

C A N A D A

**PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL
LOCALITY OF MONTRÉAL**

No: 500-06-001132-212

**SUPERIOR COURT
(Class Action Chamber)**

GABRIEL BOURGEOIS

Petitioner

vs.

ELECTRONICS ARTS INC.,

and

ELECTRONICS ARTS (Canada)

and

ACTIVISION BLIZZARD INC.,

and

ACTIVISION PUBLISHING INC.,

and

BLIZZARD ENTERTAINMENT INC.,

and

**TAKE TWO INTERACTIVE SOFTWARE
INC.,**

and

**TAKE TWO INTERACTIVE CANADA
HOLDINGS INC.,**

and

2K GAMES INC.,

and

ROCKSTAR GAMES INC.,

and

WARNER BROS ENTERTAINMENT INC.,

and

**WARNER BROS ENTERTAINMENT
CANADA INC.,**

and

**WARNER BROS. HOME ENTERTAINMENT
INC.,**

and

UBISOFT ENTERTAINMENT SA.,

and

UBISOFT INC.,

and

**UBISOFT ENTERTAINMENT INC. /
UBISOFT DIVERTISSEMENTS INC.,**

and

MICROSOFT CORPORATION,

and

MICROSOFT CANADA INC.,

and

EPIC GAMES INC.,

and

EPIC GAMES CANADA ULC,

and

SCOPELY INC.,

and

NIANTIC INC.,

and

**KING DIGITAL ENTERTAINMENT GROUP
INC.,**

and

KING.COM LTD.,

and

ZYNGA INC.,

and

ZYNGA GAME CANADA LTD

Respondents

**APPLICATION BY THE RESPONDENTS MICROSOFT CORPORATION AND
MICROSOFT CANADA INC. FOR DECLINATORY EXCEPTION TO LIMIT THE
PROPOSED CLASS**

(art. 167 and 576 CCP and art. 3148 CCQ)

**TO THE HONOURABLE JUSTICE STÉPHANE LACOSTE, S.C.J., THE
RESPONDENTS MICROSOFT CORPORATION AND MICROSOFT CANADA INC.
STATE THE FOLLOWING:**

I. INTRODUCTION

1. The Respondents Microsoft Corporation and Microsoft Canada Inc. (collectively referred to as “**Microsoft**”) intend to contest the Petitioner’s *Amended Application for Authorization to Institute a Class Action & to Obtain the Status of Representative Plaintiff* (the “**Amended Authorization Application**”).
2. Microsoft nevertheless wishes to raise from the outset that the Superior Court of Québec does not have jurisdiction over members of the Proposed Class (as defined hereinafter) who are non-residents of Québec.

II. THE AMENDED AUTHORIZATION APPLICATION

3. On or about March 2, 2021, the Petitioner filed his *Application for Authorization to Institute a Class Action & to Obtain the Status of Representative Plaintiff*, which he later amended on or about October 25, 2021. By way of judgment dated December 7, 2021, this Court partially granted Petitioner’s motion to amend, and replaced the class proposed by the Petitioner by the following proposed class (the “**Proposed Class**”):

All Canadian customers of the Loot Box Respondents (defined further below) who purchased or otherwise paid directly or indirectly for loot boxes in any of the games set out in Schedule A to this Application for Authorization between 2008 and the date this action is authorized as a class proceeding, except such Canadian customers otherwise already included in class description in either one of the following cases Cunningham et al. v. Activision Blizzard Inc. et al. SCBC S-2013414, Lussier et al. v. Scopely Inc. SCBC S-2013510, Pechnik et al. v. Take Two Interactive Software Inc. et al. SCBC S-211073, Sutherland v. Electronic Arts Inc. et al. SCBC S-209803, Petty et al. v. Niantic Inc. et al. SCBC S-213723.

4. The Amended Authorization Application alleges that the Respondents' loot boxes are unlawful and contrary to the *Criminal Code*, RSC 1985, c C-46 (see para. 43 of the Amended Authorization Application).
5. The Amended Authorization Application further alleges that the Respondents have breached the *Consumer Protection Act*, CQLR c P-40.1 (and related enactments in other provinces) and the *Civil Code of Québec*, CQLR c CCQ-1991 ("**CCQ**") by:
 - a) "offering and operating the Loot Boxes in breach of the *Criminal Code*;
 - b) concealing the odds for their Loot Boxes;
 - c) failing to place safeguards to prevent minors from playing their Loot Boxes; and
 - d) making high-value items that affect game play available exclusively from Loot Boxes, thereby forcing playing to obtain Loot Boxes"(see para. 44 of the Amended Authorization Application).
6. The Amended Authorization Application is thus seeking compensatory and punitive damages from the Respondents for the members of the Proposed Class.

III. THE SUPERIOR COURT OF QUEBEC DOES NOT HAVE JURISDICTION OVER NON-RESIDENTS OF QUEBEC

7. Microsoft respectfully submits that Québec authorities do not have jurisdiction to hear the proposed class action as regards to members of the Proposed Class who are non-residents of Québec.
8. Indeed, the Amended Authorization Application demonstrates that:
 - a) Microsoft Corporation is a legal person with its domicile at 1 Microsoft Way, Redmond, Washington, 98052-8300, United States (see para. 26 and Exhibit P-20 of the Amended Authorization Application);

- b) Microsoft Canada Inc. is a legal person with its domicile at 600-1741 Lower Water Street, Halifax, Nova Scotia, B3J 0J2, Canada (see para. 27 and Exhibit P-21 of the Amended Authorization Application).
9. For Québec authorities to have jurisdiction over personal actions of a patrimonial nature, at least one of the criteria set out at article 3148 CCQ needs to be met. These criteria are the following:
 - 1) “the defendant has his domicile or his residence in Québec;
 - 2) the defendant is a legal person, is not domiciled in Québec but has an establishment in Québec, and the dispute relates to its activities in Québec;
 - 3) a fault was committed in Québec, injury was suffered in Québec, an injurious act or omission occurred in Québec or one of the obligations arising from a contract was to be performed in Québec;
 - 4) the parties have by agreement submitted to them the present or future disputes between themselves arising out of a specific legal relationship;
 - 5) the defendant has submitted to their jurisdiction”.
 10. As will be demonstrated below, none of the criteria of article 3148 CCQ are met, and thus Québec authorities do not have jurisdiction over non-residents of Québec.
 11. Indeed, as appears from the Amended Authorization Application, none of the Microsoft Respondents have their domicile in Québec. As such, the criterion of the first paragraph of article 3148 CCQ to grant jurisdiction to the Québec authorities is not met.
 12. In addition, the Amended Authorization Application contains no allegation that the object of the litigation would be connected in any way to Microsoft’s activities in Québec. As such, the criterion of the second paragraph of article 3148 CCQ to grant jurisdiction to the Québec authorities is not met.
 13. Furthermore, the Amended Authorization Application contains no allegation that a fault was committed in Québec, an obligation of a contract (in relation to non-residents of Québec) was to be performed in Québec, or that any non-residents of Québec suffered damages in Québec. As such, the criterion of the third paragraph of article 3148 CCQ to grant jurisdiction to the Québec authorities is not met.
 14. In any case, regarding the second and third criterion, all Microsoft activities relating to video games with alleged “loot boxes” are carried-out outside of Québec, which would render untenable any allegation that would state otherwise.
 15. Finally, the Amended Authorization Application contains no allegation whatsoever that the parties have submitted to the jurisdiction of Québec authorities. As such, the criteria of the fourth and fifth paragraphs of article 3148 CCQ to grant jurisdiction to the Québec authorities are not met.

16. As a result of the above, Microsoft respectfully submits that this Court does not have jurisdiction over non-residents of Québec. The Proposed Class as regards to Microsoft thus cannot include non-residents of Québec.
17. Microsoft reserves its right to produce a sworn statement in support of this Application if it is contested by the Petitioner.
18. This Application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Application for Declinatory Exception to Limit the Proposed Class*;

RESERVE Microsoft Corporation and Microsoft Canada Inc's ("**Microsoft**") right to produce a sworn statement in support of this Application if it is contested by the Petitioner;

EXCLUDE all non-residents of the Province of Québec from the Proposed Class as relates to Microsoft;

THE WHOLE, costs to follow.

Montréal, this December 22, 2021

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NOTICE OF PRESENTATION

ADDRESSEE(S):

TO SERVICE LIST

TAKE NOTICE that the present *Application by the Respondents Microsoft Corporation and Microsoft Canada Inc. for Declinatory Exception To Limit the Proposed Class* will be presented for adjudication before the honourable justice Stéphane Lacoste S.C.J. of the Superior Court, sitting in civil practice division for the district of Montréal at a date and time to be determined at the Montréal courthouse, located at 1 Notre-Dame Street East, Montréal, Quebec, H2Y 1B6, in a room to be determined or by videoconference in a virtual room to be determined.

Montréal, this December 22, 2021

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**APPLICATION BY THE RESPONDENTS
MICROSOFT CORPORATION AND
MICROSOFT CANADA INC. FOR
DECLINATORY EXCEPTION TO LIMIT THE
PROPOSED CLASS**

ORIGINAL

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