

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-001041-207

DATE: April 13, 2022

BY THE HONOURABLE MARTIN F. SHEEHAN, J.S.C.

CHAFIK MIHOUBI

Applicant

v.

PRICELINE.COM, L.L.C.

HOTWIRE, INC.

HOMEAWAY.COM, INC.

ACCOR, S.A.

BEDANDBREAKFAST.COM, INC.

CANADASTAYS (1760335 ONTARIO INC.)

HILTON WORLDWIDE HOLDINGS, INC.

SIX CONTINENTS HOTELS, INC.

ORBITZ WORLDWIDE, L.L.C.

HYATT HOTELS CORPORATION

WYNDHAM HOTEL GROUP, L.L.C.

KAYAK SOFTWARE CORPORATION

BENJAMIN & BROTHERS, L.L.C. (RESERVATIONS.COM)

Defendants

JUDGMENT

(On an Application to Approve Notices and the Dissemination Protocol)

- [1] The Court is seized with an Application to Approve Notices and a Dissemination Protocol in the course of a class action that it has previously authorized.
- [2] The parties have agreed on the text of the notices. Defendants contest the proposed dissemination protocol on the basis that sending individual emails to the class members is not warranted in this case.

CONTEXT

- [3] On January 11, 2022, the Court authorized the institution of a class action on behalf of Quebec consumers who booked accommodation through Defendants' websites and who paid a price higher than the price initially advertised (the "**Authorization Judgment**").¹
- [4] In the same judgment, the Court summoned the parties to hear their representations as to the content of the notices required under articles 576 and 579 of the *Code of Civil Procedure* ("**CCP**"), the communication or publication of the said notices and the appropriate time limit for a class member to request exclusion.

ANALYSIS

1. APPLICABLE LAW

- [5] The authorization of a class action requires sending notices to the members (article 576 CCP), which must specify (article 579 CCP):
- 5.1. a description of the affected class;
 - 5.2. the principal issues raised by the class action and the conclusions sought;
 - 5.3. the name of the representative plaintiff, the name and address of his or her counsel and the district in which the class action will be brought;
 - 5.4. the right of class members to opt out of the class, the procedure to be followed and the time limit for opting out;
 - 5.5. the fact that a member who is not the representative or an intervenor will not be called upon to pay the legal costs of the class action; and
 - 5.6. any other information that is considered necessary, such as the web address of the class action registry.

¹ *Mihoubi c. Priceline.com et al.*, 2022 QCCS 25.

- [6] Such notices play a crucial role. In a class action, a representative often acts, without a specific mandate, on behalf of several people. Since decisions made in the course of a class action affect all the claimants involved in the action, the preservation of their individual rights relies on the timely transmission of relevant information. Notices are thus more than a mere procedural requirement. They guarantee that the class action respects the paramount principles of public order and fairness. This is especially true in the case of notices sent prior to the right to opt out of a class action. “Although it does not have to be shown that each member was actually informed, the way the notice procedure is designed must make it likely that the information will reach the intended recipients.”²
- [7] The court must therefore pay particular attention to both the language of the notice and the manner of its dissemination.
- [8] The language used should be simple and accessible to the average reader. Legal jargon should be avoided so that the notice is clearly understood by the members.³ The notice must be “clear and concise”.⁴
- [9] As for dissemination, the appropriate means must be chosen to reach the members where they are. The court must determine the time, form and manner of publication “having regard to the nature of the class action, the composition of the class and the geographical location of its members.”⁵ Individual notification of members should be preferred when circumstances allow it.⁶ If any one method does not allow reaching all potential members, a combination of dissemination means should be ordered.⁷

² *Canada Post Corp. v. Lépine*, 2009 CSC 16, paras. 42 and 43; *Meubles Léon Itée c. Option consommateurs*, 2020 QCCA 44, para. 78 (motions for leave to appeal to the Supreme Court dismissed (C.S. Can., 2020-10-22) 39132); *Hocking c. Haziza*, 2008 QCCA 800, para. 119, justice Chamberland in dissent but approved by the majority as to the principle, para. 229; *Lévesque c. Vidéotron s.e.n.c.*, 2015 QCCS 3561, para. 10; Yves LAUZON and Anne-Julie ASSELIN, “article 579 C.p.c.” in Luc CHAMBERLAND, *Le Grand Collectif - Code de procédure civile : Commentaires et annotations*, 6th ed., volume 2, Montreal, Éditions Yvon Blais, 2021.

³ Barreau du Québec, *Actions collectives : Guide sur les avis aux membres*, Montreal, Barreau du Québec, 2016, p. 8, online : <<https://www.barreau.qc.ca/media/1335/guide-avis-membres-action-collective.pdf>>; *Hocking c. Haziza*, *supra*, note 2, par. 116; *Boyer c. Agence métropolitaine de transport (AMT)*, 2010 QCCS 4984, paras. 9 and 10.

⁴ Art. 581 C.C.P.

⁵ Art. 579(2) C.C.P.

⁶ *Chevalier c. Air Transat AT inc.*, 2022 QCCS 671, para. 26; *Huard c. Innovation Tootelo inc.*, 2021 QCCS 4209, paras. 32 and 33; *Asselin c. Desjardins Cabinet de services financiers inc.*, 2021 QCCS 1340, para. 28; Y. LAUZON and A.-J. ASSELIN, *supra*, note 2.

⁷ *Huard c. Innovation Tootelo inc.*, *supra*, note 6, para. 34.

- [10] The objective remains to reach the largest number of members while ensuring that the costs incurred are proportionate to the nature and purpose of the demand.⁸ Because the target audience is often composed of a juxtaposition of fragmented subgroups that cannot be easily reached by a single medium, a combination of several means or media must often be considered.⁹ Newspapers, which can be useful depending on the circumstances, must, when necessary, give way to other means, including those offered by new technologies in the spirit of article 26 CCP.¹⁰
- [11] Costs of the notices are usually assumed by the Defendants until the judgment on the merits is rendered.¹¹

2. Discussion

- [12] On the whole, the draft notices submitted by counsel meet these requirements. They are approved with minor modifications to ensure that class counsel is given notice of potential exclusions.
- [13] With regard to the distribution protocol, Plaintiff suggests the following:
- 13.1. Each defendant will send an email to the last known contact information of all individuals who meet the class definition during the class period;
 - 13.2. Plaintiff's counsel will post the notice to members on the Class Action Registry and on their firm website;
 - 13.3. Plaintiff's counsel will disseminate the Notice to Members through a Facebook ad campaign. The ads will contain a few relevant sentences, a photo related to the litigation, and a link to a news item on their website primarily mentioning the long-form notice posted on Plaintiff's attorneys' website. The ads will specifically target people located in Quebec, aged 18 years and older. The suggested budget is \$2,800 for the French advertising campaign and \$700 for

⁸ Barreau du Québec, *supra*, note 3, p. 7; *Defrance c. Banque de Montréal*, 2019 QCCS 4615, para. 11; *Asselin c. Desjardins Cabinet de services financiers inc.*, *supra*, note 6, paras. 13 to 27; *A.B. c. Clercs de Saint-Viateur*, 2019 QCCS 1521, para. 22; *Boyer c. Agence métropolitaine de transport (AMT)*, *supra*, note 3, paras. 10 and 11; *Comments of the Minister of Justice on art. 579 C.C.P.*; Pierre-Claude LAFOND, *Le recours collectif, le rôle du juge et sa conception de la justice. Impact et évolution*, Cowansville, Éditions Yvon Blais, 2006, p. 170.

⁹ *Hocking c. Haziza*, *supra*, note 2, para. 234; *Huard c. Innovation Tootelo inc.*, *supra*, note 6, para. 34.

¹⁰ Y. LAUZON and A.-J. ASSELIN, *supra*, note 2; Catherine PICHÉ, *The coming revolution in class action notices: Reaching the universe of claimants through technologies*, 2018, *Canadian Journal of Law and Technology*, para. 227; *Huard c. Innovation Tootelo inc.*, *supra*, note 6, para. 44; *Asselin c. Desjardins Cabinet de services financiers inc.*, *supra*, note 6, paras. 41 to 52.

¹¹ *Association pour la protection automobile (APA) c. Banque de Nouvelle-Écosse*, 2022 QCCS 935, para. 24; *Huard c. Innovation Tootelo inc.*, *supra*, note 6, para. 57; *Conseil pour la protection des malades c. Centre intégré de santé et de services sociaux de la Montérégie-Centre*, 2020 QCCS 1663, para. 14.

the English advertising campaign.

[14] Defendants object for two reasons:

14.1. The publication of class action notices in the media (traditional or social) and on the plaintiff's counsel website has sometimes been considered sufficient to reach the members especially in consumer class actions where exclusions are rare¹²;

14.2. Sending individual emails could create a disparity or confusion among class members because i) some of the defendants do not have the email addresses of all class members; ii) some members could receive multiple notices; iii) non-members could receive a notification which does not apply to them.¹³

[15] They add that if emails are to be sent then the Facebook campaign becomes redundant. In the alternative, they ask that if both are kept, the cost of the Facebook campaign should be borne by the Defendants.

[16] These arguments are unfounded.

[17] The proposed dissemination protocol is identical or similar to protocols approved in recent class actions.¹⁴

[18] It also respects the above principle which states that, when possible, individual notification should be ordered. Here, users must provide an email address to access the Defendant's services. They also receive a confirmation email once the reservation is completed. It must be presumed that Defendants have access to this information.¹⁵ Some defendants have mentioned that it is impossible for them to send emails because they do not have this information. The distribution protocol recognizes this possibility by requiring that emails be sent only to known addresses. A clarification will be added to this effect.

[19] The protocol also recognizes that technological dissemination may in many cases be preferable to a newspaper notice, especially when the target group is familiar with technology.¹⁶ This is definitely the case when the subject matter of the class action relates to contracts agreed to via the internet. Given the argument that some

¹² *Calciu c. Air Transat AT inc.*, 2021 QCCS 507, para. 11; *Union des consommateurs c. Magasins Best Buy*, 2019 QCCS 5316, para. 13; *Defrance c. Banque de Montréal*, *supra*, note 8, para. 13.

¹³ *Association pour la protection automobile (APA) c. Banque de Nouvelle-Écosse*, *supra*, note 11, para. 11.

¹⁴ *Huard c. Innovation Tootelo inc.*, *supra*, note 6; *Asselin c. Desjardins Cabinet de services financiers inc.*, *supra*, note 6, para. 8; *Bérubé c. Fédération des inventeurs du Québec*, 2019 QCCS 325, para. 16.

¹⁵ *Huard c. Innovation Tootelo inc.*, *supra*, note 6, paras. 30 and 31.

¹⁶ *Tenzer c. Huawei Technologies Canada Co.*, 2020 QCCS 2380, paras. 5 to 7.

of the Defendants have advanced regarding the absence of email addresses in their possession, it certainly cannot be said that the Facebook campaign is redundant.

[20] With regard to the argument on disparity, this argument is not convincing. For one thing, any chosen means of dissemination creates disparity. For example, ordering publication of the notice in newspapers affects those who read newspapers differently than those who do not. The same can be said of a social media campaign. Eliminating these potential means because they offer no guarantee of reaching everyone or because they don't apply to some of the Defendants would defeat the very purpose of sending notices in the first place in that they would incite the court to use the lowest common denominator. A recognition that class members have different information habits advocates for the use of a combination of dissemination methods, including first and foremost individual notification when such an option is possible and considered efficient. The overall objective remains that as many class members be informed, as is reasonably possible.

[21] The potential for some members to receive multiple notices cannot be considered a problem. The issue related to non-members receiving the notice can be dealt with by making sure the text of the notice adequately describes those who are part of the class.

[22] Finally, the proposed budget for the Facebook campaign (\$3,500) is reasonable and proportional to the issues involved. No evidence was adduced regarding the cost of sending individual emails, the number of email addresses in possession of the Defendants nor regarding the overall number of class members. In the absence of such information, Defendants arguments on the proportionality of such a measure cannot overturn the importance of ensuring that a maximum of class members receive this essential information.

[23] Thus, the distribution protocol is approved.

[24] As for costs, nothing in the present matter would justify departing from the general rule that the costs of notices are borne by the Defendants until a decision as the court costs is made on the merits.

CONCLUSION

[25] The proposed notices and distribution protocol are approved with slight modifications.

[26] Notices will be sent within 30 days of the present judgment. The exclusion delay will be 60 days from the 30-day deadline.

[27] Plaintiff will have until April 11, 2022, to notify its class action application. The Court will pray act of the parties' undertaking to file a case protocol prior to May 26, 2022.

FOR THESE REASONS, THE COURT:

<p>[28] APPROVES the text of the notices to members, in English and in French, attached to this judgment, with the changes made;</p>	<p>APPROUVE le texte des avis aux membres, en français et en anglais, annexés au présent jugement, avec les modifications effectuées;</p>
<p>[29] ORDERS that notices to members be transmitted and published in a manner substantially similar to the dissemination plan proposed by Plaintiff's counsel, including:</p> <ul style="list-style-type: none"> • Each Defendant will send an email to the last available contact information of all persons who meet the class definition during the class period; • Plaintiff's counsel will post the notice to members on the Class Action Registry and on the class counsel website; • Plaintiff's counsel will disseminate the Notice to Members through a Facebook ad campaign. The ads will contain a few relevant sentences, a photo related to the litigation, and a link to a news article on their website primarily mentioning the detailed notice posted on Plaintiff's Counsel's website. The ads will specifically target people located in Quebec, 18 years of age and older. The budget will be \$2,800 for the French ad campaign and \$700 for the English ad campaign. 	<p>ORDONNE la transmission et la publication des avis aux membres d'une manière substantiellement similaire à celle prévue au plan de diffusion décrit par les avocats du demandeur, notamment :</p> <ul style="list-style-type: none"> • Chaque défendeur enverra un courriel aux dernières coordonnées disponibles de toutes les personnes qui répondent à la définition du groupe pendant la période; • L'avocat du demandeur publiera l'avis aux membres sur le Registre des actions collectives et sur le site web de son cabinet; • L'avocat du demandeur diffusera l'avis aux membres par le biais d'une campagne publicitaire sur Facebook. Les annonces contiendront quelques phrases pertinentes, une photo liée au litige et un lien vers un article d'actualité sur leur site web mentionnant principalement l'avis détaillé publié sur le site web des avocats du demandeur. Les annonces viseront spécifiquement les personnes situées au Québec, âgées de 18 ans et plus. Le budget sera de 2 800 \$ pour la campagne publicitaire en français et de 700 \$ pour la campagne publicitaire en anglais.
<p>[30] ORDERS that the mailing of notices and the advertising campaign be completed by May 13, 2022;</p>	<p>ORDONNE que l'envoi des avis et la campagne publicitaire soient complétés avant le 13 mai 2022;</p>

<p>[31] DECLARES that in order to opt out of this class action, a class member must file with the Clerk of the Superior Court an opting out Notice signed by him or her or his or her representative no later than July 15, 2022, at the expiration of which time those members who have not opted out will be bound by any judgment or settlement reached in these proceedings;</p>	<p>DÉCLARE qu'afin de s'exclure de la présente action collective, un membre du groupe devra faire parvenir au greffe de la Cour supérieure un avis d'exclusion signé par lui ou son représentant, au plus tard le 15 juillet 2022, délai à l'expiration duquel les membres qui ne se seront pas prévalus de la possibilité de s'exclure seront liés par tout jugement ou entente amiable intervenue dans la présente instance;</p>
<p>[32] DECLARES that the defendants are liable for the costs of publication of the notices of authorization to institute the class action and that these costs shall form part of the court fees on the merits of the application;</p>	<p>DÉCLARE que les défenderesses sont tenues au paiement des frais de publication des avis d'autorisation d'exercice de l'action collective et que ses frais feront partie des frais de justice sur le fond de l'action collective;</p>
<p>[33] PRAYS ACT of Plaintiff's undertaking to notify and file its application prior to April 11, 2022;</p>	<p>PREND ACTE de l'engagement du demandeur de notifier et déposer sa demande avant le 11 avril 2022;</p>
<p>[34] PRAYS ACT of the Parties' undertaking to file a case protocol prior to May 26, 2022;</p>	<p>PREND ACTE de l'engagement des parties de déposer un protocole d'instance avant le 26 mai 2022;</p>
<p>[35] THE WHOLE with costs against Defendants.</p>	<p>LE TOUT avec les frais de justice contre les défenderesses.</p>

MARTIN F. SHEEHAN, J.S.C.

Mtre Mathieu Charest-Beaudry
Mtre Lex Gill
TRUDEL JOHNSTON & LESPÉRANCE
Mtre Bruno Grenier
Mtre Cory Verbauwhede

GRENIER VERBAUWHEDE AVOCATS INC.

Mtre Peter Shams

HADEKEL SHAMS S.E.N.C.R.L.

Counsels for the Applicant

Mtre Éric Préfontaine

Mtre Emily Lynch

OSLER, HOSKIN & HARCOURT, S.E.N.C.R.L., S.R.L.

Counsels for the Defendant Hyatt Hotels Corporation

Mtre Éric Vallières

Mtre Gabrielle Lachance-Touchette

McMILLAN S.E.N.C.R.L.

Counsels for the Defendants Priceline.com, L.L.C. and Kayak Software Corporation

Mtre Eric Lefebvre

Mtre Claudette van Zyl

NORTON ROSE FULBRIGHT CANADA S.E.N.C.R.L., S.R.L.

Counsels for the Defendants Hotwire, Inc., Homeaway.com, Inc., Bedandbreakfast.com, Inc., Canadastays (1760335 Ontario Inc.) and Orbitz Worldwide, L.L.C.

Mtre Jean Saint-Onge

Mtre Alexander L. De Zordo

Mtre Karine Chênevert

BORDEN LADNER GERVAIS S.E.N.C.R.L., S.R.L.

Counsels for the Defendants Accor, S.A. and Hilton Worldwide Holdings, Inc.

Mtre Myriam Bixi

LAVERY, DE BILLY S.E.N.C.R.L.

M. Joseph David Timothy Pinos

CASSELS BROCK & BLACKWELL LLP

Counsels for the Defendant Six Continents Hotels, Inc.

Mtre Simon Jun Seida

Mtre Anthony Cayer

BLAKE, CASSELS & GRAYDON S.E.N.C.R.L.

Counsels for the Defendant Wyndham Hotel Group, L.L.C.

Mtre Joséane Chrétien

Mtre Yassin Gagnon-Djalo

McMILLAN LLP

Counsels for the Defendant Benjamin & Brothers, L.L.C. (Reservations.com)

Hearing date: April 5, 2022

Annex 1

Notice to members in French version

AVIS D'AUTORISATION D'UNE ACTION COLLECTIVE CONCERNANT DES RÉSERVATIONS DE CHAMBRES D'HÔTEL ET AUTRES HÉBERGEMENTS EN LIGNE

La Cour supérieure a autorisé l'exercice d'une action collective contre les défenderesses suivantes :

- Priceline.com, L.L.C.
- Hotwire, inc.
- Homeaway.com, inc.
- Accor, S.A.
- Bedandbreakfast.com, inc.
- Canadastays (1760335 Ontario inc.)
- Hilton Worldwide Holdings, Inc.
- Six Continents Hotels, inc.
- Orbitz Worldwide, L.L.C.
- Hyatt Corporation
- Wyndham Hotel Group, L.L.C.
- KAYAK Software Corporation
- Benjamin & Brothers, L.L.C. (reservations.com)

L'action collective allègue que ces défenderesses ont exigé un prix supérieur à celui qui a été initialement annoncé pour la réservation d'un hébergement sur le site internet des défenderesses et vise à obtenir une compensation équivalente au montant dépassant le prix annoncé, à l'exception des droits exigibles en vertu d'une loi fédérale ou provinciale, ainsi que l'octroi de dommages punitifs

Monsieur Chafik Mihoubi a obtenu le statut de représentant des membres de l'action collective.

Le jugement d'autorisation est une étape préliminaire qui permet de débiter l'action collective. Ce jugement ne décide pas de la responsabilité des défenderesses qui pourront faire valoir leurs moyens de défense au procès. C'est à la suite de ce procès, qui aura lieu dans le district de Montréal, que la Cour supérieure décidera si les défenderesses ont effectivement enfreint la *Loi sur la Protection du Consommateur* tel qu'allégué et doivent être condamnées à restituer des sommes aux membres et, dans ce cas, quel montant doit être versé.

QUI EST VISÉ?

Vous êtes visé par l'action collective si :

- Vous avez réservé, à partir du Québec, un hébergement auprès du site internet de l'une des défenderesses entre les dates indiquées pour celles-ci et vous avez payé un prix supérieur au prix initialement annoncé, à l'exception des droits exigibles en vertu d'une loi fédérale ou provinciale.

ET

- Votre réservation a été faite entre le 27 janvier 2017 et le 13 mai 2022 pour les défenderesses suivantes :
 - Priceline.com LLC (qui exploite le site priceline.com)
 - Hotwire Inc. (qui exploite le site hotwire.com)
 - Kayak Software Corporation (qui exploite le site kayak.com)
 - Benjamin & Brothers, LLC (qui exploite le site reservations.com)
 - Accor SA (qui exploite le site accorhotels.com)
 - Hilton Worldwide Holdings, Inc. (qui exploite le site hilton.com)
 - Six Continents Hotels, Inc. (qui exploite les sites holidayinn.com et intercontinental.com)
 - Hyatt Corporation (qui exploite le site hyatt.com)
 - Wyndham Hotel Group, LLC (qui exploite le site wyndhamhotels.com)
- Ou votre réservation a été faite entre le 27 janvier 2017 et le 28 septembre 2020 pour les défenderesses suivantes :
 - Homeaway.com Inc. (qui exploite les sites homeaway.ca, vrbo.com, et vacationrentals.com)
 - Bedandbreakfast.com Inc. (qui exploite le site bedandbreakfast.com)
 - Canadastays (1760335 Ontario Inc.) (qui exploite le site canadastays.com)
- Ou votre réservation a été faite entre le 27 janvier 2017 et le 4 juin 2020 pour la défenderesse suivante :
 - Orbitz Worldwide LLC (qui exploite le site orbitz.com)

Toutes les personnes qui satisfont à ces critères pourraient avoir droit à une compensation en cas de succès de l'action collective.

QUE POURRIEZ-VOUS OBTENIR?

L'action collective réclame la restitution d'une compensation équivalente au montant dépassant le prix annoncé initialement, à l'exception des droits exigibles en vertu d'une loi fédérale ou provinciale, ainsi que l'octroi de dommages punitifs.

LES FRAIS D'AVOCAT seront payés en cas de succès uniquement et selon un pourcentage des compensations versées aux membres du groupe qui sera approuvé par la Cour. **Vous n'avez donc rien à payer** à moins d'obtenir une compensation.

VOUS POUVEZ VOUS EXCLURE JUSQU'AU 15 JUILLET 2022.

Si vous ne faites rien, vous serez membre du groupe et serez lié par tout jugement rendu dans cette action.

Si vous ne souhaitez pas être membre de l'action collective pour diverses raisons, vous pouvez vous exclure du groupe.

Vous n'aurez alors droit à aucune indemnité si un jugement favorable ou une entente intervient dans cette action collective.

Vous avez jusqu'au 15 juillet 2022 pour vous exclure de l'action collective.

Pour vous exclure, vous devez **faire parvenir une lettre à cet effet au greffe de la Cour supérieure du Québec** en indiquant le numéro de cour 500-06-001041-207 :

Greffe de la Cour supérieure du Québec
1, rue Notre-Dame Est
Montréal (Québec) H2Y 1B6

Le texte doit être simple, mais indiquer clairement votre intention (par exemple, « Par la présente, je ____ (votre nom) m'exclus de l'action collective portant le numéro 500-06-001041-207.

Les avocats de la demanderesse suggèrent de leur envoyer une copie de cette lettre par courriel ou par la poste aux coordonnées suivantes :

Trudel Johnston & Lespérance
750, Côte de la Place d'Armes, bureau 90
Montréal (Québec) H2Y 2X8
info@tjl.quebec

LES PROCHAINES ÉTAPES

Pour déterminer si l'action collective est bien fondée, un procès aura lieu dans le district de Montréal. La Cour supérieure répondra aux questions suivantes :

1. Les contrats conclus entre les membres du groupe et les Défenderesses sont-ils des contrats concernant la location d'un immeuble au sens des articles 6 et 6.1 de la LPC?
2. Les premiers prix qui apparaissent sur les sites internet et les applications mobiles des défenderesses à la suite d'une recherche pour un hébergement sont-ils des prix annoncés au sens de l'article 224 c) LPC?
3. Les défenderesses ont-elles manqué à leurs obligations sous la LPC en annonçant sur leurs sites et leurs applications mobiles un prix moins élevé que celui ultimement facturé?
4. Les défenderesses ont-elles manqué à leurs obligations sous la LPC en accordant plus d'importance au prix par nuit qu'au prix du séjour?
5. Les membres du groupe ont-ils droit à une compensation correspondant à la différence entre le prix annoncé et le prix facturé, moins les taxes et droits prévus aux exceptions des articles 224, alinéa 3 de la LPC et 91.8 du *Règlement*?
6. Les défenderesses doivent-elles être condamnées à verser dommages punitifs aux membres du groupe?
7. Est-ce que les réclamations des membres doivent être recouvrées collectivement?
8. Quel est le montant des frais exigés illégalement à chaque membre du groupe?

LES CONCLUSIONS RECHERCHÉES

ACCUEILLIR l'action collective pour tous les membres des groupes;

CONDAMNER les défenderesses à payer la différence entre le montant facturé et le montant annoncé, moins les taxes et droits prévus aux exceptions des articles 224(3) de la LPC et 91.8 du *Règlement*, avec l'intérêt légal et l'indemnité additionnelle à compter de la date de la présente demande d'autorisation;

CONDAMNER les défenderesses à payer des dommages punitifs pour un montant à être déterminé, avec l'intérêt légal et l'indemnité additionnelle à compter de la date du jugement à être prononcé;

ORDONNER le recouvrement collectif de ces sommes;

LE TOUT, avec frais de justice, incluant les frais d'experts, d'avis et de dépenses d'un administrateur.

VOUS POUVEZ DEMANDER D'INTERVENIR

Un membre peut faire une demande à la Cour pour intervenir dans l'action collective. La Cour autorisera l'intervention si elle est d'avis qu'elle est utile au groupe.

RESTEZ INFORMÉ

Si vous souhaitez obtenir de l'information sur les progrès du dossier, vous pouvez consulter le site web du cabinet Trudel Johnston & Lespérance et **vous abonner à la liste d'envoi pour ce recours** en remplissant le formulaire au <https://tjl.quebec/recours-collectifs/reservation-dhebergement-en-ligne/>.

ATTENTION. Votre inscription à l'infolettre n'est pas une réclamation! Si l'action collective est couronnée de succès, vous devrez faire votre réclamation en suivant la procédure que le tribunal déterminera.

Vous pouvez aussi consulter le Registre des actions collectives où toutes les procédures doivent être publiées : <https://www.registredesactionscollectives.quebec/>

En cas de questions, vous pouvez contacter les avocats de M. Mihoubi aux coordonnées suivantes :



TRUDEL JOHNSTON & LESPÉRANCE
750, Côte de la Place d'Armes, bureau 90
Montréal (Québec) H2Y 2X8
Ligne sans frais : 1 844-588-8385
info@tjl.quebec

GRENIER VERBAUWHEDE |  **AVOCATS INC.**

Montréal (Québec) H2J 2S4
Téléphone : 514 866-5599
info@grenierverbauwhede.ca

Annex 2
Notice to members in English version

**NOTICE OF AUTHORIZATION FOR A CLASS ACTION REGARDING
ONLINE RESERVATIONS OF HOTELS AND OTHER
ACCOMMODATIONS**

The Superior Court has authorized a class action against the following defendants:

- Priceline.com, L.L.C.
- Hotwire, Inc.
- Homeaway.com, Inc.
- Accor, S.A.
- Bedandbreakfast.com, inc.
- Canadastays (1760335 Ontario inc.)
- Hilton Worldwide Holdings, Inc.
- Six Continents Hotels, Inc.
- Orbitz Worldwide, L.L.C.
- Hyatt Corporation
- Wyndham Hotel Group, L.L.C.
- KAYAK Software Corporation
- Benjamin & Brothers, L.L.C. (reservations.com)

The class action alleges that the defendants violated the Consumer Protection Act by advertising prices that are disaggregated and lower than the price ultimately charged to consumers. This class action seeks to obtain compensation equivalent to the amount consumers paid in excess of the advertised price, except where that price was only higher due to fees required under federal or provincial law, plus punitive damages.

Mr. Chafik Mihoubi has been designated as the class members' representative.

The authorization judgment is a preliminary step that allows the class action to begin. This judgment does not determine whether the defendants, who will be able to present their defences at trial, are in fact liable. Following the trial, which will take place in the district of Montreal, the Superior Court will decide whether the defendants breached the *Consumer Protection Act* as alleged and should be ordered to pay fees to the class members and, if so, in what amount.

WHO IS AFFECTED?

You are included in the class action if:

- You have reserved accommodations, from Quebec, using one of the defendants' websites between the dates specified below and you paid a price that was higher than the price that was initially advertised, except where that price was only higher due to fees required under federal or provincial law.

AND

- Your reservation was made between January 27, 2017, and May 13, 2022 for the following defendants:
 - Priceline.com LLC (which operates the website priceline.com)
 - Hotwire Inc. (which operates the website hotwire.com)
 - Kayak Software Corporation (which operates the website kayak.com)
 - Benjamin & Brothers, LLC (which operates the website reservations.com)
 - Accor SA (which operates the website accorhotels.com)
 - Hilton Worldwide Holdings, Inc. (which operates the website hilton.com)
 - Six Continents Hotels, Inc. (which operates the websites holidayinn.com and intercontinental.com)
 - Hyatt Corporation (which operates the website hyatt.com)
 - Wyndham Hotel Group, LLC (which operates the website wyndhamhotels.com)
- Or your reservation was made between January 27, 2017, and September 28, 2020, for the following defendants:
 - Homeaway.com Inc. (which operates the websites homeaway.ca, vrbo.com, and vacationrentals.com)
 - Bedandbreakfast.com Inc. (which operates the website bedandbreakfast.com)
 - Canadastays (1760335 Ontario Inc.) (which operates the website canadastays.com)
- Or your reservation was made between January 27, 2017, and June 4, 2020, for the following defendant:
 - Orbitz Worldwide LLC (which operates the website orbitz.com)

All individuals who meet these criteria might be entitled to compensation if the class action is successful.

WHAT CAN YOU OBTAIN?

The class action seeks compensation equivalent to the amount consumers paid in excess of the initial advertised price, except where that price was only higher due to fees required under federal or provincial law, as well as punitive damages.

LEGAL FEES will be paid only in the event that the class action is successful, in an amount based on a percentage of the compensation paid to the class members. All legal fees must first be approved by the Court. **As a result, you do not have to pay anything** unless you obtain compensation.

YOU CAN CHOOSE TO OPT OUT UNTIL JULY 15, 2022.

If you do not take any action, you will be a member of the class action and will be bound by any judgment rendered in this case.

If you do not wish to be a member of the class for any reason, you may opt out from the class.

If you opt out, you will not be entitled to any compensation if a favourable judgment or settlement is reached in this action.

You have until July 15, 2022 to opt out of the class.

To opt out, you must send a letter to this effect to the clerk of the Superior Court of Quebec, indicating the court number 500-06-001041-207 :

Greffe de la Cour supérieure du Québec
1, rue Notre-Dame Est
Montréal (Québec) H2Y 1B6

The text should be simple but clearly indicate your intention (for example, “I hereby exclude myself from the class action bearing number 500-06-001041-207).

Counsel for the plaintiff request that a copy of this letter also be sent to them by email or by regular mail at the following address:

Trudel Johnston & Lespérance
750, Côte de la Place d’Armes, bureau 90
Montréal (Québec) H2Y 2X8
info@tjl.quebec

THE NEXT STEPS

To determine whether the class action will succeed, a trial will be held in the District of Montreal. The Superior Court will answer the following questions:

1. Are the contracts between Class Members and Defendants contracts regarding the lease of an immovable within the meaning of sections 6 and 6.1 of the CPA?

2. Are the first prices that appear on the Defendants' websites and mobile applications following a search for accommodations advertised prices within the meaning of Section 224(c) of the CPA?
3. Did the Defendants breach their obligations under the CPA by advertising on their websites and mobile applications a lower price than the one ultimately charged?
4. Did the Defendants breach their obligations under the CPA by placing more emphasis on the price per night than the price of the stay?
5. Are the class members entitled to compensation for the difference between the advertised price and the invoiced price, less taxes and duties provided for in the exceptions to article 224(3) CPA and article 91.8 of the *Regulation*?
6. Should the defendants be ordered to pay punitive damages to the class members?
7. Should the members' claims be recovered collectively?
8. What is the amount of the fees unlawfully charged to each class member?

THE CONCLUSIONS SOUGHT

GRANT the class action for all members of the classes.

ORDER the Defendants to pay the difference between the amount charged and the amount advertised, less taxes and fees provided for in the exceptions of section 224(3) of the CPA and section 91.8 of the *Regulations*, with legal interest and additional indemnity from the date of the present request for authorization.

ORDER the Defendants to pay punitive damages in an amount to be determined, with the legal interest and additional indemnity from the date of the judgment to be rendered.

ORDER the collective recovery of these amounts.

THE WHOLE, with legal costs, including expert fees, the cost of notices and administrator expenses.

YOU MAY APPLY TO INTERVENE

Members can apply to the Court to intervene in the class action. The Court will permit the intervention if it believes it is helpful to the class.

STAY INFORMED

If you wish to receive more information, you can consult Trudel Johnston & Lespérance's website and **subscribe to the mailing list for this case** by filling out the form at <https://tjl.quebec/en/class-actions/online-accomodation-reservation/>.

IMPORTANT. Your subscription to the newsletter is not a claim! If the class action is successful, you will still have to file a claim following the procedure determined by the Court.

For more information, you can also consult the Class Action Registry, where all proceedings must be published: <https://www.registredesactionscollectives.quebec/>.

If you have any questions, you can contact Mr. Mihoubi's lawyers using the information below:



TRUDEL JOHNSTON & LESPÉRANCE

Montréal (Québec) H2Y 2X8
Phone (toll free): 1 844-588-8385
info@tjl.quebec

GRENIER VERBAUWHEDE |  VOCATS INC.
5215, rue Berri, bureau 102

Phone: 514 866-5599
info@grenierverbauwhede.ca