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Filing date: **11/09/2012**

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

Proceeding	92055406
Party	Plaintiff Jonathan K. Smith
Correspondence Address	SCOTT MICHAEL MOORE MOORE INTERNATIONAL LAW PLLC 45 ROCKEFELLER PLAZA, SUITE 2000 NEW YORK, NY 10111 UNITED STATES smm@milopc.com
Submission	Motion to Compel Discovery
Filer's Name	Scott Michael Moore, Esq.
Filer's e-mail	smm@milopc.com
Signature	/Scott Michael Moore/
Date	11/09/2012
Attachments	motion to compel 1st set Interrogatories.pdf ( 7 pages )(121401 bytes ) Barrett - Answers to Plaintiff's Interrogatories.pdf ( 7 pages )(1277326 bytes ) Barrett - Supplemental Answers to Plaintiff's Interrogatories.pdf ( 8 pages )(159922 bytes )

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

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JONATHAN K. SMITH,

Plaintiff,

v.

REGINALD C. BARRETT,

Defendant.

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) Cancellation No.: 92055406  
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**PLAINTIFF’S FIRST MOTION TO COMPEL ANSWERS TO PLAINTIFF’S FIRST  
SET OF INTERROGATORIES TO DEFENDANT**

PLEASE TAKE NOTICE that pursuant to Trademark Rule 2.120(e) and Rule 37 of the Federal Rules of Civil Procedure, plaintiff, Jonathan K. Smith, (“plaintiff” or “Smith”), by and through counsel, hereby respectfully requests that the TTAB grant an order compelling the defendant, Reginald C. Barrett, (“defendant” or “Barrett”), to answer the following interrogatories, sworn to under oath, and serve said answers on MOORE INTERNATIONAL LAW PLLC, counsel for plaintiff, at 45 Rockefeller Plaza, Suite 2000, New York, New York, 10111, and in support states as follows:

1. That plaintiff has alleged in this cancellation proceeding, inter alia, the defendant fraudulently appropriated plaintiff’s design mark and went into competition against him.
2. That plaintiff served his First Set of Interrogatories to defendant on August 13, 2012, and since that date defendant has failed to fully and completely answer interrogatory number 3 which is on the subject of defendant’s criminal history, and has completely

failed to answer interrogatory number 7 which is on the subject of identifying computers and software used in relation to the subject matter of this litigation.

3. That this motion is supported by a memorandum of law in support and Exhibits A-C.

**RELIEF REQUESTED**

FOR THE FOREGOING REASONS, plaintiff, Jonathan K. Smith, respectfully requests the TTAB to grant an order compelling the defendant, Reginald C. Barrett, to fully and completely answer interrogatories 3 and 7.

Respectfully submitted,

JONATHAN K. SMITH

By: MOORE INTERNATIONAL LAW PLLC.

/s/

By: \_\_\_\_\_  
Scott Michael Moore, Esq. (SM7478)  
Attorneys for Plaintiff  
45 Rockefeller Plaza, Suite 2000  
New York, New York 10111  
T. (212) 332-3474  
F. (212) 332-3475  
E. [smm@milopc.com](mailto:smm@milopc.com)

Date: New York, New York  
November 9, 2012

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

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JONATHAN K. SMITH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Cancellation No.: 92055406
REGINALD C. BARRETT,	)	
	)	
Defendant.	)	
	)	
	)	

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**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFF’S FIRST MOTION TO COMPEL ANSWERS TO PLAINTIFF’S FIRST  
SET OF INTERROGATORIES TO DEFENDANT**

The motion to compel has been brought pursuant to Trademark Rule 2.120(e) and Rule 37 of the Federal Rules of Civil Procedure, by plaintiff, Jonathan K. Smith, (“plaintiff” or “Smith”), requesting that the TTAB grant an order compelling the defendant, Reginald C. Barrett, (“defendant” or “Barrett”), to answer interrogatories 3 and 7 of plaintiff’s first set of interrogatories to defendant.

Plaintiff served his First Set of Interrogatories to defendant on August 13, 2012. (Annexed hereto as Exhibit A) The defendant’s responses were due September 12, 2012, which was 30 days after service. After no response was had by the defendant by the due date, plaintiff sent demand letters dated September 19, 2012, September 26, 2012, and October 9, 2012, and then, and only then, did defendant serve his answers to plaintiff’s first set of interrogatories on October 9, 2012. (Annexed hereto as Exhibit B) Plaintiff thereafter sent a demand letter that defendant supplement his answers, for the reason that certain questions were not answered at all

and the objections raised were frivolous in this case involving allegations of fraud, and/other certain questions answered were incomplete and evasively answered. On October 25, 2012, defendant served supplemental answers to plaintiff's first set of interrogatories. (Annexed hereto as Exhibit C)

**Interrogatory No. 3**

As to interrogatory 3, defendant first failed to answer the question at all, and then his supplement was incomplete and evasively answered the question.

Interrogatory No. 3

State whether or not you have any criminal convictions in any jurisdiction, and if so, state:

- (i) The jurisdiction;
- (ii) The offense(s);
- (iii) The date(s) of conviction;
- (iv) The sentence(s).

This case involves allegations by plaintiff that defendant fraudulently appropriated plaintiff's design mark and went into competition against him. The existence of any criminal convictions has a bearing on design, motive, and knowledge of the defendant, may be used to impeach the defendant, and may reasonably lead to other discoverable evidence relating to the allegations.

Defendant first failed to answer the question at all, contending the question was not relevant.

Fed. R. Evid.401 provides,

Evidence is relevant if:

- (a) It has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) The fact is of consequence in determining the action.

Abandoning the relevancy objection, defendant supplemented his answer to answer the question, but limited the time period to only the previous ten years. This is incomplete and evasive because plaintiff's question is not limited to any time period, and defendant's entire criminal history is relevant, may be used for impeachment, and may lead to other discoverable evidence. This information goes to a witness' character for truthfulness or untruthfulness under Fed. R. Evid. 608, and may be used to impeach the defendant under Fed. R. Evid. 609.

Fed. R. Civ. P. 37(a)(3)(B) provides authority that a discovery response may be compelled. Fed. R. Civ. P. 37(a)(4) provides an incomplete or evasive answer may be compelled.

**Interrogatory number 7**

As to interrogatory number 7, defendant first failed to answer the question at all, and his supplement answer continues to fail to answer the question.

Interrogatory No. 7:

Identify all computer hardware and software applications used by you in relation to the subject matter of this litigation, including model names, version numbers and quantity.

Defendant failed to answer interrogatory number 7, objecting to its relevancy in both his answer and supplement answer.

The subject matter of computer hardware and software applications is relevant under Fed. R. Evid. 401, because identifying its existence goes to show the technical ability of the defendant to carry out the alleged fraudulent scheme of appropriating plaintiff's design, and may very well be a smoking gun of the fraud since the items themselves contain a discoverable host of creative ability and communication, and a possible technical trail of evidence. In the event any computer

hardware and software applications are identified, plaintiff may direct further discovery seeking evidence of the alleged fraud.

**RELIEF REQUESTED**

FOR THE FOREGOING REASONS, plaintiff, Jonathan K. Smith, respectfully requests the TTAB to grant an order compelling the defendant, Reginald C. Barrett, to fully and completely answer interrogatories 3 and 7.

Respectfully submitted,

JONATHAN K. SMITH

By: MOORE INTERNATIONAL LAW PLLC.

/s/

By: \_\_\_\_\_  
Scott Michael Moore, Esq.  
Attorneys for Plaintiff  
45 Rockefeller Plaza, Suite 2000  
New York, New York 10111  
T. (212) 332-3474  
F. (212) 332-3475  
E. [smm@milopc.com](mailto:smm@milopc.com)

Date: New York, New York  
November 9, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> day of November, 2012, I caused a true copy of the foregoing instrument to be served via ESTTA electronic filing service to the following party(s) or their counsel of record:

Todd Wengrovsky, Esq.  
Law Offices of Todd Wengrovsky, PLLC  
285 Southfield Road, Box 585  
Calverton, NY 11933  
Attorneys for defendant

/s/

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Scott Michael Moore

UNITED STATES PATENT AND TRADEMARK  
OFFICE, TRADEMARK TRIAL AND APPEAL BOARD

-----X  
JONATHAN K. SMITH,

Plaintiff,

-against-

REGINALD C. BARRETT,

Defendant.  
-----X

**DEFENDANT'S  
ANSWERS TO  
PLAINTIFF'S FIRST  
INTERROGATORIES**

No. 92055406

Defendant, in response to Plaintiff's First Set of Interrogatories, states, being first duly sworn, as follows:

**GENERAL OBJECTIONS**

1. Defendant objects to Plaintiff's interrogatories to the extent that they are inconsistent with or purport to impose a duty of disclosure that is greater than or different from that required under the applicable Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Southern District of New York.

2. Defendant objects to Plaintiff's interrogatories to the extent that they purport to require the disclosure of information that is protected by attorney-client privilege, work-product doctrine or other applicable privilege or protection from disclosure.

3. Defendant objects to Plaintiff's interrogatories to the extent that they purport to require the disclosure of information that is not relevant to the claim or defense of any party or is not reasonably calculated to lead to the discovery of admissible evidence.

4. Defendant objects to Plaintiff's interrogatories to the extent that they purport to require the disclosure of information that does not exist or is not in Defendant's possession, custody, or control.

5. Defendant objects to Plaintiff's interrogatories to the extent that they impose on Defendants an unreasonable burden or expense.

Subject to and without waiving the foregoing objections, each of which is specifically incorporated into each individual response below, Defendant responds to Plaintiff's First Set of Interrogatories as follows:

**RESPONSES TO INTERROGATORIES**

**INTERROGATORY NO. 1:**

(i) Reginald C. Barrett, c/o Law Offices of Todd Wengrovsky, PLLC., 285 Southfield Road, Box 585, Calverton, NY 11933.

(ii) No.

**INTERROGATORY NO. 2:**

Reginald C. Barrett, c/o Law Offices of Todd Wengrovsky, PLLC., 285 Southfield Road, Box 585, Calverton, NY 11933.

**INTERROGATORY NO. 3:**

Defendant objects to this Interrogatory as irrelevant.

**INTERROGATORY NO. 4:**

Defendant objects to this Interrogatory as irrelevant.

**INTERROGATORY NO. 5:**

Defendant objects to this Interrogatory as ambiguous, irrelevant, and overly broad and overly burdensome. Subject to and without waiving the objections, Defendant responds as follows:

The basis for the listed contentions consists of oral communications between the parties, public record information, state and federal trademark records, copyright records, packaging samples, and business directory information.

**INTERROGATORY NO. 6:**

Defendant objects to this Interrogatory as irrelevant.

**INTERROGATORY NO. 7:**

Defendant objects to this Interrogatory as irrelevant.

**INTERROGATORY NO. 8:**

- (i) July 6, 2009
- (ii) cigarettes
- (iii) printing press
- (iv) Reginald C. Barrett, Jr.
- (v) invoices from the printer "Copac" and invoices from the manufacturer "Alternative Brands."

**INTERROGATORY NO. 9:**

No.

**INTERROGATORY NO. 10:**

- (i) State of New York, October 18, 2009, Shinnecock Indian Outpost, Lance Gumbs Tribal Trustee, Owner, Date of delivery of October 18, 2009;
- (ii) Shinnecock Indian Nation, Southampton, New York.

**INTERROGATORY NO. 11:**

Defendant objects to this Interrogatory as ambiguous. Subject to, and without waiving the objection, Defendant responds as follows:

A commercial art company assisted Defendant in designing the logo: Ocean Graphics in East Hampton, New York.

**INTERROGATORY NO. 12:**

Alternative Brands, 321 Farmington Road, Mocksville, North Carolina 27018  
Tel (336) 940-4818.

**INTERROGATORY NO. 13:**

Shinnecock Indian Outpost, 50 Montauk Highway, Southampton, NY 11938.

**INTERROGATORY NO. 14:**

Defendant had a meeting with the Trustees and Head of the Economic Development person to offer the opportunity to the Tribe to become involved with the product for financial gain. This offer was refused. Per Paula Collins, the Tribe did not want to become involved with tobacco and/or cigarettes out of fear of future litigation.

**INTERROGATORY NO. 15:**

Defendant has not been issued such a writing, and contends that no such writing was or is required, as "Shinnecock" is a geographic area within Suffolk County, New York.

**INTERROGATORY NO. 16:**

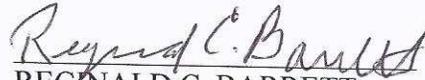
Defendant's Trademark Registration provides the basis for ownership of the mark, and document relating thereto include the trademark prosecution history.

**INTERROGATORY NO. 17:**

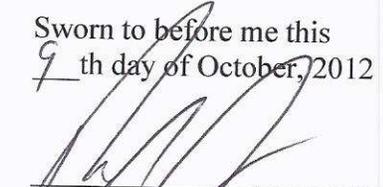
Defendant objects to this Interrogatory as ambiguous. Subject to and without waiving the objection, Defendant responds as follows:

There was no joint venture between Defendant and Plaintiff relative to Defendant's logo or production of Defendant's cigarettes.

Dated: October 7, 2012  
Amagansett, New York

  
REGINALD C. BARRETT

Sworn to before me this  
9<sup>th</sup> day of October, 2012

  
NOTARY PUBLIC

Rudolph J. Fusco Jr.  
State of New York Notary Public  
Qualified in Suffolk County  
No. 02FU6148597  
Commission Expires 06/26/2014

AS TO OBJECTIONS:

Dated: Calverton, New York  
October 7, 2012

/s/ Todd Wengrovsky  
Todd Wengrovsky - TW4823  
Law Offices of  
Todd Wengrovsky, PLLC.  
285 Southfield Road, Box 585  
Calverton, NY 11933  
Tel (631) 727-3400  
*Attorney for Defendant*

**UNITED STATES PATENT AND TRADEMARK  
OFFICE, TRADEMARK TRIAL AND APPEAL BOARD**

-----X

JONATHAN K. SMITH,

Plaintiff,

-against-

REGINALD C. BARRETT,

Defendant.

-----X

**DEFENDANT'S  
SUPPLEMENTAL  
ANSWERS TO  
PLAINTIFF'S FIRST  
INTERROGATORIES**

No. 92055406

Defendant, in response to Plaintiff's First Set of Interrogatories, states, being first duly sworn, as follows:

**GENERAL OBJECTIONS**

1. Defendant objects to Plaintiff's interrogatories to the extent that they are inconsistent with or purport to impose a duty of disclosure that is greater than or different from that required under the applicable Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Southern District of New York.

2. Defendant objects to Plaintiff's interrogatories to the extent that they purport to require the disclosure of information that is protected by attorney-client privilege, work-product doctrine or other applicable privilege or protection from disclosure.

3. Defendant objects to Plaintiff's interrogatories to the extent that they purport to require the disclosure of information that is not relevant to the claim or defense of any party or is not reasonably calculated to lead to the discovery of admissible evidence.

4. Defendant objects to Plaintiff's interrogatories to the extent that they purport to require the disclosure of information that does not exist or is not in Defendant's possession, custody, or control.

5. Defendant objects to Plaintiff's interrogatories to the extent that they impose on Defendants an unreasonable burden or expense.

Subject to and without waiving the foregoing objections, each of which is specifically incorporated into each individual response below, Defendant responds to Plaintiff's First Set of Interrogatories as follows:

### **RESPONSES TO INTERROGATORIES**

#### **INTERROGATORY NO. 1:**

Defendant objects to this Interrogatory as irrelevant. Subject to the objection and without waiving same, Defendant responds as follows:

- (i) Reginald C. Barrett, 20 Laurel Hill Lane, Amagansett, NY 11930, Tel: (631) 907-4701, Fax: (631) 907-4701, E-Mail: [ctm08@optonline.net](mailto:ctm08@optonline.net)  
(prior address of 83 Atlantic Avenue, Amagansett, NY 11930).

- (ii) No.

#### **INTERROGATORY NO. 2:**

Reginald C. Barrett, c/o Law Offices of Todd Wengrovsky, PLLC., 285 Southfield Road, Box 585, Calverton, NY 11933.

#### **INTERROGATORY NO. 3:**

Defendant objects to this Interrogatory as irrelevant, and not reasonably calculated to lead to discoverable evidence. Subject to the objection and without waiving same, Defendant responds as follows:

Defendant has no criminal convictions within the past ten years.

**INTERROGATORY NO. 4:**

Defendant objects to this Interrogatory as irrelevant. Subject to the objection and without waiving same, Defendant responds as follows:

Defendant has not been involved in any civil litigation, but has a judgment placed against him from a Suffolk County, New York Court, which was caused by Plaintiff not living up to his obligation to pay Defendant's rent at the premises of 83 Atlantic Avenue, Amagansett, New York.

**INTERROGATORY NO. 5:**

Defendant objects to this Interrogatory as ambiguous, irrelevant, and overly broad and overly burdensome. Subject to and without waiving the objections, Defendant responds as follows:

The basis for listed contentions numbered (i) through (vii) consists of oral communications between the parties;

The basis for listed contention numbered (viii) consists of federal trademark records;

The basis for listed contention numbered (ix) consists of Defendant's oral communications with its industry contacts;

The basis for listed contentions numbered (x) through (xi) consists of public record information and business directory information.

The basis for listed contentions numbered (xii) through (xiv) consists of federal trademark records;

The basis for listed contention numbered (xv) consists of oral communications between the parties;

The basis for listed contentions numbered (xvi) through (xvii) consists of state records;

The basis for listed contention numbered (xviii) consists of copyright records;

The basis for listed contention numbered (xix) consists of communications between Defendant and its manufacturer;

The basis for listed contention numbered (xx) consists of packaging samples;

The basis for listed contention numbered (xxi) consists of oral communications;

The basis for listed contention numbered (xxii) consists of federal trademark records; and

The basis for listed contention numbered (xxiii) consists of business directory information.

**INTERROGATORY NO. 6:**

Defendant objects to this Interrogatory as irrelevant. Subject to the objection and without waiving same, Defendant responds as follows:

- (i) Defendant's only business interest in such time frame is Carolina Tobacco Manf, LLC. as 100% Majority Member.
- (ii) There were no Federal or state taxes due from same, as the business has operated at a loss.

**INTERROGATORY NO. 7:**

Defendant objects to this Interrogatory as irrelevant and not reasonably calculated to lead to discoverable evidence.

**INTERROGATORY NO. 8:**

- (i) July 6, 2009
- (ii) cigarettes
- (iii) printing press
- (iv) Reginald C. Barrett, Jr.
- (v) invoices from the printer “Copac” and invoices from the manufacturer “Alternative Brands.”

**INTERROGATORY NO. 9:**

No.

**INTERROGATORY NO. 10:**

- (i) State of New York, October 18, 2009, Shinnecock Indian Outpost, Lance Gumbs Tribal Trustee, Owner, Date of delivery of October 18, 2009;
- (ii) Shinnecock Indian Nation, Southampton, New York.

**INTERROGATORY NO. 11:**

Defendant objects to this Interrogatory as ambiguous. Subject to, and without waiving the objection, Defendant responds as follows:

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**INTERROGATORY NO. 12:**

Alternative Brands, 321 Farmington Road, Mocksville, North Carolina 27018

Tel (336) 940-4818.

**INTERROGATORY NO. 13:**

Shinnecock Indian Outpost, 50 Montauk Highway, Southampton, NY 11938.

**INTERROGATORY NO. 14:**

Defendant had a meeting with the Trustees and Head of the Economic Development person to offer the opportunity to the Tribe to become involved with the product for financial gain. This offer was refused. Per Paula Collins, the Tribe did not want to become involved with tobacco and/or cigarettes out of fear of future litigation.

**INTERROGATORY NO. 15:**

Defendant has not been issued such a writing, and contends that no such writing was or is required, as “Shinnecock” is a geographic area within Suffolk County, New York.

**INTERROGATORY NO. 16:**

Defendant’s Trademark Registration provides the basis for ownership of the mark, and document relating thereto include the trademark prosecution history.

**INTERROGATORY NO. 17:**

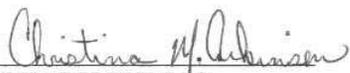
Defendant objects to this Interrogatory as ambiguous. Subject to and without waiving the objection, Defendant responds as follows:

There was no joint venture between Defendant and Plaintiff relative to Defendant's logo or production of Defendant's cigarettes.

Dated: October 24, 2012  
Amagansett, New York

  
REGINALD C. BARRETT

Sworn to before me this  
25th day of October, 2012

  
NOTARY PUBLIC

CHRISTINA M. ARKINSON  
Notary Public, State of New York  
No. 01AR6112098  
Qualified in Suffolk County  
Commission Expires June 28, 2016

AS TO OBJECTIONS:

Dated: Calverton, New York  
October 24, 2012

/s/ Todd Wengrovsky  
Todd Wengrovsky - TW4823  
Law Offices of  
Todd Wengrovsky, PLLC.  
285 Southfield Road, Box 585  
Calverton, NY 11933  
Tel (631) 727-3400  
Attorney for Defendant