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Court File No.:

FEDERAL COURT
SIMPLIFIED ACTION

B E T W E E N:

DERMASPARK PRODUCTS INC.
POLLOGEN LTD.

Plaintiffs

A N D:

ICARE BEAUTY CLINIC INC.
WILLIAM WEST WASHINGTON
SEYED MASIH YAGHOUBI

Defendants

SIMPLIFIED STATEMENT OF CLAIM

NOTICE TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules and serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, **WITHIN 30 DAYS** after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defense is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your Statement of Defense is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone (613) 992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Montreal, May 5th, 2025

Issued by: _____
(Registry Officer)

Address of local office:

30, McGill Street
Montreal, Quebec
H2Y 3Z7

CLAIM

1. The Plaintiffs seek the following reliefs:
 - a) Damages for, and arising from, the Defendants' misconduct, amounting to direct infringement, estimated to exceed \$30,000.00 in nominal damages per plaintiff as of the date of filing the Statement of Claim or an accounting of the profits illegally made by the Defendants as the Plaintiffs may elect after proper inquiry, for acts that are contrary to the *Trademarks Act*;
 - b) Post-judgment interest on any award or damages, profits and costs calculated on a semi-annual, compounded basis;
 - c) Costs of this action on a solicitor and client basis, or such basis deemed appropriate by this Honourable Court, plus QST and GST, including expert's fees, on the highest allowable scale; and
 - d) Such further and other relief as to this Honourable Court may seem just.
 - e) The above claims are each estimated not to exceed \$100,000 total.

A. The parties

2. The Plaintiff DermaSpark Products Inc. (hereinafter "**DermaSpark**"), formed under the laws of Canada, with a registered office at 885 West Georgia Street, Suite 800, Vancouver, British Columbia, V6C 3H1, is the exclusive authorized distributor in Canada of Pollogen Ltd. (hereinafter "**Pollogen**");

3. The Plaintiff Pollogen, formed and based in Israel with a registered office at 23 Shoken St., Tel Aviv, 69016, is a fully owned subsidiary company of Lumenis Ltd., since 2012;

4. The Plaintiff Pollogen manufactures and offers a full line of clinically proven, non-invasive, safe and effective anti-aging facials and body contouring treatments for a wide range of aesthetic applications highly popular and well-known by medical and aesthetic professionals across Canada, including, but not limited to, the OxyGeneo cosmetic apparatus;

5. The OxyGeneo cosmetic apparatus using micro-vibration, radio frequency, and ultrasound for aesthetic facial and body skin treatment in association with esthetical products such as the OxyGeneo pods and a gel kit are Class III medical devices in association with the active licence listing no. 95002, first issued on 10th April 2015;



(hereinafter the “**Legitimate OxyGeneo Devices**”)

6. Pollogen is the sole and exclusive owner of the common-law rights associated with the Geneo, Geneo+, Oxygeneo, OxyGeneo, Pollogen, Pollogen Design trademarks, 3-in-1 super facial, Oxygeneo 3-in-1, OxyPod and Tripollar RF trademark (hereinafter the “**Common Law Trademarks**”), as well as all exclusive rights conferred to by the *Trademarks Act* for Canadian trademark registrations

TMA1032928 for GENE0+, TMA1032944 for OXYGENEO, TMA1041360 for 3-in-1 super facial, TMA1032928 for GENE0+, TMA1032940 for geneO+ design, and TMA1184661 for OXYPOD (hereinafter the “**Registered Trademarks**”);

(Collectively, hereafter “**Pollogen’s Trademarks**”)

7. Pollogen’s Trademarks are used in association with the following goods and services:

- a. Cosmetic apparatus using micro-vibration, radio frequency, ultrasound for aesthetic facial and body skin treatment;
- b. Facial skin treatment service for humans for cosmetic purposes;
- c. Esthetic skin care treatment, namely, facial exfoliation, oxygenation massages and skin treatment;
- d. Cosmetic creams, face and body creams;
- e. Cosmetic gels, face and body gels;
- f. Anti-aging facials and body contouring treatments;
- g. Training and educational services with cosmetic apparatus;

(collectively referred to herein as the “**Plaintiffs’ Goods and Services**”)

8. The Defendant ICARE BEAUTY CLINIC INC. (hereafter “**Defendant**”) has been doing business at 100-850 Harbourside Drive, North Vancouver (British-Columbia) V7P 0A3 where they offered esthetic services;

9. The Defendant WILLIAM WEST WASHINGTON is known to have a registered mailing and delivery address at 1178 Heffley Crescent #3206, Coquitlam (British-Columbia) V3B 0A7 and has been a directing mind behind ICARE BEAUTY CLINIC INC. since its creation;

10. The Defendant SEYED MASIH YAGHOUBI is known to have a registered mailing and delivery address at 1178 Heffley Crescent #3206, Coquitlam (British-Columbia) V3B 0A7 and has been a directing mind behind ICARE BEAUTY CLINIC INC. since its creation;

B. PLAINTIFFS’ RIGHT TO THE TRADEMARKS

11. Pollogen is the sole and exclusive owner of the common-law rights associated with Pollogen’s Trademarks;

12. DermaSpark is the sole distributor and exclusive licensee, with authorization to sublicense the use of Pollogen’s Trademarks in Canada pursuant to a verbal agreement between the plaintiffs on or around March 2012, which was further confirmed by two written agreements dated January 17, 2021 and January 1st, 2023 (collectively hereinafter the “**Agreements**”);

13. Pursuant to the Agreements, DermaSpark has the right to litigate and to collect damages in order to protect Pollogen’s Trademarks;

14. Since approximately March 2012, Plaintiff DermaSpark has made continuous use of the Pollogen's Trademarks in association with Plaintiffs' Goods and Services in Canada and has made continuous use of the Pollogen's Trademarks ever since;

15. During this period, Pollogen has exercised control over the quality of Plaintiffs' Goods and Services and ensured they met the requisite standards associated with Pollogen's internal policy and relevant laws and regulations;

16. The Plaintiff DermaSpark devotes significant resources to promote and sell the Plaintiffs' Goods and Services in association with Pollogen's Trademarks, and 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 both Plaintiffs;

17. In fact, the distribution and offering of Plaintiffs' Goods and Services by DermaSpark in Canada are known to be of excellent quality and have gathered recognition and noticeability in the professional industry and to the general consumers of Canada, considering the high demand for the Plaintiffs' Goods and Services and the awards won by DermaSpark as the best worldwide vendor of Plaintiffs' Goods and Services;

18. Plaintiff DermaSpark spent a significant amount of resources on its marketing agency, REX Marketing+ Design, which was honoured as the Grand Winner of the NYX Marcom Award for its work on the OxyGeneo branding in Canada;

19. As an example, OxyGeneo's 3-in-1 super facial has earned the reputation as the #1 facial treatment in Canada and enjoys roaring success amongst celebrities as well as regular praise in the media;

20. The Plaintiff DermaSpark has always made prominent use of Pollogen's Trademarks in association with Plaintiffs' Goods and Services;

21. The Plaintiffs, through their exclusive distributorship agreement, have a shared interest in the goodwill and reputation attached to Pollogen's Trademarks in association with Plaintiffs' Goods and Services;

C. THE DEFENDANTS' MISCONDUCT – TRADEMARKS

22. The Plaintiffs discovered on or around October 3rd, 2024, that the Defendants have been violating Plaintiffs' exclusive rights to Pollogen's Trademarks under the *Trademarks Act* since at least October 18th, 2022, on a date unknown to the Plaintiffs but known to the Defendants;

23. The Defendants have willfully infringed, violated, and acted contrary to the provisions of the *Trademarks Act*, throughout Canada, and are still infringing, violating, and acting contrary to the provisions of the *Trademarks Act*;

24. Since at least October 18th, 2022, the Defendants have illegally exploited Pollogen's Trademarks and used and extensively marketed Pollogen's Trademarks in association with their own services and goods, or substituted goods of lesser quality on which they can realize a profit, in association with Plaintiffs' Goods and Services;

25. The Defendants's use of Pollogen's Trademarks is identical to and confusingly similar to Pollogen's Trademarks and is offered in association with identical goods and services;

26. The Defendants' use of Pollogen's Trademarks has caused and will cause further confusion amongst Canadian consumers and has and will further depreciate the goodwill and reputation of Pollogen's Trademarks in Canada, which the Plaintiff DermaSpark has spent years and significant financial investment in branding, marketing and developing;

27. Since at least October 18th, 2022, the Defendants, without any authorization, permission or license, have offered to sell, sold, performed, advertised and promoted through their Instagram page, (<https://www.instagram.com/icarebeautyclinic/>) and Facebook accounts/pages (<https://www.facebook.com/profile.php?id=61558822253058>) their unlawful OxyGeneo 3-in-1 Super Facial skincare treatments using its associated Plaintiffs' Goods and Services, namely the OxyGeneo cosmetic apparatus using micro-vibration, radio frequency, ultrasound for aesthetic facial and body skin treatment, and esthetical products such as the OxyGeneo pods and a gel kit;

28. The OxyGeneo cosmetic apparatus using micro-vibration, radio frequency, ultrasound for aesthetic facial and body skin treatment, and esthetical products such as the OxyGeneo pods and a gel kit used by the Defendants are clear counterfeit products that are highly similar to the Legitimate OxyGeneo Devices (hereinafter the **“Counterfeit OxyGeneo Devices”**);

29. The Defendants used the Counterfeit OxyGeneo Devices to conduct skincare and skin treatment services, while intentionally advertising and presenting the treatment as the Legitimate OxyGeneo Device, therefore, erroneously inducing consumers to believe the goods were those exclusively manufactured by Pollogen and exclusively distributed by DermaSpark;

30. The Defendants used a counterfeit device on unknowing clients, notwithstanding that OxyGeneo devices are Class III medical devices under the *Medical Devices Regulations*;

31. The Defendants knew or ought to have known that the products bearing Pollogen's Trademarks in association with Plaintiffs' Goods and Services they used and sold were counterfeit;

32. Since approximately March 2012, Plaintiff DermaSpark has been the sole distributor and exclusive licensee of Pollogen's Trademarks in Canada, and is aware at all times of the location of any duly licensed Plaintiffs' Goods and Services in Canada, in accordance with Canadian laws, rules and regulations.

33. Any transfer of any medical devices, such as Legitimate OxyGeneo Devices, must be registered with Health Canada and is subject to transfer fees;

34. The Plaintiffs and all their clients never supplied any Plaintiffs' Goods and Services to the Defendants;

35. The full extent of the Defendants' infringing acts are unknown to the Plaintiffs but known to the Defendants, and the issue of the extent of infringement will form a part of the discovery process;

36. The Defendants have purposefully used Pollogen's Trademarks in a manner to create confusion as to the source of the goods offered by the Plaintiffs and the Defendants;

37. Notwithstanding the fact that the Plaintiff DermaSpark is the sole distributor of Pollogen's Trademarks in Canada, the Defendants direct attention of the public to their goods by trading on the Plaintiffs' goodwill and reputation;

D. DAMAGES AND PROFITS

38. The Defendants' infringing acts were intentional and in direct contravention to the rights of the Plaintiffs in the Pollogen's Trademarks;

39. The Defendants knew, or should have known, of the Plaintiffs' rights in and to the Pollogen's Trademarks;

40. Such conducts by the Defendants are constitutive of violation under the law and the Plaintiffs rely on the relevant provisions of the *Trademarks Act*;

41. Furthermore, the Defendants have persisted in violating the rights of the Plaintiffs despite having been notified of their misconduct;

42. Plaintiff DermaSpark sent the Defendants a registered letter outlining their claim that was delivered to the Defendants through a courier service on or around November 18th, 2024;

43. Pursuant to Plaintiff's instructions, Plaintiffs' counsel attempted to correspond with the Defendants via email on or around November 18th and November 29th, 2024, to no avail;

44. The Plaintiffs propose that this case be tried before the Federal Court sitting in Montreal, Province of Quebec.

**THE WHOLE RESPECTFULLY SUBMITTED, IN MONTREAL, QUEBEC,
THIS MAY 5TH, 2025**



PINTO LEGAL

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SOLICITORS FOR THE PLAINTIFFS

**FEDERAL COURT
FILE NO.**

BETWEEN:

**DERMASPARK PRODUCTS INC.
POLLOGEN LTD.**

Plaintiffs

-and-

**ICARE BEAUTY CLINIC INC.
WILLIAM WEST WASHINGTON
SEYED MASIY YAGHOUBI**

Defendant

**STATEMENT OF CLAIM
SIMPLIFIED ACTION**

ORIGINAL

**TO: Administrator
FEDERAL COURT**

TO: ICARE BEAUTY CLINIC INC.
100-850 Harbourside Drive,
North Vancouver (British-Columbia)
V7P 0A3
Defendant

TO: WILLIAM WEST WASHINGTON
1178 Heffley Crescent #3206
Coquitlam (British-Columbia)
V3B 0A7
Defendant

TO: SEYED MASIY YAGHOUBI
1178 Heffley Crescent #3206
Coquitlam (British-Columbia)
V3B 0A7
Defendant

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