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Filing date: **07/22/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91199706
Party	Defendant Lorillard Licensing Company, LLC
Correspondence Address	HOWARD A MACCORD JR. MACCORD MASON PLLC 300 N GREENE STREET, 1600 WACHOVIA TOWER GREENSBORO, NC 27401 UNITED STATES dcottelli@maccordmason.com
Submission	Motion to Suspend for Civil Action
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Signature	/James L. Lester/
Date	07/22/2011
Attachments	M to Suspend.pdf (3 pages)(9356 bytes) Brief iso M to Suspend.pdf (7 pages)(20407 bytes) Lorillard vs. RJRT - COMPLAINT-c.pdf (19 pages)(3140460 bytes) Lorillard vs. RJRT - ANSWER and COUNTERCLAIM-c.pdf (21 pages)(731519 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matters of: Application Serial No. 85/111,881 for the mark SMOKING PLEASURE;

Application Serial No. 85/111,876 for the mark SMOKING PLEASURE WITHOUT MENTHOL; and

Application Serial No. 85/095,824 for the mark NON-MENTHOL PLEASURE

<hr/>)	
R.J. REYNOLDS TOBACCO COMPANY)	
)	
Opposer,)	Opposition No. <u>91199706</u>
)	
v.)	
)	
LORILLARD LICENSING COMPANY, LLC,)	
Applicant.)	
)	
<hr/>)	

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

MOTION TO SUSPEND

Applicant, Lorillard Licensing Company LLC (hereinafter “Lorillard), by and through counsel, hereby moves to suspend proceedings pursuant to 37 C.F.R. § 2.117(a). The parties herein are engaged in a civil action in the North Carolina Business Court (Docket No. 10 CVS 11471), and the determination of that action is likely to have a bearing on the present case.

WHEREFORE, Applicant respectfully requests this proceeding be suspended until termination of the civil action. A brief in support of this motion is submitted herewith.

This 22nd day of July 2011.

Respectfully submitted,

/s/ James L. Lester

James L. Lester (Reg. No. 38,721)

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Counsel for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on counsel for Opposer via First Class Mail, postage prepaid, and via e-mail, pursuant to an agreement between counsel, on July 22, 2011.

/s/ James L. Lester _____
James L. Lester

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matters of: Application Serial No. 85/111,881 for the mark SMOKING PLEASURE;

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R.J. REYNOLDS TOBACCO COMPANY)	
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Applicant.)	
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Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

**BRIEF IN SUPPORT OF APPLICANT'S MOTION FOR SUSPENSION OF
OPPOSITION**

Applicant, Lorillard Licensing Company LLC (hereinafter "Lorillard), by and through counsel, submits this Brief in support of Applicant's Motion for Suspension of Opposition pursuant to 37 C. F. R. § 2.117(a). A civil action involving the parties to this Opposition is currently pending before the North Carolina Business Court (Docket No. 10 CVS 11471) and the determination of that action will have a bearing on the present case before the Trademark Trial and Appeal Board (hereinafter "the Board"). A suspension is requested pending the final determination of the pending civil action.

I. BACKGROUND

A. The Action Before the Board

R.J. Reynolds Tobacco Company (hereinafter "Reynolds" or "Opposer") has opposed the registration of three trademark applications filed by Lorillard for the marks "SMOKING PLEASURE," "SMOKING PLEASURE WITHOUT MENTHOL," and "NON-MENTHOL PLEASURE!" (hereinafter collectively "the Applications"). Reynolds claims that it has "a right equal with Lorillard" to use the composite phrases "smoking pleasure," "smoking pleasure without menthol" and "non-menthol pleasure" in conjunction with Reynolds' offering and sale of its cigarette products (Notice of Opp., ¶¶ 10, 15 and 20). Opposer also claims that the word PLEASURE is descriptive when used in the composite phrases in dispute (Notice of Opp., ¶¶ 9, 14 and 19).

B. History of the PLEASURE Dispute

Lorillard Tobacco Company has been engaged in the business of manufacturing and selling tobacco products, including NEWPORT brand cigarettes, for decades. Lorillard has for many years used the term PLEASURE and the imagery it connotes as a marketing platform for its NEWPORT brand cigarettes. Lorillard has expended substantial resources over the years to associate the term PLEASURE with its NEWPORT brand. During this time, NEWPORT cigarettes became the No. 1 selling menthol brand in the U.S. and the No. 2 selling brand overall in the cigarette category.

Reynolds is also engaged in the business of manufacturing and selling tobacco products in direct competition with Lorillard Tobacco Company, including CAMEL brand cigarettes and snus (a smokeless, spitless tobacco product). Prior to July 16, 2009 Lorillard was involved in a dispute with Reynolds over the use of the term PLEASURE in advertising, promoting and

marketing tobacco products. The dispute included an Opposition (No. 9117225) filed by Reynolds against Lorillard's application to register the PLEASURE mark.

On July 16, 2009, Lorillard and Reynolds entered into a Settlement Agreement concerning the use of PLEASURE for the advertising, promoting and marketing of tobacco products. Pursuant to the Settlement Agreement, Reynolds withdrew its opposition to Lorillard's application for federal registration of the term PLEASURE as a trademark for cigarettes on the Principal Register. Reynolds further agreed not to use the term PLEASURE alone or in a composite mark "in a way that creates a commercial impression in the term PLEASURE separate and apart from such composite phrase" (Exhibit A, p. 4, ¶¶ 17-18).

C. The Pending Civil Action

On 5 November 2010, Lorillard filed a Complaint in the North Carolina Business Court (Exhibit A) claiming that Reynolds is violating the Settlement Agreement by, among other things, emphasizing the term PLEASURE in point-of-sale advertising displays for its Camel brand snus product and in certain websites (the "Civil Action").

On 10 January 2011, Reynolds filed an Answer and Counterclaim (Exhibit B). As one of its defenses, Reynolds claims that the term PLEASURE is descriptive when used in connection with cigarettes (Ex. B, p. 6, Aff. Defense No. 6). In its declaratory judgment counterclaim, Reynolds asserts that "there is a genuine, justiciable controversy between RJRT and Lorillard as to whether RJRT's use of the word 'pleasure' in the phrases and contexts identified in Paragraphs 26-28 above constitute a breach of the Settlement Agreement." (Ex. B, p. 16, Counterclaim ¶ 32). Those phrases and contexts include the marks UNMATCHED PLEASURE, PLEASURE TO CARRY ON, and PICK YOUR PLEASURE, as well as the Internet domains

tobaccopleasure.com and subdomains associating Reynolds' brand names with tobaccopleasure.com (e.g., camel.tobaccopleasure.com)(Ex. B, pp. 14-15, ¶¶ 26-28).

II. ARGUMENT

A. Legal Standard for Suspension of Proceedings

The Board has the inherent power to stay proceedings pending the outcome of parallel court actions. The TMBP states that "[o]rdinarily, the Board will suspend proceedings in the case before it if the final determination of the other proceeding may have a bearing on the issues before the Board." (TBMP) 3rd ed. §510.01 (May 2011). 37 C. F. R. § 2.117(a) states that:

Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.

Actions for which the Board may suspend a Board proceeding include civil actions pending between the parties in a state court. *Mother's Restaurant Inc. v. Mama's Pizza, Inc.*, 723 F.2d 1566, 221 USPQ 394 (Fed.Cir. 1983). The Board suspended proceedings pending the final determination of a Federal civil suit in *Tokaido v. Honda Associates Inc.*, 179 USPQ 861 (TTAB 1973). In *Tokaido*, the Board reviewed the complaint and found that "the outcome of the civil suit may well be dispositive of the issues raised by the pleadings of the parties in the cancellation proceeding before the Board." *Id.* at 862. Based on this finding, the cancellation was suspended. *Accord, Whopper-Burger, Inc. v. Burger King Corp.*, 171 USPQ 805 (TTAB 1971). In *The Other Telephone Co. v. Connecticut National Telephone Co.*, 181 USPQ 125 (TTAB 1974), the Board granted a suspension pending the outcome of a civil action, holding that "[t]he only question for determination, therefore, is whether the outcome of the civil action will have a bearing on the issues involved in the opposition proceeding." *Id.* at 126.

B. The Issues in the Civil Action Will Have a Bearing on this Dispute

The parties in the Opposition and in the Civil Action are identical. The Civil Action includes the issues of (1) the scope of Reynolds' right to use the term PLEASURE in composite marks and (2) whether the word PLEASURE is descriptive for tobacco products. Both of these issues are central to the determination of this Opposition.

1. Reynolds' Right to Use PLEASURE in Composite Marks

Both the Civil Action and this Opposition involve the right of Reynolds to use the term PLEASURE in composite marks. If the Court holds that Reynolds' right to use the term PLEASURE in composite marks is limited, then Reynolds would not have standing to contest the Applications. The outcome of the Civil Action should clarify the meaning of the Settlement Agreement term that prohibits Reynolds from using a composite mark containing PLEASURE "in a way that creates a commercial impression in the term PLEASURE separate and apart from such composite phrase." This issue is critical to a determination of the allegation in Paragraphs 10, 15 and 20 of the Notice of Opposition that Reynolds has "an equal right" to the composite marks in the Applications.

The Board granted a suspension under similar circumstances in *Argo & Co. v. Carpetsheen Manufacturing, Inc.*, 187 USPQ 366 (TTAB 1975). In *Argo*, applicant Carpetsheen was involved in a state court action to determine ownership of the mark, which affected its right to file the application. The opposer in that dispute was not a party in the civil action, but the Board held that the state court decision regarding ownership of the mark could have implications affecting the outcome of the opposition before the Board, and therefore suspended the opposition.

2. Descriptiveness of the Term PLEASURE for Cigarettes

In its Counterclaim in the Civil Action, Reynolds asserts that the term PLEASURE is descriptive when used in connection with cigarettes. In this Opposition, Reynolds claims that Lorillard's composite marks including the term PLEASURE are descriptive for cigarettes. The determination in the Civil Action whether the word PLEASURE is descriptive for cigarettes, which will necessarily involve the issue of whether Lorillard has obtained secondary meaning based on its longstanding use of the mark, will have a direct bearing on the Opposition.

In *Professional Economics v. Professional Economic Services*, 205 USPQ 368 (TTAB 1979), the Board cited a Massachusetts state court's determination that the petitioner in a cancellation proceeding had been using the mark continuously since a time prior to the adoption and use of registrant's mark and that the registrant's use of the mark had caused confusion. In this case, it is likely that the determination in the Civil Action will have a bearing on the issue of whether the composite marks incorporating the word PLEASURE are descriptive and lack secondary meaning, as alleged in Paragraphs 9, 14 and 19 of the Notice of Opposition.

III. CONCLUSION

Applicant respectfully requests that the Board suspend this Opposition until the final determination of the pending Civil Action and reset the dates of all pending deadlines after the Civil Action has been terminated.

Respectfully submitted,

/s/ James L. Lester
James L. Lester (Reg. No. 38,721)
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Counsel for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on counsel for Opposer via First Class Mail, postage prepaid, and via e-mail, pursuant to an agreement between counsel, on July 22, 2011.

/s/ James L. Lester _____
James L. Lester

STATE OF NORTH CAROLINA

COUNTY OF FORSYTH

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

10 CvS 11471

LORILLARD TOBACCO COMPANY and
LORILLARD LICENSING COMPANY
LLC,

Plaintiffs,

vs.

COMPLAINT

R.J. REYNOLDS TOBACCO COMPANY,

Defendant.

Plaintiffs Lorillard Tobacco Company and Lorillard Licensing Company, LLC (collectively "Lorillard"), complaining of the defendant, R.J. Reynolds Tobacco Company ("RJRT"), aver as follows:

NATURE OF THE CASE

1. This is an action for breach of contract, specifically breach of a Settlement Agreement, related common law unfair competition and unfair and deceptive trade practices under N.C.G.S. § 75-1.1, including acts using the Internet.

PARTIES, JURISDICTION & VENUE

2. Lorillard Tobacco Company is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business at 714 Green Valley Road, Greensboro, North Carolina 27420.

3. Lorillard Licensing Company, LLC, is a limited liability corporation organized and existing under the laws of the State of North Carolina, with a place of business at 1601 Wachovia Tower, 300 North Greene Street, Greensboro, North Carolina. 27420.

4. Upon information and belief, RJRT is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business at 401 North Main St., Winston-Salem, North Carolina 27102.

5. This Court has personal jurisdiction over RJRT pursuant to N.C.G.S. § 1-75.4 because it is a North Carolina corporation and is engaged in substantial activity within this state.

6. Venue is proper in this Court pursuant to N.C.G.S. § 7A-45.4 because this is a complex business case that involves a material issue related to state unfair competition and the Internet.

7. Lorillard Tobacco Company is engaged in the business of manufacturing and selling tobacco products, including NEWPORT brand cigarettes.

8. Lorillard Licensing Company, LLC, is the owner of all relevant trademark and trade dress rights associated with the NEWPORT brand cigarette.

9. RJRT is engaged in the business of manufacturing and selling tobacco products in direct competition with Lorillard Tobacco Company, including CAMEL brand cigarettes. RJRT also sells CAMEL brand snus, a smokeless tobacco product.

BACKGROUND

10. Lorillard has for many years used the term PLEASURE and the imagery it connotes as a marketing platform for its NEWPORT brand cigarettes. 

11. Lorillard has expended and continues to expend substantial resources over the years to associate the term PLEASURE with its NEWPORT brand in advertisements and various promotions. Samples of NEWPORT advertisements featuring PLEASURE are appended as Exhibits 1 through 5. In that time, NEWPORT cigarettes became the No. 1 selling menthol brand in the U.S. and the No. 2 selling brand overall in the cigarette category.

12. Since prior to the acts of RJRT complained-of herein, Lorillard has been associating the term PLEASURE with its NEWPORT brand name as a domain name to advertise and promote its NEWPORT brand cigarettes on the Internet. Lorillard also owns domain names that associate the term PLEASURE with other words. Set out below is a representative, but not exhaustive, list of the aforesaid domain names:

smoking-pleasure.com	newportpleasurestakes.com
smokingpleasure.com	pleasuresurvey.com
newport-pleasure.com	smokingpleasure.net
newport-pleasuresweeps.com	newportpleasure.org
newportpleasure.tel	newportpleasuredraw.tel
newportpleasures-pack.com	newportpleasures-retail.com
newportpleasures.com	newportpleasures.net
newportpleasurescene.com	

13. Prior to July 16, 2009, Lorillard had been involved in a dispute with RJRT concerning use of the term PLEASURE in advertising, promoting and marketing tobacco products, which included *inter parties* proceedings in the U.S. Patent and Trademark Office (“USPTO”).

14. Effective as of July 16, 2009, Lorillard and RJRT entered into a Settlement Agreement. Lorillard believed the Settlement Agreement had finally resolved the aforesaid dispute.

15. Pursuant to the Settlement Agreement, RJRT withdrew its opposition to Lorillard's application for federal registration of the term PLEASURE as a trademark for cigarettes on the Principal Register.

16. The Settlement Agreement prohibits RJRT from using "the term PLEASURE alone in the advertising or promotion of any tobacco product, or in any manner creating a commercial impression associating the term PLEASURE alone with the brand name of a tobacco product."

17. The Settlement Agreement specifies that "by 'the term PLEASURE alone,' the Parties mean that RJRT will only use the term PLEASURE as part of a composite phrase and not in a way that creates a commercial impression in the term PLEASURE separate and apart from such composite phrase."

18. The Settlement Agreement further states: "By way of example, RJRT will not significantly distinguish the term PLEASURE from other words in a composite phrase in a way that makes the term PLEASURE significantly more prominent than the other words in the composite phrase."

19. Unbeknownst to Lorillard, RJRT registered tobaccopleasure.com as an Internet domain name in or about October 2007.

20. In or prior to April 2010, RJRT began using the aforesaid domain name and the following sub-domain names as URL Internet addresses for websites promoting its tobacco products:

- camel.tobaccopleasure.com
- dissolvables.tobaccopleasure.com
- snus.tobaccopleasure.com

13

9

- pallmall.tobaccopleasure.com
- winston.tobaccopleasure.com
- saalem.tobaccopleasure.com
- kool.tobaccopleasure.com
- eclipse.tobaccopleasure.com
- doral.tobaccopleasure.com

21. RJRT did not inform Lorillard during the settlement discussions that it had registered the domain name tobaccopleasure.com, or that it planned to use "tobaccopleasure" in direct association with its tobacco product brand names as Internet URL addresses for websites promoting its tobacco products. 2

22. In or prior to August 2010, RJRT began using the term PLEASURE as the marketing platform for its CAMEL brand snus products, as shown below.



23. In or prior to August, 2010, RJRT began emphasizing the term PLEASURE in point-of-sale advertising displays for its snus product.

COUNT I

BREACH OF CONTRACT

24. Lorillard repeats and incorporates herein by reference the allegations of paragraphs 1-23 above as if set forth here in full.

25. RJRT's uses of the term PLEASURE as set forth in ¶¶ 19, 20, 22 and 23 above constitute breaches of the Settlement Agreement between it and Lorillard.

26. Upon information and belief, RJRT's aforesaid breaches of the Settlement Agreement were deliberate and willful.

27. Lorillard has been in full performance of its duties and obligations under the Settlement Agreement and stands ready, willing and able to continue to perform under the Agreement.

28. As a result of the aforesaid breaches, Lorillard has been irreparably damaged.

29. Upon information and belief, unless the Settlement Agreement is specifically enforced by order of this Court and the acts complained-of herein are enjoined, RJRT will continue to violate the Settlement Agreement through prohibited use of the term PLEASURE to Lorillard's irreparable harm.

30. Lorillard has no adequate remedy at law.

31. Lorillard has been damaged in an amount in excess of \$10,000 as a result of the conduct complained of herein.

COUNT II

UNFAIR COMPETITION (COMMON LAW)

32. Lorillard repeats and incorporates herein by reference the allegations of paragraphs 1-31 above as if set forth here in full.

33. Through the expenditure of considerable time, money, and labor, Lorillard has earned a commercial advantage in marketing its NEWPORT cigarettes through use of the term PLEASURE.

34. RJRT's uses of the term PLEASURE set forth in ¶¶ 19, 20, 22 and 23 above constitute unfair competition in that they are calculated to misappropriate Lorillard's commercial competitive advantage. By using the term PLEASURE as aforesaid, RJRT is taking unfair advantage of the good will that Lorillard has built up and earned in the term PLEASURE as a marketing platform for its NEWPORT brand cigarettes through extensive advertising and promotions via the Internet and other media. Exhibit 1.

35. RJRT's uses of the term PLEASURE set forth in ¶¶ 19, 20, 22 and 23 above are likely to cause confusion, mistake or deception of the public.

36. Upon information and belief, RJRT's actions described above have been carried out knowingly and willfully.

37. As a direct and proximate result of RJRT's acts set forth in ¶¶ 19, 20, 22 and 23 above, Lorillard has been irreparably harmed and, unless the said acts are enjoined, Lorillard will continue to be irreparably harmed.

38. Lorillard has no adequate remedy at law.

39. Lorillard has been damaged in an amount in excess of \$10,000 as a result of the conduct complained of herein.

COUNT III

UNFAIR AND DECEPTIVE TRADE PRACTICES (N.C.G.S. § 75-1.1)

40. Lorillard repeats and incorporates herein by reference the allegations of paragraphs 1-39 above as if set forth here in full.

41. RJRT's uses of the term PLEASURE set forth in ¶¶ 19, 20, 22 and 23 above constitute unfair and deceptive trade practices through use of the Internet and otherwise in violation of N.C.G.S. § 75-1.1.

42. Lorillard has been damaged in an amount in excess of \$10,000 as a result of the conduct complained of herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Lorillard Tobacco Company and Lorillard Licensing Company, LLC, pray for relief as follows:

1. For an order of specific performance and injunction directing RJRT to fully comply with the prohibitions of the Settlement Agreement and to immediately cease and desist from unfair competition, including all uses of the term PLEASURE complained-of herein.
2. For an award of compensatory damages.
3. For an award of treble damages pursuant to G.S. § 75-16.
4. For an award of attorney fees and costs.
5. For such other and further relief as the Court deems just and proper.

This the 5th day of November 2010,

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HUMPHREY & LEONARD, LLP

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Jim W. Phillips, Jr.

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By: Harvey Marcus

Harry C. Marcus, *pro hac pending*
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ATTORNEYS FOR PLAINTIFFS,
LORILLARD TOBACCO COMPANY AND LORILLARD
LICENSING COMPANY, LLC

EXHIBIT 1

Newport

pleasure!


MENTHOL BOX

© 1995 Philip Morris Inc. All rights reserved. Newport, Menthol, and Newport Menthol are trademarks of Philip Morris Inc. Newport is a registered trademark of Philip Morris Inc. in the U.S. and other countries.

Box: 19 mg. "tar," 1.1 mg. nicotine av. per cigarette by FTC method.

**SURGEON GENERAL'S WARNING: Cigarette
Smoke Contains Carbon Monoxide.**

NP-995-0
15984

SPECIAL OFFER

\$

Not In Combination With Other Offers. MANUFACTURER'S PROMOTION AND COST. WHILE SUPPLIES LAST. LIMIT 2 CARTONS PER CUSTOMER.

E

EXHIBIT 2



SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.

NEWPORT:
PLEASURE!
FIRE IT UP!
 PMS 021 WITH
 SOLID BLACK
 OUTLINE AND
 DROP SHADOW

BACKGROUND:
 PMS 384

**SPINNAKER
 BACKGROUND:**
 50% PMS 384

ART:
 4/C

COPYRIGHT:
 BLACK TYPE
 © LOEBLARD 1999
 4

WARNING:
 BLACK TYPE
 AND RULE IN
 WHITE PANEL
 OUTSIDE EDGE
 OF BLACK
 RULE BUTTS TO
 MATCH BACK-
 GROUND WITH
 NO GAPS

**TALL
 BLACK TYPE**
 Size: 16 mg. "tar"
 1.2 mg. nicotine av.
 per cigarette by
 FTC method.

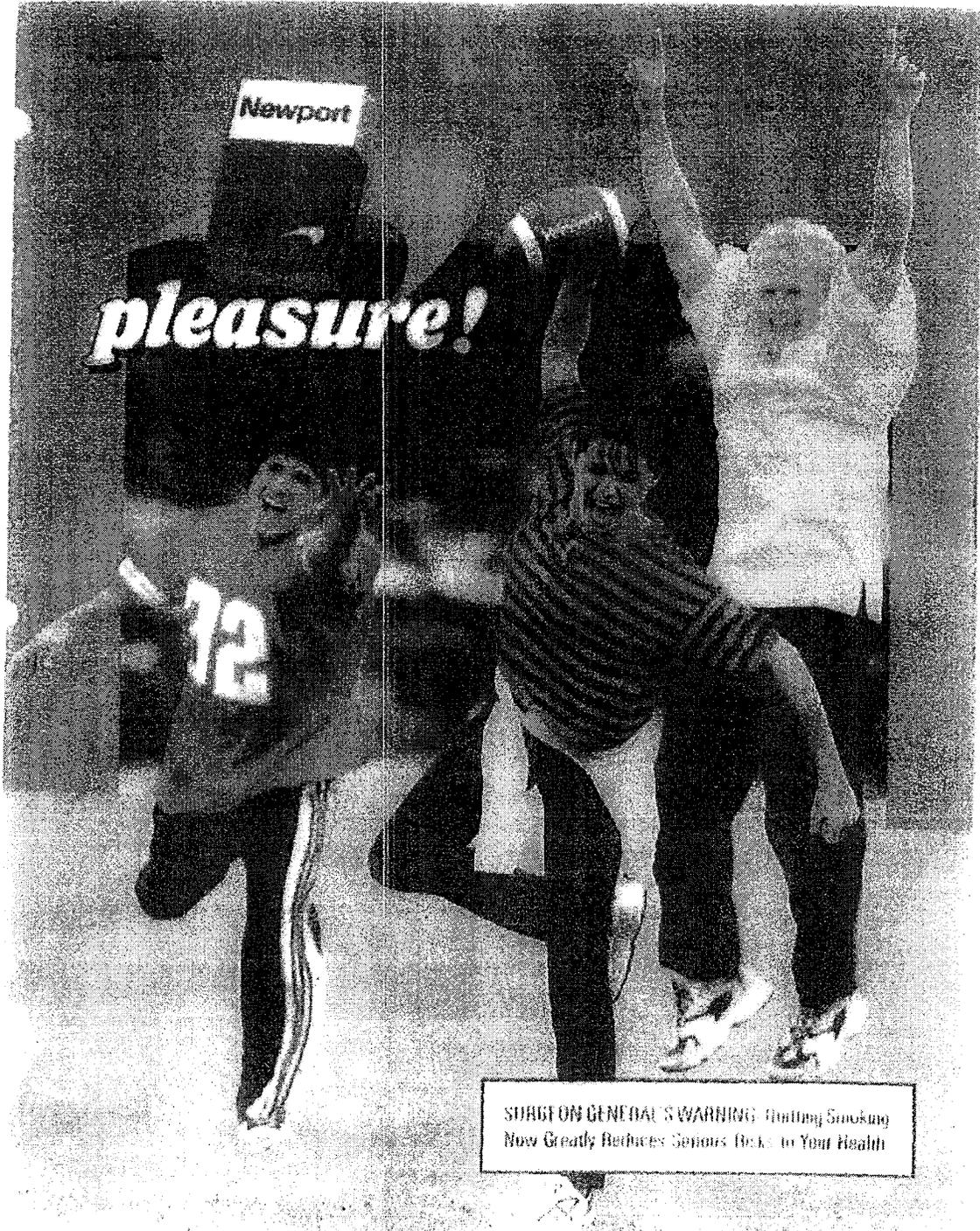
THIS JOB MUST BE DIE CUT TO SIZE. BLEED, DIE CUT AND SAFETY LINES DO NOT PRINT.

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FINAL DATA
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07508599

EXHIBIT 3



pleasure!

Newport

SURGEON GENERAL'S WARNING: Quitting Smoking
Now Greatly Reduces Serious Risks to Your Health

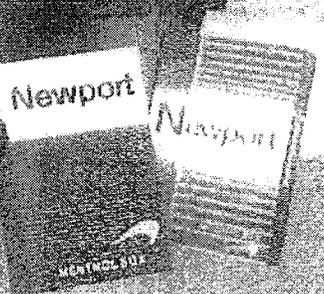
P 12701 000302

EXHIBIT 4



Newport

pleasure!

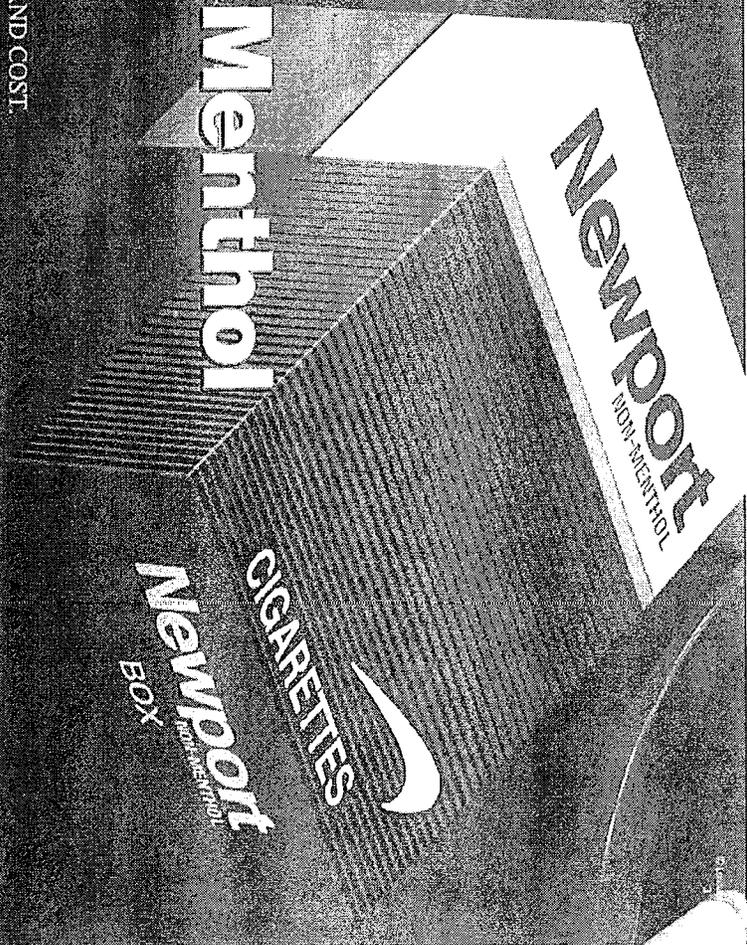


SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy

R 1RT01-000321

EXHIBIT 5

Pleasure tastes great in Real New Newport Non-Menthol



SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy.

CIGARETTES

Newport® Menthol, Newport® Lights and Newport® Lights menthol are trademarks of Philip Morris Inc. Newport® is a registered trademark of Philip Morris Inc. ©1997 Philip Morris Inc.

MANUFACTURERS PROMOTION AND COST.

NORTH CAROLINA
COUNTY OF GUILFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
2010 CVS 11471

LORILLARD TOBACCO COMPANY and
LORILLARD LICENSING COMPANY,
LLC,

Plaintiffs,

v.

R.J. REYNOLDS TOBACCO COMPANY,

Defendant.

ANSWER and COUNTERCLAIM

ANSWER

Defendant R.J. Reynolds Tobacco Company (“RJRT”), by and through counsel, and for its Answer to the Complaint of Plaintiffs Lorillard Tobacco Company and Lorillard Licensing Company, LLC (collectively, “Lorillard”), alleges and says as follows:

NATURE OF THE CASE

1. The Complaint speaks for itself and is the best evidence of its contents. RJRT denies any allegations contained in paragraph 1 inconsistent with the Complaint.

PARTIES, JURISDICTION & VENUE

2. RJRT admits upon information and belief the allegations contained in paragraph 2.

3. RJRT admits upon information and belief the allegations contained in paragraph 3.

4. RJRT admits the allegations contained in paragraph 4.

5. RJRT admits the allegations contained in paragraph 5.

6. RJRT admits that, based on the allegations contained in the Complaint, this is a mandatory complex business case and, therefore, venue is proper in the North Carolina Business Court. RJRT denies the allegations contained in paragraph 6 to the extent not specifically admitted.

7. RJRT admits upon information and belief the allegations contained in paragraph 7.

8. RJRT admits that Lorillard Licensing Company, LLC, owns the trademark “NEWPORT” for use on cigarettes. RJRT denies the allegations contained in paragraph 8 to the extent not specifically admitted.

9. RJRT admits the allegations contained in paragraph 9.

BACKGROUND

10. RJRT admits that Lorillard has for some time used the word “pleasure” in advertisements for its NEWPORT brand cigarettes. RJRT denies the allegations contained in paragraph 10 to the extent not specifically admitted.

11. RJRT lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 11, and therefore denies same.

12. RJRT lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 12, and therefore denies same.

13. RJRT admits the allegations contained in paragraph 13.

14. RJRT admits that effective as of July 16, 2009, Lorillard and RJRT entered into a Settlement Agreement. RJRT lacks knowledge or information sufficient to form a

belief as to the truth or falsity of the remaining allegations contained in paragraph 14, and therefore denies same.

15. RJRT admits the allegations contained in paragraph 15.

16. The Settlement Agreement speaks for itself and is the best evidence of its contents. RJRT denies any allegations contained in paragraph 16 inconsistent with the Settlement Agreement.

17. The Settlement Agreement speaks for itself and is the best evidence of its contents. RJRT denies any allegations contained in paragraph 17 inconsistent with the Settlement Agreement.

18. The Settlement Agreement speaks for itself and is the best evidence of its contents. RJRT denies any allegations contained in paragraph 18 inconsistent with the Settlement Agreement.

19. RJRT lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 19, and therefore denies same.

20. RJRT admits that it publically registered the domain and/or sub-domain names as Internet addresses for RJRT websites and that those names were thereafter addresses for RJRT tobacco product websites. RJRT denies the allegations contained in paragraph 20 to the extent not specifically admitted.

21. Seeking admissions for evidentiary purposes concerning the content of settlement discussions is improper. RJRT denies the allegations contained in paragraph 21 to the extent not specifically admitted.

22. RJRT denies the allegations contained in paragraph 22.

23. RJRT denies the allegations contained in paragraph 23.

COUNT I

BREACH OF CONTRACT

24. RJRT incorporates by reference the responses contained in the preceding paragraphs 1 through 23 as though fully set forth herein.

25. RJRT denies the allegations contained in paragraph 25.

26. RJRT denies the allegations contained in paragraph 26.

27. RJRT denies the allegations contained in paragraph 27.

28. RJRT denies the allegations contained in paragraph 28.

29. RJRT denies the allegations contained in paragraph 29.

30. RJRT denies the allegations contained in paragraph 30.

31. RJRT denies the allegations contained in paragraph 31.

COUNT II

UNFAIR COMPETITION (COMMON LAW)

32. RJRT incorporates by reference the responses contained in the preceding paragraphs 1 through 31 as though fully set forth herein.

33. RJRT denies the allegations contained in paragraph 33.

34. RJRT denies the allegations contained in paragraph 34.

35. RJRT denies the allegations contained in paragraph 35.

36. RJRT denies the allegations contained in paragraph 36.

37. RJRT denies the allegations contained in paragraph 37.

38. RJRT denies the allegations contained in paragraph 38.

39. RJRT denies the allegations contained in paragraph 39.

COUNT III

UNFAIR AND DECEPTIVE TRADE PRACTICES (N.C.G.S. § 75-1.1)

40. RJRT incorporates by reference the responses contained in the preceding paragraphs 1 through 39 as though fully set forth herein.

41. RJRT denies the allegations contained in paragraph 41.

42. RJRT denies the allegations contained in paragraph 42.

AFFIRMATIVE DEFENSES

1. To the extent that any claim alleged by Lorillard is premised on RJRT's use of the word "pleasure" prior to July 16, 2009, such claim is barred, in whole or in part, by the doctrine of settlement and release.

2. Lorillard is barred under the doctrine of settlement and release from asserting its rights under any registration issuing from the Lorillard PLEASURE Application, or any other alleged federal or state statutory or common law rights in the term PLEASURE alone, against the use by RJRT of any permitted composite phrase incorporating the term PLEASURE.

3. Lorillard has waived and is estopped from asserting its rights under any registration issuing from the Lorillard PLEASURE Application, or any other alleged federal or state statutory or common law rights in the term PLEASURE alone, against the use by RJRT of any permitted composite phrase incorporating the term PLEASURE.

4. Lorillard's claim for Breach of Contract is barred, in whole or in part, by the doctrine of first breach.

5. Lorillard's claims for Unfair Competition and Unfair and Deceptive Trade Practices are barred by the Settlement Agreement because RJRT's uses of the word "pleasure" complies with the negotiated terms of the Settlement Agreement.

6. Lorillard's claims for Unfair Competition and Unfair and Deceptive Trade Practices fail because the term PLEASURE is a generic or generically descriptive word that has not attained a secondary meaning associated with Lorillard or its products or through which Lorillard has acquired a commercial advantage.

7. Lorillard's claims for Unfair Competition and Unfair and Deceptive Trade Practices fail because RJRT has not attempted to palm off its products as those of Lorillard, RJRT's use of the word "pleasure" did not deceive or tend to deceive the public, and RJRT has used and is using the word "pleasure" in such a way that adequately shows that RJRT's use is not intended to refer to Lorillard's tobacco products.

8. Lorillard has failed to mitigate its damages.

9. Lorillard has not been injured or damaged to the extent alleged.

10. Lorillard's Complaint is barred by the doctrine of unclean hands in seeking to gain advantage from a wrong caused by its own actions.

11. Lorillard is not entitled to recover attorneys fees and costs because RJRT has not willfully engaged in any wrongful act or practice and has not made an unwarranted refusal to resolve the matter which constitutes the basis of this suit.

12. RJRT intends to rely upon all other applicable defenses as may become apparent during discovery in this action and reserves the right to amend its Answer accordingly.

COUNTERCLAIM

Defendant R.J. Reynolds Tobacco Company (“RJRT”), by and through counsel, hereby complains of Plaintiffs Lorillard Tobacco Company and Lorillard Licensing Company, LLC (collectively, “Lorillard”) and alleges as follows:

Introduction

1. This dispute arises out of Lorillard’s assertion that it owns *exclusive* rights, under state and federal law, to use the word “pleasure” in connection with promoting tobacco products. In 2005, Lorillard applied to the United States Patent and Trademark Office (the “USPTO”) to register the word “pleasure” as a trademark for use in connection with its cigarette products. RJRT opposed Lorillard’s application primarily on the grounds that RJRT, Lorillard, and other cigarette manufactures had for decades used the descriptive word “pleasure” in connection with promoting tobacco products.

2. In 2007, Reynolds Innovations Inc. (“RII”), a trademark holding company and subsidiary of RJRT, applied to the USPTO to register certain phrases that included the word “pleasure” as trademarks for use in connection with smokeless tobacco. Lorillard subsequently opposed RII’s trademark applications.

3. To resolve their disputes before the USPTO, Lorillard and RJRT (defined to include RII) entered into a Settlement Agreement effective July 16, 2009. Therein, the parties agreed, *inter alia*, that RJRT would not use the term PLEASURE alone, but could “use the term PLEASURE as part of a composite phrase and not in a way that creates a commercial impression in the term PLEASURE separate and apart from such composite phrase.” Lorillard agreed, *inter alia*, not to assert “its rights under any registration issuing

from the Lorillard PLEASURE Application, or any other alleged federal or state statutory or common law rights in the term PLEASURE alone . . . against: (a) the use by RJRT of any permitted composite phrase incorporating the term PLEASURE. . . .”

4. Despite the terms of Settlement Agreement between the parties, Lorillard has now sued RJRT for its uses of the word “pleasure” in composite phrases in marketing its snus smokeless tobacco product. By these counterclaims, RJRT seeks a declaratory judgment that its uses of the word “pleasure” in its marketing materials is not a breach of the parties’ Settlement Agreement. RJRT also brings counterclaims against Lorillard for breach of the Settlement Agreement and unfair and deceptive trade practices for wrongfully and maliciously seeking to prevent RJRT from fairly competing with Lorillard and from exercising RJRT’s rights under the Settlement Agreement to use the word “pleasure” in composite phrases.

Parties

5. RJRT is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business at 401 North Main Street, Winston-Salem, North Carolina 27102. RJRT is engaged in the business of manufacturing and selling tobacco products, including CAMEL brand cigarettes and CAMEL brand snus, a smokeless tobacco product.

6. Upon information and belief, Lorillard Tobacco Company is a corporation organized and existing under the laws of the State of North Carolina, with its principal place of business at 714 Green Valley Road, Greensboro, North Carolina 27420. Lorillard

Tobacco Company is engaged in the business of manufacturing and selling tobacco products, including NEWPORT brand cigarettes.

7. Upon information and belief, Lorillard Licensing Company, LLC, is a limited liability corporation organized and existing under the laws of the State of North Carolina, with a place of business at 1601 Wachovia Tower, 300 North Greene Street, Greensboro, North Carolina 27420. Upon information and belief, Lorillard Licensing Company, LLC is the owner of all relevant trademark and trade dress rights associated with the NEWPORT brand cigarettes.

Jurisdiction and Venue

8. This Court has personal jurisdiction over Lorillard Tobacco Company and Lorillard Licensing Company, LLC pursuant to N.C.G.S § 1-75.4 because they are North Carolina legal entities engaged in substantial activities within this state.

9. Venue is proper in this Court pursuant to N.C.G.S. § 7A-45.4 because this is a complex business case in which Lorillard has raised claims relating to state unfair competition and use of the Internet.

Allegations Common to All Counts

10. Every major player in the tobacco industry has made widespread use of the descriptive word “pleasure” in connection with promoting tobacco products, either in advertising copy or as a part of slogans. The use of “pleasure” by the tobacco industry dates back decades. For example, in 1926, American Tobacco began using the word “pleasure” prominently in such slogans as “Don’t delay the pleasure of smoking” and “That’s your pleasure – your protection” to promote its LUCKY STRIKE cigarettes. For the next 80

years, RJRT, Brown & Williamson (now part of RJRT), Philip Morris (now Altria), American Tobacco, Liggett, and Lorillard all have used, at some point in time and often contemporaneously with one another, the word “pleasure” in advertising for tobacco products.

11. Lorillard began its attempt to secure exclusive trademark rights in the word “pleasure” around March 2005, when it opposed a third-party’s application to the USPTO to register the phrase “Real Smoking Pleasure” for tobacco and related products. Lorillard contended that “Real Smoking Pleasure” was confusingly similar to Lorillard’s alleged “family” of “pleasure” trademarks.

12. In April 2005, RJRT received a letter from Hanna Hasl-Kelchner, Lorillard’s Associate General Counsel. In that letter, Ms. Hasl-Kelchner alleged that, in Lorillard’s view, RJRT’s “use of the term ‘Pleasure’ has crossed the line of being merely descriptive and threatens to dilute the Newport pleasure platform by creating a likelihood of confusion.” She then asked for assurance that RJRT would immediately terminate the dissemination of material containing, among other things, the CAMEL brand tagline “Pleasure to Burn,” and that RJRT would not make “commercial use of the term ‘Pleasure’ in the future.” RJRT denied Lorillard’s allegations and declined to give Lorillard the assurances it requested.

13. On July 29, 2005, Lorillard filed a use-based application with the USPTO to register the word “pleasure,” in standard character format, for use in connection with “cigarettes.” RJRT filed an opposition to that application on August 9, 2006. RJRT objected on grounds that the word “pleasure,” standing alone, is not capable of functioning as a trademark. RJRT also opposed the Lorillard application on the grounds that “pleasure” is

merely descriptive when used in connection with cigarettes. Lastly, RJRT opposed Lorillard's application on the basis that Lorillard had failed to demonstrate its trademark use of "pleasure" standing alone.

14. On September 28, 2007, during the pendency of RJRT's opposition to Lorillard's "pleasure" application, RII applied to the USPTO to register the phrases "Pleasure for Wherever," "The Next Level of Pleasure," and "A Revolution in Pleasure," all for RJRT's smokeless tobacco products. On March 26, 2008, Lorillard opposed RII's applications, alleging a confusing similarity with Lorillard's asserted "pleasure" marks.

15. On July 16, 2009, RJRT and Lorillard conducted, through various representatives, a mediated settlement conference in Greensboro, North Carolina, at the conclusion of which a representative of each party executed a seven-page handwritten document entitled "Settlement Terms." The Settlement Terms embodied the terms and conditions upon which the parties agreed at the mediation to resolve the disputes between them.

16. In early August 2009, RJRT and Lorillard entered into a Settlement Agreement effective July 16, 2009, to finalize the settlement that had been summarized in the handwritten Settlement Terms. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit 1.

17. Pursuant to numbered paragraph 1 of the Settlement Agreement, RJRT withdrew with prejudice its opposition to Lorillard's application for federal registration of the term PLEASURE.

18. Pursuant to numbered paragraph 2 of the Settlement Agreement, Lorillard withdrew with prejudice its opposition to RII's applications for federal registration of the phrases "Pleasure for Wherever," "The Next Level of Pleasure," and "A Revolution in Pleasure."

19. The Settlement Agreement provides at numbered paragraph 3 that "RJRT will not use the term PLEASURE alone or in conjunction with any other words as the name of a brand of tobacco product."

20. The Settlement Agreement provides at numbered paragraph 4 that "RJRT will not use the term PLEASURE alone in the advertising or promotion of any tobacco product, or in any manner creating a commercial impression associating the term PLEASURE alone with the brand name of a tobacco product."

21. For purposes of numbered paragraph 4 of the Settlement Agreement, the parties agreed that "by 'the term PLEASURE alone,' the Parties mean that RJRT will only use the term PLEASURE as part of a composite phrase and not in a way that creates a commercial impression in the term PLEASURE separate and apart from such composite phrase."

22. The Settlement Agreement provides at numbered paragraph 4 that "[b]y way of example, RJRT will not significantly distinguish the term PLEASURE from other words in a composite phrase in a way that makes the term PLEASURE significantly more prominent than the other words in the composite phrase."

23. The parties agreed that an example of an advertisement that would not be acceptable under numbered paragraph 4 of the Settlement Agreement was attached to the

Settlement Agreement at Exhibit A. The advertisement attached as Exhibit A to the Settlement Agreement contained the phrase “LEGENDS OF *Pleasure*” in a manner such that the word “pleasure” was significantly larger than the words “legends of” as shown below:



24. The Settlement Agreement provides at numbered paragraph 5 that “Lorillard will not asserts its rights under any registration issuing from the Lorillard PLEASURE Application, or any other alleged federal or state statutory or common law rights in the term PLEASURE alone . . . against: (a) the use by RJRT of any permitted composite phrase incorporating the term PLEASURE. . . .”

25. In numbered paragraph 7 of the Settlement Agreement, Lorillard provided RJRT the following release regarding RJRT’s use of the term PLEASURE in connection with tobacco products:

Effective on the Agreement Date, and except for obligations undertaken by RJRT in this Agreement, Lorillard, by and for itself and its successors, agents, assigns, and any other person, entity, corporation, subsidiary, affiliate, association, or partnership taking through or under Lorillard (collectively “the Lorillard Releasers”), hereby releases and forever discharges RJRT and its officers, directors, agents, employees, sureties, predecessors, successors, assigns, attorneys, and any other person, corporation, subsidiary, affiliate, association, partnership, or entity taking through or under RJRT (collectively “the RJRT Releasees”), of and from any and all manner of action, causes of action, debts, liabilities, claims, and demands of every kind and nature whatsoever, whether known or unknown, accrued or unaccrued, that said Lorillard Releasers have alleged or could have alleged against the RJRT Releasees, from the beginning of time to the Agreement Date, arising out of

and limited to the RJRT Releasees' use of the term PLEASURE and/or efforts to register trademarks incorporating the term PLEASURE in connection with tobacco products. This limited release is a full and final release, and shall apply to all known, unknown, anticipated, and unanticipated injuries or damages arising out of the RJRT Releasees' use of the term PLEASURE and/or efforts to register trademarks incorporating the term PLEASURE in connection with tobacco products. Lorillard expressly reserves its right to enforce this Agreement as otherwise specified herein.

26. Since the time the Settlement Agreement became effective, and consistent with its terms, RJRT has used the word "pleasure" in advertisements and promotional materials. RJRT's use of "pleasure" has included the following composite phrases:

- a. UNMATCHED PLEASURE;
- b. PLEASURE TO CARRY ON;
- c. PICK YOUR PLEASURE;
- d. OPEN YOUR PATH TO UNMATCHED PLEASURE;
- e. PLEASURE SWITCH CHALLENGE;
- f. "... unbridled PASSION for pleasure ..."
- g. CENTERFOLD OF PLEASURE;
- h. PERSONAL PLEASURES DISCOVERED;
- i. "Scratch and reveal the pleasure of SNUS";
- j. "Camel SNUS - the pleasure's all yours"; and
- k. "On-the-go tobacco pleasure."

27. RJRT has used the word "pleasure" in textual uses. By way of example, a RJRT website contained as of November 30, 2009, the following textual uses of "pleasure":
"These days, the rules generally require that tobacco pleasure be taken outdoors, a fact which

has negatively impacted the amount of quality bar time one can have during an evening out. More time is spent by the pleasure seeker excusing oneself from the conversation at hand. . . .”

28. RJRT has also used, in addition to tobaccopleasure.com, the following sub-domain names for websites for its tobacco products:

- a. camel.tobaccopleasure.com;
- b. dissolvables.tobaccopleasure.com;
- c. snus.tobaccopleasure.com;
- d. pallmall.tobaccopleasure.com;
- e. winston-tobaccopleasure.com;
- f. salem.tobaccopleasure.com;
- g. kool.tobaccopleasure.com;
- h. eclipse.tobaccopleasure.com; and
- i. doral.tobaccopleasure.com.

29. As to all of its uses of the word “pleasure,” RJRT has used and continues to use “pleasure” as part of a composite phrase and not in a way that creates a commercial impression in the term PLEASURE separate and apart from such composite phrase. Moreover, in none of the phrases and contexts in which RJRT uses the word “pleasure” does RJRT significantly distinguish the term PLEASURE from other words in a composite phrase in a way that makes the term PLEASURE significantly more prominent than the other words in the composite phrase.

COUNT I

DECLARATORY JUDGMENT

30. RJRT repeats and incorporates by reference the allegations set forth in paragraphs 1-29 of the Counterclaim as if fully set forth herein.

31. The Settlement Agreement executed by RJRT and Lorillard effective July 16, 2009 is a valid and binding agreement between the parties.

32. A genuine, justiciable controversy exists between RJRT and Lorillard as to whether RJRT's uses of the word "pleasure" in the phrases and contexts identified in paragraphs 26-28 above are uses permitted by the Settlement Agreement.

33. Lorillard contends, and RJRT denies, that RJRT's uses of the word "pleasure" in the phrases and contexts identified in paragraphs 26-28 above constitute a breach of the Settlement Agreement.

34. RJRT contends, and Lorillard denies, that RJRT's uses of the word "pleasure" in the phrases and contexts identified in paragraphs 26-28 above are permitted by the Settlement Agreement.

35. The existence of this controversy has harmed and will continue to harm RJRT in its sales and marketing of its tobacco products.

36. Due to the existence of this controversy between the parties, RJRT is entitled to declaratory relief pursuant to the North Carolina Declaratory Judgments Act, N.C. Gen. Stat. § 1-253 *et seq.*, declaring that RJRT's uses of the word "pleasure" in the phrases and contexts identified in paragraphs 26-28 above are permitted by and not in breach of the Settlement Agreement.

COUNT II

BREACH OF CONTRACT

37. RJRT repeats and incorporates by reference the allegations set forth in paragraphs 1-36 of the Counterclaim as if fully set forth herein.

38. The Settlement Agreement executed by RJRT and Lorillard effective July 16, 2009 is a valid and binding agreement between the parties.

39. Lorillard has breached the terms of the Settlement Agreement between it and RJRT by *inter alia* initiating this lawsuit and, thereby, “assert[ing] its rights under any registration issuing from the Lorillard PLEASURE Application, or any other alleged federal or state statutory or common law rights in the term PLEASURE alone . . . against: (a) the use by RJRT of any permitted composite phrase incorporating the term PLEASURE. . . .” specifically including RJRT’s uses of the word “pleasure” in the phrases and contexts identified in paragraphs 26-28 above.

40. Lorillard has breached the terms of the Settlement Agreement between it and RJRT by *inter alia* initiating this lawsuit and, thereby, failing to honor the release identified in paragraph 25 above.

41. Upon information and belief, Lorillard’s aforesaid breaches of the Settlement Agreement were deliberate and willful, and for the purposes of stifling proper competition by RJRT in the manufacturing and sale of its tobacco products.

42. RJRT has been and is in full performance of its duties and obligations under the Settlement Agreement and stands ready, willing and able to continue to perform under the Settlement Agreement.

43. As a result of Lorillard's breaches of the Settlement Agreement, RJRT has been damaged in excess of \$10,000, in an amount to be proven at trial. RJRT's damages include, but are not limited to, the attorneys' fees and costs incurred by RJRT in defense of this suit.

COUNT III

UNFAIR AND DECEPTIVE TRADE PRACTICES (N.C. Gen. Stat. § 75-1.1)

44. RJRT repeats and incorporates by reference the allegations set forth in paragraphs 1-43 of the Counterclaim as if fully set forth herein.

45. Lorillard's assertion of its "rights under any registration issuing from the Lorillard PLEASURE Application, or any other alleged federal or state statutory or common law rights in the term PLEASURE alone . . . against: (a) the use by RJRT of any permitted composite phrase incorporating the term PLEASURE. . . .," specifically including RJRT's uses of the word "pleasure" in the phrases and contexts identified in paragraphs 26-28 above, are deceptive, oppressive, immoral, unscrupulous, have a tendency to deceive and do in fact deceive, and otherwise constitute a violation of the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1.

46. Upon information and belief, Lorillard's aforesaid actions were deliberate and willful, and for the purposes of stifling proper competition by RJRT in the manufacturing and sale of its tobacco products. Furthermore, there has been an unwarranted refusal by Lorillard to fully resolve this matter.

47. As a result of Lorillard's unfair and deceptive trade practices, RJRT has been damaged in excess of \$10,000, in an amount to be proven at trial. Pursuant to N.C. Gen. Stat. § 75-16, RJRT is entitled to have such damages trebled. Pursuant to N.C. Gen. Stat. § 75-16.1 or other applicable law, RJRT is entitled to an award of costs and reasonable attorneys' fees.

WHEREFORE Defendant and Counterclaimant R.J. Reynolds Tobacco Company prays the Court as follows:

1. That Lorillard Tobacco Company and Lorillard Licensing Company, LLC have and recover nothing of RJRT on their Complaint;
2. That the Court deny Lorillard Tobacco Company and Lorillard Licensing Company, LLC's request for attorneys' fees and costs incurred in bringing this action;
3. That the Court enter judgment in RJRT's favor and against Lorillard Tobacco Company and Lorillard Licensing Company, LLC on this Counterclaim;
4. That the Court declare that RJRT's use of the word "pleasure" in the phrases and contexts identified herein does not breach the Settlement Agreement between the parties;
5. For actual damages, in an amount to be determined at trial;
6. For special, consequential, incidental, punitive and treble damages, in an amount to be determined at trial;
7. For pre-judgment and post-judgment interest as allowed by law;
8. That the costs of this action, including any discretionary costs, be taxed against Lorillard Tobacco Company and Lorillard Licensing Company, LLC;

9. For recovery of reasonable attorneys' fees; and
10. For such other and further relief as the Court deems just and proper under the circumstances.

Respectfully submitted this the 10th day of January, 2011.

/s/ Adam H. Charnes
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **ANSWER and COUNTERCLAIM** was this day served upon counsel for all parties via U.S. mail, addressed as follows:

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This the 10th day of January, 2011.

/s/ Adam H. Charnes.
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