

Federal Court



Cour fédérale

**Date: 20230724**

**Docket: T-165-21**

**Citation: 2023 FC 1010**

**Ottawa, Ontario, July 24, 2023**

**PRESENT: The Honourable Justice Fuhrer**

**BETWEEN:**

**7294140 CANADA INC. DBA ZOOMTONER**

**Plaintiff**

**and**

**CONNEXLOGIX INC.  
ROBERT GUNARATNAM BASKAR  
CONNEX LOGISTICS SOURCE INC.**

**Defendants**

**ORDER AND REASONS**

I. Overview

[1] The Defendants seek summary judgment dismissing the Plaintiff's claim for want of the Court's jurisdiction. They assert that this is not a case of trademark infringement, passing off and depreciation of goodwill by any of the Defendants, but rather it is one involving a technological

risk a seller assumes in using the Amazon online “marketplace” or platform to sell one’s products, including an Amazon Standard Identification Number assigned to those products.

[2] Responding to the Defendants’ motion, the Plaintiff asserts loss of control of its trademark ZOOMTONER because of the Defendants’ conduct, and consequent passing off, infringement and depreciation of goodwill. According to the Plaintiff, the Defendants have not established there is no serious issue for trial.

[3] For the reasons that follow, I find that the Plaintiff has not raised any valid cause of action in respect of the individual Defendant, Robert Gunaratnam Baskar, nor the corporate Defendant, Connexlogix Inc.. I therefore grant the Defendant’s motion in part and dismiss the action against these Defendants, with the remainder of the motion dismissed. The action will proceed to trial against the Defendant, Connex Logistics Source Inc..

## II. Additional Background

[4] Robert Gunaratnam Baskar [Robert Baskar or individual Defendant] is an officer and director of Connex Logistics Source Inc. [CLSI or corporate Defendant], an Ontario corporation incorporated on November 22, 2019, and Connexlogix Inc. [CLI or corporate Defendant], a Canada corporation incorporated on November 19, 2020 [collectively, Defendants]. The Defendants’ evidence, contained in the supporting affidavit of Robert Baskar sworn on April 29, 2022 [Baskar Affidavit], is that CLI has never conducted business. The Amended Statement of Defence states otherwise, however - it describes a range of products and related services that CLI advertises, sells and provides.

[5] In response to the Defendants' motion, the Plaintiff, 7294140 Canada Inc. dba Zoomtoner [Zoomtoner or Plaintiff], relies on the affidavit of David Ohayon, president of Zoomtoner, sworn on June 13, 2022 [Ohayon Affidavit]. According to the Ohayon Affidavit, Zoomtoner has used its trademark ZOOMTONER [Trademark] in association with filled ink and toner cartridges for printers and photocopiers for more than a decade.

[6] More recently, in March 2020, Zoomtoner started selling sanitary face masks for protection against viral infections, like COVID-19, under the Trademark. Exhibit DO-4 to the Ohayon Affidavit is an image of the packaging on which the Trademark is displayed for Zoomtoner's face masks. David Ohayon indicated in cross-examination that Zoomtoner acquired the masks from different suppliers or manufacturers.

[7] From the outset, Zoomtoner sold its face masks online via Amazon under the Amazon Standard Identification Number [ASIN], B0874VFK24, created by Amazon at Zoomtoner's request (as admitted by David Ohayon in cross-examination), for the sale of masks in quantities of 100 [K24 ASIN]. The K24 ASIN, however, initially was not "locked" or exclusive to Zoomtoner because it did not have a registered trademark at that time. Consequently, third party masks, including those distributed by CLSI or with CLSI's permission, were available to buy on Amazon in connection with the K24 ASIN.

[8] At about the same time as Zoomtoner began selling face masks online, CLSI started selling AUKEY and PISEN branded face masks in quantities of fifty, also online via Amazon.

CLSI previously had registered as an Amazon seller in January 2020 to sell other products through its Amazon store or portal.

[9] The AUKEY and PISEN face masks were sold by CLSI under a different ASIN, B089LCNRBC. CLSI acquired these face masks from 2232604 Ontario Inc. [223 Ontario], a company owned and operated by Mr. Yee Yen (Ian) Tan.

[10] According to Robert Baskar, 223 Ontario soon took over the sale of the AUKEY and PISEN face masks because of sales volumes, pursuant to an asserted consignment agreement between CLSI and 223 Ontario. The latter was given access to CLSI's Amazon store or portal for this purpose. The AUKEY and PISEN face masks sold through CLSI's portal first referenced or linked to the K24 ASIN in July 2020, after CLSI itself had stopped selling face masks and provided access to 223 Ontario. CLSI did not oversee 223 Ontario's face mask listings via the portal.

[11] Neither 223 Ontario nor Mr. Tan is a party to this action.

[12] On January 25, 2021, Zoomtoner applied to register the Trademark under application number 2079653 for goods (1) filled ink cartridges for printers; filled ink jet cartridges; ink cartridges, filled, for printers and photocopiers; toner cartridges, filled, for inkjet printers; toner cartridges, filled, for printers and photocopiers [Goods 1], and (2) disposable sanitary masks for protection against viral infections [Goods 2]. The registration issued on June 9, 2021 under registration number TMA1101745 [Registration].

[13] On January 26, 2021, Zoomtoner commenced this action, initially against CLI and Robert Baskar. CLSI was added later when Zoomtoner amended the Statement of Claim on January 31, 2022. Zoomtoner claims against the Defendants for passing off, infringement and depreciation of goodwill in relation to its Trademark pursuant to paragraphs 7(b) and 7(c) and sections 19, 20 and 22 of the *Trademarks Act*, RSC 1985, c T-13 [TMA]. In addition, Zoomtoner seeks, among other remedies, damages or an accounting of profits, punitive and exemplary damages, pre- and post-judgment interest, and solicitor-client costs.

[14] Relevant legislative provisions are reproduced in Annex “A” below.

### III. Summary Judgment Principles and Issues

[15] Rules 213-215 of the *Federal Courts Rules*, SOR/98-106 [Rules] apply to a motion for summary judgment.

[16] In *Rallysport Direct LLC v 2424508 Ontario Ltd.*, 2019 FC 1524 at para 42, I summarized the applicable legal principles along the following lines (citations omitted):

1. Summary judgment, if warranted, allows the Court to (i) dispense summarily with an action where there is no genuine issue for trial, (ii) conserve scarce judicial resources, and (iii) improve access to justice.
2. The Court must interpret summary judgment rules broadly, favouring proportionality and fair access to affordable, timely and just adjudication; a fair and just process is one that permits a judge to find the facts necessary to resolve the dispute and to apply the relevant legal principles to the facts as found.
3. The test that the moving party must meet is whether the case is so doubtful that it does not deserve consideration by the trier of fact at a future trial; or, alternatively, whether there is no legal basis to the claim, having regard to the law or the evidence brought forward. It is not restricted to the clearest of cases.

4. Where the Court determines that the necessary facts cannot resolve the dispute fairly and justly, or where the Court determines that it would be unjust to make a finding on those facts alone, summary judgment should not be granted.
5. It would be unjust to make a finding on the facts alone where issues were not raised by one party because doing so would preclude them from knowing the case to meet.
6. The Court generally should not decide issues of credibility on a motion for summary judgment. Observing live testimony and cross-examination often places a judge in a better position to draw appropriate inferences, and to weigh evidence, as opposed to doing so based on affidavit evidence alone.
7. Not all conflicting evidence will raise credibility issues and preclude summary judgment. Courts should take a hard look at the merits of the case to determine if credibility issues need be resolved.
8. The effect of granting summary judgment will be to preclude a party from presenting any evidence at trial, effectively resulting in that party losing its day in court.

[17] These principles are based largely on the decision of this Court in *Milano Pizza Ltd. v 6034799 Canada Inc.*, 2018 FC 1112 at paras 21-41, and were cited with approval by the Federal Court of Appeal in *ViiV Healthcare Company v Gilead Sciences Canada, Inc.*, 2021 FCA 122 at para 39 and more recently followed by the Federal Court of Appeal in *Gemak Trust v Jempak Corporation*, 2022 FCA 141 at para 61 and *Saskatchewan (Attorney General) v Witchekan Lake First Nation*, 2023 FCA 105 at para 22 [*Witchekan Lake*].

[18] In the latter decision, the Federal Court of Appeal clarified that the bar for meeting the test for summary judgment is high: *Witchekan Lake*, above at para 23. Further, as mentioned in point 7 above, credibility issues will not defeat a motion for summary judgment if the Court does not need to resolve them to dispose of the motion; the motions judge has the option of directing a summary trial on disputed facts or live credibility issues: *Witchekan Lake*, above at para 40.

[19] Ultimately, there will be no genuine issue for trial if the summary judgment motion permits the judge to make necessary factual findings, apply the law to the facts, and reach a just result in a proportionate, more expeditious and less expensive manner: *Hryniak v Mauldin*, 2014 SCC 7 (CanLII), [2014] 1 SCR 87 at para 49; *Techno-Pieux Inc. v Techno Piles Inc.*, 2022 FC 721 at para 38.

[20] Both parties must “put their best foot forward”; the moving party, however, bears the burden of establishing facts necessary to justify summary judgment, while the responding party, to resist the motion successfully, must provide specific facts and evidence to show there is a genuine issue for trial: *Garford Pty Ltd. v Dywidag Systems International, Canada, Ltd.*, 2010 FC 996 at para 6.

[21] Bearing all these principles in mind, I find that the penultimate or overarching question the Court must answer here is whether there is a genuine issue for trial in respect of any of the following more granular issues:

- A. *Are there valid causes of action against the individual Defendant, Robert Baskar, the corporate Defendant, CLI, and the corporate Defendant, CLSI? If yes, then the Court also must consider the issues that follow in the context of whether the Defendants have established that there is no genuine issue for trial.*
- B. *Have the Defendants used the Plaintiff’s Trademark pursuant to the TMA sections 2 and 4?*
- C. *Are the Defendants liable for passing off under the TMA sections 7(b) and 7(c)?*
- D. *Are the Defendants liable for trademark infringement pursuant to the TMA sections 19 and 20, regarding activities that took place before the trademark was registered?*
- E. *Have the Defendants diminished the goodwill of the Plaintiff’s Trademark pursuant to the TMA section 22, again regarding activities that took place before the trademark was registered?*

[22] There also are preliminary admissibility issues regarding both the Defendants' evidence and the Plaintiff's responding evidence on this motion that, of necessity, I address below first, before considering whether there is any genuine issue for trial: *Lickerish, Ltd. v airG Inc.*, 2020 FC 1128 at para 27, citing *Pfizer Canada Inc. v Teva Canada Limited*, 2016 FCA 161 at paras 79-81 and 84.

#### IV. Analysis

[23] I deal first with the preliminary admissibility issues and follow with a consideration of whether the Defendants have established, for each of them, that there is no genuine issue for trial.

##### *Preliminary Admissibility Issues*

[24] During the course of the motion hearing, the Defendants, and the Plaintiff in turn, challenged the admissibility of certain of the other side's evidence and corresponding submissions.

[25] For the reasons below, I determine that portions of the evidence of all parties are inadmissible. This determination applies to paragraphs 17, 18, 22 and 37 of the Ohayon Affidavit and Exhibits DO-8 and DO-15 to such affidavit in respect of Zoomtoner's evidence. It also covers the following portions of the Defendants' evidence, including related submissions: paragraph 7 of the Baskar Affidavit; questions 224-236 at pages 53-56 of the transcript of the cross-examination of David Ohayon; exhibit 4 to the cross-examination of David Ohayon



comprising a text message; and paragraph 15 and the last sentence of paragraph 35 of the Defendants' memorandum of fact and law.

(1) Defendants' Challenge of Plaintiff's Evidence

[26] At the hearing of this motion, the Defendants narrowed their challenge (from their written submissions) to paragraphs 6, 8, 9, 17, 18, 22 and 37 of the Ohayon Affidavit on the basis that they involve legal arguments and legal conclusions. The Defendants contend that the remaining paragraphs of the Ohayon Affidavit should be afforded little weight. The Defendants also specifically challenge Exhibits DO-7, DO-8 and DO-15 to the Ohayon Affidavit on the basis that they are inadmissible hearsay, relying on this Court's decision in *Gray v Canada (Attorney General)*, 2019 FC 301 at para 133.

[27] Paragraph 6 of the Ohayon Affidavit asserts Zoomtoner's ownership of the Trademark, including the common law and registered rights that attach to the Trademark. Although I do not disagree with the Defendants complaint about this paragraph, Exhibit DO-2 (described in paragraph 8 of the Ohayon Affidavit discussed below) is a copy of the certificate of registration for the Registration. The certificate is signed by the "Acting, Registrar of Trademarks" and certifies, on its face, that the Trademark has been registered and that the attached extract is a true copy of the record of its registration. According to the *TMA* s 54(3), this suffices as evidence of not only the facts set out in the extract but also that the person named as the owner of the registered trademark, in this case 7294140 Canada Inc. (i.e. Zoomtoner) is the registered owner of the Trademark. On this basis, I see no need to exclude paragraph 6 insofar as David Ohayon's statements related to Zoomtoner's ownership of the registered Trademark.

[28] Zoomtoner's asserted ownership of common law rights, however, is a different matter in my view.

[29] Apart from a bald statement of use of the Trademark since 2011 by Zoomtoner in association with filled ink and toner cartridges for printers and photocopiers (i.e. Goods 1), the Ohayon Affidavit provides no facts or documentary evidence from which the Court can draw the legal conclusion of "use" of the Trademark within the meaning of section 4 of the *TMA* for such goods.

[30] As previously noted by this Court, "[t]he bald assertion of a conclusion is not a pleading of material fact": *Badawy v Canada (Justice)*, 2018 FC 1189 at para 16, citing *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at paras 16-19, 27). More importantly, the Federal Court of Appeal guides that in response to a summary judgment motion, the responding party must present specific facts, along with supporting evidence, further to Rule 214, to establish that there is a genuine issue for trial: *Badawy v Igras*, 2019 FCA 153 at para 10.

[31] I thus find inadmissible the statement of Zoomtoner's ownership of common law rights in the Trademark as they relate to Goods 1.

[32] In my view, however, the Ohayon Affidavit contains additional facts that establish some use of the Trademark in respect of face masks.

[33] For similar reasons as above, I also am not convinced that paragraph 8 of the Ohayon Affidavit should be treated as inadmissible. While the terminology “matured to registration” may not be language that David Ohayon would have used, as opposed to his lawyer, the paragraph otherwise just provides the date and number of the Registration. Paragraph 8 also introduces the certificate of registration attached to the Ohayon Affidavit at Exhibit DO-2, as mentioned above, and the Defendants have not provided any written or oral reasons why this document is inadmissible.

[34] Regarding paragraph 9 of the Ohayon Affidavit, I find that it makes a generalized statement in the second half about “any unauthorized use of confusing trademarks or any use of similar trademarks with the effect of depreciating the value of the goodwill attached thereto harms the Plaintiff” without specific reference to the Trademark *per se*. It strikes me as an introduction to the more specific paragraphs that follow. While issues of confusion and likely depreciation are ultimately for the Court to determine, I am not persuaded that the paragraph is inadmissible. Rather, I assign it low weight for lack of specificity, particularly in respect of the “significant amount of resources” the Plaintiff devotes to promoting and selling face masks.

[35] I agree with the Defendants that paragraphs 17, 18, 22 and 37 are more in the nature of legal arguments or conclusions alone, as opposed to factual, or factual in part as in the case of the above paragraphs, and thus I find they are inadmissible: *Lukács v Canada (Transportation Agency)*, 2019 FC 1256 at para 22.

[36] Regarding Exhibit DO-7, I am not prepared to find it inadmissible, in part because the Defendants, though they requested this result, nonetheless relied on the exhibit during their submissions at the oral hearing of their motion. There is little information about the provenance of this exhibit in the Ohayon Affidavit. It is described somewhat obliquely in paragraph 19 as what the customer sees when they search for disposable masks (presumably on the amazon.ca website mentioned in the uniform resource locator or URL as the top of the page) and then click on the listing associated with the K24 ASIN (which is displayed in the URL). According to David Ohayon, they then are “directed to the product’s page which features Plaintiff’s product, Plaintiff’s mark, Plaintiff’s pictures of its products.” There is no information, however, about who conducted the search and obtained what I infer is a printout that forms Exhibit DO-7, nor when such search was conducted. In the circumstances, I attach low to moderate weight to this document.

[37] Regarding Exhibit DO-8, however, I find this exhibit inadmissible. Exhibit DO-8 involves a series of customer reviews from 2020-2021, ostensibly of “ZoomToner™ Ships from Canada – 100 Pack Disposable Face Masks...” which are mentioned at the top of the first page. It too has the appearance of a printout from the amazon.ca website and, like Exhibit DO-7, it displays the K24 ASIN in the URL. David Ohayon testified on cross-examination that someone at his company conducted the search that generated the document that comprises Exhibit DO-8, but he did not provide a name. Unlike Exhibit DO-7, Exhibit DO-8 shows a date at the bottom of each of the two pages that make up the exhibit.

[38] Leaving aside the manner in which Exhibit DO-8 is described in now inadmissible paragraph 22, the customer reviews are largely either anonymous or involve what appear to be only first names. Further, they do not name any other companies that sell face masks. David Ohayon admitted not investigating the customer reviews or speaking with the individuals, although he testified in cross-examination that Amazon policy does not allow it. In my view, Exhibit DO-8 is unreliable hearsay and for this reason, I find it inadmissible.

[39] I also find Exhibit DO-15 inadmissible hearsay. This exhibit is ostensibly sales information that Zoomtoner requested and obtained from Amazon regarding “ConnexLogix” and its use of the K24 ASIN (that is, products linked to the K24 ASIN purchased via CLSI’s portal), as asserted by Zoomtoner. Exhibit DO-13 is the request that Zoomtoner’s counsel sent to Amazon. Exhibit DO-14 is the cover email sent to Zoomtoner’s counsel in response. The response was sent by a law firm based in Seattle, Washington, according to the information on the face of Exhibit DO-14. There is no information in the email about how the information was assembled and obtained from Amazon. Contrary to Zoomtoner’s submissions, it is not a business record that can be admitted pursuant to subsection 30(1) of the *Canada Evidence Act*, RSC 1985, c C-5, absent authentication by Amazon, or the company that prepared it, confirming that it is a record made in the usual and ordinary course of business.

(2) Plaintiff’s Challenge of Defendants’ Evidence

[40] For its part, Zoomtoner challenges certain of the Defendants’ evidence and submissions on this motion because, according to Zoomtoner, the Defendants breached settlement privilege. On this basis, Zoomtoner requests that the Court “strike” the following from the record:

paragraph 7 of the Baskar Affidavit; questions 224-236 at pages 53-56 of the transcript of the cross-examination of David Ohayon; exhibit 4 to the cross-examination of David Ohayon comprising a text message; and the Defendants' memorandum of fact and law submitted in support of their motion, specifically paragraph 15 and the last sentence of paragraph 35.

[41] All of the above portions of the Defendants' motion record revolve around the text message which purports to set out the terms of an agreement reached between the sender and the recipients. I find on a balance of probabilities that the text message embodies the Plaintiff's efforts to settle the dispute involving use of the K24 ASIN, and thus, is protected by settlement privilege for several reasons.

[42] I start with the premise that settlement privilege encourages open settlement negotiations by "wrap[ping] a veil around the efforts parties make to settle their disputes" and making settlement communications inadmissible: *Sable Offshore Energy Inc. v Ameron International Corp.*, 2013 SCC 37 [*Sable*] at paras 2, 13. The privilege extends to the contents of the negotiated agreement: *Sable*, at para 18. Further, it applies regardless of whether the words "without prejudice" are used; what matters is the intention of the parties to settle: *Sable*, at para 14.

[43] Although the Defendants characterize the agreement as something other than settlement of a dispute, in my view their characterization is not inconsistent with settlement.

[44] Further, the fact that the text message was sent to Ian Tan (and at least one other person not relevant to this matter), as opposed to any of the named Defendants to the action, does not have the effect, in my view, of lifting or unwrapping the settlement privilege veil in the applicable circumstances.

[45] The Defendants, by their own admission, permitted or authorized 223 Ontario, of which Ian Tan is the principal, to use the CLSI portal on Amazon and provided such company with their password for “continuity” in the sale of face masks that CLSI previously sourced from 223 Ontario and itself sold through its portal. Further, the Defendants’ evidence is that Ian Tan became a director of CLSI after this action was commenced.

[46] In addition, the Defendants have not identified to the Court any overriding public interest, such as allegations of fraud, misrepresentation or undue influence, that would justify disclosure: *Sable*, above at para 19; *Source Media Group Corp. v Black Press Group Ltd.*, 2014 FC 1014 at paras 18-19.

[47] I turn next to the more granular issues outlined above.

A. *Are there valid causes of action against all of the Defendants?*

[48] In my view, the Defendants have established that there is no genuine issue for trial regarding Robert Baskar and CLI because Zoomtoner has not raised any valid cause of action against them. I therefore find that the action must be dismissed as against the individual

Defendant and the corporate Defendant, CLI. I am not persuaded, however, that there are no valid causes of action regarding the corporate Defendant, CLSI.

[49] Zoomtoner's Amended Statement of Claim describes Robert Baskar as a businessman and the sole directing mind of CLI. The claim also indicates that "[CLI] and CLSI are controlled, directly or indirectly, in part or in whole by the same individuals." It further avers that the "Defendant Baskar, acting solely as the directing mind of [CLI] and also apparently involved in the directing and controlling of the Defendant CLSI, has willfully induced and caused the [CLI] and CLSI Defendants to infringe, violate and act contrary to the provisions of the Trademarks Act, throughout Canada."

[50] In my view, the above averment is a legal conclusion of inducement and causation by the individual Defendant regarding the corporate Defendants' alleged contravention of the *Trademarks Act*. I find, however, that Zoomtoner has not provided any other facts in the Amended Statement of Claim, nor any evidence on this motion, from which the Court could determine personal liability of the individual Defendant that would justify lifting the corporate veil. All other acts described in the claim simply mention the Defendants collectively. In other words, Zoomtoner has not pled any specific allegations, or material facts, nor provided specific evidence on this motion, regarding what it asserts Robert Baskar did in his personal capacity, separate from the corporate Defendants.

[51] As previously noted by this Court, the kind of participation in the acts of a corporation that would give rise to personal liability involve a "degree and kind of personal involvement by



which the director or officer makes the tortious act his own”: *Petrillo v Allmax Nutrition Inc.*, 2006 FC 1199 [*Petrillo*] at para 30, citing *Mentmore Manufacturing Co., Ltd. et al. v National Merchandising Manufacturing Co. Inc. et al.*, 1978 CanLII 2037 (FCA), 89 DLR (3d) 195 [*Mentmore*]. This principle applies not only to large corporations but also to small, closely held companies: *Petrillo*, at para 31. As observed by the court in *Mentmore*, “[t]here is no reason why the small, one-man or two-man corporation should not have the benefit of the same approach to personal liability merely because there is generally and necessarily a greater degree of direct and personal involvement in management on the part of its shareholders and directors.” [Emphasis added.]

[52] The Ontario Court of Appeal later clarified that there must be “some conduct on the part of those directing minds that is either tortious in itself or exhibits a separate identity or interest from that of the corporations such as to make the acts or conduct complained of those of the directing minds”: *Petrillo*, above at para 29, citing *Normart Management Ltd. v West Hill Redevelopment Co. Ltd.*, 1998 CanLII 2447 (ON CA), 155 DLR (4th) 627 [*Normart*]. This Court recently has held that personal liability on the part of an individual who owns or controls a company will not arise even if the individual was the one who decided the company would undertake the alleged misconduct: *Vachon Bakery Inc. v Racioppo*, 2021 FC 308 at paras 120-122.

[53] Further, contrary to Zoomtoner’s submission at subparagraph 58(a) of its memorandum of fact and law, it is not enough for a plaintiff to plead personal liability on the part of an officer or director in a statement of claim in the hope that evidence to support the allegation will be

uncovered during discovery: *Zero Spill Systems (Int'l) Inc. v 614248 Alberta Ltd.*, 2009 FC 70 at para 19.

[54] There simply is insufficient evidence here in my view that Robert Baskar participated in any act, including permitting or authorizing 223 Ontario to use the CLSI portal, that rises to the level of conduct described in *Mentmore* and *Normart* that would attract personal liability and warrant lifting the corporate veil. I arrive at this conclusion bearing in mind that the parties to a summary judgment motion are required to put their best foot forward: *Boehringer Ingelheim (Canada) Ltd. v Sandoz Canada Inc.*, 2023 FC 241 at para 27, citing *CanMar Foods Ltd. v TA Foods Ltd.*, 2021 FCA 7 at para 27.

[55] In the circumstances, I conclude the Defendants have established that the case against Robert Baskar is so doubtful that there is no genuine issue for trial. I thus will grant the Defendants' motion in respect of Robert Baskar and dismiss the Plaintiff's action against him.

[56] I find similarly in respect of CLI. It was not incorporated until November 19, 2020, at a time when, according to the Baskar Affidavit, only 223 Ontario was selling masks through the CLSI portal with CLSI's permission. Zoomtoner has not pointed to any jurisprudence, nor provided any relevant supporting evidence, from which the Court could conclude that CLI could be liable for the acts of another company (here, CLSI) by reason of a common directing mind (here, Robert Baskar), especially at a time when CLI did not exist.

[57] As an example, Zoomtoner pleads in paragraph 15 of its Amended Statement of Claim that, “[o]n or around September 1st, 2020, the Defendants have illegally exploited the Plaintiff’s Mark and used and extensively marketed Plaintiff’s Mark and ASIN in association with their own goods, ...” I am not satisfied that a claim worded in this manner is supportable against a company that did not exist at that time. In other words, I find the Defendants have established that the case against CLI is equally doubtful such that there is no genuine issue for trial. I thus will grant the Defendants’ motion in respect of the corporate Defendant CLI and dismiss the Plaintiff’s action against it.

[58] I come to a different conclusion, however, regarding CLSI which company in my view is an appropriate Defendant in the circumstances.

[59] Zoomtoner’s evidence on this motion includes an invoice issued to 6570712 Canada Inc., a company that David Ohayon states he owns and controls, for 1 unit of 100-pack 3-ply face masks sold by Connex Logistics Source Inc. and shipped on December 23, 2020, that is at a time when CLSI asserts 223 Ontario was selling face masks through the CLSI portal. David Ohayon further states that he used the K24 ASIN to place the order that the numbered company received on December 28, 2020 in an Amazon package. According to David Ohayon, the package contained 100-pack disposable sanitary masks under the mark AUKEY. CLSI’s evidence is that it previously sold AUKEY face masks, albeit in quantities of fifty, before 223 Ontario took over face mask sales.

[60] In other words, the invoice for the face masks purchased by 6570712 Canada Inc. contradicts CLSI's evidence about which company was selling face masks at that time – 223 Ontario, according to the Baskar Affidavit, versus CLSI, according to Exhibit DO-9 to the Ohayon Affidavit.

[61] This leads me to conclude that the Defendants have failed to establish there is no genuine issue for trial against CLSI, as detailed below.

B. *Has CLSI used the Trademark pursuant to the TMA sections 2 and 4?*

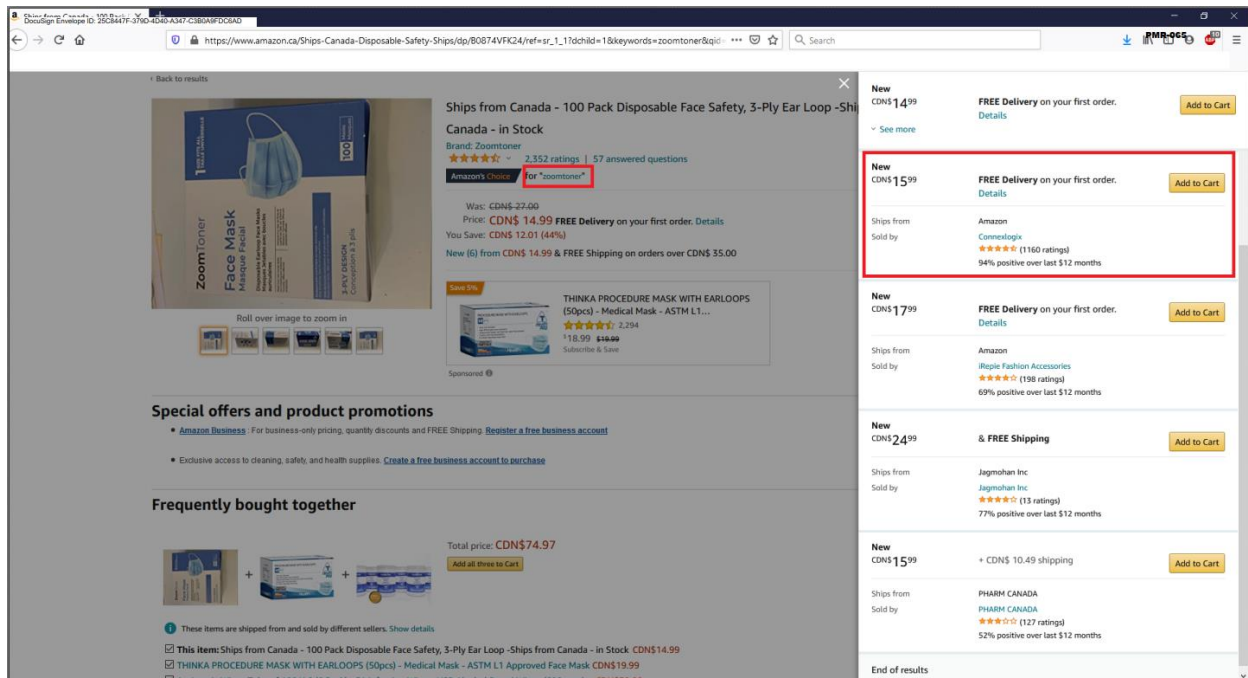
[62] I am satisfied that there is a genuine issue for trial about whether CLSI used the Trademark.

[63] Contrary to the Defendants' submissions, I am not persuaded that this is not a trademark case but rather a case about an Amazon ASIN in which Zoomtoner asserts rights, specifically the K24 ASIN. In my view, the case is more about whether the Trademark is in some other manner associated with face masks at the time of their sale on the Amazon platform that notice of the association is given to the consumer.

[64] The Defendants point to David Ohayon's admission in cross-examination that no Defendant applied the Trademark to their products. This does not end the enquiry about use, however. The *TMA* s 4 is broader, and contemplates, not only a trademark being marked on the goods themselves or their packaging, but also being "in any other manner so associated with the goods that notice of the association is then given to the person to whom the property or

possession is transferred.” I find this is not an issue that I can determine based on the record before the Court on this motion.

[65] For example, Exhibit DO-7 to the Ohayon Affidavit, reproduced below, shows packaging not only for ZoomToner Face Masks but also THINKA Procedure Masks on the shaded, left side of the page, with an indication that these products are “frequently bought together.” It is difficult to see on the image here but in the record the K24 ASIN can be seen in the URL at the top of the page. On the right side of the page are a number of Add to Cart buttons that show different “Sold by” entities for each button, including Connexlogix, iRepie Fashion Accessories, Jagmohan Inc and PHARM CANADA. There is no specific brand mentioned with these “Sold by” listings (although the Ohayon Affidavit characterizes them, unconvincingly in my view, as the “ZOOMTONER product purportedly sold by ‘CONNEXLOGIX’”). This exhibit raises unanswered questions for the Court, among others, about whether these entities are in some manner “associating” the Trademark (or THINKA for that matter) with their products, simply by using the Amazon platform or, more specifically, using the K24 ASIN, and what consumers (especially the average, hurried consumer) are likely to think about what masks they are ordering and the source from which they are ordering them. Further, there is a lack of evidence about how prospective purchasers find face masks available for sale on the Amazon platform and what they see at each stage of their quest until they press the “Add to Cart” button.



[66] The Defendants admitted at the hearing of this motion that there is no evidence of what steps occur before, that is before a consumer lands on a webpage such as Exhibit DO-7 and makes a choice about what masks to purchase. They assert, however, that no Defendant was involved because prior to July 2020, when 223 Ontario took over sales of face masks through the CLSI portal, CLSI sales involved a different ASIN and further, CLSI did not sell 100-pack masks.

[67] As of July 7, 2020 when the first sale of masks by 223 Ontario took place, the “Order details” reproduced at paragraph 20 of the Baskar Affidavit show 100-pack masks and the linked K24 ASIN. The “Order contents” show an image of a package but it is too small to determine if a trademark is displayed on the package and none is mentioned in the affidavit. In addition, there is no information in the image about what steps the consumer would have taken to generate the order, including pressing an Add to Cart button such as those shown in Exhibit DO-7.

[68] In the end, I find there is insufficient evidence to determine the issue of use of the Trademark, under the *TMA* s 4, by or with the authority of CLSI. Even if use were established, there also is insufficient evidence in my view to answer the question of whether permitting or authorizing 223 Ontario to use the CLSI portal (that has the names Connexlogix and/or Connex Logistics Source Inc. associated with it) without any apparent oversight by CLSI, exposes CLSI in the circumstances to liability for one of more of the claimed causes of action.

[69] In other words, I find that there is insufficient evidence to resolve the dispute at this stage. This is sufficient in my view to dispose of the remainder of the Defendants' motion, including the remaining granular issues to which I turn next briefly for completeness. I have reworded them to take into account the dismissal of the action against the Defendants, Robert Baskar and CLI.

C. *Is CLSI liable for passing off under the TMA sections 7(b) and 7(c)?*

[70] This cause of action, like the next two turn on whether Zoomtoner can establish section 4 use of the Trademark by or with the authority of CLSI. In my view, the Defendants have provided insufficient evidence to absolve CLSI from liability conclusively on a balance of probabilities. The copy of the asserted consignment agreement between CLSI and 223 Ontario on record in this matter is blurry, cut off on the right side resulting in missing text, unsigned by the 223 Ontario (the Consignee) and back-dated (to April 1, 2020) as admitted in the Baskar Affidavit. The latter affidavit states, however, that CLSI's first online face mask sale was on June 30, 2020. Noting the high threshold for success on a summary judgment motion, I am not satisfied that the Defendants have met it in the circumstances: *Witchekan Lake*, above at para 23.

[71] It goes without saying that Zoomtoner will need to establish at trial that it has or had enforceable rights at the relevant dates for assessing the passing off claims, particularly prior to the registration of its Trademark: *Sandhu Singh Hamdard Trust v Navsun Holdings Ltd.*, 2019 FCA 295 at para 39.

[72] While I have found that Zoomtoner's bald assertions of use of the Trademark since 2011 are insufficient to support a conclusion of use of the Trademark since that time for Goods 1, in my view the evidence points to Zoomtoner's use of the Trademark for face masks (i.e. Goods 2) at least since March 2020 when they first were offered for sale. I believe, however, the trial judge would benefit from a more complete evidentiary record to assess these causes of action, including claimed dates of use.

D. *Is CLSI liable for trademark infringement pursuant to the TMA sections 19 and 20, regarding activities that took place before the trademark was registered?*

[73] I similarly determine that the Defendants have not met the high threshold regarding the TMA sections 19, 20 and 22 issues.

[74] In my view, this issue, like the next one, turns not only on whether Zoomtoner can establish section 4 use of its Trademark by or with the authority of CLSI but also on whether the activities, that ultimately may support a finding of use by the trial judge, occurred or carried on after the date the Trademark was registered, namely, June 9, 2021. Whether such activities constitute infringement and what remedies may flow from a finding of infringement are matters better left for the trial judge's consideration.



E. *Has CLSI diminished the goodwill of the Plaintiff's trademark pursuant to the TMA section 22, again regarding activities that took place before the trademark was registered?*

[75] Section 22 is premised on section 4 use (whether confusing or non-confusing) and activities likely to have the effect of depreciating the goodwill attached to a registered trademark. In other words, as with the above issue, the date of registration of the Trademark, namely, June 9, 2021 is a key date in assessing this cause of action. That assessment, in my view, is better suited to consideration by the trial judge on a more complete evidentiary record.

V. Conclusion

[76] For the above reasons, I grant the Defendants' motion in part and dismiss the action as against the individual Defendant Robert Baskar and the corporate Defendant CLI. The remainder of Defendants' motion as against the corporate Defendant CLSI is dismissed, with Zoomtoner's action against CLSI proceeding to trial.

VI. Costs

[77] The individual Defendant Robert Baskar, and the corporate Defendant CLI are entitled to have their costs of the action, up to but excluding this motion, assessed at the top of Column V of Tariff B. The costs of this motion will be in the cause.

**ORDER in T-165-21**

**THIS COURT ORDERS that:**

1. The Defendants' motion for summary judgment is granted in part.
2. The Plaintiff's action is dismissed as against the individual Defendant, Robert Gunaratnam Baskar, and the corporate Defendant, Connexlogix Inc..
3. The Defendants' motion for summary judgment is dismissed as against the corporate Defendant, Connex Logistics Source Inc., and the action against this Defendant will proceed to trial.
4. The individual Defendant, Robert Gunaratnam Baskar, and the corporate Defendant, Connexlogix Inc. are entitled to their have their costs of the action, up to but excluding this motion, assessed at the top of Column V of Tariff B.
5. The costs of this motion will be in the cause.

"Janet M. Fuhrer"

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Judge

**Annex “A”: Relevant Provisions**

*Trademarks Act (R.S.C., 1985, c. T-13)*  
*Loi sur les marques de commerce (L.R.C. (1985), ch. T-13)*

<p><b>Interpretation</b></p> <p><b>Definitions</b></p> <p><i>use</i>, in relation to a trademark, means any use that by section 4 is deemed to be a use in association with goods or services; (emploi ou usage)</p>	<p><b>Définitions et interprétation</b></p> <p><b>Définitions</b></p> <p><i>emploi</i> ou <i>usage</i> À l’égard d’une marque de commerce, tout emploi qui, selon l’article 4, est réputé un emploi en liaison avec des produits ou services. (use)</p>
<p><b>When deemed to be used</b></p> <p><b>4 (1)</b> A trademark is deemed to be used in association with goods if, at the time of the transfer of the property in or possession of the goods, in the normal course of trade, it is marked on the goods themselves or on the packages in which they are distributed or it is in any other manner so associated with the goods that notice of the association is then given to the person to whom the property or possession is transferred.</p> <p><b>Idem</b></p> <p><b>(2)</b> A trademark is deemed to be used in association with services if it is used or displayed in the performance or advertising of those services.</p> <p><b>Use by export</b></p> <p><b>(3)</b> A trademark that is marked in Canada on goods or on the packages in which they are contained is, when the goods are exported from Canada, deemed to be used in Canada in association with those goods.</p>	<p><b>Quand une marque de commerce est réputée employée</b></p> <p><b>4 (1)</b> Une marque de commerce est réputée employée en liaison avec des produits si, lors du transfert de la propriété ou de la possession de ces produits, dans la pratique normale du commerce, elle est apposée sur les produits mêmes ou sur les emballages dans lesquels ces produits sont distribués, ou si elle est, de toute autre manière, liée aux produits à tel point qu’avis de liaison est alors donné à la personne à qui la propriété ou possession est transférée.</p> <p><b>Idem</b></p> <p><b>(2)</b> Une marque de commerce est réputée employée en liaison avec des services si elle est employée ou montrée dans l’exécution ou l’annonce de ces services.</p> <p><b>Emploi pour exportation</b></p> <p><b>(3)</b> Une marque de commerce mise au Canada sur des produits ou sur les emballages qui les contiennent est réputée, quand ces produits sont exportés du Canada, être employée dans ce pays en liaison avec ces produits.</p>
<p><b>Unfair Competition and Prohibited Signs</b></p> <p><b>Prohibitions</b></p> <p><b>7</b> No person shall</p> <p>...</p>	<p><b>Concurrence déloyale et signes interdits</b></p> <p><b>Interdictions</b></p> <p><b>7</b> Nul ne peut :</p> <p>...</p>

<p>(b) direct public attention to his goods, services or business in such a way as to cause or be likely to cause confusion in Canada, at the time he commenced so to direct attention to them, between his goods, services or business and the goods, services or business of another;</p> <p>(c) pass off other goods or services as and for those ordered or requested; or</p> <p>...</p>	<p>b) appeler l'attention du public sur ses produits, ses services ou son entreprise de manière à causer ou à vraisemblablement causer de la confusion au Canada, lorsqu'il a commencé à y appeler ainsi l'attention, entre ses produits, ses services ou son entreprise et ceux d'un autre;</p> <p>c) faire passer d'autres produits ou services pour ceux qui sont commandés ou demandés;</p> <p>...</p>
<p><b>Validity and Effect of Registration</b></p> <p><b>Rights conferred by registration</b></p> <p><b>19</b> Subject to sections 21, 32 and 67, the registration of a trademark in respect of any goods or services, unless shown to be invalid, gives to the owner of the trademark the exclusive right to the use throughout Canada of the trademark in respect of those goods or services.</p> <p><b>Infringement</b></p> <p><b>20 (1)</b> The right of the owner of a registered trademark to its exclusive use is deemed to be infringed by any person who is not entitled to its use under this Act and who</p> <p>(a) sells, distributes or advertises any goods or services in association with a confusing trademark or trade name;</p> <p>(b) manufactures, causes to be manufactured, possesses, imports, exports or attempts to export any goods in association with a confusing trademark or trade name, for the purpose of their sale or distribution;</p> <p>(c) sells, offers for sale or distributes any label or packaging, in any form, bearing a trademark or trade name, if</p> <p>(i) the person knows or ought to know that the label or packaging is intended to be associated with goods or services that are</p>	<p><b>Validité et effet de l'enregistrement</b></p> <p><b>Droits conférés par l'enregistrement</b></p> <p><b>19</b> Sous réserve des articles 21, 32 et 67, l'enregistrement d'une marque de commerce à l'égard de produits ou services, sauf si son invalidité est démontrée, donne au propriétaire le droit exclusif à l'emploi de celle-ci, dans tout le Canada, en ce qui concerne ces produits ou services.</p> <p><b>Violation</b></p> <p><b>20 (1)</b> Le droit du propriétaire d'une marque de commerce déposée à l'emploi exclusif de cette dernière est réputé être violé par une personne qui est non admise à l'employer selon la présente loi et qui :</p> <p>a) soit vend, distribue ou annonce des produits ou services en liaison avec une marque de commerce ou un nom commercial créant de la confusion;</p> <p>b) soit fabrique, fait fabriquer, a en sa possession, importe, exporte ou tente d'exporter des produits, en vue de leur vente ou de leur distribution et en liaison avec une marque de commerce ou un nom commercial créant de la confusion;</p> <p>c) soit vend, offre en vente ou distribue des étiquettes ou des emballages, quelle qu'en soit la forme, portant une marque de commerce ou un nom commercial alors que :</p> <p>(i) d'une part, elle sait ou devrait savoir que les étiquettes ou les emballages sont destinés à être associés à des produits ou</p>

<p>not those of the owner of the registered trademark, and</p> <p>(ii) the sale, distribution or advertisement of the goods or services in association with the label or packaging would be a sale, distribution or advertisement in association with a confusing trademark or trade name; or</p> <p>(d) manufactures, causes to be manufactured, possesses, imports, exports or attempts to export any label or packaging, in any form, bearing a trademark or trade name, for the purpose of its sale or distribution or for the purpose of the sale, distribution or advertisement of goods or services in association with it, if</p> <p>(i) the person knows or ought to know that the label or packaging is intended to be associated with goods or services that are not those of the owner of the registered trademark, and</p> <p>(ii) the sale, distribution or advertisement of the goods or services in association with the label or packaging would be a sale, distribution or advertisement in association with a confusing trademark or trade name.</p>	<p>services qui ne sont pas ceux du propriétaire de la marque de commerce déposée,</p> <p>(ii) d'autre part, la vente, la distribution ou l'annonce des produits ou services en liaison avec les étiquettes ou les emballages constituerait une vente, une distribution ou une annonce en liaison avec une marque de commerce ou un nom commercial créant de la confusion;</p> <p>d) soit fabrique, fait fabriquer, a en sa possession, importe, exporte ou tente d'exporter des étiquettes ou des emballages, quelle qu'en soit la forme, portant une marque de commerce ou un nom commercial, en vue de leur vente ou de leur distribution ou en vue de la vente, de la distribution ou de l'annonce de produits ou services en liaison avec ceux-ci, alors que :</p> <p>(i) d'une part, elle sait ou devrait savoir que les étiquettes ou les emballages sont destinés à être associés à des produits ou services qui ne sont pas ceux du propriétaire de la marque de commerce déposée,</p> <p>(ii) d'autre part, la vente, la distribution ou l'annonce des produits ou services en liaison avec les étiquettes ou les emballages constituerait une vente, une distribution ou une annonce en liaison avec une marque de commerce ou un nom commercial créant de la confusion.</p>
<p><b>Depreciation of goodwill</b></p> <p><b>22 (1)</b> No person shall use a trademark registered by another person in a manner that is likely to have the effect of depreciating the value of the goodwill attaching thereto.</p>	<p><b>Dépréciation de l'achalandage</b></p> <p><b>22 (1)</b> Nul ne peut employer une marque de commerce déposée par une autre personne d'une manière susceptible d'entraîner la diminution de la valeur de l'achalandage attaché à cette marque de commerce.</p>
<p><b>Legal Proceedings</b></p> <p><b>Idem</b></p> <p><b>54(3)</b> A copy of the record of the registration of a trademark purporting to be certified to be true by the Registrar is evidence of the facts set out therein and that the person named therein as owner is the registered</p>	<p><b>Procédures judiciaires</b></p> <p><b>Idem</b></p> <p><b>54(3)</b> Une copie de l'inscription de l'enregistrement d'une marque de commerce, donnée comme étant certifiée conforme par le registraire, fait foi des faits y énoncés et de ce que la personne y nommée comme</p>

owner of the trademark for the purposes and within the territorial area therein defined.

propriétaire est le propriétaire inscrit de cette marque de commerce aux fins et dans la région territoriale qui y sont indiquées.

***Federal Courts Rules (SOR/98-106)***  
***Règles des Cours fédérales (DORS/98-106)***

<p><b>Summary Judgment and Summary Trial</b></p> <p><b>Motion and Service</b></p> <p><b>Motion by a party</b></p> <p><b>213 (1)</b> A party may bring a motion for summary judgment or summary trial on all or some of the issues raised in the pleadings at any time after the defendant has filed a defence but before the time and place for trial have been fixed.</p> <p><b>Further motion</b></p> <p><b>(2)</b> If a party brings a motion for summary judgment or summary trial, the party may not bring a further motion for either summary judgment or summary trial except with leave of the Court.</p> <p><b>Obligations of moving party</b></p> <p><b>(3)</b> A motion for summary judgment or summary trial in an action may be brought by serving and filing a notice of motion and motion record at least 20 days before the day set out in the notice for the hearing of the motion.</p> <p><b>Obligations of responding party</b></p> <p><b>(4)</b> A party served with a motion for summary judgment or summary trial shall serve and file a respondent's motion record not later than 10 days before the day set out in the notice of motion for the hearing of the motion.</p> <p><b>Summary Judgment</b></p> <p><b>Facts and evidence required</b></p>	<p><b>Jugement et procès sommaires</b></p> <p><b>Requête et signification</b></p> <p><b>Requête d'une partie</b></p> <p><b>213 (1)</b> Une partie peut présenter une requête en jugement sommaire ou en procès sommaire à l'égard de toutes ou d'une partie des questions que soulèvent les actes de procédure. Le cas échéant, elle la présente après le dépôt de la défense du défendeur et avant que les heure, date et lieu de l'instruction soient fixés.</p> <p><b>Nouvelle requête</b></p> <p><b>(2)</b> Si une partie présente l'une de ces requêtes en jugement sommaire ou en procès sommaire, elle ne peut présenter de nouveau l'une ou l'autre de ces requêtes à moins d'obtenir l'autorisation de la Cour.</p> <p><b>Obligations du requérant</b></p> <p><b>(3)</b> La requête en jugement sommaire ou en procès sommaire dans une action est présentée par signification et dépôt d'un avis de requête et d'un dossier de requête au moins vingt jours avant la date de l'audition de la requête indiquée dans l'avis.</p> <p><b>Obligations de l'autre partie</b></p> <p><b>(4)</b> La partie qui reçoit signification de la requête signifie et dépose un dossier de réponse au moins dix jours avant la date de l'audition de la requête indiquée dans l'avis de requête.</p> <p><b>Jugement sommaire</b></p> <p><b>Faits et éléments de preuve nécessaires</b></p>
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**214** A response to a motion for summary judgment shall not rely on what might be adduced as evidence at a later stage in the proceedings. It must set out specific facts and adduce the evidence showing that there is a genuine issue for trial.

**If no genuine issue for trial**

**215 (1)** If on a motion for summary judgment the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the Court shall grant summary judgment accordingly.

**Genuine issue of amount or question of law**

**(2)** If the Court is satisfied that the only genuine issue is

- (a)** the amount to which the moving party is entitled, the Court may order a trial of that issue or grant summary judgment with a reference under rule 153 to determine the amount; or
- (b)** a question of law, the Court may determine the question and grant summary judgment accordingly.

**Powers of Court**

**(3)** If the Court is satisfied that there is a genuine issue of fact or law for trial with respect to a claim or a defence, the Court may

- (a)** nevertheless determine that issue by way of summary trial and make any order necessary for the conduct of the summary trial; or
- (b)** dismiss the motion in whole or in part and order that the action, or the issues in the action not disposed of by summary judgment, proceed to trial or that the action be conducted as a specially managed proceeding.

**214** La réponse à une requête en jugement sommaire ne peut être fondée sur un élément qui pourrait être produit ultérieurement en preuve dans l'instance. Elle doit énoncer les faits précis et produire les éléments de preuve démontrant l'existence d'une véritable question litigieuse.

**Absence de véritable question litigieuse**

**215 (1)** Si, par suite d'une requête en jugement sommaire, la Cour est convaincue qu'il n'existe pas de véritable question litigieuse quant à une déclaration ou à une défense, elle rend un jugement sommaire en conséquence.

**Somme d'argent ou point de droit**

**(2)** Si la Cour est convaincue que la seule véritable question litigieuse est :

- a)** la somme à laquelle le requérant a droit, elle peut ordonner l'instruction de cette question ou rendre un jugement sommaire assorti d'un renvoi pour détermination de la somme conformément à la règle 153;
- b)** un point de droit, elle peut statuer sur celui-ci et rendre un jugement sommaire en conséquence.

**Pouvoirs de la Cour**

**(3)** Si la Cour est convaincue qu'il existe une véritable question de fait ou de droit litigieuse à l'égard d'une déclaration ou d'une défense, elle peut :

- a)** néanmoins trancher cette question par voie de procès sommaire et rendre toute ordonnance nécessaire pour le déroulement de ce procès;
- b)** rejeter la requête en tout ou en partie et ordonner que l'action ou toute question litigieuse non tranchée par jugement sommaire soit instruite ou que l'action se poursuive à titre d'instance à gestion spéciale.

*Canada Evidence Act (R.S.C., 1985, c. C-5)*  
*Loi sur la preuve au Canada (L.R.C. (1985), ch. C-5)*

<p><b>Documentary Evidence</b></p> <p><b>Business records to be admitted in evidence</b></p> <p><b>30 (1)</b> Where oral evidence in respect of a matter would be admissible in a legal proceeding, a record made in the usual and ordinary course of business that contains information in respect of that matter is admissible in evidence under this section in the legal proceeding on production of the record.</p>	<p><b>Preuve documentaire</b></p> <p><b>Les pièces commerciales peuvent être admises en preuve</b></p> <p><b>30 (1)</b> Lorsqu'une preuve orale concernant une chose serait admissible dans une procédure judiciaire, une pièce établie dans le cours ordinaire des affaires et qui contient des renseignements sur cette chose est, en vertu du présent article, admissible en preuve dans la procédure judiciaire sur production de la pièce.</p>
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**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-165-21

**STYLE OF CAUSE:** 7294140 CANADA INC. DBA ZOOMTONER v  
CONNEXLOGIX INC., ROBERT GUNARATNAM  
BASKAR, CONNEX LOGISTICS SOURCE INC.

**PLACE OF HEARING:** HELD VIA VIDEOCONFERENCE

**DATE OF HEARING:** DECEMBER 1, 2022

**ORDER AND REASONS:** FUHRER J.

**DATED:** JULY 24, 2023

**APPEARANCES:**

Michael Chevalier FOR THE PLAINTIFF

Jim Holloway FOR THE DEFENDANTS

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