

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO : 500-06-

(Class Action)
SUPERIOR COURT

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 AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO
OBTAIN THE STATUS OF REPRESENTATIVE**
(Sections 571 C.C.P. and following)

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

I. GENERAL PRESENTATION

A) THE CLASS ACTION

1. Applicant wishes to institute a class action 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**")

or any other Class to be determined by the Court;

2. This action arises from the publication by the defendants, on several websites that one or more of them own or host, of intimate videos or photos were posted without the consent of the subjects (the “**non-consensual content**”). This includes, but is not limited to, the illegal dissemination by the defendants, directly or indirectly, of content for streaming and download that depicts child sexual abuse material, the sexual assault of non-consenting adults, and intimate images (“**non-consensual intimate images**”) of adults who have not consented to the public dissemination of such content;
3. As a consequence of the foregoing, the Applicant and the Class members, who featured in the non-consensual content published on the defendants’ websites, suffered and continue to suffer damages for which they are entitled to receive compensation;

B) THE DEFENDANTS

4. The defendant 9219-1568 Québec Inc. (which carries on business as MindGeek) is a Montréal-based company with between 750 and 999 employees, as appears from the État des renseignements d’une personne morale au registre des entreprises which will be produced as **Exhibit P-1**, with a portfolio of pornographic websites;
5. The defendant MindGeek s.a.r.l., is a legal person having a place of business at 32 Boulevard Royal, 2449 Luxembourg, Luxembourg, which owns, operates and/or manages one or several of the websites;
6. The defendant, MG Freesites Ltd, is 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. MG Freesites Ltd. owns, operates and/or manages one or several of the websites;
7. The defendant, MG Freesites II Ltd, is 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. MG Freesites II Ltd. owns, operates and/or manages one or several of the websites;
8. The defendant, MG Content RT Limited, is 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. MG Content RT Limited owns, operates and/or manages one or several of the websites;
9. The defendants together will be referred to as “**MindGeek**”;
10. MindGeek has incorporated dozens of subsidiaries and related companies around the world, the details of which are unknown to the Class at this time. However, MindGeek operates as a single business enterprise, commingling its funds and other assets to shelter and avoid liabilities and to hide the identity of its owners, and are jointly and severally liable in this action as alter egos of the other;

11. The most popular of MindGeek's sites is called PornHub, but it also owns multiple other similar sites, such as RedTube, YouPorn, Tube8, PornMD, Thumbzilla, Xtube and others (collectively with PornHub, the "**offending websites**");
12. As part of its business, MindGeek actively solicits, promotes and facilitates the payment for dissemination on its websites of explicit sexual images and videos, from which it generates significant profits;
13. Although the offending websites offer premium subscription plans, they offer free content for non-members (the majority of visitors), and profit from advertising, co-promotions and other business arrangements;
14. PornHub, for example, is one of the most-visited websites in the world, attracting 3.5 billion visits a month and recording almost three billion ad impressions per day, as appears from The New York Times article "The Children of Pornhub" dated December 4, 2020 which will be produced as **Exhibit P-2**;
15. PornHub has been visited 42 billion times in 2019, as appears from the Le Journal de Montréal article "MindGeek: agir là où ça fait mal!" dated December 22, 2020 which will be produced as **Exhibit P-3**;
16. The offending websites accept for upload pornographic photos and videos from the general public, including non-consensual content;
17. Until December 2020, anyone could upload pornographic content to PornHub, which content was then available for streaming or download to save for viewing on a personal computer in perpetuity;
18. Despite knowing that there is a high risk that that non-consensual content would be uploaded, MindGeek took no steps to ensure that only consensual images and videos would be allowed on websites it owned or operated, directly or indirectly. Instead, MindGeek monetized the non-consensual images and videos for profit;

C) THE NON-CONSENSUAL CONTENT

19. A 2019 investigation by the United Kingdom's Sunday Times discovered dozens of illegal videos of child sexual abuse on PornHub within minutes, some of which depicted children as young as three years old, with some of this content having been posted on the platform several years earlier, as appears from the article "Unilever and Heinz pay for ads on Pornhub, the world's biggest porn site" dated November 3, 2019, which will be produced as **Exhibit P-4**;
20. MindGeek also hosts content for streaming and download, which depict intimate representations, including sexual acts, featuring persons who never consented to such publication;

21. MindGeek is aware that the offending websites host non-consensual content for streaming and download including, but not limited to, the sexual abuse of children and intimate depiction of adults, who have not consented to the public dissemination of the content;
22. For example:
- a) Pornhub hosted a video of a 14 years old girl being raped, as appears from the BBC News article “I was raped at 14, and the video ended up on a porn site” dated February 10, 2020 which will be produced as **Exhibit P-5**;
 - b) The mother of a missing 15 years old girl discovered many videos of her daughter’s rape and sexual abuse on Pornhub, as appears from The New York Times article P-2;
 - c) Pornhub hosted the video of a 14 years old Indigenous girl’s sexual assault and torture for months, despite requests for the video’s removal;
23. These examples are described in an open letter dated March 9, 2020, from a group of Canadian Parliament Members and Senators, from three different parties, to Justin Trudeau, Canada’s Prime Minister, which reads as follows:

“ Dear Prime Minister,

First, we commend Canada’s participation in the development and launch of the Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse on March 5, 2020, providing steps for technology companies to protect children from sexual exploitation online.

Today, we write to you asking for your help to build on these efforts and protect women and youth, particularly those who are victims of child sexual exploitation, sex trafficking, and sexual assault, from further exploitation online.

Pornhub, owned by Montréal-based MindGeek, is the largest website in the world producing, making available and distributing sexually explicit content, with 42 billion visits and 6.8 million videos uploaded per year. It has come to our attention that some of this content contains the real exploitation of women and minors. In several cases, Pornhub has either refused to remove such videos, or has failed to remove them in a reasonable timeframe.

An investigation late last year by the Sunday Times UK found “dozens” of illegal videos of child sexual exploitation on Pornhub within “minutes”. Some of the illegal content had been on the platform for more than three years. Following this investigation, PayPal cut off its services to Pornhub in November 2019.

Over the last few months, the media has highlighted additional examples of content featuring victims of child sexual exploitation, sex trafficking, and sexual assault being published on Pornhub including:

- A 15-year-old girl who had been trafficked and missing for a year was found after 58 videos of her rape and sexual abuse were discovered online, many on Pornhub.*
- Twenty-two females were lured into filming sex acts and the videos subsequently uploaded to Pornhub. The perpetrators have been charged with sex trafficking.*
- A 14-year-old indigenous girl's sexual assault and torture were filmed and uploaded to Pornhub which hosted her videos for months despite repeated requests to remove the videos.*
- A 14-year-old girl was filmed being raped by a 49-year old woman and videos of her rape were uploaded to Pornhub.*
- A victim of domestic violence was sexually assaulted, and the videos of her abuse uploaded to Pornhub.*

Each time these videos are viewed-and many have hundreds of thousands of views-the victims are revictimized. This is deeply harmful to those exploited in these videos.

The ability for Pornhub, and other online companies, to publish this content, and in some cases to profit off crimes committed against children, victims of sex trafficking and sexual assault, is fundamentally contrary to any efforts to increase gender equality in Canada and protect women and youth from sexual exploitation.

In addition, these videos are available online because Pornhub verifies the email address of the account creator and does not require verification of the age or consent of each person featured in subsequent videos that are uploaded.

The Government of Canada has a responsibility to ensure that people who appear in sexually explicit content that is uploaded and published online by companies operating in Canada are not children, nor victims of human trafficking or sexual assault. Further, the Government of Canada has a responsibility to investigate those who produce, make available, distribute and sell sexually explicit content featuring victims of child sexual exploitation, sex trafficking, and sexual assault.

We, the undersigned Senators and Members of Parliament, call upon the Government of Canada to:

1. Review the federal legislative and regulatory framework to ensure Canada's laws fully prohibit the distribution of material featuring victims of child sexual exploitation, sex trafficking, and sexual assault.

2. Ensure that MindGeek's activities are in compliance with Canadian law including, Bill C-22, an Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service, which came into force on December 8, 2011, and Bill C-13, the Protecting Canadians from Online Crime Act, which came into force on March 10, 2015; and

3. Take whatever other steps are necessary at the federal level to ensure that companies that sell, produce, make available or publish sexually explicit content be required to verify the age and consent of each individual represented in such material.

We are committed to working with your government to protect women and youth, particularly those who are victims of child sexual exploitation, sex trafficking, and sexual assault from further exploitation online and addressing this issue in a timely manner.

Thank you for your immediate attention to this matter.

Sincerely,

*Senator Julie Miville-Dechéne
Independent Senator for Quebec*

*Senator Kim Pate
Independent Senator for Ontario*

*John McKay, MP
Scarborough-Guildwood*

*Stuator Frances Lankin
Independent Senator – Ontario*

*Rosemarie Falk, MP
Battlefords- Lloydminster*

*Dr. Colin Carrie, MP
Oshawa*

*Arnold Viersen, MP
Peace River – Westlock*

Cathay Wagantall, MP

24. On December 15, 2020, a lawsuit was launched in California alleging, among other things, that:
- a) MindGeek knew or should have known that one of its commercial partners since 2011, GirlsDoPorn, regularly used fraud and coercion to get women to appear in videos;
 - b) For over a decade, GirlsDoPorn sex-trafficked hundreds of high school and college-aged women using fraud, coercion and intimidation to get the young women to film pornographic videos under the false pretense that the videos would remain private, off the Internet, and never to be seen in North America, when in reality, GirlsDoPorn intended to publish the videos online, including on MindGeek sites;
 - c) MindGeek continued to participate in GirlsDoPorn’s sex trafficking by marketing, selling and exploiting victim’s videos years after MindGeek learned GirlsDoPorn used fraud, intimidation and coercion as part of its customary business practices;
 - d) MindGeek did not remove videos when requested to do so by the women who appeared in them, despite the fact some of them explicitly reaffirmed that they were coerced;
 - e) MindGeek did not end its partnership with GirlsDoPorn until that company’s operators were charged by U.S. authorities in November 2019. One of GirlsDoPorn’s operators, Ruben Andre Garcia, pleaded guilty to two counts of sex trafficking by force, fraud and coercion;
- as appears from the Complaint which will be produced as **Exhibit P-6**;
25. MindGeek waited until December, 2020, to block unverified users from uploading new content on Pornhub and to suspend millions of videos uploaded by non-verified users across its platforms, including Pornhub, as appears from the The Globe and Mail article “MindGeek suspends millions of videos uploaded by non-verified users across its platforms, including Pornhub” dated December 14, 2020 which will be produced as **Exhibit P-7**;
26. MindGeek should have taken these and other minimal steps earlier, in 2007, to ensure that non-consensual content was not posted on its websites;
27. Instead, it generated significant revenue and profit from non-consensual intimate images and videos hosted on its websites;
28. Despite all of the above, non-consensual content remains on the websites;

D. CAUSES OF ACTION

29. The availability of non-consensual content, including but not limited to, photos and videos of sexual abuse and sexual assault, including those of minors, on the offending websites is a direct and foreseeable result of those sites' failure to elicit the consent of persons in the photos and videos and to comply with the applicable legal obligations;
30. Until 2019, MindGeek had no policies or procedures, to, among other things, investigate:
 - a. prospective content partners' business practices or reputation;
 - b. prospective content users practices or reputation;
 - c. on each video or image before they were published, steps to ensure they were obtained with consent;
 - d. on allegations of offenses committed by its content partners or users;
31. MindGeek did not employ enough properly trained content moderators to review the footage on its websites for acts of sex trafficking, rape or underage persons.
32. The non-consensual content would not have been accessible to the public but for MindGeek's breaches of its duties owed to the Class members to securely and responsibly ensure that images and videos are posted with consent;
33. It is a fundamental human right for persons to have control over the dissemination of intimate images and videos of oneself. The right to privacy is internationally recognized in multiple instruments, including article 12 of the *Universal Declaration of Human Rights*, article 17 of the *International Covenant on Civil and Political Rights*, article 16 of the *Convention on the Rights of the Child*, article 8 of the *European Convention on Human Rights*, and article 11 of the *American Convention on Human Rights*;
34. Every province in Canada has similar legislation and rules of law that protects any individual's right to inviolability, dignity and to the protection of his privacy, among others;
35. In Québec, articles 3, 10, 35, 36, 37 and 1457 of the *Québec Civil Code*, articles 1, 4 and 5 of the *Charter of human rights and freedom* and the *Act respecting the protection of personal information in the private sector*, CQLR c. P-39.1 protect the individuals rights to inviolability, to the safeguard of his dignity, honour and reputation and to respect for his private life;
36. In several common law provinces, legislation has been enacted establishing a statutory cause of action for violation of privacy, which apply to individuals residing in those jurisdictions:
 - British Columbia: *Privacy Act*, RSBC 1996, c. 373;

- Manitoba: *Privacy Act*, CCSM c. P125;
 - Saskatchewan: *Privacy Act*, RSS 1978, c. P-24;
 - Newfoundland: *Privacy Act*, RSNL 1990, c. P-22;
37. Several provinces have also enacted legislation respecting civil remedies for the non-consensual distribution of intimate images, which apply to individuals residing in those jurisdictions:
- Manitoba: *Intimate Image Protection Act*, CCSM, c. 187;
 - Alberta: *Protecting Victims of Non-Consensual Distribution of Intimate Images Act*, RSA 2017, c. P-26.9;
 - Saskatchewan: *The Privacy Amendment Act*, 2018, SS 2018, c. 28;
 - Nova Scotia: *Intimate Images and Cyber-protection Act*, SNS 2017, c. 7;
 - Newfoundland: *Intimate Images Protection Act*, RSNL 2018, c. I-22;
38. The court may take judicial notice of the law of other provinces or territories of Canada and of that of a foreign state or require that proof be made of it;
39. In addition, the *Criminal Code*, R.C.S., 1985, c. C-46 and *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service*, S.C. 2011, c. 4 apply to this case;
40. Among other things, it is an offence contrary to s. 162.1 of the *Criminal Code* to knowingly publish, distribute, transmit, sell or advertises an intimate image of a person knowing that the person did not give their consent, or being reckless as to whether or not that person gave their consent;
41. By its actions and omissions, and in the duties owed to the Class members, MindGeek has breached and violated Class members' rights and is responsible for the damages suffered, such breaches including;
- a) failing to verify the consent of the persons depicted on the websites;
 - b) failing to prohibit non-verified users to post content before December 2020;
 - c) failing to have effective policies and procedures to avoid the dissemination of non-consensual content on its website;
 - d) failing to have an effective takedown system in place by, among other things, failing to remove the non-consensual content from all websites and failing to remove the information associated with such content, once informed;

- e) failing to effectively and completely takedown images and videos posted on related websites or licensed for use on third party websites;
- f) failing to take steps to prevent non-consensual content from being re-posted on a particular website and/or from being posted on any of the other websites owned, operated and/or managed by MindGeek or licensed for use on third party websites;
- g) failing to advise Class members of the existence and availability of technology to prevent non-consensual content from being re-posted on a particular website and/or from being posted on any of the other websites owned, operated and/or managed by MindGeek;

E. DAMAGES

- 42. The circumstances give rise to serious and far-reaching consequences on the Class members' personal lives, the full extent of which has yet to be determined;
- 43. On behalf of herself and the Class members, the Applicant claims damages and compensation with respect to:
 - a. Pecuniary and non-pecuniary damages;
 - b. Breach of the *Privacy Act*, RSBC 1996, c. 373, s. 1(1); breach of the *Privacy Act*, CCSM c. P125, s. 2(1); breach of the *Privacy Act*, RSS 1978, c. P-24, s. 2; breach of the *Privacy Act*, RSNL 1990, c. P-22, s. 3; and breach of the *Civil Code of Quebec* SQ 1991, c. 64 art. 3, 10, 35-37;
 - c. Breach of the *Intimate Image Protection Act*, CCSM, c. 187, s. 11(1); breach of the *Protecting Victims of Non-Consensual Distribution of Intimate Images Act*, RSA 2017, c. P-26.9, s. 3; breach of the *Privacy Amendment Act*, 2018, SS 2018, c. 28, s. 7.3(1); breach of the *Intimate Images and Cyber-protection Act*, SNS 2017, c. 7, s. 2; and breach of the *Intimate Images Protection Act*, RSNL 2018, c. I-22, s. 4(1);
 - d. Loss of privacy including, but not limited to, the publication of embarrassing or private facts, without consent, publicly placing a person in a false light, and intrusion upon seclusion;
 - e. Breach of copyright and appropriation of likeness;
 - f. Defamation and damage to reputation;
 - g. Negligence and gross negligence;
 - h. Inducing breach of confidence;

- i. Unjust enrichment; and
 - j. Fraud;
44. On behalf of herself and the Class members, the Applicant also claims aggravated, punitive, and exemplary damages, the particulars of which will be provided prior to trial;

II. FACTS GIVING RISE TO THE APPLICANT'S CLAIM AND IN SUPPORT OF THE APPLICATION FOR LEAVE TO USE OF A PSEUDONYM

45. The facts on which the Applicant's personal claim against MindGeek is based, are as follows:
46. The Applicant is an adult female residing in Ontario;
47. As a child, the Applicant was a victim of sexual abuse, some of which was recorded and subsequently published online, including on websites owned and/or hosted by MindGeek;
48. The Applicant is aware of a video depicting her abuse as a child that was disseminated on Pornhub's website. The video depicts the abuse of the Applicant when she was approximately 12 years old;
49. Indeed, between September and October 2019, she received a private message on her Twitter account from a man she knew, which said something to the effect that she was appearing on a link, which was also contained in the tweet;
50. The applicant did not see this message until January of 2020;
51. Once she saw the message, the Applicant clicked on the link which took her to the video on Pornhub;
52. While the videos behind a pay screen are not accessible to non paying users, the link allows anyone who clicks it to see the video title, a still image from the video and the comments underneath;
53. On the basis of the image, the Applicant was able to identify herself, and also identify the particular incident of abuse it depicted;
54. Following the events described here above, the Applicant filled out a form response to request removal of the video provided on the Defendants' website under the contact support section;
55. All the Applicant received was an automated response, 4-5 business days later and the Defendants have never followed up in any manner with the Applicant afterwards;

III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH CLASS MEMBER

56. The facts giving rise to the personal claim of each Class member against MindGeek are as follows:
- a) Each Class member has, or at the relevant time appeared in non-consensual content disseminated by MindGeek, on one or more websites it owns or hosts, directly or indirectly, for streaming and download;
 - b) Each Class member's rights to inviolability, to the safeguard of dignity, honour and reputation and to respect for one's private life were violated by MindGeek;
 - c) MindGeek owed duties to the Class members to protect their rights to inviolability, to the safeguard of one's dignity, honour and reputation and to respect for one's private life;
 - d) MindGeek breached its duties to the Class members;
 - e) All the damages suffered by the Class members are a direct and proximate result of MindGeek's conduct and its breaches of duties;
 - f) In consequence of the foregoing, the Applicant and Class members are justified in claiming the payment of all damages and losses they suffered and continue to suffer due to MindGeek's conduct;
 - g) Each Class member was the victim of an unlawful an intentional interference with his fundamental rights, thus giving rise to punitive damages;

IV. COMPOSITION OF THE CLASS

57. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings, with respect to provision 575 (3) of the *Code of civil procedure*, for the following reasons:
- a) It is expected that there are numerous Class members;
 - b) The names and addresses of people who can be part of the Class are unknown to the Applicant;

- c) The facts alleged in the foregoing paragraphs make it difficult, if not impossible, to contact each Class member to obtain a warrant or to proceed by way of joinder;
- 58. The class action is the only procedural vehicle that will enable all victims of MindGeek to access justice;
- 59. It would be impossible, as well as disproportionate, to require each individual member of the Class to institute an individual action, whereas a class action allows an economy of resources by having one judge hear all of the evidence and render a decision binding upon the defendants and all Class members;

V. QUESTIONS

- 60. The identical, similar or related questions of law or fact between each member of the Class and MindGeek which the Applicant wishes to have decided by the class action are:
 - a) Do the offending websites facilitate the dissemination of non-consensual content?
 - b) Did the defendants breach any of its duties to the Class members?
 - c) Did the defendants violate the Class members' rights to inviolability, to the safeguard of their dignity, honour and reputation and to respect for their private life?
 - d) Did the defendants fail to abide by the rules of conduct incumbent upon it, according to the circumstances, usage or law, so as not to cause injury to the Class members, thereby causing injuries to the Class members as a result of its fault?
 - e) Are the defendants liable to pay any damages or compensation to the Class members?
 - f) If so, what kind of damages are commonly suffered by the Class members?
 - g) May the Court determine a minimum quantum of damage that the Class members suffered in common and/or set parameters for the damages suffered by the Class members, based on the gravity of the defendants' conduct and the consequence thereof?
 - h) Did the defendants unlawfully and intentionally interfere with the fundamental rights of the Class members?
 - i) If so, what is an appropriate amount of punitive damages to which the defendants should be condemned in order to sanction and deter the conduct in question?
 - j) Is it appropriate for punitive damages to be recovered collectively?

61. The questions of law or of fact which are particular to each of the members of the Class are:
- a) Did each Class member appear in non-consensual content published by the defendants, on one or more websites it owns or hosts, for streaming and download, that depicts the sexual abuse of children, the sexual assault of non-consenting adults, and/or non-consensual intimate images of adults who have not consented to the public dissemination of such content?
 - b) What is the quantum of the pecuniary and non-pecuniary damages suffered by each of the Class members?

VI. NATURE OF THE ACTION

62. The action that the Applicant wishes to institute for the benefit of the Class members is a class action in civil liability for compensatory and punitive damages against the defendants;

VII. CONCLUSIONS SOUGHT

63. The conclusions sought by the Applicant against the defendants are as follows :

GRANT the Class Action;

CONDEMN the defendants to pay pecuniary and non-pecuniary damages temporarily evaluated at \$500 million, to be enhanced, plus interest at the legal rate as of the date of the *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative*, as well as the additional indemnity provided by the law in virtue of article 1619 C.c.Q.;

CONDEMN the defendants to pay punitive damages temporarily evaluated at \$100 million, to be enhanced, plus interest at the legal rate as of the date of the *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative*, as well as the additional indemnity provided by the law in virtue of article 1619 C.c.Q.;

DECLARE :

- a) That all Class members are entitled to be compensated for all of their pecuniary damages resulting from the faults of the defendants, including, but

without limitation, their loss of income, their loss of earning capacity and their expenses and relevant disbursements;

- b) That all Class members are entitled to be compensated for their non-pecuniary damages resulting from the faults of the defendants, in accordance with parameters to be set by the Court during the trial pertaining to the collective questions;

ORDER collective recovery of the punitive damages claimed herein, and the liquidation of the Class members claims pursuant to articles 595 to 598 C.C.P.;

CONDEMN the defendants to pay the costs incurred for any investigation necessary to establish its liability in this case, including the extrajudicial fees of the lawyers and out-of-court disbursements;

CONDEMN the defendants to pay to Class members the costs of distributing the funds to Class members;

CONDEMN the defendants to any further relief as may be just and proper;

THE WHOLE with the legal costs, including the cost of all exhibits, reports, expertise and publication of notices;

A) The Applicant requests the status of representative of the Class

64. Applicant, who seeks to obtain the status of representative, is able to adequately represent the Class members, for the following reasons:

- a) That person is person is a Class member, as she appeared in non-consensual content disseminated by MindGeek, on website(s) it owned or operated, directly or indirectly;
- b) That person has the capacity and interest to fairly and adequately protect and represents the interest of the members;
- c) That person acts in good faith and has instituted this action for the sole goal of having her rights, as well as the rights of other Class members recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of MindGeek's conduct;
- d) That person understands the nature of the action;

- e) That person is available to dedicate the necessary time for an action and to collaborate with Class members; and
- f) That person does not have any conflict of interests with the other Class members on the issues common to the Class members;

B) The Applicant suggests that this class action be exercised before the Superior Court of justice in the district of Montreal

- 65. Applicant suggests that the class action should be brought before the Superior Court of the district of Montréal because MindGeek has its principal place of business in the judicial district of Montréal;
- 66. The Applicant adds that the Superior Court of Québec, district of Montréal, has competence over the proposed international or national Class;
- 67. The present motion is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative*;

AUTHORIZE the institution of a Class Action

ASCRIBE the Applicant the status of representative of the persons included in the Class herein described as:

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;

IDENTIFY the principle questions of fact and law to be dealt collectively as the following:

- a) Do the offending websites facilitate the dissemination of non-consensual content?
- b) Did the defendants breach any of its duties to the Class members?
- c) Did the defendants violate the Class members' rights to inviolability, to the safeguard of their dignity, honour and reputation and to respect for their private life?
- d) Did the defendants fail to abide by the rules of conduct incumbent upon them, according to the circumstances, usage or law, so as not to cause injury to the Class members, thereby causing injuries to the Class members as a result of their fault?
- e) Are the defendants liable to pay any damages or compensation to the Class members?
- f) If so, what kind of damages are commonly suffered by the Class members?
- g) May the Court determine a minimum quantum of damage that the Class members suffered in common and/or set parameters for the damages suffered by the Class members, based on the gravity of the defendants' conduct and the consequence thereof?
- h) Did the defendants unlawfully and intentionally interfere with the fundamental rights of the Class members?
- i) If so, what is an appropriate amount of punitive damages to which the defendants should be condemned in order to sanction and deter the conduct in question?
- j) Is it appropriate for punitive damages to be recovered collectively?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the Class Action;

CONDEMN the defendants to pay pecuniary and non-pecuniary damages temporarily evaluated at \$500 million, to be enhanced, plus interest at the legal rate as of the date of the *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative*, as well as the additional indemnity provided by the law in virtue of article 1619 C.c.Q.;

CONDEMN the defendants to pay punitive damages temporarily evaluated at \$100 million, to be enhanced, plus interest at the legal rate as of the date of the *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative*, as well as the additional indemnity provided by the law in virtue of article 1619 C.c.Q.;

DECLARE :

- a) That all Class members are entitled to be compensated for all of their pecuniary damages resulting from the faults of the defendants, including, but without limitation, their loss of income, their loss of earning capacity and their expenses and relevant disbursements;
- b) That all Class members are entitled to be compensated for their non-pecuniary damages resulting from the faults of the defendants, in accordance with parameters to be set by the Court during the trial pertaining to the collective questions;

ORDER collective recovery of the punitive damages claimed herein, and the liquidation of the Class members claims pursuant to articles 595 to 598 C.C.P.;

CONDEMN the defendants to pay the costs incurred for any investigation necessary to establish its liability in this case, including the extrajudicial fees of the lawyers and out-of-court disbursements;

CONDEMN the defendants to pay to Class members the costs of distributing the funds to Class members;

CONDEMN the defendants to any further relief as may be just and proper;

THE WHOLE with the legal costs, including the cost of all exhibits, reports, expertise and publication of notices;

DECLARE that all Class members that have not requested their exclusion from the Class in the prescribed delay will be bound by any judgement to be rendered on the Class action to be instituted;

FIX the delay of exclusion at 60 days from the date of the publication of the notice to Class members;

ORDER the publication of a notice to Class members pursuant to section 591 C.C.P.;

PERMIT the use of pseudonyms for the identification of the Applicant and of the Class members in the proceedings, exhibits, and/or all other documents filed into the Court record, in order to protect their identities;

THE WHOLE with costs, including the costs of all publications of notices and expert reports.

Québec, December 29, 2020

Siskinds Desmeules, Avocats

SISKINDS DESMEULES AVOCATS

(Me Caroline Perrault)

(Me Karim Diallo)

caroline.perrault@siskinds.com

karim.diallo@siskinds.com

Lawyers of the Applicant

43, rue de Buade, bureau 320

Québec (Québec) G1R 4A2

Téléphone : 418-694-2009

Télécopieur : 418-694-0281

Notification : notification@siskinds.com

SUMMONS (Sections 145 and following C.C.P.)

Filing of a judicial application

Take notice that the Applicant has filed this Application for authorization to institute a class action and to appoint the status of Representative Applicant in the office of the Superior Court in the judicial district of Montréal.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montréal situated at 1, rue Notre-Dame Est, Montréal (Québec), H2Y 1B6, within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;

- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the Applicant.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as an Applicant under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the Applicant's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the originating application, the Applicant intends to use the following exhibits:

- Exhibit P-1 :** État des renseignements d'une personne morale au registre des entreprises;
- Exhibit P-2 :** The New York Times article "The Children of Pornhub" dated December 4, 2020;

- Exhibit P-3 :** Le Journal de Montréal article "MindGeek: agir là où ça fait mal!" dated December 22, 2020;
- Exhibit P-4 :** United Kingdom's Sunday Times article "Unilever and Heinz pay for ads on Pornhub, the world's biggest porn site" dated November 3, 2019;
- Exhibit P-5:** BBC News article "I was raped at 14, and the video ended up on a porn site" dated February 10, 2020;
- Exhibit P-6:** California Complaint from 40 women filed on December 15, 2020;
- Exhibit P-7:** The Globe and Mail article "MindGeek suspends millions of videos uploaded by non-verified users across its platforms, including Pornhub" dated December 14, 2020.

These exhibits are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in section 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Québec, December 29, 2020

Siskinds Desmeules Avocats

SISKINDS DESMEULES AVOCATS

(Me Caroline Perrault)

(Me Karim Diallo)

caroline.perrault@siskinds.com

karim.diallo@siskinds.com

Lawyers of the Applicant

43, rue de Buade, bureau 320

Québec (Québec) G1R 4A2

Téléphone : 418-694-2009

Télécopieur : 418-694-0281

Notification : notification@siskinds.com

C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

(Class Action)
SUPERIOR COURT

NO : 500-06

JANE DOE
Applicant

c.
9219-1568 QUÉBEC INC. (d.b.a. MindGeek),
MINDGEEK S.A.R.L.,
MG FREESITES LTD,
MG FREESITES II LTD
and
MG CONTENT RT LIMITED
Defendants

APPLICATION FOR AUTHORIZATION TO
INSTITUTE A CLASS ACTION AND TO
OBTAIN THE STATUS OF REPRESENTATIVE
(Sections 571 C.C.P. and following)

BB-6852

Casier 15

Me Caroline Perrault
Me Karim Diallo

N/D : 67-256

SISKINDS DESMEULES | Avocats s.e.n.c.r.l.
43, rue de Buade, bureau 320, Québec (Québec) G1R 4A2
TÉLÉPHONE 418-694-2009 (Sans frais 1-877-735-3542)
TÉLÉCOPIEUR 418-694-0281
NOTIFICATION notification@siskinds.com

SISKINDS.com/qc

