

SUPERIOR COURT
(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N^o: 500-06-000552-113

DATE: December 19, 2011

**IN THE PRESENCE OF:
THE HONOURABLE MR. JUSTICE KEVINS DOWNS, S.C.J.**

GARETH HEDGES
Petitioner

vs.

MIDSTREAM MEDIA INTERNATIONAL N.V.
Respondent

JUDGMENT

- [1] **THE COURT** is seized with a Motion to Authorize the Bringing of a Class Action & to Ascribe the Status of Representative (Art. 1002 C.C.P. and following);
- [2] **GIVEN** the Inscription for Judgment by Default to Appear filed by the Petitioner;
- [3] **SEEING** the default of the Respondent to appear and to contest the proceedings within the delays;
- [4] **SEEING** the proceedings, as well as, the exhibits in support thereof produced in the court record;
- [5] **GIVEN** the representations made by the Petitioner's attorneys;

- [6] **FOR THESE REASONS:**
- [7] **GRANTS** the present motion;
- [8] **AUTHORIZES** the bringing of a class action in the form of a motion to institute proceedings in damages;
- [9] **ASCRIPTIONS** the Petitioner the status of representative of the persons included in the class herein described as:
- all residents in Canada who have visited the Respondent's YOUPORN Websites;
- [10] **IDENTIFIES** the principle questions of fact and law to be treated collectively as the following:
- a) Did the Respondent engage in "history sniffing" or "history hijacking" on Class Members' computers?
 - b) Did the Respondent fail to disclose material terms regarding "history sniffing" or "history hijacking" on Class Members' computers?
 - c) What use was made of such "history sniffing" or "history hijacking", including whether they were used for purposes of tracking individuals web surfing and whether personal information was obtained regarding Class Members?
 - d) Did the Respondent employ techniques to thwart Class Members' attempts to not be tracked?
 - e) Did the Respondent violate the privacy of Class Members?
 - f) Were Class Members prejudiced by the Respondent's conduct, and, if so, what is the appropriate measure of these damages?
 - g) Are Class Members entitled to, among other remedies, injunctive relief, and, if so, what is the nature and extent of such injunctive relief?
 - h) Is the Respondent liable to pay compensatory, moral, punitive and/or exemplary damages to Class Members, and, if so, in what amount?
- [11] **IDENTIFIES** 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 Defendant liable for the damages suffered by the Petitioner and each of the members of the class;

ORDER the Defendant to permanently cease from using “history sniffing” or “history hijacking” to collect and/or disseminate Class Members' personal information;

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

CONDEMN the Defendant 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 Defendant 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 Defendant 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;

[12] **DECLARES** 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;

[13] **FIXES** 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;

[14] **ORDERS** 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 on the website of the Petitioner's attorneys at www.clg.org;

[15] **THE WHOLE** with costs.

KEVINS DOWNS, S.C.J.

Me Jeff Orenstein
CONSUMER LAW GROUP INC.
Attorneys for the Petitioner