

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: **500-06-001041-207**

SUPERIOR COURT
(Class Actions)

CHAFIK MIHOUBI

Plaintiff

v.

PRICELINE.COM, L.L.C.

-and-

HOTWIRE, INC.

-and-

HOMEAWAY.COM, INC.

-and-

ACCOR SA

-and-

BEDANDBREAKFAST.COM, INC.

-and-

**CANADASTAYS (1760335 ONTARIO
INC.)**

-and-

HILTON WORLDWIDE HOLDINGS, INC.

-and-

SIX CONTINENTS HOTELS, INC.

-and-

ORBITZ WORLDWIDE, L.L.C.

-and-

HYATT HOTELS CORPORATION

-and-

WYNDHAM HOTEL GROUP, L.L.C.

-and-

KAYAK EUROPE, G.M.B.H.

-and-

**BENJAMIN & BROTHERS, L.L.C.
(RESERVATIONS.COM)**

Defendants

**DEFENCE OF THE DEFENDANT
HILTON WORLDWIDE HOLDINGS INC.
(Art. 170 C.C.P.)**

IN DEFENCE TO PLAINTIFF'S JUDICIAL APPLICATION ORIGINATING A CLASS ACTION, DEFENDANT HILTON WORLDWIDE HOLDINGS INC. ("HILTON") SUBMITS THE FOLLOWING:

1. With respect to the allegations contained in paragraphs 1 and 2 of the *Demande introductive d'instance de l'action collective* (the "**Application**"), it refers to the *Consumer Protection Act*, CQLR c. P-40.1 (the "**CPA**"), denying any liability and the validity of the conclusions sought by the Plaintiff.
2. It denies the allegations contained in paragraphs 3 to 5 of the Application.
3. With respect to the allegations contained in paragraphs 6 to 8 of the Application, it refers to the authorization judgement rendered by Justice Martin Sheehan on January, 11 2022 (the "**Authorization Judgment**"), denying any liability and the validity of the conclusions sought by the Plaintiff.
4. It has no knowledge of the allegations contained in paragraphs 9 to 13 of the Application.
5. With respect to the allegations contained in paragraphs 14 and 16 of the Application, Hilton admits only that its subsidiaries operate a website and mobile application allowing users to book accommodations in many countries, having no knowledge of the activities of other defendants.
6. It has no knowledge of the allegations contained in paragraph 15 of the Application.
7. It denies the allegations contained in paragraph 17 of the Application.
8. With respect to the allegations contained in paragraph 18 of the Application, it refers to the Authorization Judgement, denying any liability and the validity of the conclusions sought by the Plaintiff.
9. It has no knowledge of the allegations contained in paragraph 19 of the Application.
10. It denies as drafted the allegations contained in paragraphs 20 to 24 of the Application.
11. It has no knowledge of the allegations contained in paragraphs 25 to 73 of the Application.
12. With respect to the allegations contained in paragraph 74 of the Application, it admits that its subsidiaries operate the hilton.com website, denying anything inconsistent therewith.

13. It denies as drafted the allegations contained in paragraphs 75 to 78 of the Application.
14. It has no knowledge of the allegations contained in paragraphs 61 to 118 of the Application.
15. With respect to the allegations contained in paragraphs 119 to 130, it refers to the applicable laws and regulations, denying any liability and the validity of the conclusions sought by the Plaintiff.
16. It denies the allegations contained in paragraphs 131 to 149 of the Application.

AND FOR FURTHER PLEA, HILTON ADDS THE FOLLOWING:

I. INTRODUCTION

17. Hilton is a multi-national hospitality company which, during, the class period owned, managed, and franchised hotels in numerous countries around the world under numerous distinct hotel brands.
18. Consumers may visit hilton.com for various reasons. For example, consumers may learn about Hilton properties, join Hilton's rewards program, and learn about different specials or packages.
19. Consumers have multiple options for how they may book lodging at a Hilton hotel, including direct online booking through hilton.com, via telephone, booking in person, or indirect booking through an online travel agency ("OTA") such as Priceline or Expedia, or via telephone.
20. Consumers who are interested in learning about room rates or booking directly at hilton.com must first enter their destination, dates of their stay, any special rates, affinity discounts, or promotion codes that may apply, and the room type.
21. Some Hilton hotels impose mandatory nightly fees associated with the reservation, often referred to as "resort fees." These resort fees cover the cost of various amenities that are offered to consumers at these Hilton resorts. Certain non-resort Hilton hotels charge similar mandatory fees known as "urban destination fees" or "daily mandatory charges" for amenities included at those particular hotels.
22. In all cases, Hilton's booking process discloses if a mandatory fee will be charged on a per night basis, the amount of the fee, and the amenities provided by the fee. Such disclosures are available to the consumer at the first opportunity after the consumer selects the information necessary to determine if a mandatory fee applies – and at multiple times in the booking process before the reservation is finalized. More importantly, prior to payment, consumers are provided with a clear breakdown of the "Total for Stay," which includes the nightly rate, any mandatory fees, and taxes.

II. HILTON DULY DISCLOSES THE FEES INVOICED TO THE CLASS MEMBERS

23. The reservation process for a hotel room on the Hilton website is distinctly clear and leaves no doubt for the consumer with regards to the fees that will be charged to the customer, as appears from a screen shot of the reservation process for a given Hilton hotel, communicated herewith as **Exhibit H-1**.
24. The reservation process involves three (3) different steps and, as soon as a hotel property is selected and the reservation process begins, the mandatory fees are disclosed to the customer.
25. Indeed, as appears from Exhibit H-1, page 6, as soon as a room for a hotel property is selected, which is the first step of the reservation process, a disclaimer appears on top of the page stating that “Daily Resort Charge includes: Guest internet access; beach club access with 2 chairs & towels; transportation within a 3 mile area via an electric cart; beach cruiser bikes; 2 bottled waters daily; 2 cups of American Coffee daily; local & toll-free calls.”

Daily Resort Charge includes: Guest Internet access; beach club access with 2 chairs & towels; transportation within a 3 mile area via an electric cart; beach cruiser bikes; 2 bottled waters daily; 2 cups of American Coffee daily; local & toll-free calls.

26. In addition, as appears from Exhibit H-1, page 7, there is a specific mention under the rate for available rooms stating “Plus \$32.00 USD resort charge per night, plus tax”:

Daily Resort Charge includes: Guest Internet access; beach club access with 2 chairs & towels; transportation within a 3 mile area via an electric cart; beach cruiser bikes; 2 bottled waters daily; 2 cups of American Coffee daily; local & toll-free calls.

We found 1 room for you.

Avg/night in \$USD ▼



2 Queens Signature

Quick Book
Honors Discount **\$260**

More Rates From \$230

Plus \$32.00 USD resort charge per night, plus tax

27. When the room is selected on the Hilton website, the rate type must be selected before Hilton may determine whether any mandatory fees will apply. The customer, in the course of the reservation, can select different packages. This is the second step of the reservation process. As appears from Exhibit H-1, page 8, the same disclaimer as the one on page 7 appears on the top of the page regarding the Daily Resort Charge, and the same mention of the amount of the resort charge appears under the available rates from pages 8 to 10.

28. As appears from Exhibit H-1, pages 8 to 10, there is a link on the right of the available rate which provides the detailed room rate, including taxes and fees, as appears from page 11 of Exhibit H-1.

Flexible Rate
Change or cancel up to 1 day before arrival. Pay when you stay.

2 Queens Signature
3 adults

Avg **\$269.00/night in USD**

| | |
|--------------------------|-----------------|
| 11 Oct 2021 | \$269.00 |
| 12 Oct 2021 | \$269.00 |
| 13 Oct 2021 | \$269.00 |
| Total room charge | \$807.00 |

Resort Charge: \$32.00 per room, per night

| | |
|-------------------|----------------|
| Total fees | \$96.00 |
|-------------------|----------------|

7.00 % per room, per night
4.00 % per room, per night
3.00 % per room, per night

| | |
|--------------------|-----------------|
| Total taxes | \$126.42 |
|--------------------|-----------------|

Book Total for stay: **\$1,029.42**

Guarantee Policy
This reservation requires a credit card deposit of \$343.14 USD which will be charged to your card.
If you use a debit/credit card to check in, a hold may be placed on your card account for the full anticipated amount to be owed to the hotel, including estimated incidentals, through your date of check-out and such hold may not be released for 72 hours from the date of check-out or longer at the discretion of your card issuer.

Cancellation Policy
If you wish to cancel, please do so 1 day prior to arrival to avoid cancellation penalties.
At check in, the front desk will verify your check-out date. Rates quoted are based on check-in date and length of stay. Should you choose to depart early, price is subject to change.
We reserve the right to cancel or modify reservations where it appears that a customer has engaged in fraudulent or inappropriate activity or under other circumstances where it appears that the reservations contain or resulted from a mistake or error.
Totals listed here are estimated based on current taxes and exchange rates (if applicable) and do not include additional fees/charges that may be incurred during your stay.

Optional services for an additional charge

29. As appears from Exhibit H-1, page 12, as soon as a rate type is selected, the detailed room rate, including taxes and fees appears on top of the page, as well as a link to the price details.

Hilton HONORS

Plans Change Look for our flexible booking options with free changes and cancellations available at every hotel.

Step 3 of 3
Payment and Guest Details

Total for stay **\$1,029.42**
[Show price details](#)

| | |
|-------------------|----------|
| Total room charge | \$807.00 |
| Total fees | \$96.00 |
| Total taxes | \$126.42 |

All fields are required unless marked optional.

Payment

Card number
Month Year

Guest information

Gale South Beach, Curio Collection by Hilton
11 Oct - 14 Oct 2021 (3 nights)
1 room for 3 adults
[Edit Stay](#)

- 2 Queens Signature
Change Room
- Flexible Rate
Change Rate
- Payment and Guest Details**

30. At step 3 of the reservation process, the customer must confirm the payment and guest details. As appears from Exhibit H-1, page 15, the total price details also include the taxes and fees.

Hilton
HONORS

Sign In | Join

Plans Change Look for our flexible booking options with free changes and cancellations available at every hotel.

Step 3 of 3

Payment and Guest Details

| | |
|------------------------------------|---------------------------|
| Total for stay | \$1,029.42 |
| Hide price details | Avg \$269.00/night in USD |


| | |
|--|-----------------|
| Flexible Rate | |
| 11 Oct 2021 | \$269.00 |
| 12 Oct 2021 | \$269.00 |
| 13 Oct 2021 | \$269.00 |
| Total room charge | \$807.00 |
| Resort Charge: \$32.00 per room, per night | |
| Total fees | \$96.00 |
| 7.00 % per room, per night | |
| 4.00 % per room, per night | |
| 3.00 % per room, per night | |
| Total taxes | \$126.42 |

Total for stay: \$1,029.42

All fields are required unless marked optional.

Payment

Card number



Gale South Beach, Curio Collection by Hilton

11 Oct – 14 Oct 2021 (3 nights)
1 room for 3 adults
[Edit Stay](#)

- 2 Queens Signature
Change Room
- Flexible Rate
Change Rate
- Payment and Guest Details**

31. As appears from Exhibit H-1, pages 12 to 18, the detailed room rate, including taxes and fees, must be confirmed in order for a reservation to be made.
32. The mandatory fees invoiced by Hilton vary by location but may include certain amenities, such as use of a fitness center, food or beverages, local calls, discounts, transportation, towels and beach chairs, etc. As set forth in paragraphs 22 and following, consumers are informed of the mandatory fee and what the mandatory fee covers multiple times through the reservation process.
33. Consequently, the Hilton customer knows specifically, throughout all of the different steps in the reservation process and before they pay, what mandatory fees will be charged. Therefore, Hilton's process is fully compliant with legal requirements.
34. In addition, the class members did not suffer any damages through the reservation process.
35. There is also no evidence that the alleged display of the mandatory fees would have influenced the class members' decision to reserve an accommodation with Hilton.
36. In most cases, Hilton allows customers to cancel 1 day prior to arrival without penalty, as set forth in Exhibit H-2. Consequently, the class members are aware, throughout all of the different steps of the reservation process, of the mandatory fees charged, and may avoid paying those fees up until one day prior to their stay.

III. THE CIVIL RECOURSES PROVIDED BY THE CONSUMER PROTECTION ACT CANNOT BE APPLIED TO THIS MATTER

37. Hilton's website and the application allow consumers to reserve accommodations in one of Hilton's hotels.
38. The civil recourses provided for at section 272 CPA are unavailable to the class members, as this provision is inapplicable to contracts regarding the lease of an immovable, pursuant to sections 6 and 6.1 CPA.
39. Only sections 264 to 267 and 277 to 290.1 CPA of title IV respecting business practices, are applicable to the rental of an immovable property.
40. Section 272 of the CPA is thus inapplicable to the rental of an immovable property for vacation purposes and there are no civil remedies that can be sought by Mr. Mihoubi or by the class members under the CPA.

IV. THERE IS NO VALID CLAIM AGAINST HILTON FOR PUNITIVE DAMAGES

41. There are no allegations in the Application that can justify an award of any punitive damages against Hilton.
42. Considering that no civil remedies can be sought based on section 272 CPA, the class members cannot claim punitive damages.
43. In addition, there is not in the present case any intentional, malicious or vexatious conduct by Hilton nor any conduct displaying ignorance, carelessness or serious negligence with respect to their obligations and consumers' rights. As a result, there cannot be any award of punitive damages against Hilton.

V. THE LAWS OF THE STATE OF NEW YORK ARE APPLICABLE TO THE CONTRACT CONCLUDED BETWEEN THE CLASS MEMBERS AND HILTON

44. Article XV of Hilton's Site Usage Agreement (the "**Agreement**"), entitled "General Provisions" specifically provides that the Agreement is governed by the laws of the State of New York, as appears from Hilton's Site Usage Agreement, communicated herewith as **Exhibit H-3**.
45. Considering that section 19 CPA is inapplicable to contracts regarding the lease of an immovable, the laws of the State of New York are applicable to the contract concluded between the class members and Hilton.
46. There can be no recourse against Hilton pursuant to the CPA.

VI. ANSWERS TO COMMON QUESTIONS

47. In light of the foregoing, the answers to the common authorized questions should be as follows:

- a) Are the contracts entered into between the Class Members and the Defendants contracts for the lease of a building within the meaning of Sections 6 and 6.1 of the CPA?

Answer: Yes.

- b) Are the first prices that appear on Hilton's website and mobile application following a search for accommodations advertised prices within the meaning of article 224(c) CPA?

Answer: No.

- c) Did Hilton breach its obligations under the CPA by advertising on its website and mobile application a lower price than the one ultimately charged?

Answer: No.

- d) Did Hilton breach its obligations under the CPA by placing more emphasis on the price per night than on the price of the full stay?

Answer: No.

- e) Are the class members entitled to compensation for the difference between the advertised price and the invoiced price, minus the taxes and duties provided for in the exceptions of paragraph 3, article 224 CPA and section 91.8 RRACPA?

Answer: No.

- f) Should Hilton be ordered to pay punitive damages to the class members?

Answer: No.

- g) Do members' claims have to be recovered collectively?

Answer: No.

- h) What is the amount of fees unlawfully charged to each class member?

Answer: None.

48. The Judicial Application Originating a Class Action is ill founded in fact and in law.

49. Hilton's Defence is well founded in fact and in law.

FOR THESE REASONS, DEFENDANT PRAYS THIS HONOURABLE COURT TO:

A. GRANT the present Defence;

- B. DISMISS** Plaintiff's Judicial Application Originating a Class Action;
- C. THE WHOLE** with legal costs.

Montréal, January 31, 2023

Borden Ladner Gervais LLP

Borden Ladner Gervais LLP

Lawyers for Defendants

Hilton Worldwide Holdings Inc.

Mtre. Karine Chênevert

1000 De La Gauchetière Street West

Suite 900

Montréal QC H3B 5H4

Tel.: 514.954.3180

Fax: 514.954.1905

Email: kchenevert@blg.com

Notification: notification@blg.com

O/File: 564920.000003

Angers, Nathalie

De: Angers, Nathalie
Envoyé: February 1, 2023 10:11 AM
À: mathieu@tjl.quebec; lex@tjl.quebec; bgrenier@grenierverbauwhede.ca; cverbauwhede@grenierverbauwhede.ca; peter@hadekelshams.ca; eric.lefebvre@nortonrosefulbright.com; claudette.vanzyl@nortonrosefulbright.com; sandrine.raquepas@nortonrosefulbright.com; eprefontaine@osler.com; elynch@osler.com; mbrixi@lavery.ca; notifications-mtl@lavery.ca; tpinos@cassels.com; simon.seida@blakes.com; anthony.cayer@blakes.com; Joseane Chretien; Yassin Gagnon-Djalo; Eric Vallieres; Gabrielle Lachance-Touchette; Notifications-mtl@nortonrosefulbright.com; notifications-mtl@lavery.ca
Cc: Chênevert, Karine; De Zordo, Alexander L.; Saint-Onge, Jean
Objet: NOTIFICATION: Chafik Mihoubi v. Priceline.com, L.L.C. et al. (No. 500-06-001041-207) //Defence of Hilton Worldwide Holdings inc. and Exhibits H-1 to H-3
Pièces jointes: 2023-01-31- Defence Hilton.pdf; Exhibit H-1.pdf; Exhibit H-2.pdf; Exhibit H-3 (Hilton Site Usage Agreement.pdf)

Suivi:

Destinataire

Réception

mathieu@tjl.quebec
lex@tjl.quebec
bgrenier@grenierverbauwhede.ca
cverbauwhede@grenierverbauwhede.ca
peter@hadekelshams.ca
eric.lefebvre@nortonrosefulbright.com
claudette.vanzyl@nortonrosefulbright.com
sandrine.raquepas@nortonrosefulbright.com
eprefontaine@osler.com
elynch@osler.com
mbrixi@lavery.ca
notifications-mtl@lavery.ca
tpinos@cassels.com
simon.seida@blakes.com
anthony.cayer@blakes.com
Joseane Chretien
Yassin Gagnon-Djalo
Eric Vallieres
Gabrielle Lachance-Touchette
Notifications-mtl@nortonrosefulbright.com
notifications-mtl@lavery.ca
Chênevert, Karine
De Zordo, Alexander L.
Saint-Onge, Jean

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Remis: 2023-02-01 10:12 AM

NOTIFICATION BY ELECTRONIC

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(ARTICLE 134 C.P.C.)

DATE:

Montréal, February 1, 2023

SENDER(S):

| | |
|---------------------------|--|
| Name(s): | Mtre. Karine Chênevert |
| Firm: | BORDEN LADNER GERVAIS LLP |
| Address: | 1000 De La Gauchetière St. West, suite 900 Montréal, Québec, H3B 5H4 Lawyers for Defendants ACCOR, S.A. and Hilton Worldwide Holdings, inc. |
| Telephone: | 514.954.3180 |
| Email address(es): | kchenevert@blg.com |
| Our file: | 564920.000003 |

ADDRESSEE(S):

| | |
|---------------------------|---|
| Name: | Mtre Mathieu Charest-Beaudry / Mtre Lex Gill |
| Firm: | TRUDEL JOHNSTON & LESPÉRANCE, s.e.n.c. |
| | Me Bruno Grenier / Me Cory Verbauwhede GRENIER VERBAUWHEBE AVOCATS INC. |
| | Me Peter Shams HADEKEL SHAMS s.e.n.c.r.l. |
| | Lawyers for Plaintiff |
| Email address(es): | mathieu@tjl.quebec / lex@tjl.quebec / bgrenier@grenierverbauwhede.ca / cverbauwhede@grenierverbauwhede.ca / peter@hadekelshams.ca |

| | |
|---------------------------|---|
| Name: | Mtre. Eric C. Lefebvre Mtre Claudette Vanzyl Mtre Sandrine Requepas |
| Firm: | NORTON ROSE FULBRIGHT CANADA LLP |
| | Lawyers for Hotwire, inc., Homeaway.com, inc., Bedandbreakfast.com, inc., Canadastays (1760335 Ontario inc.) and Orbitz Worldwide, L.L.C. |
| Email address(es): | eric.lefebvre@nortonrosefulbright.com / claudette.vanzyl@nortonrosefulbright.com sandrine.raquepas@nortonrosefulbright.com |

| | |
|---------------------------|---|
| Name: | Mtre. Éric Préfontaine Mtre Emily Lynch |
| Firm: | OSLER, HOSKIN & HARCOURT LLP |
| | Lawyers for Hyatt Hotels Corporation and Hyatt Corporation |
| Email address(es): | eprefontaine@osler.com / elynch@osler.com |

Name: Mtre. Myriam Brix
Firm: LAVERY, DE BILLY, LLP.

Mtre Joseph David Timothy Pinos
CASSELS BROCK & BLACKWELL LLP

Lawyers for Six Continents Hotels, inc.
Email address(es): mbixi@lavery.ca / notifications-mtl@lavery.ca / tpinos@cassels.com / notifications-mtl@lavery.ca

Name: Mtre. Simon J. Seida
Firm: Mtre Anthony Cayer
BLAKE, CASSELS & GRAYDON LLP

Lawyers for Wyndham Hotel Group, L.L.C.

Telephone:
Email address(es): simon.seida@blakes.com / anthony.cayer@blakes.com

Name: Me Éric Vallières / Me Gabrielle Lachance-Touchette
Firm: MCMILLAN LLP

Lawyers for Priceline.com and Kayak Software Corporation

Email address(es): eric.vallieres@mcmillan.ca
gabrielle.lachance-touchette@mcmillan.ca

Name: Me Joséane Chrétien / Mtre Yassin Gagnon-Djalo
Firm: MCMILLAN LLP

Lawyers for Benjamin & Brothers, L.L.C. (Reservations.com)

Email address(es): Joseane.chretien@mcmillan.ca
Yassin.gagnon-djalo@mcmillan.ca

COURT FILE NUMBER AND NATURE OF THE NOTIFIED DOCUMENT:

Court number: 500-06-001041-207

Parties: Chafik Mihoubi c. Priceline.com, L.L.C., Hotwire, inc., Homeaway.com, inc., Accor, S.A., Bedandbreakfast.com, inc., Canadastays (1760335 Ontario inc.), Hilton Worldwide Holdings, inc., Six Continents Hotels, inc., Orbitz Worldwide, L.L.C., Hyatt Hotels Corporation, Wyndham Hotel Group, L.L.C., Kayak Europe, G.M.B.H. et Benjamin & Brothers, L.L.C. (Reservations.com)

Nature of the document: Defence of Hilton Worldwide Holdings inc. and Exhibits H-1 to H-3

Number of pages: -10- (Defence only)
(attachments only)



Nathalie Angers

**Adjointe à la pratique pour / Practice Assistant
for Karine Chênevert, Ève Gaudet & Justine Kochenburger**

T 514.954.2555 #23206 | NAngers@blg.com

1000, rue De La Gauchetière Ouest, bureau / suite 900, Montréal, QC, Canada H3B 5H4

notification@blg.com

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SUPERIOR COURT
(Class Actions)

DISTRICT OF MONTRÉAL
N° : 500-06-001041-207

CHAFIK MIHOUBI

Plaintiff

v.

PRICELINE.COM, L.L.C. et als.

Defendants

**DEFENCE OF DEFENDANT HILTON
WORLDWIDE HOLDINGS, INC.**
(Art. 170 CCP)

ORIGINAL

BLG 1000, rue De La Gauchetière Ouest
Bureau 900
Montréal, QC, Canada H3B 5H4
Téléphone : 514.879.1212
Borden Ladner Gervais Télécopieur : 514.954.1905
kchenevert@blg.com

B.M. 2545 Mtre Karine Chênevert
File : 299542.000001