

**SUPERIOR COURT
(Class Action Division)**

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

N°: 500-06-001425-251

CHLOÉ SABOURIN

Applicant

v.

**META PLATFORMS INC.
FACEBOOK CANADA LTD.
WHATSAPP LLC
INSTAGRAM LLC**

Defendants

**MOTION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE
AND TO EXAMINE THE APPLICANT
(Article 574 of the *Code of Civil Procedure*)**

**TO THE HONOURABLE CATHERINE PICHÉ, J.C.S., SPECIAL CASE MANAGEMENT JUDGE
IN THE PRESENT PROCEEDING, THE DEFENDANTS SUBMIT THE FOLLOWING:**

I. INTRODUCTION

1. The Defendants, Meta Platforms, Inc. ("**Meta**"), Facebook Canada Ltd, WhatsApp LLC and Instagram LLC hereby respectfully seek the Court's permission to file the relevant evidence described below, first for the purposes of presenting a declinatory exception based on the forum selection clause and in order to contest the Amended Application for authorization to institute a class action dated February 24, 2026 (hereinafter the "**Amended Application**"):
 - (a) A sworn statement of Michael Duffey, Case Manager on the eDiscovery and Information Governance Team at Meta, a copy of which is communicated as **Exhibit D-1** in support hereof, together with its supporting exhibits;
 - (b) A sworn statement of James Beldock, Director of Product Management in Meta Superintelligence Labs at Meta, a copy of which is communicated as **Exhibit D-2** in support hereof.
 - (c) A written examination of the Applicant on the subjects listed herein.

2. For the reasons that follow, this evidence is essential to provide the Court with the relevant factual context and to assist it at the authorization hearing in determining whether the courts of Québec have jurisdiction over the proposed class action and whether the Applicant's main causes of action are based on an impermissible extra-territorial application of the Copyright Act. Meta also intends to argue that the criteria set out in article 575 of the Code of Civil Procedure ("**CCP**") are not met.
3. This Motion does not constitute a recognition of the jurisdiction of the courts of Québec, which is contested.

II. THE PROPOSED CLASS ACTION

4. The Applicant, Chloé Sabourin, alleges that she is a member of the following class and seeks authorization to institute a class action against Defendants on its behalf:

All persons domiciled in the Province of Québec who hold a copyright, within the meaning of the Copyright Act (R.S.C. 1985, c. C-42), in an artistic work, whose works have been used without authorization by the defendants to develop, train, and/or commercialize their artificial intelligence models since September 23, 2023, or any other group to be determined by the Court.

4. The Amended Application alleges that Defendants use visual content protected by copyright for the training of their artificial intelligence models.
5. The Applicant alleges that protected artistic works, including her own works, were used without authorization in the training of those models.
6. The Applicant is claiming compensatory damages and the restitution of profits or statutory damages in the amount of \$20,000 per work allegedly used without authorization. The Applicant is also claiming punitive damages as well as injunctive relief.

III. THE ESSENTIAL NATURE OF THE EVIDENCE TO BE ADDUCED BY THE DEFENDANTS

7. Defendants seek this Court's permission to file the following relevant evidence:
 - (i) The Affidavit of Michael Duffey (Exhibit D-1) , together with its supporting exhibits;
 - (ii) The Affidavit of James Beldock (Exhibit D-2).
8. This evidence is intended to establish that the courts of Québec do not have jurisdiction because of the forum selection clause that binds the Applicant. Meta also intends to argue, subsidiarily, that the criteria set out in article 575 CCP are not met, notably as the Applicant's main causes of action are based on an impermissible extra-territorial application of the Copyright Act, given that the alleged acts occurred outside Canada.

(i) **The Affidavit of Michael Duffey;**

9. Defendants intend to file the affidavit of Michael Duffey, as Exhibits D-1, together with the supporting exhibits.
10. The affidavit and its supporting exhibits establish the comprehensive contractual framework that binds all Canadian users of Facebook, Instagram, and WhatsApp, and provide direct evidence that the Applicant is bound by a forum selection clause designating California courts as the exclusive forum for the resolution of disputes.
11. The Applicant accepted to be bound by the terms and conditions governing Meta's platforms, which Meta files as Exhibits D-4 and D-5 (the Meta Terms of Service applicable in September 2023 and January 2025, respectively), Exhibits D-9 and D-10 (the Instagram Terms of Use applicable in September 2023 and January 2025, respectively), Exhibits D-11 and D-12 (the Commercial Terms applicable in September 2023 and since March 6, 2024, respectively) and Exhibit D-6 (the current Meta Privacy Policy). The same is true of WhatsApp, whose applicable terms are filed as Exhibit D-14.
12. The signup pages filed as Exhibits D-3 (Facebook), D-8 (Instagram) and D-13 (WhatsApp) shows that consent to the governing terms is a prerequisite to account creation, and that no user could have accessed these services without first accepting the applicable terms and policies.
13. Exhibit D-15, which consists of excerpts from the Applicant's professional Facebook page, demonstrates that the Applicant operates a Facebook page where she promotes her work commercially. Exhibit D-16, which consists of excerpts from the Applicant's publicly available Instagram account, further demonstrates that the Applicant held a Creator account on Instagram, a designation specifically intended for public figures, content producers, artists, and influencers, rather than a personal account.
14. Exhibit D-18 consists of a selection of advertising campaigns paid for by the Applicant on Meta's platform. By purchasing such advertising services, the Applicant expressly agreed to be bound by Meta's Advertising Policies and Meta Commercial Terms.
15. This evidence is required in order to allow Defendants to demonstrate that the Applicant agreed to submit all disputes, including the present matter, to the courts in the United States.
16. Pursuant to article 3148 of the *Civil Code of Québec*, the Defendants intend to demonstrate that the courts of Québec have no jurisdiction over the present matter given that the Applicant agreed to submit this dispute to a foreign jurisdiction.

(ii) **The Affidavit of James Beldock**

17. Defendants seek to adduce the Affidavit of James Beldock, filed in support hereof as Exhibit D-2. This affidavit is essential to contest the jurisdiction of this Court and demonstrate that the Amended Application relies on an impermissible extraterritorial application of the *Copyright Act*.
18. The affidavit of James Beldock confirms that Meta is a Delaware company that operates out of the United States, with its head office located in Menlo Park, California.

19. Facebook Canada Ltd. is a wholly owned subsidiary of Meta. Facebook Canada Ltd. does not operate the social media platform known as Facebook, which is offered and operated by Meta.
20. Instagram LLC is a wholly owned subsidiary of Meta. Instagram LLC does not operate the social media platform known as Instagram, which is offered and operated by Meta. Instagram LLC has no employees and has had no involvement whatsoever in the downloading, training, and distribution alleged in the Amended Motion.
21. With respect to the location of the relevant activities, the affidavit confirms that the storage devices, including servers, onto which the visual works were downloaded and stored for training the Meta models were not located in Canada. The visual works used to train the Meta models are mainly stored in the United States. Meta does not have any data centers in Canada that stored any of these visual works.
22. In or around February 2023, Meta created a United States-based organization known as GenAI, now incorporated in the Meta Superintelligence Labs, which developed and trained the Meta models, including Llama 3.2 Vision, Llama 4 and Emu. During the development of those models, GenAI was led by employees based in Menlo Park, California. Meta did not train any of the Meta models with the visual works on servers located in Canada. All servers used for training the Meta models are located in the United States. No training of the Meta models was performed on servers located in Canada.
23. The Meta models that were used in Instagram, WhatsApp, Meta AI, and Facebook services were all stored, hosted and operated outside of Canada.
24. The Affidavit of James Beldock is therefore essential to assist this Court in its assessment of whether the criteria set out in article 575 of the CCP are met. Based on this evidence, Meta intends to demonstrate that the facts alleged in the Modified Application do not justify the conclusion sought pursuant to article 575(2) of the CCP.

IV. WRITTEN EXAMINATION OF THE APPLICANT

25. The Defendants seek leave to examine the Applicant in writing, prior to the authorization hearing, with respect to the following topics:
 - (i) the creation, operation and use of her Facebook and Instagram accounts and pages;
 - (ii) commercial or promotional use of those accounts and pages in connection with her artistic activities;
 - (iii) The Applicant's configuration of her privacy settings on Facebook and Instagram during the Class Period.
26. Such examination would allow the Court to make an informed determination as to whether the Applicant has an arguable case against Defendants as required by paragraph 575(2) and (4) of the CCP.

V. CONCLUSION

27. This motion and the proposed evidence to be adduced comply with the principle of proportionality and will provide this Court with necessary and relevant evidence, first for the purposes of the Defendants' declinatory exception based on the forum selection clause and, subsidiarily, for the purposes of contesting authorization under article 575 CCP.

THEREFORE, MAY IT PLEASE THE COURT TO:

GRANT the present Motion;

AUTHORIZE the Defendants to file the affidavit of Michael Duffey, together with its supporting exhibits and the affidavit of James Beldock;

ALLOW the Defendants to examine the Applicant in writing, prior to the authorization hearing, with respect to:

- (i) The creation, operation and use of her Facebook and Instagram accounts and pages;
- (ii) Commercial or promotional use of those accounts and pages in connection with her artistic activities;
- (iii) The Applicant's configuration of her privacy settings on Facebook and Instagram during the Class Period.

THE WHOLE without costs, unless contested.

MONTREAL, this July 10, 2026

McCarthy Tétrault

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**ALL NOTIFICATIONS BY E-MAIL MUST BE ADDRESSED
SOLELY TO NOTIFICATION@MCCARTHY.CA**

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ORIGINAL

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