

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL
LOCALITY OF MONTRÉAL

SUPERIOR COURT
(Class Action Chamber)

No: 500-06-001132-212

GABRIEL BOURGEOIS

Petitioner

vs.

ELECTRONICS ARTS INC.,

et als.

Respondents

**RESPONDENTS MICROSOFT CORPORATION AND MICROSOFT CANADA INC.'S
APPLICATION FOR AUTHORIZATION TO ADDUCE RELEVANT EVIDENCE
(574 CCP)**

**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**") hereby seek the authorization of this Honourable Court to adduce relevant evidence pursuant to article 574, paragraph 3 of the *Code of Civil Procedure*, RLRQ c C-25.01 ("**CCP**").
2. More specifically, Microsoft seeks authorization to adduce as relevant evidence a Sworn Statement of a Microsoft representative (or more, depending on the knowledge of the affiant(s)) and its annexe(s).
3. Microsoft also seeks authorization to ask supplementary questions to Mr. Bourgeois if Scopely Inc. is authorized to examine the Petitioner.
4. As further detailed below, the Sworn Statement is relevant and necessary for the Court's analysis of the authorization criteria pursuant to article 575 CCP, and more particularly in order to complete, correct, clarify and explain certain false, incomplete and/or ambiguous allegations advanced by the Petitioner.

II. THE AMENDED AUTHORIZATION APPLICATION

5. 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 (the “**Amended Authorization Application**”). 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.

6. 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).
7. 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 Quebec*, 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).
8. The Amended Authorization Application is thus seeking compensatory and punitive damages from the Respondents for the members of the Proposed Class.

III. THE SWORN STATEMENT IS RELEVANT AND NECESSARY

9. Microsoft seeks this Honourable Court's permission to file a Sworn Statement of a Microsoft representative in order to complete and correct several vague, ambiguous and/or erroneous allegations advanced in the Amended Authorization Application, and to provide all of the relevant and necessary information for the Court's analysis of the authorization criteria of 575 CCP, the whole consistent with the type of evidence allowed by the Courts at the authorization stage of a class action.
10. More specifically, the Sworn Statement will serve, among other things, to:
 - a) Correct and complete the Amended Authorization Application's misleading allegations that Microsoft has failed to place safeguards to protect minors (see for example paras. 44, 46 and 47 of the Amended Authorization Application), by explaining the various safeguards that Microsoft has put in place to protect minors;
 - b) Correct and complete the Amended Authorization Application's misleading assumption that all "loot boxes" are the same, by demonstrating that each game and each "loot box" is unique and has its own characteristics;
 - c) Correct and complete the Amended Authorization Application's erroneous allegations that all of Microsoft's games listed in Appendix A of the Amended Authorization Application contain paid "loot boxes" (see paras. 102-104 of the Amended Authorization Application), by identifying Microsoft's games that offer paid "loot boxes" components;
 - d) Correct and complete the Amended Authorization Application's vague, ambiguous, incomplete and erroneous allegations regarding "loot boxes" generally and their characteristics (see for example paras. 61-71, 81-82, and 102-104 of the Amended Authorization Application) by describing the characteristics and functionalities of the Microsoft games;
 - e) Correct and complete the Amended Authorization Application's vague, ambiguous and erroneous allegations regarding the use by Microsoft of Direct Gambling Mechanics, Dynamic Difficulty Adjustment, Matchmaking Optimization and Dynamic Pricing (as these terms are defined in the Amended Authorization Application, see paras. 72-80 of the Amended Authorization Application);
 - f) Complete the Amended Authorization Application by providing the relevant terms and conditions applicable to Microsoft's video games that include "loot boxes" components;
 - g) Provide the appropriate factual matrix to determine whether it is arguable that video games that include "loot boxes" components could constitute illegal gambling under the *Criminal Code*;

11. The Sworn Statement of a Microsoft Representative will thus serve to complete and correct the otherwise vague, ambiguous and/or erroneous allegations of the Amended Authorization Application regarding Microsoft's parental controls and games containing paid "loot boxes".
12. It will provide the Court with the complete factual matrix regarding the allegations advanced by the Petitioner in this regard and will assist this Honourable Court in its analysis of the authorization criteria, and specifically in its determination of whether the Petitioner has established an arguable case pursuant to article 575 (2) CCP and whether the claims of the members of the Proposed Class raise identical, similar or related issues of law or fact pursuant to article 575(1) CCP.
13. Microsoft submits that this evidence will demonstrate that the proposed class action is not only untenable but also frivolous in many respects.
14. It will also demonstrate the absence of common issues regarding "loot boxes", as video games and "loot boxes" are extremely different from one another.
15. In addition, Microsoft seeks the Court's authorization to ask supplementary questions to Mr. Bourgeois if Scopely Inc. is authorized to examine the Petitioner.
16. The present Application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Application for Authorization to Adduce Relevant Evidence*;

RESERVE Respondents Microsoft Corporation and Microsoft Canada Inc. ("**Microsoft**")'s right to amend this Application to allege the specific evidence that it seeks to adduce;

AUTHORIZE Microsoft to file a Sworn Statement of a Microsoft representative and its annexe(s) as relevant evidence for the purposes of the authorization hearing.

AUTHORIZE Microsoft to ask supplementary questions to Mr. Bourgeois if Scopely Inc. is authorized to examine the Petitioner;

THE WHOLE, with legal costs.

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. to Adduce Relevant Evidence* 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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ORIGINAL

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