

Zanin v. Ooma, Inc., 2026 FCA 98 (CanLII)

Source: Federal Court of Appeal
Date: 2026-05-19
File number: A-24-25
Citation: Zanin v. Ooma, Inc., 2026 FCA 98 (CanLII),
<<https://canlii.ca/t/kl1fk>>, retrieved on 2026-07-02

Date: 20260519

Docket: A-24-25

Citation: 2026 FCA 98

**CORAM: DE MONTIGNY C.J.
LEBLANC J.A.
PAMEL J.A.**

BETWEEN:

JOHN ZANIN

Appellant

and

OOMA, INC. AND OOMA CANADA INC.

Respondents

Heard at Montréal, Quebec, on April 20, 2026.

Judgment delivered at Ottawa, Ontario, on May 19, 2026.

REASONS FOR JUDGMENT BY:

PAMEL J.A.

CONCURRED IN BY:

DE MONTIGNY C.J.
LEBLANC J.A.

Date: 20260519

Docket: A-24-25

Citation: 2026 FCA 98

**CORAM: DE MONTIGNY C.J.
LEBLANC J.A.
PAMEL J.A.**

BETWEEN:

JOHN ZANIN

Appellant

and

OOMA, INC. AND OOMA CANADA INC.

Respondents

REASONS FOR JUDGMENT

PAMEL J.A.

[1] The appellant, John Zanin, appeals a decision of the Federal Court (the decision under appeal) granting the defendants' motion for a stay of proceedings under [section 50](#) of the *Federal Courts Act*, R.S.C. 1985, c. F-7 (the stay motion) and dismissing Mr. Zanin's motion for certification of the proposed class proceeding (the certification motion) on the grounds that no reasonable cause of action was made out.

[2] In January 2020, and after having seen an advertisement in a Costco magazine, Mr. Zanin, a resident of Ontario, subscribed to a Voice over Internet Protocol telephone service (the “service”) provided by the respondent, Ooma Inc. headquartered in California (Ooma Inc.). The respondent Ooma Canada Inc. (Ooma Canada) is a wholly owned subsidiary of Ooma Inc. and incorporated in British Columbia in August 2019 strictly for administrative purposes and for collecting invoices issued by Ooma Inc. to Canadian customers. According to Ooma (which is how I will refer to the defendants collectively), Ooma Canada has no employees and no involvement in the advertising of Ooma Inc.’s services and is not a party to any contract with Ooma Inc. customers.

[3] At the time Mr. Zanin subscribed to the service, it was being advertised as “Free” or “\$0”, with customers only having to pay fees and applicable taxes. The fees charged monthly to Mr. Zanin often ranged between \$5 or \$6, which Ooma admits formed part of its revenues. In any event, Mr. Zanin cancelled his subscription to the service which forms the subject matter of the present matter in December 2021.

[4] Prior to Mr. Zanin’s involvement in this matter, in February 2021, Ms. Fiona Chiu, as proposed representative plaintiff, instituted the underlying proposed class action on the basis that Ooma falsely described the service offered to residential customers as being free, thus misrepresenting the real cost of the service to customers; Ms. Chiu thereafter proceeded to file the certification motion. The statement of claim and certification motion alleged, amongst other things, claims against Ooma of misrepresentation and double ticketing as prohibited under [sections 52 and 54](#) of the [Competition Act](#), R.S.C. 1985, c. C-34 (as those provisions appeared at the time) as well as the use of false descriptions as prohibited under [section 7](#) of the [Trademarks Act](#), R.S.C. 1985, c. T-13.

[5] Ooma raised objections to the Federal Court’s jurisdiction from the outset on the basis of the arbitration and forum selection clauses in its governing terms and conditions. The arbitration clause provided that any dispute under the subscription agreement, including the determination of the scope or applicability of the arbitration agreement, was to be determined by arbitration in Santa Clara County, California pursuant to the Judicial Arbitration and Mediation Services (JAMS) Comprehensive Arbitration Rules and Procedures. The arbitration clause also contained a class

action waiver whereby customers specifically waived their right to participate in any representative proceeding including class actions. In addition, Ooma's governing terms and conditions contained a forum selection clause which provided for litigation before the courts in Santa Clara County where, *inter alia*, any part of the arbitration agreement is determined to be unenforceable.

[6] On March 22, 2021, Justice Gascon, acting as case management judge and following a case management conference, issued a Scheduling Order (the Scheduling Order) which provided, amongst other things, that certain proceedings of the parties—including the filing of Ooma's statement of defence, the perfecting of the motion for certification, Ooma's motions in respect of jurisdiction and/or limitation periods, cross-examinations on affidavits, and related motions—were to be made without prejudice to Ooma's stated position and not to constitute attornment to the Court's jurisdiction. The Scheduling Order also contemplated the prospect of other pre-certification motions possibly being filed.

[7] In April 2021, Ooma proceeded to file its statement of defence in which it repeated its objection to the Court's jurisdiction, and in June 2021, it filed the stay motion. In addition to seeking a stay of the matter in favour of the governing arbitration and forum selection clauses, the stay motion included, as alternative relief in the event the stay was refused, a request for summary judgment under [Rules 213](#) and [215\(1\)](#) of *Federal Courts Rules*, SOR/98-106 and dismissal of the action on the basis that it disclosed no genuine issue for trial on account of the action being time-barred and that, in any event, there existed no cause of action against Ooma Canada.

[8] On November 9, 2021, Justice Gascon issued a further Order substituting Mr. Zanin as the new proposed representative plaintiff, with the proceedings deemed to have been commenced on November 8, 2021 (the Substitution Order). The Substitution Order also permitted the amendment of proceedings including certain amendments to Ooma's stay motion, again with specific mention that such amendments would not constitute attornment by Ooma to the Court's jurisdiction. With Mr. Zanin now acting as proposed representative plaintiff, the amended certification motion and amended stay motion were eventually heard by Justice Gascon, as the motions judge.

[9] Following the hearing and while the decision of the Court was still pending, the *Competition Act* was amended to introduce subsection 52(1.3) specifically addressing drip pricing and specifying that the “making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation.” Further to exchanges with the parties, the motions judge issued a direction that no additional submissions on the enactment of subsection 52(1.3) were necessary as the amendment was not retroactive and, in light of the pleadings and factual evidence submitted in this case, he was not convinced that submissions on the issue would be of any assistance to the Court.

[10] On January 10, 2025, the motions judge granted Ooma’s stay motion in favour of arbitration in California pursuant to [section 50](#) of the *Federal Courts Act*. He also dismissed Mr. Zanin’s certification motion on the basis that he did not disclose a reasonable cause of action under the *Competition Act* or *Trademark Act*; the motions judge determined that the allegations in the statement of claim could not support the claims being made under [paragraph 7\(d\)](#) of the *Trademarks Act* or [sections 52](#) and [54](#) of the *Competition Act*, and that even assuming the facts to be true, the claims by Mr. Zanin have no realistic prospect of success.

[11] It is this decision which is now under appeal. Mr. Zanin limits his appeal to the dismissal of the stay motion and on the issue of whether his claim under [section 52](#) of the *Competition Act* raises a reasonable cause of action; he does not challenge on appeal the motions judge’s findings that his claims under [paragraph 7\(d\)](#) of the *Trademarks Act* and [section 54](#) of the *Competition Act* do not disclose any reasonable causes of action. The appellate standards of review are applicable to this appeal: questions of law are reviewed on a standard of correctness and findings of fact or mixed fact and law, from which there is no extricable question of law, are not reversed absent a palpable and overriding error (*Housen v. Nikolaisen*, [2002 SCC 33](#)).

[12] Mr. Zanin does not dispute that claims under the *Competition Act* and *Trademarks Act* are generally arbitrable (*Difederico v. Amazon.com, Inc.*, [2023 FCA 165](#) (*Difederico*), leave for appeal to SCC refused, 40927 (16 May 2024); *General Entertainment and Music Inc. v. Gold Line Telemanagement Inc.*, [2023 FCA 148](#)), nor does he take issue with the motions judge’s

determination that he had accepted and was bound by Ooma's terms and conditions, including the arbitration and forum selection clauses. Rather, Mr. Zanin takes issue with the motions judge having stayed the matter in favour of arbitration in this case, arguing that by seeking summary judgment, even though in the alternative, Ooma somehow transformed the stay motion into a merits-based motion which exceeded the protective language of the Scheduling Order and Substitution Order (together, the Court's Orders), thus causing Ooma to waive its right to arbitration and attorn to the jurisdiction of the Federal Court.

[13] The motions judge was not persuaded; in short, he found that Ooma consistently reserved its rights to object to the Court's jurisdiction, a right that was preserved in the Court's Orders (paragraphs 94 to 110 of the decision under appeal). Here, the motions judge determined that Ooma "acted within the boundaries" of the Court's Orders, with all its arguments and actions falling within the limits set out therein. In essence, Ooma had sought permission in advance to seek the remedies it sought in a single motion.

[14] For my part, I find no reviewable error with such a finding. The assessment of attornment to jurisdiction and waiver of an arbitration clause is a question of mixed fact and law, not to be overturned absent palpable and overriding error (*Barer v. Knight Brothers LLC*, 2019 SCC 13 at para. 49). The motions judge was best placed to have understood the intention of the parties in relation to the preliminary motions. Along with the pleadings and the language of any orders of the Court, the circumstances in which the orders were made must be taken into consideration in their interpretation (*Sutherland v. Reeves*, 2014 BCCA 222, 61 B.C.L.R. (5th) at para. 31). Unlike the situation in *Al-Husseini v. Altaif Inc.*, 2022 FC 1497, the Court's Orders were rendered by the motions judge himself. What Mr. Zanin is essentially asserting is that the motions judge disregarded the parties' intentions expressed during the case management conferences and misinterpreted his own orders, an assertion I have difficulty accepting.

[15] Mr. Zanin also raises an alternative argument that arbitration clauses in consumer contracts (and the class action waiver attached to it) are rendered null and void by sections 14.1 to 14.4 of the *British Columbia Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 (B.C.

Consumer Protection Act) which came in force on March 31, 2025, well after Mr. Zanin ceased being an Ooma customer in December 2021 (paragraph 94 of Mr. Zanin’s memorandum of fact and law). I have not been convinced of the application of the B.C. *Consumer Protection Act* to the claim being made by Mr. Zanin. Although I accept that the choice to restrict or not to restrict arbitration clauses in consumer contracts is a matter for the legislature (*Seidel v. TELUS Communications Inc.*, 2011 SCC 15 at para. 2), I have not been convinced of any substantial connection in this case to British Columbia. Mr. Zanin is a resident of Ontario and not a British Columbia consumer and he has not made out a case that Ooma Canada – an entity incorporated for administrative purposes only and without any employees – is the supplier of goods and services as contemplated by the *British Columbia Consumer Protection Act*. In any event, I must agree with the motions judge that this argument has no merit as sections 14.1 to 14.4 have no retroactive effect and thus do not apply to claims which arose — as is the case for Mr. Zanin — prior to their enactment (*Vandenbosch v. Rogers Communications Canada Inc.*, 2026 BCCA 102 at para. 79).

[16] As a final argument in relation to the application of the arbitration clause, Mr. Zanin argues that the arbitration clause is incapable of being performed under the principles set out in *Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41, as the terms of the clause are inconsistent with the applicable JAMS policies and procedures. I am not convinced and must agree with the motions judge that this issue—being highly factually infused—falls squarely within the bailiwick of the arbitrator under the competence-competence principle. Although I accept that this principle is not absolute, I have not been shown by Mr. Zanin that the issues which he raises involve pure questions of law, questions of mixed fact and law requiring only superficial consideration of the evidentiary record, or that such issues would be impossible for the parties to arbitrate or to resolve before the arbitrator (*Uber Technologies Inc. v. Heller*, 2020 SCC 16 at paras. 32, 38–46; *Dell Computer Corp. v. Union des consommateurs*, 2007 SCC 34 at paras. 84–86; *Rogers Wireless Inc. v. Muroff*, 2007 SCC 35 at para. 11). I should point out that Mr. Zanin has not provided expert evidence on the laws of California in relation to the issues he raises and I have not been convinced of any reviewable error on the part of the motions judge on this issue.

[17] The motions judge also determined that Mr. Zanin had not demonstrated the existence of a “strong cause” against the enforcement of the forum selection clause—in line with the test developed in *Z.I. Pompey Industrie v. ECU-Line N.V.*, 2003 SCC 27 and taking into account the different policy considerations arising within the context of consumer contract as set out in *Douez v. Facebook, Inc.*, 2017 SCC 33—in the event any part of the arbitration agreement is determined to be unenforceable. He also found that under the competence-competence principle, the issue as to its eventual application would fall to the arbitrator.

[18] Mr. Zanin argues that the motions judge skipped over the first stage of the “strong cause test” by presuming the forum selection clause to be enforceable and argues that the enforcement of such a clause would be contrary to section 36 of the *Competition Act* and section 25 of the *Federal Courts Act* which provide for any claim for damages under that statute to be brought before the Federal Court. I cannot agree with Mr. Zanin and find myself aligned with the motions judge when he stated that the issue of whether damages claimed under section 36 of the *Competition Act* can be subject to arbitration has now been clearly disposed of in the affirmative (*Difederico; Murphy v. Amway Canada Corporation*, 2013 FCA 38).

[19] Finally, Mr. Zanin does not take issue with the class action waiver independently of the arbitration clause; he states that the two provisions are married together, and points us to footnote 28 of his memorandum of fact and law where he asserts that his argument regarding the class action waiver is subsumed into his argument regarding the enforceability of the arbitration clause. Mr. Zanin conceded during his reply that if the arbitration agreement is upheld by the Court, then there cannot be a case in the Federal Court “or even a class action for that matter.” Consequently, and as I have not been convinced that the motions judge committed a reviewable error in finding the arbitration agreement valid, that should put an end to the present appeal and I need not address Mr. Zanin’s arguments in relation to the dismissal of his motion for certification for not having raised a reasonable cause of action.

[20] That said, and considering the matter may well continue in arbitration or further litigation, I will address Mr. Zanin arguments suggesting that the motions judge erred in his determination that

the pleadings and evidence did not establish a reasonable cause of action as he overlooked or failed to consider evidence indicating false or misleading representations to the public as prohibited under [section 52](#) of the *Competition Act*.

[21] Mr. Zanin first points to the allegations that were made in the statement of claim and to the evidence and invites the Court to come to a different impression of the evidence than did the motions judge. I am loath to do so as a finding that a statement of claim does not disclose a reasonable cause of action is reviewable on the deferential standard of palpable and overriding error (*Jensen v. Samsung Electronics Co. Ltd.* [2023 FCA 89](#) at para. 42), and I have not been convinced that the intervention of the Court on this issue is justified.

[22] Putting aside the motions judge's struggles to understand Mr. Zanin's pleadings and submissions despite the many opportunities he was given to explain and clarify them (paragraph 47 of the decision under appeal), the motion's judge was unambiguous that a case for misrepresentation had not been made out; he stated at paragraphs 458 and 486 of his decision:

[458] I am well aware of the fact that, at this certification stage, my task is not to assess the merits of the evidence. Yet, I cannot accept at face value Mr. Zanin's allegations when a mere cursory review of the materials he relies on suffices to reveal that such allegations are not a fair and accurate rendering of what was actually said by Ooma in its promotional, advertising, or billing materials. Once stripped of their misquotes, selective quotes, mischaracterizations, distortions, and misrepresentations, Mr. Zanin's references amounts to no more than allegations of pricing practices that are a far cry from a criminal false or misleading representation.

...

[486] A plain reading of Ooma's representations does not allow any credulous and inexperienced consumer, or any ordinary consumer, to conclude that the Service is "Free or \$0," unless the consumers would willfully blind themselves and choose to ignore the specific mention of "you only pay applicable taxes and fees." A credulous and inexperienced consumer (or an ordinary one) is not one who ignores half of a short advertising message not exceeding 20 words, or only partially reads what is expressly written. Unless a person decides to act with utmost bad faith, no one could seriously read Ooma's representations, as a whole and in their entirety, as suggesting or implying that the Service is, in reality, "FREE or \$0."

[23] In his written submissions, Mr. Zanin argued that the motions judge should not have come to such a finding on his own, and cites the Competition Tribunal decision in *Canada (Commissioner of Competition) v Cineplex Inc* , [2024 CanLII 93716 \(CT\)](#), 2024 Comp Trib 5 (*Cineplex Tribunal*) (appeal dismissed, *Cineplex Inc. v. Commissioner of Competition*, [2026 FCA 10](#) – leave to the Supreme Court pending) (*Cineplex FCA*) (*Cineplex*) for the proposition that, in matters of consumer behavior, expert evidence is necessary to evaluate the general impression of consumers when they encounter a service advertised as free, despite also mentioning the payment of fees and applicable taxes, and whether such representations, taken together, nonetheless constitute false or misleading representations under [section 52](#) of the *Competition Act*.

[24] To be fair to Mr. Zanin, he did soften his insistence on the need for expert evidence on this issue during oral submissions, accepting that although the general impression test is an integral part of false and misleading advertising cases under section 52 (*Cineplex FCA* at para. 135), *Cineplex Tribunal* only goes as far as suggesting that expert evidence may assist with general impression in some cases (at para. 281 – see also *Cineplex FCA* at para. 146); nowhere is it stated that expert evidence is required to assess general impression. More importantly, what the motions judge determined was that Mr. Zanin’s allegations, on a mere cursory review, do not constitute a fair and accurate rendering of the representations that were actually made by Ooma in its promotional, advertising, or billing materials.

[25] After canvassing the law on the notion of general impression, the motions judge found, at paragraph 492, that the test for determining general impression and literal meaning of purportedly false and misleading representation is an objective one, and there is no need for a thorough review of the evidence to undertake such an assessment. I have not been convinced by Mr. Zanin that the motions judge committed a reviewable error in law in coming to that determination. If I were to accept Mr. Zanin’s argument that expert evidence is always required when assessing general impression at the certification stage in these circumstances, it would eliminate the need for the reasonable cause of action requirement whenever consumer behaviour is at issue; the gatekeeping function of the Court would be rendered futile as the determination of reasonable cause of action

would invariably have to be left to expert evidence. There is no principled reason for such a proposition.

[26] There can be no reasonable cause of action where, assuming all facts pleaded to be true, it is plain and obvious that the plaintiff's claim cannot succeed (*Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 at para. 63). The motions judge found that Ooma's promotional material stated that fees and taxes remained payable – which from my perspective distinguishes the situation here from that which existed in *Cineplex* – and thus any false or misleading misrepresentations, as alleged by Mr. Zanin in his pleadings, simply do not exist (at paragraph 456). On that basis, the motions judge concluded that Mr. Zanin had no reasonable cause of action under section 52 of the *Competition Act* (at least prior to the enactment of section 52(1.3)). Having considered Mr. Zanin's arguments, I find no reviewable error in such a finding.

[27] I am also not persuaded by Mr. Zanin's argument that the motions judge erred in treating this matter as a "hidden fee" case when it was not, prompting his counsel to suggest that the motions judge was "looking at a completely different case." Counsel points to paragraph 16 of the decision under appeal and disputes the assertion by the motions judge that Mr. Zanin "was not aware of the fees" at the time he subscribed to the service. Before us, Mr. Zanin's counsel argued that it would be difficult for him to claim that Mr. Zanin was not aware of the fees at that time and, in fact, such an assertion by Mr. Zanin does not appear in the statement of claim. Putting aside the effect such an argument may have on Mr. Zanin's claim for damages, there is some suggestion in the record that Mr. Zanin only became aware of the fees and taxes when he received his first credit card statement (pages 28 to 30 of the transcript emanating from the cross-examination of Mr. Zanin).

[28] In any event, there is nothing in the motions judge's reasons to have me believe that he misunderstood the nature of the claim being asserted by Mr. Zanin. Mr. Zanin cites this Court's decision in *Wenham v. Canada (Attorney General)*, 2018 FCA 199 for the proposition that at the certification stage, the motions judge must look at the pleadings holistically, get to the essential

character of the case, and look to see whether there is a reasonable cause of action. I have not been convinced that the motions judge did anything less.

[29] Finally, Mr. Zanin argues that the motions judge erred in refusing to consider further written representations by the parties on the application of subsection 52(1.3) as a clarifying provision to the application of section 52, even though subsection 52(1.3) only came into force on June 23, 2022, well after Mr. Zanin ceased subscribing to the service. The motions judge found that additional submissions on this issue were not necessary as the enactment of the subsection was not retroactive and, in particular, on account of the evidence submitted and the manner in which the case was pleaded by Mr. Zanin. Putting aside that directions from the Court are not appealable, I have not been convinced by Mr. Zanin that the motions judge's decision not to entertain further submissions on how it may be considered was a reversible error.

[30] Overall, I have not been convinced by Mr. Zanin of any reviewable error on the part of the Federal Court. I would therefore dismiss the appeal, with costs.

“Peter G. Pamel”

J.A.

“I agree.

Yves de Montigny C.J.”

“I agree.

René LeBlanc J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-24-25

STYLE OF CAUSE:

JOHN ZANIN v. OOMA, INC. AN
D OOMA CANADA INC.

PLACE OF HEARING:

MONTREAL, QUEBEC

DATE OF HEARING:

APRIL 20, 2026

REASONS FOR JUDGMENT BY:

PAMEL J.A.

CONCURRED IN BY:

DE MONTIGNY C.J.
LEBLANC J.A.

DATED:

MAY 19, 2026

APPEARANCES:

Simon Lin

FOR THE APPELLANT

Jérémie John Martin
Sébastien A. Paquette

FOR THE APPELLANT

Yves Martineau
Romy Proulx

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Evolink Law Group
Burnaby, British Columbia

FOR THE APPELLANT

Champlain Avocats
Montréal, Quebec

FOR THE APPELLANT

Stikeman Elliott LLP
Montréal, Quebec

FOR THE RESPONDENTS