

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N^o: 500
17-051 368-093

SUPERIOR COURT

WAL-MART CANADA CORP., a corporation incorporated under the laws of Nova Scotia, with attorneys for service located at Purdy's Wharf Tower II, 1300-1969 Upper Water Street, P.O. Box 730, Halifax, NS, B3J 2V1 and having a principal place of business in Quebec at 1600, Le Corbusier Blvd., Laval, Québec, H7S 1Z2

Plaintiff

vs

UNITED FOOD AND COMMERCIAL WORKERS CANADA, corporation having a principal place of business at 300-61 International Boulevard, Rexdale Ontario M9W 6K4 and a place of business at 100-1405 Blvd. Henri-Bourassa Ouest, Montréal, Québec, H3M 3B2

Defendant

**MOTION TO INSTITUTE PROCEEDINGS IN INTERLOCUTORY AND
PERMANENT INJUNCTION**

**IN SUPPORT OF THEIR MOTION TO INSTITUTE PROCEEDINGS, PLAINTIFFS
RESPECTFULLY DECLARE THE FOLLOWING:**

The Parties

1. The Plaintiff, Wal-Mart Canada Corp. ("**Wal-Mart Canada**") is a corporation incorporated under the laws of Nova Scotia, with attorneys for service at Purdy's Wharf Tower II, 1300-1969 Upper Water St. Halifax, Nova Scotia, B3J 2V1. It has a principal place of business in Ontario at 1940, Argentia Road, Mississauga, Ontario and a principal place of business in Quebec at 1600 Blvd Le Corbusier, Laval, Quebec, H7S 1Z2;

2. Wal-Mart Canada is a wholly owned subsidiary of Wal-Mart Stores, Inc. ("Wal-Mart USA") and is the exclusive Canadian licensee of Wal-Mart USA's trademarks, registered and unregistered, including Wal-Mart USA's trademarks referred to herein;
3. Wal-Mart USA and Wal-Mart Canada are hereinafter sometimes referred to collectively as "**Wal-Mart**";
4. The Defendant, United Food and Commercial Workers Canada ("**UFCW**") is a union duly organized in Canada and has a principal place of business at 300-61 International Boulevard , Rexdale Ontario M9W 6K4 and has offices in the Province of Quebec at 100-1405 Blvd. Henri Bourassa O. Montreal, Quebec H3M 3B2;

The Business of Wal-Mart Canada

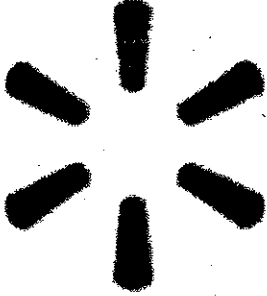
5. Wal-Mart Canada is engaged in the business of retail discount department store services in all provinces of Canada including Quebec. In particular, Wal-Mart Canada operates over 50 stores in the province of Quebec;
6. Wal-Mart Canada began operating its retail discount department stores in Canada in 1994 in association with the trademark Wal-Mart;
7. Wal-Mart Canada currently operates over 310 discount department stores in Canada and employs more than 80,000 employees (referred to as "Associates") across Canada. Each General Merchandise store houses more than 80,000 products and also offers a wide range of specialty services. Supercentres house more than 120,000 products including grocery and offer a wide range of specialty services. Depending on the store, these specialty services may include pharmacy services, optometry services and film development services, among others;

The Trademark Rights

8. Wal-Mart USA is the owner of the registered trademarks listed in **Table 1** below;


Table 1

TRADEMARK	REGISTRATION NUMBER	DATE OF REGISTRATION
WALMART	TMA430385	July 15, 1985
WAL-MART	TMA502605	October 21, 1998
ECONOMISEZ PLUS. VIVEZ MIEUX.	TMA738269	April 17, 2009

TRADEMARK	REGISTRATION NUMBER	DATE OF REGISTRATION
SPARK (rays) Design 	TMA739446	March 5, 2009

9. Further particulars of each of these registered trademarks are provided in the document, a copy of which is attached herewith as **EXHIBIT P-1**;
10. Wal-Mart Canada has made exclusive and extensive use of the trademarks listed in Table 1, and has a shared goodwill and reputation in these trademarks in Canada;
11. By reason of the aforesaid trademark registrations, the exclusive licence to Wal-mart Canada, and the provisions of Section 19 of the *Trade-marks Act*, the Plaintiff has the exclusive right to the use of the said registered trademarks throughout Canada;
12. Wal-Mart USA has also filed applications to register a series of trademarks which it has recently adopted and used as part of a rebranding program. The said trademarks are listed in **Table 2** below:

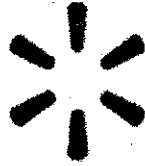
Table 2

TRADEMARK	APPLICATION NUMBER	FILING DATE
WALMART Save Money. Live Better & Design  Save money. Live better.	1,409,936	August 27, 2008
SAVE MONEY. LIVE BETTER.	1,350,102	June 4, 2007

13. Further particulars of each of these trademarks are provided in the document, a copy of which is attached herewith as **EXHIBIT P-2**;
14. Wal-Mart Canada has made exclusive and extensive use of the trademarks listed in Table 2, and has a shared goodwill and reputation in these trademarks in Canada;
15. In Canada, in association with its retail and other services, Wal-Mart Canada has used the trademarks listed in **Tables 1 and 2** above, in association with its philanthropic, charitable and community activities, at least as early as the Spring of 2009;

The Rebranding Program / Rebranded Indicia

16. Since 1994 and continuing to the present date, Wal-Mart Canada has prominently displayed its exterior signage on the front of its stores. This signage typically has the word WAL-MART written in large white block capital letters set on a blue background. Since 1994 Wal-Mart has used the colours red, white and blue for its signage and exterior decorating;
17. Since the opening of Wal-Mart stores in Canada in 1994, the WAL-MART trademark has been prominently featured on Wal-Mart Canada retail stores and on exterior and interior signage and in the Plaintiff's extensive advertising in association with its business in Canada. The Canadian public has come to recognize WAL-MART as denoting the Plaintiff's business;
18. Since Wal-Mart USA first commenced business, its corporate image, including its trade name as well as its corporate logos and slogans, have undergone changes, while still maintaining corporate identity through the use of the Wal-Mart trademark. Such up-dating of the corporate image helps keep Wal-Mart's image fresh and contemporary;
19. Wal-Mart recently designed and developed a rebranded corporate image, which includes, as part of its rebranding program, a new logo, namely the registered SPARK Design mark as shown in **Table 1**, as well as the one word Walmart written in lower case letters as shown in **Table 2** and the words "Save Money. Live Better." or its French equivalent "Économisez Plus. Vivez Mieux." as shown in Tables 1 and 2 above (hereinafter referred to as "the Rebranded Indicia");
20. The rebranding program involved significant expenditures of research, time and money. The rebranding program resulted in the design of the Rebranded Indicia referred to in paragraph 19 above. In 2008, Wal-Mart USA unveiled the new logo (referred to herein as the "**Spark Design**"). The new logo is reproduced below:



21. Wal-Mart USA also rebranded the store name to a one-word form with no hyphen, namely Walmart.
22. As part of the rebranding program, Wal-Mart also changed its promotional and marketing slogan. The new slogan is "SAVE MONEY. LIVE BETTER". This new slogan reflects Wal-Mart's ongoing and renewed sense of purpose in helping people buy what they need at the best possible price and, thus, enhance their lifestyle. That is the underlying philosophy behind the new slogan;
23. The new Spark design, the rebranded store name Walmart, in conjunction with the new slogan (the "Rebranded Indicia") were officially rolled out in Canada in February 2009;
24. As part of the rebranding program, Wal-Mart USA and Wal-Mart Canada also changed their underlying colour scheme, which now features the non-hyphenated word "Walmart" in blue with the Spark design in gold, the whole as more fully appears from **EXHIBIT P-3**;
25. The new Rebranded Indicia are now used throughout Wal-Mart stores in Canada, as well as being used on Wal-Mart Canada's website. The Rebranded Indicia appears on signage, flyers, the website, as well as, appearing throughout Wal-Mart stores on signage in various specialty departments of the stores, the whole as more fully appears from **EXHIBIT P-4**;
26. As a result of the extensive use of its Rebranded Indicia, the Plaintiff's new trademarks, slogans and design have been seen by millions of Wal-Mart customers, in the stores, on flyers and other documentation and are beginning to become well-known in the Canadian marketplace as denoting the commercial business of the Plaintiff;
27. By reason of the foregoing, Wal-Mart has established a reputation and goodwill in Canada, in and to its Rebranded Indicia, including the trademarks Walmart, alone and in conjunction with the Spark design, and the slogans SAVE MONEY. LIVE BETTER. and ECONOMISEZ PLUS. VIVEZ MIEUX.

Philanthropic Activities of Wal-Mart Canada

28. Wal-Mart Canada also has a long history of involvement in the communities in which stores are located, as well as, on a national level;
29. Wal-Mart Canada operates one of Canada's strongest community involvement programs which is focused on donating and raising money and increasing awareness for Canadian charities and organizations in need. Since 1994, Wal-Mart Canada and its Associates have raised and donated over \$50 million to Canadian organizations through Wal-Mart Canada's good works programs;
30. The Rebranded Indicia, which have recently been adopted in Canada by Wal-Mart Canada have also been prominently displayed and used in relation to Wal-Mart Canada's philanthropic activities, the whole as more fully appears from **EXHIBIT P-5**;

Infringing Activities of the Defendant

31. UFCW has a website located at www.ufcw.ca and www.walmartworkerscanada.ca (hereinafter "UFCW website") wherein it promotes itself as one of Canada's largest and most progressive private sector unions;
32. Wal-Mart Canada is aware that some of its Associates are members of the UFCW;
33. On the UFCW website, the business of the UFCW is described by its national president and it is clear from the website, that the UFCW is actively recruiting members with the goal of enlarging its membership and furthering its business and commercial objectives, the whole as more fully appears from **EXHIBIT P-6**;
34. In the past, the UFCW has referred to Wal-Mart Canada generically with pictures of persons dressed as Wal-Mart Canada employees. Wal-Mart Canada was aware of this fact and did not object since the word "Wal-Mart" was not being used as a trademark but merely as an identifier of Wal-Mart as a corporate entity;
35. Wal-Mart Canada has very recently become aware that the UFCW website now includes pages entitled "Walmart Workers Canada" / "Le Syndicat pour les employés de Walmart au Canada". These webpages prominently display a logo that includes elements identical to or confusingly similar to the elements in Wal-Mart's Rebranded Indicia, the whole as more fully appears from **EXHIBIT P-7**;
36. The UFCW website uses the trademark "Walmart" in a format which is essentially identical to the new Walmart trademark and store name adopted by Wal-Mart Canada as part of the rebranding program;
37. Finally, the UFCW website also uses the slogans "Get Respect. Live Better." / "Recevez le Respect. Vivez Mieux." which are obvious plays on Wal-Mart's new

slogans SAVE MONEY. LIVE BETTER. / ECONOMISEZ PLUS. VIVEZ MIEUX., the whole as more fully appears from Exhibit P-7;

38. The UFCW website also displays a clear picture of three Wal-Mart Associates or persons impersonating Wal-Mart Associates, attired in the distinctive blue vest worn by Wal-Mart Canada Associates, the whole as more fully appears from Exhibit P-7;
39. The UFCW is also distributing new business cards that display the same indicia, that is the trademark Walmart, a design very similar to the new Spark design which is registered trademark, as well as, the slogan "Get Respect. Live Better.", and a picture of three persons attired in the distinctive blue vest worn by Wal-Mart Canada Associates, the whole as more fully appears from **EXHIBIT P-8**;
40. The UFCW is now using Wal-Mart's Rebranded Indicia, in an attempt to springboard on Wal-Mart's reputation to further its own commercial interests and activities;
41. These activities are without the consent, license, or permission of Wal-Mart;
42. In addition to the use of the Wal-Mart Rebranded Indicia, the UFCW Canada is also using other language on its UFCW website to insinuate that there is a sponsorship, connection, association, or affiliation between Wal-Mart and the UFCW. In particular, the following language appears on the UFCW website:
 - (a) Walmart Workers Canada / Employés de Walmart Canada & Spark logo;
 - (b) The Union for Walmart Workers in Canada / Le syndicat pour les employés de Walmart au Canada;
 - (c) Walmart News;
 - (d) Walmart Workers Call, UFCW Canada Answers / Les employés de Walmart lancent un appel, les TUAC Canada y répondent;

The whole as more fully appears from Exhibit P-7;

43. In the past, the UFCW has used the name Wal-Mart generically and sought to attract Wal-Mart Canada employees to join its union. However, past materials did not infer or imply any type of relationship between the UFCW and Wal-Mart Canada, including any sponsorship, connection, association, or affiliation. Moreover, the UFCW did not use Wal-Mart's trademarks as trademarks per se;
44. The same cannot be said today. The UFCW's new website, business cards, and other materials uses an accumulation of indicia identical or confusingly similar to Wal-Mart's Rebranded Indicia;

45. These uses of Wal-Mart's Rebranded Indicia raises an inevitable and completely false implication that Wal-Mart has licensed its trademarks to the UFCW and is controlling the use of its trademarks, either directly or indirectly in order to assist the Defendant union in recruiting Wal-Mart Canada workers with the approval of Wal-Mart Canada. This is false;
46. The use of Wal-Mart's intellectual property on the UFCW's website has created the sort of ambiguity which is the very essence of confusion and passing off;
47. Any implication that Wal-Mart Canada is colluding with the UFCW to encourage its Associates to join the UCFW in what could be viewed as company - supported union activity is completely false. It is extremely prejudicial since it suggests that Wal-Mart Canada may be indulging in an underhanded form of union busting and is attempting to bar or to make it very difficult for other unions to seek certification. Once such an implication has been raised through the unauthorized use of Wal-Mart's intellectual property, the presumption can be almost impossible to rebut. This constitutes an incalculable harm in and of itself;
48. As indicated previously, the UFCW is trading on Wal-Mart's new Rebranded Indicia. It is particularly harmful to the Plaintiff to have its introduction of a new rebranding campaign threatened by an uninvited and inaccurate association with a third party. The reputation and goodwill in Wal-Mart's new Rebranded Indicia will be irrevocably harmed by the actions of the Defendant which will cause the public to associate the Rebranded Indicia with both the Defendant and the Plaintiff - two separate and distinct businesses with separate and distinct objectives;
49. These activities by the UFCW constitute acts of infringement of the registered trademarks listed in Table 1 above, contrary to Sections 19 and 20 of the *Trade-marks Act* to the detriment of the Plaintiff as the exclusive licensee of these trademarks in Canada;
50. In addition, these activities constitute a depreciation of the value of the goodwill associated with the registered trademarks listed in Table 1 above, contrary to Section 22 of the *Trade-marks Act*. The Defendant's activities are (1) reducing the advantage of Wal-Mart's reputation in its trademarks, (2) taking away the whole or some portion of the custom otherwise to be expected by Wal-Mart and thus are rendering Wal-Mart's trademarks less advantageous. The wrongful use by the UFCW of Wal-Mart's trademarks are resulting in an erosion and dilution of the prestige, strength and integrity of Wal-Mart's trademarks;
51. A further overlap results from the philanthropic activities of Wal-Mart Canada and the UFCW in the field of charity and philanthropy. This overlap creates further opportunities for ambiguity and confusion between the services of the Plaintiff and those of the Defendant;

UFCW is a Trademark Owner Itself

52. The UFCW is the owner of a number of registered trademarks in Canada and has jealously guarded the distinctiveness of those trademarks;
53. The UFCW's charter, and in particular, Article 20 thereof, has very specific provisions concerning the maintenance and protection of its corporate name, symbols and trademarks and emphasizes the importance of trademarks, logos and other indicia for the maintenance of distinctiveness and corporate recognition, the whole as more fully appears from **EXHIBIT P-9**;
54. The Plaintiff has requested that the UFCW modify the UFCW websites to delete references and indicia which are identical or confusingly similar with the Rebranded Indicia. The UFCW has declined to amend its website;
55. The UFCW is, thus, fully aware of the Plaintiff's rights. It is determined to continue to willfully and blatantly infringe those rights unless enjoined from doing so by this Honourable Court;

Clear and apparent right

56. By their conduct and actions as set out herein above, the Defendant has:
 - (a) infringed, and is deemed to have infringed, the registered trademarks listed in Table 1 above, contrary to Sections 19 and 20 of the *Trade-marks Act*;
 - (b) used the registered trademarks listed in Table 1 above in a manner likely to have the effect of depreciating the value of the goodwill attaching thereto contrary to Section 22 of the *Trade-marks Act*;
 - (c) directed public attention to their business and services in such a way as to cause or to be likely to cause confusion in Canada with the services and business of the Plaintiff;
 - (d) directly or indirectly, passed off their wares, services or business as and for that of the Plaintiff, contrary to law and s.7(b) of the *Trade-marks Act*; and;
 - (e) directly or indirectly, falsely suggested a sponsorship, connection, association, or affiliation between the Defendant's business and that of the Plaintiff;
57. The activities of the Defendant as aforesaid are deliberate and are calculated to disrupt and damage the Plaintiff's business.
58. As mentioned hereinabove, it is clear that the Defendant does not have the right to use Wal-Mart's Rebranded Indicia as trademarks ;

Suffering a grave and irreparable prejudice

59. The activities of the Defendant set out in the present motion as set out herein are causing serious and immediate irreparable harm and damage to the Plaintiff and to the valuable reputation and goodwill in Wal-Mart's registered trademarks as listed in Table 1 above;
60. Furthermore, the Plaintiff submits that the balance of inconvenience is clearly in favour of Plaintiff since the remedies sought by Plaintiff are extremely minor and would simply require Defendant to revert back to its former website;
61. Without the remedy requested above, the Plaintiff will suffer grave and irreparable harm, namely, damage to its reputation, loss of goodwill, loss of distinctiveness of its licensed trademarks, and loss of control over its Rebranded Indicia;
62. Notwithstanding complaints by the Plaintiff, the Defendant has refused to cease its aforesaid activities and threatens to continue and escalate these activities unless restrained by order of this Honourable Court.

Varia

63. The Superior Court of the judicial district of Montreal, Province of Quebec, has jurisdiction over the present matter since the Defendant has an establishment or a residence in Quebec and the dispute relates to its activities in Quebec. In addition, a fault is committed in Quebec;
64. Plaintiff has the right and hereby requests that this Honourable Court exempt them from giving security provided for in section 755 of the *Code of Civil Procedure*;
65. The Plaintiff reserves all of its other rights and recourses;
66. The present Motion for the issuance of a provisional injunction, safeguard order, interlocutory injunction and permanent injunction is well founded both in fact and in law;
67. The present Motion is well-founded both in fact and in law.

FOR THESE REASONS, PRAY THIS HONOURABLE COURT TO:

(A) CONCLUSIONS ON THE INTERLOCUTORY INJUNCTION:

GRANT the present Motion for Interlocutory Injunction;

ORDER by way of Interlocutory Injunction and to remain in force until a final judgment, to Defendant, its principals, directors, officers, servants, agents, employees, representatives and members, and all those under their control:

- (i) not to use Walmart or Wal-Mart as a trademark, alone or with other indicia in any form or format in any media including websites, business cards, flyers, advertising;
- (ii) not to use the expression "Walmart Workers Canada" in any form or format in any media, including websites, business cards, flyers, advertising;
- (iii) not to use the expression "Union for Walmart Workers" in Canada in any form or format in any media, including websites, business cards, flyers, advertising;
- (iv) not to use the word Walmart or Wal-Mart alone or with other words, indicia or designs in a colour scheme which is similar to the current colour scheme adopted by Wal-Mart Canada in association with its Rebranded Indicia, namely blue, white and gold, in any form or format in any media, including websites, business cards, flyers, advertising;
- (v) not to use the expression "Get Respect. Live Better." or any other expression which constitutes a play on Wal-Mart's slogan and trademark SAVE MONEY. LIVE BETTER. in any form or format in any media, including websites, business cards, flyers, advertising;
- (vi) not to use photographs or images purporting to represent employees of Wal-Mart Canada wearing the blue vest and name tag badge similar to that worn on the job by Wal-Mart employees in Canada in any form or format in any media, including websites, business cards, flyers, advertising;
- (vii) not to use any circular, oval or semi-circular design similar to the Spark design that includes spokes or figures in association with the trademark Walmart in any form or format in any media, including websites, business cards, flyers, advertising;
- (viii) not to use an oval, circular or semi-circular design that adopts the essential characteristics and colour scheme of Wal-Mart's Rebranded Indicia in any form or format in any media, including websites, business cards, flyers, advertising;
- (ix) to immediately take down the website under the following url: www.walmartworkerscanada.ca and to cease use of the trademarks Walmart or Wal-Mart on websites operated or controlled by the Defendant;

- (x) not to use the expression "Employés de Walmart Canada" in any form or format in any media, including websites, business cards, flyers, advertising;
- (xi) not to use the expression "Le syndicat pour les employés de Walmart au Canada" in any form or format in any media, including websites, business cards, flyers, advertising;
- (xii) not to use the expression "Recevez le Respect. Vivez Mieux." or any other expression which constitutes a play on Wal-Mart's slogan and trademark ECONOMISEZ PLUS. VIVEZ MIEUX. in any form or format in any media, including websites, business cards, flyers, advertising;
- (xiii) not to use any other words, expressions, designs, logos or other indicia which constitute a reference which could potentially suggest a sponsorship, connection, association, or affiliation between UFCW and Wal-Mart Canada;
- (xiv) not to, directly or indirectly, infringe the registered trademarks listed in Table 1 above, contrary to s.19 and 20 of the *Trade-marks Act*;
- (xv) not to, directly or indirectly, do any act which is likely to have the effect of depreciating the value of the goodwill associated with the registered trademarks listed in Table 1 above, contrary to s. 22 of the *Trade-marks Act*;
- (xvi) not to, directly or indirectly, direct public attention to their wares, services or business in such a manner as to cause or be likely to cause confusion with the wares, services and business of the Plaintiff, contrary to s. 7(b) of the *Trade-marks Act*;
- (xvii) not to, directly or indirectly, pass off their wares, services or business as and for that of the Plaintiff, contrary to s.7(b) of the *Trade-marks Act*; and
- (xviii) not to, directly or indirectly, falsely suggest a sponsorship, connection, association, or affiliation between the Defendant's business and that of the Plaintiff.

(B) CONCLUSIONS ON THE FINAL INJUNCTION:

GRANT the present action for permanent injunction;

ORDER by way of permanent injunction to Defendant, its principals, directors, officers, servants, agents, employees, representatives and members, and all those under their control:

- (i) not to use Walmart or Wal-Mart as a trademark, alone or with other indicia in any form or format in any media including websites, business cards, flyers, advertising;

- (ii) not to use the expression "Walmart Workers Canada" in any form or format in any media, including websites, business cards, flyers, advertising;
- (iii) not to use the expression "Union for Walmart Workers" in Canada in any form or format in any media, including websites, business cards, flyers, advertising;
- (iv) not to use the word Walmart or Wal-Mart alone or with other words, indicia or designs in a colour scheme which is similar to the current colour scheme adopted by Wal-Mart Canada in association with its Rebranded Indicia, namely blue, white and gold, in any form or format in any media, including websites, business cards, flyers, advertising;
- (v) not to use the expression "Get Respect. Live Better." or any other expression which constitutes a play on Wal-Mart's slogan and trademark SAVE MONEY. LIVE BETTER. in any form or format in any media, including websites, business cards, flyers, advertising;
- (vi) not to use photographs or images purporting to represent employees of Wal-Mart Canada wearing the blue vest and name tag badge similar to that worn on the job by Wal-Mart employees in Canada in any form or format in any media, including websites, business cards, flyers, advertising;
- (vii) not to use any circular, oval or semi-circular design similar to the Spark design that includes spokes or figures in association with the trademark Walmart in any form or format in any media, including websites, business cards, flyers, advertising;
- (viii) not to use an oval, circular or semi-circular design that adopts the essential characteristics and colour scheme of Wal-Mart's Rebranded Indicia in any form or format in any media, including websites, business cards, flyers, advertising;
- (ix) to immediately take down the website under the following url: www.walmartworkerscanada.ca and to cease use of the trademarks Walmart or Wal-Mart on websites operated or controlled by the Defendant;
- (x) not to use the expression "Employés de Walmart Canada" in any form or format in any media, including websites, business cards, flyers, advertising;
- (xi) not to use the expression "Le syndicat pour les employés de Walmart au Canada" in any form or format in any media, including websites, business cards, flyers, advertising;
- (xii) not to use the expression "Recevez le Respect. Vivez Mieux." or any other expression which constitutes a play on Wal-Mart's slogan and trademark

ECONOMISEZ PLUS. VIVEZ MIEUX. in any form or format in any media, including websites, business cards, flyers, advertising;

- (xiii) not to use any other words, expressions, designs, logos or other indicia which constitute a reference which could potentially suggest a sponsorship, connection, association, or affiliation between UFCW and Wal-Mart Canada;
- (xiv) not to, directly or indirectly, infringe the registered trademarks listed in Table 1 above, contrary to s.19 and 20 of the *Trade-marks Act*;
- (xv) not to, directly or indirectly, do any act which is likely to have the effect of depreciating the value of the goodwill associated with the registered trademarks listed in Table 1 above, contrary to s. 22 of the *Trade-marks Act*;
- (xvi) not to, directly or indirectly, direct public attention to their wares, services or business in such a manner as to cause or be likely to cause confusion with the wares, services and business of the Plaintiff, contrary to s. 7(b) of the *Trade-marks Act*;
- (xvii) not to, directly or indirectly, pass off their wares, services or business as and for that of the Plaintiff, contrary to s.7(b) of the *Trade-marks Act*; and
- (xviii) not to, directly or indirectly, falsely suggest a sponsorship, connection, association, or affiliation between the Defendant's business and that of the Plaintiff.

RESERVE Plaintiff's other rights and recourses against Defendant;

DISPENSE Plaintiff from providing security;

THE WHOLE with costs.

MONTREAL, June 19, 2009

(s) **LAPOINTE ROSENSTEIN**
S.E.N.C.R.L./LLP.

LAPOINTE ROSENSTEIN, L.L.P.
Attorneys for Plaintiff

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