

C A N A D A

S U P E R I O R C O U R T
(Class Actions)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-06-001115-209

JANE DOE

Applicant

v.

9219-1568 QUÉBEC INC.
AYLO HOLDINGS S.À.R.L., formerly
known as MINDGEEK S.A.R.L.
AYLO FREESITES LTD, formerly known as
MG FREESITES LTD
AYLO USA INCORPORATED, formerly
known as MINDGEEK USA INC.
AYLO BILLING LIMITED, formerly known
as 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

AMENDED APPLICATION OF 9219-1568 QUÉBEC INC. AND (...)
9279-2738 QUÉBEC INC. (...)
FOR LEAVE TO
FILE RELEVANT EVIDENCE AT THE AUTHORIZATION STAGE
(Articles 574 and 575 Code of civil procedure)

TO THE HONORABLE JUSTICE DONALD BISSON, DESIGNATED JUDGE TO
HEAR ALL PROCEEDINGS IN THE PRESENT ACTION, 9219-1568 QUÉBEC
INC. AND (...) 9279-2738 QUÉBEC INC. (...) STATE AS FOLLOWS:

1. EXECUTIVE SUMMARY

1. 9219-1568 Québec inc. and (...), 9279-2738 Québec inc. (...) (hereinafter, the "**Petitioners**"), seek the leave to file relevant evidence at the hearing 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. The evidence Petitioners wish to file is comprised of:
 - a) A report prepared by Maître Thomas Rouhette from the law firm Signature Litigation, dealing with whether class proceedings exist in other countries where members of the "worldwide class" proposed by Applicant would be located, and presenting the main procedural aspects of same. A copy of this report, dated June 10, 2022 (the "**Rouhette Report**") is communicated as **Exhibit D-1**; and
 - b) An affidavit by Mr. Andreas Alkiviades Andreou, dated June 9, 2022 (the "**Andreou Affidavit**") (...) which provides information on the location, corporate structure, and activities of each corporate Petitioners, communicated as **Exhibit (...) D-2 (...)**.

(the "**Relevant Evidence**")
3. The Rouhette Report and the Andreou Affidavit (...) are relevant, useful, appropriate and proportionate in order to:
 - a) ascertain whether criterion (1°) of Article 575 of the *Code of Civil Procedure (C.C.P.)* is met given the worldwide nature of the class which Applicant seeks to represent;
 - b) ascertain whether the rights and interests of putative class members residing outside of Canada (the "**Foreign Members**") and those of putative class members residing in Québec (...) would be adequately protected in the context of a "worldwide" class action;
 - c) ascertain whether authorizing a worldwide class action would be compatible with the principle of proportionality; and
 - d) ascertain whether, considering the vague and general allegations of the *Amended Application for authorization*, the criterion (2°) of Article 575 C.C.P. is met in respect of each Petitioners.
4. The interests of justice require that the Relevant Evidence be admitted as it is limited in scope, circumscribed to issues that are directly relevant to the authorization stage, and necessary for the Court to be able to assess whether the criteria of Article 575 C.C.P. are satisfied.

2. THE FOREIGN LEGAL REGIMES AND THE ROUHETTE REPORT

5. Applicant seeks to be authorized to institute a *worldwide* class action, or subsidiarily, a class action restricted to Canadians:

“1. Since 2007, all natural persons whose intimate videos or photos, (including child sexual abuse material, images of sexual assault and non-consensual intimate images) were posted without their consent on a website owned or operated by the defendants, directly or indirectly

or, subsidiarily;

Since 2007, all natural persons in Canada whose intimate videos or photos, (including child sexual abuse material, images of sexual assault and non-consensual intimate images) were posted without their consent on a website owned or operated by the defendants, directly or indirectly. [...]”¹

[underline added]

6. The Relevant Evidence is relevant to the contestation of the proposed worldwide class (i.e. all natural persons, regardless of where they live or have suffered a prejudice).
7. (...) According to a long line of case law, global class action must be appropriate considering the criteria for authorization (notably the commonality of the issues) and consistent with the principle of proportionality considering the increased complexity of the litigation that may ensue, *inter alia*, due to the multiplicity of potentially applicable legal regimes.
8. [...]
9. As regards criterion (1°) of Article 575 C.C.P., this Court will at the authorization stage need to consider whether, given the worldwide nature of the class, “*the recourses of the members raise identical, similar or related questions of law or fact*” (on a *prima facie* basis).
10. This implies that the Court will have to consider to what extent the multiplicity of the foreign legal regimes applicable to the claim of class members from various jurisdictions affects the commonality of the issues raised.
11. The Court will also have to determine, on a *prima facie* basis:
 - a) whether the rights and interests of Foreign Members would be adequately protected if a world class were to be authorized;
 - b) whether authorizing a class action on behalf of a worldwide class would negatively affect the rights of class members residing in Québec [...]; and

¹ Amended Application for authorization, page 3.

- c) whether the worldwide nature of the class action is compatible with the principle of proportionality.
12. In order for the Court to perform this exercise, this Court will need to refer to the legal regimes in place in the various jurisdictions where Foreign Class Members would be located and would greatly benefit from the Rouhette Report.

2.1.1 Applicable liability regimes in foreign jurisdictions

13. Applicant does not explain what legal regimes this Court would need to apply to determine whether Defendants are liable towards each Foreign Member. Nor does Applicant explain the similarities or differences existing between the different legal regimes which would be applicable to the claims of each Foreign Member if a worldwide class were to be authorized.
14. In the face of this complete lack of precision in the *Amended Application for authorization*, Petitioners will at the authorization stage, in accordance with article 2809 CCQ, submit a selection of author commentaries, all readily available, concerning the liability regime applicable to content-hosting websites (*hébergeurs de contenu*) in force in the various jurisdiction where class members would be resident and would have suffered their alleged prejudice.
15. These legal regimes are highly relevant at the authorization stage since the tribunal needs to take into account that, on the merits of the class action, the law of each class members' residence would apply to the determination of Defendants' liability, the whole in accordance with article 3126 C.C.Q., which provides that "*if the injury appeared in [a State other than where the fault occurred], the law of the latter State is applicable if the person who committed the injurious act should have foreseen that the injury would manifest itself there*".
16. Although the fact that the Court would need to apply more than one legal regime is not *per se* a bar to the authorization of a worldwide class action, the Court must nonetheless consider how significantly these regimes differ from one another, and whether, as a result, this affects the commonality of the questions raised.
17. In the present case, given the worldwide nature of the requested class action, the Court will thus have to determine to what extent the various legal regimes in force throughout the world concerning the liability of content-hosting websites differ or not from one another.

2.1.2 The Rouhette Report

18. In the same vein, Applicant's proposed worldwide class action implies that all Foreign Members be bound by Quebec procedural rules on class actions

while they may be completely unfamiliar with such a mechanism since none exists in their jurisdiction, or while the procedural rules in place in their jurisdiction may significantly differ from Quebec law.

19. Applicant is silent on the measures that would be required to protect the interests and rights of all Foreign Members, especially regarding the possibility for them to opt out from the class action, and the measures to put in place to ensue that Foreign Members are properly informed of their rights, which entails the dissemination of notices in a huge number of jurisdictions, in almost as many languages. Applicant is also silent regarding how a decision by this Court would affect the rights of Foreign Members in their own jurisdiction, and how this Court's judgment would be treated or enforced in these jurisdictions.
20. Petitioners submit that in order to perform its duty at the authorization stage, the Court will have to consider (i) whether a worldwide class action would adequately protect the rights of Foreign Members around the world while also ensuring the rights of class members in Québec (...) (ii) what specific measures would need to be put in place to do so, and (iii) whether, as a consequence, authorizing such a worldwide class action would be compatible with the principle of proportionality.
21. The Rouhette Report sets out a neutral and high-level description of class action mechanisms available around the world, and as such provides a useful overview to the Court.
22. More particularly, the Rouhette Report contains information regarding the existence and basic mechanisms of class actions and similar proceedings in 198 countries. It shows that:
 - a) 65 States have no class action mechanism;
 - b) there are 36 States for which the existence or absence of a class (...) action mechanism is not confirmed due to lack of information;
 - c) 97 States have a class action mechanism, and the Rouhette Report provides a detailed study of 38 of them.
23. Given the significant number of States *without* a class action mechanism, as well as the great number of States for which the existence of such mechanism is unknown, adequate measures would need to be put in place to protect Foreign Members' rights and interests. In particular, the Court would need to consider whether measures are necessary (and possible) to ensure that class members around the world who are not familiar with the

functioning of class actions can take cognizance of, and react to, the notice, including:

- a) the necessity to explain to Foreign Members what a class action is and how it proceeds;
- b) the necessity to ensure that Foreign Members understand what the Applicant's class action involves and how it could potentially affect their rights;
- c) the necessity for Foreign Members to be provided with an effective opt-out mechanism, to understand how to exercise same, and how it would affect their rights.

24. With respect to the 38 States *with* a class action mechanism that are subject to Maître Rouhette's more in-depth study, the Rouhette Report also underlines that there are as many class action mechanisms as there are jurisdictions in which such a mechanism exists. Comparing some key aspects of such mechanisms shows that some of these differences are major, including notably the widely diverging regimes relating to opt-out (or opt-in) mechanisms, the ways in which decisions of tribunals are communicated to class members or impact their individual rights, and of course the many requirements relating to the language of the proceedings and of communications to members.
25. It is obvious from the Rouhette Report that even with substantial measures being put in place to ensure a proper understanding by all Foreign Members, the differences in legal regimes would entail significant risks of misinterpretation and misinformation by Foreign Members.
26. As such, the Rouhette Report will assist the Court in determining whether the proposed *worldwide* class could adequately protect the rights and interests of all Foreign Members as well as those of members residing in Québec (...), and whether if it is compatible with the principle of proportionality and serves a real purpose.

3. THE ANDREOU AFFIDAVIT (...)

27. Applicant's *Amended Application for Authorization* asks this Court to authorize a class action against nine distinct corporate entities and (...) three individuals which Applicant considers (...) "*alter ego*".
28. However, besides her obvious generalizations (...), Applicant provides no explanations as to why each of the identified corporation would constitute a proper defendant (...). Indeed, Applicant's allegations in this regard are essentially limited to the following vague assertion:

“10. MindGeek has incorporated [...] hundreds of subsidiaries and related companies around the world over time, the details of which are unknown to the Class at this time. The structure of MindGeek has changed numerous times throughout the years. However, MindGeek, including MindGeek Principals, operate [...] as a single business enterprise, commingling its funds and other assets to shelter and avoid liabilities and to hide the entity of its owners, treating each other’s assets as their own, issuing shares haphazardly and without authority, holding themselves out as being personally liable for the debts of each other, failing to maintain proper minutes and corporate records, using the same business locations and employing the same employees, failing to adequately capitalize the entities, failing to maintain arm’s length relationship among themselves, and diverting assets without consideration to the detriment of and are thus jointly and severally liable in this action as alter egos of the other.”²

29. In its analysis of criterion (2°) of Article 575 C.C.P. (whether “*the facts alleged seem to justify the conclusions sought*”), however, this Court will have to consider whether the allegations made against each of the Petitioners contain facts that, on *prima facie* basis, justify the conclusion sought.
30. For this purpose, the Court would benefit from being provided with more information regarding the corporate structure and functioning of each Petitioner. This is what the Andreou Affidavit is (...) meant to do.
31. This (...) affidavit merely provides information regarding the corporate structure and activities of the Petitioners that is necessary for the Court to evaluate whether Applicant’s *alter ego* allegations are sufficient to justify the authorization of a class action against each one of them.
32. As such, the Court should allow the Andreou Affidavit to be submitted at the authorization stage.

**WHEREFORE 9219-1568 QUÉBEC INC. AND (...) 9279-2738 QUÉBEC INC. (...)
PRAY THAT THIS HONORABLE COURT:**

- [1] **GRANT** the present Application
- [2] **AUTHORIZE** Petitioners 9219-1568 Québec inc. and (...) 9279-2738 Québec inc. (...) to file:
 - [2.1] The Report prepared by M^{re} Thomas Rouhette, of Signature Litigation, dated June 10, 2022, being Exhibit D-1;
 - [2.2] The Affidavit of Andreas Alkiviades Andreou dated June 9, 2022, being Exhibit D-2;

² Amended Application for authorization, page 5.

[...]

[...]

[3] **THE WHOLE** without costs save in case of contestation.

MONTREAL, January 24, 2024



LCM ATTORNEYS INC.

Attorneys for

9219-1568 Québec inc. and

[...]

9279-2738 Québec inc.,

[...]

M^{tre} Sébastien C. Caron, Ad. E., ICD.D

M^{tre} 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

O/f: 71186.1

C A N A D A

SUPERIOR COURT
(Class Actions)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-06-001115-209

JANE DOE

Applicant

v.

9219-1568 QUÉBEC INC.
AYLO HOLDINGS S.À.R.L., formerly
known as MINDGEEK S.A.R.L.
AYLO FREESITES LTD, formerly known as
MG FREESITES LTD
AYLO USA INCORPORATED, formerly
known as MINDGEEK USA INC.
AYLO BILLING LIMITED, formerly known
as 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

AMENDED LIST OF EXHIBITS

(in support of the Application of 9219-1568 Québec Inc. and (...) 9279-2738 Québec Inc. (...) for Leave to File Relevant Evidence at the Authorization Stage)

Exhibit D-1:	Rouhette Report and Annexes, dated June 10, 2022;
Exhibit D-2:	Affidavit by Mr. Andreas Alkiviades Andreou, dated June 9, 2022;
[...]	[...]
[...]	[...]

MONTREAL, January 24, 2024

LCM Attorneys Inc.

LCM ATTORNEYS INC.

Attorneys for

9219-1568 Québec inc. and

[...]

9279-2738 Québec inc.

[...]

M^{re} Sébastien C. Caron, Ad. E., ICD.D

M^{re} 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

O/f: 71186.1

N°: 500-06-001115-209

C A N A D A
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class actions)

JANE DOE

Applicant

v.

9219-1568 QUÉBEC INC.
AYLO HOLDINGS S.À.R.L., formerly known as
MINDGEEK S.A.R.L.
AYLO FREESITES LTD, formerly known as MG
FREESITES LTD
AYLO USA INCORPORATED, formerly known as
MINDGEEK USA INC.
AYLO BILLING LIMITED, formerly known as 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

**AMENDED APPLICATION OF 9219-1568 QUÉBEC
INC. AND (...) 9279-2738 QUÉBEC INC. (...)**
FOR LEAVE TO
FILE RELEVANT EVIDENCE AT THE
AUTHORIZATION STAGE
(Articles 574 and 575 Code of civil procedure)
And AMENDED LIST OF EXHIBITS

ORIGINAL

Code BL5788

M^{re} Sébastien C. Caron, Ad. E.,
ICD.D
Tel.: 514.375.2680
scaron@lcm.ca

O/Ref.: 71186.1

M^{re} Fanny Albrecht
Tel.: 514.375.6228
fabrecht@lcm.ca

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