

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000551-107

(Class Action)
SUPERIOR COURT

G. ALBILIA

Petitioner

-vs.-

APPLE, INC., legal person duly incorporated, having its head office at 1 Infinite Loop, City of Cupertino, State of California, 95014, USA

and

APPLE CANADA INC., legal person duly incorporated, having its principal establishment at 555, Dr. Frédérik-Phillips, bureau 210, City of Saint-Laurent, Province of Quebec, H4M 2X4

and

GOGII, INC., legal person duly incorporated, having its head office at 13160 Mindanao Way, Suite 233, City of Marina Del Rey, State of California, 90292, USA

and

PANDORA MEDIA, INC., legal person duly incorporated, having its head office at 2101 Webster Street, Suite 1650, City of Oakland, State of California, 94612, USA

and

BACKFLIP STUDIOS, INC., legal person duly incorporated, having its head office at 3000 Pearl Street, Suite 202, City of Boulder, State of Colorado, 80301, USA

and

THE WEATHER CHANNEL, INC., legal person duly incorporated, having its head office at 300 Interstate North Parkway SE, City of Atlanta, State of Georgia, 30339-2403, USA

and

DICTIONARY.COM, LLC, legal person duly incorporated, having its head office at 555 12th Street, Suite 100, City of Oakland, State of California, 94607, USA

and

OUTFIT7 LTD., legal person duly incorporated, having its head office at Bravnicarjeva 11 Ljubljana, 1000 Slovenia

and

ROOM CANDY, INC., legal person duly incorporated, having its head office at P.O. Box 80963, City of San Marino, State of California, 91118, USA

and

SUNSTORM INTERACTIVE, INC., legal person duly incorporated, having its head office at 9643 Oakhaven Court, City of Indianapolis, State of Indiana, 46256, USA

Respondents

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
&
TO ASCRIBE THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following)**

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT,
SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER
STATES AS FOLLOWS:

I. GENERAL PRESENTATION

A) THE ACTION

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:

- all residents in Canada who have downloaded and/or placed an App onto their iPhone or iPad since approximately December 1st 2008 through to the present, or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who have downloaded and/or placed an App onto their iPhone or iPad since approximately December 1st 2008 through to the present, or any other group to be determined by the Court;

2. The present action involves the intentional interception, by the Respondents, of the Class Members' personally identifying information ("PII"). The Respondents accomplish this by using iPhone and iPad mobile device applications ("Apps"). The Respondents capture Class Members' devices Unique Device ID ("UDID") -- the unique identifying number that Apple assigns to each of its iPhones and iPads -- and transmits that information along with the devices' location data to third-party advertisers;

3. All of this is done without Class Members' consent and in violation of their legal rights;

B) THE RESPONDENTS

4. Respondent Apple, Inc. ("Apple USA") is an American company. Apple USA developed, manufactured, distributed, and sold the iPhone, as well as, the iPad throughout Canada, including the province of Quebec, either directly or indirectly through its affiliate and/or subsidiary Respondent Apple Canada Inc. ("Apple Canada"), the whole as appears more fully from a copy of the *Registre des entreprises* CIDREQ report, produced herein as **Exhibit R-1**.



Given their close ties, both Respondents are being collectively referred to herein as “Apple”;

5. Respondent Gogii, Inc. is an American company. It is the maker of the App Textplus4;
6. Respondent Pandora Media, Inc. is an American company. It is the maker of the App Pandora;
7. Respondent Backflip Studios Inc. is an American company. It is the maker of the App Paper Toss;
8. Respondent The Weather Channel is an American company. It is the maker of the App Weather Channel;
9. Respondent Dictionary.com, LLC is an American company. It is the maker of the App Dictionary.com;
10. Respondent Outfit7 Ltd. is a Slovenia company. It is the maker of the App Talking Tom Cat;
11. Respondent Room Candy, Inc. is an American company. It is the maker of the App Pimple Popper Lite;
12. Respondent Sunstorm Interactive, Inc. is an American company. It is the maker of the App Pumpkin Maker;
13. Other Respondents may be added when more information as to the details of the conduct as alleged herein is revealed;

C) THE SITUATION

14. The basis for the present claim rest on the Respondents’ use of an intrusive tracking scheme implemented through the use of mobile device Apps on Class Members’ iPhones and iPads;
15. Apps are computer programs that users can download and install on their mobile computer devices, including iPhones and iPads. Class Members downloaded these Apps from an Apple-sponsored website as part of the use of their mobile devices. Apple claims to review each application before offering it to its users, purports to have implemented app privacy standards, and claims to have created strong privacy protections for its customers. However, Class Members have discovered that some of these Apps have been transmitting their personal, identifying information to advertising networks without obtaining their consent;

16. Apple has retained significant control over the software that users can place on their iPhones. Apple claims that this control is necessary to ensure smooth functioning of the iPhone. For instance, iPhone users are only allowed to download software specifically licensed by Apple;
17. Apple also retains a significant amount of control over the types of Apps it allows into its newly created market place. Whether an App is allowed to be sold in the App Store is completely at the discretion of Apple. Apple requires that proposed Apps go through a rigorous approval process. In exchange for Apple agreeing to allow the App developer to participate in its program, Apple retains thirty percent (30%) of all revenues from sales of the App;
18. Apple also exercises a significant amount of control over the functionality of the Apps that it allows into its program. For instance, Apple restricts how Apps interact with the iPhone's operating system and restricts Apps from disabling certain safety features of the iPhone;
19. Apple's App Store has been a huge success. As of October 20, 2010, there were at least 300,000 third-party applications officially available on the App Store, with over seven (7) billion total downloads. It is estimated that worldwide App sales this year will total \$6.7 billion;
20. Apple's iPhone has also succeeded in helping to bring hand-held computing to the masses. Approximately fifty-nine (59) million people now have an iPhone. With the subsequent introduction of its iPad (estimated sales of 8.5 million in 2010), Apple has obtained a remarkable reach for its products;
21. Due to the iPhone's tremendous commercial success, mobile devices (including iPhones and iPads) are now used by many consumers in almost all facets of their daily lives, from choosing a restaurant, to making travel arrangements, to conducting bank transactions. Most consumers carry their mobile devices with them everywhere they go. While this convenience is valuable to consumers, so is the information that consumers put into their mobile devices;
22. Because Apps are software that users, such as Plaintiffs, download and install on their iPhone (which is a hand-held computer), Apps have access to a huge amount of information about a mobile device user. Apps can have access to such items as a mobile device's contacts list, username and password, and perhaps most importantly-- the user's location information;
23. All of this information, however, is of extreme interest to many advertising networks. This information is also highly valuable. It is for this reason that many Apps are given away for free by the developer -- just so that the App developer can sell advertising space on its App. Some advertising networks pay App developers to place banner ads within their Apps. Those ads are

then populated with content from the third-party advertising network. In the process, those third-party advertisers are able to access various pieces of information from the user's iPhone, supposedly in order to serve ads to the App user that are more likely to be of interest to them;

24. Considering that mobile advertising is such big business, advertisers, website publishers, and ad networks are seeking ways to better track their web users and find out more about them. The ultimate goal of many advertising networks is to ascertain the identity of particular users so that advertisements can be tailored to their specific likes and dislikes;
25. Browser cookies are the traditional method used by advertisers to track web users' activities. But browser cookies have a large hurdle when it comes to an advertiser's ability to track a viewer -- users often delete them because they do not want advertising companies to have information about them;
26. Respondents, however, have found their solution -- the Unique Device ID ("UDID") that Apple assigns to every iPhone and iPad it manufactures. Apple's UDID is an example of a computing device ID generally known as a global unique identifier ("GUID"). A GUID is a string of electronically readable characters and/or numbers that is stored in a particular device or file (e.g., piece of hardware, copy of software, database, user account) for purposes of subsequently identifying the device or file. Thus, a GUID is similar to a serial number in that it is so unique that it reliably distinguishes the particular device, software copy, file, or database from others, regardless of the operating environment;
27. Because the UDID is unique to each iPhone and iPad, it is an attractive feature for third-party advertisers looking for a means of reliably tracking a mobile device users' online activities. Because the UDID is not alterable or deletable by a iPhone or iPad user, some have referred to the UDID as a "supercookie". While not technically correct (because the UDID is on the device from the time of its manufacturing), this description aptly summarizes the desirability of access to the UDID from an advertising perspective;
28. Apple's UDID is concerning for several reasons. First, unlike with desktop computers, mobile devices travel most everywhere with the user. Also, mobile devices tend to be unique to an individual. While someone might borrow someone's mobile device briefly, it is unusual for individuals to frequently trade mobile devices with someone they know;
29. Furthermore, unlike a desktop computer, the iPhone and iPad come equipped with the tools necessary to determine their geographic location. Thus, being able to identify a unique device, and combining that information with the devices' geographic location, gives the advertiser a huge amount of information about the user of a mobile device. From the perspective of



advertisers engaged in surreptitious tracking, this is a perfect means of tracking mobile device users' interests and likes on the Internet;

30. Apple certainly understands the significance of its UDID and users' privacy, as, internally, Apple claims that it treats UDID information as "personally identifiable information" because, if combined with other information, it can be used to personally identify a user;
31. Unfortunately, however, unlike with browser cookies, Apple does not provide users any way to delete or restrict access to their devices' UDIDs. Traditional efforts to prevent Internet tracking, such as deleting cookies, have no effect on Apps' access to an iPhone's or iPad's UDID;
32. Apple has, however, recognized that it could go further to protect its users' private information from being shared with third parties. Thus, in April of 2010, Apple amended its Developer Agreement purporting to ban Apps from sending data to third-parties except for information directly necessary for the functionality of the App. Apple's revised Developer Agreement provides that "the use of third party software in Your Application to collect and send Device Data to a third party for processing or analysis is expressly prohibited";
33. This change prompted a number of third-party advertising networks (who have been receiving a steady flow of user data from iPhone and iPad Apps) to protest. One prominent critic was the CEO of AdMob. It appears that, as a result of this criticism, Apple has taken no steps to actually implement its changed Developer Agreement or enforce it in any meaningful way;
34. In the present action, each of the non-Apple Defendants, through the use of Apps placed on Class Members' mobile devices, accessed their UDID and location information and transmitted that information to numerous third-party ad networks. This information may have included what Apps Class Members downloaded, how frequently they used the Apps and for how long, users' location, age, gender, income, ethnicity, sexual orientation, and political views;
35. The general practice engaged in by Respondents was recently confirmed by Eric Smith, Assistant Director of Information Security and Networking at Bucknell University in Lewisburg, Pennsylvania and reported in his research report entitled, "iPhone Applications & Privacy Issues: An Analysis of Application Transmission of iPhone Unique Device Identifiers (UDID's)", the whole as appears more fully from a copy of said report, produced herein as **Exhibit R-2**;
36. Further, the *Wall Street Journal*, as reported in the article "Your Apps Are Watching You" by Scott Thurm and Yukari Iwatani Kane (December 18, 2010), independently confirmed that each non-Apple Defendant



systematically uses its iPhone App to obtain iPhone users' UDID and location data and transmit it to multiple third parties, the whole as appears more fully from a copy of said article, produced herein as **Exhibit R-3**;

37. None of the Respondents adequately informed Class Members of their practices, and none of the Respondents obtained Class Members' consent to do so;
38. Class Members' valuable UDID information, demographic information, location information, as well as their application usage habits is personal and private. Such information was taken from them without their knowledge or consent. Class Members should be compensated for this harm. Class Members are entitled to compensation for this invasion of their privacy;
39. Each of the non-Apple Respondents is liable to Class Members for having violating their rights. Apple, by exercising significant control over App developers and sharing profits with them, has created its own solidary liability with the other Respondents as a joint venturer;
40. In addition, Apple has also aided and abetted the remaining Respondents in the commission of their legal wrongs against Class Members. Apple knew or should have known the other Respondents' conduct constituted a breach of those Respondents' duties to Class Members, but did not take any meaningful steps to prevent such harm;

D) THE FOREIGN PROCEDURES

41. Two (2) class action actions have been instituted in the United States based on the Respondents' conduct, the whole as appears more fully from a copy of said Complaints, produced herein *en liasse* as **Exhibit R-4**;

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

42. Petitioner purchased an iPhone on or about the end of 2009 from Rogers;
43. Since that time, he has downloaded numerous Apps including, but not limited to: Pandora, Dictionary.com, Paper Toss, The Weather Channel, Textplus 4, Pimple Popper Lite, Pumpkin Maker, and Talking Tom Cat;
44. Petitioner has learned of the institution of two (2) class actions filed in the United States regarding the facts as alleged in the present proceedings;
45. Petitioner believes that as a consequence of his installation of the various Apps onto his iPhone and considering the allegations as set forth in the

American actions, that his privacy rights have been violated by the Respondents' actions;

46. Petitioner's damages are a direct and proximate result of the Respondents' conduct;
47. In consequence of the foregoing, Petitioner is justified in claiming damages;

III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

48. Every member of the class has downloaded Apps onto either their iPhone or iPad;
49. Each member of the class has had their privacy rights violated due to the Respondents' unlawful actions;
50. All of the damages to the class members are a direct and proximate result of the Respondents' conduct;
51. In consequence of the foregoing, members of the class are justified in claiming damages;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

- A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical
52. The sale of iPhones and iPads, as well as the downloading of Apps for said devices, are widespread in Quebec and Canada;
53. Petitioner is unaware of the specific number of persons who downloaded these Apps, however, given their tremendous popularity, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands);
54. Class members are numerous and are scattered across the entire province and country;
55. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the



conduct of Respondents would increase delay and expense to all parties and to the court system;

56. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgements on questions of fact and law that are similar or related to all members of the class;
57. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the class to obtain mandates and to join them in one action;
58. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice;
- B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondents and that which the Petitioner wishes to have adjudicated upon by this class action
59. Individual questions, if any, pale by comparison to the numerous common questions that predominate;
60. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;
61. The recourses of the members raise identical, similar or related questions of fact or law, namely:
- a) Did the Respondents create, cause, or facilitate the creation of personally identifiable profiles of Class Members?
 - b) Did the Respondents obtain and disseminate Class Members' personally identifiable information without their knowledge and consent, or beyond the scope of their consent?
 - c) Did the Respondents fail to disclose material terms regarding the collection and dissemination of the Class Members' personally identifiable information?
 - d) Did the Respondents use iPhone Apps or iPad Apps to send Class Members' UDID, location, username/password, or other such information to third parties?
 - e) What use was made of the Class Members' personally identifiable information, including to whom the information was sold for a profit?



- f) Did the Respondents violate the privacy of Class Members?
- g) Were Class Members prejudiced by the Respondents' conduct, and, if so, what is the appropriate measure of these damages?
- h) Are Class Members entitled to, among other remedies, injunctive relief, and, if so, what is the nature and extent of such injunctive relief?
- i) Are the Respondents liable to pay compensatory, moral, punitive and/or exemplary damages to Class Members, and, if so, in what amount?

62. The interests of justice favour that this motion be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

63. The action that the Petitioner wishes to institute on behalf of the members of the class is an action in damages;

64. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioner and each of the members of the class;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

ORDER the Defendants to permanently cease from continuing to collect and disseminate Class Members' personally identifiable information;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

A) The Petitioner requests that he be attributed the status of representative of the Class

65. Petitioner is a member of the class;

66. Petitioner is ready and available to manage and direct the present action in the interest of the members of the class that they wish to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec and the *Fonds d'aide aux recours collectifs*, as the case may be, and to collaborate with his attorneys;

67. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;

68. Petitioner has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

69. Petitioner, with the assistance of his attorneys, are ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;

70. Petitioner is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other class members, recognized and protecting so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;

71. Petitioner understands the nature of the action;

72. Petitioner's interests are not antagonistic to those of other members of the class;

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



73. A great number of the members of the class reside in the judicial district of Montreal and in the appeal district of Montreal;

74. The Petitioner's attorneys practice their profession in the judicial district of Montreal;

75. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Petitioner the status of representative of the persons included in the class herein described as:

- all residents in Canada who have downloaded and/or placed an App onto their iPhone or iPad since approximately December 1st 2008 through to the present, or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who have downloaded and/or placed an App onto their iPhone or iPad since approximately December 1st 2008 through to the present, or any other group to be determined by the Court;

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

- a) Did the Respondents create, cause, or facilitate the creation of personally identifiable profiles of Class Members?
- b) Did the Respondents obtain and disseminate Class Members' personally identifiable information without their knowledge and consent, or beyond the scope of their consent?
- c) Did the Respondents fail to disclose material terms regarding the collection and dissemination of the Class Members' personally identifiable information?



- d) Did the Respondents use iPhone Apps or iPad Apps to send Class Members' UDID, location, username/password, or other such information to third parties?
- e) What use was made of the Class Members' personally identifiable information, including to whom the information was sold for a profit?
- f) Did the Respondents violate the privacy of Class Members?
- g) Were Class Members prejudiced by the Respondents' conduct, and, if so, what is the appropriate measure of these damages?
- h) Are Class Members entitled to, among other remedies, injunctive relief, and, if so, what is the nature and extent of such injunctive relief?
- i) Are the Respondents liable to pay compensatory, moral, punitive and/or exemplary damages to Class Members, and, if so, in what amount?

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

GRANT the class action of the Petitioner and each of the members of the class;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

ORDER the Defendants to permanently cease from continuing to collect and disseminate Class Members' personally identifiable information;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;



CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

DECLARE that all members of the class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

ORDER the publication of a notice to the members of the class in accordance with article 1006 C.C.P. within sixty (60) days from the judgement to be rendered herein in LA PRESSE and the NATIONAL POST;

ORDER that said notice be available on the various Respondents' websites with a link stating "Notice to iPhone and iPad App users";

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

THE WHOLE with costs including publications fees.

Montreal, December 30, 2010

(s) Jeff Orenstein

CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein

Attorneys for the Petitioner