

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N° : 500-06-001041-207

COUR SUPÉRIEURE
(Action collective)

CHAFIK MIHOUBI

Applicant

c.

PRICELINE.COM, L.L.C.

et

HOTWIRE, INC.

et

HOMEAWAY.COM, INC.

et

ACCOR, S.A.

et

BEDANDBREAKFAST.COM, INC.

et

**CANADASTAYS (1760335 ONTARIO
INC.)**

et

HILTON WORLDWIDE HOLDINGS, INC.

et

SIX CONTINENTS HOTELS, INC.

et

ORBITZ WORLDWIDE, L.L.C.

et

HYATT HOTELS CORPORATION

et

WYNDHAM HOTEL GROUP, L.L.C.

et

KAYAK EUROPE, G.M.B.H.

et

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

Defendants

**APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE OF
DEFENDANT ACCOR, S.A.**

(Art. 574(3) CCP)

TO THE HONOURABLE JUSTICE MARTIN SHEEHAN J.S.C., SITTING IN AND FOR THE DISTRICT OF MONTREAL, RESPONDENTS HEREBY PLEAD AS FOLLOWS:

1. On January 27, 2020, the Applicant filed an *Application to Authorize the Bringing of a Class Action and to Obtain the Status of Representative Plaintiff* against multiple defendants, including Respondent/Petitioner Accor, S.A. ("**Accor**"), the whole as more fully appears from the Court record;
2. On December 16, 2020, the Applicant filed a *Modified Application to Authorize the Bringing of a Class Action and to Obtain the Status of Representative Plaintiff* (the "**Application for Authorization**"), the whole as more fully appears from the Court record;
3. As appears from the Application for authorization, the Applicant seeks to represent the following Class:

All consumers who, while located in Quebec, reserved accommodation on the internet with the defendants and who paid a price higher than the price initially advertised, except for any fees payable under a federal or provincial statute where, under such statute, those fees must be collected directly from the consumer for remittance to a public authority.

(hereinafter referred to as the "**Class**").

4. The Applicant's proposed class action alleges that the Respondents would have (i) laid lesser stress, in their advertisements, on the price of a set of goods or services than on the price of any goods or services forming part of the set and (ii) charged consumers a higher price than the one advertised for accommodation reservations.
5. Specifically, the Applicant contends that the Respondents, on their respective reservation websites, would have failed to announce the full price of a stay at the first step of the reservation process, as certain fees would have been added and charged later in said process.
6. The Applicant alleges that he made reservations on one of the Respondents' websites, www.priceline.com, in 2018 and 2019. He alleges that he paid a price higher than the one advertised at the first step of the reservation process due to the addition of certain service fees.

I. Causes of Action Alleged

7. The proposed class action alleges causes of actions under the *Consumer Protection Act*, sections 224 and 272;
8. Accordingly, the Applicant claims, for himself and on behalf of the putative class, reimbursement of the difference between the alleged announced price and the paid price, with the exception of taxes, as well as punitive damages.

9. As will be further detailed below, the Application for authorization does not provide a complete picture of (a) the current booking process on Respondent Accor's website and (b) the contractual relationship between Respondent Accor and the class members.
10. Respondent Accor's proposed relevant evidence therefore aims to fill those gaps and provide a more comprehensive factual and contractual background to the Court for its assessment of the authorization criteria in art. 575 CCP.

II. Respondents' Proposed Relevant Evidence

11. Respondent Accor seeks to adduce its proposed relevant evidence by way of the Sworn Statement of Michael Innocentin, filed in support of the present Motion as **Exhibit A**, which refers to the documentary evidence identified as **Exhibits A-1 and A-2**.

A. *The Booking Path*

12. In the Application for authorization, Applicant details, at paragraphs 2.5 to 2.10, and at paragraphs 2.40 to 2.45 for Respondent Accor more specifically, the alleged steps to complete a reservation, or booking path.
13. However, the Application for authorization fails to present a complete and accurate picture of the current booking path.
14. The Sworn Statement and Exhibit A-1 will notably demonstrate the fee disclosures provided on multiple occasions in the course of Respondent Accor's current booking path before the reservation is finalized.

B. *Terms and Conditions of the Contractual Relationship*

15. In the Application for authorization, Applicant fails to make any mention, or produce as evidence, the terms and conditions of the contractual relationship between the Respondents and members of the putative class at the time of making reservations on the Respondents' respective websites.
16. These terms and conditions are essential to a complete understanding of the respective parties' rights and obligations, including regarding Accor's cancellation policy.
17. The Sworn Statement and Exhibit A-2 will notably fill the factual gap left by the Application for Leave on this topic, by providing said terms and conditions which govern the relationship between the parties.

III. Conclusions

18. The evidence that Respondent Accor wishes to adduce, as detailed in this Motion, is strictly circumscribed to the above two topics.

19. Said evidence is essential to provide this Court with a comprehensive picture of the factual background of the case as well as the contractual relationship between the Respondent and members of the putative class, which are both at the heart of the Applicant's alleged personal cause of action and proposed class action;
20. Accordingly, the Respondent's proposed relevant evidence will be useful for the Court in assessing the arguable test criterion pursuant to paragraph 575 CCP, namely the arguable case criterion and the scope of the class;
21. The present application is well-founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

- [A] **GRANT** the present *Application for Leave to Adduce Relevant Evidence*;
- [B] **ALLOW** Respondent to file the Sworn Statement of Michael Innocentin and Exhibits A-1 and A-2;
- [C] **THE WHOLE**, with costs to follow.

Montréal, May 31, 2021

Borden Ladner Gervais S.E.N.C.R.L., S.R.L.

Borden Ladner Gervais LLP

Lawyers for Respondent **Accor, S.A.**

Mtre. Alexander De Zordo

Mtre. Karine Chênevert

1000 De La Gauchetière Street West, Suite 900

Montréal, QC H3B 5H4

Tel.: 514.954.3180

Fax: 514.954.1905

AdeZordo@blg.com

KChenevert@blg.com

NOTICE OF PRESENTATION

TO: Mtre. Lex Gill
Mtre Bruce W. Johnston
Mtre Mathieu Charest-Beaudry
TRUDEL, JOHNSTON & LESPÉRANCE
750 Côte de la Place d'Armes, Suite 90
Montréal, QC H2Y 2X8

bruce@tjl.quebec
lex@tjl.quebec
mathieu@tjl.quebec

Lawyers for Plaintiff

Mtre. Fadi Amine
MILLER THOMSON SENCRL
1000 de la Gauchetière Street West
Suite 3700
Montréal, QC H3B 4W5

famine@millერთhompson.com

**Lawyers for Priceline.com L.L.C. et
Kayak Europe, G.M.B.H.**

Mtre. Éric Préfontaine
Mtre Annie-Claude Authier
OSLER, HOSKIN & HARCOURT LLP
1000 de la Gauchetière Street West
Suite 2100
Montréal, QC H3B 4W5

eprefontaine@osler.com
aauthier@osler.com

**Lawyers for Hyatt Hotels
Corporation**

Mtre Bruno Grenier
Mtre Cory Verbauwheide
GRENIER VERBAUWHEBE AVOCATS INC.
5215 Berri Street, suite 102
Montréal, QC H2J 2S4

bgrenier@grenierverbauwheide.ca
cverbauwheide@grenierverbauwheide.ca

Lawyers for Plaintiff

Mtre. Eric C. Lefebvre
Mtre Saam Pousht-Mashhad
NORTON ROSE FULBRIGHT CANADA LLP
1 Place Ville-Marie, suite 2500
Montréal, QC H3B 1R1

eric.lefebvre@nortonrosefulbright.com
spoushtmashhad@nortonrosefulbright.com
Notifications-mtl@nortonrosefulbright.com

**Lawyers for Orbitz Worldwide,
L.L.C., Homeaway.com, inc.,
Bedandbreakfast.com, inc. and
Canadastays (1760335 Ontario Inc.)**

Mtre. Myriam Bixi
LAVERY, DE BILLY, LLP.
1, Place Ville Marie, Suite 4000
Montréal, QC H3B 4M4
mbixi@lavery.ca
notifications-mtl@lavery.ca

**Lawyers for Six Continents hotels,
inc.**

Mtre. Joseph David Timothy Pinos
CASSELS BROCK & BLACKWELL LLP
40 King St
Suite 2100, Scotia Plaza
Toronto (Ontario) M5H 3C2
T : 416-869-5784
F : 416-350-6903
tpinos@cassels.com

**Lawyers for Six Continents hotels,
inc.**

Mtre Simon J. Seida
Mtre Anthony Cayer
BLAKE, CASSELS & GRAYDON LLP
1, Place Ville Marie
Bureau 3000
Montréal (Québec) H3B 4N8
simon.seida@blakes.com
anthony.cayer@blakes.com

Lawyers for Wyndham Hotel Group

TAKE NOTICE that the foregoing *Application of the Respondents for leave to adduce evidence* will be presented for hearing and adjudication before the Honourable justice Martin Sheehan, J.S.C. of the Superior Court, sitting in and for the District of Montréal, at the Montréal Courthouse, in a room to be determined by the Court.

KINDLY GOVERN YOURSELF ACCORDINGLY.

Montreal, May 31, 2021

Borden Ladner Gervais S.E.N.C.R.L., S.R.L.

BORDEN LADNER GERVAIS LLP
Lawyers for Respondent **Accor S.A.**

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(RESERVATIONS.COM)**

Defendants

RESPONDENTS' LIST OF EXHIBITS

EXHIBIT A: Sworn Declaration of Michael Innocentin dated May 31, 2021;

- EXHIBIT A-1:** Screenshots of the www.all.accor.com booking process;
- EXHIBIT A-2:** Screenshot of Accor's "General Conditions of Sale" and "Sale and Cancellation Conditions"

Montreal, May 31, 2021

Borden Ladner Gervais S.E.N.C.R.L., S.R.L.

BORDEN LADNER GERVAIS LLP
Lawyers for Respondent **Accor, S.A.**

Angers, Nathalie

De: Angers, Nathalie
Envoyé: May 31, 2021 4:44 PM
À: Lex Gill; famine@millerthomson.com; tpinos@cassels.com; mbrixi@lavery.ca; simon.seida@blakes.com; anthony.cayer@blakes.com; Préfontaine, Éric; eric.lefebvre@nortonrosefulbright.com; spoushtmashhad@nortonrosefulbright.com; Mathieu Charest-Beaudry; peter; Bruno Grenier; bruce@tjl.quebec; notifications-mtl@lavery.ca; cverbauwhede@grenierverbauwhede.ca; aauthier@osler.com
Cc: Chênevert, Karine; De Zordo, Alexander L.; Saint-Onge, Jean; Tremblay, Gabrielle
Objet: NOTIFICATION: - 500-06-001041-207 / Chafik Mihoubi c. Priceline.com, L.L.C., et al. / Application for Leave to Adduce Evidence of Defendant ACCOR, S.A. , Exhibits A, A-1 and A-2
Pièces jointes: 2021-05- 31 - Application for leave to adduce evidence of Defendant Accor(122028493.1).pdf; Respondent Accor - Exhibits A, A-1 & A-2.pdf

BORDEREAU DE NOTIFICATION PAR COURRIER ÉLECTRONIQUE (ARTICLE 134 C.P.C.)

DATE : Montréal, le 31 mai 2021

EXPÉDITEUR :

Nom : Me Jean Saint-Onge / Alexander L. De Zordo / Me Karine Chênevert
Étude : **BORDEN LADNER GERVAIS S.E.N.C.R.L., S.R.L.**
Adresse : 1000, rue De La Gauchetière Ouest, bureau 900
Montréal, Québec, H3B 5H4
Avocats des défenderesses ACCOR, S.A.et Hilton Worlwide Holdings, inc.
Téléphone : 514.879.1212
Ligne directe : 514.954.3191 (ADZ) 514.954.3180 (KC)
Courriel : jsaintonge@blg.com / adezordo@blg.com / kchenevert@blg.com
Notre dossier : 564920-000003

DESTINATAIRE(S) :

Nom : Me Bruce W. Johnston / Me Mathieu Charest-Beaudry
Étude : **TRUDEL JOHNSTON & LESPÉRANCE, s.e.n.c.**
Adresse : 750, Côte de la Place d'Armes, bureau 90
Montréal, Québec, H2Y 2X8

Me Bruno Grenier / Me Cory Verbauwhede
GRENIER VERBAUWHEBE AVOCATS INC.
5215, rue Berri, bureau 102
Montréal, Québec, H2J 2S4

Me Peter Shams
HADEKEL SHAMS s.e.n.c.r.l.
305 rue de Bellechasse, bureau 400A
Montréal, Québec, H2S 1W9

Avocats du demandeur

Téléphone : 514.871.8385 (Trudel Johnston) / 514.866.5599 (Gernier Verbauwhebe)
Courriel : bruce@tjl.quebec / mathieu@tjl.quebec / bgrenier@grenierverbauwhede.ca / cverbauwhede@grenierverbauwhede.ca / peter@hadekelshams.ca
Votre dossier : 1432-1

Nom : Mtre. Fadi Amine
Étude : **MILLER THOMSON SENCRL**
Adresse : 1000 de la Gauchetière Street West
Suite 3700
Montréal, QC H3B 4W5

Attorneys for Priceline.com L.L.C. et Kayak Europe, G.M.B.H.

Téléphone : (514) 875-5210
Courriel : famine@millerthomson.com
Votre dossier :

Nom : Mtre. Eric C. Lefebvre
Étude : Mtre Saam Pousht-Mashhad
Adresse : **NORTON ROSE FULBRIGHT CANADA LLP**
1 Place Ville-Marie, suite 2500
Montréal, QC H3B 1R1

Attorneys for Orbitz Worldwide, L.L.C., Homeaway.com, inc., Bedandbreakfast.com, inc. and Canadastays (1760335 Ontario Inc.)

Attorneys for Priceline.com L.L.C. et Kayak Europe, G.M.B.H.

Téléphone : (514) 847-4747
Courriel : eric.lefebvre@nortonrosefulbright.com / spoushtmashhad@nortonrosefulbright.com
Votre dossier :

Nom : Mtre. Éric Préfontaine
Étude : Mtre Annie-Claude Authier
Adresse : **OSLER, HOSKIN & HARCOURT LLP**
1000 de la Gauchetière Street West
Suite 2100
Montréal, QC H3B 4W5

Attorneys for Hyatt Hotels Corporation

Téléphone :
Courriel : eprefontaine@osler.com / aauthier@osler.com
Votre dossier :

Nom : Mtre. Myriam Brixi
Étude : **LAVERY, DE BILLY, LLP.**
Adresse : 1, Place Ville Marie, Suite 4000
Montréal, QC H3B 4M4

Mtre Joseph David Timothy Pinos
CASSELLS BROCK & BLACKWELL LLP
Scotia Plaza
40 King Street, Suite 2100
Toronto, Ontario M5H 3C2

Attorneys for Six Continents hotels, inc.

Téléphone : (514) 871-1522

Courriel : mbrixi@lavery.ca / notifications-mtl@lavery.ca / tpinos@cassels.com

Votre dossier :

Nom : Mtre. Simon J. Seida & Mtre Anthony Cayer

Étude : **BLAKE, CASSELS & GRAYDON LLP**

Adresse : 1, Place Ville Marie, Suite 3000
Montréal, QC H3B 4N8

Attorneys for Wyndham hotel Group

Téléphone :

Courriel : simon.seida@blakes.com / anthony.cayer@blakes.com

Votre dossier :

NUMÉRO DE DOSSIER DE COUR ET NATURE DU DOCUMENT NOTIFIÉ :

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Parties : Chafik Mihoubi c. 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 Europe, G.M.B.H. et Benjamin & Brothers, L.L.C. (Reservations.com)

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Nombre de pages : -9- (excluding exhibits)
(pièces jointes seulement)



Nathalie Angers

Adjointe à la pratique pour / Practice Assistant for Karine Chênevert,
Ève Gaudet, Gabrielle Tremblay, Jasmine Kavadias Landry

T 514.954.2555 #23206 | NAngers@blg.com

1000, rue De La Gauchetière Ouest, bureau / suite 900, Montréal, QC, Canada H3B 5H4

notification@blg.com

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Défenderesses

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EVIDENCE OF DEFENDANT ACCOR, S.A.
AND EXHIBITS A, A-1 and A- 2**
(Art. 574 (3) CCP)

ORIGINAL

BLG 1000, rue De La Gauchetière Ouest
Bureau 900
Montréal, QC, Canada H3B 5H4
Téléphone : 514.879.1212
Télécopieur : 514.954.1905
Borden Ladner Gervais adezordo@blg.com
B.M. 2545 kchenever@blg.com

Me Alexander L. De Zordo, *Ad. E.*
Me Karine Chênevert
Dossier : 564920-000003