

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Actions)

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

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 ACCOR SA
(Art. 170 C.C.P.)

IN DEFENCE TO PLAINTIFF'S JUDICIAL APPLICATION ORIGINATING A CLASS ACTION, DEFENDANT ACCOR SA ("ACCOR") 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, Accor admits operating a website and mobile application allowing users to book accommodations for numerous 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 Judgment, 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 54 of the Application.
12. With respect to the allegations contained in paragraph 55 of the Application, it refers to Exhibit P-24, denying anything inconsistent therewith.
13. It denies as drafted the allegations contained in paragraphs 56 to 60 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, THE DEFENDANT ACCOR S.A. ADDS THE FOLLOWING:

A. Introduction

17. Accor is a global hotel operator and franchisor, offering a diverse brand portfolio with more than 40 hotel brands in numerous countries around the world.
18. Accor SA operates and franchises certain hotels located in Europe. Subsidiary entities of Accor SA operate and franchise hotels in North America. Accor SA does not set the fees for all Accor branded hotels worldwide.
19. Accor did not breach any legal requirements since it only advertises a single price in its accommodation booking process in a manner that is not misleading to consumers.
20. Any fees invoiced to the customers are duly and completely disclosed to the Accor customers in the context of any reservation on the Accor website or application.

B. Accor duly discloses the fees invoiced to the class members

21. The reservation process for a hotel room on the Accor website or on its application is clear and leaves no doubt for the class members with regards to the fees invoiced, as appears from a screen shot of the reservation process for a given Accor hotel, communicated herewith as **Exhibit A-1**.
22. As appears from the first screenshot in Exhibit A-1 at page 1, the first results page, which includes different hotel establishments in which different types of accommodations are available, includes disclaimers, at the rate display, that the rate displayed is a "rate from".
23. As appears from Exhibit A-1, at page 3, as soon as a particular room is selected for the first time from the various room options, a total price for the stay is detailed, including taxes and fees:

[Back to results](#)



SLS South Miami Beach
4.5/5 (2939 Reviews)
📶 🚰 🚰
🕒 Check-in 16:00 🕒 Checkout 11:00

[See details →](#)

ALL - ACCOR LIVE LIMITLESS

By becoming a member of the loyalty programme, you can access the members' rate and save 5%

Become a member

Choose your room

Prices are for 3 people and 3 nights
Prices are only valid for 15 minutes. Select the "Refresh prices" option when suggested.

2 ROOMS FOR YOUR SEARCH

Filter: Breakfast included



Superior City View Double
👤 maximum: 4 adults 1,25 m²/269 ft²

Philippe Stark designed rooms with two SLS signature double beds & panoramic art deco views. Dual rainfall shower head bathrooms with Ciel Reserve spa amenities. 42" HD TV, Lavazza Espresso machine, plush bathrobes, slippers & in-room safes.

Standard Package

Get Real, Experience it All

Cancellation subject to conditions
 Online payment

Average per night
CA\$461.19
 Taxes not included: CA\$193.71
 Fees not included: CA\$185.97
 of which Resort Experience Fees: CA\$81.99 per night
[Pricing conditions](#)

FLEXIBLE RATE - BED AND BREAKFAST

Cancellation subject to conditions
 No prepayment required
 Breakfast included

Average per night
Public: **CA\$615.08**
 Member: **CA\$584.32**
 Taxes not included: CA\$214.98
 Fees not included: CA\$185.97
 of which Resort Experience Fees: CA\$81.99 per night
[Pricing conditions](#)

👤 Become a member for free to save 5 %.



Premier Ocean View Double
👤 maximum: 4 adults 1,25 m²/269 ft²

Rate from(1)
 CA\$512.54
 Average per night | 3 adults

Select a rate

* The prices indicated are per accommodation (room, bed, etc.) or other services, for the number of people and the date(s) selected previously unless otherwise specified. If they are not included in the rate or specifically selected when the reservation is made, supplementary services (breakfast, half board, full board etc.) are available as option which can be paid at the hotel directly.

Taxes are included in the price or indicated in the tax details. Some taxes may be payable on arrival at the hotel (for example, tourist tax), depending on current local regulations.

All bookings, wherever they are made, are payable in the hotel's currency. Only the amount confirmed during the booking in the currency of the hotel is guaranteed. Conversion to the customer's currency is given for reference only and is not part of the contract. Costs linked to conversions between the hotel's currency and that of the customer (exchange rates, bank fees) shall be paid by the customer.

[General Conditions of Sale](#)
[ALL - Accor Live Limitless terms and conditions \(PDF 530 KB\)](#)

[Hide](#)

Cart details

Superior City View Double CA\$461.19 avg/night

Get Real, Experience it All
[Pricing conditions](#)

Taxes
 • Taxes CA\$193.71

Fees
 • Fees CA\$185.97
 of which Resort Experience Fees: CA\$81.99 per night

[Learn more](#)

TOTAL (Fees and taxes included) **CA\$1,763.23**
 i.e. US\$1,459.14

Validate

Feedback

24. A dropdown Cart details, shown at page 4 of Exhibit A-1, specifies “Fees of which Resort Experience Fees: \$61.99CA per night.”

The screenshot shows a 'Cart details' dropdown menu with the following information:

Cart details Hide	
Superior City View Double	CA\$461.19 avg/night
Get Real, Experience it All Pricing conditions	
Taxes	
• Taxes	CA\$193.71
Fees	
• Fees	CA\$185.97 <i>of which Resort Experience Fees: CA\$61.99 per night</i>
Learn more	
TOTAL (Fees and taxes included)	CA\$1,763.23 i.e. US\$1,459.14

[Skip this step](#)

25. The Cart details also contain a link to Pricing conditions, and as appears at page 5 of Exhibit A-1, the Pricing conditions also detail the taxes and fees.
26. In order for a reservation to be completed and as appears from Exhibit A-1, the detailed total, including taxes and fees, must be (i) validated in the process shown at pages 3 and 4, (ii) confirmed in the process shown at pages 8 and 9 and (iii) reviewed when completing payment, as shown at page 9.
27. The link to the Pricing conditions breaking out the components of the total price appears again at pages 6, 8 and 9 of Exhibit A-1.
28. Consequently, the class members are aware, throughout all of the different steps, of the fees invoiced.
29. Accor’s process is therefore fully compliant with legal requirements.
30. In addition, the class members did not suffer any damages through the reservation process. They had multiple opportunities to cancel their reservation should they wish to do so.

C. The civil recourses provided by the *Consumer Protection Act* cannot be applied to this matter

31. Accor's terms and conditions on its website provide that the site "allows the reservation of rooms in hotels or other types of accommodation operated under an ACCOR brand", as appears from the terms and conditions attached herewith as **Exhibit A-2**.
32. 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.
33. 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.
34. 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.

D. There is no valid claim against Accor for punitive damages

35. There are no allegations in the Application that can justify an award of any punitive damages against Accor.
36. Considering that no civil remedies can be sought based on section 272 CPA, the class members cannot claim punitive damages.
37. In addition, there is not in the present case any intentional, malicious or vexatious conduct by Accor 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 Accor.

E. French law is applicable to the contract concluded between the class members and Accor

38. Article 12 of Accor's General Terms and Conditions of Services (the "**Terms and Conditions**"), filed as Exhibit A-2, entitled "Applicable Law and Dispute Resolution" specifically provides that the Terms and Conditions are governed by French law.
39. Considering that section 19 CPA is inapplicable to contracts regarding the lease of an immovable, French law is applicable to the contract concluded between the class members and Accor.
40. Consequently, French law is applicable to the contract concluded between the class members and Accor.
41. There can be no recourse against Accor pursuant to the CPA.

F. Answers to the common issues

42. For these reasons, the principal issues of fact and law to be dealt with collectively must be answered as follows:

1) Are the contracts between Class Members and Defendants contracts regarding the lease of an immovable within the meaning of sections 6 and 6.1 of the CPA?

Answer: Yes.

2) Are the first prices that appear on the Defendants' websites and mobile applications following a search for accommodations advertised prices within the meaning of Section 224(c) of the CPA?

Answer: No.

3) Did the Defendants breach their obligations under the CPA by advertising on their websites and mobile applications a lower price than the one ultimately charged?

Answer: No.

4) Did the Defendants breach their obligations under the CPA by placing more emphasis on the price per night than the price of the stay?

Answer: No.

5) Are the class members entitled to compensation for the difference between the advertised price and the invoiced price, less taxes and duties provided for in the exceptions to article 224(3) CPA and article 91.8 of the Regulation?

Answer: No.

6) Should the defendants be ordered to pay punitive damages to the class members?

Answer: No.

7) Should the members' claims be recovered collectively?

Answer: No.

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

Answer: No fees were unlawfully charged.

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

44. Accor'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, February 7, 2023



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Objet: NOTIFICATION: Chafik Mihoubi v. Priceline.com, L.L.C. et al. (No. 500-06-001041-207) // Defence of Accor, S.A. and Exhibits A-1 and A-2 [BLG-DOCUMENTS.FID7295541]
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564920_000003 _ Accor Management Canada Inc_ _
Quebec Class Action Court_other

NOTIFICATION BY ELECTRONIC

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(ARTICLE 134 C.P.C.)

DATE:

Montréal, February 7, 2023

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Number of pages: -9- (Defence excluding exhibits)
(attachments only)



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SUPERIOR COURT
(Class Actions)

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

CHAFIK MIHOUBI

Plaintiff

c.

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

Defendants

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