

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**2038724 ONTARIO LTD. and 2036250 ONTARIO INC.**

Plaintiffs

- and -

**QUIZNO'S CANADA RESTAURANT CORPORATION,  
QUIZ-CAN LLC, THE QUIZNO'S MASTER LLC,  
CANADA FOOD DISTRIBUTION COMPANY, GORDON FOOD SERVICE, INC.  
and GFS CANADA COMPANY INC.**

Defendants

*Proceeding under the Class Proceedings Act, 1992*

**REPLY TO THE STATEMENT OF DEFENCE  
OF QUIZNOS CANADA RESTAURANT CORPORATION, QUIZ-CAN LLC, THE  
QUIZNO'S MASTER LLC AND CANADA FOOD DISTRIBUTION COMPANY  
(collectively, "Quiznos")**

1. The plaintiffs admit the allegations contained in paragraphs 10 (first and third sentences), 11, 17, 18, 20 (to the extent that this paragraph reflects what is stated in the franchise agreement), 21 (first sentence), 22, 24, 25, 27, 28 (first sentence), 30 (last sentence), 31, 33, 36 (to the extent only that the October 1, 2006 Distribution Agreement sets a maximum price for delivery), 39 (first sentence), 45, and 55 (to the extent only that the excerpts accurately reproduce those parts of the franchise agreement and disclosure document respectively) of Quiznos' statement of defence.
2. The plaintiffs deny the allegations contained in paragraphs 4, 5, 6, 7, 8, 9, 10 (second sentence, although the plaintiffs admit that Quiznos obtains low cost and competitive prices from

suppliers for its own benefit), 12, 13, 14, 15, 16, 21 (balance), 23, 28 (balance), 29, 32, 34, 35, 36 (in part), 37, 38, 39 (balance), 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55 (balance), 56, 57, 59, 60 and 61 of Quiznos' statement of defence.

3. The plaintiffs have no knowledge of the allegations contained in paragraphs 19, 26, 30 (balance) and 58 of Quiznos' statement of defence.

4. The plaintiffs repeat and rely upon the allegations contained in its amended amended statement of claim, as if pleaded below in their entirety.

5. With respect to the allegations contained in paragraph 4 of the statement of defence, the plaintiffs admit the number of Quiznos' Canadian restaurants alleged but state that several hundred Quiznos restaurants have been closed during the Class Period primarily as a result of Quiznos' product pricing practices. The Quiznos' brand is not unique and is not unique for its quality. The surroundings of a Quiznos' restaurant are not "upscale".

6. With respect to the allegations contained in paragraph 5 of the statement of defence, Quiznos extracts many millions of dollars each year from the supply system which it would not do if its interest was in enhancing store profitability rather than its own at the direct expense of the franchisees which already pay substantial fees to Quiznos.

7. With respect to the allegations contained in paragraphs 6 and 49 of the statement of defence, Quiznos uses what it purports to be its contractual entitlements to wrongfully generate substantial revenues for itself at the expense of its franchisees.

8. Further with respect to the allegations contained in paragraphs 8 and 36 of the statement of defence, the GFS defendants (“GFS”) do not charge lesser prices than those fixed and maintained by Quiznos.

9. With respect to the allegations contained in paragraphs 9 and 48 of the statement of defence, there were in excess of 700 franchisees operating during the Class Period. The number of stores which have closed during the Class Period reflects the lack of franchisee profitability. Quiznos’ reporting of financial results is entirely unreliable for the purposes for which they are advanced. Quiznos franchisees often purchase new stores to avoid the cannibalization of their existing store sales as Quiznos insists on exercising its rights to place stores in locations which will have that effect.

10. With respect to the allegations contained in paragraphs 10, 21 and 30 of the statement of defence, the defendant, Canada Food Distribution Company (“CFD”), is a sham company established for the sole purpose of generating profits for Quiznos. All functions previously performed by Quiznos are performed by a single individual purportedly employed by CFD, who works out of Quiznos’ offices. Quiznos has buyer power which it uses primarily to extract profits from the supply of products for itself.

11. With respect to the allegations contained in paragraphs 12 and 13 of the statement of defence, CFD is not disclosed in the franchise agreement or the disclosure document given to franchisees in Ontario. It is mentioned in a footnote to a financial statement attached to the disclosure document, but even Quiznos does not know the meaning of the reference.

12. With respect to the advertising fund, Quiznos expends substantial funds in marketing for the purpose of selling additional product primarily to enhance its own profitability and to sell more franchises, not to ensure franchisee profitability.

13. With respect to the allegations contained in paragraph 16 of the statement of defence, allegations of under portioning against the said plaintiff were made in bad faith. Whether that plaintiff committed any violations has not been determined and is the subject of a different action which Quiznos has not advanced.

14. With respect to the allegations contained in paragraph 17 of the statement of defence, Quiznos moved its head office subsequent to the issuance of the statement of claim more than three and a half years ago.

15. With respect to the allegations contained in paragraph 19 of the statement of defence, the defendant, Quiznos Canada Restaurant Corporation, itself does not know what management services are provided to it by the defendant, Quiz-Can LLC.

16. With respect to the allegations contained in paragraph 28 of the statement of defence, the products in issue are in fact commodities. GFS and other food distributors sell comparable products or are able to easily source comparable products to those sold by Quiznos.

17. With respect to the allegations contained in paragraph 29 of the statement of defence, Quiznos denies the franchisees their rights to receive the specifications for the products which they are entitled to receive under the franchise agreement.

18. With respect to the allegations contained in paragraph 46 of the statement of defence, Quiznos has acted to frustrate the plaintiffs' ability to do just what Quiznos says the plaintiffs are unable to do.

19. With respect to the allegations contained in paragraph 55 of statement of defence, Quiznos' rights under the franchise agreement are circumscribed by its obligations at law and in the context of the entire franchise agreement. Quiznos does not make disclosure of its distribution scheme to its franchisees.

20. With respect to the allegations contained in paragraph 58 of the statement of defence, the releases referred to are void. The plaintiffs plead and rely upon sections 3, 4 and 11 of the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000 c.3. Moreover, the releases were procured by Quiznos' bad faith conduct while the certification motion or the appeal therefrom was pending. Quiznos misled the franchisees and failed to provide them with all of the information to which they were entitled before being asked to sign releases. Quiznos utilized its power and control as a franchisor to extract improvident alleged settlements from its vulnerable franchisees without regard to the franchisees' legitimate and genuine interests and solely to prefer Quiznos' own interests at the expense of the franchisees.

21. Approximately 100 of the said releases were procured after the initial denial of certification and while the appeal therefrom was pending.

DATE: December 21, 2009

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**2038724 ONTARIO LTD. et al.**

Plaintiffs

**QUIZNO'S CANADA RESTAURANT  
and  
CORPORATION**

Defendants

Court File Number: 06-CV-311330CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**PROCEEDING COMMENCED AT TORONTO**

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LLC, THE QUIZNO'S MASTER LLC AND  
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