

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500
06-000511-101

**SUPERIOR COURT OF QUÉBEC
(CLASS ACTION)**

PATRICE ST-ARNAUD, residing and domiciled
at 400 Rue St-Philippe, Montréal, Province of
Québec, H4C 2V3;

Petitioner

vs.

FACEBOOK INC., a legal person duly constituted
according to the law, having its principal place of
business at 156 University Avenue, Palo Alto,
California, 94301, U.S.A.,

Respondent

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

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF QUÉBEC,
SITTING IN AND FOR THE DISTRICT OF MONTRÉAL, THE PETITIONER STATES THE
FOLLOWING:

GENERAL PRESENTATION

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

*All physical persons (including their estates, executors, or personal representatives),
corporations, and other entities, who:*

- a) were subject to misrepresentation and other wrongful practices by the Respondent in regards to their personal information as described herein;
- b) were subject to a breach of privacy and in the addition or alternative, an invasion of privacy and in the addition or alternative, a breach of confidence in regards to their personal information; or
- c) were subject to the conversion of said personal information for unauthorized use.
(hereinafter both resident and non-resident Group Members are collectively referred to as "Petitioners", "Group Members", the "Group", or "Users");
2. The Respondent Facebook Inc. (hereinafter "Facebook") operates the social networking website found at <http://www.facebook.com> (hereinafter "Facebook.com" or the "website") which is the largest social networking website in the world. The Respondent offers and carries on business in the Province of Québec and throughout Canada, and derives revenue as a result of its presence and users located in Québec and throughout Canada.
- (herein references to the "Respondent" is intended to include the above mentioned corporation, subsidiaries, affiliates, predecessors and associated companies, their officers, employees, representatives and agents)
3. Facebook.com is the largest social networking site in the world and is estimated to have over 350 million individual subscribers creating revenues for Facebook of over \$500 million per year. It is estimated that 42% of Canadians have a Facebook.com account;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

4. The Petitioner, **PATRICE ST-ARNAUD**, resides in the City of Montréal in the Province of Québec and at all material times was a registered user of the website Facebook.com. Mr. St-Arnaud has been a member of Facebook.com since 2007 and has been subject to, *inter alia*, breach of privacy and/or the conversion of said information for commercial use

through the materially deceptive conduct of the Respondent as outlined herein and other statutory breaches of the Respondent as outlined herein.

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

5. Facebook.com allows members to communicate and share information with friends, family, co-workers, classmates and other people who share similar interests. Facebook.com requires Users such as those in the position of the Petitioner to register an account to access these services.
6. Registering an account requires a User to provide a name, gender, date of birth, and a valid e-mail address. After providing this information Users can create personal profiles and post messages, photos, and videos. To assist in the creation of their profiles Users are asked to provide personal information including, but not limited to, schools they attended, their home city, interests, and employers.
7. Users can add friends and send them messages and may further update their profiles to notify friends about their activities and opinions. Users can also join "networks" or people with similar interests and backgrounds. Such network criteria may include, by way of example, users organized by city, school, workplace, and region.
8. The Petitioner, as with other Users, is the owner of all of the content and information posted on his Facebook.com account and said content and information cannot lawfully be appropriated by the Respondent without the proper and informed consent of the Petitioner and other Users. As set forth below, Facebook converts and misappropriates said content and information for its benefit and gain.
9. Because of the amount of personal information provided by the Petitioner and Group Members to the Respondent, it is vital that Users be provided with a high degree of

control over the release of said information to third parties. The compromise of a User's personal information may leave the User open to such detrimental effects as, *inter alia*, identity theft, harassment, embarrassment, or threats to their personal and financial security.

10. Facebook.com originally provided Users such as those in the position of the Petitioner with simple "one-click" methods by which Users could keep their information private. Prior to the most recent privacy policy revisions enacted the Respondent on or about November 19, 2009 and on or about December 9, 2009 and on or about January 20, 2010, the only categories of personal information made publicly available by Facebook.com were:
 - i. a User's name; and
 - ii. networks the User belonged to.
11. On February 4, 2009, without proper communication to or agreement by its Users, Facebook revised its Terms of Service, asserting broad, permanent, and retroactive intentions to reveal Users' information, even as to Users who deleted their Facebook.com accounts. The Respondent stated it could make public a User's "*name, likeness and image for any purpose, including commercial or advertising.*" Having met with numerous objection by Users and threatened action by U.S. federal government regulators, Facebook withdrew the proposed changes and replaced them with changes announced variously on or about April 24, 2009, on or about November 19, 2009 and on or about December 9, 2009.
12. These changes announced variously on or about April 24, 2009, on or about November 19, 2009 and on or about December 9, 2009, and implemented by Facebook on or about said dates made the following categories of personal data "*publicly available information*":

- i. Users' names;
 - ii. profile photos;
 - iii. Friend Lists;
 - iv. pages Users are fans of, including controversial political causes, organizations, individuals, and products they support;
 - v. their genders;
 - vi. their geographic regions; and
 - vii. networks they belong to.
13. Said changes in making previously protected personal data "*publicly available information*" were made without proper and informed consent and authorization of Users, without proper or any consideration, in breach of Facebook's contractual obligations to Users to keep the Users' personal information private, and amounted to the conversion of Users' personal information for the benefit of Facebook. Facebook intentionally or negligently misrepresented these changes as giving Users greater control over the release of their personal information and enhancing the privacy of its' Users, whereas said changes decreased Users' control over their personal information.
14. The Respondent accordingly has made and continues to make public and otherwise shares, uses, and disseminates the personal information of its Users to third parties for commercial purposes or economic benefit.
15. Without limiting the generality of the foregoing, at the time of the changes to its privacy policy as referred to in the paragraphs above, Facebook set the default privacy setting for certain types of information Users post on Facebook to "Everyone". Facebook allows the "*publicly available information*" set to "Everyone" to be: "*accessed by everyone on the Internet (including people not logged into Facebook);*" made subject to "*indexing by third party search engines;*" "*associated with you outside of Facebook (such as when you visit other sites on the internet);*" and "*imported and exported by us and others without privacy limitations.*"

16. At the time of the privacy policy changes, Facebook "pre-clicked" certain options which diminish the privacy of the User, a method known in the Internet and marketing industries as a "negative option." Accordingly many Users such as those in the position of the Petitioner had their information made publicly available even if they had previously selected that this information not be made publicly available.
17. Not only do the revised privacy settings result in the disclosure of the aforementioned personal information, impacting privacy directly, but the revelation of this data violates the privacy of Users and allows the unauthorized revelation of Users' personal and private information to third parties, and results in consequential damages and injury to the Users.
18. The tools provided by Facebook to the Petitioner and Users in the position of the Petitioner are materially misleading and calculated to result in unauthorized breaches of Users privacy and conversion of their personal information, including but not limited to the breach of *Personal Information Protection and Electronic Documents Act., S.C., 2000, c. 5.* (hereinafter "PIPEDA") and other breaches of statute.
19. Facebook intentionally or negligently designs its privacy policies in such a way as to mislead Users into putting their personal information and privacy at further risk. Such design and dissemination constitutes a material misrepresentation of the effects of Facebook.com's privacy settings in such fashion as to increase the damage to Users. The default privacy settings are all set at such fashion as to expose Users personal and private information to unauthorized third party access and appropriation.
20. As a result, the privacy setting procedures are intentionally, or in the alternative negligently, designed such that the Petitioner and Group Members are misled on a Group wide basis into allowing Facebook to have their personal and private information easily accessed for commercial or other use. This process further exposes the Petitioner and Group Members to, *inter alia*, identity theft, data mining, harassment, embarrassment, intrusion, and all types of unauthorized use.

21. The control mechanisms as provided by Facebook are materially deceptive, confusing, and ineffective, and permit third party application developers and websites to access more information than Facebook previously authorized.

FACEBOOK VIOLATION OF USERS' PRIVACY AND CONVERSION OF THEIR PERSONAL INFORMATION THROUGH THE FACEBOOK APPLICATION PROGRAMMING INTERFACE (HEREINAFTER "API")

22. API, is the generic term for a detailed Group of commands and interfaces which permit an application to run on Facebook.com. Third-party applications through the API permits access to "*profile, friend, page, group, photo and event data*" through Facebook.com by Third-party application developers who, create, *inter alia*, applications and games on Facebook.com.
23. Facebook's original privacy settings contained a universal one-click option to prevent the disclosure of Users' personal information through the Facebook API system. Users were presented with a click box which stated "*Do not share any information about me through the Facebook API.*" Users accordingly could restrict the sharing of their personal information.
24. Under the revised privacy policy settings as set out in this class action motion, Facebook has eliminated the one-click option and substituted it with multiple check boxes the User must *de-select* if they wish to refrain from sharing the corresponding information. The checkboxes include:
 - i. Personal info (activities, interests, etc.);
 - ii. Status updates;
 - iii. Online presence;
 - iv. Website;
 - v. Family and Relationship;
 - vi. Education and Work;

- vii. My videos;
- viii. My links;
- ix. My notes;
- x. My photos;
- xi. Photos and videos of me;
- xii. About me;
- xiii. My birthday;
- xiv. My hometown; and
- xv. My religious and political views.

25. The revised setting states that "*applications will always be able to access [User] publicly available information (Name, Profile Picture, Gender, Current City, Networks, Friend List, and Pages) and information that is available to Everyone,*" making publicly available information mandatorily accessible to third parties. A User merely has the option to safeguard other personal information by un-checking the respective boxes containing their personal information as referenced in Paragraph 23, above, of this class action motion.
26. Thus, the new "security setting" mandates that the Facebook Platform share Users' personal information with application developers without the Users' knowledge or consent, and Users have no way to countermand this change.
27. The Facebook altered privacy rules do not properly or reasonably protect Users' personal information or present Users with realistic options to restrict third party access to all User information through the Facebook Platform. To block the more than 350,000 applications from accessing their information, Users would have to perform the steps described in Paragraph 23 of this class action motion for every single application.
28. The controls offered to the Petitioner and Group Members by the Respondent require Users to search the Application Directory and visit the application's "*about*" page. Even assuming a User has a limited number of applications, locating and correctly setting the myriad privacy settings of each such application is a daunting and formidable task.

29. Facebook has misrepresented, intentionally or negligently the effect of their privacy policy changes and default settings and other controls such as to materially increase the risk to Users of unauthorized use of their personal information.
30. On or about January 20, 2010, Facebook implemented a program providing unauthorized access of Users' e-mail addresses to third-party developers. Said e-mail addresses being personal information that Facebook.com requires Users to provide but that is not necessarily available to others. In so doing, Facebook mandated provision of such personal information to third party developers without proper, informed consent of Users.
31. The changes enacted by Facebook on or about November 19, 2009, and on or about December 9, 2009 and on or about January 20, 2010 were deceptively described by Facebook, leading Users to believe their personal information was protected from unauthorized sharing, use, and dissemination.
32. The aforementioned changes made to the privacy policy by the Respondent violate Users' expectations, diminish User privacy, and contradict Facebook's own representations.
33. Facebook profits from their aforementioned conversion of Users' personal information, and violation of Users' privacy. Such conduct generates revenue primarily through various types of advertisements which are targeted to Users based on their profiles and information. The data collected from its Users is the key commercial asset Facebook employs to sell advertising and drive traffic to the Facebook.com website.
34. Facebook monetizes the personal information provided by the Petitioner and Group Members through, *inter alia*, the sale of targeted advertising to third parties. Said advertising is catered towards the personal information provided by the User. These advertisements appear throughout the Facebook.com website and on user pages such as, *inter alia*, a User's home page or news feed.

35. Facebook's new privacy settings are confusing, materially deceptive, and have resulted in Users such as those in the position of the Petitioner inadvertently revealing large amounts of personal and private information to third parties without the consent of the User.
36. Facebook owed and continues to owe the Petitioner and Group Members a duty to release only the personal information for which Facebook has obtained the consent of a User to so release.
37. Facebook has benefitted and been enriched by its alleged conduct as described above. Facebook has collected fees and generated revenue from the sharing, use, and dissemination of information to which use its Users did not consent.
38. Facebook has knowledge of this benefit and has voluntarily accepted and retained all benefit that it received regarding its unlawful conduct. It would be unjust to allow Facebook to retain the economic benefit it procured through its' misrepresentation and unlawful practice without compensating the Petitioner and Group Members.
39. The representations made by Facebook towards its Users when describing the privacy policy upgrade and the way in which Facebook would treat the personal information of Users were untrue, inaccurate, and misleading.
40. Facebook acted negligently in making its representations to the Petitioner and Members of the Group. The Petitioner and Group Members relied, in a reasonable manner, upon the representations made by Facebook.
41. The reliance of the Petitioner and Group Members upon the representations made by Facebook resulted in a detriment to the Petitioner and Group Members in that their personal information was shared, used and disseminated to third parties without the proper consent of the Petitioner and Group Members, and for the financial or other benefit of Facebook.

42. The Petitioner and Group Members relied upon Facebook and expected that it would take proper precautions and safety measures when dealing with the personal and private information uploaded by Users, and would make truthful and full representations as to the character and effect of the Respondent's privacy policies and the manner in which Facebook would share, use, and disseminate the personal information provided by the Petitioner and Group Members.
43. At all material times Facebook knew or ought to have known that its privacy policy, when used as represented by the Respondent, would cause or contribute to the compromise of the security of Users' personal and private information and the unauthorized sharing, use, and dissemination of Users' personal and private information and an increased risk to the unauthorized sharing, use, and dissemination of Users' personal and private information.
44. Facebook owed a duty to warn Users of the risks associated with Users providing their personal and private information to the Respondent and a duty to obtain Users' consent. Facebook breached its duty to its Users by failing to provide proper warning prior to the privacy policy changes enacted by Facebook on or about November 19, 2009, and on or about December 9, 2009 and on or about January 20, 2010 and by failing to provide any adequate warning thereafter, of, *inter alia*, the risks associated with Users providing their personal and private information.
45. Any warnings that were provided were inadequate and ineffective in that said warnings, *inter alia*:
- a) failed to warn of the actual and known risks;
 - b) were insufficient to give Users, prospective Users, and the public a true indication of the risks associated with Users providing their personal and private information; and
 - c) failed to make clear, credible, complete and current disclosure of the risks associated with Users providing their personal and private information to