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June 15, 2022 15 juin 2022		
Jena Russell		
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Court File No. T -

FEDERAL COURT

B E T W E E N:

IMPOSSIBLE FOODS INC.

Plaintiff

- and -

**ZOGLO'S INCREDIBLE FOOD INC. and
ZOGLO'S INCREDIBLE FOOD CORP.**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the [Federal Courts Rules](#), serve it on the Plaintiff's solicitor or, where the Plaintiff does not have a solicitor, serve it on the Plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

Copies of the [Federal Courts Rules](#), information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: June 14, 2022

Issued by: _____
Registry Officer

Address of local office:

180 Queen Street West,
Suite 200
Toronto, Ontario
M5V 3L6

TO: **THE ADMINISTRATOR**
Federal Court
180 Queen St. West, Suite 200
Toronto, ON
M5V 3L6

AND TO: **ZOGLO'S INCREDIBLE FOOD INC.**
23 Jenkins Drive
Richmond Hill, ON
L4C 8C5

AND TO: **ZOGLO'S INCREDIBLE FOOD
CORP.**
1055 West Georgia Street
1500 Royal Centre, P.O. Box 11117,
Vancouver, British Columbia
V6E 4N7

CLAIM

1. The Plaintiff claims:

- (a) a declaration that the Defendants have done or intend to do the following:
 - (i) infringe the exclusive rights granted to the Plaintiff, Impossible Foods Inc., by ss. 19 and 20 of the *Trademarks Act*, RSC 1985, c T-13 ("*Trademarks Act*"), in relation to the Plaintiff's Registered IMPOSSIBLE Trademarks (as defined below);
 - (ii) direct public attention to their goods, services, or business in such a way as to cause or be likely to cause confusion in Canada, at the time they commenced so to direct public attention to them, between their goods, services or business and the goods, services, or business of the Plaintiff contrary to s. 7(b) of the *Trademarks Act*;
 - (iii) by their activities described herein act in a manner that is likely to have the effect of depreciating the value of the goodwill attaching to the Plaintiff's Registered IMPOSSIBLE Trademarks, contrary to s. 22(1) of the *Trademarks Act*.

including without limitation by adopting, using and threatening to use INCREDIBLE as or as part of a trademark or trade name, including any other trademarks, trade names, social media account names and domain names confusingly similar to the IMPOSSIBLE Trademarks (as defined below), in association with the advertising, promotion, sale, and offering for sale of the Defendants' goods, services and business related to the manufacture, distribution and sale of plant-based food products;

- (b) an interim, interlocutory, and permanent injunction (including on a *quia timet* basis) restraining the Defendants, along with their parents, affiliates, subsidiaries and all other related companies and businesses, and their respective and collective officers, directors, employees, agents, partners, licensees, franchisees, successors and assigns, as well as all others over whom any of the foregoing directly or indirectly exercise control or authority, from:
 - (i) infringing the Plaintiff's Registered IMPOSSIBLE Trademarks in association with the advertising, promotion, sale, and offering for sale of the Defendants' goods and services or otherwise in association with the Defendants' business, contrary to ss. 19 and 20 of the *Trademarks Act*;

- (ii) directing public attention to their goods, services, or business in such a way as to cause or be likely to cause confusion in Canada, at the time they commenced so to direct public attention to them, between their goods, services or business and the goods, services, or business of the Plaintiff, contrary to s. 7(b) of the *Trademarks Act*;
- (iii) depreciating the value of the goodwill attaching to the Plaintiff's Registered IMPOSSIBLE Trademarks, contrary to s. 22(1) of the *Trademarks Act*; including without limitation by adopting, using and threatening to use INCREDIBLE as or as part of a trademark or trade name, including any other trademarks, trade names, social media account names, and domain names, confusingly similar to the IMPOSSIBLE Trademarks, in association with the advertising, promotion, sale, and offering for sale of the Defendants' goods, services and business related to the manufacture, distribution and sale of plant-based food products;
- (c) an interlocutory and final Order requiring the same parties as in paragraph 1(b) to deliver-up or destroy under oath any goods, packaging, labels, and advertising materials (and any equipment used to produce the same) in their possession, power or control that are or that would be contrary to any Order granted by this Court, in accordance with s. 53.2 of the *Trademarks Act*;
- (d) an award of damages or an accounting of the Defendants' profits, at the Plaintiff's election, for the Defendants' violations of the *Trademarks Act*;
- (e) a mandatory Order requiring the Defendants and all parties referenced in paragraph 1(b) to take all steps necessary to irrevocably withdraw or abandon all trademark applications and business name registrations consisting of or comprising "INCREDIBLE", including the INCREDIBLE Applications (as defined below), with the Canadian Intellectual Property Office or any other applicable authority;
- (f) punitive damages in a sum that the Court considers just for the Defendants' willful infringement, passing off and depreciation of goodwill of the Plaintiff's IMPOSSIBLE Trademarks;
- (g) pre-judgment and post-judgment interest in accordance with the *Federal Courts Act*, RSC 1985, c F-7;
- (h) the Plaintiff's costs of the Action at the highest possible scale;

- (i) all applicable taxes, including the harmonized sales tax; and
- (j) such further and other relief as the Plaintiff may request and this Honourable Court may deem just.

The Plaintiff and its IMPOSSIBLE Trademarks

- 2. Impossible Foods Inc. (“Impossible Foods”) is a Delaware corporation with a principal place of business located at 400 Saginaw Drive, Redwood City, CA, United States of America, 94063.
- 3. Founded in 2011, Impossible Foods has developed a leading product line of plant-based meat substitutes all sold in association with a family of IMPOSSIBLE trademarks. Impossible Foods’ first product, IMPOSSIBLE BURGER, launched in 2016 and has had tremendous commercial and critical success.
- 4. Impossible Foods’ IMPOSSIBLE BURGER product is sold extensively across Canada through leading national grocery store chains and independent retailers. In addition, the IMPOSSIBLE BURGER is also offered on the menus of leading restaurants across the country, from large-scale restaurant chains such as Burger King to high-end dining establishments such as Bymark restaurant in Toronto. As a result of the exceptional quality and taste of its products and their wide-scale distribution and availability, the IMPOSSIBLE BURGER has developed significant goodwill throughout the country.
- 5. Impossible Foods has registered many of its trademarks in Canada including its primary branding mark IMPOSSIBLE and also IMPOSSIBLE BURGER, both with the following particulars:

<u>Trademark</u>	<u>Reg. No.</u>	<u>Goods/Services</u>
IMPOSSIBLE	TMA1042507	Substitutes for foods made from animals or animal products namely, meat substitutes, fish substitutes, dairy product substitutes namely, non-dairy butter, non-dairy cheese, non-dairy cottage cheese, non-dairy cream cheese, non-dairy cream, non-dairy yogurt, non-dairy milk, non-dairy half and half, non-dairy buttermilk, non-dairy egg nog, non-dairy sour cream, non-dairy whipping cream, non-dairy whipped cream, non-dairy dip, non-dairy powdered cheese.
IMPOSSIBLE BURGER	TMA1102472	Substitutes for food, namely, plant-based meat substitutes, plant-based fish substitutes, and plant-based chicken substitutes.

(collectively, the “Registered IMPOSSIBLE Trademarks”).

6. Since the highly successful launch of the IMPOSSIBLE BURGER, Impossible Foods has introduced IMPOSSIBLE SAUSAGE, IMPOSSIBLE CHICKEN NUGGETS/IMPOSSIBLE NUGGETS and IMPOSSIBLE MEATBALLS plant-based meat substitute products. The IMPOSSIBLE SAUSAGE product has been launched in Canada with much success and is the subject of pending Canadian trademark application no. 1,961,513. The other additional products are similarly expected to be introduced throughout Canada.
7. Impossible Foods has become very well-known across Canada for its plant-based meat substitute products and has used, registered and applied for a family of IMPOSSIBLE trademarks that include: IMPOSSIBLE, IMPOSSIBLE FOODS, IMPOSSIBLE BURGER, IMPOSSIBLE SAUSAGE, IMPOSSIBLE CHICKEN NUGGETS, IMPOSSIBLE NUGGETS, IMPOSSIBLE MEATBALLS, IMPOSSIBLE MEAT, and IMPOSSIBLE BEEF (collectively, the “IMPOSSIBLE Trademarks”).
8. Impossible Foods has invested substantial time, effort and resources into developing and protecting its IMPOSSIBLE Trademarks and ensuring that they clearly and uniquely identify Impossible Foods, its business, services and goods in the marketplace. The IMPOSSIBLE Trademarks enjoy a very substantial reputation and goodwill in Canada and are extremely important assets of Impossible Foods.

The Defendants and Their Unauthorized Activities

9. The Defendant Zoglo’s Incredible Food Corp. was incorporated on July 23, 2020 under the laws of British Columbia with a registered address of 1055 West Georgia Street, 1500 Royal Centre, P.O. Box 11117, Vancouver, British Columbia, V6E 4N7. It changed its name from 1258481 B.C. Ltd. to Zoglo’s Incredible Food Corp. on March 29, 2021 and is a publicly-traded company.
10. The Defendant Zoglo’s Incredible Food Inc. was incorporated on July 13, 2020 under the laws of Ontario with a registered address of 23 Jenkins Drive, Richmond Hill, Ontario, L4C 8C5. It changed its name from Zoglo’s Incredible Food Corp. to Zoglo’s Incredible Food Inc. on March 29, 2021. Zoglo’s Incredible Food Inc. is a subsidiary wholly-owned by Zoglo’s Incredible Food Corp.
11. The Defendants are engaged in the advertising, distribution and sale of plant-based meal products and plant-based meat substitute products.
12. To the best of Impossible Foods’ knowledge and belief, the Defendants hold intellectual property assets purchased from the Israeli company Naknik Nahariya Kasher Soglowek Ltd. (“Naknik”). The precise ownership of the intellectual property assets and corporate structure as between

the Defendants is not within the knowledge of Impossible Foods but is within the knowledge of the Defendants. Naknik produced and sold plant-based meal products in a number of jurisdictions, including Canada, under the brand name ZOGLO'S. Naknik continues to sell its plant-based meal products in Israel under the brand name ZOGLO'S.

13. Just prior to the sale to the Defendants of its intellectual property outside of Israel, Naknik had filed Canadian trademark applications for various INCREDIBLE-formative trademarks for use with plant-based meat substitutes. On July 22, 2019 Impossible Foods filed a Letter of Protest with the Canadian Intellectual Property Office bringing its prior and superior trademark rights to their attention. To the best of Impossible Foods' knowledge and belief, these trademark applications are now owned and many are now used by the Defendants, although there has yet to be any assignment recorded in the Canadian Intellectual Property Office. The particulars of these INCREDIBLE-formative applications are as follows:

<u>Trademark</u>	<u>App No.</u>
INCREDIBLE BURGER	1967666
INCREDIBLE SLIDER	1967671
INCREDIBLE CHICKEN BURGER	1967673
INCREDIBLE HOT DOG	1967677
INCREDIBLE CHICKEN CUTLET	1967674
INCREDIBLE MEATLESS	1967679

(collectively, the "INCREDIBLE Applications")

14. To the best of Impossible Foods' knowledge and belief, the Defendants started rebranding the original ZOGLO'S vegetarian meal products using the trademark INCREDIBLE approximately in mid-2021. The Defendants refer to this line of products as "Zoglo's Original", which includes among others, INCREDIBLE BURGERS, INCREDIBLE NUGGETS, INCREDIBLE HOT DOGS, INCREDIBLE SLIDERS, INCREDIBLE CUTLETS, among many others where INCREDIBLE is combined with the descriptive name of the product.
15. In approximately September 2021, more than 2 years after Impossible Foods filed its Letter of Protest with the Canadian Intellectual Property Office against the Defendants' INCREDIBLE Applications alerting all to its prior and superior trademark rights, the Defendants nevertheless launched a new line of plant-based meat substitute food products all using the trademark

INCREDIBLE. The Defendants refer to this new line of products as “Zoglo’s Incredible”, which includes INCREDIBLE BURGER, INCREDIBLE CHICKEN PIECES, INCREDIBLE MEATBALLS, INCREDIBLE SAUSAGE LINKS, among many others where INCREDIBLE is combined with the descriptive name of the product.

16. All the Defendants’ uses and trademark applications for and including INCREDIBLE and INCREDIBLE-formative trademarks are hereinafter referred to as the “Impugned INCREDIBLE Marks”.
17. The Defendants’ products displaying the Impugned INCREDIBLE Marks are advertised, marketed and sold to the same consumers and through the same retail channels of trade as Impossible Foods’ plant-based IMPOSSIBLE-branded products.
18. The Defendants’ Impugned INCREDIBLE Marks are likely to cause confusion as to whether the Defendants, their business, services and goods originate from or are sponsored by Impossible Foods and have or will give the false and misleading suggestion to consumers that the Defendants’ business, services and goods are somehow related to or affiliated with Impossible Foods when that is not the case, all contrary to sections 7(b), 19, and 20 of the *Trademarks Act*.
19. Impossible Foods has invested significant time, money and energy into ensuring that the IMPOSSIBLE Trademarks clearly and uniquely identify Impossible Foods in the marketplace. The Defendants’ use of the Impugned INCREDIBLE Marks is depreciating and likely to depreciate the goodwill associated with the Registered IMPOSSIBLE Trademarks by, among others, whittling away its unique source-identifying quality, contrary to s. 22 of the *Trademarks Act*.
20. The Defendants’ use of the Impugned INCREDIBLE Marks have caused and will cause Impossible Foods potential or actual damage, including without limitation depreciation of goodwill through the loss of distinctiveness of the IMPOSSIBLE Trademarks, and irreparable damage, and have or will enable the Defendants to enjoy unjust profits.
21. The Defendants’ course of conduct was clearly one which they knew or ought to have known was likely to constitute trademark infringement, depreciation of goodwill and passing off of Impossible Foods’ rights or reflected an indifference to such risk and the Defendants should be sanctioned through an award of punitive damages.
22. Indeed, the Defendants began using the nearly identical and confusingly similar Impugned INCREDIBLE Marks in association with plant-based food products more than 2 years after Impossible Foods had filed its Letter of Protest with the Canadian Intellectual Property Office

with respect to each of the INCREDIBLE Applications bringing its prior and already well-known IMPOSSIBLE Trademarks to their attention and putting them on notice that Impossible Foods took issue with the Impugned INCREDIBLE Marks.

23. The full scope of the Defendants' unauthorized acts in association with the Impugned INCREDIBLE Marks is not known to Impossible Foods but is known to the Defendants, and Impossible Foods pleads fully in relation to the same.
24. Impossible Foods requested that the Defendants cease their unauthorized acts in association with the Impugned INCREDIBLE Marks but the Defendants have refused to do so.
25. The Defendants' activities will continue unless restrained by this Court.
26. The Defendants should be jointly and severally liable for all relief claimed by Impossible Foods.
27. Impossible Foods proposes that this action be tried in Toronto, Canada.
28. This action is not being pursued as a simplified proceeding.

Dated: June 14, 2022



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