

**MCKEE'S CARPET ZONE v. SEARS CANADA INC., et al.
FREQUENTLY ASKED QUESTIONS**

**ACTION COMMENCED BY SEARS FLOOR COVERING CENTRE LICENSEES
ALLEGING UNDISCLOSED REBATES**

1. I HEARD THAT A PROPOSED CLASS ACTION HAS BEEN COMMENCED AGAINST THE DEFENDANTS. WHAT DOES THIS MEAN?

The action was commenced by McKee's Carpet Zone as a Representative Plaintiff on its own behalf and proposing that the action be certified as a class proceeding to include all possible Class Members who entered into a license agreement with Sears for operation of a "Sears Floor Covering Centre" since 1998. The proposed action does not proceed as a class action until it is certified as a class proceeding by the Court.

The Representative Plaintiff brought a motion seeking certification of the action as a class proceeding before Mr. Justice Strathy in the Ontario Superior Court of Justice in Toronto on May 25/26, 2010.

By reasons released on August 23, 2010, Mr. Justice Strathy certified this action as a class proceeding. This does not mean that the Court has made a decision as to the likelihood of recovery by the plaintiff, or as to the merits of the claims or defences asserted by either side.

A case conference was held on September 20, 2010 to address issues arising from the certification motion and the proposed certification order. By reasons released on October 15, 2010, Mr. Justice Strathy resolved those outstanding issues which were subsequently set-out in the formal Order of the Court dated October 15, 2010.

2. WHAT HAPPENS NEXT?

Pursuant to the terms of the certification order, Sears will provide notice to all possible Class Members by the proceed and form prescribed on or before January 15, 2011.

Class Counsel will bring a motion to seek the appointment of an Alberta Sub-class Representative Plaintiff and a corresponding amendment to the Statement of Claim.

The parties will resolve the terms of a scheduling order for documentary and oral discovery by way of a "Discovery Plan", providing that discovery will be completed by June 30, 2011.

3. WHAT DO YOU NEED FROM ME NOW?

You do not need to do anything further at this point in time. If you have not already done so, you may provide us with your information including copies of documentation and we will record your information on our database so that you can receive future updates as to the progress of the action. Being included on our database does not obligate you in any way. It does not necessarily mean that you are part of the Class as defined by the Court either.

4. HOW DO I KNOW IF I AM PART OF THE CLASS ACTION?

If you fall within the Class as defined by the Court, it is not necessary for you to do anything in order to be included in the lawsuit. The *Class Proceedings Act* is by default inclusive, rather than exclusive. This means that you will be automatically included in the lawsuit, subject to your right to opt-out and exclude yourself pursuant to the procedure and form prescribed in the certification order.

If you were a Licensee with Sears Canada Inc. and operated a Sears Floor Covering Centre at any time between 1999 and January 30, 2010, you should be included in the proposed class as that is the class definition proposed to the Court.

5. I NEED ADVICE REGARDING MY SITUATION AND ISSUES WITH SEARS CANADA INC AND HOME COVERINGS BUYING GROUP INC. CAN YOU HELP?

We do not offer legal advice regarding individual situations to Class Members, except where a specific individual retainer agreement is entered into. Accordingly, do not presume that we are acting on your behalf in respect of any issue unless there is a clear retainer agreement that we are engaged to do so.

We do provide legal advice to Class Members in respect of the common issues set-out and attached to the certification order.

6. WHAT IS THE COST TO ME IN PARTICIPATING IN THE CLASS PROCEEDING?

Individual Class Members are not personally liable to pay counsel for prosecuting the common issues in the class action nor are they liable to pay their own legal fees if the class action is not successful.

Individual Class Members may be responsible for their own legal fees if, after the trial of common issues, they are required to retain their own counsel to deal with individual issues that remain.

Plaintiffs' counsel may seek counsel fees from the value or benefit gained by Class Members resulting from the class proceeding.

Plaintiffs' counsel must obtain court approval of any counsel fees to be paid by the Representative Plaintiffs and Class Members.

7. HOW CAN I GET MORE INFORMATION?

Plaintiffs' counsel are maintaining a database of individuals who request to be kept up to date as to recent developments. To be added to this database, or to obtain further information, you can contact plaintiffs' counsel David Thompson or Matthew Moloci of Scarfone Hawkins^{LLP} at 905-523-1374, extension 233 or chutton@shlaw.ca.

You can also check out the following website for the most recent developments:

www.classactionlaw.ca