

C A N A D A

SUPERIOR COURT  
(Class Actions)

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PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

JANE DOE

N° 500-06-001115-209

Applicant

v.

9219-1568 QUÉBEC INC.  
MINDGEEK S.A.R.L.  
MG FREESITES LTD  
MINDGEEK USA INC.  
MG BILLING LIMITED  
FERAS ANTOON  
DAVID TASSILLO  
COREY URMAN  
9279-2738 QUÉBEC INC.  
SOCIÉTÉ DE GESTION FDCO INC.  
9288-1259 QUÉBEC INC. and  
9288-1275 QUÉBEC INC.

Defendants

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MOTION FOR DECLINATORY EXCEPTION OF  
MINDGEEK S.A.R.L., MG FREESITES LTD,  
MINDGEEK USA INC. and MG BILLING LIMITED

(Art. 167 C.p.c.)

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TO THE HONOURABLE DONALD BISSON, S.C.J., DESIGNATED TO HEAR ALL  
PROCEEDINGS IN THE PRESENT ACTION, MINDGEEK S.A.R.L., MG FREESITES  
LTD, MINDGEEK USA INC. AND MG BILLING LIMITED STATE AS FOLLOWS:

1. MindGeek S.A.R.L., MG Freesites Ltd, MindGeek USA Inc. and MG Billing Limited (hereinafter the "**Foreign Defendants**"), all foreign corporations without any presence or activity in Québec, hereby seek the dismissal as against them of Applicant's *Amended Application for authorization to institute a class action and to obtain the status of representative* (the "**Amended Application for authorization**");
2. For the reasons stated hereinafter, the Superior Court of Québec does not have jurisdiction to hear Applicant's action against them, none of the

grounds of jurisdiction provided by the *Civil Code of Québec* being met in the present case. Indeed:

- a) The Foreign Defendants are not domiciled or based in Québec;
  - b) The Foreign Defendants do not possess or operate any establishment in Québec, nor do they have any activity in Québec;
  - c) The Foreign Defendants did not commit any fault in Québec and there is no contractual relationship between the Applicant and the Foreign Defendants upon which Applicant's claim could be founded;
  - d) Applicant's prejudice was not suffered in Québec;
  - e) The Foreign Defendants did not submit to the jurisdiction of the Courts of Québec;
3. The allegations of the *Amended Application for authorization* are insufficient to establish a factual basis for concluding that the Courts of Québec have jurisdiction. In fact, Applicant's allegations concerning the Foreign Defendants are limited to its broad and vague claim that all defendants should be considered as being each other's *alter ego*, a sweeping assertion that is supported by no specific factual allegation, and which the affidavit of Mr. Andreas Alkiviades Andreou clearly demonstrate is false;

## 2. **MINDGEEK S.A.R.L.**

4. MindGeek S.A.R.L. is a private limited liability company constituted pursuant to the laws of Luxembourg, having its corporate seat and its only establishment in Luxembourg. It is properly registered with the Luxembourg *Registre de commerce et des sociétés*, complies with all applicable corporate formalities under the laws of the Luxembourg and is in good standing vis-à-vis same;
5. MindGeek S.A.R.L. has its own board of managers (*i.e.* board of directors), none of whom is a resident of Québec, is adequately capitalized, possesses its own bank accounts, and enters into, and is responsible for, fulfilling its own contracts;
6. MindGeek S.A.R.L. has no establishment or office in Québec, no employee in Québec, no activity of any kind in Québec, and it does not own any asset in Québec;
7. MindGeek S.A.R.L. is nothing more than a holding company, and has no activity other than as a shareholder;

8. In particular, MindGeek S.A.R.L. does not own, operate or manage any website or server; it does not have any involvement with the website referred to by Applicant as the “offending websites” or with the website content at issue in the present case, and it does not either exercise control over the day-to-day operations or decisions of the other defendants herein;

**3. MG FREESITES LTD**

9. MG Freesites Ltd is a company constituted pursuant to the laws of the Republic of Cyprus, having its corporate seat and its only establishment in Cyprus; it complies with all applicable corporate formalities and is in good standing vis-à-vis same;
10. MG Freesites Ltd has its own board of directors, none of whom are resident of Québec, is adequately capitalized, possesses its own bank accounts, and enters into and is responsible for fulfilling its own contracts;
11. MG Freesites Ltd has no establishment or office in Québec, no employee in Québec, no activity of any kind in Québec, and it does not own any asset in Québec;

**4. MINDGEEK USA INC.**

12. MindGeek USA Inc. is a company constituted pursuant to the laws of the State of Delaware (United States of America), having its registered address and only place of business in California (U.S.A.); it complies with all applicable corporate formalities and is in good standing vis-à-vis same;
13. MindGeek USA Inc. has its own board of directors, none of whom are resident of Québec, is adequately capitalized, possesses its own bank accounts, and enters into and is responsible for fulfilling its own contracts;
14. MindGeek USA Inc. has no establishment or office in Québec, no employee in Québec, no activity of any kind in Québec, and it does not own any asset in Québec;
15. MindGeek USA Inc.’s sole activity is the distribution of DVD-based content; it does not own, operate or manage any website or server, does not have any involvement with any of the “offending websites” or the website content at issue in the present case, and does not either exercise control over the day-to-day operations or decisions of the other defendants herein;

**5. MG BILLING LIMITED**

16. MG Billing Limited is a private company limited by shares constituted pursuant to the laws of the Republic of Ireland, having its registered address

in Ireland and sole place of business in Cyprus; it complies with all applicable corporate formalities and is in good standing vis-à-vis same;

17. MG Billing Limited has its own board of directors, none of whom are resident of Québec, is adequately capitalized, possesses its own bank accounts, and enters into and is responsible for fulfilling its own contracts;
18. MG Billing Limited has no establishment or office in Québec, no employee in Québec, no activity of any kind in Québec, and it does not own any asset in Québec;

## 6. CONCLUSION

19. As appears from the above, this Court does not have jurisdiction to hear the recourse which Applicant seeks to be authorized to institute against the Foreign Defendants, and the *Amended Application for authorization* should therefore be dismissed as it concerns MindGeek S.A.R.L., MG Freesites Ltd, MindGeek USA Inc. and MG Billing Limited.

### FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

**GRANT** the present motion;

**DISMISS** Applicant's *Amended Application for authorization to institute a class action and to obtain the status of representative* against MindGeek S.A.R.L., MG Freesites Ltd, MindGeek USA Inc. and MG Billing Limited;

**WITH** legal costs.

MONTREAL, June 9<sup>th</sup>, 2022



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#### LCM ATTORNEYS INC.

Attorneys for MindGeek S.A.R.L., MG Freesites Ltd, MindGeek USA Inc. and MG Billing Limited

M<sup>re</sup> Sébastien C. Caron

M<sup>re</sup> Fanny Albrecht

scaron@lcm.ca | 514.375.2680

falbrecht@lcm.ca | 514.375.2668

2700-600, De Maisonneuve West

Montreal (Québec) H3A 3J2

Fax: 514.905.2001

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N° : 500-06-001115-209

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9288-1275 QUÉBEC INC.

Defendants

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**AFFIDAVIT OF ANDREAS ALKIVIADES ANDREOU**  
(in support of the Motion for Declinatory Exception)

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I, Andreas Alkiviades Andreou, hereby declare as follows:

1. I am employed by MG CY Holdings Ltd as Director of Corporate Finance, a position which I have held since 2013. I have also served as a Class A manager (the equivalent of a director) for MindGeek S.A.R.L. since 2016.
2. Through my employment and experience, I am familiar with the corporate structure and operations of MindGeek S.A.R.L., MG Freesites Ltd, MindGeek USA Inc. and MG Billing Ltd named in Applicant's *Amended Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* (the "**Amended Application**"). Almost every day, as part of my regular job responsibilities, I deal with issues involving the corporate structure and operations of these corporate legal entities.
3. I have reviewed the Amended Application and am familiar with the allegations made regarding the structure and operations of these legal corporate entities.

a) MindGeek S.A.R.L.

4. MindGeek S.A.R.L. is a private limited liability company (*société à responsabilité limitée*) constituted pursuant to the laws of Luxembourg, having its registered office at 32, boulevard Royal, L-2449 Luxembourg and registered with the Luxembourg Register of Commerce and Companies (R.C.S. Luxembourg) ("RCS") under number B 181337.
5. MindGeek S.A.R.L. is the ultimate parent corporation of MG Freesites Ltd, MindGeek USA Inc., MG Billing Ltd, and Entreprise MindGeek Canada (9219-1568 Québec inc.).
6. MindGeek S.A.R.L. is nothing more than a holding company, without any employees or operations of its own.
7. MindGeek S.A.R.L. is adequately capitalized, both possessing its own bank accounts and serving as a party to and responsible for fulfilling its own contracts. MindGeek S.A.R.L. has its own board of directors located in Luxembourg and observes all necessary corporate formalities and is in good standing vis-à-vis same.
8. MindGeek S.A.R.L. does not have any activities, any offices or employees in Canada. It does not file tax returns in Canada.
9. MindGeek S.A.R.L. does not exercise control over the day-to-day decisions of the other corporate defendants.

**b) MindGeek USA Inc.**

10. MindGeek USA Inc. is a company constituted pursuant to the laws of the State of Delaware, having its principal executive office at 21800 Oxnard Street, Suite 150, Woodland Hills, California 91367 United States of America.
11. MindGeek USA Inc.'s sole activities is to distribute DVD. MindGeek USA Inc. does not itself create, solicit, post, manage, or have any other involvement with the website content at issue in the instant case or any website content.
12. MindGeek USA Inc. is adequately capitalized, both possessing its own bank accounts and serving as a party to and responsible for fulfilling its own contracts. MindGeek USA Inc. has its own board of directors located in the USA and observes all necessary corporate formalities and is in good standing vis-à-vis same.
13. MindGeek USA Inc. does not have any offices in Canada. It does not file tax returns in Canada.

**c) MG Freesites Ltd**


14. MG Freesites Ltd is a company constituted pursuant to the laws of the Republic of Cyprus, having its head office at 195-197 Old Nicosia-Limassol Road, Block 1 Dali Industrial Zone, Cyprus.
15. MG Freesites Ltd is responsible for operating certain websites, referred to as "tubesites", including "PornHub", which offer non-subscription content and operates associated websites, including "PornHub Premium," which offer certain subscription content.
16. MG Freesites Ltd is adequately capitalized, both possessing its own bank accounts and serving as a party to and responsible for fulfilling its own contracts. MG Freesites Ltd has its own board of directors located in Cyprus and observes all necessary corporate formalities and is in good standing vis-à-vis same.
17. MG Freesites Ltd does not have any offices or employees in Canada.

18. The content managed by MG Freesites Ltd is accessible worldwide, with no particular focus on Canada.

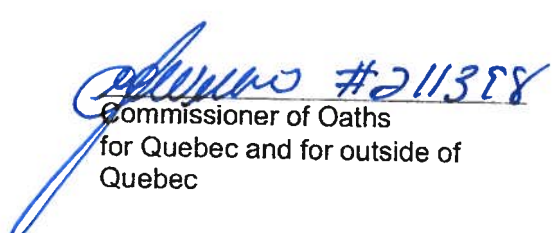
**d) MG Billing Ltd**

19. MG Billing Ltd is a company constituted pursuant to the laws of the Republic of Ireland, having its principal place of business in Cyprus having its head office at 195-197 Old Nicosia-Limassol Road, Block 1 Dali Industrial Zone, Cyprus.
20. MG Billing Ltd facilitates certain aspects of subscription and membership transactions with customers of websites and has access to records reflecting those transactions.
21. MG Billing Ltd is adequately capitalized, both possessing its own bank accounts and serving as a party to and responsible for fulfilling its own contracts. MG Billing Ltd also has its own board of directors located in Cyprus and observes all necessary corporate formalities and is in good standing vis-à-vis same.
22. MG Billing Ltd has no office, no employee and no activities in Canada and it does not own any asset in Canada.

**AND I HAVE SIGNED**

  
\_\_\_\_\_  
Andreas Alkiviades Andreou

Sworn to before me in Montreal  
(by technological means)  
this 9<sup>th</sup> day of June, 2022

  
Commissioner of Oaths  
for Quebec and for outside of  
Quebec



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**LIMITED**

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**ORIGINAL**

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Code BL5788

O/Ref. : 71186/1

M<sup>re</sup> Sébastien C. Caron, Ad. E.  
Tel.: 514.375.2680  
[scaron@lcm.ca](mailto:scaron@lcm.ca)

M<sup>re</sup> Fanny Albrecht  
Tel.: 514.375.2668  
[falbrecht@lcm.ca](mailto:falbrecht@lcm.ca)

**LCM Avocats inc. | LCM Attorneys Inc.**  
600, de Maisonneuve Ouest/West, #2700  
Montréal (Québec) H3A 3J2 Fax: 514.905.2001