

**SUPERIOR COURT**  
(Class Action)

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

N° : 500-06-001121-215

DATE : April 16, 2021

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**BY THE HONOURABLE CHANTAL CHATELAIN, J.S.C.**

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**9343-4678 QUÉBEC INC. (d.b.a. Restaurant Déli Boyz)**

Applicant

v.

**UBER CANADA INC.**

**UBER B.V.**

**UBER PORTIER B.V.**

**DOORDASH, INC.**

**DOORDASH TECHNOLOGIES CANADA INC.**

**JUST EAT CANADA INC. (d.b.a. SkipTheDishes Restaurant Services Inc.)**

**SKIPTHEDISHES RESTAURANT SERVICES INC.**

Defendants

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**JUDGMENT**  
**(Authorization of Service by Postal Channels)**

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[1] The Applicant, 9343-4678 Québec inc. (d.b.a. Restaurant Déli Boyz), seeks authorization to serve its *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* (January 8, 2021) and its amended version (January 11, 2021) by e-mail, to be performed by a Quebec bailiff, upon Defendants Uber B.V. and Uber Portier B.V., in the Netherlands to the email address for service of legal documents provided by Uber Portier B.V. in its contract with the Applicant (alleged as Exhibit P-6 in support of the authorization application) as well as to the e-mail address of the attorneys who filed an answer in the present file on behalf of Defendant Uber Canada Inc.

[2] Alternately, the Applicant seeks authorization to serve said applications by FedEx upon Uber B.V. and Uber Portier B.V., in the Netherlands.

[3] Paragraph 1 of Article 494 of the *Code of Civil Procedure* provides that when international notification is to be made in States which are party to the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (“**Hague Convention**”), that such notification must be performed pursuant to the Hague Convention:

#### INTERNATIONAL NOTIFICATION

494. In States party to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, made at The Hague on 15 November 1965, international notification is made in accordance with the Convention, which is reproduced in a schedule to this Code and has force of law in Québec.

In States not party to the Convention, notification is made as provided for in Book I or in accordance with the law in force in the place where the notification is made. The court, on request, may authorize a different method of notification if it is required by the circumstances.

The certificate of notification is sent to the notifying party through the same channels as those used to send the request for notification.

[4] The Netherlands being a signatory party to the Hague Convention,<sup>1</sup> notification must be made in accordance with the Hague Convention and the provision at paragraph 2 of Article 494 of the *Code of Civil Procedure* which authorizes the court to allow a different method of notification is inapplicable herein.

[5] The Netherlands has declared no objection to service by postal channels under Sub-Article 10(a) of the Hague Convention which reads as follows:<sup>2</sup>

10. Provided the State of destination does not object, the present Convention shall not interfere with

a) the freedom to send judicial documents, by postal channels, directly to persons abroad,

[6] However, as indicated by the Court of Appeal in *Droit de la famille — 192513*, judgments of the Superior Court have held that international notification by email was irregular under the Hague Convention as it does not correspond to service by postal channels.<sup>3</sup> Considering the Applicant’s alternate conclusion sought herein, it is not necessary to engage further in that debate.

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<sup>1</sup> <https://www.hcch.net/en/states/hcch-members/details1/?sid=3>.

<sup>2</sup> <https://www.hcch.net/en/states/authorities/details3/?aid=37>.

<sup>3</sup> *Droit de la famille — 192513*, 2019 QCCA 2139, par. 44.

[7] That said, Justice Gagnon observed in *Basal c. Allergan PLC & Others* that “In various countries applying the Hague Convention, caselaw is undecided whether the Convention (concluded in 1965) when allowing service by postal channels, allows relying on private couriers (such as FedEx), or only on state-operated postal entities (such as Canada Post)”.<sup>4</sup> In view of this uncertainty, as decided by Justice Gagnon in that case, the Court believes that it would be more prudent to err on the side of caution and to allow service by Canada Post.

**WHEREFORE, THE COURT:**

[8] **AUTHORIZES** the Applicant to serve its *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* and its *Amended Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*, as well as any additional proceedings in this file, upon the Defendants Uber B.V. and Uber Portier B.V. by Canada Post, to the following address, until they are represented by an attorney:

- Mr. Treublaan 7, 1097 DP Amsterdam, Netherlands

[9] **REQUIRES** the Applicant to diligently file a copy of the proof of delivery confirmation from Canada Post as proof of service of the said proceedings to Uber B.V. and Uber Portier B.V.;

[10] **WITHOUT COSTS.**

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CHANTAL CHATELAIN, J.S.C.

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<sup>4</sup> *Basal c. Allergan PLC & Others*, 2019 QCCS 469, par. 5.

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Hearing on file: April 14, 2021