

C A N A D A

**PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL
LOCALITY OF MONTRÉAL**

No: 500-06-001351-242

(Class Actions)
SUPERIOR COURT

LIEL OHAYON

Applicant

v.

STARBUCKS COFFEE CANADA, INC.

-and-

STARBUCKS CORPORATION

-and-

FOODTASTIC INC. (a.d.b.a. SECOND CUP)

-and-

THE TDL GROUP CORP.

-and-

**RESTAURANT BRANDS INTERNATIONAL
INC.**

-and-

**RESTAURANT BRANDS INTERNATIONAL
LIMITED PARTNERSHIP**

Defendants

**APPLICATION BY FOODTASTIC INC. FOR AUTHORIZATION TO ADDUCE
RELEVANT EVIDENCE**
(Arts. 12, 574 CCP)

TO THE HONOURABLE CATHERINE MARTEL OF THE SUPERIOR COURT, ACTING AS THE DESIGNATED JUDGE IN THE PRESENT CASE, THE DEFENDANT FOODTASTIC INC. RESPECTFULLY SUBMITS AS FOLLOWS:

I. INTRODUCTION

1. The Defendant Foodtastic Inc. ("**Foodtastic**") hereby seeks the authorization of this Honourable Court to adduce relevant evidence pursuant to article 574, paragraph 3 of the *Code of Civil Procedure*, RLRQ c. C-25.01 ("**CCP**").
2. More specifically, Foodtastic seeks authorization to adduce as relevant evidence an executed sworn statement substantially similar to the draft sworn statement communicated as **Exhibit SC-1** hereto, along with its Annex A attached in support thereof (the "**Sworn Statement**").
3. As further detailed below, the Sworn Statement is relevant and necessary for the Court's analysis of the authorization criteria pursuant to article 575 CCP, and more specifically whether the Applicant has demonstrated an arguable case pursuant to 575(2) CCP, as it serves to correct and clarify certain false allegations advanced by the Applicant.

II. THE AUTHORIZATION APPLICATION

4. On or about December 30, 2024, the Applicant Liel Ohayon (the "**Applicant**") filed an *Application to Authorize the Bringing of a Class Action* (the "**Authorization Application**"), on behalf of the following proposed classes (the "**Proposed Classes**") :

"Starbucks Class"

All consumers in Canada who, between December 30, 2021 and November 7, 2024, were charged for a non-dairy substitute when purchasing a Starbucks beverage.

"Second Cup Class"

All consumers in Canada who, since December 30, 2021, were charged for a non-dairy substitute when purchasing a Second Cup beverage.

"Tim Hortons Class"

All consumers in Canada who, since December 30, 2021, were charged for a non-dairy substitute when purchasing a Tim Hortons beverage."

5. The Authorization Application names Foodtastic as one of the defendants and alleges that it owns the Second Cup coffee chain concerned by the Second Cup Class (paragraph 11 of the Authorization Application).
6. The Authorization Application alleges breaches of provisions of the *Consumer Protection Act* and of the *Civil Code of Quebec* by the Defendants in connection

with their previous practice of charging an extra fee to consumers requesting non-dairy substitutes in their beverages (the “**Additional Charge**”).

7. As a result of the Defendants’ alleged faults, the Applicant seeks, on behalf of the Proposed Classes, compensatory damages in an amount equivalent to the aggregate of the surcharges for non-dairy substitutes charged by the Defendants to the class members during the class period, as well as punitive damages in an amount to be determined.

III. THE RELEVANCE OF THE SWORN STATEMENT

A. *Incorrect Entity Named in the Authorization Application*

8. Foodtastic seeks this Honourable Court’s permission to file the Sworn Statement and its Annex A, namely the *État des renseignements d’une personne morale au registre des entreprises* for SC Coffee Canada inc., in order to correct and contradict the allegation that Foodtastic owns the Second Cup coffee chain (see paragraph 11 of the Authorization Application).
9. This Sworn Statement demonstrates that SC Coffee Canada inc. is the franchisor entity for the Second Cup coffee chain, not Foodtastic Inc. which is merely a shareholder of the franchisor.
10. This evidence is therefore relevant in assessing whether the Applicant has established an arguable case against Foodtastic pursuant to article 575(2) CCP.

B. *Milks Subject to an Additional Charge*

11. Foodtastic further seeks this Honourable Court’s permission to file the Sworn Statement in order to provide the factual context surrounding the imposition by Second Cup of an Additional Charge, by demonstrating that:
 - Second Cup charged until February 27, 2025 an additional \$0.80 for customizing a handcrafted beverage with coconut milk, almond milk, soy milk, oat milk or lactose-free milk (collectively the “**Milks subject to an additional charge**”);
 - Second Cup charged no additional cost for non-fat, 2% or whole-milk (the “**Milks not subject to an additional charge**”);
 - Based on a comparison of the average cost per ounce for all Milks subject to an additional charge procured for Second Cup Canadian stores between the years 2021 to 2024 (the “**Period**”), and of the average cost per ounce for Milks not subject to an additional charge for the same stores for the same Period, Second Cup paid on average approximately 98% more per ounce for the Milks subject to an additional charge than it did Milks not subject to an additional charge for the same stores for the same Period.

12. The Sworn Statement also contains a table providing the breakdown of Second Cup's average cost per ounce for Milks not subject to an additional charge, and for each type of Milk subject to an additional charge for the Period to further support this last assertion.
13. This evidence is relevant in assessing whether the Applicant has established an arguable case against Foodtastic pursuant to article 575(2) CCP.
14. The evidence Foodtastic wishes to submit will serve to correct and contradict the allegations that non-dairy substitutes are not any more expensive than regular milk and sometimes even less expensive (see paragraphs 3, 5-6, 24-26, 41-42, 48-49, and 52 of the Authorization Application).
15. Given the confidential and highly sensitive nature of the data on the average cost per ounce for all types of milk, Foodtastic respectfully asks that a redacted version of the Sworn Statement be filed in the public record, omitting the costs presented in the table at its paragraph 9 (Exhibit SC-1), and that the unredacted version be filed under seal.
16. Pursuant to article 12 CCP, the Court may make an exception to the principle of open proceedings and issue a confidentiality and sealing order if the protection of substantial and legitimate interests requires it.
17. The public disclosure of the average cost per ounce presented in the table at paragraph 9 of the Sworn Statement would greatly prejudice Second Cup, as it would namely allow competitors to have a clear view of Second Cup's purchasing power and wholesale costs.
18. The substantial and legitimate interests to be protected goes beyond Second Cup' commercial interests, namely because the information in question pertains to its suppliers, who are not parties to this litigation.
19. The confidentiality and sealing order sought is thus proportional and essential to eliminate the serious risk of public disclosure of third parties' information and protect Second Cup from having its competitors access highly sensitive information relating to its profit margins and its purchasing power over time.
20. The Sworn Statement is relevant and useful and complies with the requirements of articles 9, 18 and 19 of the CCP.
21. Furthermore, the Applicant has given her express consent in advance to the Defendants filing proof of their actual costs for Milks subject to an additional charge and Milks not subject to an additional charge as preliminary evidence at the authorization stage (see paragraph 6 of the Authorization Application).
22. In light of the above, Foodtastic respectfully submits that it is in the interests of the parties and of justice that the Sworn Statement and its supporting annex be introduced into the Court record and be considered by this Honourable Court in

the context of its analysis of the authorization criteria, and specifically in its determination of whether the Applicant has established an arguable case pursuant to article 575 (2) CCP.

23. The present Application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:

GRANT the present Application for Authorization to Adduce Relevant Evidence;

AUTHORIZE the Defendant Foodtastic Inc. to file in the public record an executed sworn statement substantially similar to the draft sworn statement, communicated as **Exhibit SC-1** hereto, with the costs indicated in the table at paragraph 9 redacted, along with its Annex A attached in support thereof, within 30 days of the judgment on the present Application;

AUTHORIZE the Defendant Foodtastic Inc. to file under seal an unredacted version of the executed sworn statement (Exhibit SC-1) along with its Annex A attached in support thereof, within 30 days of the judgment on the present Application;

THE WHOLE with legal costs.

Montréal, this June 19, 2025

Fasken Martineau DuMoulin LLP

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Attorneys for Defendant Foodtastic Inc.

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**RESTAURANT BRANDS INTERNATIONAL
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-and-

**RESTAURANT BRANDS INTERNATIONAL
LIMITED PARTNERSHIP**

Defendants

LIST OF EXHIBITS

EXHIBIT SC-1

Draft Sworn Statement of Somnath (Sam) Wadera and its Annex A.

Montréal, this June 19, 2025

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NOTICE OF PRESENTATION

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TAKE NOTICE that the present *Application for Authorization to Adduce Relevant Evidence* will be presented for adjudication before the honourable justice Catherine Martel S.C.J. of the Superior Court, sitting in civil practice division for the district of Montréal, at a time to be determined at the Montréal courthouse, located at 1 Notre-Dame Street East, Montréal, Quebec, H2Y 1B6, in a room to be determined or by videoconference in a virtual room to be determined.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, this June 19, 2025

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Cc: Noah Boudreau; Mirna Kaddis; Marie-Eve Labonté
Objet: Notification - Liel Ohayon c. Starbucks Coffee Canada et als. - 500-06-001351-242 - Notre réf. : 328561.00048 [FMD-CANADA.FID13688193]
Pièces jointes: 314511403_v(1)_2025-06-19 Application by Foodtastic Inc. for Authorization to Adduce Relevant Evidence.pdf; 314511467_v(1)_SC-1 Draft Sworn Statement - REDACTED.pdf; 314418696_v(1)_Annex A - REQ SC Coffee Canada inc.pdf

NOTIFICATION PAR MOYEN TECHNOLOGIQUE

Fasken Martineau DuMoulin S.E.N.C.R.L., s.r.l.
(Art. 133 - 134 du *Code de procédure civile*, RLRQ c. C-25.01)

Parties : Liel Ohayon c. Starbucks Coffee Canada et als.
Cour : Cour supérieure
District judiciaire : Montréal
Localité : Montréal
Numéro de cour : 500-06-001351-242

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Document(s) notifié(s) :

Titre du document	Type	Nb pages	Taille
Application by Foodtastic inc for Authorization to Adduce Relevant Evidence	PDF	11	183KB
Exhibit SC-1	PDF	3	206KB
Annex A	PDF	6	2MB

Veuillez communiquer avec l'expéditeur en cas de difficultés techniques avec les documents.

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-and-

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PARTNERSHIP**

Defendants

16989/328561.00048

BF1339

**APPLICATION BY FOODTASTIC INC. FOR
AUTHORIZATION TO ADDUCE RELEVANT
EVIDENCE, LIST OF EXHIBIT, EXHIBIT SC-1 AND
NOTICE OF PRESENTATION**

ORIGINAL

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