

C A N A D A

(Class Action)
SUPERIOR COURT

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO : 500-06-

JANE DOE, having elected domicile at
Siskinds Desmeules Avocats, 43, de Buade
Street, office 320, Québec, Québec, G1R 4A2

Applicant

c.

9219-1568 QUÉBEC INC. (d.b.a. MindGeek),
legal person having its head office at 7777,
Décarie Boulevard, office 300, Montréal,
Québec, H4P 2H2

and

MINDGEEK S.A.R.L., a legal person having a
place of business at 32, Boulevard Royal,
2449 Luxembourg, Luxembourg

and

MG FREESITES LTD, a private limited
liability company incorporated under the laws
of the Republic of Cyprus, having a place of
business at 195-197 Old Nicosia-Limassol
Road, Block 1 Dali Industrial Zone, Cyprus,
2540

and

MG FREESITES II LTD, a private limited
liability company incorporated under the laws
of the Republic of Cyprus, having a place of
business at 195-197 Old Nicosia-Limassol
Road, Block 1 Dali Industrial Zone, Cyprus,
2540

and

MG CONTENT RT LIMITED, a private limited liability company incorporated under the laws of Ireland, having a place of business at 195-197 Old Nicosia-Limassol Road, Block 1 Dali Industrial Zone, Cyprus, 2540

Defendants

APPLICATION FOR LEAVE TO FILE AN APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE UNDER A PSEUDONYM
(Sections 11, 12 and 49 C.C.P.)

TO ONE OF THE HONOURABLE JUSTICES OF THE QUÉBEC SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTRÉAL, THE APPLICANT STATES AS FOLLOWS:

INTRODUCTION

1. The Applicant wishes to institute a class action under a pseudonym, on behalf of the natural persons forming part of the class hereinafter described, namely:

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;

(hereinafter referred to as the “**Class**”)

the whole as it appears from this Court’s file;

2. The Applicant was a victim of sexual abuse when she was a child, some of which was recorded and subsequently published online, including on websites owned and/or hosted by the defendants;

3. The Applicant is aware of a video depicting her abuse as a child that was disseminated on PornHub, one of the defendants' website. The video depicts the abuse of the Applicant when she was approximately 12 years old;
4. The Applicant discovered the existence of the videos online on Pornhub's site in 2020;
5. The subject matter of this proceeding justifies the use of a pseudonym by the Applicant;
6. Indeed, the Applicant hesitated to take the matter to court fearing precisely for her reputation and dignity, which could be further violated, thereby exacerbating the trauma she has previously experienced and is still currently experiencing;
7. Considering that many people had access to the videos in question, the Applicant fears that she could be identified and wishes that her privacy protected and her identity kept confidential, the whole as it appears from the email produced herein, under seal, as **exhibit R-1**;
8. Article 12 *C.C.P.* provides that the court may make an exception to the principle of open debate if it considers that public order and the protection of the dignity of persons concerned by a legal proceeding or the protection of important legitimate interests require the anonymity of the persons concerned;
9. The principle of open court proceedings must therefore be modulated where necessary, so as to preserve the ability of the litigant to use the courts to exercise his or her fundamental rights;
10. In this case, the order sought is necessary to avoid a serious risk to the proper administration of justice in the absence of other reasonable measures that could rule out that risk;
11. Indeed, it would be paradoxical for the Applicant to be placed in the position of having to renounce the exercise of a right because of an invasion of her dignity caused by legal proceedings, when the remedy itself is precisely aimed at obtaining compensation for an invasion of her privacy and integrity;
12. Encouraging such a contradiction can only have the effect of deterring litigants in a situation similar to that of the Applicant from freely exercising their legitimate rights in court. This result, if it could not be countered, would bring the proper administration of justice into disrepute;
13. If the application for permission to use a pseudonym is rejected, her identity would be made public and that would contribute to increase the harm she is already suffering;
14. This irreparable harm would be added to the list of negative consequences that already arise from the facts mentioned above;
15. The beneficial effects of the order sought clearly outweigh their detrimental effects on the rights and interests of the parties and the public;

16. The anonymity order sought is the least intrusive measure in the open debate principle, particularly since the applicant only objects to the disclosure of her identity in the proceedings and does not dispute the possibility that the evidence gathered may in principle be available to the public;
17. The order sought would not prevent the public or the media from reviewing, attending or reporting on the proceedings;
18. In a case involving allegations of a sexual nature, the courts should deal favourably with requests for anonymity by applicants;
19. Access to justice would also be facilitated by the fact that Class members would know that they would be able to assert their rights without fear of public disclosure;
20. This application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

AUTHORIZE the Applicant to file an application for authorization to institute a class action and to obtain the status of representative under a pseudonym;

ORDER the use of a pseudonym for the identification of the Applicant in the proceedings, exhibits, and/or all other documents filed into the Court record, in order to protect her identity;

ORDER the production under seal or of redacted version of any document, exhibit or information that would otherwise permit to identify the Applicant;

AUTHORIZE the Applicant to elect domicile at the place of business of her lawyers, Siskinds Desmeules, Avocats, at 43, de Buade Street, office 320, Québec (Québec) G1R 4A2;

THE WHOLE without costs.

Québec, December 29, 2020



SISKINDS DESMEULES AVOCATS

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(Me Karim Diallo)

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SUPERIOR COURT

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO : 500-06-

JANE DOE

Applicant

c.

9219-1568 QUÉBEC INC. and ALS

Defendants

LIST OF EXHIBIT

Exhibit supporting the application

In support of this application, the Applicant intends to use the following exhibit:

Exhibit R-1: Email from the applicant (*under seal*).

Québec, December 29, 2020

Siskinds Desmeules, Avocats

SISKINDS DESMEULES AVOCATS

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(Me Karim Diallo)

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CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

(Class Action)
SUPERIOR COURT

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Applicant

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BB-6852 Casier 15
Me Caroline Perrault N/D : 67-256
Me Karim Diallo

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