

CANADA

(Class Action)
SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

R. ROBITAILLE

NO: 500-06-000325-056

Petitioner

-vs.-

YAHOO! INC., a corporation created by virtue of the laws of the United States of America, having its head office at 701 First Avenue, City of Sunnydale, State of California, 94089, USA

-and-

YAHOO! CANADA CO., a corporation duly constituted, having a principal place of business at 1959 Upper Water Street, P.O. Box 997, Suite 800, City of Halifax, Province of Nova Scotia, B3J 2X2

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:

GENERAL PRESENTATION

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 Quebec who have paid for membership of YAHOO's online dating service, or any other group to be determined by the Court;

United States

2. The following paragraphs (3 to 9) appear more fully from a copy of the Class Action Complaint instituted in the United States District Court for the Northern District of California San Jose on October 14th 2005, attached hereto as **Exhibit R-1**;
3. In that action, the class contends that the Defendant Yahoo! Inc. deliberately and intentionally, originates and perpetuates false and/or non-existent profiles on its site to generate interest and give the site a much more attractive and functional appearance in order to falsely represent more subscriber participation than actually exists;
4. These false and/or non-existent profiles are created to induce and entice its targeted members to continue purchasing membership of the service at a monthly fee;
5. It is alleged that the Defendant Yahoo! Inc.:
 - a) provided false images of potential "new matches" that do not exist;
 - b) manufactured false profiles;
 - c) provided false images to its targeted members on separate occasions that contain different names, addresses and profile information each time;
 - d) provided false images to illustrate the usefulness, popularity and reliability of the online service;
 - e) informed the target members that the false image is a potential "new match";
 - f) used the same key phrase for multiple false images in an attempt to attract the targeted member;
 - g) provided false images to the targeted members at or about the time for their subscription to be renewed or cancelled;
6. These actions were deceptive and likely to mislead consumers into subscribing to Defendant Yahoo! Inc.'s online dating service;

Canada and Quebec

7. Petitioner contends that the same situation has taken place in Canada and Quebec;
8. By reason of Defendants' acts and omissions, Petitioner and the members of the group suffered damages that they wish to claim;

The Defendant

9. Defendant Yahoo! Inc. is an internet service company having its head office at 701 First Avenue, City of Sunnydale, State of California, 94089, USA;
10. Defendant Yahoo! Inc. does business in Canada and Quebec through Yahoo! Canada Co., which has a principal place of business at 1959 Upper Water Street, P.O. Box 997, Suite 800, City of Halifax, Province of Nova Scotia, B3J 2X2, the whole as more fully appears from a copy of the Quebec Inspector General of Financial Institutions Report attached hereto as **Exhibit R-2**;
11. Defendants operate two (2) online match-making services, namely "Yahoo! Personals" and "Yahoo! Personals Premier" which is available to residents of Canada and Quebec;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

12. Petitioner purchased a membership to Yahoo! Personals with the hope of meeting and dating eligible women;
13. Petitioner began using the website to contact local women;
14. Petitioner has become aware of the class action taken in the United States and does not wish to continue with the service as he is interested in meeting "real" women only;
15. Petitioner finds that due to Defendants actions he is not getting the service that he originally thought he was signing up for;
16. In consequence of the foregoing, Petitioner is justified in claiming damages;

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

17. Every member of the group has purchased a membership to either Yahoo! Personals or Yahoo! Personals Premier;
18. Each member of the group is justified in claiming for damages;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

19. The composition of the group makes the application of article 59 or 67 C.C.P. impractical for the following reasons:
 - a) The number of persons included in the group is estimated at over 1000;
 - b) The names and addresses of persons included in the group are not known to the Petitioner;
 - c) All the facts alleged in the preceding paragraphs make the application of articles 59 or 67 C.C.P. impossible;
20. The recourses of the members raise identical, similar or related questions of fact or law, namely:
 - a) Did Defendants' actions constitute a breach of contract between themselves and their subscribed members?
 - b) Did Defendants commit acts that were deceptive and/or misleading to their subscribed members?
 - c) Did Defendants concealment and/or failure to disclose the true nature of their online service constitute an unfair and deceptive practice?
 - d) Did Defendants knowingly or negligently misrepresent the quality and nature of their online service?
 - e) Did Defendants engage in false and/or deceptive advertising when it represented that its online service had characteristics that it does not or omitted to disclose material facts regarding the online services actual characteristics?
 - f) Did Defendants violate Quebec civil law or Consumer Protection Act?
 - g) Did Defendants violate Quebec and/or Federal Statutes?

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

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

22. The action that Petitioner wishes to institute for the benefit of the members of the class is an action in liability;

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

GRANT Plaintiffs motion;

CONDEMN Defendants to pay to the members of the group damages temporarily evaluated at \$2,000,000, à parfaire;

GRANT the class action of Petitioner on behalf of all the members of the group;

ORDER the treatment of individual claims of each member of the group in accordance with articles 1037 to 1040 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

24. Petitioner suggests that this class action be exercised before the Superior Court in the district of Montreal for the following reasons:

- a) A great number of the members of the group resides in the judicial district of Montreal and in the appeal district of Montreal;
- b) Plaintiff is domiciled in the judicial district of Montreal;
- c) Their attorneys practice their profession in the judicial district of Montreal;

25. Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the members of the group for the following reason:

- a) He has purchased a membership to the Defendants online dating service;
- b) He understands the nature of the action;

- c) He is available to dedicate the time necessary for an action and to collaborate with members of the group;
- d) His interests are not antagonistic to those of other members of the group;

26. 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 group herein described as:

- all residents in Quebec who have paid for membership of YAHOO's online dating service, 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 Defendants' actions constitute a breach of contract between themselves and their subscribed members?
- b) Did Defendants commit acts that were deceptive and/or misleading to their subscribed members?
- c) Did Defendants concealment and/or failure to disclose the true nature of their online service constitute an unfair and deceptive practice?
- d) Did Defendants knowingly or negligently misrepresent the quality and nature of their online service?
- e) Did Defendants engage in false and/or deceptive advertising when it represented that its online service had characteristics that it does not or omitted to disclose material facts regarding the online services actual characteristics?
- f) Did Defendants violate Quebec civil law or Consumer Protection Act?
- g) Did Defendants violate Quebec and/or Federal Statutes?

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

GRANT Plaintiffs motion;

CONDEMN Defendants to pay to the members of the group damages temporarily evaluated at \$2,000,000, à parfaire;

GRANT the class action of Petitioner on behalf of all the members of the group;

ORDER the treatment of individual claims of each member of the group in accordance with articles 1037 to 1040 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

DECLARE that all members of the group that have not requested their exclusion from the group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the members;

ORDER the publication of a notice to the members of the group in accordance with article 1006 C.C.P.;

THE WHOLE, with costs to follow.

Montreal, December 13, 2005

(s) Jeff Orenstein

CONSUMER LAW GROUP INC.

Per: Jeff Orenstein

Attorneys for the Petitioner