IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

IMPOSSIBLE FOODS	INC.,

Plaintiff,

v.

MOTIF FOODWORKS, INC.,

Defendant.

C.A. No. 22-311 (WCB)

PLAINTIFF IMPOSSIBLE FOODS INC.'S RESPONSIVE LETTER BRIEF IN OPPOSITION TO LETTER SEEKING A PROTECTIVE ORDER AND AN ORDER COMPELLING PRODUCTION

OF COUNSEL:

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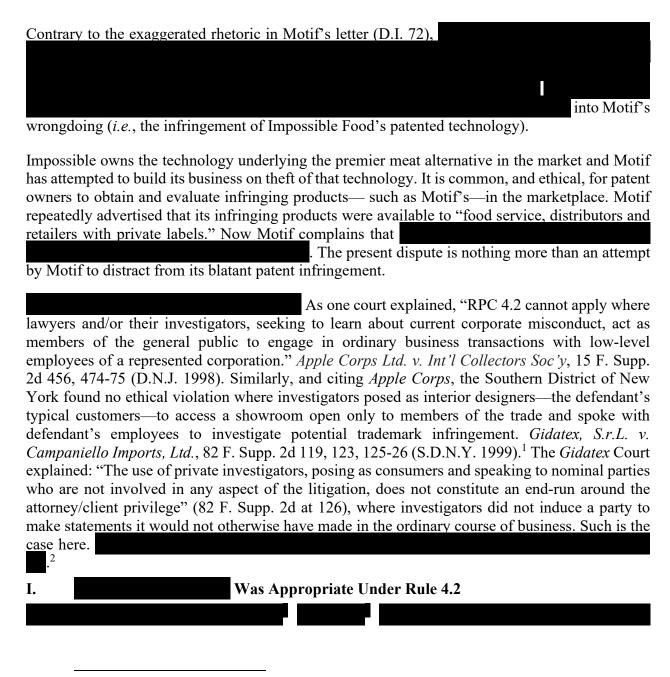
Lorelei P. Westin WILSON SONSINI GOODRICH & ROSATI, P.C. 12235 El Camino Real San Diego, CA 92130 (858) 350-2300

Dated: May 18, 2023

WILSON SONSINI GOODRICH & ROSATI, P.C.

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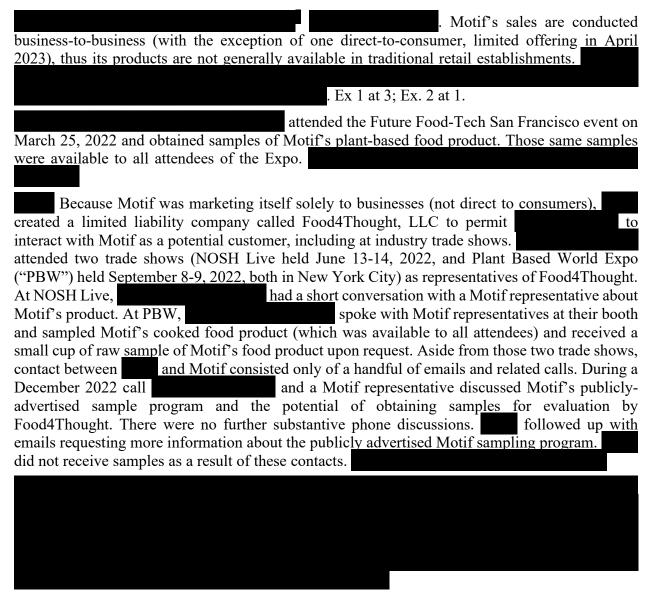


¹ Motif has been aware of *Gidatex* since at least April 25, 2023 (when Motif's counsel cited it) and of *Apple Corps* since at least May 9, 2023 (when WSGR cited it in a letter to Motif's counsel), but Motif did not address either case in its opening brief. Motif should not be permitted to do so in reply. L.R. 7.1.3(c)(2) ("The party filing the opening brief shall not reserve material for the reply brief which should have been included in a full and fair opening brief").

²Unless otherwise cited, the facts herein are from the declaration of Lorelei P. Westin.

Ex. 1 at 1.

Ex. 2 at 1



II. The four cases Motif Cites Do Note Demonstrate There was a Violation of RPC 4.2

In re Complaint of PMD Enterprises Inc., 215 F. Supp. 2d 519 (D.N.J. 2002): Unlike WSGR's request that its investigators only attempt to obtain samples of Motif's products, the court in PMD found that the plaintiff's counsel expressly authorized ex parte contact with at least one member of the defendant's litigation control group—who was also a key fact witness—and offered compensation to that witness in violation of New Jersey law. Id. at 522-23, 527-29. Such facts are entirely absent here.

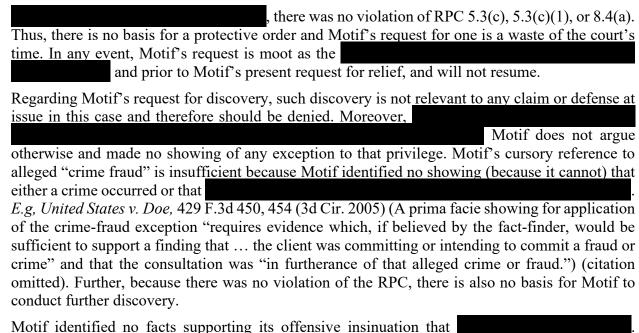
⁵ Activities preceding March 14, 2022 (when Motif's counsel informed WSGR that Motif was represented, Ex. 3) are not subject to analysis under RPC 4.2 or otherwise the subject of relief this Court could grant. Thus, the discussion here is limited to post-March 14, 2022, conduct.

Midwest Motor Sports v. Arctic Cat Sales, Inc., 347 F.3d 693 (8th Cir. 2003): A private investigator contacted the opposing represented party. Although the court found a violation of RPC 4.2, it explicitly only imposed sanctions—exclusion of evidence—because the investigators engaged in conduct such as secretly recording the party, including its *president*—a "critical' non-party witness—in violation of Rule 8.4(c). *Id.* at 697-98, at 701. Those facts do not exist here.

Meyer v. Kalanick, 212 F. Supp. 3d 437 (S.D.N.Y 2016): This case did not concern an allegation of unauthorized contact with a represented party. Instead it concerned misrepresentations made to more than two dozen of the plaintiff's acquaintances "to try to unearth derogatory personal information about [plaintiff] and his counsel that could then be used to try to intimidate them or to prejudice the Court against them." *Id.* at 443. Nothing like that happened here. By contrast *Gidatex*, decided by the same court, explained that "hiring investigators to pose as consumers is an accepted investigative technique, not a misrepresentation." 82 F. Supp. 2d at 122.

Site 2020 Inc. v. Superior Traffic Servs, No. 21-63-M-DLC-KLD (D.I. 172-1, Ex. 4): The court faced vastly different circumstances than those present here. In that case, the Magistrate Judge found that the plaintiff caused a third party that had an existing business relationship with the defendant to (1) tell the defendant that it had not contracted to be acquired by the plaintiff, and (2) offered to enter into a business relationship with the defendant. Id. at 4-6, 27-28. That false representation led the defendant to divulge extensive business information that the defendant "would not have divulged ... had it not viewed [third party] as a trustworthy potential business partner." Id. at 11. The plaintiff's leadership then lied during deposition about the contacts the third party had with defendant. Id. at 30-32. Nothing even remotely similar has happened here.

III. A Protective Order is Not Warranted and No Further Discovery is Justified



Obtaining samples that Motif made available to the public is not "and," and self-serving suspicions alone do not merit the Court's attention, let alone rise to the level of justifying issuance of a protective order or discovery unrelated to any claim or defense. Motif's motion is a distraction

from the actual issues in this case—Motif's theft of Impossible's patented technology.

Respectfully,

/s/ Ian R. Liston

Ian R. Liston (#5507)

cc: Clerk of Court (via Hand Delivery)

All Counsel of Record (via CM/ECF)

EXHIBIT 1

REDACTED IN ITS ENTIRETY

EXHIBIT 2

REDACTED IN ITS ENTIRETY

EXHIBIT 3

From: Sent:	Tigan, Jeremy A. <jtigan@morrisnichols.com> Monday, March 14, 2022 9:41 AM</jtigan@morrisnichols.com>	
To:	Liston, lan Ward, Jennifer	
Cc: Subject:	Impossible/Motif (No. 22-311)	
[External]		
Hi lan,		
We'll be representing Motif. (stipulation.	Can we get a 30-day extension to respond to the complaint (to 4/29)? If so, I'll send you a	
Thanks,		
Jeremy		

This message, including any accompanying documents or attachments, may contain information that is confidential or that is privileged. If you are not the intended recipient of this message, please note that the dissemination, distribution, use or copying of this message or any of the accompanying documents or attachments is strictly prohibited. If you believe that you may have received this message in error, please contact me at (302) 658-9200 or by return e-mail.