Gamble Inc.	DayQuil Sinus Liquicaps	02273829	5mg
Procter & Gamble Inc.	NyQuil Complete	02503549	10mg
Procter & Gamble Inc.	NyQuil Complete + Vicks Vapocool	02481928	5mg
Procter & Gamble Inc.	NyQuil Complete + Vicks Vapocool Cold & Flu Liquid	02482401	10mg
Procter & Gamble Inc.	NyQuil Cough DM + Congestion	02503611	5mg
Procter & Gamble Inc.	NyQuil Kids	02520419	5mg
Procter & Gamble Inc.	NyQuil Sinus Liquicaps	02273810	5mg
Procter & Gamble Inc.	Vicks DayQuil Cold & Flu Multi-Symptom Relief Liquicaps	02272784	5mg
Procter & Gamble Inc.	Vicks DayQuil Complete Cold & Flu Liquicaps	02483378	5mg

Procter & Gamble Inc.	Vicks DayQuil Complete Cold & Flu Liquid	02409534	10mg
Procter & Gamble Inc.	Vicks DayQuil Hot Remedy	02531518	10mg
Procter & Gamble Inc.	Vicks NyQuil Complete Cold & Flu	02409542	10mg
Procter & Gamble Inc.	Vicks NyQuil Complete Cold & Flu Liquicaps	02483351	5mg
Procter & Gamble Inc.	Vicks NyQuil Hot Remedy	02531488	10mg
Glaxosmithkline Consumer Healthcare ULC	NeoCitran Cold & Sore Throat Night	02246602	10mg
Glaxosmithkline Consumer Healthcare ULC	NeoCitran Extra Strength Cold & Congestion	00843792	10mg
Glaxosmithkline Consumer Healthcare ULC	NeoCitran Extra Strength Cold & Sinus Night – Apple Cinnamon	02456982	10mg
Glaxosmithkline Consumer Healthcare ULC	NeoCitran extra strength cold & sinus night	02215403	10mg
Glaxosmithkline Consumer Healthcare ULC	NeoCitran Extra Strength Total Cold	02293994	10mg
Glaxosmithkline Consumer Healthcare ULC	NeoCitran Extra Strength Total Cold Night	02409178	10mg
Glaxosmithkline Consumer Healthcare ULC	NeoCitran Total Cold Night	02413280	10mg
Glaxosmithkline Consumer Healthcare ULC	Robitussin Children's Cold	02394693	5mg
Glaxosmithkline Consumer Healthcare ULC	Robitussin Children's Cough & Cold Bedtime	02394707	5mg
RB Health (Canada) Inc.	Mucinex Multi-Action Congestion, Cold & Cough	02433435	5mg
RB Health (Canada) Inc.	Mucinex Multi-Action Congestion, Cold & Flu	02433451	5mg
RB Health (Canada) Inc.	Mucinex Multi-Action Congestion, Cold & Cough Solution	02433419	10mg

SCHEDULE B

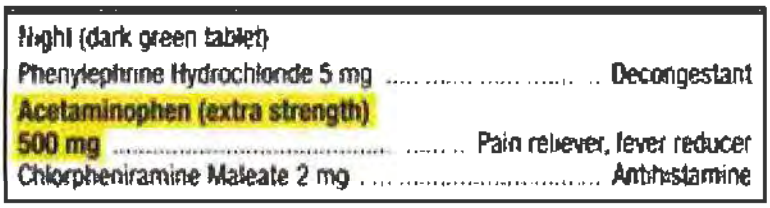
Benylin Extra Strength Cold & Sinus Day



Drug Facts

Active ingredients (in each tablet)	**Purpose**
Day (light green tablet)	
Phenylephrine Hydrochloride 5 mg	Decongestant
Acetaminophen (extra strength) 500 mg	Pain reliever, fever reducer

Benylin Extra Strength Cold & Sinus Night



Night (dark green tablet)	
Phenylephrine Hydrochloride 5 mg	Decongestant
Acetaminophen (extra strength) 500 mg	Pain reliever, fever reducer
Chlorpheniramine Maleate 2 mg	Antihistamine

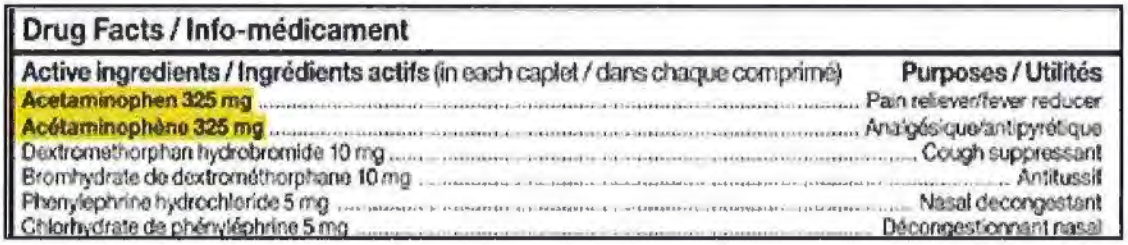
DayQuil Cold & Flu

Active ingredients (per 30 mL) / **Ingrédients actifs** (par 30 mL)	**Purposes / Utilités**
Acetaminophen 650 mg (this is not a standard dosage unit)	Pain reliever, fever reducer
Acétaminophène 650 mg (ceci n'est pas une dose unitaire normale)	Analgésique, antipyrétique
Dextromethorphan hydrobromide 20 mg	Cough suppressant
Bromhydrate de dextrométhorphane 20 mg	Antitussif
Phenylephrine hydrochloride 10 mg	Nasal decongestant

DayQuil Complete

Active ingredients (per 30 mL) / **Ingrédients actifs** (par 30 mL)	**Purposes / Utilités**
Acetaminophen 650 mg (this is not a standard dosage unit)	Pain reliever, fever reducer
Acétaminophène 650 mg (ceci n'est pas une dose unitaire normale)	Analgésique, antipyrétique
Dextromethorphan hydrobromide 20 mg	Cough suppressant
Bromhydrate de dextrométhorphane 20 mg	Antitussif
Phenylephrine hydrochloride 10 mg	Nasal decongestant

DayQuil Complete + Vicks Vapocool

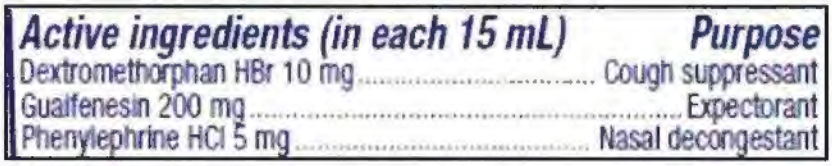


Drug Facts / Info-médicament	
Active ingredients / Ingrédients actifs (in each caplet / dans chaque comprimé)	**Purposes / Utilités**
Acetaminophen 325 mg	Pain reliever/fever reducer
Acétaminophène 325 mg	Analgésique/antipyrétique
Dextromethorphan hydrobromide 10 mg	Cough suppressant
Bromhydrate de dextrométhorphane 10 mg	Antitussif
Phenylephrine hydrochloride 5 mg	Nasal decongestant
Chlorhydrate de phénylephrine 5 mg	Décongestionnant nasal

DayQuil Complete + Vicks Vapocool Cold & Flu Liquid

Active ingredients (per 30 mL) / **Ingrédients actifs** (par 30 mL)	**Purposes / Utilités**
Acetaminophen 650 mg (this is not a standard dosage unit)	Pain reliever, fever reducer
Acétaminophène 650 mg (ceci n'est pas une dose unitaire normale)	Analgésique, antipyrétique
Dextromethorphan hydrobromide 20 mg	Cough suppressant
Bromhydrate de dextrométhorphane 20 mg	Antitussif
Phenylephrine hydrochloride 10 mg	Nasal decongestant

DayQuil Cough DM + Congestion

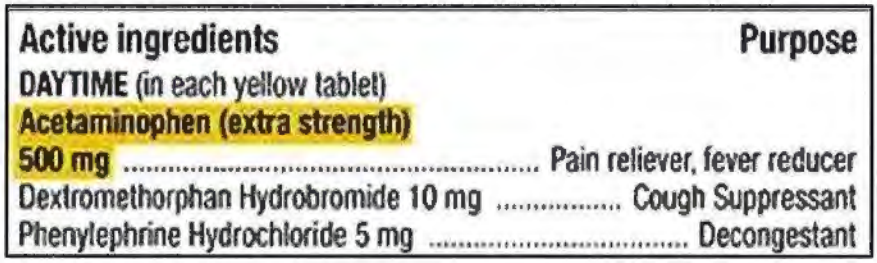


Active ingredients (in each 15 mL)	*Purpose*
Dextromethorphan HBr 10 mg	Cough suppressant
Guaifenesin 200 mg	Expectorant
Phenylephrine HCl 5 mg	Nasal decongestant

DayQuil Sinus Liquicaps

Active ingredients (in each capsule) / **Ingrédients actifs** (dans chaque capsule)	**Purposes / Utilités**
Acetaminophen 325 mg	Pain reliever, fever reducer
Acétaminophène 325 mg	Analgésique, antipyrétique
Phenylephrine hydrochloride 5 mg	Nasal decongestant

Extra Strength Tylenol Cold Daytime



Active ingredients	**Purpose**
DAYTIME (in each yellow tablet)	
Acetaminophen (extra strength) 500 mg	Pain reliever, fever reducer
Dextromethorphan Hydrobromide 10 mg	Cough Suppressant
Phenylephrine Hydrochloride 5 mg	Decongestant

Extra Strength Tylenol Cold Nighttime

NIGHTTIME (in each blue tablet)

Acetaminophen (extra strength) 500 mg	Pain reliever, fever reducer
Dextromethorphan Hydrobromide 10 mg	Cough Suppressant
Phenylephrine Hydrochloride 5 mg	Decongestant
Chlorpheniramine Maleate 2 mg	Antihistamine ▶

Extra Strength Tylenol Flu Daytime

Drug Facts

Medicinal ingredients	**Purpose**
DAYTIME Tablets (each Yellow tablet contains)	
Acetaminophen (extra strength) 500 mg	Pain reliever, fever reducer
Dextromethorphan Hydrobromide 10 mg	Cough Suppressant ▶

Phenylephrine Hydrochloride 5 mg .....
NIGHTTIME Tablets (each Blue tablet contains)
Acetaminophen (extra strength) 500 mg ..... Pain re
Dextromethorphan Hydrobromide 10 mg .....
Phenylephrine Hydrochloride 5 mg .....
Chlorpheniramine Maleate 2 mg .....

Extra Strength Tylenol Sinus Daytime

Drug Facts

Medicinal ingredients (each tablet contains)	**Purpose**
Acetaminophen (extra strength) 500 mg	Pain reliever, fever reducer
Phenylephrine Hydrochloride 5 mg	Nasal Decongestant

Extra Strength Tylenol Sinus Nighttime

Active ingredients (in each tablet)	**Purposes**
Acetaminophen (extra strength) 500 mg	Pain reliever, Fever reducer
Phenylephrine Hydrochloride 5 mg	Nasal Decongestant
Chlorpheniramine Maleate 2 mg	Antihistamine

Mucinex Multi-Action Congestion, Cold & Cough

Drug Facts

Active ingredients (in each caplet)	**Purposes**
Acetaminophen (325 mg)	Pain reliever
Guaifenesin (200 mg)	Expectorant
Phenylephrine Hydrochloride (5 mg)	Nasal decongestant

Mucinex Multi-Action Congestion, Cold & Flu

Active ingredients (in each caplet)	Purposes
Acetaminophen (325 mg)	Pain reliever, fever reducer
Guaifenesin (200 mg)	Expectorant
Phenylephrine Hydrochloride (5 mg)	Nasal decongestant

Mucinex Multi-Action Congestion, Cold & Cough Solution

Active ingredients (in each 20 mL)	Purposes
Acetaminophen 650 mg	Pain reliever, fever reducer
Guaifenesin 400 mg	Expectorant
Phenylephrine Hydrochloride 10 mg	Nasal Decongestant
Dextromethorphan Hydrobromide 20 mg	Cough suppressant

NeoCitran Cold & Sore Throat Night

Drug Facts

Active ingredients	Purposes
Acetaminophen 325 mg	Pain reliever & fever reducer
Phenylephrine hydrochloride 10 mg	Nasal decongestant
Pheniramine maleate 20 mg	Antihistamine

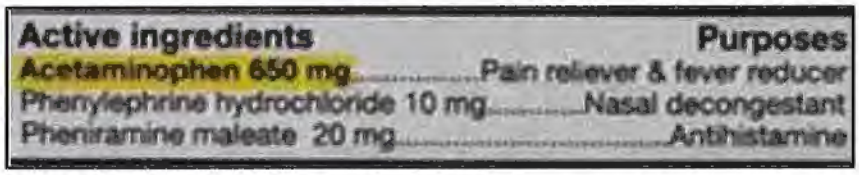
NeoCitran Extra Strength Cold & Congestion

Active ingredients	Purposes
Acetaminophen 650 mg	Pain reliever & fever reducer
Phenylephrine hydrochloride 10 mg	Nasal decongestant

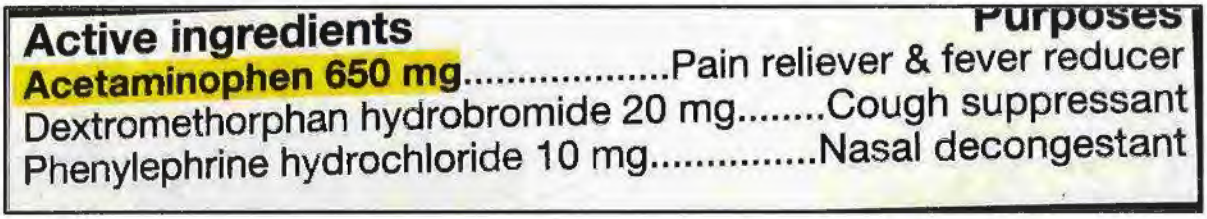
NeoCitran Extra Strength Cold & Sinus Night - Apple Cinnamon

Active ingredients	Purposes
Acetaminophen 325 mg	Pain reliever & fever reducer
Phenylephrine hydrochloride 10 mg	Nasal decongestant
Pheniramine maleate 20 mg	Antihistamine

NeoCitran Extra Strength Cold & Sinus Night



NeoCitran Extra Strength Total Cold



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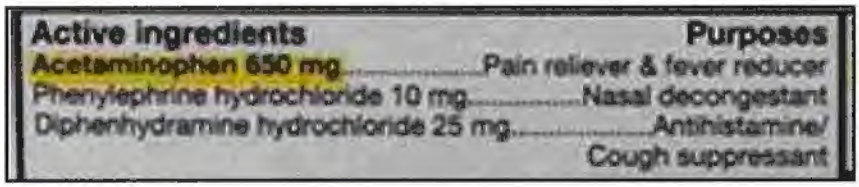

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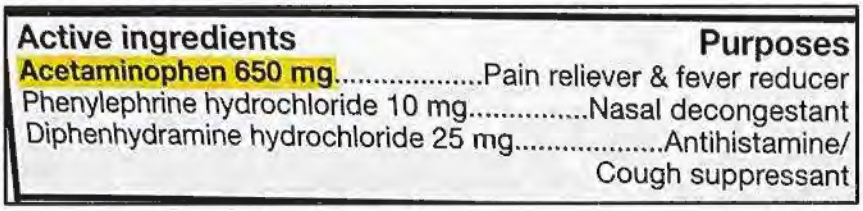
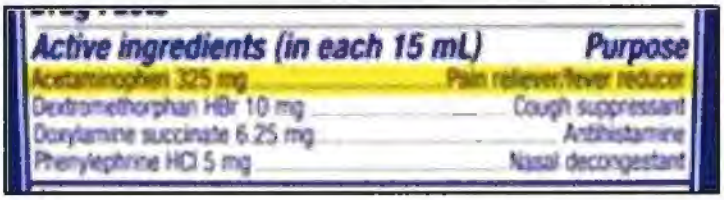


NyQuil Complete



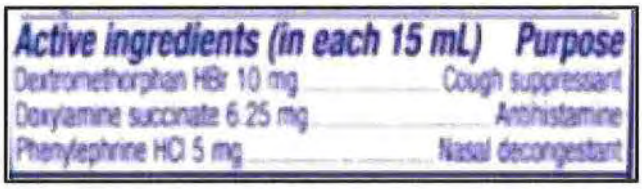
NyQuil Complete + Vicks Vapocool

Active ingredients / Ingrédients actifs (in each caplet / dans chaque comprimé)	Purposes / Utilités
Acetaminophen 325 mg	Pain reliever/fever reducer
Acétaminophène 325 mg	Analgésique/antipyrétique
Dextromethorphan hydrobromide 10 mg	Cough suppressant
Bromhydrate de dextrométhorphane 10 mg	Antitussif
Phenylephrine hydrochloride 5 mg	Nasal decongestant
Chlorhydrate de phényléphrine 5 mg	Décongestionnant nasal
Doxylamine succinate 6.25 mg	Antihistamine
Succinate de doxylamine 6,25 mg	Antihistaminique

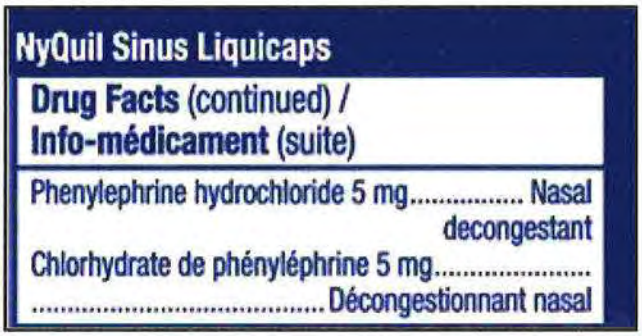
NyQuil Complete + Vicks Vapocool Cold & Flu Liquid

NyQuil Cough DM + Congestion

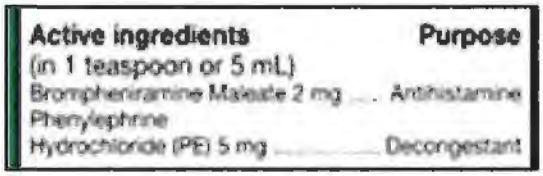
NyQuil Kids



NyQuil Sinus Liquicaps



Robitussin Children's Cold



Robitussin Children's Cough & Cold Bedtime

Vicks DayQuil Cold & Flu Multi-Symptom Relief Liquicaps

Active ingredients (in each capsule) / **Ingrédients actifs** (dans chaque capsule)	**Purposes / Utilités**
Acetaminophen 325 mg	Pain reliever, fever reducer
Acétaminophène 325 mg	Analgésique, antipyrétique
Dextromethorphan hydrobromide 10 mg	Cough suppressant
Bromhydrate de dextrométhorphane 10 mg	Antitussif
Phenylephrine hydrochloride 5 mg	Nasal decongestant
Chlorhydrate de phényléphrine 5 mg	Décongestionnant nasal

Vicks DayQuil Complete Cold & Flu Liquicaps

Active ingredients / Ingrédients actifs (in each capsule / dans chaque capsule)	**Purposes / Utilités**
Acetaminophen 325 mg	Pain reliever/fever reducer
325 mg d'acétaminophène	Soulage la douleur/réduit la fièvre
Dextromethorphan hydrobromide 10 mg	Cough suppressant
10 mg de bromhydrate de dextrométhorphane	Antitussif
Phenylephrine hydrochloride 5 mg	Nasal decongestant
5 mg de chlorhydrate de phényléphrine	Décongestionnant nasal
Guaifenesin 200 mg	Expectorant
200 mg de guaifénésine	Expectorant

Vicks DayQuil Complete Cold & Flu Liquid

MEDICINAL INGREDIENTS per 30 mL:
Pain Reliever/Fever Reducer (Acetaminophen 650 mg - this is not a standard dosage unit) **Cough suppressant** (Dextromethorphan HydroBromide 20 mg) **Expectorant** (Guaifenesin 400 mg) **Nasal Decongestant** (Phenylephrine Hydrochloride 10 mg)

Vicks DayQuil Hot Remedy

Drug Facts DayQuil™

Active ingredients (in each Packet)	Purpose
Acetaminophen 500 mg	Pain reliever/Fever reducer
Dextromethorphan HBr 20 mg	Cough suppressant
Phenylephrine HCl 10 mg	Nasal decongestant

Vicks NyQuil Complete Cold & Flu

Active ingredients (per 30 mL) / **Purposes /**
Ingrédients actifs (par 30 mL) **Utilités**

Acetaminophen 650 mg (this is not a standard dosage unit) ..... Pain reliever, fever reducer

Acétaminophène 650 mg (ceci n'est pas une dose unitaire normale) ..... Analgésique, antipyrétique

Dextromethorphan hydrobromide 20 mg ..... Cough suppressant

Bromhydrate de dextrométhorphane 20 mg ..... Antitussif

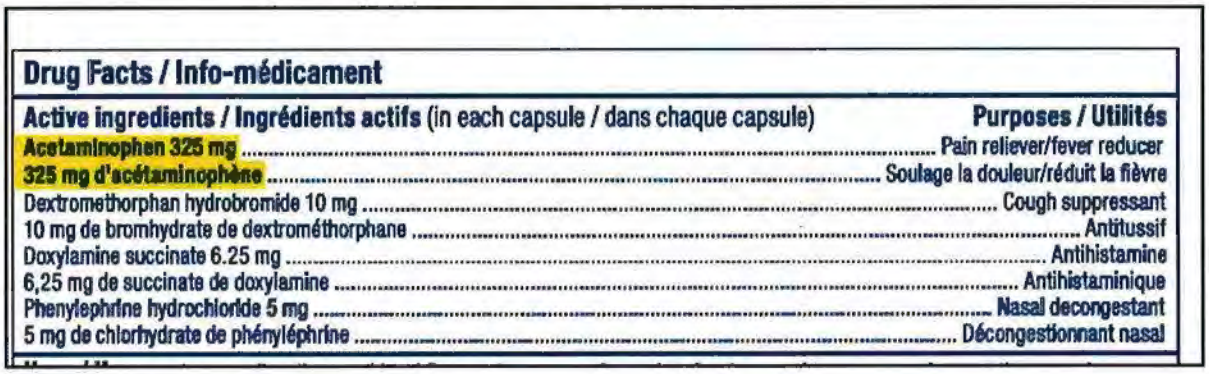
Doxylamine succinate 12.5 mg ..... Antihistamine

Succinate de doxylamine 12,5 mg ..... Antihistaminique

Phenylephrine hydrochloride 10 mg ..... Nasal decongestant

Chlorhydrate de phénylephrine 10 mg ..... Décongestionnant nasal

Vicks NyQuil Complete Cold & Flu Liquicaps



Drug Facts / Info-médicament

Active ingredients / Ingrédients actifs (in each capsule / dans chaque capsule)	**Purposes / Utilités**
Acetaminophen 325 mg	Pain reliever/fever reducer
325 mg d'acétaminophène	Soulage la douleur/réduit la fièvre
Dextromethorphan hydrobromide 10 mg	Cough suppressant
10 mg de bromhydrate de dextrométhorphane	Antitussif
Doxylamine succinate 6.25 mg	Antihistamine
6,25 mg de succinate de doxylamine	Antihistaminique
Phenylephrine hydrochloride 5 mg	Nasal decongestant
5 mg de chlorhydrate de phényléphrine	Décongestionnant nasal

Vicks NyQuil Hot Remedy

Drug Facts **NyQuil™**

Active ingredients (in each Packet)	*Purpose*
Acetaminophen 650 mg	Pain reliever/Fever reducer
Diphenhydramine HCl 25 mg	Antihistamine/Cough suppressant
Phenylephrine HCl 10 mg	Nasal decongestant

SCHEDULE C

Extra-Provincial Consumer Protection Legislation

Alberta

1. The Defendants have breached the *Consumer Protection Act*, RSA 2000, c C-26.3 (the "***Alberta CPA***"). The Consumer Subclass Members in Alberta are "consumers" within the meaning of section 1. The Cold Medicines are "goods" within the meaning of section 1. The Defendants are each a "supplier" within the meaning of section 1. The supply of the Cold Medicines is a "consumer transaction" within the meaning of section 1.

2. By reason of the Defendants' conduct, the Defendants have breached sections 5-6 of the *Alberta CPA*. The Defendants' actions are in violation of subsections 6(2)(b)-(c), 6(4)(a), 6(4)(c) and/or 6(4)(e) and constitute "unfair practices".

3. As a result of the Defendants' breaches of the *Alberta CPA*, the Consumer Subclass Members in Alberta are entitled to damages equal to some, or all, of the price paid by them for the Cold Medicines pursuant to subsections 7(1), 7(3), 13(2)(b) and/or 142.1(2)(a), or in the alternative restitution of some, or all, of the price paid by them and received by the Defendants, directly or indirectly, for the Cold Medicines pursuant to subsections 7(3), 13(2)(d)(ii) and/or 142.1(2)(c)(ii). Further, the Manufacturer Defendants are liable to pay punitive damages to the Consumer Subclass Members in Alberta pursuant to subsections 7.2(1), 13(2)(c) and/or 142.1(2)(b) of the *Alberta CPA*.

4. The Defendants cannot rely on any arbitration clause, if any such clause exists, due to section 16 of the *Alberta CPA* which invalidates any such clause between a "supplier" and a "consumer" in respect of a "consumer transaction", rendering such a clause void and unenforceable.

Saskatchewan

5. The Defendants have breached the *Consumer Protection and Business Practices Act*, SS 2013, c C-30.2 (the "***Saskatchewan CPBPA***"). The Consumer Subclass Members in Saskatchewan are each a "consumer" within the meaning of section 2. The Cold Medicines are "goods" within the meaning of section 2. The

Defendants are each a "supplier" within the meaning of section 2. The supply of the Cold Medicines are "transactions involving goods and services" within the meaning of sections 2 and 5.

6. By reason of the Defendants' conduct, the Defendants have breached sections 6-9 of the *Saskatchewan CPBPA*. The Defendants' actions are in violation of sections 6(a)-(c), 7(a), 7(c) and/or 7(o) and constitute "unfair practices".

7. As a result of the Defendants' breaches of the *Saskatchewan CPBPA*, the Consumer Subclass Members in Saskatchewan are entitled to damages equal to some, or all, of the price paid by them for the Cold Medicines pursuant to subsection 93(1)(b), or in the alternative restitution of some, or all, of the price paid by them and received by the Defendants, directly or indirectly, for the Cold Medicines pursuant subsection 93(1)(a). Further, the Manufacturer Defendants are liable to pay punitive damages to the Consumer Subclass Members in Saskatchewan pursuant to subsection 93(1)(b) of the *Saskatchewan CPBPA*.

8. The Defendants cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to section 101 of the *Saskatchewan CPBPA* which invalidates any such clause or waiver, rendering it void.

Manitoba

9. The Defendants have breached the *Business Practices Act*, CCSM, c. B120 (the "***Manitoba BPA***"). The Consumer Subclass Members in Manitoba are each a "consumer" within the meaning of section 1. The Cold Medicines are "goods" within the meaning of section 1. The Defendants are each a "supplier" within the meaning of section 1. The supply of the Cold Medicines is a "consumer transaction" within the meaning of section 1.

10. By reason of the Defendants' conduct, the Defendants have breached sections 2-3 of the *Manitoba BPA*. The Defendants' actions are in violation of subsections 2(1), 2(3)(a), 2(3)(c), 2(3)(p), 3(1)(a) and/or 3(2)(a) and constitute "unfair business practices" in breach of section 5.

11. As a result of the Defendants' breaches of the *Manitoba BPA*, the Consumer Subclass Members in Manitoba are entitled to damages in an amount equal to some, or all, of the of the price paid by them for the Cold Medicines pursuant to subsection 23(2)(a) of the *Manitoba BPA*, or in the alternative repayment of some, or all, of the price paid by them and received by the Defendants, directly or indirectly, for the Cold Medicines pursuant to subsection 23(2)(d). Further, the Manufacturer Defendants are liable to pay punitive damages to the Consumer Subclass Members in Manitoba pursuant to subsection 23(4) of the *Manitoba BPA.*

Ontario

12. The Defendants have breached the *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A (the "***Ontario CPA***"). The Consumer Subclass Members in Ontario are each a "consumer" within the meaning of section 1. The Cold Medicines are "goods" within the meaning of section 1. The Defendants are each a "supplier" within the meaning of section 1. The supply of the Cold Medicines constitutes a "consumer transaction" within the meaning of section 1. The Defendants made "representation[s]" within the meaning of section 1.

13. By reason of the Defendants' conduct, the Defendants have made false, misleading or deceptive representations pursuant to subsections 14(2)(1), 14(2)(3) and/or 14(2)(14) and/or unconscionable representations pursuant to subsection 15(2)(a). The Defendants' actions therefore constitute "unfair practices" in breach of section 17(1).

14. As a result of the Defendants' breaches of the *Ontario CPA*, the Consumer Subclass Members in Ontario are entitled to damages equal to some, or all, of the price paid by them for the Cold Medicines, or in the alternative restitution of some, or all, of the price paid by them and received by the Defendants, directly or indirectly, for the Cold Medicines, pursuant to subsections 18(1) or 18(2). Further, the Manufacturer Defendants are liable to pay punitive damages to the Consumer Subclass Members in Ontario pursuant to subsection 18(11) of the *Ontario CPA*.

15. The Defendants cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to sections 7 and 8 of the *Ontario CPA*, which provide the right to begin or be a member of a class proceeding in respect to a consumer agreement and invalidates any clause or waiver that seeks to limit this right.

16. The Plaintiff further pleads that the notice requirement pursuant to subsection 18(3) of the *Ontario CPA* is fulfilled by the delivery of written notice to the Defendants as set out in the Notice of Civil Claim, or in the alternative by the filing of this Notice of Civil Claim. In the further alternative, the Plaintiff pleads that the Court should disregard the requirement for notice pursuant to subsection 18(15) of the *Ontario CPA*.

Prince Edward Island

17. The Defendants have breached the *Business Practices Act*, RSPEI 1988, c B-7 (the "***PEI BPA***"). The Consumer Subclass Members in Prince Edward Island are each a "consumer" within the meaning of section 1. The Cold Medicines are "goods" within the meaning of section 1. The Defendants made "consumer representation[s]" within the meaning of section 1.

18. By reason of the Defendants' conduct, the Defendants have made false, misleading and/or deceptive consumer representations pursuant to subsections 2(a)(i), 2(a)(iii) and/or 2(a)(xiii) and/or unconscionable consumer representations pursuant to subsection 2(b)(i). The Defendants' actions therefore constitute "unfair practices" in breach of section 3.

19. As a result of the Defendants' breaches of the *PEI BPA*, Consumer Subclass Members in Prince Edward Island are entitled to damages equal to some, or all, of the price paid by them for the Cold Medicines, or in the alternative restitution of some, or all, of the price paid by them and received by the Defendants, directly or indirectly, for the Cold Medicines, pursuant to subsection 4(1). Further, the Manufacturer Defendants are liable to pay punitive damages to the Consumer Subclass Members in Prince Edward Island pursuant to subsection 4(2) of the *PEI BPA*.

20. The Defendants cannot rely on any arbitration clause or waiver, if any such clause or waiver exists, due to subsection 4(8) of the *PEI BPA*, which invalidates any such clause or waiver rendering it void.

21. The Plaintiff further pleads that the notice requirement pursuant to subsection 4(5) of the *PEI BPA* is fulfilled by the delivery of written notice to the Defendants as set out in the Notice of Civil Claim, or in the alternative by the filing of this Notice of Civil Claim.

Newfoundland and Labrador

22. The Retail Defendants have breached the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 (the "***Newfoundland CPBPA***"). The Consumer Subclass Members in Newfoundland are each a "consumer" within the meaning of section 2. The Cold Medicines are "goods" within the meaning of section 2. The Retail Defendants are each a "supplier" within the meaning of section 2. The supply of the Cold Medicines constitutes a "consumer transaction" within the meaning of section 2.

23. By reason of the Retail Defendants' conduct, the Retail Defendants have committed unfair business practices pursuant to subsections 7(1)(a), 7(1)(c) and/or 7(1)(w) and/or unconscionable acts and/or practices pursuant to subsection 8(1)(f). The Retail Defendants have therefore breached subsection 9(1) of the *Newfoundland CPBPA.*

24. As a result of the Retail Defendants' breaches of the *Newfoundland CPBPA*, Consumer Subclass Members in Newfoundland and Labrador are entitled to damages equal to some, or all, of the price paid by them for the Cold Medicines pursuant to subsection 10(2)(b), or in the alternative repayment of some, or all, of the price paid by them and received by the Retail Defendants, directly or indirectly, for the Cold Medicines pursuant to subsection 10(2)(e).

25. The Retail Defendants cannot rely on any arbitration clause or class action waiver, if any such clause or waiver exists, due to section 3 of the *Newfoundland CPBPA*, which invalidates any such clause or waiver rendering it void.