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

Proceeding	92048480
Party	Plaintiff Sinbad Grand Cafe, LLC
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Submission	Response to Board Order/Inquiry
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Date	01/17/2009
Attachments	Petitioner's Response to Board's Request For the Status of The Civil Action.pdf (8 pages)(275991 bytes) Exhibit A.pdf (20 pages)(1035889 bytes) Exhibit B.pdf (39 pages)(1705303 bytes) Exhibit C.pdf (3 pages)(19349 bytes) Exhibit D.pdf (14 pages)(494694 bytes) Exhibit E.pdf (3 pages)(75687 bytes) Exhibit F.pdf (16 pages)(758108 bytes)

The Current Civil Litigation. Sierra, the California corporation, is allegedly the exclusive licensee of the Al-Fakher Trademark and is the Plaintiff and Counter-defendant in the a litigation against Petitioner, Sinbad Grand Cafe, LLC (“Sinbad” or “Petitioner”). This civil action is pending in the Central District of California, case number 2:07-cv-06104-DSF-CT, entitled Sierra Network, Inc. v. Akram Allos et al (the “Civil Action”).

The Civil Action primarily alleges trademark infringement claims. On or about July 15, 2008, after having filed several deficient complaints which were dismissed, Sierra served its Second Amended Complaint. Sierra’s Second Amended Complaint is attached hereto as **Exhibit A.** Petitioner filed counterclaims against Sierra for Unfair Competition (under Michigan laws). Petitioner’s answer and counterclaim is attached hereto as **Exhibit B.** Thereafter, based on Sierra’s defamatory actions, Petitioner sought leave of court to add additional counterclaims for libel and slander. A copy of the district court’s order approving the supplemental counterclaims is attached hereto as **Exhibit C.** A copy of Petitioner’s supplemental counterclaims is also attached hereto as **Exhibit D.**

Petitioner has not asserted any claim for cancellation in the original counterclaim or supplemental counterclaims.

To date, Petitioner and Sierra have not completed any discovery in the Civil Action beyond the initial disclosures required under Federal Rule of Civil Procedure 26(a). On the other hand, in this Petition for Cancellation proceedings, substantial discovery has been conducted and completed.

ARGUMENT

SINCE THE CIVIL ACTION WILL NOT HAVE A BEARING ON THE ISSUES PENDING BEFORE THE BOARD, THE PETITION FOR CANCELLATION SHOULD NOT BE SUSPENDED

The Trademark Trial and Appeal Board (“Board”) should not suspend the proceedings in this case. Most commonly, a request to suspend pending the outcome of another proceeding seeks suspension because of a civil action pending between the parties in a Federal district court. Trademark Board Manual of Procedure § 510.02(a). To the extent that a civil action in a Federal district court involves issues in common with those in a proceeding before the Board, the decision of the Federal district court is often binding upon the Board, while the decision of the Board is not binding upon the court. *Id.* Ordinarily, the Board will suspend proceedings in the case before it if the final determination of the other proceeding will have a bearing on the issues before the Board. *Id.* As explained below, it is Petitioner’s contention that the Civil Action will not have any bearing on the cancellation issues before the Board.

A. PETITIONER CANNOT OBTAIN CANCELLATION OF THE AL-FAKHER TRADEMARK IN THE CIVIL ACTION SINCE SIERRA IS NOT THE OWNER OF THE AL-FAKHER TRADEMARK

Petitioner cannot obtain cancellation of the Al-Fakher Registration as a remedy in the Civil Action since Respondent is not a party in the Civil Action. The owner of a trademark, not the exclusive licensee, is the proper defendant of the trademark. *Informix Software, Inc. v. Oracle Corp.*, 927 F.Supp. 1283 (N.D. Cal. 1996); *Iowa Health Care System v. Trinity Health Corp.*, 177 F.Supp. 2d 897, 911 (N.D. Iowa 2001) Courts have refused to cancel a trademark where the owner of the trademark did not stand as a party

before the court. *See Van Well Nursery, Inc. v. Mony Life Ins. Co.*, 421 F.Supp.2d 1321 (E.D. Wash., 2006)

1. **The Owner and Licensee Are Two Different Corporations.** The owner of the Al-Fakher Trademark is Respondent, which is a Jordanian company. The licensee is Sierra, which is a California corporation. These are two separate corporations in two different countries. The fact that Respondent is also doing business as Sierra Network, Inc. in Jordan does not mean it is the same company as Sierra, which is a California corporation. These are two distinct companies, of which one is the owner and one is the licensee of the Al-Fakher Trademark. This is also evidenced by the fact that these two companies entered into an Exclusive Distributorship Agreement. Certainly, if they were identical companies, they would never enter into an agreement with their own self. Clearly, the two companies understood they were different, they filed documents in the USPTO claiming to be two different companies, entered into agreements with each other, and are incorporated separately in two different companies. The fact that each one is entitled to do business as Sierra Network, Inc. in two different countries is a meaningless fact.

2. **Respondent is Not a Party in the Civil Action.** Sierra is the sole plaintiff in the Civil Action, and Sierra, as an alleged exclusive licensee, is not the owner of the Al-Fakher Trademark. The owner of the Al-Fakher Trademark is not a party to the Civil Action, and therefore, Petitioner cannot obtain cancellation of the Al-Fakher Registration as a remedy in the Civil Action. Accordingly, determination of the Civil Action will not have any bearing on the issues before the Board.

B. THE ISSUES TO BE DECIDED IN THE CIVIL ACTION ARE DISTINCT FROM THE ISSUES TO BE DECIDED IN THE PETITION FOR CANCELLATION

The Petition for Cancellation (the "Petition") concerns issues distinct from the Civil Action. A counterclaim may entitle the defendant in the original action to some amount of affirmative relief. *See Riverside Memorial Mausoleum, Inc. v. UMET Trust*, 581 F.2d 62, 68 (3rd Cir. 1978).

1. The Civil Action Has No Claim for Cancellation of the Al-Fakher Trademark.

Petitioner did not assert a counterclaim for cancellation of the Al-Fakher Registration because, Petitioner cannot assert such a claim against the licensee, Sierra. The law is clear in this respect. Since Petitioner did not assert such a counterclaim, Petitioner is prohibited, in the Civil Action, from obtaining affirmative relief through the cancellation of the Al-Fakher Trademark. The issues underlying Petitioner's claims for cancellation on the grounds alleged in the Petition are *not* before the district court in the Civil Action.

2. The Counterclaims in the Civil Action Have No Bearing on the Issues in This Proceeding.

The Counterclaims includes claims for Unfair Competition, Libel and Slander against Sierra. Even the final determination by the judge in the Civil Action on these claims will have no bearing on the cancellation issues in this proceeding. A judge's final decision holding that Sierra engaged in unfair competition or that it defamed Petitioner in any way is of no value in this cancellation proceeding. The Board will not be able to use that outcome or any evidence pertaining to the same in deciding on the cancellation issues. A final determination of the issues in the Civil Action will thus not have any

bearing on the issues relating to the Petition. A stay of these proceedings will therefore not serve any meaningful purpose.

C. SUSPENSION OF THE PROCEEDINGS IS NOT JUDICIALLY OR ECONOMICALLY EFFICIENT

Suspension of these cancellation proceedings would unnecessarily prolong the various disputes between Petitioner, Respondent and Respondent's alleged licensee, Sierra. Substantial discovery in the cancellation proceedings is propounded and completed. However, very little discovery has begun in the Civil Action. Suspension would cause the time and effort expended by Petitioner and Respondent in these cancellation proceedings to go to waste.

Additionally, suspension would be particularly egregious given that findings by the Board in Petitioner's favor would obviate the need for the court in the Civil Action to consider Sierra's claim of trademark infringement. See *Morton-Norwich Products, Inc. v. J.L. Prescott Co.*, 216 U.S.P.Q. 1120, 1123 (D.S.C. 1981) (finding that if the USPTO cancels the trademark registration, the count for trademark infringement would have to be dismissed). It is the Board's decision which will have an impact on the Civil Action, not the other way around.

Therefore, suspension of the cancellation proceedings would result in unwarranted delay and an inefficient use of resources.

CONCLUSION

Based on the foregoing, Petitioner respectfully urges the Board not to suspend the
Petition for Cancellation.

Dated: January 17, 2008

By: 

Natu J. Patel
Attorneys for Petitioner
Sinbad Grand Cafe, LLC

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CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing PETITIONER'S RESPONSE TO THE BOARD'S REQUEST FOR THE STATUS OF THE CIVIL ACTION was served by electronic mail, upon attorneys for Respondent, this 17th day of January, 2009 as follows:

Christopher Q. Pham, Esq.
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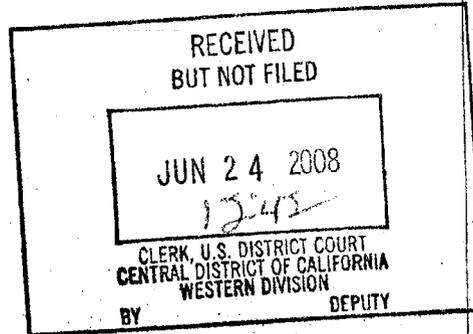
1/17/09

Natu J. Patel

Date

Exhibit A

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10 Attorneys for Plaintiffs
11 SIERRA NETWORK, INC.

12 UNITED STATES DISTRICT COURT FOR THE
13 CENTRAL DISTRICT OF CALIFORNIA

14 SIERRA NETWORK, INC., a California
15 Corporation

Case No. CV 07-6104-DSF (CTx)

16 Plaintiff,

**SECOND AMENDED
COMPLAINT FOR :**

17 vs.

18 TOBACCO IMPORT USA, a business
19 entity of unknown status; SINBAD
20 GRAND CAFÉ, LLC, a Michigan
21 Limited Liability Company; AL
22 FAKHER TRADING COMPANY,
23 L.L.C., a business entity of unknown
24 status; WWW.DUBAITOBACCO.COM,
25 an Internet Business Entity,
26 WWW.ALFAKHER.US, an Internet
27 Business Entity,
28 WWW.ALFAKHIR.COM, an Internet
Business Entity, Corporations 1-10,
Limited Liability Companies A-Z, and
Does 1-20 Inclusive

- 1) COPYRIGHT INFRINGEMENT [17 U.S.C. §501(a)];
- (2) FALSE DESIGNATION OF ORIGIN [15 U.S.C. §1125(a)];
- (3) TRADEMARK DILUTION [15 U.S.C. §1125(c); CALIFORNIA BUSINESS & PROFESSIONS CODE §14330];
- (4) UNFAIR BUSINESS PRACTICES [CALIFORNIA BUSINESS & PROFESSIONS CODE §17200 et seq.];
- (5) UNJUST ENRICHMENT;
- (6) FRAUD AND DECEIT; FRAUDULENT CONCEALMENT;
- (7) CYBERSQUATTING U.S.C. §43(d)

Defendants.

1 COMES NOW, Plaintiff SIERRA NETWORK, INC. (“Sierra” or
2 “Plaintiff”) to hereby file its Second Amended Complaint (referred to herein as the
3 “SAC”) against TOBACCO IMPORT USA (“Tobacco Import”), AL FAKHER
4 TRADING COMPANY, LLC (“Al Fakher Trading”),
5 WWW.DUBAITOBACCO.COM (“Dubai Tobacco.com”),
6 WWW.ALFAKHER.US (“Al Fakher.us”), WWW.ALFAKHIR.COM (“Al
7 Fakhir.com”), Corporations 1-10, Limited Liability Companies A-Z, and Does I –
8 X (collectively, “Defendants”).

9
10 **JURISDICTION AND VENUE**

11 1. This action arises under the copyright laws of the United States, 17
12 U.S.C. §101 *et seq.* as well as out of §43(a) of the *Lanham Act* for trademark
13 infringement and trademark dilution. Jurisdiction is conferred upon this Court by
14 virtue of 28 U.S.C. §§1331, 1338(a) and (b), 1367(a), and 15 U.S.C. § 1121.

15 2. Venue is proper in this district under 28 U.S.C. §1400(a) and
16 §1391(b) and (c) because on information and belief a substantial part of the
17 events and omissions giving rise to the claims asserted herein occurred within this
18 judicial district, substantial injury occurred in this district, and certain Defendants
19 are subject to personal jurisdiction in this district.

20 3. Personal jurisdiction exists over Defendants because on information
21 and belief, and, as alleged herein, Defendants conduct business in California and in
22 this judicial district, or otherwise avail themselves of the privileges and protections
23 of the laws of the State of California, such that they do not offend traditional
24 notions of fair play and due process to Defendants in the jurisdiction herein.

25 **THE PARTIES**

26 4. Plaintiff SIERRA NETWORK, INC. (“Plaintiff”) is now, and was at
27 the time of the filing of this Complaint and at all intervening times, a corporation
28

1 organized under the laws of California, with its principal place of business in
2 California.

3 5. Plaintiff is informed and believes that Defendant Tobacco Import
4 USA (“Tobacco Import”) is a business entity of unknown status and the fictitious
5 business name of Defendant Sinbad Grand Café LLC, and the licensed agent of
6 Defendant Al Fakher Trading Company, L.L.C., with its principal location at
7 21060 Coolidge Highway, Oakpark, Michigan 48237, and offices in California,
8 Oregon, Michigan, Toronto, Donguan China, and Hong Kong.

9 6. Plaintiff is informed and believes that Defendant Sinbad Grand Café
10 LLC (“Sinbad Café”) is a Michigan Limited Liability Company and the parent
11 company of Tobacco Import.

12 7. Plaintiff is informed and believes that Defendant Al Fakher Trading
13 Company, L.L.C. (“Al Fakher Trading”), is a business company of unknown status
14 located in Dubai, United Arab Emirates.

15 8. Plaintiff is informed and believes that Defendants www.alfakhir.com
16 (“alfakhir.com”), www.dubaitobacco.com (“dubaitobacco.com”), and
17 www.alfakhir.us (“alfakhir.us”) (collectively, “Al Fakher Trading websites”) are
18 owned and controlled by Defendant Al Fakher Trading for internet advertising and
19 online sales of products which infringe Plaintiff’s Property.

20 9. The true names and capacities, whether individual, corporate,
21 associate or otherwise, of Defendants herein designated by fictitious names
22 Corporations 1-10; Limited Liability Companies A-Z; and Does I-X, inclusive, are
23 unknown to Plaintiff. Plaintiff therefore sues said Defendants by such fictitious
24 names. When the true names and capacities of said Defendants have been
25 ascertained, Plaintiff will amend this pleading accordingly.

26 10. Plaintiff further alleges that Corporations 1-10; Limited Liability
27 Companies A-Z; and Does I-X, inclusive, sued herein by fictitious names are
28

1 jointly, severally and concurrently liable and responsible with the named
2 Defendants upon the causes of action hereinafter set forth.

3 11. Plaintiff is informed and believe and thereon allege that at all times
4 mentioned herein that Defendants Tobacco Import, Al Fakher Trading, Sinbad
5 Café, the Al Fakher Trading websites, Corporations 1-10; Limited Liability
6 Companies A-Z; and Does I-X, inclusive, and each of them (collectively,
7 “Defendants”), were the agents, servants and employees of every other Defendant
8 and the acts of each Defendant, as alleged herein, were performed within the
9 course and scope of that agency, service or employment.

10 **GENERAL ALLEGATIONS**

11 12. Plaintiff is the authorized exclusive United States licensee, importer
12 and distributor of the Property, and is authorized by contract to stand in the shoes
13 of the licensor, AL FAKHER For TOBACCO Trading & Agencies Co.
14 (“Licensor”) and protect Licensor’s rights in the Property.

15 13. The subject matter of this Second Amended Complaint are premium
16 tobacco products, original packaging design elements, and trademarks (“the
17 Property”) controlled by Plaintiff as the exclusive United States licensee, importer
18 and distributor.

19 14. Plaintiff is the owner of at a number of trademarks connected with the
20 Property, including the following names and marks: “Al-Fakher,” a mark
21 registered November 11, 2003 on the Principal Register of the United States Patent
22 and Trademark Office (“USPTO”), registration number 2782619, in International
23 Class 34; “Al Fakher Al Fakher,” serial number 77012850, with registration
24 pending on the Principal Register in International Classes 34, 16, and 43; “Golden
25 Al Fakher,” serial number 78606 649, with registration pending on the Principal
26 Register in International Classes 34 and 30; and, “Al Fakher Tropical,” serial
27 78703714, by assignment from Bassam Hamade. Plaintiff’s trademarks shall be
28 referred to collectively as “the Mark.”

1 The Certificate of Registration for the registered Mark as well as official
2 USPTO status reports pending applications are attached herewith as Exhibits "A"
3 and "B," respectively.

4 15. Plaintiff is the exclusive owner of numerous copyrighted original
5 designs for labels and packaging, including 36 label designs for its 36 flavors of
6 tobacco products (the "Copyrighted Designs"). A true and correct copy of
7 Plaintiff's copyright application for its label design collection on file with the
8 United States Copyright Office as of June 4, 2008, is attached herewith as Exhibit
9 "C."

10 16. As evidenced by the trademark registration records submitted with
11 this SAC, all times relevant herein, Plaintiff, as the exclusive U.S. licensee, held
12 and continues to hold the exclusive rights under United States Trademark Law, 15
13 *USC* §1125 ("The Lanham Act") to affix its distinctive trademark ("the Mark") to
14 its products and materials connected with advertising and sale of its products
15 throughout the United States.

16 17. At all times relevant herein, Plaintiff, as the exclusive U.S. licensee,
17 held and continues to hold the exclusive rights under United States Copyright Law,
18 17 *USC* §101 *et seq.* ("the Copyright Act") to distribute, display, or license the
19 Property and the Copyrighted Designs throughout the United States, as evidenced
20 by the copyright applications submitted with the SAC.

21 18. The flavored tobacco industry has long been centered in the Middle
22 East and is a relatively small community of manufacturers and distributors.
23 Defendants have been long aware of Plaintiff's rights in and to the Property due to
24 the widespread recognition and respect for Plaintiff's product line. During all times
25 alleged herein, Defendants have been engaged in intentional repeated, widespread
26 unauthorized distribution and advertisement of sub-standard tobacco products
27 masquerading as Plaintiff's products or trading on Plaintiff's reputation and
28

1 goodwill. Defendants' packaging misappropriates the Copyrighted Designs and
2 Plaintiff's Mark or a colorable imitation of Plaintiff's Mark.

3 19. Plaintiff has distinguished itself as the international leader in the
4 superior quality Middle Eastern flavored tobacco market, contributing significantly
5 to the wide interest in flavored tobacco and hookah smoked Middle Eastern
6 tobacco. Plaintiff is courted and hailed due to its famous name recognition which
7 represents quality and distinguished quality and flavor and beautiful packaging
8 graphic Copyrighted Designs.

9 20. Because of Plaintiff's extensive use of the Mark and its Copyrighted
10 Designs, Plaintiff has built up significant goodwill therein and its product line has
11 been praised and recognized in numerous articles appearing in both trade
12 publications and those directed to the general public, and on the wide spread
13 internet blog sites.

14 21. The success of Plaintiff's marketing efforts is evidenced by, among
15 other things, unsolicited media attention and multitude of consumer blog sites that
16 praise Plaintiff's products, its packaging, and its label Copyrighted Designs.

17 22. At various times relevant to allegations made herein, a substantial
18 number of purchases were made from Defendants of tobacco products which
19 Defendants have continuously and systematically distributed into California and
20 elsewhere masquerading as Plaintiff's Property. Purchases were made from
21 tobacco lounges, "hookah cafes" and retail shops, including a recent purchase fro
22 Dream Café hookah lounge in Anaheim, California, in which Defendants'
23 infringing products are prominently featured in the merchant display cabinet; in
24 Fountain Valley and Orange County, California, and elsewhere.

25 23. The tobacco products purchased from Defendants were inspected by
26 Plaintiff to determine authenticity. Upon inspection of the items using Plaintiff's
27 security measures, it was confirmed that the products Defendants sold were in fact
28 being "palmed off" as Plaintiff's tobacco products.

1 24. Defendants advertise the infringing tobacco products as the “genuine
2 Al Fakher,” the “original Al Fakher,” and similar misrepresentations designed to
3 confuse consumers and divert sales from Plaintiff.

4 25. Actual confusion has been caused by Defendants’ deceptive practices.
5 Popular internet blog sites and “Hookah Forums” contain numerous consumer
6 comments reflecting this confusion.

7 (a) Regarding Defendant dubaitobacco.com: “...*this website*
8 *which claims to be the Alfakher official website and represents your products. We*
9 *would like to know if you have any relation with this website*” “*I just got sent a*
10 *fake tub myself, although it was in the old packaging.*”

11 (b) Regarding Defendant Al Fakher Trading: “*The box shows*
12 *something called the ‘Al Fakher Trading Corp.’ But it’s called Dubai tobacco?*”
13 “... *it COULD be another line put out BY Al Fakher.*” “... *it says ‘Al Faker trading*
14 *group.... Looks like its tobacco, but not the same brand*”

15 (c) Regarding Defendant alfakher.us: “*The tubs aren’t right.*” “*I*
16 *think that’s fake too.*”

17 (d) Regarding Defendant alfakher.com: “*What’s the difference*
18 *between these two?*”

19 26. Upon information and belief, Defendants’ “palming off” of Plaintiff’s
20 Property through the manufacture and/or sale of inferior quality tobacco products
21 bearing Plaintiff’s Mark and Copyrighted Designs was willful, having been
22 adopted with knowledge of Plaintiff’s prior rights in and to the Property, with the
23 intent to confuse and trade on and benefit from the goodwill established by
24 Plaintiff in its protected and well known Property.

25 27. At the time of this SAC, Defendants have continuously and
26 systematically distributed throughout California and the United States thousands of
27 inferior and infringing products, misled and confused consumers, affected
28 widespread negative publicity regarding Plaintiff’s Property, negatively affected

1 the market price of Plaintiff's goods by selling at below-market prices, and
2 diverted millions of dollars in business away from Plaintiff.

3 28. Plaintiff has recently been informed by its Licensor that Plaintiff is at
4 risk of losing its exclusive license and Plaintiff's contract with its manufacturing
5 plant due to the damage being caused by Defendants.

6 **FIRST CAUSE OF ACTION**

7 **(Federal Copyright Infringement Against All Defendants, Corporations 1-10;
8 Limited Liability Companies A-Z; and Does I-X, Inclusive)**

9 **[17 U.S.C. §501(a)]**

10 29. Plaintiff repeats and realleges every allegation set forth in Paragraphs
11 1-28.

12 30. Plaintiff is the exclusive owner of the 36 Copyrighted Designs for its
13 labels and packaging. At all times relevant herein, Plaintiff has held and still holds
14 the exclusive rights under the Copyright Act to reproduce, distribute, display the
15 Copyrighted Designs or to prepare derivative works in any and all formats and
16 mediums throughout the United States.

17 31. Plaintiff's registered Mark and its pending trademark registrations on
18 public display at the USPTO website further provides constructive notice of
19 Plaintiff's ownership rights in the Copyrighted Designs.

20 32. Defendants did not seek and failed to obtain the consent or
21 authorization of Plaintiff to utilize, manufacture, reproduce, copy, display,
22 commercially distribute and market in commerce or otherwise the Copyrighted
23 Designs.

24 33. Without permission, Defendants intentionally and knowingly
25 reproduced, "palmed off," copied, displayed, and manufactured colorable
26 imitations of the Copyrighted Designs by offering, advertising, promoting,
27 retailing, selling, distributing inferior tobacco products whose packaging utilized
28 the Copyrighted Designs.

1 **Limited Liability Companies A-Z; and Does I-X, Inclusive)**
2 **[15 U.S.C. § 1125(c), *California Business and Professions Code* § 14330 et seq.,**
3 **and California Common Law]**

4 42. Plaintiff repeats and reallges every allegation set forth in Paragraphs
5 1-41.

6 43. Plaintiff's Mark is "famous" within the meaning of the Lanham Act
7 and is distinctive by virtue of the substantial inherent and acquired distinctiveness
8 of the Mark, the extensive use by Plaintiff, and the wide advertising and publicity
9 of Plaintiff's goods bearing the Mark.

10 44. As a result of the substantial inherent and acquired distinctiveness in
11 Plaintiff's Mark, extensive use by Plaintiff, and the wide advertising and publicity
12 of the Mark, Plaintiff's Mark has become strong and is widely identified and
13 respected.

14 45. Upon information and belief, Defendants' unlawful actions began
15 long after Plaintiff's Mark became famous, and Defendants acted knowingly,
16 deliberately and willfully with the intent to trade on Plaintiff's reputation and to
17 dilute Plaintiff's Mark. Defendants' conduct is willful, wanton and egregious.

18 46. The actions of Defendants complained of herein have injured and are
19 likely to continue to injure the business reputation of Plaintiff and its Mark.

20 47. Defendants' intentional sale and "palming off" of inferior tobacco
21 products bearing Plaintiff's Mark unfairly competes with Plaintiff and has caused
22 and is likely to continue to cause confusion, mistake, or deceive, mislead, betray,
23 and defraud consumers into believing that the inferior tobacco products are
24 genuine tobacco products of Plaintiff.

25 48. Defendants' unauthorized and counterfeit use of Plaintiff's famous
26 Mark has diluted and will continue to dilute and tarnish Plaintiff's name and Mark,
27 and is likely to detract from the distinctiveness of Plaintiff's Mark.

28

1 proprietary rights.

2 55. Defendants have long been aware of Plaintiff's rights in and to the
3 Property due to the widespread recognition and respect for Plaintiff's product line.
4 Defendants have compounded their infringements and other misconduct by
5 creating and disseminating Derivative Works without authorization and by
6 continuing their other fraudulent and deceptive acts to Plaintiff's injury.

7 56. The acts and practices of the named Defendants as detailed above
8 constitute acts of unlawful, unfair or fraudulent business acts and practices within
9 the meaning of *California Business & Professions Code* §17200.

10 57. These Defendants have engaged in transactions that are in violation of
11 numerous provisions of California law. Strict liability may be applied even if
12 Defendants' acts have violated only one of the provisions set forth in the relevant
13 statute.

14 58. Pursuant to *California Business & Professions Code* §17203, Plaintiff
15 seeks an order from this Court prohibiting Defendants from engaging or continuing
16 to engage in the unlawful, unfair, or fraudulent business acts or practices set forth
17 in this SAC and/or ordering that Defendants perform their obligations under the
18 law and cancel any illegal licenses for the Property or any Derivative Works.

19 59. Plaintiff additionally requests an order from this Court requiring that
20 Defendants disgorge profits and return or pay to Plaintiff all of Defendants' ill-
21 gotten gains obtained its illegal transactions, and/or pay restitution, including the
22 amount of monies that should have been paid if Defendants complied with their
23 legal obligations, or, as equity requires.

24 60. Plaintiff further requests a court order that an asset freeze or
25 constructive trust be imposed over all monies in Defendants' possession which
26 rightfully belong to Plaintiff.

27 //

28 //

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2
3 **FIFTH CAUSE OF ACTION**

4 **Unjust enrichment**

5 **(Unjust Enrichment Against All Defendants, Corporations 1-10; Limited**
6 **Liability Companies A-Z; and Does I-X, Inclusive)**

7 61. Plaintiff hereby repeats and realleges every allegation set forth in
8 paragraphs 1-60.

9 62. By virtue of the egregious and illegal acts of Defendants as described
10 above, Defendants have been unjustly enriched in an amount to proven at trial.

11 63. Defendants have no justification for appropriating Plaintiff's Property
12 and exclusive proprietary rights except to capitalize on Plaintiff's goodwill for
13 Defendants' own pecuniary gain. Plaintiff has expended substantial time,
14 resources and effort to obtain an excellent reputation. As a result of Plaintiff's
15 efforts, Defendants are now unjustly enriched and are benefiting from property
16 rights that rightfully belong to Plaintiff.

17 63. Defendants' retention of monies gained through its deceptive business
18 practices, infringements, acts of palming off and otherwise would serve to unjustly
19 enrich Defendants and would be contrary to the interests of justice unless the Court
20 orders an equitable remedy.

21 **SIXTH CAUSE OF ACTION**

22 **(Intentional Fraud and Deceit/Fraudulent Concealment Against All**
23 **Defendants, Corporations 1-10; Limited Liability Companies A-Z; and Does**
24 **I-X, Inclusive)**

25 64. Plaintiffs repeat and reallege every allegation set forth in Paragraphs 1-
26 63.

27 65. Since in or around 2007, Plaintiff began to be notified by customers
28 and colleagues that infringing products were appearing in the marketplace and that
online bloggers were discussing the confusion between the infringing products and
Plaintiff's Property. Plaintiff began conducting research to ascertain the activities

1 reported to Plaintiff. Until that time, there was nothing to make the facts of
2 intentional fraud and deceit susceptible of discovery to Plaintiff and Plaintiff did
3 not have actual or constructive knowledge of the fraud and deceit despite
4 Plaintiff's exercise of usual diligence.

5 66. Plaintiff's research gave rise to internet postings which reflect that
6 Defendants had been engaged in committing intentional fraud and deceit to
7 Plaintiff's injury. Plaintiff has also discovered recent exploitations of the
8 Copyrighted Designs and the Mark masquerading as Defendants' property with no
9 attribution of authorship and ownership to Plaintiff.

10 67. Defendants' fraud and deceit is based on:

11 (a) With each advertisement of its tobacco products and each sale,
12 Defendants intentionally concealed the material fact that their tobacco products are
13 being palmed off as genuine products of Plaintiff;

14 (b) With each advertisement of its tobacco products and each sale,
15 Defendants intentionally concealed the material fact that the mark utilized by
16 Defendants and the label designs utilized on Defendants' products misappropriate
17 and infringe on Plaintiff's Copyrighted Designs and Mark;

18 (c) Prior to its advertising and sale of its fraudulent tobacco
19 products, Defendants intentionally concealed the material fact of their intention to
20 mislead consumers and infringe Plaintiff's Property when Plaintiff's products,
21 Mark and Copyrighted Designs attained a sufficient level of consumer interest,
22 fame and financial success;

23 (d) Defendants concealed the material facts that they were engaged
24 in illegal licensing agreements, including those between Defendant Al Fakher
25 Trading and Defendant Tobacco Import utilizing Plaintiff's Property;

26 (e) Defendants concealed the material facts that they attempted to
27 register their infringing works based on Plaintiff's Property for copyright and
28 trademark;

1 (f) Defendants knew that the concealed facts described above were
2 material;

3 (g) Plaintiff had no knowledge of the facts concealed by
4 Defendants and the facts were inaccessible to Plaintiff until Plaintiff began to hear
5 rumors of Defendants' fraudulent activities in or around 2007;

6 (h) Defendants intentionally concealed the facts set forth above
7 with the intent to defraud Plaintiff, deprive Plaintiff of Plaintiff's hard earned
8 goodwill, as well as to confuse and mislead consumers;

9 (i) Had Plaintiff been aware of the facts, Plaintiff would not have
10 permitted the infringements and the confusion in the marketplace and other illegal
11 activities committed by Defendants; and

12 (j) As as a result of the concealment of the facts, Plaintiff, its
13 Property, its goodwill and reputation have sustained irreparable damage.

14 68. Defendants' continuing unlawful creation, license, advertisement,
15 sale, and registration furthers the fraud and deceit of Defendants.

16 **SEVENTH CAUSE OF ACTION**

17 **(Cybersquatting Against all Defendants, Corporations 1-10; Limited Liability**
18 **Companies A-Z; and Does 1-10, Inclusive)**

19 **(U.S.C. §43(d))**

20 69. Plaintiff hereby incorporates each and every allegation contained in
21 paragraphs 1-68.

22 70. Plaintiff is the owner of the Mark including "Al-Fakher," a mark
23 registered November 11, 2003 on the Principal Register of the USPTO.

24 71. Defendants fraudently registered internet domain names,
25 including www.alfakhir.com, www.dubaitobacco.com, and www.alfakhir.us in
26 violation of the federal Anticybersquatting Consumer Protection Act with the
27 specific intent to profit from Plaintiff's goodwill in its registered Mark.
28

1 72. Defendants' knowing registration of multiple domain names that are
2 identical, confusingly similar or dilutive of Plaintiff's Mark has harmed the
3 goodwill represented by the Mark, has brought unjust commercial gain to
4 Defendants, has diluted and weakened the Mark, and has created a likelihood of
5 confusion as to the source, sponsorship, affiliation or endorsement of Defendants'
6 websites.

7 73. Defendants have committed all of the aforesaid acts of cybersquatting
8 deliberately, willfully, maliciously and oppressively, without regard to Plaintiff's
9 legal, contractual, and proprietary rights. Defendants' outrageous conduct supports
10 an award of exemplary and punitive damages in an amount sufficient to punish and
11 make an example of Defendants and to deter them from similar conduct in the
12 future.

13 **WHEREFORE**, Plaintiff SIERRA NETWORK, INC. prays for judgment
14 against Defendants, as follows:

- 15 A. For damages in an amount to be proven at trial for copyright
16 infringement under 17 *U.S.C.* §501(a);
17 B. For damages in an amount to be proven at trial for false designation of
18 origin under 15 *U.S.C.* §1125(a);
19 C. For damages in an amount to be proven at trial for trademark dilution
20 under 15 *U.S.C.* §1125(c);
21 D. For damages in an amount to be proven at trial for unfair, fraudulent and
22 illegal business practices under *Business and Professions Code* §17200;
23 E. For disgorgement of Defendants' profits under 15 *U.S.C.* §1117(a);
24 F. For an injunction by this Court prohibiting Defendants from engaging or
25 continuing to engage in the unlawful, unfair, or fraudulent business acts
26 or practices described herein;
27 G. For an order from the Court requiring that Defendants provide complete
28 accountings and for equitable relief, including that Defendants disgorge

1 and return or pay their ill-gotten gains obtained from the illegal
2 transactions entered into and or pay restitution, including the amount of
3 monies that should have been paid if Defendants' complied with their
4 legal obligations, or as equity requires;

5 H. For an order from the Court that an asset freeze or constructive trust be
6 imposed over all monies and profits in Defendants' possession which
7 rightfully belong to Plaintiff;

8 I. For destruction of the infringing articles in Defendants' possession under
9 15 U.S.C. §1118;

10 J. For treble damages suffered by Plaintiff as a result of the willful and
11 intentional infringements and acts of counterfeiting engaged in by
12 Defendants, under 15 U.S.C. §1117(b);

13 K. For damages in an amount to be proven at trial for unjust enrichment.

14 L. For Plaintiff's reasonable attorney's fees;

15 M. For all costs of suit; and

16 N. For such other and further relief as the Court may deem just and
17 equitable.

18 **DEMAND FOR JURY TRIAL;**

19 Plaintiff Sierra Network, Inc. respectfully demands a trial by jury in this
20 action.

21
22 DATED: June 23, 2008

GAREEB|PHAM, LLP

23
24
25 By: Susan Rabin

26 Christopher Q. Pham
27 Alexander S. Gareeb
28 Susan Rabin,
Attorneys for Plaintiff
Sierra Network, Inc.

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party to the
3 within action. My business address is **GAREEB | PHAM LLP**, located at Aon Center, 707
4 Wilshire Boulevard, 53rd Floor, Los Angeles, California 90017. On July 15, 2008, I served the
5 herein described document(s):

6 **Summons and Second Amended Complaint**

7 by transmitting via facsimile the document(s) listed above to the fax number(s)
8 set forth below on this date before 5:00 p.m.

9 X by placing the document(s) listed above in a sealed envelope with postage
10 thereon fully prepaid, in the United States mail at Los Angeles, California
11 addressed as set forth below.

12 CM/ECF - by electronically transmitting the document(s) listed above to

13 by personally delivering the document(s) listed above to the person(s) at the
14 address(es) set forth below.

15 by overnight delivery of the document(s) listed above to the person(s) at the
16 address(es) set forth below.

17 I am readily familiar with the firm's practice of collection and processing correspondence for
18 mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day
19 with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion
20 of the party served, service is presumed invalid if postal cancellation date or postage

21 Natu J. Patel
22 Patel Law Firm
23 2532 Dupont Drive
24 Irvine, CA 92612-1524

25 I declare under penalty of perjury under the laws of the State of California that the above
26 is true and correct. Executed on July 15, 2008 at Los Angeles, California.

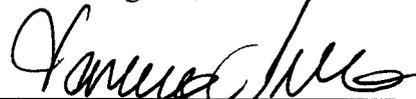
27 
28 Vanessa Tello

Exhibit B

1 Natu J. Patel, SBN 188618
2 **THE PATEL LAW FIRM, P.C.**
3 2532 Dupont Drive
4 Irvine, California 92612-1524
5 Office: 949.955.1077
6 Facsimile: 949.955.1877
7 NPatel@thepatellawfirm.com

8 Attorney for Defendants Sinbad Grand Cafe, LLC and
9 Tobacco Import USA; and Counter-claimant Sinbad
10 Grand Cafe doing business as Tobacco Import USA

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

11	SIERRA NETWORK, INC., a California Corporation,)	Case No.: CV07-06104
12)	
13	Plaintiff,)	Assigned for all purposes to
14	vs.)	Honorable Judge Dale S.
15)	Fischer
16	TOBACCO IMPORT USA., a business entity of unknown status; SINBAD GRAND CAFE, LLC, a Michigan Limited Liability Company; AL FAKHER TRADING COMPANY, L.L.C., a business entity of unknown status; WWW.DUBAITOBACCO.COM, an Internet Business Entity, WWW.ALFAKHER.US, an Internet Business Entity, WWW.ALFAKHIR.COM, an Internet Business Entity, Corporations 1-10, Limited Liability Companies A-Z, and DOES 1-20 Inclusive,)	DEFENDANTS SINBAD GRAND CAFE, LLC AND TOBACCO IMPORT USA'S ANSWER AND AFFIRMATIVE DEFENSES; SINBAD GRAND CAFE, LLC, DOING BUSINESS AS TOBACCO IMPORT USA'S COUNTERCLAIM FOR UNFAIR COMPETITION
17)	
18)	
19)	
20)	
21)	
22)	
23)	
24)	
25)	
26	Defendants.)	
27)	
28	SINBAD GRAND CAFE, LLC, doing business as TOBACCO IMPORT USA,)	

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Counter-claimant,)
)
vs.)
)
SIERRA NETWORK, INC., a California)
Corporation, and ROES 1-10, Inclusive,)
)
Counter-defendants.)
)
)
)

Defendants, SINBAD GRAND CAFE, LLC and TOBACCO IMPORT USA (collectively “Defendants”)¹, answer SIERRA NETWORK, INC.’s (“Plaintiff” or “SIERRA”) Complaint for Copyright Infringement, False Designation of Origin, Trademark Dilution, Unfair Business Practices, Unjust Enrichment, Fraud and Deceit, and Cybersquatting on file herein and admit, deny, and aver as follows:

ANSWER

1. With respect to the allegations of paragraph 1, Defendants admit that this action arises under the copyright laws of the United States, 17 U.S.C. §101 *et seq.* as well as out of §43(a) of the *Lanham Act* for trademark infringement and trademark dilution. Defendants further admit that jurisdiction

¹ Sinbad Grand Cafe, LLC is a Michigan limited liability company doing business as Tobacco Import USA

1 Highway, Oakpark, Michigan 48237. Sinbad Grand Cafe denies that it has
2 offices in California, Oregon, Toronto, Donguan China, and Hong Kong.

3
4 6. With respect to the allegations of paragraph 6, Sinbad Grand Café
5 admits that it is a Michigan limited liability company doing business as
6 Tobacco Import USA.

7
8 7. With respect to the allegations of paragraph 7, Defendants admit
9 that Al Fakher Trading Company, L.L.C. is a limited liability company located
10 in Dubai, United Arab Emirates.

11
12 8. With respect to the allegations of paragraph 8, Defendants lack
13 information sufficient to form a belief as to the truth of the allegations of
14 Paragraph 8 and therefore leave Plaintiff to its proof.

15
16 9. With respect to the allegations of paragraph 9, Defendants lack
17 information sufficient to form a belief as to the truth of the allegations of
18 Paragraph 9 and therefore leave Plaintiff to its proof.

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20 10. With respect to the allegations of paragraph 10, Defendants lack
21 information sufficient to form a belief as to the truth of the allegations of
22 Paragraph 10 and therefore leave Plaintiff to its proof.

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24 11. With respect to the allegations of paragraph 11, Defendants lack
25 information sufficient to form a belief as to the truth of the allegations of
26 Paragraph 11 and therefore leave Plaintiff to its proof.
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GENERAL ALLEGATIONS

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2 12. With respect to the allegations of paragraph 12, Defendants lack
3 information sufficient to form a belief as to the truth of the allegations of
4 Paragraph 12 and therefore leave Plaintiff to its proof.
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6 13. With respect to the allegations of paragraph 13, Defendants lack
7 information sufficient to form a belief as to the truth of the allegations of
8 Paragraph 13 and therefore leave Plaintiff to its proof.
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10 14. With respect to the allegations of paragraph 14, Defendants lack
11 information sufficient to form a belief as to the truth of the allegations of
12 Paragraph 14 and therefore leave Plaintiff to its proof.
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14 15. With respect to the allegations of paragraph 15, Defendants lack
15 information sufficient to form a belief as to the truth of the allegations of
16 Paragraph 15 and therefore leave Plaintiff to its proof.
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18 16. With respect to the allegations of paragraph 16, Defendants lack
19 information sufficient to form a belief as to the truth of the allegations of
20 Paragraph 16 and therefore leave Plaintiff to its proof.
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22 17. With respect to the allegations of paragraph 17, Defendants lack
23 information sufficient to form a belief as to the truth of the allegations of
24 Paragraph 17 and therefore leave Plaintiff to its proof.
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1 18. With respect to the allegations of paragraph 18, Defendants lack
2 information sufficient to form a belief as to the truth of the allegations of
3 Paragraph 18 and therefore leave Plaintiff to its proof.
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5 19. With respect to the allegations of paragraph 19, Defendants lack
6 information sufficient to form a belief as to the truth of the allegations of
7 Paragraph 19 and therefore leave Plaintiff to its proof.
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9 20. With respect to the allegations of paragraph 20, Defendants lack
10 information sufficient to form a belief as to the truth of the allegations of
11 Paragraph 20 and therefore leave Plaintiff to its proof.
12

13 21. With respect to the allegations of paragraph 21, Defendants lack
14 information sufficient to form a belief as to the truth of the allegations of
15 Paragraph 21 and therefore leave Plaintiff to its proof.
16

17 22. With respect to the allegations of paragraph 22, Defendants lack
18 information sufficient to form a belief as to the truth of the allegations of
19 Paragraph 22 and therefore leave Plaintiff to its proof.
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21 23. With respect to the allegations of paragraph 23, Defendants lack
22 information sufficient to form a belief as to the truth of the allegations of
23 Paragraph 23 and therefore leave Plaintiff to its proof.
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- 47. Defendants deny the allegations in Paragraph 47.
- 48. Defendants deny the allegations in Paragraph 48.
- 49. Defendants deny the allegations in Paragraph 49.
- 50. Defendants deny the allegations in Paragraph 50.
- 51. Defendants deny the allegations in Paragraph 51.
- 52. Defendants deny the allegations in Paragraph 52.

FOURTH CAUSE OF ACTION
Unlawful, Unfair, Fraudulent Business Practices Against All Defendants, Corporations 1-10; Limited Liability Companies A-Z; and Does I-X, Inclusive)
[California Business & Professions Code §17200 *et seq.*]

- 53. Defendants repeat and reaffirm every answer to Paragraphs 1-52.
- 54. Defendants deny the allegations in Paragraph 54.
- 55. Defendants deny the allegations in Paragraph 55.
- 56. Defendants deny the allegations in Paragraph 56.
- 57. Defendants deny the allegations in Paragraph 57.
- 58. With respect to the allegations of paragraph 58, Defendants lack information sufficient to form a belief as to the truth of the allegations of Paragraph 58 and therefore leave Plaintiff to its proof.
- 59. With respect to the allegations of paragraph 59, Defendants lack information sufficient to form a belief as to the truth of the allegations of Paragraph 59 and therefore leave Plaintiff to its proof.

1 60. With respect to the allegations of paragraph 60, Defendants lack
2 information sufficient to form a belief as to the truth of the allegations of
3 Paragraph 60 and therefore leave Plaintiff to its proof.
4

5 **FIFTH CAUSE OF ACTION**
6 **Unjust Enrichment**
7 **(Unjust Enrichment Against All Defendants, Corporations 1-10; Limited**
8 **Liability Companies A-Z; and Does I-X, Inclusive)**

9 61. Defendants repeat and reaffirm every answer to Paragraphs 1-60.

10 62. Defendants deny the allegations in Paragraph 62.

11 63. With respect to the allegations of paragraph 63, Defendants lack
12 information sufficient to form a belief as to the truth of the allegations of
13 Plaintiff's expenditure of substantial time, resources, and effort to obtain an
14 excellent reputation in Paragraph 63 and therefore leave Plaintiff to its proof.
15
16 Defendants deny the remaining allegations in Paragraph 63.
17

18 63(sic). Defendants deny the allegations in Paragraph 63(sic).
19

20 **SIXTH CAUSE OF ACTION**
21 **(Intentional Fraud and Deceit/Fraudulent Concealment Against All**
22 **Defendants, Corporations 1-10; Limited Liability Companies A-Z; and**
23 **Does I-X, Inclusive)**

24 64. Without acknowledging any right of Plaintiff to re-plead this
25 claim, Defendants deny paragraphs 64-68 in their entirety.²

26 **SEVENTH CAUSE OF ACTION**
27

28 ² Plaintiff's claim for fraud was dismissed with prejudice by the court on August 4, 2008.

1 F. With respect to the allegations of paragraph F, Defendants deny
2 that Plaintiff is entitled to the relief claimed therein.

3 G. With respect to the allegations of paragraph G, Defendants deny
4 that Plaintiff is entitled to the relief claimed therein.
5

6 H. With respect to the allegations of paragraph H, Defendants deny
7 that Plaintiff is entitled to the relief claimed therein.
8

9 I. With respect to the allegations of paragraph I, Defendants deny
10 that Plaintiff is entitled to the relief claimed therein.
11

12 J. With respect to the allegations of paragraph J, Defendants deny
13 that Plaintiff is entitled to the relief claimed therein.
14

15 K. With respect to the allegations of paragraph K, Defendants deny
16 that Plaintiff is entitled to the relief claimed therein.
17

18 L. With respect to the allegations of paragraph L, Defendants deny
19 that Plaintiff is entitled to the relief claimed therein.
20

21 M. With respect to the allegations of paragraph M, Defendants deny
22 that Plaintiff is entitled to the relief claimed therein.
23

24 N. With respect to the allegations of paragraph N, Defendants deny
25 that Plaintiff is entitled to the relief claimed therein.
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AFFIRMATIVE DEFENSES

Without admitting any allegations of the Complaint not otherwise admitted, Defendants aver and assert affirmative defenses as follows:

FIRST AFFIRMATIVE DEFENSE
(Trademark Misuse)

Plaintiff's claims are barred, in whole or in part, because Plaintiff has unfairly used its trademark registrations to promote its monopoly trademark rights.

SECOND AFFIRMATIVE DEFENSE
(Trademark Invalidity)

Plaintiff's claims are barred, in whole or in part, because Plaintiff's trademark registrations are invalid.

THIRD AFFIRMATIVE DEFENSE
(No Trademark Infringement)

Plaintiff's claims are barred, in whole or in part, because Defendants have not infringed upon Plaintiff's trademarks.

FOURTH AFFIRMATIVE DEFENSE
(Fair Use)

Plaintiff's claims are barred, in whole or in part, because of the doctrine of fair use.

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FIFTH AFFIRMATIVE DEFENSE
(Lack of Evidence)

Plaintiff's claims are barred, in whole or in part, because there is no clear and convincing evidence in support thereof.

SIXTH AFFIRMATIVE DEFENSE
(Authority, Legal Right, Necessity, Justification and/or Privilege)

Plaintiff's claims are barred, in whole or in part, because Defendants had the authority, legal right, necessity, justification and/or was privileged to act as it did.

SEVENTH AFFIRMATIVE DEFENSE
(Good Faith)

Plaintiff's claims are barred, in whole or in part, because Defendants acted in good faith at all material times.

EIGHTH AFFIRMATIVE DEFENSE
(Consent of Plaintiff)

Plaintiff's claims are barred, in whole or in part, because Plaintiff consented, agreed to and/or authorized the acts complained of.

NINTH AFFIRMATIVE DEFENSE
(Estoppel)

Plaintiff's claims are barred, in whole or in part, because of the doctrine of estoppel.

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TENTH AFFIRMATIVE DEFENSE
(Waiver)

Plaintiff's claims are barred, in whole or in part, because of the doctrine of waiver.

ELEVENTH AFFIRMATIVE DEFENSE
(Laches)

Plaintiff's claims are barred, in whole or in part, because of the doctrine of laches.

TWELFTH AFFIRMATIVE DEFENSE
(Acquiescence)

Plaintiff's claims are barred, in whole or in part, because it has acquiesced to Defendants' use.

THIRTEENTH AFFIRMATIVE DEFENSE
(Unclean Hands)

Plaintiff's claims are barred, in whole or in part, because of the doctrine of unclean hands.

FOURTEENTH AFFIRMATIVE DEFENSE
(Fraud)

Plaintiff's claims are barred, in whole or in part, because the right to use its marks was obtained fraudulently.

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FIFTEENTH AFFIRMATIVE DEFENSE
(Conditions Precedent)

Plaintiff's claims are barred, in whole or in part for failure to properly satisfy all conditions precedent as required by statute, rule, and/or common law.

SIXTEENTH AFFIRMATIVE DEFENSE
(Third Party Acts)

Plaintiff's claims are barred, in whole or in part, because the acts or omissions of third parties over which Defendants have no control caused any damages that Plaintiff seeks to recover.

SEVENTEENTH AFFIRMATIVE DEFENSE
(Failure to State a Claim)

The Complaint fails to state a claim upon which relief can be granted and, therefore should be dismissed.

EIGHTEENTH AFFIRMATIVE DEFENSE
(Res Judicata)

Plaintiff's claims are barred, in whole or in part by the doctrine of Res Judicata.

NINETEENTH AFFIRMATIVE DEFENSE
(Copyright Invalidation)

Plaintiff's claims are barred, in whole or in part, because Plaintiff's copyright, if any, is invalid.

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TWENTIETH AFFIRMATIVE DEFENSE
(No Copyright Infringement)

Plaintiff's claims are barred, in whole or in part, because Defendants' allegedly infringing work is not substantially similar to Plaintiff's alleged copyrighted work.

TWENTY-FIRST AFFIRMATIVE DEFENSE
(Merger)

Plaintiff's copyright infringement claim is barred by the doctrine of merger.

TWENTY-SECOND AFFIRMATIVE DEFENSE
(No Irreparable Harm)

Plaintiff has suffered no harm and/or irreparable harm.

///
///

TWENTY-THIRD AFFIRMATIVE DEFENSE
(Additional Affirmative Defenses)

1
2
3 Defendants reserve the right to assert additional affirmative defenses in
4 the event that the additional defenses become apparent during the course of this
5 proceeding.
6

7
8 Dated: August 14, 2008

9 Respectfully Submitted,
10 **THE PATEL LAW FIRM, P.C.**

11 

12 Natu J. Patel (SBN 188618)
13 2532 Dupont Drive
14 Irvine, California 92612-1524
15 Office: 949.955.1077
16 Facsimile: 949.955.1877
NPatel@thepatellawfirm.com

17 Attorney for Defendants Sinbad Grand
18 Café, LLC and Tobacco Import USA;
19 and Counter-claimant Sinbad Grand Cafe
20 doing business as Tobacco Import USA
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DEFENDANTS' DEMAND FOR JURY TRIAL

1
2 Defendants hereby make a demand for jury trial under Rule 38 of the
3 Federal Rules of Civil Procedure on all issues that may be tried by jury.
4

5
6 Dated: August 14, 2008

7 Respectfully Submitted,
8 **THE PATEL LAW FIRM, P.C.**

9 

10 Natu J. Patel (SBN 188618)
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15 NPatel@thepatellawfirm.com

16 Attorney for Defendants Sinbad Grand
17 Café, LLC and Tobacco Import USA;
18 and Counter-claimant Sinbad Grand Cafe
19 doing business as Tobacco Import USA
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COUNTERCLAIM

1
2 A. Counter-claimant, SINBAD GRAND CAFE, LLC, a Michigan
3 limited liability company doing business as TOBACCO IMPORT USA
4 (hereinafter “Counter-claimant” or “Sinbad Grand Café”), hereby incorporates
5 all of the allegations of the preceding Answer to the Complaint into this
6 Counterclaim.
7

8
9 B. The Counterclaim by Counter-claimant against SIERRA
10 NETWORK, INC. (“SIERRA”) for a declaratory judgment and other relief,
11 *inter alia*, arises under the trademark laws of the United States, the Lanham Act
12 (Title 15 of the United States Code (“U.S.C.”) §1051 *et seq.*), and the
13 Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking that Plaintiff’s
14 alleged trademark is invalid. The unfair competition claim by Counter-claimant
15 against SIERRA arises under the common law as adopted by the courts of
16 Michigan as well as Michigan Compiled Laws §445.901, *et seq.*
17
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19

20
THE PARTIES

21
22 C. SINBAD GRAND CAFE is a limited liability corporation of the
23 State of Michigan, doing business as TOBACCO IMPORT USA.
24

25 D. Counter-claimant is informed and believes, and based upon such
26 information and belief alleges, that SIERRA, at all times relevant to this
27
28

1 Complaint, was and is a corporation organized and existing under the laws of
2 the State of California.

3 E. The true names and capacities, whether individual, corporate,
4 associate, or otherwise, of Counter-defendants ROES 1 through 10, inclusive,
5 are unknown to Counter-claimant at this time, and Counter-claimant, therefore,
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sues said Counter-defendants by such fictitious names. Counter-claimant will
ask leave of Court to amend this Counter-complaint when the same shall have
been ascertained. Counter-claimant is informed and believes and thereon
alleges that each ROE defendant was responsible intentionally, or in some other
actionable manner, for the events and happenings referred to herein, which
proximately caused injury and damage to Counter-claimant, as hereinafter
alleged.

F. Any reference to SIERRA or Cross-defendant shall refer to each
named defendant and all ROE defendants, and to each of them.

JURISDICTION AND VENUE

G. This court has jurisdiction over the subject matter of all
Counterclaims under 28 U.S.C. §§ 1331, 1338, 1367(a), 2201, 2202, and
pursuant to the trademark laws of the United States, 15 U.S.C. §§1051 *et seq.*
This Honorable court has determined that the exercise of specific personal
jurisdiction over the Counter-claimant is warranted. This court also has

1 pendent jurisdiction over the state claims of unfair competition under the
2 common law as adopted by the courts of Michigan as well as Michigan
3 Compiled Laws §445.901, *et seq.* Venue is proper in this district under 28
4 U.S.C. §§ 1391 and 1400 since SIERRA has submitted itself to the jurisdiction
5 of this Honorable Court. Furthermore, SIERRA is a corporation of the State of
6 California.
7
8

9 **BACKGROUND OF RELEVANT FACTS**

10 H. Counter-claimant realleges and incorporates by reference the
11 allegations of all of the preceding paragraphs of this Answer and Counterclaim,
12 above, inclusive as if fully set forth herein.
13

14 I. This Counterclaim concerns issues related to Counter-defendant's
15 accusations of trademark infringement against Counter-claimant regarding the
16 trademark "Al-Fakher", a mark registered November 11, 2003, on the Principal
17 Register of the United States Patent and Trademark Office ("USPTO"),
18 registration number 2782619, in International Class 34 ("AL-FAKHER").
19

20 J. Counter-claimant is an exclusive licensed distributor of flavored
21 tobacco products manufactured by the Al Fakher Trading Co. (L.L.C.) of
22 Dubai, United Arab Emirates. ("AL FAKHER TRADING COMPANY")
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1 K. The flavored tobacco products imported from the United Arab
2 Emirates by Counter-claimant are marketed under the brand name “Dubai
3 Tobacco”.

4
5 L. The United Arab Emirates (“UAE”) is a Middle Eastern federation
6 of seven states. The seven states, termed emirates, are Abu Dhabi, Ajman,
7
8 Dubai, Fujairah, Ras al-Khaimah, Sharjah, and Umm al-Quwain.

9 M. AL FAKHER TRADING COMPANY is a manufacturer of
10 tobacco products, legally registered and licensed in Dubai, UAE on October 25,
11 1999 as a limited liability company. AL FAKHER TRADING COMPANY
12 markets products under the trade name “ALFAKHER TRADING CO L.L.C.”
13
14 A copy of the foreign registration is attached hereto as **Exhibit A**.

15
16 N. AL FAKHER TRADING COMPANY owns trademark rights in
17 Dubai to various trademarks, including, but not limited to, “Dubai Al Fakher”,
18 and “Al Fakher International”. Copies of the two example registrations are
19 attached hereto as **Exhibit B**.

20
21
22 O. Counter-claimant is informed and believes, and based upon such
23 information and belief alleges, that at some time between October 25, 1999 and
24 November 11, 2003, AL FAKHER TRADING COMPANY sold, and/or
25 distributed products to areas within the United States, including products
26 bearing its trade name.
27
28

1 P. Counter-claimant alleges that since AL FAKHER TRADING
2 COMPANY has used its trade name in commerce prior to the registration of the
3 trademark AL-FAKHER, it is entitled to common law rights and use of its trade
4 name and trademarks.
5

6 Q. Counter-claimant is informed and believes, and based upon such
7 information and belief alleges, that since AL FAKHER TRADING COMPANY
8 is entitled to common law rights. Counter-claimant, as the exclusive agent of
9 AL FAKHER TRADING COMPANY, is entitled to exercise those common
10 law rights and protections afforded to its principal.
11
12

13 R. Counter-claimant alleges that even though Counter-claimant is
14 legally entitled to utilize its principal's trade name to market its products,
15 Counter-defendant has unfairly and in bad faith threatened customers of
16 Counter-claimant with unwarranted legal action. Such action has caused
17 irreparable damage to Counter-claimant's sales, business relations and
18 reputation.
19
20
21

22 **COUNTERCLAIM FOR UNFAIR COMPETITION**
23 **Violation of Michigan Consumer Protection Act**
24 **[Michigan Compiled Laws §445.901, *et seq.*]**
25 **(Against Counter-Defendant SIERRA)**

26 S. Counter-claimant realleges and incorporates by reference the
27 allegations of all of the preceding paragraphs of this Answer and Counterclaim,
28 above, inclusive as if fully set forth herein.

1 T. Counter-claimant alleges that Counter-defendant has engaged in
2 unfair competition and unfair business practices by deliberately, maliciously,
3 deceptively, and oppressively pressuring and threatening Counter-claimant's
4 customers in an attempt to damage Counter-claimant's sales, business relations
5 and reputation as follows:
6

7
8 (i) As an example, Counter-claimant is informed and believes, and
9 based upon such information and belief alleges, that on or about
10 July 2008, an agent of Counter-defendant's licensor, a Mr. Ameer
11 Hakeem, threatened one of Counter-claimant's Florida
12 distributors, Mr. Khaled Ahmad, falsely claiming that the "Dubai
13 Tobacco" products Mr. Ahmad was selling were fake products.
14 Mr. Hakeem also threatened that if Mr. Ahmad did not desist, the
15 Bureau of Alcohol Tobacco and Firearms would fine Mr. Ahmad
16 and have his products confiscated.
17
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21
22 (ii) Counter-claimant is informed and believes, and based upon such
23 information and belief alleges, that agents of Counter-defendant
24 have physically threatened agents of Counter-claimant and/or
25 Counter-claimant's customers. Counter-claimant alleges that in
26 one such instance, one of Counter-defendant's distributors in
27
28

1 Michigan verbally assaulted and attempted to physically injure an
2 agent of Counter-claimant.

3 U. Counter-claimant is informed and believes, and based upon such
4 information and belief, alleges that Counter-defendant's actions constitute
5 actionable wrongs under Michigan Compiled Laws §445.901 *et seq.* by
6 disparaging the goods, services, business, or reputation of Plaintiff by false or
7 misleading representation of fact.
8

9
10 V. Counter-claimant is informed and believes, and based upon such
11 information and belief, alleges that Counter-defendant's actions also constitute
12 actionable wrongs by failing to reveal material facts, the omission of which tend
13 to mislead or deceive the consumer, and which facts could not reasonably be
14 known by the consumer.
15

16
17 W. By reason of the foregoing unlawful acts, Counter-defendant has
18 caused, and continues to cause, substantial and irreparable damage and injury to
19 Counter-claimant and to the public. Counter-defendant has benefited from such
20 unlawful conduct, and will continue to carry out such unlawful conduct and to
21 be unjustly enriched thereby unless enjoined by this Court.
22

23
24 X. As a proximate and direct result of Counter-defendant's acts as
25 herein alleged, Counter-claimant has sustained damages in an as yet
26 unascertained amount to be proven at trial.
27
28

1 Y. WHEREFORE, Counter-claimant prays for judgment against
2 Counter-defendant as hereinafter set forth.

3 **PRAYER FOR RELIEF**

4
5 WHEREFORE, Counter-claimant prays for judgment against Counter-
6 defendant as follows:

7
8 A. For judgment dismissing the Complaint with prejudice;

9 B. Order an award for actual damages according to proof;

10 C. Order an award for special damages according to proof;

11
12 D. Order an award granting Counter-claimant monetary relief, including
13 damages and the costs of the action;

14
15 E. Order an award of attorney's fees;

16 F. Order an award of punitive damages to be determined at trial;

17
18 G. Order for an injunction prohibiting Counter-defendant from engaging or
19 continuing to engage in the unlawful, unfair, or fraudulent business acts or
20 practices described herein;

21
22 H. Order for treble damages suffered by Counter-claimant as a result of
23 Counter-defendant's unlawful, unfair, or fraudulent business acts or practices
24 described herein;

25
26 ///

27
28 ///

1 I. For judgment awarding such other further relief as the Court may deem
2 just and proper under the circumstances in favor of Counter-claimant.
3
4

5 Dated: August 14, 2008

Respectfully Submitted,
THE PATEL LAW FIRM, P.C.

7
8 

9 Natu J. Patel
10 Attorney for Defendants Sinbad Grand
11 Café, LLC and Tobacco Import USA;
12 and Counter-claimant Sinbad Grand Cafe
13 doing business as Tobacco Import USA
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COUNTER-CLAIMANT'S DEMAND FOR JURY TRIAL

Counter-claimant hereby demands a trial by jury of those issues asserted on the Counterclaim as triable to a jury as a matter of right.

Dated: August 14, 2008

Respectfully Submitted,
THE PATEL LAW FIRM, P.C.



Natu J. Patel
Attorney for Defendants Sinbad Grand
Café, LLC and Tobacco Import USA;
and Counter-claimant Sinbad Grand Cafe
doing business as Tobacco Import USA

PROOF OF SERVICE

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CASE NO. CV 07-06104

I, the undersigned, declare as follows:

I am employed in the County of Orange, State of California. I am over the age of 18 years, and not a party to the within action. My business address is: 2532 Dupont Drive, Irvine, California 92612.

On August 14, 2008, I served the following document(s):

Defendants Sinbad Grand Cafe, LLC & Tobacco Import USA's Answer And Affirmative Defenses; Sinbad Grand Café, LLC, Doing Business As Tobacco Import USA's Counterclaim For Unfair Competition

on the interested parties in this action by placing a true and correct copy of each document thereof, enclosed in a sealed envelope, addressed as follows:

**Christopher Q. Pham, Esq
Susan Rabin, Esq
GAREEB | PHAM, LLP
707 Wilshire Boulevard, Suite 5300
Los Angeles, CA 90017**

By Mail: I am readily familiar with The Patel Law Firm's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence is deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at Irvine, California.

By Personal Service: I provided such document(s) by hand delivery.

By Overnight Courier: I caused the above-referenced document(s) to be delivered to an overnight courier service for delivery to the above address(es).

By Facsimile Machine: I caused the above-referenced document(s) to be transmitted to the above-named persons at the following facsimile number(s):

By Electronic Mail: I caused the above-referenced document(s) to be transmitted to the above-named persons at the following electronic mail address(es):
cpham@gareebpham.com

Executed on August 14, 2008, at Irvine, California.

I declare that I am employed in the office of a member of the bar of this court at whose direction this service was made.



Christina Donos

EXHIBIT A

UNITED ARAB EMIRATES
GOVERNMENT OF DUBAI
DEPARTMENT OF ECONOMIC DEVELOPMENT



دولة الإمارات العربية المتحدة
حكومة دبي
السلطة الاقتصادية

رخصة تجارية
Commercial License

License Details / تفاصيل الرخصة			
License No.	514917	رقم الرخصة	
Company Name	AL FAKHER TRADING CO (L.L.C)	اسم الشركة	شركة الفاخر التجارية (ذات مسئولية محدودة)
Trade Name	AL FAKHER TRADING CO (L.L.C)	الإسم التجاري	شركة الفاخر التجارية (ذ.م.م)
Legal Type	Limited Liability Company(LLC)	الشكل القانوني	ذات مسئولية محدودة
Expiry Date	25/10/2007	تاريخ الإصدار	26/10/1999
D&B D-U-N-S ® No.	534461470	رقم الرخصة الام	514917
Register No.	61056	رقم التسجيل التجاري	73483

License Members / أعضاء الرخصة			
Share / الحصص	Role / الصفة	Nationality / الجنسية	Name / الإسم
	Manager / مدير	Iran / ايران	رحمان نوروز علي فرجي
		رقم الشخص / No.	111007

License Activities / أنشطة الرخصة	
Smoking Requisites Trading	تجارة لوازم التدخين
Tobacco & Cigarettes Trading	تجارة التبغ المعالج والسجائر

Telephone	971-4-2723655	تليفون	محل رقم 6 ملك عبدالرحمن وعبدالمجيد محمود و الطيب الزرعوني - ديرة - المرمر
Fax	971-4-2729397	فاكس	
Mobile No		الهاتف المتحرك	P.O. Box 65400

تم تغيير الموقع في 2007-6-11

Print Date 12/06/2007 12:32 تاريخ الطباعة
Receipt No. 10162071 رقم الإيصال

EXHIBIT B

UNITED ARAB EMIRATES

Ministry of Economy & Planning
Commercial Registration Deptدولة الامارات العربية المتحدة
وزارة الاقتصاد والتخطيط
إدارة التسجيل التجاري**شهادة تسجيل علامة تجارية**

عملاً بأحكام المادة ١٦ من القانون الإتحادي رقم ٣٧ لسنة ١٩٩٢م بشأن تسجيل العلامات التجارية :

تشهد وزارة الاقتصاد والتخطيط أن العلامة التجارية التي سبق تقديم طلب تسجيلها تحت رقم : ٦٩٢٩٦



من قبل : ش. الفلخر التجارية ذ م م

تاريخ الإيداع : ٢٠٠٥/٠٤/٣٠

الجنسية : الامارات

الموطن : ص.ب ٦٥٤٠٠ ، دبي - الامارات العربية المتحدة

إسم العلامة : مصسل دبي

رقم الفنة : ٣٤ (المنتجات موضحة خلف الشهادة)

قد تم تسجيلها تحت رقم : ٥٧١٥٣ بتاريخ : ٢٠٠٦/٠١/١٨

وسيظل التسجيل نافذ المفعول لمدة عشر سنوات اعتباراً من ٢٠٠٥/٠٤/٣٠ وحتى تاريخ انتهاء مدة الحماية في : ٢٠١٥/٠٤/٣٠

ويجوز تجديد الحماية وفقاً لأحكام المادة ١٩ من قانون العلامات التجارية لمدد متتالية أخرى كل منها عشر سنوات .

الاشتراطات : عدم المطالبة بحق خاص عن استخدام الكلمتين "مصسل ، دبي" كل على حدة

تحريراً في : ٢٠٠٦/٠١/٢١

مدير إدارة التسجيل التجاري
وزارة الاقتصاد والتخطيط
دولة الامارات العربية المتحدة

٣٤

للفئة :

٦٩٢٩٦

المنتجات الخاصة بالعلامة التجارية المودعة تحت رقم :

التبغ الخام او المصنوع ، المعسل ، ادوات التدخين ، الكبريت، والواقعة بالفننه ٣٤



٢٠٠٦/٠١/٢١

تحريراً في :

UNITED ARAB EMIRATES

Ministry of Economy
Commercial Registration Deptدولة الامارات العربية المتحدة
وزارة الاقتصاد
إدارة التسجيل التجاري

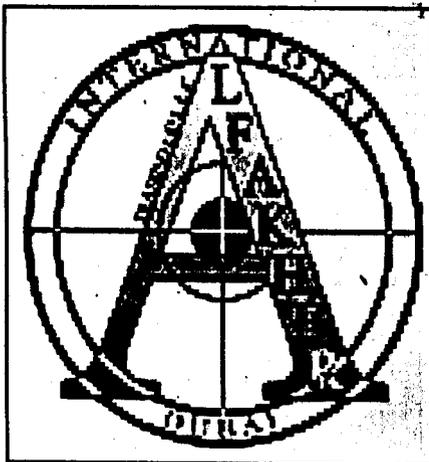
TRUE COPY

شهادة تسجيل علامة تجارية بصورة طبق الأصل

عملاً بأحكام المادة ١٦ من القانون الإتحادي رقم ٣٧ لسنة ١٩٩٢م بشأن تسجيل العلامات التجارية :

٧١٧٠٤

تشهد وزارة الاقتصاد أن العلامة التجارية التي سبق تقديم طلب تسجيلها تحت رقم



ش. الفاخر التجارية ذ م م

من قبل :

٢٠٠٥/٠٧/٢٥

تاريخ الإيداع :

الامارات

الجنسية :

ص ب ٦٥٤٠٠ دبي الامارات العربية المتحدة

الموطن :

A ALFAKHER A INTERNATIONAL DUBAI

إسم العلامة :

(المنتجات موضحة خلف الشهادة)

٣٤

رقم الفئة :

٢٠٠٧/٠٧/٣٠

بتاريخ :

٨٣٢١٦

تم تسجيلها تحت رقم :

وسيزل التسجيل نافذ المفعول لمدة عشر سنوات اعتباراً من : ٢٠٠٥/٠٧/٢٥ وحتى تاريخ انتهاء مدة الحماية في : ٢٠١٥/٧/٢٥ .

ويجوز تجديد الحماية وفقاً لأحكام المادة ١٩ من قانون العلامات التجارية لمدد متتالية أخرى كل منها عشر سنوات .

الاشتراطات : عدم الطالبة بحق خاص عن استخدام الكلمتين INTERNATIONAL , DUBAI لشيوع استخدامهما ك
على حدة .

٢٠٠٧/٠٧/٣٠

حريراً في :



دبي

23

Exhibit C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 07-6104 DSF (CTx)

Date 1/5/09

Title Sierra Networks, Inc. v. Tobacco Import USA, et al.

Present: The
Honorable

DALE S. FISCHER, United States District Judge

Debra Plato

Not Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (In Chambers) Order GRANTING Motion for Leave to Supplement the Counterclaim

Defendant and Counterclaimant Sinbad Grand Café, LLC's motion for leave to supplement the counterclaim was filed on December 13, 2008. The opposition was due, at the latest, on December 29, 2008.¹ No opposition has yet been filed. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. The hearing set for January 12, 2009, is removed from the Court's calendar.

The Court deems the lack of opposition to be consent to the motion. Local Rule 7-12; see also Ghazali v. Moran, 46 F.3d 52 (9th Cir. 1995); Brydges v. Lewis, 18 F.3d 651, 652 (9th Cir. 1993). The motion is GRANTED.

IT IS SO ORDERED.

¹ The Court's current standing order requires opposition papers to be filed 21 days prior to the noticed hearing date. The current standing order is published on the Court's website. However, the standing order issued to the parties on September 21, 2007, indicates that motions are to be filed in accordance with Local Rule 7, which requires opposition papers to be filed 14 days prior to the noticed hearing date.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Exhibit D

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Counter-claimant,)
)
vs.)
)
SIERRA NETWORK, INC., a California)
Corporation, and ROES 1-10, Inclusive,)
)
Counter-defendants.)
)
)
)

SUPPLEMENTAL COUNTERCLAIM

A. Counter-claimant, SINBAD GRAND CAFE, LLC, a Michigan limited liability company doing business as TOBACCO IMPORT USA (hereinafter “Counter-claimant” or “Sinbad Grand Café”), hereby incorporates all of the allegations of the Answer, Affirmative Defenses, and Counterclaim filed by Counter-claimant on August 14, 2008.

B. This supplemental counterclaim by Counter-claimant against SIERRA NETWORK, INC. (“SIERRA”) for libel and slander arises under the common law as adopted by the courts of California, as well as California Civil Code § 44 et seq.

JURISDICTION AND VENUE

C. This court has jurisdiction over the subject matter of all Counterclaims under 28 U.S.C. §§ 1331, 1338, 1367(a), 2201, 2202, and

1 pursuant to the trademark laws of the United States, 15 U.S.C. §§1051 *et seq.*
2 This Honorable Court has determined that the exercise of specific personal
3 jurisdiction over the Counter-claimant is warranted. This court also has
4 pendent jurisdiction over the state claims of libel and slander arising under the
5 common law as adopted by the courts of California, as well as California Civil
6 Code § 44 *et seq.* Venue is proper in this district under 28 U.S.C. §§ 1391 and
7 1400 since SIERRA has submitted itself to the jurisdiction of this Honorable
8 Court. Furthermore, SIERRA is a corporation of the State of California.

12 INTRODUCTION

13 D. This supplemental counterclaim sets forth several developments
14 subsequent to the filing of the counterclaim in this case. In particular, Counter-
15 claimant files this supplemental complaint now in order to add counterclaims
16 for libel and slander based upon SIERRA's malicious spreading of false
17 statements designed to harm Counter-claimant's business relations and
18 reputation.
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21

22 BACKGROUND OF RELEVANT SUPPLEMENTAL FACTS

23 E. On August 14, 2008, Counter-claimant filed its answer, affirmative
24 defenses, and counterclaim.
25
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1 F. On or about October 28, 2008, SIERRA disclosed documents to
2 Counter-claimant which discussed the arrest and indictment of a Mr. Akram
3 Aziz Allos for selling illegal tobacco products. (“ARREST DOCUMENTS”)
4

5 G. Counter-claimant’s president, whose name is also Akram Allos, is
6 not the person identified in the ARREST DOCUMENTS.
7

8 H. On or about November 3, 2008, Counter-claimant’s president,
9 Akram Allos, discovered that SIERRA and its agents were (a) transmitting or
10 otherwise delivering copies of the ARREST DOCUMENTS to its customers,
11 distributors, and other third parties; and (b) making oral and written statements
12 that the president of Counter-claimant was the person identified in the ARREST
13 DOCUMENTS.
14
15

16 I. Several of these third parties are familiar with Counter-claimant
17 and its president, Akram Allos, and the relationship between Counter-claimant
18 and its president.
19

20 J. On or about November 3, 2008, upon learning of SIERRA and its
21 agents’ activities, Counter-claimant demanded SIERRA to retract their false
22 statements.
23
24

25 K. On or about December 4, 2008, after receiving no notice of
26 retraction, or other indication that SIERRA and its agents had retracted their
27
28

1 statements or stopped making such false statements, Counter-claimant once
2 again sent SIERRA its demand for retraction.

3
4 L. As of December 12, 2008, Counter-claimant has not received a
5 notice of retraction or other indication that SIERRA and its agents have
6 retracted their statements.

7
8 M. Counter-claimant is informed and believes and thereon alleges
9 that, even after learning that the individual identified in the ARREST
10 DOCUMENTS is not Counter-claimant's president, SIERRA continued to
11 disseminate false and misleading statements to the detriment of Counter-
12 claimant and its president.

13
14
15 **COUNTERCLAIMS FOR RELIEF**

16 **SECOND COUNTERCLAIM FOR LIBEL**
17 **California Civil Code § 45, 45a**
18 **(Against Counter-Defendant SIERRA)**

19 N. Counter-claimant realleges and incorporates by reference the
20 allegations of all of the preceding paragraphs of this Supplemental
21 Counterclaim, above, inclusive as if fully set forth herein.

22
23 O. Counter-claimant is informed and believes and thereupon alleges
24 that Counter-defendant has published the ARREST DOCUMENTS to third
25 parties, which identify a person with a similar name as that of Counter-
26 claimant's president.
27
28

1 P. Counter-claimant is informed and believes and thereupon alleges
2 that according to the ARREST DOCUMENTS, the person identified therein
3 was arrested and indicted.
4

5 Q. Counter-claimant is informed and believes and thereupon alleges
6 that Counter-defendant published the ARREST DOCUMENTS with
7 accompanying statements identifying Counter-claimant's president as the
8 individual arrested and indicted.
9

10 R. The statements in conjunction with the ARREST DOCUMENTS
11 are libelous on their face, and expose Counter-claimant to hatred, contempt, and
12 ridicule.
13

14 S. Counter-claimant is informed and believes and thereupon alleges
15 that the parties to whom Counter-defendant made statements and provided the
16 ARREST DOCUMENTS are aware of the identities of Counter-claimant and its
17 president, and are also aware of the relationship between Counter-claimant and
18 its president.
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22 T. Counter-defendant's statements regarding Counter-claimant's
23 president and his involvement with the ARREST DOCUMENTS were false.
24 These statements are injurious to Counter-claimant's business reputation since
25 they falsely imply, among other things, that Counter-claimant sells counterfeit
26
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1 products, that Counter-claimant is engaged in criminal activities, or that
2 Counter-claimant was punished for a crime.

3 U. Counter-claimant is informed and believes and thereupon alleges
4 that Counter-defendant's actions were performed with the intent of injuring
5 Counter-claimant's reputation.
6

7 V. Counter-claimant is informed and believes and thereupon alleges
8 that Counter-defendant failed to make any reasonable investigation into the
9 truth of its statements.
10

11 W. Counter-claimant is informed and believes and thereupon alleges
12 that Counter-defendant either knew that the statements were false and/or failed
13 to make any reasonable investigation as to the identity of the person identified
14 in the ARREST DOCUMENTS which Counter-defendant published to third
15 parties.
16

17 X. Counter-claimant is informed and believes and thereon alleges
18 that, even after learning that the individual identified in the ARREST
19 DOCUMENTS is not Counter-claimant's president, SIERRA continued to
20 disseminate false and misleading statements.
21

22 Y. As a proximate and direct result of Counter-defendant's acts as
23 herein alleged, Counter-claimant has sustained irreparable harm to its business
24 relations.
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1 EE. Counter-defendant's oral statements were false. The oral
2 statements regarding Counter-claimant's president are injurious to Counter-
3 claimant's business reputation since they falsely imply, among other things, that
4 Counter-claimant sells counterfeit products, that Counter-claimant is engaged in
5 criminal activities, or that Counter-claimant was punished for a crime.
6

7
8 FF. Counter-claimant is informed and believes and thereupon alleges
9 that Counter-defendant's actions were performed with the intent of injuring
10 Counter-claimant's reputation.
11

12 GG. Counter-claimant is informed and believes and thereupon alleges
13 that Counter-defendant either knew of the falsity of its statements and/or failed
14 to make any reasonable investigation into the truth of its statements.
15

16 HH. Counter-claimant is informed and believes and thereon alleges
17 that, even after learning that Counter-claimant's president was not the same
18 person identified in the ARREST DOCUMENTS, SIERRA continued to
19 disseminate false and misleading statements.
20
21

22 II. As a proximate and direct result of Counter-defendant's actions as
23 herein alleged, Counter-claimant has sustained irreparable harm to its business
24 relations.
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1 JJ. As a proximate and direct result of Counter-defendant's acts as
2 herein alleged, Counter-claimant has sustained damages in an as yet
3 unascertained amount to be proven at trial.
4

5 KK. WHEREFORE, Counter-claimant prays for judgment against
6 Counter-defendant as hereinafter set forth.
7

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Counter-claimant prays for judgment against Counter-
11 defendant as follows:
12

- 13 A. For judgment dismissing the Complaint with prejudice;
- 14 B. Order an award for actual damages according to proof;
- 15 C. Order an award for special damages according to proof;
- 16 D. Order an award granting Counter-claimant monetary relief, including
17 damages and the costs of the action;
- 18 E. Order an award of attorney's fees;
- 19 F. Order an award of punitive damages to be determined at trial;
- 20 G. Order for an injunction prohibiting Counter-defendant from engaging or
21 continuing to engage in the unlawful, unfair, or fraudulent business acts or
22 practices described herein;
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H. Order for treble damages suffered by Counter-claimant as a result of Counter-defendant's unlawful, unfair, or fraudulent business acts or practices described herein;

I. Order for an injunction commanding Counter-defendant to disseminate retractions of all false statements made regarding Counter-claimant and its president, and prohibiting Counter-defendant from making further false statements regarding Counter-claimant and its president.

J. Order for punitive damages as a result of Counter-defendant's malicious statements.

K. For judgment awarding such other further relief as the Court may deem just and proper under the circumstances in favor of Counter-claimant.

Dated: December 12, 2008

Respectfully Submitted,
THE PATEL LAW FIRM, P.C.



Natu J. Patel
Attorney for Defendants Sinbad Grand Café, LLC and Tobacco Import USA; and Counter-claimant Sinbad Grand Cafe doing business as Tobacco Import USA

COUNTER-CLAIMANT'S DEMAND FOR JURY TRIAL

Counter-claimant hereby demands a trial by jury of those issues asserted on the Counterclaim as triable to a jury as a matter of right.

Dated: December 12, 2008

Respectfully Submitted,
THE PATEL LAW FIRM, P.C.



Natu J. Patel
Attorney for Defendants Sinbad Grand
Café, LLC and Tobacco Import USA;
and Counter-claimant Sinbad Grand Cafe
doing business as Tobacco Import USA

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PROOF OF SERVICE

1 UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
2 CASE NO. CV 07-06104

3 I, the undersigned, declare as follows:

4 I am employed in the County of Orange, State of California. I am over the age of 18
5 years, and not a party to the within action. My business address is: 2532 Dupont Drive,
Irvine, California 92612.

6 On December 12, 2008, I served the following document(s):

7 **Sinbad Grand Cafe, LLC, Doing Business As Tobacco Import USA's First**
8 **Supplemental Counterclaim**

9 on the interested parties in this action by placing a true and correct copy of each
10 document thereof, enclosed in a sealed envelope, addressed as follows:

11 **Christopher Q. Pham, Esq**
12 **Johnson & Pham, LLP**
13 **6355 Topanga Canyon Blvd, Suite 115**
Woodland Hills, California 91367
cpham@johnsonpham.com

- 14 **By Mail:** I am readily familiar with The Patel Law Firm's business practice for
15 collection and processing of correspondence for mailing with the United States Postal
16 Service. I know that the correspondence is deposited with the United States Postal
17 Service on the same day this declaration was executed in the ordinary course of
18 business. I know that the envelope was sealed and, with postage thereon fully prepaid,
placed for collection and mailing on this date, following ordinary business practices, in
the United States mail at Irvine, California.
- 19 **By Personal Service:** I provided such document(s) by hand delivery.
- 20 **By Overnight Courier:** I caused the above-referenced document(s) to be delivered to
an overnight courier service for delivery to the above address(es).
- 21 **By Facsimile Machine:** I caused the above-referenced document(s) to be transmitted to
the above-named persons at the following facsimile number(s):
- 22 **By Electronic Mail:** I caused the above-referenced document(s) to be transmitted to the
23 above-named persons at the following electronic mail address(es):
cpham@johnsonpham.com

24 Executed on December 12, 2008, at Irvine, California.

25 I declare that I am employed in the office of a member of the bar of this court at
26 whose direction this service was made.

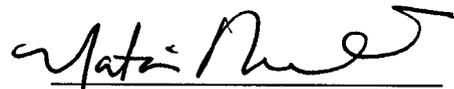
27 
28 Natasia Malaihollo

EXHIBIT E



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Electronic Trademark Assignment System

Confirmation Receipt

Your assignment has been received by the USPTO.
The coversheet of the assignment is displayed below:

TRADEMARK ASSIGNMENT

Electronic Version v1.1
Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
	Name	Formerly	Execution Date
	Entity Type		
	Bassam Hamade	FORMERLY BNN IMPORT EXPORT	02/01/2008
			INDIVIDUAL; UNITED STATES
RECEIVING PARTY DATA			
Name:	Al-Fakher for Tobacco Trading & Agencies Co. Ltd.		
Doing Business As:	DBA Sierra Network, Inc.		
Street Address:	P.O. Box 911145		
City:	Amman		
State/Country:	JORDAN		
Postal Code:	11191		
Entity Type:	CORPORATION: JORDAN		
PROPERTY NUMBERS Total: 1			
	Property Type	Number	Word Mark
	Serial Number:	78703714	AL-FAKHER TROPICAL
CORRESPONDENCE DATA			
Fax Number:	(213)455-2940		
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.			
Phone:	2134552930		
Email:	srabin@gareebpham.com		
Correspondent Name:	Susan Rabin c/o Gareeb Pham LLP		

Address Line 1: 707 Wilshire Blvd Address Line 2: Ste 5300 Address Line 4: Los Angeles, CALIFORNIA 90017	
ATTORNEY DOCKET NUMBER:	SIERRA
DOMESTIC REPRESENTATIVE Name: Susan Rabin c/o Gareeb Pham LLP Address Line 1: 707 Wilshire Blvd Address Line 2: Ste 5300 Address Line 4: Los Angeles, CALIFORNIA 90017	
NAME OF SUBMITTER:	Susan Rabin
Signature:	/susan rabin/
Date:	06/27/2008
Total Attachments: 3 source=Settlement-Tobacco Trading#page1.tif source=Settlement-Tobacco Trading#page2.tif source=Settlement-Tobacco Trading#page3.tif	
RECEIPT INFORMATION ETAS ID: TM118622 Receipt Date: 06/27/2008 Fee Amount: \$40	

[Return to home page](#)

| [HOME](#) | [INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [CONTACT US](#) | [PRIVACY STATEMENT](#)

EXHIBIT F

EXCLUSIVE DISTRIBUTION AGREEMENT

This agreement (The Agreement) is made on this day, 20th July 2006 by and between:

1. The First Party AL FAKHER For TOBACCO Trading and Agencies CO (The owner of Al Fakher Tobacco Trading in Ajman, UAE), a company incorporated under the laws of the Hashemite Kingdom of Jordan, having its principal office at Amman 911145 Jordan 11191, represented herein this agreement by MR. Samer Fakhouri (hereinafter called the "Manufacturer").

And

2. The Second Party SIERRA NETWORK, Inc, a company incorporated under the laws of the State of California, having its principal office at 4000 w 139 St, Hawthorne, California- USA represented herein this agreement by MR Emil Hakim (hereinafter called "The Exclusive Distributor)

(The First and Second Parties are collectively referred to as the "Parties")

Preamble

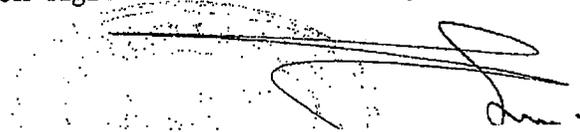
Whereas AL FAKHER for TOBACCO Trading & and Agencies is the manufacturer of a well-known high quality processed honeyed and flavored tobacco in all forms of packages.

A Whereas The Manufacturer wishes to enter into this agreement with an Exclusive Distributor of its well-known high quality processed honeyed and flavored tobacco in the territory the United State of America.

, all pursuant to the terms and conditions of this agreement;

Whereas SIRRA NETWORK, Inc. is ready, capable and willing to be the Exclusive Distributor of the well-known high quality processed honeyed and flavored tobacco.

Whereas the Parties wish to exert efforts to setup a commercial relation for the purpose of promoting their mutual interests and executing the present Exclusive Distribution Agreement determining

A handwritten signature in black ink is written over a circular, faded stamp. The signature appears to be "Emil Hakim".

the rights and obligations of each Party.

NOW THEREFORE, the parties hereto have agreed as follows:

Article 1 Preamble & Schedules & Appendixes

For the Purposes of this Agreement, the above Preamble, along with the Schedules and appendixes attached to this Agreement constitute an integral part of this Agreement and shall be read with it.

Article 2 Definitions

Unless the context requires otherwise, the following terms shall have the meanings assigned to them in this Article.

B "The products" shall mean the processed honeyed and flavored tobacco offered for sale in any form of packaging.

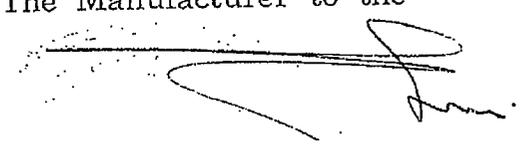
C "The Territory" shall mean the geographical area of the United State of America.

D "Exclusive Distribution" means the exclusive right to market distributes and sells the "Products" in the Territory, pursuant to the terms and provisions of This Agreement.

E "Intellectual Property Rights" shall mean all Intellectual Property rights related to the Products including but not limited to, Al-Fakher's Trademarks, service marks, trade names, trade dress, logos, slogans , drawings , colors , commercial description of goods, trade secrets , symbols customer list, packages, designs, patents, copyrights, proprietary and ., information enabling accomplishment of a particular task, operation of a particular device or a process, know-how related to the Products and which are all owned, and possessed by the Manufacturer whether in a tangible and/or intangible form, including but not limited to technological information, ideas, inventions, plans, research

F "The year" shall mean any period of (12) twelve months starting from the date of execution set here above.

G Confidential Information: any information, data and industrial secrets, considered by the as confidential and supplied and/or exchanged under This Agreement by The Manufacturer to the Exclusive Distributor.



Article 3 Scope of the Agreement

In view of the terms and conditions of the "Agreement" the "Manufacturer" hereby grants the Exclusive Distributor, and the Exclusive Distributor hereby accepts the rights to display sell and distribute the Products" in the "Territory" for a period of Five years. To be renewed upon mutual written agreement by the Parties.

Article 4 Work's Strategy:

1. The Exclusive Distributor will submit the purchase orders to the manufacturer in the form designed by the Manufacturer in (Appendix A) and the Exclusive Distributor has to secure minimum order of 30 tones quarterly to be reviewed semiannually by the manufacturer according to market demand in the territory after thoroughly discussing it with the Exclusive Distributor.
2. Payment by the Exclusive Distributor shall be made by bank transfer as follows: 50% of the payment upon placing the order (Advanced Payment), and the remaining 50% to be paid upon receiving a copy of the bill of lading.
3. Delay in the Advance Payments for more than two weeks as from the date of the issuance of the order, will be considered as a breach of contract and shall give the Manufacturer the right to deal with the Products as it deems fit, and without any responsibility and/or obligation thereof and will have the right to cancel this agreement. The remaining 50% if not paid the Advanced Payment will be confiscated as a penalty and the agreement will be cancelled.
4. The payment process will be in US Dollar through bank transfer to a bank account provided by the Manufacturer.

Article 5 Manufacturer's Obligations

1. The Manufacturer hereby undertakes to supply the Exclusive Distributor with quality products according to the internal quality and standards of products and packaging adopted by the

Manufacturer for its products

2. The Manufacturer hereby undertakes to exert its best efforts to meet the quantity ordered by the Exclusive Distributor within the periods agreed upon by the Parties on monthly bases.
3. The Manufacturer should respond to the Exclusive Distributor's purchase order and exert its best efforts to meet the order and the order shipping date without any unreasonable delay unless there are justified reasons not allowing it to do so. If delay is to take place, the manufacturer must inform the Exclusive Distribution immediately to avoid any damage or loss resulting from such delay.
4. The Manufacturer will not be responsible in case the product was displayed, sold or distributed within the Territory by any third party, without awareness or conception of the Manufacturer. Exclusive Distributor has to report such activities to the manufacturer as soon as he is aware of such activity and the Manufacturer has to exert all efforts to stop such activities.
5. During the term of this Agreement and without the prior written consent of the Exclusive Distributor the manufacturer shall not engage directly or indirectly in the Distribution or selling of the product in the USA Market.
6. Appoint a representative for implementation of this Agreement, who shall serve as a point of contact.

Article 6 Exclusive Distributor Obligations:

1. The Exclusive Distributor in this agreement should willingly accept this designation and to exert the utmost and best efforts towards the purchases, sales and order transactions as per the terms of this agreement.
2. Upon signature of This Agreement, The Exclusive Distributor shall prepare for the Manufacturer's approval a Forecast of the Products to be distributed in the Territory, which Forecast shall be reviewed by the Manufacturer and amended on quarterly basis.

A handwritten signature in black ink, appearing to be a stylized name, located at the bottom right of the page.

3. Purchase sufficient number of the Products from the Manufacturer in order to meet the Minimum Commitment requirements set out in Article 4, Failure of the Exclusive Distributor to meet the Minimum Commitment requirements shall be deemed material breach of this Agreement.
4. Appoint a representative for implementation of this Agreement, who shall serve as a point of contact. The Representative shall prepare and issue monthly reports detailing the Exclusive Distributor; sales forecast, names of existing and future Customers dealing with the Exclusive Distributor, inventory, sales volume.
5. The Exclusive Distributor will not make any representations or give any warranties concerning the Product or its specifications, which are false or misleading in anyway or go beyond those warranties made by the Manufacturer in this Agreement.
6. Prepare, for the Manufacturer's approval, a marketing plan and budget to reflect the Exclusive Distributor's plans in connection with the Product.
7. Apply, maintain and renew, at its expense, any governmental approval required for the marketing, sale and Exclusive Distribution of the Product throughout the Territory.
8. Notify The Manufacturer of all matters of importance coming to its attention, relating to the Products, competitive information, legislation changes, policies, new products and market trends.
9. Comply with all applicable laws and regulations in the Territory in which it engages and the laws and regulations that apply to the export, sale and/or use of the Product. The Exclusive Distributor shall bear all expenses and costs related to compliance with such laws and regulations.
10. The Exclusive Distributor has no right to change the Product, the method of its display unless other wise a written consent is provided by the Manufacturer.
11. The Exclusive Distributor should display, sell and



distribute the Products within the Territory only unless otherwise mutually agreed in writing by the parties.

12. The Exclusive Distributor will assume all expenses resulting of the product's distribution within the Territory, such as taxes and other fees imposed by the authorities within the Territory.
13. The manufacturer has the right through any of his representatives to oversee the Exclusive Distributors books showing all details of the operation.
14. The Exclusive Distributor shall provide the marketing and sales projection plan including the quantities and time table to be discussed and approved by the Manufacturer.
15. The Exclusive Distributor will provide the manufacture with the cost breakdown and price breakdown to be sold in the Market after it is agreed with the manufacturer and this price breakdown policy should determine the manufacture's selling price.
16. The Exclusive Distributor will not engage to deal directly & indirectly with Agents, Exclusive Distributors and or sole representatives of competitive brands.

Article 7 Appointments of Resellers or Sub-distributors

1. The Exclusive Distributor might appoint resellers or sub-distributors in writing in the USA upon the written approval of the Manufacturer. Any breach of this sub-article shall be considered as a material breach of the Agreement.
2. The Manufacturer has the right to introduce sub-distributors within the market to the Exclusive Distributor. The Exclusive Distributor will sell the product for a price as structured in price breakdown agreed with the manufacturer.
3. The manufacturer has the right to open outlets in the USA market to sell directly to consumers the manufacturer shall by the products from the distributor at wholesale price.

Article 8 Advertising & Publishing:

1. The two parties will hold regular discussions on the strategies that should be adopted in displaying the Products for sale in the Territory the Manufacturer shall decide the amount of money to be allocated for the product's sales promotion in the Territory.
2. The Exclusive Distributor should exert all efforts in promoting the Products and improving the sales within the Territory.
3. The Manufacturer will provide all sales printed materials and printed advertising materials relevant to the products, and the Exclusive Distributor shall fully cooperate with the Manufacturer in this regard as the Manufacturer deems fit.
4. The Manufacture will assume the cost of product advertising and promoting within the territory.

Article 9 Intellectual Proprietary Rights.

1. The Exclusive Distributor should bear in mind that the Intellectual Property Rights of the Products belong to the manufacturer. The Manufacturer shall also have the sole and exclusive ownership rights in any results and information relating to, arising out of or resulting from the performance of this Agreement by the Parties, including, but not limited to all copyrights, marketing information and material.
2. The Exclusive Distributor undertakes to promptly inform the Manufacturer of any possible infringement by third parties of Manufacturer's Intellectual Proprietary Rights and Confidential Information including any duplication of the Products, and to participate with the Manufacturer regarding any legal action against such infringement which, in the Manufacturer's judgment, should be necessary.
3. The Exclusive Distributor shall fully cooperate with the Manufacturer in protecting and enforcing the latter's rights in the Product Intellectual Property Rights and Confidential Information. The Exclusive Distributor undertakes to assist the Manufacturer and take all reasonable actions necessary to



record, register and otherwise establish and prove the Manufacturer's Intellectual Property Rights and Confidential Information concerning the Products, including without limitation executing all documents, affidavits, assignments and assurances and to provide oral testimony.

Article 10 Confidentiality.

1. The Exclusive Distributor agrees to receive in confidence any information disclosed by the Manufacturer, including, but not limited to, the Products, Inventions or technical information or information of a business or commercial nature and all other Intellectual Property Rights (hereinafter referred to as "Confidential Information") and not to disclose any of the Confidential Information to any other person, firm or corporation, and to use the Confidential Information only for the Exclusive Distributor's own use in order to fulfill its obligations under this Agreement.
2. The "Manufacturer" agrees not to unveil any information he receives from the Exclusive Distributor" regarding the present agreement, qualified as confidential and to deal with such confidential information in the same degree of attention as if belongs to him.
3. The Exclusive Distributor agrees that the Confidential Information received from the Manufacturer shall only be disclosed to such of its employees and sales or service representatives that have a need to know about such Confidential Information for a use authorized by this Agreement.
4. The Exclusive Distributor undertakes to bind its employees, officers, sales, technical maintenance and service representatives, and other third parties to whom Confidential Information is disclosed as permitted hereunder, to the terms and conditions contained herein.
5. Unless otherwise specifically stated herein, this Agreement does not grant the Exclusive Distributor any manufacturing,

assembly, production or licensing rights, or any rights in the Intellectual Property Rights of the Manufacturer.

6. The Exclusive Distributor acknowledges and agrees hereby that in the event of any violation hereof, the Manufacturer shall be authorized and entitled to obtain from any court of competent jurisdiction, preliminary and permanent injunctive relief as well as an equitable accounting of all profits or benefits arising out of such violation, which rights and remedies shall be cumulative and in addition to any other rights or remedies to which the Manufacturer shall be entitled under law or under this Agreement.

Article 11 Non Competition

1. The Exclusive Distributor shall not-directly or indirectly or through mediation have an interest, be a partner and/or deal, engage or assist any other person, corporation or other entity to engage in the design, development, manufacture, sale, marketing or use of any product or device that competes with the Product in the USA Market for the term of this Agreement.
2. This term remains effective towards The Exclusive Distributor for Two consecutive years following the termination of This Agreement for any other reason whatsoever, unless otherwise agreed by The Manufacturer.
3. The above provision applies towards The Exclusive Distributor, as well as its subsidiaries, branches, and any other company, in which the Broker is a partner and/or shareholder thereof.
4. The Exclusive Distributor acknowledges that it has no other known relationships with any other third parties, which would conflict with any interest of The Manufacturer.
5. The Exclusive Distributor has the right to use this agreement in the USA courts of law to enforce, resolve any



dispute arising and stop any smuggling to the USA Market after getting the manufacture's approval.

Article 12 Warranties:

1. The Manufacturer warrants that the Product is provided according to the quality standard adopted by it.
2. This warranty shall not apply to a Product which has been subject to misuse, unauthorized use, negligence, accident, (including fire, water, explosion, smoke, vandalism, etc.) or which has been dealt with in contrary to the Manufacturer's instructions or any other cause beyond the Manufacturer's control.
3. The Foregoing Warranty is the Manufacturer's Sole and Exclusive warranty of the Products.

Article 13 Indemnifications:

The Exclusive Distributor shall indemnify, defend, and hold the Manufacturer harmless against any liability, damages, or loss that might occur from any claims, actions, suits, judgments, proceedings, recoveries or expenses, including, but not limited to, attorneys fees, arising out of, based on, or caused by (a) third parties claims against Products provided by the Manufacturer under This Agreement; (b) product claims, representations, or warranties, whether written or oral, made or alleged to be made by the Exclusive Distributor or any of its employees or Exclusive Distributor in its promotion or sale of any of the Products where such product claims or warranties were not provided by, or approved in writing by the Manufacturer, (b) labeling of the Products which was not provided by, or approved by the Manufacturer, (c) negligent handling of the Products by the Exclusive Distributor of any of its employees or Exclusive Distributor .



Article 14 Term & Termination of the Agreement:

- A- This Agreement shall enter into force from the effective Date set forth in page No. 1 of The Agreement and shall remain in force for five years not contradicting with the terms set in this Agreement and renewed automatically unless either of The Parties declares its willingness not to renew the Agreement, accordingly the declaring party should be by give Sixty days' written notice to the other party thereof.
- B- In all cases termination of This Agreement shall not constitute a termination and/or a waiver of the confidentiality, dispute resolution, non-competition, and intellectual property provisions of This Agreement, which shall remain in force in perpetuity.
- C- The Exclusive Distributor hereby acknowledges and declares that termination of This Agreement, shall not entitle it to any claim, and/or request of recovery of expenses, compensations, loss, damages, lost profit. Etc
- D- This Agreement can be terminated immediately and without serving a notice in the following cases:
1. In the event either of the parties voluntarily filing of a petition in bankruptcy or liquidation, or has such a petition involuntarily filed against it.
 2. In the event The Exclusive Distributor fails to meet its duties identified under This Agreement.
 3. In the event The Exclusive Distributor make any change in its current Directors Emil Hakim (Chairman), Ehab Attalla (CFO), Mamdouh Mokhtar (CEO) which, in the opinion of The Manufacturer impairs its rights under This Agreement.
 4. The Exclusive Distributor assignment and/or transfer of any of its rights and duties under This Agreement, without the prior written consent of The Manufacturer.
 5. The Exclusive Distributor violation and breach of any of the terms and provisions, and obligations of This Agreement, and non-compliance and/or

correction of the said violations and/or breach within 30 days of the written notice sent to it by The Manufacturer.

Article 15 Amendments:

No Amendment or changes to this Agreement shall take place unless made in writing and signed by the Parties.

Article 16 Assignments:

Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, the Manufacturer may transfer or assign, in whole or in part, any of its rights under this Agreement to any such person or entity controlled by or under common control of the Manufacturer, or to any of its successors.

Article 17 Force Majeure:

Neither party shall be responsible for any failure to perform due to unforeseen circumstances or to causes beyond the party's reasonable control, including but not limited to acts of God, war, riot, embargoes, and acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor or materials. In event of any such delay in delivery or payment, the party in delay may defer the performance date for a period equal to the time of such delay. Lack of liquidity by one party, shall not constitute a Force Majeure.

Article 18 Governing Law.

This Agreement shall be governed and construed in accordance with the laws and regulations of the United Arab Emirates.

Article 19 Dispute Resolution

1. The Parties hereto desire to settle all disputes between them quickly, amicably and in the most cost effective manner. In order

to accomplish these goals, the Parties agree to the following provisions, which shall apply to the resolution of any disputes arising out of or relating to this Agreement.

2. The Parties shall make every attempt to resolve any disputes that may arise between them informally and by providing the other Party with notification, specifying to the fullest possible extent, the relevant facts surrounding the dispute or claim and all defenses thereto.
3. In the event the Parties are unable to informally resolve their disputes or claims between themselves within thirty (30) days after the initial notification of the dispute or claim, despite their good faith efforts to do so, the Parties agree to submit to non-binding mediation before mutually agreeable mediators, with the Parties to jointly share the costs of such mediation, with each Party bearing fifty percent (50%) of said costs.
4. In the event the Parties are still unable to resolve their dispute or the claim presented, despite their good faith mediation efforts, disputes and claims shall be resolved in confidential arbitral proceedings by a binding UAE arbitration forum of three members to be held in the UAE as provided hereunder.
5. Each party shall have the right to appoint one arbitrator and the two appointed arbitrators should agree on appointing the third arbitrator.
6. The arbitrators shall have the authority to permit discovery to the extent they deem appropriate, and shall have the authority to grant injunctive relief in a form substantially similar to that, which would otherwise be granted by a court of law or equity.
7. The arbitrators shall have no authority to award punitive damages or any other damages not measured by the prevailing party's actual damages; any damages awarded must conform to the terms and conditions of THIS AGREEMENT, and the arbitrators shall specify in writing the basis for any damage award and the types of damages awarded.

8. The decision of the arbitrators shall remain confidential and be final and binding upon the Two Parties. The prevailing party in the arbitration proceedings shall be awarded reasonable attorneys' fees, expert witness costs and expenditures, and all other costs and expenditures incurred directly or indirectly in connection with the proceedings, unless the arbitrators shall, for good cause, determine otherwise.

Article 20 Headings

The headings of the Articles of this Agreement are inserted only for the purposes of convenience and they shall not be construed as to affect the scope, meaning or intent of the provisions of this Agreement or any part or portion thereof, nor shall they otherwise be given any legal effect.

Article 21 Notices.

Any notice given by either party in accordance with this Agreement shall be made in writing and delivered by registered mail or by courier to the address set forth in the beginning of this Agreement, or to other addresses as the parties shall designate in prior written notice.

Article 22 Waivers

Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of the same or any other provision.

Article 23 Severability

If any provision of this Agreement is determined to be invalid or unenforceable, the provision shall be deemed to be severable from the remainder of this Agreement. The parties shall make their best efforts in order to render effective such provisions of this Agreement not affected thereby and this Agreement will continue in full force and effect.

Article 24 The Entire Agreement.

This Agreement including all schedules constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understanding or representations, oral or written between the parties hereto regarding such matter.

Article 25: Relationship

A- Nothing in This agreement shall be construed to form a relationship between the Parties under which they might be considered as partners, joint ventures, agency, employment relationship, or any sort of such representation on each other's behalf.

B- The activities carried by The Exclusive Distributor under This Agreement shall be binding on the Parties only to the extent explicitly stated herein, and any further definition of the commercial relationships between the Parties shall be subject to separate agreements covering each project.

Article 26 Language

This Agreement shall be made in English. The said language shall be controlling in all respects. Any and all correspondence, documents or notices exchanged between the Parties and/or third party relating to this Agreement shall be in the English only.

Article 27

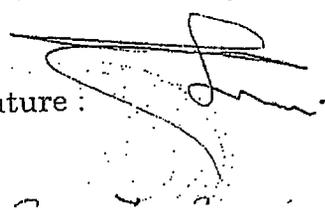
This Agreement consists of twenty-seven Articles including this Article.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, as of the date first above written.

The First Party

Name: Samer Fakhouri
Title: General Manager

Signature:



The Second Party

Name: Emil Hakim
Title: Chairman

Signature:

