

No. 23-874

**In The
Supreme Court of the United States**

IMPOSSIBLE X LLC,

Petitioner,

v.

IMPOSSIBLE FOODS INC.,

Respondent.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit**

**BRIEF IN OPPOSITION TO PETITION FOR
WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

1. Does [*Ford Motor Co. v. Montana Eighth Judicial District Court*, 592 U.S. 351 (2021),] create a categorical rule that specific jurisdiction does not require any link between the defendant's forum contacts and the plaintiff's injury, even when the defendant has no presence in the forum state?

2. Are the relevant forum contacts in a declaratory noninfringement action only those that relate to the defendant's enforcement-related conduct, or can they also include general business activities?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Impossible Foods Inc. states that it has no parent corporation, and no publicly held corporation owns 10 percent or more of its stock.

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**BRIEF IN OPPOSITION TO PETITION FOR
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Respondent Impossible Foods Inc. respectfully submits this Brief in opposition to the Petition for a Writ of Certiorari by Petitioner Impossible X LLC.

INTRODUCTION

This case does not warrant the Court’s review. The Petition mischaracterizes the Court’s precedent and the Ninth Circuit’s opinion below in an attempt to manufacture a split among the circuit courts of appeals and state courts of last resort that simply does not exist. Its first question presented depends on the proposition that, as used by this Court in *Ford Motor Co. v. Montana Eighth Judicial District Court*, 592 U.S. 351 (2021), and in numerous other opinions, the disjunctive conjunction “or” actually means “and.” Likewise, its second question presented depends on a conflation of patent law, on the one hand, and trademark law, on the other. Because Impossible X identifies no reasons for the Court to abrogate *Ford* or that decision’s numerous antecedents to identical effect, and because the decision of the court of appeals is consistent with the trademark law principles governing the merits of the parties’ respective claims, the Court should deny the Petition.

STATEMENT

1. Impossible Foods seeks a declaratory judgment of the noninfringement of Impossible X’s trademarks and service marks. In applying this

Court’s decision in *Ford*, the court of appeals held Impossible X properly subject to an exercise of specific personal jurisdiction in California. Pet. App. at 1a–43a. That holding underlies the Petition’s two questions presented, both of which bear on Impossible Foods’s showing that its claims relate to Impossible X’s brand-building activities in California.

2. Impossible Foods and Impossible X each use the word “impossible” either as a trademark or service mark or as a component of such marks. In pre-filing correspondence directed to Impossible Foods and in a (currently stayed) parallel proceeding before the TTAB, Impossible X asserted an actionable conflict between the parties’ uses of their respective marks. *Id.* at 9a–10a. The merits of that assertion are not before the Court.

Impossible Foods has its headquarters in California and manufactures and markets plant-based meat substitutes. One such product is its IMPOSSIBLE BURGER®. Others include the IMPOSSIBLE SAUSAGE® and IMPOSSIBLE PORK™, and Impossible Foods also provides services such as the online provision of recipes. *Id.* at 4a, 67a–68a.

Impossible X sells apparel, nutritional supplements, diet guides, exercise plans, and consulting services through its website and various social media channels. Its sole owner is Joel Runyon, who first used a version of an IMPOSSIBLE mark on his personal fitness and lifestyle blog in 2010 and registered it with the U.S. Patent and Trademark Office in 2012. *Id.* at 4a–5a. Shortly thereafter, Runyon formed Impossible Ventures LLC before changing that business’s name to Impossible X in 2016. *Id.*

Impossible X has no employees besides Runyon and is, for all practical purposes, an extension of Runyon, a self-styled “digital nomad” who claims to “handle[] business for Impossible LLC . . . remotely from wherever I happen[] to be.” *Id.* at 5a–6a. Although Runyon has worked from several places since he first registered the IMPOSSIBLE mark and has traveled extensively, he has “substantial” ties to California relevant to the parties’ dispute. *Id.* at 6a.

Specifically, Runyon rented an office at a CrossFit facility in San Diego from 2014–16 and described it as his “hub” of operations, his “home base,” and “base point” where he began “building” Impossible X’s meal and nutrition business, including its Paleo.io software application and website. *Id.* at 69a. Runyon’s LinkedIn page continued to identify San Diego as the location of his company’s headquarters until after the inception of this litigation. *Id.* at 7a.

Although claiming to have split his time between San Diego and New York City during this period, Runyon also described San Diego as a “base point,” and his business activities were clearly concentrated there. *Id.* at 6a. Indeed, as the court of appeals correctly noted, Runyon might well have properly been subject to a claim of general jurisdiction during those years. *Id.* at 19a. Runyon rented both an apartment and a workspace in San Diego, from which he ran Impossible X. He did not rent workspace in New York or elsewhere. (Runyon’s primary reason for spending time in New York was due to a personal, rather than a business, relationship.) *Id.* at 6a.

Consistent with the information on Impossible X’s LinkedIn page, Runyon’s social media posts from

Impossible X accounts referred to his San Diego workspace as “impossiblehq” and “impossibleheadquarters.” Runyon expressed excitement about “[s]etting up shop” there and “hav[ing] a dedicated spot for videos and writing.” In an Instagram post, Runyon also described his office as “[m]y new favorite place to work in San Diego,” telling his social media followers that he just had to “finish up putting @impossibleheadquarters branding on everything now.” Runyon’s LinkedIn profile listed “San Diego, California” as the “headquarters” for Impossible Ventures (later renamed Impossible X). In a blog post on an Impossible Ventures website, Runyon promoted his San Diego office as a place where he could “build a team” and “do calls and do meetings.” *Id.* at 6a–7a.

While living in San Diego, Runyon endeavored to build Impossible X’s brand recognition, and “[m]any of Impossible X’s marketing efforts explicitly sought to establish a connection between the company and [its] physical location [in San Diego].” *Id.* at 19a. The record contains numerous examples of marketing efforts and social media posts in which Runyon touted the Impossible brand from “an office festooned with company logos,” *id.*, including through photos of himself wearing fitness gear with the Impossible mark. *Id.* at 7a. When promoting that brand on social media, Runyon frequently tagged San Diego as his location. For example, in a June 2014 post from the “impossiblehq” Instagram handle, Runyon promoted his new Impossible-branded fitness gear, adding the hashtags #sandiego and #sd. And in January 2015, Runyon posted to Twitter that he “[c]ame home to San Diego and found my brand new #impossible hoodie waiting for me.” Runyon also promoted his business in a segment on the local news, and, in an Instagram post,

featured a screenshot of himself (clad in an Impossible X t-shirt) being interviewed under the storyline “New Local App Aims to Relieve Sitting Pain,” adding the hashtags “#sd” and “#sandiego.” *Id.* Likewise, Runyon also leveraged his brand to promote various “paleo” diet guides while in California. *Id.* at 7a–8a. The court of appeals therefore properly determined that “California is where Runyon most clearly endeavored to develop brand recognition, in some instances by explicitly tying the ethos of the IMPOSSIBLE mark to California itself.” *Id.* at 35a.

In June 2016, Runyon left his “base point” in San Diego and started living a fully nomadic lifestyle. Although he had rented the gym office in his own name, Runyon signed his notice of vacating his lease “Joel Runyon[,] Impossible X LLC.” *Id.* at 8a (alteration in original). For the next two years, Runyon ran his business remotely as he traveled and worked in Europe and elsewhere. *Id.*

Despite traveling, Runyon maintained business-related contacts with California. *Id.* at 19a–20a (“Even after Runyon left California, he continued to return and do business there through Impossible X.”). In February 2017, the year *after* Impossible Foods began using its own IMPOSSIBLE marks, *id.* at 68a, Runyon still described his “homebase” as “social-ish (San diego) and NYC usually. couple years back was Chicago.” *Id.* at 8a. As indicated by social media posts (some from Impossible-branded accounts) and flight records, Runyon made at least eight trips to California between October 2017 and December 2019, during which he performed Impossible X-related work. *Id.* at 8a, 70a.

Moreover, on the occasions after 2016 when Runyon returned to California, he continued to promote his Impossible brand in connection with California. In 2018, Runyon’s personal Instagram account and the @impossiblehq account shared several posts tagged with California locations advertising Impossible X content and products. For example, in August 2018, a Runyon tweet asked “[w]ho in the San Diego/Encinitas area” he should host on his Impossible X podcast. *Id.* at 9a (alterations in original). In November 2018, the Impossible X Twitter account promoted an interview with an athlete that Runyon recorded in West Hollywood. *Id.* In 2018 and 2019, Impossible X posted photos of athletes wearing Impossible-branded shirts at iconic locations in California, such as near the Golden Gate Bridge, on Instagram. Cumulatively, Runyon spent at least two months in San Diego in 2018 alone. *Id.*

In January 2019, Runyon settled in Austin, Texas. Two years later, he formed Impossible X LLC in Texas and merged his Illinois LLC into it. He also assigned the Impossible trademark registrations to the new Texas entity. In social media posts, Runyon reflected that San Diego was the “nicest place,” but that it was “tougher to grow business there.” Runyon later posted in August 2019 that “san diego is great, but taxes 🙄. better entrepreneur community in austin.” *Id.* at 8a. As late as 2020, some of his posts were either from, or tagged, California locations. *Id.* at 70a. Moreover, Impossible X made plans with a Los Angeles-based company to manufacture apparel using the IMPOSSIBLE mark as recently as 2021. *Id.* at 9a.

3. In 2020 and 2021, Impossible X sent a demand letter to Impossible Foods’s counsel and then

opposed one of Impossible Foods’s trademark applications in an adversarial proceeding before the Trademark and Trial Appeal Board (“TTAB”). Impossible Foods subsequently filed suit in the United States District Court for the Northern District of California seeking a declaratory judgment confirming its noninfringement of Impossible X’s trademarks and service marks. *Id.* at 9a–10a.

4. The district court granted Impossible X’s motion to dismiss for want of specific personal jurisdiction. Pet. App. at 66a–89a.

That court concluded that Impossible X had intentionally and purposefully directed its activities toward California by, inter alia, “building’ its . . . business in San Diego and using its name in that context.” *Id.* at 80a, 83a. Applying the framework from this Court’s opinion in *Calder v. Jones*, 465 U.S. 783 (1984), it also found those same activities likely to cause harm in California if the rights created by the use of Impossible X’s marks were to conflict with those of another California-based company, as Impossible X has alleged in the proceeding before the TTAB and in its demand letter to Impossible Foods. Pet. App. at 84a, 85a.

Nevertheless, the district court granted Impossible X’s motion because of its determination that Impossible Foods’s request for declaratory relief did not *arise from* Impossible X’s California activities. *Id.* at 85a–87a. The district court did not, however, address the issue of whether those activities *related to* that request. It also declined to inquire whether an exercise of personal jurisdiction over Impossible X would comply with fair play and substantial justice. *Id.* at 88a.

5. Impossible Foods timely appealed the dismissal. Impossible X did not cross-appeal the district court’s findings that there was an actionable case and controversy, Pet. App. at 72a–75a, and that Impossible X had purposefully directed its activities toward California. *Id.* at 80a, 83a.

6. The United States Court of Appeals for the Ninth Circuit reversed.

Expressly declining to address the relevance of Impossible X’s enforcement of its perceived rights against a California domiciliary, *id.* at 23a, the court of appeals affirmed the district court’s finding that Impossible X had purposefully directed its actions toward California. *Id.* at 13a (“Impossible X purposefully directed its activities toward California and availed itself of the privileges of conducting activities there.”); *see also id.* at 17a–20a. The court likewise determined in the first instance that Impossible X had failed to carry its burden to prove that haling Impossible X into court in California was constitutionally unreasonable. *Id.* at 14a (“[T]here is nothing unreasonable about requiring Impossible X to defend a lawsuit based on its trademark building activities in the state that was its ‘headquarters’ and Runyon’s ‘home base,’ and that continued to be a business destination for Runyon and Impossible X.”); *see also id.* at 41a–43a. The Petition does not challenge these determinations.

In a holding the Petition *does* challenge, the court of appeals concluded that “Impossible Foods’ declaratory judgment action ‘arises out of or relates to’ Impossible X’s conduct in California because [Impossible X’s] trademark building activities form the basis

of the contested trademark rights—rights which Impossible X broadly asserted in the TTAB opposition that triggered this action.” *Id.* at 13a–14a. As has this Court in *Ford* and numerous other opinions, the court of appeals recognized the disjunctive nature of the “arises out of or relates to” inquiry and did not require a causal relationship between Impossible X’s activities in California and the parties’ controversy. See Pet. App. at 29a (“None of [the Court’s] precedents has suggested that only a strict causal relationship between the defendant’s in-state activity and the litigation will do.” (quoting *Ford*, 592 U.S. at 362 (alteration in original))). It then held that Impossible X’s numerous and extensive brand-building activities in California (as opposed to its general activities in the state) were sufficiently related to Impossible Foods’ request for a declaratory judgment to render an exercise of jurisdiction over Impossible X appropriate. Pet. App. at 23a–40a.

7. The court of appeals denied Impossible X’s petition for panel rehearing and rehearing en banc on November 22, 2023. Pet. App. at 90a–91a.

REASONS FOR DENYING THE PETITION

I. Relatedness is a Standalone Means for Establishing Personal Jurisdiction

The reach of the California long-arm statute is coextensive with due process, *Calder*, 465 U.S. at 786 n.5 (interpreting CAL. CIV. PROC. CODE § 410.10), and the jurisdictional analysis in this case therefore is the same under state and federal law. Pet. App. at 12a. Consistent with the framework established by this Court’s decisions and its own case law, the court of appeals held that a nonresident defendant is subject

to an exercise of specific personal jurisdiction under that statute if:

(1) the defendant . . . either purposefully direct[s] his activities toward the forum or purposefully avail[s] himself of the privileges of conducting activities in the forum; (2) the claim . . . arises out of or relates to the defendant’s forum-related activities; and (3) the exercise of jurisdiction . . . comport[s] with fair play and substantial justice, i.e. it must be reasonable.

Id. at 13a (quoting *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017)). The Petition’s first question presented invites the Court to read out of existence the “or relates to” prong of the second factor. As did the court of appeals, the Court should decline that invitation.

A. This Court’s Decisions Dispose of the First Question Presented

The Petition’s first question presented rests on an untenable reading of this Court’s opinion in *Ford Motor Co. v. Montana Eighth Judicial District Court*, 592 U.S. 351 (2021), and its numerous antecedents. Impossible X repeatedly suggests that *Ford* requires a causal relationship between a nonresident’s ties to a forum and the causes of action asserted against it. *See, e.g.*, Pet. at i (“[C]ausation was not irrelevant [in *Ford*].”). *Ford*’s actual holding, however, expressly rejects Impossible X’s theory:

[O]ur most common formulation of the rule demands that the suit “arise out of or relate to the defendant’s contacts with

the forum.” The first half of that standard asks about causation; but the back half, after the “or,” contemplates that some relationships will support jurisdiction without a causal showing.

Id. at 362 (quoting *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 582 U.S. 255, 262 (2017)). As the Ninth Circuit properly recognized, the Court itself emphasized the “or relate to” half of the analysis in *Ford* to make clear its availability on a standalone basis. See Pet. App. at 29a.

Despite invoking *Ford* itself for the proposition that but-for causation is necessary, the Petition is relatively devoid of citations to that opinion beyond its cobbling together of quotations to assert that but-for causation played a role in *Ford*’s outcome. Specifically, Impossible X claims that this Court “explained that in ‘some’ cases, a defendant’s ‘raft of . . . in-state activities’ may be an ‘except for’ cause of the plaintiff’s injury even if that cannot be definitively ‘pro[ved].” Pet. at i (alterations in original) (quoting *Ford*, 592 U.S. at 362, 367). Even if that Frankenstein’s monster-style summary is accurate, however, it says nothing about the relationship between relatedness and causation, much less that the former depends on the latter.

Instead, Impossible X repeatedly cites to a dissent below, but that opinion’s characterizations of *Ford* neither have precedential value nor are substitutes for *Ford* itself. See *R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 177 n.10 (1980) (“[C]omments in [a] dissenting opinion . . . are just that: comments in a dissenting opinion.”); cf. *Rakas v. Illinois*, 439 U.S. 128, 149 n.17

(1978) (noting with disapproval that “[i]t is not without significance that these statements of today’s ‘holding’ come from the dissenting opinion, and not from the Court’s opinion”). The Petition also invokes Justice Alito’s concurrence in *Ford*, but, like the Court’s opinion itself, that opinion rejects the strict but-for causation requirement urged by Impossible X: “Ford . . . asks us to adopt an unprecedented rule under which a defendant’s contacts with the forum State must be proven to have been a but-for cause of the tort plaintiff’s injury. The Court properly rejects that argument.” *Ford*, 592 U.S. at 373 (Alito, J., concurring). By suggesting with such weak support that the question is an open one, the Petition’s first question is fundamentally inconsistent with *Ford*’s actual holding that “we have never framed the specific jurisdiction inquiry as always requiring proof of causation—i.e., proof that the plaintiff’s claim came about because of the defendant’s in-state conduct.” 592 U.S. at 362.

Moreover, *Ford* is hardly the first opinion from this Court to recognize the standalone nature of the relatedness inquiry. For example, in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), the Court held that an exercise of personal jurisdiction over a nonresident defendant is appropriate if “the defendant ‘deliberately’ has engaged in significant activities within a State” or “purposefully directed’ [out-of-state] activities at residents of the forum,” and the litigation “arise[s] out of or relate[s] to’ those activities.” *Id.* at 475–76, 472 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)). Indeed, the Court has routinely confirmed the availability of the relatedness prong to plaintiffs on a standalone basis even when it has determined that an exercise of personal jurisdiction is inappropriate for

other reasons. *See, e.g., Daimler AG v. Bauman*, 571 U.S. 117, 118 (2014) (reversing exercise of general personal jurisdiction over nonresident defendant but noting that “specific jurisdiction,’ encompasses cases in which the suit ‘arise[s] out of *or relate[s]* to the defendant’s contacts with the forum” (alterations in original) (emphasis added) (citation omitted) (quoting *Helicopteros Nacionales de Colombia*, 466 U.S. at 414 n.8)).

Impossible X’s first question presented and its novel proposed “rough causation” standard therefore depend on the untenable proposition that, although *Ford* and other opinions from this Court expressly allow a plaintiff to satisfy the second prong by showing *either* a causal relationship between the defendant’s activities in the forum *or* that the plaintiff’s cause of action relates to those activities, such a plaintiff in reality must demonstrate *both* those things.¹ That position is contrary to *Ford*’s use of the disjunctive conjunction “or” to separate the two options, as well as to common sense. *See United States v. Woods*, 571 U.S. 31, 45 (2013) (“[‘Or’s’] ordinary use is almost always disjunctive, that is, the words it connects are to ‘be given separate meanings.’” (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979)); *see also Loughrin v. United States*, 573 U.S. 351, 357 (2014) (rejecting argument “constru[ing] . . . two entirely distinct statutory phrases that the word ‘or’ joins as

¹ Impossible X attempts to obscure the fundamental inconsistency between its position and this Court’s holding in *Ford* by attributing the former to the dissent below. *See* Pet. at 8 “[U]nder *Ford*, the dissent explained, a plaintiff must ‘show some causal nexus—even if not a strict one—between activities and harms alleged.’” (quoting Pet. App. at 61a)).

containing an identical element”). Rather than inviting “clarification,” Impossible X’s proposal to dispose of the relatedness of a cause of action to a nonresident defendant’s activities in a forum as a standalone factor supporting an exercise of personal jurisdiction would require the abrogation of numerous opinions from this Court.

That proposed abrogation is neither necessary nor wise. Contrary to Impossible X’s claim otherwise, the court of appeals’ application of *Ford* in this case does not leave specific personal jurisdiction inquiries “with no objective limiting principle.” Pet. at 23. The obvious such principle in a case lacking but-for causation is the plaintiff’s need to show that the defendant’s conduct in the forum *relates to* the plaintiff’s claims, which is precisely what the plaintiffs did in *Ford* and precisely what Impossible Foods did in this case. The acceptance of that showing by the court of appeals, without requiring Impossible Foods also to show that its complaint *arose from* Impossible X’s activities in California, therefore is in no way inconsistent with this Court’s holding in *Ford*. To the contrary, it reflects the precise either/or methodology contemplated by that decision and its predecessors.

B. The Petition Mischaracterizes Both Ninth Circuit Law and That Court’s Opinion in This Case

In addition to its improper attempt to redefine the word “or,” the Petition mischaracterizes both the Ninth Circuit’s opinion in this case and that court’s case law generally. To begin with, and although “[t]he ordinary meaning of [‘relating to’] is a broad one,” *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992), the Ninth Circuit’s post-*Ford* applications of

the relatedness prong of this Court’s framework dispose of Impossible X’s parade of horrors. Indeed, many of those applications *reject* arguments by plaintiffs that their claims relate to defendants’ activities in forum jurisdictions. For example, despite citing the appellate opinion in this case six times, *Briskin v. Shopify, Inc.*, 87 F.4th 404 (9th Cir. 2023), affirmed the grant of a motion to dismiss based on the California-based plaintiff’s failure to demonstrate that the defendant’s alleged extraction and processing of his personal data in Canada related to the defendant’s presence in California. Significantly, that presence included the defendant’s former headquarters in Los Angeles, its operation of brick-and-mortar locations in California, its “over 80,000 merchant-customers in the state,” and the presence of a quarter of its employees there. *See id.* at 410. As the *Briskin* court properly recognized, the difference between the former California headquarters in that case and Impossible X’s former San Diego headquarters here is that Impossible X’s “trademark-building activities in the state ‘establish[ed] the asserted legal rights . . . at the center of th[e] dispute.’” *Id.* at 414 (first and third alterations in original) (quoting Pet. App. at 37a).

That conclusion in *Briskin* is correct. The Petition repeatedly—but incorrectly—asserts that the exercise of specific personal jurisdiction in this case rests on Impossible X’s “general business activities.” *See, e.g.*, Pet. App. at i. By placing those words in quotation marks when referring to the opinion below, page 2 of the Petition misleadingly suggests the court of appeals based its holding on them. In fact, those words appear nowhere in the opinion—they are instead *the dissent’s* characterization of the court’s holding. *See, e.g.*, Pet. App. at 52a, 53a n.2, 54a. This

Court therefore should disregard Impossible X's inaccurate factual assertion throughout the Petition and in its second question presented that "general business activities" underlie the exercise of jurisdiction here.

In fact, rather than resting on Impossible X's general business activities, the opinion makes clear the court's reliance on the brand-building (or trademark-building) activities in California underlying Impossible X's own claim of protectable trademark and service mark rights. Thus, the court of appeals actually held that "Impossible X's *brand-building activities* in California since 2014 are sufficiently related to the instant trademark dispute to confer personal jurisdiction." *Id.* at 13a (emphasis added). Lest there be any doubt on the issue, it elaborated on this point in the following manner:

Impossible Foods' declaratory judgment action "arises out of or relates to" Impossible X's conduct in California because its *trademark building activities* form the basis of the contested trademark rights—rights which Impossible X broadly asserted in the TTAB opposition that triggered this action. . . . [T]here is nothing unreasonable about requiring Impossible X to defend a lawsuit based on its *trademark building activities* in the state that was its "headquarters" and Runyon's "home base," and that continued to be a business destination for Runyon and Impossible X.

Id. at 13a–14a (emphasis added).

The opinion is replete with still more statements to identical effect.² It is thus apparent that the actual holding below rests on Impossible X’s cultivation in California of the very trademark rights Impossible X has asserted against Impossible Foods. That geographic nexus is of no small consequence: On the contrary, as set forth below in greater detail and as the court of appeals correctly recognized, Pet. App. at 33a–34a, protectable trademark rights arise from the use in commerce of a claimed mark in particular geographic markets. See *United Drug Co. v. Theodore Rectanus Co.*, 248 U.S. 90, 100 (1918) (“[A]s between conflicting claimants to the right to use the same mark, priority of appropriation determines the question.”); 2 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 16:18 (5th ed.) (“Use, not registration, creates trademark rights and priority.”). Because Impossible X’s claim of prior trademark rights in California cannot be separated from its

² See, e.g. *id.* at 33a (“Impossible X’s trademark building activities in California are . . . integral to the scope of the rights that are to be declared in this case.”); *id.* at 35a (“California is where Runyon most clearly endeavored to develop brand recognition, in some instances by explicitly tying the ethos of the IMPOSSIBLE mark to California itself.”); *id.* at 36a (“Impossible Foods’ declaratory judgment action sufficiently ‘arises out of or relates to’ Impossible X’s trademark building activities in California”); *id.* at 37a (“There is an obvious difference between undifferentiated nationwide sales and marketing efforts and what we have here: Impossible X for a substantial period of time using California as its ‘base point’ and ‘headquarters’ to build the brand and establish the asserted legal rights that are at the center of this dispute.”); *id.* at 40a (“Impossible X’s trademark building efforts in California bear on its use of the mark and thus the scope of its rights.”).

brand-building activities in that state, the narrowness of the holding below is apparent.

Indeed, post-*Ford* opinions from the court of appeals in other contexts flatly contradict Impossible X's fever dream of confused and unprincipled findings of relatedness from the court of appeals. For example, in *Yamashita v. LG Chem, Ltd.*, 62 F.4th 496 (9th Cir. 2023), the defendants purposefully availed themselves of the privilege of doing business in Hawaii by shipping residential solar batteries to and through the port of Honolulu. Nevertheless, those shipments were not sufficiently related to the plaintiff's claim of injury from a defective e-cigarette lithium-ion battery purchased from an unidentified third party that had distributed it in Hawaii. The court therefore affirmed the district court's dismissal of those claims for want of specific personal jurisdiction. *Id.* at 506–07; *see also, e.g., LNS Enters. v. Cont'l Motors, Inc.*, 22 F.4th 852, 863–64 (9th Cir. 2022) (affirming dismissal of action for want of specific personal jurisdiction under relatedness inquiry where contacts with forum limited to advertising by four third parties on nonresident defendant's website); *Brown v. Serv. Grp. of Am., Inc.*, No. 22-35107, 2022 WL 16958933, at *2 (9th Cir. Nov. 16, 2022) (affirming dismissal of action against nonresident defendant in light of plaintiff's failure to demonstrate relatedness).

Not surprisingly, Ninth Circuit district courts also have recognized the limited scope of the underlying opinion here. For example, in *Chattopadhyay v. Evolve Vacation Rental Network, Inc.*, No. 3:22-CV-06103-LB, 2023 WL 6199181 (N.D. Cal. Sept. 21, 2023), the Colorado-based defendant managed California rental properties on behalf of California residents whose business it had solicited; those activities

were not sufficiently related to the plaintiff's claim of unlawful exclusion from the listings on the defendant's platform to render an exercise of personal jurisdiction appropriate. *Id.* at *10. Likewise, the California-based plaintiff in *Encuentra v. Church & Dwight Co.*, No. 23-CV-02051-H-SBC, 2024 WL 24071 (S.D. Cal. Jan. 2, 2024), failed to defeat a motion to dismiss despite the lead defendant's operation of "a manufacturing plant in Victorville, California" producing goods not at issue in the litigation. *Id.* at *4. The courts in both cases repeatedly cited to the Ninth Circuit's opinion in this one, but that opinion did not, as Impossible X would have this Court believe, lead to the automatic haling into California courts of nonresident defendants with "general business activities" in the state. See *Chattopadhyay*, 2023 WL 6199181, at *6 (citing Pet. App. at 17a–18a); *Encuentra*, 2024 WL 24071, at *2–3 (citing Pet. App. at 12a, 24a, 75a–76a); see also *Doe v. Deutsche Lufthansa AG*, No. 23-CV-04413-SI, 2024 WL 1354523, at *6, *9 (N.D. Cal. Mar. 29, 2024) (granting motion to dismiss for want of relatedness despite citing Pet. App. at 13a, 18a). It is thus apparent that Ninth Circuit courts have not run amok in invoking the underlying opinion here to reach unprincipled findings of relatedness devoid of guardrails.

C. No Cognizable Split Exists Between the Circuit Courts of Appeals or Between Them and State Courts of Last Resort

Impossible X's assertion of a cognizable split among federal and state courts allegedly confused by the disjunctive nature of this Court's holding lacks merit. To begin with, and if the opinions cited by the Petition are any indication, post-*Ford* expressions of

confusion among those courts themselves are exceedingly rare; likewise, there are no readily apparent opinions acknowledging the existence of a putative split on the issue of how to apply the disjunctive test confirmed by *Ford. Cf., T-Mobile S., LLC v. City of Roswell, Ga.*, 574 U.S. 293, 299 (2015) (“The Eleventh Circuit acknowledged that the Courts of Appeals had split on that question, and that it had departed from the majority rule.”).

A review of the opinions proffered by the Petition confirms that the courts issuing them understand the either/or relationship between causation and relatedness:

The First Circuit: Impossible X neglects to call the Court’s attention to *Rodriguez-Rivera v. Allscripts Healthcare Sols., Inc.*, 43 F.4th 150 (1st Cir. 2022), in which the First Circuit undertook two relatedness inquiries without any consideration whatsoever of the issue of causation. *See id.* at 160–62. Moreover, even with respect to *Vapotherm, Inc. v. Santiago*, 38 F.4th 252 (1st Cir. 2022), Impossible X acknowledges—as it must—that decision’s express recognition of the either/or relationship between relatedness and causation underlying this Court’s decision in *Ford*. *See* 38 F.4th at 261 (holding “strict causal relationship” between nonresident defendants’ conduct and injury in forum not required). To the extent *Vapotherm* purports to require a “probe [into] causal nexus,” it does so based on clearly abrogated pre-*Ford* authority. *See id.* at 289 (quoting *Phillips Exeter Acad. v. Howard Phillips Fund, Inc.*, 196 F.3d 284, 289 (1st Cir. 1999)). Finally, the New Hampshire-based plaintiff in that case accused the nonresident defendant of unlawfully hiring certain of the

plaintiff's employees domiciled in Florida and Georgia—a far cry from the facts of this case, in which Runyon's brand-building activities in California are necessary to the existence of his asserted rights in the first instance.

The Third Circuit: In *Hepp v. Facebook*, 14 F.4th 204 (3d Cir. 2021), the Third Circuit cited *Ford* for the proposition that “the [defendant’s] contacts [with the forum] must give rise to—or relate to—plaintiff’s claims,” *id.* at 207 (emphasis added), before undertaking a relatedness inquiry independent of the issue of causation. And, even in Impossible X’s proffered nonprecedential decision in *Martinez v. Union Officine Meccaniche S.P.A.*, No. 22-1364, 2023 WL 3336644 (3d Cir. May 10, 2023), the same court indirectly quoted *Ford* for the proposition that “[t]he second [requirement] is a ‘strong relationship’ between ‘the defendant, the forum, and the litigation,’” again without any mention of causation. *Id.* at *1 (quoting *Hepp*, 14 F.4th at 208 (quoting *Ford*, 592 U.S at 365)). The Third Circuit therefore needs no guidance on the distinguishable nature of the two inquiries.

The Fifth Circuit: Impossible X characterizes *Johnson v. TheHuffingtonPost.com, Inc.*, 21 F.4th 314 (5th Cir. 2021), as holding that “a plaintiff must still ‘link’ the alleged injury to the defendant’s forum contacts,” Pet. at 13, but nothing in that opinion equates “link” with “causation.” Instead, the context in which “link” appears makes clear the court’s use of it in the sense of “related to,” which is precisely the inquiry required by *Ford* and undertaken by the court of appeals in this case. Moreover, the ultimate outcome of *Johnson* acknowledges the distinct nature of the relatedness and causation inquiries. See 21 F.4th at 321 (“[The advertisements challenged by the suit] neither

caused *nor relate to* the harm that the story caused.” (emphasis added)). The Fifth Circuit therefore understands full well that relatedness does not depend on causation. *See also Pace v. Cirrus Design Corp.*, 93 F.4th 879, 900 (5th Cir. 2024) (“The Supreme Court [has] rejected [the theory] that ‘only a strict causal relationship between the defendant’s in-state activity and the litigation will do.’” (quoting *Ford*, 592 U.S. at 362)); *Alexander v. Anheuser-Busch, L.L.C.*, No. 19-30993, 2021 WL 3439131, at *3 (5th Cir. Aug. 5, 2021) (“[W]hile [the plaintiff] need not show that these contacts [with the forum] caused his injury, he must at least show that they are related to it.”).

The Tenth Circuit: Impossible X represents to this Court that the Tenth Circuit’s conception of relatedness requires “rough causation,” Pet. at 14, but that phrase appears nowhere in *Hood v. American Auto Care, LLC*, 21 F.4th 1216 (10th Cir. 2021). That absence is not surprising in light of *Hood*’s observations that “the Supreme Court made clear that a causal connection is not required,” *id.* at 1222, that “[a]lthough the Supreme Court agreed that ‘arise out of’ is a causal test, it distinguished that language from the ‘relate to’ component of the second requirement,” *id.* at 1223, and that “[*Ford*] clarified that the Court’s precedents did not support requiring strict causation as a general principle, not just on the specific facts there.” *Id.* at 1225. Against that backdrop, *Hood*’s comments regarding a declaratory judgment plaintiff’s claim “aris[ing] from” “essentially the same type of activity” undertaken by a defendant in the forum, *id.* at 1224, cannot be seriously read as importing a causation requirement into the relatedness inquiry.

The Eleventh Circuit: Impossible X is correct that, quoting one of its pre-*Ford* opinions, the Eleventh Circuit suggested in *Del Valle v. Trivago GMBH*, 56 F.4th 1265 (11th Cir. 2022), *cert. denied*, 144 S. Ct. 90 (2023), that “the concept of relatedness . . . focuses on the ‘causal relationship between the defendant, the forum, and the litigation.’” *Id.* at 1275 (quoting *Fraser v. Smith*, 594 F.3d 842, 850 (11th Cir. 2010)). But it fails to advise the Court that the Eleventh Circuit immediately and repeatedly qualified that suggestion by holding that “the Supreme Court [has] rejected the contention that specific jurisdiction may attach only when the defendant’s forum conduct directly gave rise to the plaintiff’s claims,” that “direct causation is not required,” and that “direct causation between the nonresident’s forum contacts and the plaintiff’s cause of action is not required . . .” *Id.* at 1275, 1276. And, more recently, that court has held that “whether the claims ‘arise out of or relate to’ one of the defendant’s contacts [with the forum] does not require direct causation.” *SkyHop Techs., Inc. v. Narra*, 58 F.4th 1211, 1229 (11th Cir. 2023) (quoting *Ford*, 592 U.S. at 362). These unambiguous statements belie any suggestion that that court requires a demonstration of causation as a prerequisite for a finding of relatedness or that it is any way confused about *Ford*’s significance.

The Supreme Court of Oregon: In an opinion cited throughout the Petition, the Supreme Court of Oregon held that, “[a]s *Ford Motor Co.* makes clear, due process will not ‘always requir[e] proof of causation—*i.e.*, proof that the plaintiff’s claim came about because of the defendant’s in-state conduct.’” *Cox v. HP Inc.*, 492 P.3d 1245, 1255 (Ore. 2021) (en banc) (second alteration in original) (emphasis omitted) (quoting *Ford*, 592 U.S. at 362). Nor did it stop there:

“There will be at least some cases in which the ‘relationship among the defendant, the forums, and the litigation’ is ‘close enough to support specific jurisdiction’ in the absence of a but-for causal link.” *Id.* (quoting *Ford*, 592 U.S. at 371). The court’s subsequent reference to reasonable foreseeability, *id.* at 1255, is no more inconsistent with *Ford* than is this Court’s reference to the same concept in *Burger King*, 471 U.S. at 476; see also *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 781 (1984) (“reasonabl[e] anticipat[ion]”). It certainly does not qualify in any way the Oregon court’s clear recognition that relatedness and causation are separate and distinct concepts.

The Supreme Court of Tennessee: Impossible X’s proffered opinion from the Supreme Court of Tennessee holds that “the language used by the Court [in *Ford*] effectively . . . abrogate[d] any approach that required a causal connection,” *Baskin v. Pierce & Allred Constr., Inc.*, 676 S.W.3d 554, 576 (Tenn. 2023); it likewise acknowledges that “specific jurisdiction is an area of the law where the Court has been reticent to draw bright lines.” *Id.* To the extent that, like the Supreme Court of Oregon, the Tennessee court considers reasonable foreseeability part of the overall due process analysis, that is hardly an approach requiring correction by this Court.

In short, Impossible X’s proffered splits among the lower federal courts and state courts of last resort comprise nothing more than the unsurprising phenomenon that some post-*Ford* opinions have held exercises of specific personal jurisdiction over nonresident defendants appropriate while other post-*Ford* opinions have not. Because that phenomenon predates *Ford*, compare *Burger King*, 471 U.S. at 487 (holding exercise of personal jurisdiction proper) *with*

Helicopteros Nacionales de Colombia, 466 U.S. at 418–19 (holding it inappropriate), Impossible X has failed to demonstrate that those differing outcomes arise from confusion over this Court’s clear holding in *Ford*. And, even if professed confusion exists within the academy, remedying it is neither the responsibility, nor should not be a high priority, of this Court. *Cf. Cent. State Univ. v. Am. Ass’n of Univ. Professors, Cent. State Univ. Chapter*, 526 U.S. 124, 130 (1999) (Stevens, J., dissenting) (“While surveying the flood of law reviews that crosses my desk, I have sometimes wondered whether law professors have any time to spend teaching their students about the law.”). The Petition’s first question presented therefore is without merit.

II. The Relevant Forum Contacts in a Trademark-Based Declaratory Judgment Action are not Restricted to the Defendant’s Enforcement-Related Conduct

The Petition’s argument in support of its second question presented—that Impossible X’s putatively non-enforcement activities in California are not related to Impossible Foods’ request for declaratory relief—rests on an attempted conflation of trademark law with its patent counterpart. The court of appeals recognized the clear distinctions between the two and so should this Court.³

³ Impossible X argues that “declaratory judgment actions involving trademarks are analogous to those involving patents.” Pet. at 17 (quoting *Windsurfing Int’l Inc. v. AMF Inc.*, 828 F.2d 755, 757 (Fed. Cir. 1987)). In fact, none of the authorities proffered by Impossible X in support of that proposition addresses the issue

As this Court has long recognized, “[r]ights in a trademark are determined by the date of the mark’s first use in commerce. The party who first uses a mark in commerce is said to have priority over other users.” *Hana Fin., Inc. v. Hana Bank*, 574 U.S. 418, 419 (2015); *see also United Drug*, 248 U.S. at 100. A trademark owner therefore cannot “monopolize markets that his trade has never reached, and where the mark signifies not his goods, but those of another.” *Hanover Star Milling Co. v. Metcalf*, 240 U.S. 403, 416 (1916).

Indeed, although federal registration of a mark can give its owner nationwide constructive priority of rights, 15 U.S.C. § 1057(c), those rights are enforceable only in markets in which both parties either currently use their marks or will use them in the immediate future. *See generally Contiente v. Contiente*, 378 F.2d 279, 282 (9th Cir. 1967) (denying relief to senior user and federal registrant in light of nonoverlapping geographic markets served by parties); *Dawn Donut Co. v. Hart’s Food Stores, Inc.*, 267 F.2d 358, 830-32 (2d Cir. 1959) (same). In trademark cases, the extent of the plaintiff’s mark-building activities in a particular forum is not just relevant to the merits of a claim for infringement or a request for declaratory relief—it is critical.

This is especially true because trademark rights do not exist in gross, but only to the extent that

in the context of a dispute over personal jurisdiction. On the contrary, *Windsurfing and Nike, Inc. v. Already, LLC*, 663 F.3d 89, 96 (2d Cir. 2011), *aff’d*, 568 U.S. 85 (2013), arose from disputes over the existence of actionable cases and controversies; likewise, Section 23:51.50 of Professor McCarthy’s treatise addresses the same subject.

marks are used in connection with particular goods or services. Consistent with that principle, the test for infringement is whether the parties' respective uses are likely to cause confusion. 15 U.S.C. §§ 1114(1), 1125(a). That inquiry typically involves application of a multifactored test turning on the totality of both parties' uses, including that of the plaintiff.⁴ Under that test, Ninth Circuit courts determining the likelihood of confusion between conflicting marks must examine, among other things, the similarity of the marks, "marketing channels," and "the proximity or relatedness of the [parties'] goods or services." See *AMF, Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348–49 (9th Cir. 1979). The *Sleekcraft* test also requires consideration of "how the trademark holder's mark is generally used," as well as the "use and function" of the plaintiff's products or services. *Id.* at 349–50. In analyzing the mark-similarity factor, a court must weigh how the parties' marks "are encountered in the marketplace," *id.* at 351, including the degree of geographic proximity between the parties' uses. See generally *Lodestar Anstalt v. Bacardi & Co.*, 31 F.4th 1228, 1250–51 (9th Cir. 2022). A related factor, actual confusion, asks whether the "use of the two marks has

⁴ Each circuit court of appeals has its own multifactored test, compare, e.g., *Polaroid Corp. v. Polarad Elecs. Corp.*, 287 F.2d 492, 495 (2d Cir. 1961) (applying eight-factor test) with *Uncommon, LLC v. Spigen, Inc.*, 926 F.3d 409, 425 (7th Cir. 2019) (applying seven-factor test), but this Court has held the differences between them nonsubstantive. See *B & B Hardware, Inc. v. Hargis Indus.*, 575 U.S. 138, 154–55 (2015) (holding that differing tests for likely confusion applied in infringement and registrability contexts address the same issue for issue-preclusion purposes).

already led to confusion,” *Sleekcraft*, 599 F.2d at 352, which Impossible X alleged in prefiling correspondence had already occurred. Pet. App. at 71a. The court of appeals therefore correctly held that “[g]iven trademark law’s focus on trademark *use*, trademark usage is central in evaluating trademark *rights*.” *Id.* at 31a (citations omitted).

Moreover, and despite the Petition’s persistent hyperventilation on the issue,⁵ that holding is not the first one from a federal appellate court to recognize the basis proposition that the existence of trademark rights in the first instance and the inquiry into whether those rights have been violated are directly related to the use in commerce of a claimed mark. For example, in *CompuServe, Inc. v. Patterson*, 89 F.3d 1257 (6th Cir. 1996), the plaintiff responded to an accusation of trademark infringement by filing a declaratory judgment action in Ohio against the Texas-based defendant. In reversing the dismissal of the complaint for want of personal jurisdiction, the Sixth Circuit reached a holding of relatedness because “any common law trademark or trade name which [the defendant] might have in his product would arguably have been created in Ohio, and any violation of those alleged trademarks or trade names by [the plaintiff] would have occurred, at least in part, in Ohio.” *Id.* at 1267.

Simply put, trademark rights are fundamentally different from those under federal patent law. In contrast to a trademark claimant, a patentee need not practice the technology set forth in its patent to have

⁵ See, e.g., Pet. at 18 (“egregious”), 21 (“unmoor[ed]” and “barrels through . . . limits”), 22 (“ran roughshod”), 25 (“dystopian”).

protectable rights. See *Special Equip. Co. v. Coe*, 324 U.S. 370, 378–79 (1945) (“[F]ailure of the patentee to make use of a patented invention does not affect the validity of the patent.”). Moreover, the rights conferred by a patent are defined by the patent’s claims, exclusive of any other considerations, including the geographic markets within the United States served by the parties. See *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 373 (1996) (“The claim ‘define[s] the scope of a patent grant’” (alteration in original) (quoting 6 Ernest B. Lipscomb, *Walker on Patents* § 21:17, at 315–316 (3d ed. 1985))); *Hoechst-Roussel Pharms., Inc. v. Lehman*, 109 F.3d 756, 759 (Fed. Cir. 1997) (“[T]he claims define the patent owner’s property rights”). Because where and how the patentee may happen to operate is irrelevant to any cause of action it may assert against a defendant, the geographic locus of its “patent-building” rights is truly unrelated to any claims for infringement it might bring.

The Court therefore should reject Impossible X’s reliance on the Federal Circuit’s pre-*Ford* opinion in *Avocent Huntsville Corp. v. Aten International Co.*, 552 F.3d 1324 (Fed. Cir. 2008), which arose from a declaratory judgment action in a utility patent dispute. The issue in that case was whether the nonresident patentee’s transmittal of three demand letters into a forum subjected it to an exercise of specific personal jurisdiction there. The court answered that question in the negative, but only after noting that “[w]hat the patentee . . . uses . . . [in a forum] is of no real relevance to the enforcement or defense of a patent.” *Id.* at 1335. As the court of appeals in this case properly recognized, precisely the opposite is true where trademarks and service marks are concerned.

Pet. App. at 27a–29a. Not surprisingly, therefore, the *Avocent* court itself noted that its holding reflected “policy considerations unique to the patent context.” *Id.* at 1332 (quoting *Silent Drive, Inc. v. Strong Indus.*, 326 F.3d 1194, 1201 (Fed. Cir. 2003)).

Of equal significance, the Federal Circuit has more recently disavowed interpretations of *Avocent* and similar cases suggesting that it intended to adopt the inflexible bright-line rule Impossible X advances here. In *Apple Inc. v. Zipit Wireless, Inc.*, 30 F.4th 1368 (Fed. Cir. 2022), the court reversed the dismissal of Apple’s complaint against a declaratory judgment defendant who had left California four years before sending a series of demand letters to Apple and then filing and dismissing a patent infringement action in Georgia. Specific personal jurisdiction existed over the defendant in California despite the absence of any formal enforcement activities by it in that state. In so holding, the court observed that “the district court erred in reading our precedent as creating a bright-line rule that communications directed to ‘the attempted resolution’ of the parties’ dispute regarding the patents-in-suit trumps all other considerations of fairness and reasonableness.” *Id.* at 1378. It further explained:

Although some of our earlier precedent . . . suggests that there is such a bright-line rule, Supreme Court precedent . . . has made clear that jurisdictional inquiries cannot rest on such bright-line rules—there are no “talismanic jurisdictional formulas.” Rather, “the facts of each case must [always] be

weighed” in determining whether personal jurisdiction would comport with “fair play and substantial justice.”

Id. (third alteration in original) (citing, inter alia, *Avocent*, 552 F.3d at 1340) (quoting *Burger King*, 471 U.S. at 485, 485–86).

The court of appeals in this case recognized what Impossible X does not: “[E]ven in the patent context, it is not so clear that the Federal Circuit adheres to a rigid bright-line approach that considers only traditional enforcement activities as part of the ‘arising out of or related to’ inquiry.” Pet. App. at 26a–27a; see also *Genetic Veterinary Scis., Inc. v. LABOKLIN GmbH & Co. KG*, 933 F.3d 1302, 1312 (Fed. Cir. 2019) (rejecting proposition that *Avocent* created bright-line rule); *Jack Henry & Assocs. v. Plano Encryption Techs. LLC*, 910 F.3d 1199, 1203 (Fed. Cir. 2018) (“[O]ur decision in *Avocent* did not establish the generalization that [a] letter charging infringement can never provide specific jurisdiction.”). Just as the outcome of this case does not create a split between Ninth Circuit law and that of the other regional circuits and state courts of last resort, so too is it consistent with the Federal Circuit’s applications of patent law.

III. Impossible X’s Remaining Arguments Are Meritless

The throwaway nature of Impossible X’s thinly veiled suggestion that the Court should use this case as a vehicle for holding the Declaratory Judgment Act unconstitutional, Pet. at 26–27, should not obscure the radical nature of that suggestion. The Court addressed and confirmed the Act’s constitutional validity as long ago as its decision in *Aetna Life Insurance Co. of Hartford, Conn. v. Haworth*, 300 U.S. 227, 240

(1937), and the Petition offers no reason to revisit it, much less a compelling one. Especially because Impossible X neither cross-appealed the district court's finding of an actionable case and controversy, Pet. App. at 72a–75a, nor briefed that issue before the court of appeals, the Court should decline to take it up under the auspices of the Petition's two actual questions presented.

The Court also should disregard Impossible X's persistent reliance on its putatively small operations and single individual owner. *See* Pet. at 23, 25, 27. Although the Ford Motor Company may have “global” operations, 592 U.S. at 355, this Court's holding that it was subject to exercises of personal jurisdiction in Montana and Minnesota was not linked to Ford's overall size. Instead, the Court ultimately held those exercises appropriate because “Ford had systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States.” *Id.* at 365. Impossible X may not be the same size as Ford, but, in contrast to Ford's sale of other vehicles not at issue in the case before this Court, all of Impossible X's activities in California, past or present, have occurred in connection with that company's versions of the IMPOSSIBLE mark. The scale of those activities therefore is not dispositive, as all of them relate to Impossible Foods' request for declaratory relief.

CONCLUSION

For the reasons set forth above, Impossible Foods requests the Court to deny the Petition.

Respectfully submitted,

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