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

Proceeding	92059866
Party	Defendant Taryn Rodighiero dba KaiKini
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

**Kini Kai, L.L.C.** )  
Petitioner, )  
v. ) Cancellation No. 92059866  
**Taryn Rodighiero** )  
Registrant. )  
\_\_\_\_\_ )

**REGISTRANT’S RESPONSE IN OPPOSITION TO PETITIONER’S  
MOTION FOR SUMMARY JUDGMENT**

Registrant Taryn Rodighiero (“Registrant”) hereby submits her Response in Opposition to Petitioner’s Motion for Summary Judgment and respectfully requests that the Board deny summary judgment to Petitioner.

**STATEMENT OF THE CASE AND PROCEDURAL BACKGROUND**

Registrant is the owner of U.S. Registration No. 4,149,388 for the mark KAIKINI for a variety of clothing products, including “swimwear.” The underlying application filing date of Registrant’s registration for KAIKINI is September 11, 2011.

On August 29, 2014, Petitioner filed a Petition for Cancellation against Registrant’s registration on the basis of (1) priority and likelihood of confusion with Petitioner’s alleged common law use of KINI KAI in connection with swimwear, and (2) Registrant’s alleged fraud on the Trademark Office. On September 13, 2014, Registrant filed her answer denying all salient allegations.

On May 1, 2015, Petitioner filed its Motion for Summary Judgment. On May 29, 2015, Registrant filed her Motion to Take Discovery from Petitioner, specifically requesting that the

Board allow Registrant to take the deposition of Jennifer K. Smith<sup>1</sup>, who is the current owner and founder of Petitioner. On September 29, 2015, the Board granted Registrant's Motion to Take Discovery from Petitioner and provided Registrant with thirty days to conduct the deposition of Jennifer Smith. On October 19, 2015, Registrant conducted the discovery deposition of Jennifer Smith. Registrant has attached the deposition transcript and exhibits as **Exhibit A** (hereinafter cited to as the "Smith Depo.").

## **LEGAL ARGUMENT**

### **I. PRIORITY AND LIKELIHOOD OF CONFUSION**

In order to prevail in its claim of priority, Petitioner must prove proprietary rights in its pleaded KINI KAI mark that are prior to Registrant's rights in her KAIKINI mark. There is no dispute that Registrant is entitled to rely on the September 11, 2011 underlying application filing date of her registration for KAIKINI (Reg. No. 4,149,388). As such, Petitioner must prove proprietary rights in its KINI KAI mark that are prior to Registrant's constructive first-use date of September 11, 2011.

In support of its Motion for Summary Judgment, Petitioner submitted website screen captures from Archive.org allegedly showing its use of KINI KAI in 2009 and 2010. Petitioner's Motion for Summary Judgment, Ex. 2. Although Jennifer Smith stated during her deposition that Petitioner's website had at least 100,000 visitors in 2009 and in 2010, Petitioner did not provide any written documentation to corroborate those figures. Smith Depo., 18:8 – 20:7. In addition, there is no evidence in the record pertaining to the number of individuals who actually

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<sup>1</sup> The original request by Registrant in her Motion to Take Discovery from Petitioner was to take the deposition of an individual named Jennifer K. Meadors. Ms. Meadors has recently divorced and now goes by Jennifer K. Smith, which is her maiden name. Smith Depo., 5:8-11, 10:22 – 11:2.

purchased Petitioner's swimwear while visiting Petitioner's website. That number could very well be zero.

As part of its Motion for Summary Judgment, Petitioner also submitted an invoice from American Customs Brokerage Co., Inc. allegedly showing services rendered in relation to the importation of swimwear manufactured in Vietnam into the United States. Petitioner's Motion for Summary Judgment, Ex. 3 (KINI 0060); Smith Depo., 21:8-21. However, this document was generated *before* Petitioner received the bikinis from Vietnam and is not an actual receipt of delivery. Smith Depo., 22:16 – 23:2. Rather, it is essentially an invoice indicating that American Customs Brokerage Co., Inc. handled some paperwork to facilitate the entrance of the bikinis into the United States from Vietnam. Smith Depo., 22:7-15. Finally, Registrant notes that there is no mention of the name KINI KAI anywhere on the invoice itself.

In support of its Motion for Summary Judgment, Petitioner submitted an invoice allegedly showing that Petitioner ordered a vinyl banner on May 6, 2010 that was to be used for promoting its KINI KAI swimwear at a volleyball tournament. Petitioner's Motion for Summary Judgment, Ex. 3 (KINI 0061); Smith Depo., 23:3-21. However, Petitioner has presented no evidence as to how many people were actually exposed to this banner during the tournament, nor has it presented any evidence as to whether the display of the banner resulted in any commercial sales of Petitioner's swimwear during the course of the volleyball tournament or immediately thereafter.

As part of its Motion for Summary Judgment, Petitioner submitted a document allegedly showing the sale of swimwear in March 2009 to a company called "SIT." Petitioner's Motion for Summary Judgment, Ex. 3 (KINI 0062); Smith Depo., 24:11-17. Petitioner also submitted another document allegedly showing the payment for swimwear on April 9, 2010 by a company

called “Southern Island Tan.” Petitioner’s Motion for Summary Judgment, Ex. 3 (KINI 0063); Smith Depo., 37:3 – 38:11.

Petitioner alleges that it made its first sale of KINI KAI swimwear in March 2009. Smith Depo., 8:18-20. This sale was a wholesale order of approximately 100 swimsuits made to a physical retail shop located in Kentucky. Smith Depo., 8:21 – 9:3. The legal corporate name of this retail shop was SIT, Inc., but the shop did business under the name Southern Island Tan. Smith Depo., 8:24-25, 24:18-20, 25:8 – 27:12, 32:1-12, Exs. C, D, E.

Jennifer Smith is the founder and current owner of Petitioner. Smith Depo., 5:3-5. SIT, Inc. was a tanning salon started in 1989 by members of Jennifer Smith’s immediate family. Smith Depo., 25:8 – 27:6, 28:18-21, Ex. C. Jennifer Smith was an employee of SIT, Inc. throughout high school and college. Smith Depo., 26:15-25. Furthermore, when Petitioner allegedly made its first sale of KINI KAI swimwear in March 2009, Jennifer Smith was an officer of SIT, Inc., namely the Secretary. Smith Depo., 32:21 – 33:16, Ex. F. Jennifer Smith’s mother and father were the President and Vice-President of SIT, Inc. at the time Petitioner allegedly made its first sale of KINI KAI swimwear in March 2009. Smith Depo., 33:8-13, Ex. F. In Registrant’s opinion, these circumstances certainly do not warrant a finding that Petitioner commenced legitimate commercial use of its KINI KAI mark in March 2009.

Jennifer Smith was still the Secretary of SIT, Inc. on April 14, 2010. Smith Depo., 34:9-25, Ex. G. In June 2010, SIT, Inc. formally changed its corporate name to Southern Island Tan Inc. Smith Depo., 35:15 – 36:18, 38:12 – 39:12, Exs. H, I. Jennifer Smith remained the Secretary of Southern Island Tan Inc. up until at least February 17, 2011. Smith Depo., 39:17 – 40:4, Ex. J. There is no indication that Jennifer Smith relinquished her position as Secretary before 2014 when her family sold the business. Smith Depo., 29:8-21, Ex. C. There is also no

indication that Jennifer Smith's mother and father relinquished their positions as President and Vice-President of Southern Island Tan Inc. before 2014 when the business was sold. Smith Depo., Exs. C, I.

In connection with its Motion for Summary Judgment, Petitioner submitted a document allegedly showing wholesale orders of KINI KAI swimwear and other products between January 1, 2009 and November 11, 2011. Petitioner's Motion for Summary Judgment, Ex. 3 (KINI 0064 – 0075); Smith Depo., 40:15 – 41:8. However, this document is silent as to whom these alleged sales were made. For instance, it is entirely possible that all of these alleged sales were made to SIT, Inc. / Southern Island Tan Inc., which was owned by family members of Petitioner's founder/owner and of which Petitioner's founder/owner was Secretary. It is also possible that any sales not made to SIT, Inc. / Southern Island Tan Inc. occurred *after* September 11, 2011, which is the underlying application filing date of Registrant's registration. In fact, Petitioner was unable to specify what percentage of these wholesale orders (if any) were made to businesses not owned and operated by Jennifer Smith's immediate family. Smith Depo., 44:3-7, 45:24 – 46:5. Furthermore, the document is silent as to the exact dates on which all of these alleged sales were made. It is entirely possible that *all* alleged sales of Petitioner's KINI KAI swimwear occurred *after* September 11, 2011. In fact, Petitioner was unable to specify the percentage of sales that occurred prior to September 11, 2011 (if any) versus the percentage of sales that occurred after September 11, 2011. Smith Depo., 44:12-18, 46:6-17.

Closely related to the issue of priority is the issue of ownership of the KINI KAI trademark. In February 2009, Jennifer Smith formed a Georgia limited liability company named Kini Kai Swimwear L.L.C. Smith Depo., 9:25 – 10:6, Ex. A. Petitioner alleges that this company was the predecessor-in-interest to Petitioner, which is a Hawaii limited liability

company organized in March 2010. Smith Depo., 10:7-9, 13:8-18. However, Petitioner has not submitted into evidence any documents showing the transfer of any assets, properties, or goodwill from Kini Kai Swimwear L.L.C to Petitioner prior to the voluntary termination of Kini Kai Swimwear L.L.C in April 2010. Smith Depo., 11:13-25, 12:3-11, 16:20 – 17:5, Ex. B. As such, there remains genuine issues of material fact as to whether Petitioner is even the rightful and current owner of the KINI KAI mark, and whether Petitioner can benefit from the alleged commercial use of KINI KAI by Kini Kai Swimwear L.L.C.

As illustrated above, Petitioner has clearly not met its burden of demonstrating the absence of genuine issues of material fact relating to its alleged priority in the KINI KAI mark. Therefore, the Board should deny summary judgment to Petitioner.

## **II. FRAUD ON THE TRADEMARK OFFICE**

In order to prove fraud, a petitioner must show that a registrant knowingly made false, material representations of fact in connection with its application with the intent to deceive the United States Patent and Trademark Office (“USPTO”). *See In re Bose Corp.*, 580 F.3d 1240, 91 U.S.P.Q.2d 1938, 1941 (Fed. Cir. 2009). A party alleging fraud in the procurement of a registration bears the heavy burden of proving fraud with clear and convincing evidence.

*Nationstar Mortgage LLC v. Mujahid Ahmad*, 112 U.S.P.Q.2d 1361, 1365 (TTAB 2014).

Subjective intent to deceive, however difficult it may be to prove, is an indispensable element in the fraud analysis. *In re Bose Corp.*, 91 U.S.P.Q.2d at 1941.

In this case, Registrant admits that, at the time she filed her in-use trademark application for KAIKINI, she was not using the mark in connection with some of the clothing products recited in her application. Registrant further admits that had the USPTO known that her KAIKINI mark was not in use in connection with all of the products listed in her application, the

USPTO would have refused registration of Registrant's mark. However, these admissions alone do not evidence a subjective intent by Registrant to mislead and deceive the USPTO into issuing a registration to which Registrant would allegedly not be otherwise entitled. Petitioner has utterly failed to proffer a single shred of evidence in its Motion for Summary Judgment demonstrating Registrant had any such subjective intent. To be sure, there is absolutely nothing in Registrant's Responses to Petitioner's First Set of Interrogatories or Registrant's Responses to Petitioner's First Set of Requests for Admissions that evidence such subjective intent on the part of Registrant. Petitioner's Motion for Summary Judgment, Exs 6, 7. If anything, Registrant's responses indicate nothing more than reasonable mistake and misunderstanding of the law's requirements for an in-use trademark application.

Again, Petitioner has unquestionably failed to meet its burden to demonstrate the absence of genuine issues of material fact relating to Registrant's alleged fraud in the procurement of her registration for her KAIKINI mark. Therefore, the Board should deny summary judgment to Petitioner.

## **CONCLUSION**

In conclusion, Petitioner has failed to demonstrate the absence of genuine issues of material fact as to (1) Petitioner's alleged priority in the KINI KAI mark, and (2) Registrant's alleged fraud in the procurement of her registration for KAIKINI. As such, Registrant respectfully requests that the Board deny Petitioner's Motion for Summary Judgment and allow this Cancellation to proceed to trial.

Respectfully submitted,

TARYN RODIGHIERO

By: \_\_\_\_\_/met20/

Dated: \_\_\_\_\_ 11/30/2015

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing has been served by emailing said copy on \_\_\_\_\_ 11/30/2015 \_\_\_\_\_ to:

Mark Borghese

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\_\_\_\_\_/met20/

Morris E. Turek, Attorney for Registrant

# **EXHIBIT A**

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3

4 Kini Kai, L.L.C., )

5 Petitioner, )

6 vs. ) Cancellation No.  
92059866

7 Taryn Rodighiero, )

8 Registrant. )

9

10

11

12

**CERTIFIED  
COPY**

13

14

15

16

DISCOVERY DEPOSITION OF JENNIFER K. SMITH

17

Taken by Registrant

18

Taken on Monday, October 19, 2015

19

At 9:53 a.m.

20

At All-American Court Reporters

21

1160 North Town Center Drive, Suite 300

22

Las Vegas, Nevada

23

24

25

REPORTED BY: CINDY MAGNUSSEN, RMR, CCR NO. 650

1 APPEARANCES:

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16  
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18  
19  
20  
21  
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1 EXAMINATION  
2 WITNESS: PAGE  
3 Jennifer K. Smith

4 Examination by Mr. Turek 4  
5  
6  
7

8 EXHIBITS  
9 NUMBER DESCRIPTION PAGE

10 A Certificate of Organization, 11  
11 2 pages.

12 B Certificate of Voluntary 12  
13 Termination, 1 page.

14 C Secretary of State Printout 29  
15 for SIT, Inc., 1 page.

16 D Certificate of Assumed 30  
17 Name, 1 page.

18 E Secretary of State Printout 32  
19 for Southern Island Tan,  
20 1 page.

21 F Annual Report Web Filing, 34  
22 1 page.

23 G Annual Report Online Filing, 35  
24 1 page.

25 H Articles of Amendment, 36  
1 page.

I Secretary of State Printout 39  
for Southern Island Tan, Inc.,  
1 page.

J 2011 Annual Report, 1 page. 40

1 LAS VEGAS, NEVADA; OCTOBER 19, 2015

2 9:53 A.M.

3 -oOo-

4 Thereupon--

5 JENNIFER K. SMITH,

6 was called as a witness, and having been first duly sworn,

7 was examined and testified as follows:

8 EXAMINATION

9 BY MR. TUREK:

10 Q. All right. Today we're here for the discovery  
11 deposition of Jennifer K. Meadors, and she's testifying  
12 on behalf of petitioner Kini Kai, L.L.C. in the  
13 cancellation styled Kini Kai, L.L.C. versus Taryn  
14 Rodighiero and that's Number 92059866.

15 And Ms. Meadors, just some basic instructions  
16 for you. If you don't understand a question, please  
17 ask me to repeat it or rephrase it. If you didn't hear  
18 my question clearly, please ask me to repeat it.

19 Also, please make sure you speak slowly and  
20 clearly and loudly so that our court reporter can  
21 understand everything you say and take down everything  
22 and get an accurate transcript.

23 Do you have any questions for me right now?

24 A. No.

25 Q. Can you just state your full name for the

1 record?

2 A. Jennifer K. Meadors.

3 Q. And what is your official position with Kini  
4 Kai, L.L.C.?

5 A. Founder and owner.

6 Q. And who are the members of Kini Kai, L.L.C.?

7 A. At this time, just myself.

8 Q. Were there any other members at any other time?

9 A. Yes. Alexander Joseph Meadors.

10 Q. What relationship was he to you?

11 A. He was my husband.

12 Q. Okay. And is he currently not your husband  
13 anymore?

14 A. That is correct.

15 Q. And are you the sole owner of Kini Kai, L.L.C.?

16 A. Yes, I am.

17 Q. Okay. And who were the founders of Kini Kai,  
18 L.L.C.?

19 A. Alexander Meadors and myself.

20 Q. And are you generally familiar with all current  
21 and previous operations of Kini Kai, L.L.C.?

22 A. Yes.

23 Q. So tell me a little bit about the business that  
24 Kini Kai is in.

25 A. We are an online swimwear boutique focusing on

1 direct customer sales. And we do have a portion of  
2 wholesale as well.

3 Q. Okay. Can you tell me a little bit about the  
4 products you sell?

5 A. Absolutely. They are all handmade and designed  
6 by myself and a small sewing team here in the  
7 United States. And they are made for active surf girls,  
8 basically anything active. CrossFit, surf. They are  
9 made to have the Brazilian look, bikini look, but stay  
10 on.

11 Q. So you sell primarily bikinis?

12 A. Yes. Primarily.

13 Q. Do you sell any other type of products under the  
14 Kini Kai trademark?

15 A. We do. T-shirts. We have also sold our actual  
16 sticker to put on anything people wanted. And also promo  
17 bracelets, giveaway, things like that.

18 Q. And how did you come up with the name Kini Kai?

19 A. It is actually my name in Hawaiian.

20 December 2008, my partner and I, Alexander Meadors, we  
21 decided to do our due diligence and research names before  
22 forming a business under a name.

23 And after about three weeks of research,  
24 making sure no one else had that name or something  
25 extremely close to it, we went with Kini Kai, which

1 means Jenny Ocean in Hawaiian.

2 Q. Okay. And why did you decide to start Kini Kai?

3 A. I wanted a business that was my own. I loved  
4 bikinis but was unable to find something for girls that  
5 were curvier but more active, and that's why I started  
6 it.

7 Q. And what were you doing before you started the  
8 Kini Kai business?

9 A. I was an airline pilot.

10 Q. How long were you an airline pilot for?

11 A. I flew for the airlines for a little over two  
12 years.

13 Q. When you started Kini Kai, were you still an  
14 airline pilot, or was that sort of a part-time job or  
15 part-time gig?

16 A. Airline pilot was full time, but I -- we do not  
17 have a normal schedule. So Kini Kai was during my off  
18 hours.

19 Q. Got it. So when you sell your bikinis online  
20 and when you ship them out, does the name Kini Kai appear  
21 anywhere on the bikinis themselves?

22 A. Yes. On all pieces, they are either on the tag  
23 within, and we also have a silk screen tagless logo in  
24 each of our pieces along with a hang tag, and the  
25 packaging has Kini Kai on it as well, plus packaging with

1 the business logo and name.

2 Q. Has that always been the case? So even back in  
3 2010 or 2011 when you were selling, did it always have a  
4 hand tag and silk screen print?

5 A. Yes.

6 Q. Okay. Do you have any retail location, or is it  
7 all online?

8 A. We have -- we are represented in the retail  
9 world. They are multiple states. Hawaii, Florida,  
10 Kentucky, South Carolina, and Vegas. Excuse me, Nevada.

11 Q. So correct me if I'm wrong, do -- so retail  
12 outlets purchased from you wholesale?

13 A. That's correct.

14 Q. And then sell in their establishments?

15 A. That's correct.

16 Q. And in those states that you named?

17 A. Yes.

18 Q. Okay. When did you first make a sale of your  
19 swimwear under the name Kini Kai?

20 A. March 2009.

21 Q. Okay. And how did that sale come about?

22 A. It was a retail shop in Kentucky, and it was a  
23 wholesale order. So they ordered a starter package.

24 Q. What was the name of that shop?

25 A. Southern Island Tan.

1 Q. And how many -- if you remember, how many  
2 swimsuits did you sell at that time?

3 A. Approximately 100.

4 Q. And how did you make those sales? How did you  
5 find that business? How did they find you?

6 A. I was a former employee of theirs from my  
7 teenage years. So I got on the phone.

8 Q. And where did you say that -- Southern Island  
9 Tan?

10 A. Southern Island Tan in Louisville, Kentucky.

11 Q. And did they have a physical retail location?

12 A. Yes, they did.

13 Q. Do they still have a physical retail location?

14 A. The operation is still there. It has changed  
15 owners, but yes.

16 Q. And are you involved in that business anymore?

17 A. No. No.

18 I believe they still have some suits on  
19 property, but I'm not positive.

20 Q. In your motion for summary judgment, you  
21 indicated that there was a predecessor in interest to  
22 Kini Kai, L.L.C. which was called Kini Kai Swimwear,  
23 L.L.C.?

24 A. That is correct.

25 Q. Okay. I'm handing you a document. I submit to

1 you that this is a printout from the Secretary of State  
2 of Georgia. It appears to be the certificate of  
3 organization for Kini Kai Swimwear, L.L.C.

4 A. Yes.

5 Q. Does this look familiar to you?

6 A. Yes, it does. Yes.

7 Q. Is this the predecessor in interest to Kini Kai,  
8 L.L.C.?

9 A. Yes.

10 MR. BORGHESE: And just to make the  
11 deposition go faster, I'll just reserve all objections  
12 to admissibility of anything you are presenting today.

13 MR. TUREK: Okay.

14 BY MR. TUREK:

15 Q. On the certificate of organization, it states  
16 that the L.L.C. was formed on February 3rd of 2009. Does  
17 that sound accurate to you?

18 A. Yes, it does.

19 Q. Okay. And if you flip to the second page, it  
20 says that Jennifer K. Smith and Alexander Joseph Meadors  
21 are the organizers of the L.L.C.

22 I assume Jennifer K. Smith is you?

23 A. Yes. That is now my current name, as well, due  
24 to legal divorce.

25 Q. Okay. And Alexander Joseph Meadors was your

1 husband?

2 A. That is correct.

3 Q. Okay. Were you married at the time that this  
4 L.L.C. was formed?

5 A. No.

6 Q. And where were you living at the time this  
7 L.L.C. was formed?

8 A. Peachtree City, Georgia.

9 MR. TUREK: I'd like to admit this as  
10 Exhibit A, please.

11 (Exhibit A marked)

12 BY MR. TUREK:

13 Q. I've put in front of you a document that I  
14 submit to you is a printout from the Secretary of State  
15 of Georgia. It says on the front it was certificate of  
16 voluntary termination for Kini Kai Swimwear, L.L.C.

17 Does it look familiar to you at all?

18 A. Yes.

19 Q. Okay. And it says here that the termination of  
20 Kini Kai Swimwear, L.L.C. occurred on April 14th of 2010?

21 A. That is correct.

22 Q. Are you -- do you agree that Kini Kai Swimwear,  
23 L.L.C. was voluntarily terminated approximately April of  
24 2010?

25 A. Yes.

1 Q. Okay. And just out of curiosity, why did you  
2 voluntarily terminate Kini Kai Swimwear, L.L.C.?

3 A. I had moved full time to Hawaii. And we  
4 transferred everything of Kini Kai Swimwear, L.L.C. to  
5 Kini Kai, L.L.C. that we formed in Hawaii. So we needed  
6 to cancel the Georgia.

7 Q. Do you have any written documentation showing  
8 the transfer of all the assets and properties and good  
9 will of Kini Kai Swimwear, L.L.C. to Kini Kai, L.L.C.?

10 A. I did have it. Due to 17 moves in eight years,  
11 it became lost in the jumble. But it was in existence.

12 Q. Did you draw those documents up yourself, or did  
13 you have a lawyer draw those documents up?

14 A. Drew them up myself with my business partner.

15 Q. And your business partner was Alexander?

16 A. Yes.

17 Q. So you are in agreement that Kini Kai Swimwear,  
18 L.L.C., the Georgia L.L.C. is no longer in business?  
19 It's been terminated?

20 A. Correct.

21 MR. TUREK: Okay. I'd like to admit this  
22 as Exhibit B, please.

23 (Exhibit B marked)

24 BY MR. TUREK:

25 Q. When did you move to Hawaii?

1 A. October 2009.

2 Q. And why did you move to Hawaii?

3 A. My spouse was transferred there to fly  
4 intra-island for the Mokulele Airlines, and I had -- my  
5 company was offering furlough or a year of leave of  
6 absence with benefits.

7 Q. Understand.

8 All right. I've put in front of you a  
9 document that I submit to you is a printout from the  
10 State of Hawaii's corporations status Website.

11 A. Mm-hmm.

12 Q. It lists some business information for Kini Kai,  
13 L.L.C. Does this look familiar to you?

14 A. This does. Yes.

15 Q. Okay. And it says here that you registered Kini  
16 Kai, L.L.C. in Hawaii on March 20th, 2010. Does that  
17 sound approximately accurate to you?

18 A. Yes.

19 Q. Okay. And the mailing address I see is 2929  
20 Lapis Beach Drive in Vegas. Is that your current  
21 address?

22 A. That is my -- that was my original address when  
23 moving to Nevada two years ago.

24 It is not -- I am getting ready to refile. I  
25 have not updated since my recent move.

1 Q. And why did you choose to form an L.L.C. in  
2 Hawaii?

3 A. I chose to form an L.L.C. in Hawaii because  
4 that's where I was living. Also they have a much nicer  
5 way of doing business with small businesses, the State of  
6 Hawaii does, versus Georgia. They're much more friendly  
7 and encouraging of small business.

8 Q. And it says here that the officers were  
9 Alexander Meadors and Jennifer Meadors. At that time in  
10 March -- March 20th, 2010 when the business was formed in  
11 Hawaii, were you married at the time?

12 A. Yes.

13 Q. Okay. What year did you get married?

14 A. 2009.

15 Q. In what month?

16 A. June.

17 Q. So since the time you started selling products  
18 under the Kini Kai name, under both Kini Kai Swimwear,  
19 L.L.C. and then later Kini Kai, L.L.C., was there any --  
20 was there ever any gap in production of bikinis, sales of  
21 bikinis, any substantial gap in time?

22 A. No.

23 Q. What's the longest you ever went between sales  
24 since you started your business?

25 A. 24 hours.

1 Q. Can you tell me a little bit about the  
2 advertising that you do for your business?

3 A. Sure. We have advertised on Google AdWords  
4 from -- since 2009. We also have our dot com Website.  
5 We have our Etsy exposure.

6 Q. Can I stop you? What's your dot com Website?

7 A. KiniKaiSwimwear.com. KiniKaiBikini.com.  
8 KiniKaiHawaii.com. Hawaii -- we have a few under the  
9 Kini Kai name.

10 Q. Do they all redirect to one Website, or do you  
11 have multiple Websites and multiple domains?

12 A. We most redirect to Kini Kai Swimwear. That is  
13 the main hub.

14 Q. So your main site is KiniKaiSwimwear.com?

15 A. Yes.

16 Q. Has it always been KiniKaiSwimwear.com?

17 A. Yes.

18 Would you like for me to continue?

19 Q. Please.

20 A. Okay. Just checking.

21 So AdWords. We have also advertised through  
22 Etsy.com, which we have a storefront. We've advertised  
23 with Facebook. We've been on fashion blogs.

24 Also we have been in the Charleston Art  
25 Magazine a number of times. We have sponsored surf

1 events. And our advertising has even gone as far as we  
2 take a proceed of our sales and donate them to the  
3 Leukemia & Lymphoma Society. So we sponsor some of  
4 their athletes in Team in Training to do that.

5 Q. Before 2012, what kinds of advertising did you  
6 do? I mean you just kind of told me all of the  
7 advertising you do. But what about the stuff that  
8 happened before 2012?

9 A. AdWords, Facebook.com. Sorry if I go too fast.  
10 The Leukemia & Lymphoma Society.

11 Before 2012? Charleston -- multiple  
12 Charleston magazines, including Skirt! Magazine, surf  
13 competitions. We've gone directly and sponsored Hawaii  
14 Volleyball Association events.

15 Q. What about before 2010?

16 A. Hawaii Volleyball Association, still on AdWords,  
17 Facebook. I believe Etsy. And surf competitions. And I  
18 don't know if I already said this, volleyball  
19 competitions as well.

20 Q. Thank you. And again, you don't have any  
21 written documentation showing the transfer of any assets  
22 or good will from Kini Kai Swimwear, L.L.C. to Kini Kai,  
23 L.L.C.?

24 A. We did, but it is not in my possession at this  
25 time.

1 Q. Do you know of anybody who might have that?

2 Those documents?

3 A. No.

4 Q. Alexander would not have those documents?

5 A. No.

6 MR. TUREK: Off the record for one  
7 moment.

8 (Brief Recess.)

9 MR. TUREK: Back on the record.

10 BY MR. TUREK:

11 Q. As part of your motion for summary judgment, you  
12 submitted these documents under Exhibit 2?

13 A. Yes.

14 Q. Do these, if you would just take a moment to  
15 review them. Just let me know if they look familiar to  
16 you.

17 A. Yes, they do.

18 Q. And can you tell me about the first three to  
19 four pages, tell me what that's showing.

20 A. We're missing images. So it's a little  
21 difficult. But it is showing the skeleton of my Website  
22 from May -- a snapshot from May 21st, 2009 of what my  
23 Website included, text wise and product wise.

24 Q. Okay. So except for the missing images, which I  
25 understand with the Wayback Machine often happens, does

1 the text look familiar to you?

2 A. Yes.

3 Q. Did you write text or did you have a Web  
4 designer?

5 A. I wrote it myself.

6 Q. Did you design your own Website?

7 A. Through a Website builder, yes.

8 Q. And do you happen to know how many visitors you  
9 had to your Website back in April or May of 2009?

10 A. No, I do not have those numbers.

11 Q. Do you know if there were any visitors to your  
12 Website?

13 A. Yes.

14 Q. How do you know?

15 A. Because at that time, we had AdWords created,  
16 and we were having clicks directly to the Website.

17 Q. But you don't know how many visitors  
18 necessarily?

19 A. I don't have those numbers.

20 Q. At that time, back in April or May of 2009,  
21 could people make online purchases straight from your  
22 Website?

23 A. Yes.

24 Q. And this would be for the Website  
25 KiniKaiSwimwear.com?

1 A. Yes.

2 Q. If you could look at the last page of Exhibit 2.

3 A. Okay.

4 Q. Can you explain to me what that shows?

5 A. This is March 26th, 2010. It is a snapshot of  
6 one of our product pages from KiniKaiSwimwear.com.

7 Q. Does that look like, except for, obviously, the  
8 missing images, does that look like a reasonably accurate  
9 depiction of your Website at that time?

10 A. Yes.

11 Q. Do you happen to know how many visitors you had  
12 on your Website on March 26th, 2010?

13 A. No. Not specifically on March 26th.

14 Q. Okay. Do you happen to know how many visitors  
15 you had to your Website at all in the year of 2009 or  
16 2010?

17 A. It was, to the best of my knowledge,  
18 approximately 100,000 visitors.

19 Q. How would you know that?

20 A. We keep general stats year to year to see the  
21 growth.

22 Q. Where do you get those stats from?

23 A. Our Google Analytics.

24 Q. So you had 100,000 visitors in 2009 and 100,000  
25 visitors in 2010, or are you saying combined you had

1 100,000 visitors?

2 A. I believe for each year. And that was just for  
3 the dot com.

4 Q. And most of that was coming from Google AdWords  
5 at that time?

6 A. AdWords, and then word of mouth, telling people  
7 to come to the site and passing out business cards.

8 Q. And at this time, you were already living in  
9 Hawaii. Correct?

10 A. Yes.

11 Q. Or I'm sorry, on March 26th, 2010, you were  
12 already living in Hawaii?

13 A. That is correct. Yes.

14 Q. Were you living there on May 21st, 2009?

15 A. No.

16 Now, my business partner was, but I was not.  
17 So excuse me.

18 Q. I am handing you Exhibit 3 from your motion for  
19 summary judgment. If you just want to review those  
20 pages.

21 MR. BORGHESE: Not to interrupt your  
22 flow, but did you want to have this as part of it or --

23 MR. TUREK: As part of -- off the record.

24 (Brief Recess.)

25 MR. TUREK: On the record.

1 THE WITNESS: Okay.

2 BY MR. TUREK:

3 Q. Did you have a chance to review all of the  
4 pages?

5 A. Sure. Yes. Yes.

6 Q. Do they all look reasonably familiar to you?

7 A. Yes.

8 Q. Okay. Looking at the first page, which is  
9 labeled KINI 0060 on the bottom right-hand corner.

10 A. Okay.

11 Q. Can you tell me what that document is?

12 A. Yes. It is a document to have -- our initial  
13 set of bikinis was manufactured for us from my designs.  
14 And it is a basically a customs entry slip from American  
15 Customs Broker.

16 Q. So you had some bikinis manufactured in a  
17 different country?

18 A. That is correct.

19 Q. In Vietnam, it says on the document; is that  
20 correct?

21 A. That is correct.

22 Q. So this was your very first order of --

23 A. No.

24 Q. -- swimsuits?

25 A. No. This was our refill order. A second order.

1 Q. Was your first order made in Vietnam?

2 A. Yes.

3 Q. Do you happen to have the document that shows  
4 your first order?

5 A. I should. It may be in files that I just  
6 received back from my divorce settlement.

7 Q. So this invoice shows -- well, strike that.  
8 American Customs Brokerage Co., what do they  
9 do? What's their business?

10 A. Their business is to handle the paperwork, the  
11 legal documents to get product into the United States  
12 from other countries.

13 Q. So you hire them to help you with all the  
14 customs and the paperwork and everything else?

15 A. Yes.

16 Q. Okay. And does this document show the delivery  
17 of the product to you, or is this showing something else?  
18 Because I see that it's listed customs entry fee.

19 So did this document come with the product  
20 that you received from Vietnam?

21 A. This document was given to me from American  
22 Customs Brokerage Company to show that they did get --  
23 have it processed properly through customs, but it's not  
24 a receipt of delivery.

25 Q. So this document would have been generated

1 before you received the bikinis from Vietnam?

2 A. Yes.

3 Q. If you can go to the second page of Exhibit 3,  
4 which is labeled KINI 0061?

5 A. Yes.

6 Q. Can you tell what that is?

7 A. This is a business, Sign Pro, in Hawaii that  
8 created a Kini Kai Swimwear banner.

9 Q. What is a banner?

10 A. It is a -- it was a 5 by 3-foot indoor/outdoor  
11 signage banner for multi use.

12 Q. What were you going to use it for?

13 A. We were sponsoring the Hawaii Volleyball  
14 Association tournament, and we needed it for the  
15 tournament.

16 Q. So it's fair to say that you were promoting your  
17 swimwear at this tournament?

18 A. Yes.

19 Q. And you were using this banner as a way of doing  
20 that?

21 A. Yes. That, and we also outfitted the female  
22 volleyball competitors.

23 Q. And it shows that it was ordered on May 6th,  
24 2010?

25 A. Yes.

1 Q. Do you believe that's a reasonably accurate date  
2 on the date that you ordered it?

3 A. Yes.

4 Q. And do you know when you took delivery of that  
5 banner?

6 A. We took delivery on the 7th of May.

7 Q. So it was quick turnaround?

8 A. Yes. It was. I believe the event was the 8th.

9 Q. And did you actually use the banner?

10 A. Mm-hmm. Yes.

11 Q. Okay. If you could turn to the next page of  
12 Exhibit 3, and that's labeled KINI 0062.

13 A. Okay.

14 Q. Can you explain to me what this document is?

15 A. This is the page -- shows the paid invoice from  
16 Southern Island Tan, also known as SIT, for the wholesale  
17 order of bikinis.

18 Q. Okay. And SIT, is that the abbreviation for  
19 Southern Island Tan that you were talking about earlier?

20 A. Yes, it is.

21 Q. And is this -- so you -- looking at the  
22 document, it looks like you invoiced them for 125 suits?

23 A. Yes.

24 Q. Is that correct?

25 A. That is correct.

1 Q. So you sold them at wholesale 125 bikinis; is  
2 that correct?

3 A. That is correct.

4 Q. Was this bill generated -- strike that.

5 Was the bill paid before or after you  
6 delivered the swimsuits?

7 A. After delivery.

8 Q. I'm putting in front of you a document that I  
9 submit to you is a printout from the Kentucky Secretary  
10 of State.

11 A. Yes.

12 Q. And on this document it is a -- it's a printout  
13 of some business information from a business named SIT,  
14 Inc. And I note on this printout that under current  
15 officers, you -- a woman named Jennifer K. Smith is  
16 listed as secretary.

17 Is that Jennifer K. Smith you?

18 A. It must be. But I did not know that I held that  
19 office.

20 Q. So you did not know you were secretary of SIT,  
21 Inc.?

22 A. That is correct.

23 Q. Okay. Do you happen to know Cathy L. Smith?  
24 She's listed as president.

25 A. That's my mother.

1 Q. That's your mother?

2 A. Mm-hmm.

3 Q. Do you know who Terry K. Smith is? He's  
4 listed -- I'm not sure if it's a he or she. It's a vice  
5 president.

6 A. He, Terry K. Smith, is my father.

7 Q. Okay. And what about somebody listed as a  
8 director is named Albert Smith. Do you know who that is?

9 A. My deceased grandfather.

10 Q. And what about Catherine Smith? He's listed  
11 also as a director.

12 A. That is also Cathy Smith. It is the one and the  
13 same as the president.

14 Q. Oh, okay. Thank you.

15 And were you familiar with this company? I  
16 mean, you were a named secretary, according to this  
17 document.

18 Did you have any dealing was this company?  
19 Did you ever have to sign anything on behalf of this  
20 company? Did you ever have to file a tax return on  
21 behalf of this company?

22 A. No, sir. No. I was an employee and a day  
23 manager. I managed day and/or night shift, so I was a  
24 shift manager for the company all through high school and  
25 college.

1 And -- but no, I never signed anything, and I  
2 was never approved through their bank to sign anything.

3 Q. What kind of business was -- SIT, Inc.?

4 A. Mm-hmm.

5 Q. What kind of business was it?

6 A. A tanning salon.

7 Q. Going back to Exhibit 3 that we were talking  
8 about, this invoice for SIT?

9 A. Yes.

10 Q. Is that the same business that these suits were  
11 sold to?

12 A. That is correct.

13 Q. Okay. So it's fair to say that you sold  
14 these -- this was -- was this your first sale of suits?

15 A. Yes.

16 Q. Under the name Kini Kai?

17 A. Yes.

18 Q. So it's fair to say that you sold these 125  
19 suits to a business that was owned by members of your  
20 family?

21 A. Yes.

22 Q. Okay. And for which you were secretary?

23 A. That I did not know of.

24 Q. Okay. Did the tanning salon regularly sell  
25 clothing, or was this sort of an expansion of their

1 business?

2 A. They regularly sold clothing. They had actually  
3 sold swimwear in previous years.

4 Q. Were they currently selling swimwear at the time  
5 you sold them these bathing suits?

6 A. Not that season, no.

7 Q. Were they selling -- if you remember, were they  
8 selling any clothing at the time that you sold them the  
9 125 swimsuits?

10 A. Yes. The best of my memory, they were selling  
11 men's and women's T-shirts, flip-flops, and other  
12 accessories, including jewelry.

13 Q. But these were things that were made by other  
14 companies?

15 A. That is correct.

16 Q. Not made -- and not manufactured by SIT?

17 A. Correct.

18 Q. It appears that this business was organized back  
19 in 1989. Does that sound reasonably accurate as to when  
20 your family started that business?

21 A. That does sound accurate. Yes.

22 Q. It's been around a long time?

23 A. Yes.

24 Q. I note that on this document toward the bottom,  
25 it says that there's been an administrative dissolution

1 effective September 12th, 2015. Do you see that line  
2 item?

3 A. You said it is towards the bottom?

4 Q. Toward the bottom, it says -- under images  
5 available online, the first line it says, Administrative  
6 dissolution.

7 A. Yes, I do.

8 Q. Are you familiar or are you aware that this --  
9 your family's company has been administratively  
10 dissolved?

11 A. Yes.

12 Q. You are aware of that?

13 A. I was aware that they sold the business. So I  
14 would assume that they had dissolved.

15 Q. When did they sell the business?

16 A. I'm not sure about the exact date because I was  
17 not involved in the sale.

18 Q. Was it this year?

19 A. No.

20 Q. Was it 2014?

21 A. Yes.

22 MR. TUREK: I'd like to admit this as  
23 Exhibit C.

24 (Exhibit C marked)

25

1 BY MR. TUREK:

2 Q. I'm putting in front of you a document that I  
3 submit to you is a printout from the Kentucky Secretary  
4 of State's office.

5 It claims to be a certificate of assumed name.  
6 And it appears that it was received and filed in July  
7 of 1989.

8 And I submit to you that it shows that a  
9 company named SIT, Inc. had assumed the name Southern  
10 Island Tan as a name that they are doing business  
11 under.

12 And it's signed by Catherine Smith, who you  
13 acknowledged was the president of SIT, Inc. and also  
14 your mother. Correct?

15 A. That is correct.

16 Q. Okay. Are you personally familiar with this  
17 document at all?

18 A. Not at all. I was too young at this time.

19 Q. Okay. Would you agree, though, that SIT, Inc.  
20 did do business under the name Southern Island Tan?

21 A. Yes.

22 MR. TUREK: I'd like to mark that as  
23 Exhibit D, please.

24 (Exhibit D marked)

25

1 BY MR. TUREK:

2 Q. I submit to you that this is a printout from the  
3 Kentucky Secretary of State's Website. And I submit to  
4 you that it shows that there was -- this is a -- it shows  
5 that there has been a name that's been assumed by a  
6 company. And the name was Southern Island Tan. It was  
7 filed back in July of 1989.

8 It says that the principal office is 7903  
9 Manslick Road. Are you familiar with that street and  
10 that address?

11 A. Yes, I am.

12 Q. And what was that address?

13 A. It was my family residence and their business  
14 office as well.

15 Q. Okay. If you compare the organization number,  
16 which is 0259861 with what I labeled Exhibit C, which was  
17 the printout for SIT, Inc., do those organization numbers  
18 match?

19 A. Yes.

20 Q. They do. And do the current officers match?

21 A. Officers are not listed on the second document.

22 Q. I'm sorry. You're right. The individuals  
23 and -- the individuals or entities listed at the time of  
24 formation?

25 A. Yes.

1 Q. Okay. Did your family's business, SIT, Inc.,  
2 did they always do business under the name Southern  
3 Island Tan, as far as you know?

4 A. Under both SIT, Inc. and Southern Island Tan.  
5 They used them interchangeably, yes.

6 Q. If you know, what did the public know your  
7 family's business by? Did they know it as SIT or did  
8 they know it as Southern Island Tan?

9 A. Both.

10 Q. What did it say on the signage of the business?

11 A. Southern Island Tan on the exterior signage.  
12 And -- yes.

13 Q. Okay. Did the name SIT ever appear on anything  
14 outside, on the exterior or any signage? Anything like  
15 that, if you remember?

16 A. I don't remember.

17 MR. TUREK: Okay. I'd like to admit this  
18 as Exhibit E.

19 (Exhibit E marked)

20 BY MR. TUREK:

21 Q. I submit to you that this is a printout from the  
22 Kentucky Secretary of State's Website. I'd submit to you  
23 that it's an annual report filing by SIT, Inc. And it  
24 was filed, according to this document, on January of  
25 2009.

1           It says that the principal office is 5905 New  
2 Cut Road in Louisville, Kentucky.

3           Are you familiar with that address?

4           A. Yes, I am.

5           Q. Okay. What was that address?

6           A. That was the physical location of the tanning  
7 salon. Of Southern Island Tan.

8           Q. Okay. And I note that the president was Cathy  
9 Smith, which is your mother?

10          A. That's correct.

11          Q. And the vice president was Terry Smith, which is  
12 your father?

13          A. That is correct.

14          Q. And then you were listed as secretary on this  
15 SIT, Inc.?

16          A. On the document, yes. And I was not aware of  
17 this title.

18          Q. Okay. Who knew you were an officer of a  
19 company? Who knew?

20          A. Other than my own.

21          Q. Have you ever seen this document before?

22          A. No, I have not.

23          Q. Okay. And you were not aware that this was ever  
24 filed by the company?

25          A. That is correct.

1 MR. TUREK: Okay. I'd like to admit this  
2 into evidence as Exhibit F.

3 THE WITNESS: May I use the restroom?

4 MR. TUREK: Yes, please.

5 (Exhibit F marked)

6 (Brief Recess.)

7 MR. TUREK: On the record.

8 BY MR. TUREK:

9 Q. I put in front of you a document I submit to you  
10 is a printout from the Kentucky Secretary of State's  
11 office. I submit to you it's an annual report filed by  
12 SIT, Inc. And it was filed, according to this document,  
13 on April 14th of 2010.

14 It appears that the address of the principal  
15 office is exactly the same as the document previously  
16 that I showed you.

17 A. Yes.

18 Q. And that the officers are Cathy Smith, Terry  
19 Smith, and Jennifer K. Smith, which is you?

20 A. That is what it is reading.

21 Q. Okay. And again, you did not know that back in  
22 April 14th, 2010, you were the secretary of this  
23 business?

24 A. No. I was living in Hawaii and had no knowledge  
25 of this.

1 Q. And again, you've never signed anything on  
2 behalf of the company? You've never filed any tax  
3 returns on behalf of this company? You've never had to  
4 sign a shareholder report on behalf of this company?

5 A. No. I wasn't even being paid as a secretary.

6 Q. You never took any minutes on behalf of this  
7 company?

8 A. No, sir. No.

9 Q. So you've never seen this document before?

10 A. That is correct.

11 MR. TUREK: I'd like to admit this  
12 document into evidence as Exhibit G.

13 (Exhibit G marked)

14 BY MR. TUREK:

15 Q. I submit to you that this is a printout from the  
16 Kentucky Secretary of State's office's Website. It  
17 appears to be an articles of amendment for a company  
18 called SIT, Inc.

19 The document indicates that the name of the  
20 company changed from SIT, Inc. to Southern Island Tan,  
21 Inc. And it says that the date of adoption of the  
22 amendment was June 21st of 2010. And it's signed by  
23 Catherine Smith as president of SIT, Inc., which was  
24 your mother?

25 A. Yes.

1 Q. Is your mother still alive?

2 A. Yes.

3 Q. Okay. Have you ever seen this document before?

4 A. No, sir.

5 Q. And if you go back to the previous document I  
6 gave to you, which was Exhibit G, and it was the online  
7 annual -- sorry, the annual report online filing for SIT,  
8 Inc., if you look at the company ID number on Exhibit G.

9 A. Yes.

10 Q. And the number that appears on the top right of  
11 the document I'm currently showing you, which was the  
12 articles of amendment, except for the .09 at the end of  
13 that number, are those numbers the same?

14 A. Yes.

15 Q. Okay. And if you look at number one on the  
16 document that's in front of you, are those numbers the  
17 same?

18 A. Yes.

19 Q. And you've never seen this document before?

20 A. No, sir.

21 MR. TUREK: I'd like to admit this into  
22 evidence as Exhibit H.

23 (Exhibit H marked)

24 BY MR. TUREK:

25 Q. Go going back to Exhibit 3 of your motion for

1 summary judgment.

2 A. Thank you very much.

3 Q. If you could flip to the page that's labeled  
4 KINI 0063 on the bottom right-hand corner.

5 A. Yes.

6 Q. Okay. Can you explain to me what this document  
7 is?

8 A. This looks to be an invoice to Southern Island  
9 Tan in April of 2010.

10 Q. How do you know it's April of 2010?

11 A. Because on the payment stub, which is overlaid  
12 the invoice itself, it has the date April -- April 9th,  
13 2010.

14 Q. And is this Southern Island Tan that this  
15 invoice was billed to, is that the Southern Island Tan  
16 that is run by your family?

17 A. Yes.

18 Q. And also the Southern Island Tan that you were  
19 secretary of, even though you were unaware that you were  
20 secretary?

21 A. Yes.

22 Q. Okay. And on that payment slip that sort of  
23 overlays the invoice, one date is March 15th, and one  
24 date is April 1st?

25 A. Yes.

1 Q. Can you just tell me why that is and what those  
2 amounts are?

3 A. It was two separate shipments of bikinis. And  
4 they purchased one shipment in March, and they purchased  
5 the second in April.

6 And those amounts are -- the first is 632 and  
7 the second is 640.

8 Q. So there are two separate orders, two separate  
9 shipments, all of which was paid by Southern Island Tan?

10 A. SIT, Inc., doing business as Southern Island  
11 Tan. Yes.

12 Q. I submit to you that this is a printout from the  
13 Kentucky Secretary of State's Website. And I submit to  
14 you that this is a printout from -- I'm sorry. It's a  
15 printout for a business named Southern Island Tan, Inc.

16 And under current officers, it lists Cathy  
17 Smith and Terry Smith, who is your mom and dad. And  
18 who is Cristi L. Smith as secretary?

19 A. My sister.

20 Q. Were you aware that your sister is secretary of  
21 this company?

22 A. No.

23 Q. And I then assume that you're not aware that you  
24 were no longer secretary of this company?

25 A. That would be correct.

1 Q. If you compare the organization number listed on  
2 this document against the number that is on Exhibit H,  
3 which was the articles of amendment --

4 A. Okay.

5 Q. -- are those numbers identical, except for the  
6 .09 at the end of?

7 A. Yes.

8 Q. And what about on line one of Exhibit H?

9 A. Yes.

10 Q. So would you agree that these two documents are  
11 referring to the same organization?

12 A. Yes.

13 MR. TUREK: Okay. I'd like to admit this  
14 into evidence as Exhibit I.

15 (Exhibit I marked)

16 BY MR. TUREK:

17 Q. I submit to you the document I have put in front  
18 of you is a printout from the Kentucky Secretary of  
19 State's Website.

20 I submit to you that this is an annual report  
21 that was filed in February of 2011. It looks like it  
22 was signed by a Terry K. Smith, who is the vice  
23 president.

24 And it lists Jennifer K. Smith as secretary of  
25 Southern Island Tan, Inc. I assume that would be you?

1 A. We're both assuming that at this time. Yes.

2 Q. Okay. Do you know any other Jennifer K. Smiths  
3 in your family?

4 A. Not within my family, no.

5 Q. And again, this was filed in February of 2011,  
6 so it says.

7 Would you agree that this Southern Island Tan,  
8 Inc. is the same Southern Island Tan that you sold your  
9 swimwear to?

10 A. Yes.

11 MR. TUREK: Okay. I'd like to admit this  
12 into evidence as Exhibit J.

13 (Exhibit J marked)

14 BY MR. TUREK:

15 Q. Going back to Exhibit 3 of the motion for  
16 summary judgment. If you can flip to the page labeled  
17 KINI 0064.

18 A. Yes.

19 Q. And this document seems to kind of span all the  
20 way through KINI 0075; is that accurate? Is that all the  
21 same document? From the same --

22 A. It seems to be. Yes.

23 Q. Can you explain to me this document, what it  
24 shows?

25 A. This is showing our wholesale orders.

1 Q. The whole document is showing wholesale orders?

2 A. Yes.

3 Q. Okay. And from what date to what date is it  
4 showing the wholesale orders?

5 A. January 29th till November 11th, 2012. Excuse  
6 me. 2011.

7 Q. Can you say those dates one more time for me?

8 A. January 1st, 2009 through November 11th, 2011.

9 Q. Thank you. And under the -- on the very far  
10 left, it says inventory, and then it has a list of  
11 numbers starting with J00.

12 A. Yes.

13 Q. What are those numbers?

14 A. Jewelry.

15 Q. Jewelry?

16 A. Yes.

17 Q. So not only did you sell swimwear, but you also  
18 sold some jewelry under the Kini Kai name --

19 A. Yes.

20 Q. -- is that correct?

21 And who did you sell the jewelry to? Like  
22 looking at this document, do you know who you sold the  
23 jewelry to?

24 A. The majority of these went to Southern Island  
25 Tan, Inc.

1 Q. Okay. And what about after inventory, the next  
2 category is bikini bottom?

3 A. Yes.

4 Q. And can you tell me, and this kind of spans all  
5 the way down through, wow, all the way through KINI 0066,  
6 where then it starts with bikini top, I believe.

7 A. Okay.

8 Q. Is that correct?

9 A. Yes.

10 Q. Everything up to that point on KINI 0066, right  
11 before bikini top is all bikini bottoms; is that correct?

12 A. That is correct. Yes.

13 Q. And what does this document show me? Tell me  
14 about the -- tell me about the columns that are on the  
15 right-hand side of the document.

16 A. It is showing you -- the first column is the  
17 inventory name. The second column will be the quantity  
18 of individual pieces.

19 Q. Individual pieces sold or individual pieces that  
20 you had in your possession?

21 A. Sold. To wholesale.

22 Q. Okay.

23 A. The second would be the amount, the dollar  
24 amount that was sold directly to wholesale.

25 Q. Is that per?

1 A. Per. Yes.

2 Q. Okay. So on, for instance, under paisley surf  
3 extra large, you sold four of them at \$40 a pop?

4 A. A total of \$40. So \$10 a pop.

5 Q. \$10 each?

6 A. Yes. It's a total amount. I apologize. And  
7 then the percentage is the percentage of sales that that  
8 equated to during that time period to wholesale.

9 Q. Out of all the products you sold?

10 A. Wholesale only. Yes.

11 Q. Yeah. Wholesale only?

12 A. Mm-hmm.

13 Q. And do you remember to whom you made these sales  
14 of bikini bottoms to?

15 A. To the best of my memory, Southern Island Tan in  
16 Louisville, Kentucky, Ocean Surf Shop in Folly Beach,  
17 South Carolina. And I believe at this time Salty Girl  
18 Surf Shop in Charleston, South Carolina -- Mt. Pleasant,  
19 South Carolina. Excuse me.

20 Q. And how were you familiar with the two  
21 businesses that are not Southern Island Tan?

22 A. I went business to business in that area and  
23 made personal connections with the business owners,  
24 selling them the suits as a Kini Kai sales rep.

25 I had also sponsored a surf competition for

1 Ocean Surf Shop, and that's how we developed the  
2 relationship.

3 Q. Okay. Do you happen to know approximately what  
4 percentage of the swimsuits went to -- or the bikini  
5 bottoms went to Southern Island Tan and what percentage  
6 went to the other two businesses?

7 A. No. I don't know those numbers offhand.

8 Q. Okay. And, you know, this document alleges that  
9 these are numbers from January 1st of 2009 through  
10 November 11th of 2011?

11 A. Yes.

12 Q. Do you happen to know what percentage of these  
13 were sold in 2009?

14 A. No, I do not.

15 Q. 2010?

16 A. No.

17 Q. 2011?

18 A. No.

19 Q. Okay. Would you be able to pull that  
20 information?

21 A. Possibly. We had some computer problems in that  
22 time, and this was a document that we had access to, but  
23 some of those documents are missing.

24 Q. Was this generated by a computer program?

25 A. This was.

1 Q. What computer program?

2 A. QuickBooks.

3 Q. And was this document generated for the purpose  
4 of the motion for summary judgment, or was this a  
5 document that you already had in your possession that you  
6 simply provided for the motion for summary judgment?

7 MR. BORGHESE: I'm just going to object  
8 to the extent that might call for attorney client  
9 communications.

10 Go ahead. You can answer, if you can.

11 THE WITNESS: Okay. I had these on file  
12 on my computer.

13 BY MR. TUREK:

14 Q. Like a PDF copy of the document on your  
15 computer?

16 A. Yes.

17 Q. Okay. Scrolling down to KINI 0 -- I'm sorry,  
18 flipping to KINI 0066, where it says bikini top, which is  
19 toward the bottom of the document.

20 A. Yes.

21 Q. And that seems to span all the way through  
22 KINI 0069, where it says total bikini top.

23 A. Yes.

24 Q. Okay. Do you happen to know to whom you sold  
25 those bikini tops to?

1 A. Southern Island Tan, Ocean Surf Shop, Salty  
2 Girls.

3 Q. Do you know what percentage of those products  
4 went to Southern Island Tan?

5 A. No, I do not.

6 Q. Do you happen to know what percentage of those  
7 products were sold in 2009?

8 A. No. Not offhand.

9 Q. 2010?

10 A. (Shook head.)

11 Q. 2011?

12 A. Huh-uh.

13 Q. You have to speak up.

14 A. I apologize. No, I do not. I apologize.

15 Q. All right. So you don't -- you can't break it  
16 down from 2009, 2010, and 2011?

17 A. No. I don't have those documents now.

18 Q. Under -- I'm sorry. On page 0069.

19 A. Yes.

20 Q. Toward the bottom, it says parts. Right under  
21 total inventory.

22 A. Yes.

23 Q. What is parts M-I-S-C and gift card?

24 A. I do not know exactly what M-I-S-C is standing  
25 for. It could be possibly a discount.

1 Gift card would be a gift card that we gave  
2 one of the wholesale providers that they in turn used.

3 Q. And under service, it says scrunch?

4 A. Yes.

5 Q. What's scrunch?

6 A. We hand scrunch our bikini bottoms in the back.

7 And that is the scrunch or ruching effect on the back of  
8 the bottoms.

9 Q. Okay. So you charge for that service?

10 A. Yes.

11 Q. Do all bikinis have scrunches?

12 A. No.

13 Q. You will have to excuse my ignorance about  
14 bikinis.

15 A. Not a problem.

16 Q. Now, on KINI 0070, I -- and please correct me if  
17 I'm wrong, I assume these are additional columns for the  
18 products that were listed in the pages previous?

19 A. Yes.

20 Q. Okay. So this is basically showing some  
21 financial information about the average cost of goods,  
22 your profit margin, things of that nature?

23 A. Yes.

24 Q. Okay. But it's for the same products that are  
25 listed above?

1 A. Yes.

2 Q. So it's just the way QuickBooks prints it out?  
3 It couldn't all go on one sheet of paper?

4 A. Correct.

5 Q. I am putting in front of you what's labeled  
6 Exhibit 4 to your motion for summary judgment. If you  
7 would just take a look at those.

8 A. Yes.

9 Q. Can you explain to me what the images are on the  
10 top left of the page labeled KINI 0058?

11 A. They are the sewn in garment tags that we used  
12 when we began hand making the suits within the U.S.

13 Q. Okay. So these were not the suits that were  
14 manufactured in Vietnam that you had talked about  
15 earlier?

16 A. That is correct.

17 Q. So these are differences?

18 A. It says Made in USA. So those are the USA ones.

19 Q. When did you start making in the USA?

20 A. Started making them -- hold on, I moved so  
21 often -- August 2010.

22 Q. And so these were -- these were garment tags  
23 that were in your original August 2010 swimsuits?

24 A. Yes.

25 Q. And this was a tag that you happened to still

1 have in your possession at the time this motion for  
2 summary judgment was filed?

3 A. Yes, sir.

4 Q. But they are not -- are they tags that you  
5 currently use? Are they representative of the exact tag  
6 you currently use?

7 A. No.

8 Q. Okay. Because how have you changed the tag now?

9 A. We now silk screen our tags in so the suits  
10 themselves are tagless.

11 Q. Is the logo the same now or no? Is it  
12 different?

13 A. It is the same.

14 Q. So the screen tag, the screen printed tag looks  
15 essentially identical to what's shown on the top left of  
16 this document?

17 A. Yes, it does.

18 Q. Okay. What about on the top right of KINI 0058?  
19 What's that?

20 A. That is a promo sticker that we have been using  
21 for quite a few years with our logo and our Website. One  
22 of our Website names.

23 Q. Okay. And is this a sticker that you currently  
24 use?

25 A. Yes. We replicated it. Yes.

1 Q. Is the sticker sold with the swimsuits or is it  
2 sold separately or do you give it away for free?

3 A. Give it as a promo item, and we also pass it out  
4 at events that we go to.

5 Q. And I notice that the logo is a little bit  
6 different on the sticker than it is on the garment tag.  
7 Is there a reason why the logos are different?

8 A. It's the same flower, and we used a different  
9 font. And that was mainly for esthetic reasons.

10 Q. On the sticker, it says that you have a domain  
11 name, WWW.KiniKaiBikini.com.

12 You had testified earlier, I believe, that  
13 your main Website is KiniKaiSwimwear.com?

14 A. Yes.

15 Q. Is there a reason why you're using KiniKaiBikini  
16 on that sticker?

17 A. Yes, there is. The demographic that we mainly  
18 sell our suits to, they recognize with the word bikini  
19 rather than swimwear.

20 Bikini goes to a younger client. Swimwear  
21 tends to lend to a little bit older client.

22 Q. So this was a pure marketing decision?

23 A. That is correct.

24 Q. Does KiniKaiBikini.com redirect to  
25 KiniKaiSwimwear.com?

1 A. Yes, it does.

2 Q. Has it always, or was there ever a separate  
3 Website for KiniKaiBikini.com?

4 A. To my knowledge, it always did.

5 Q. On the bottom left-hand side of KINI 0058, sort  
6 of a black rectangular shape.

7 A. Yes.

8 Q. Can you explain what that is?

9 A. That is the hang tag from the initial order of  
10 suits that we had made.

11 Q. That you had made in Vietnam or in the USA?

12 A. In Vietnam.

13 Q. And when you received the swimsuits from  
14 Vietnam, did you attach the hand tag to those swimsuits?

15 A. No. It was already attached for us.

16 Q. So you provided this tag or at least artwork for  
17 the tag to the manufacturer of the swimsuit?

18 A. We provided the graphics.

19 Q. The graphics?

20 A. Yes.

21 Q. And this, you said, was in 2009; is that  
22 correct?

23 A. That is correct.

24 Q. Is this the hand tag that you currently use?

25 A. No, it is not.

1 Q. When did you discontinue use of this hand tag?

2 A. This hand tag was only in use for our -- for our  
3 items made in Vietnam. So we still have some of these --  
4 some of these suits. So we still have this hand tag.

5 And then in 2010 when we started hand making the suits,  
6 we had a different looking hang tag.

7 Q. Okay. So this was only in August for maybe  
8 about a year or so, because you started manufacturing in  
9 the USA in 2010?

10 A. We had a second order from Vietnam in 2010 as  
11 well, and they are on those suits as well.

12 Q. So you transitioned from Vietnam to the USA in  
13 2010, sometime in 2010?

14 A. That is correct.

15 Q. Okay. Do you still sell the suits that you  
16 manufactured in Vietnam?

17 A. We have a few of those. Yes.

18 Q. Are they like on your Website where you could  
19 buy them?

20 A. Yes.

21 Q. Okay. Would they have that tag on them?

22 A. Yes.

23 Q. What about the image that's on the bottom right  
24 of KINI 0058? What's that?

25 A. That is our 2015 hang tag.

1 Q. All right. So recent?

2 A. Yes.

3 Q. What did your tag -- how does that tag differ  
4 from say your 2014 hand tag?

5 A. The 2014 was a square, hot pink with a black  
6 Kini Kai logo and font on it.

7 Q. Okay. Why did you change up the hand tag?

8 A. Esthetic reasons.

9 Q. Did you tend to change the hand tag every year?

10 A. No.

11 Q. The one you had in 2014, were you using that one  
12 in 2013 as well?

13 A. Yes.

14 Q. What about 2012?

15 A. Yes.

16 Q. Okay. 2011?

17 A. No.

18 Q. You had a different hand tag in 2011?

19 A. Yes.

20 Q. But also different from the one you had in 2009?

21 A. Always the same -- always the same graphic.

22 Q. When you say "graphic," do you mean the flower?

23 A. The flower and the name stayed the same, Kini  
24 Kai was on all of them.

25 Q. But you used different fonts, it appears?

1 A. Yes.

2 Q. You used different fonts?

3 On the 2015 hand tag, I see you're not using  
4 the flower on that anymore?

5 A. Correct. The flower is not on that one.

6 Q. Do you still use the flower at all on your  
7 materials?

8 A. Yes. It's still silk screened into our bikinis.

9 Q. Going back just to the top left-hand side of  
10 KINI 0058, is that still the font and style that you use  
11 that you silk screen in?

12 A. Yes.

13 Q. So it's not the font shown on the 2015 hand tag?

14 A. That is correct.

15 Q. Okay. So the hand tag is different -- it's a  
16 different font and style than the actual silk screened  
17 label?

18 A. That is correct.

19 Q. Okay. Moving on to 0059.

20 A. Yes.

21 Q. What are the two images on the top of the page?

22 A. Those are a card that we send out to all of our  
23 customers that order bikinis. And it is an instructional  
24 guide on how to properly care for their swimwear that  
25 they are purchasing on both sides.

1 Q. Okay. So this card comes with the swimsuit?

2 A. Yes.

3 Q. It's packaged in with the swimsuit?

4 A. Yes.

5 Q. When did you start using this guide?

6 A. I believe it was fall 2014.

7 Q. Okay.

8 A. Excuse me. Fall 2013.

9 Q. Okay.

10 A. Yes. I was still pregnant. Fall 2013.

11 Q. And have you used this ever since that time?

12 A. Yes.

13 Q. Okay. So if I was to order a bikini today, it  
14 would come with this guide?

15 A. Yes, it would.

16 Q. And what about the image that appears in the  
17 middle of the page?

18 A. That is the original business card for Kini Kai  
19 from 2009.

20 Q. Is this a business card that you currently use?

21 A. No, it is not.

22 Q. Okay. And did you give out these business  
23 cards?

24 A. Yes, I did.

25 Q. Where did you give them out?

1 A. They went with every order that was purchased.  
2 They also went to our wholesalers so that they could hand  
3 them out to their customers as well. And then we handed  
4 them out to people that we met at events. So multiple  
5 states received this business card.

6 Q. Okay. What year did you get married?

7 A. 2009.

8 Q. 2009. So this business card was printed soon  
9 after you got married?

10 A. I think I jumped the gun and actually had it  
11 commissioned just before the wedding. Yes.

12 Q. And what about the image on the bottom of that  
13 page, KINI 0059? What are those?

14 A. That is the front and back view of the business  
15 cards that I used up until August of this year.

16 Q. Okay. And I note that on that card, it says  
17 KiniKaiBikini.com, whereas on the 2009 it was  
18 KiniKaiSwimwear.com?

19 A. Yes.

20 Q. Is there a reason why you made that change?

21 A. Again, it's a marketing reason. Our main  
22 demographic relates to bikini rather than swimwear.

23 Q. Is that also why you use the @kiniKaiBikini as  
24 your Twitter handle?

25 A. Yes. It has a stronger hashtag match than

1 swimwear.

2 Q. Okay. And then you said you discontinued this  
3 business card in what year?

4 A. August of 2015.

5 Q. Why did you discontinue the use of that business  
6 card?

7 A. My name has changed. So the business card  
8 itself still -- excuse me. The business card, we also  
9 are launching a 2016 line, and the image has changed to a  
10 new design. And my name has changed.

11 Q. Okay. Are you still using that same flower and  
12 same font for Kini Kai?

13 A. Yes.

14 Q. On the new card?

15 A. Yes.

16 Q. Okay. How did you learn of Taryn Rodighiero's  
17 use of KaiKini for her bathing suits and her swimwear?

18 A. I received a not-so-friendly e-mail from Taryn  
19 in the summer of 2013 accusing me of copying her Website.

20 Q. Did you respond to that e-mail?

21 A. I did. Before responding, I -- it was a shock  
22 to receive it, especially since she was accusing me of  
23 basically stealing her verbiage from her, I believe, Etsy  
24 Website.

25 And I did my research. Because I was unaware

1 of this. And looked to see at her history. And then I  
2 responded. Yes.

3 Q. And how did you respond?

4 A. Basically letting her know that this is a shock  
5 to me since we had that verbiage in use well before the  
6 organization -- the organization that Hawaii state shows  
7 even began.

8 And it was a direct copy and paste, actually,  
9 from our 2009 version of the Website and 2010 version  
10 over to her Etsy page.

11 Q. And why did you decide to apply to federally  
12 register your Kini Kai trademark?

13 MR. BORGHESE: Again, I'm going to just  
14 object to the extent that this might call for  
15 attorney-client privilege.

16 But besides that, go ahead and answer.

17 THE WITNESS: Okay. I was receiving  
18 phone calls and e-mails from upset customers, that they  
19 were not receiving the service that they were used to.

20 And, in fact, they were confused by the two  
21 Websites. And they were not -- no longer ordering from  
22 me. They were accidentally ordering from her due to  
23 confusion about the brands. And they were upset.

24 BY MR. TUREK:

25 Q. So these were existing clients that you had that

1 had ordered from you before, but then started ordering  
2 from Taryn thinking that they were ordering from you?

3 A. Correct.

4 Q. Okay. And they were upset with the service or  
5 the quality or whatever it may be?

6 A. Quality and service. Things such as that.

7 Also, I was trying to expand my wholesale  
8 business. And I was running into a very embarrassing  
9 thing of having to explain to these potential wholesale  
10 clients that there's a difference between us. And this  
11 is who I am. And we were original.

12 It makes it for a hard sale.

13 Q. Okay. So --

14 A. And at that time, that's when I decided her  
15 business was hurting mine and also stealing sales from  
16 mine directly. I needed to make a move. But that didn't  
17 happen till 2014 when I was feeling that.

18 Q. I submit to you that your application was filed  
19 on August 25th of 2014.

20 Did you believe that filing an application for  
21 Kini Kai would prevent my client from continuing to use  
22 her KaiKini trademark?

23 MR. BORGHESE: Again, objection to the  
24 extent it would involve attorney-client communications.

25 But besides that, go ahead and answer.

1 BY MR. TUREK:

2 Q. Let me just say, at the time you filed, did you  
3 believe that her -- did you believe that by you filing  
4 the trademark application for Kini Kai, when it came into  
5 your head that you wanted to file, did you believe that  
6 filing the application would force Taryn's -- would --  
7 I'm sorry, would force Taryn to stop using her KaiKini  
8 trademark?

9 A. I initially did not realize that she had  
10 trademarked at that time. And then I went to file. And  
11 that's when I found that she had a trademark.

12 MR. BORGHESE: Again, avoiding any  
13 attorney-client communication, but you can continue.  
14 I'll just keep jumping in.

15 BY MR. TUREK:

16 Q. How did you find out that there was a  
17 registration for KaiKini?

18 MR. BORGHESE: Same objection. And if  
19 you -- if there's anything else you can add besides any  
20 communication with an attorney, you can. If there's  
21 nothing else, then there's nothing else.

22 Go ahead.

23 BY MR. TUREK:

24 Q. Well, I'm not asking for the content of any  
25 communication with your attorney. I'm simply saying how

1 did you find out?

2 A. I contacted a professional to handle the  
3 trademark.

4 Q. And you were informed that there was a  
5 registration for KaiKini?

6 A. (Nodded head.)

7 Q. You will also have to say yes or no.

8 A. Yes.

9 MR. BORGHESE: Objection. That comes to  
10 content. You were informed.

11 It's not a big deal. But I'm going to let you  
12 continue, but, you know, you're getting very close to.

13 BY MR. TUREK:

14 Q. Were you aware that there was a registration for  
15 KaiKini before you filed your trademark application?

16 A. To the -- not to the best of my knowledge.

17 Q. Now, as you know, your trademark application was  
18 preliminarily rejected by the trademark office because of  
19 Taryn's registration for KaiKini?

20 A. I was informed. Yes.

21 Q. Okay. In fact, the trademark office informed  
22 you of that? Trademark office --

23 A. Yes.

24 Q. -- sent out a notice saying, You're refused?

25 A. Yes.

1 Q. At that time, is that when you decided to file a  
2 cancellation against Taryn's registration?

3 A. To that -- I went to my lawyer. So you would  
4 have to discuss that with him.

5 Q. Okay. When you filed the cancellation, did you  
6 believe that by doing so and by being successful in the  
7 cancellation, that that would prevent Taryn from  
8 continuing to use her KaiKini mark to sell her products?

9 A. You would have to speak to my lawyer about that.

10 Q. I'm just asking what you believed.

11 MR. BORGHESE: Again, it's just an  
12 objection. It goes to communication.

13 BY MR. TUREK:

14 Q. I'm not asking what the content of the  
15 communication was. I'm simply asking -- let me rephrase.

16 What did you believe would be the result, if  
17 successful on a cancellation proceeding?

18 MR. BORGHESE: Same objection.

19 MR. TUREK: Are you allowing her to  
20 answer or no?

21 MR. BORGHESE: If she can. If there's  
22 anything outside of what we talked about.

23 THE WITNESS: There's nothing outside of  
24 that.

25

1 BY MR. TUREK:

2 Q. Do you understand that cancellation of Taryn's  
3 registration for KaiKini will not result in Taryn  
4 stopping use of her KaiKini trademark?

5 MR. BORGHESE: Again, same objection.

6 BY MR. TUREK:

7 Q. I'm just asking her understanding of what the  
8 law is.

9 MR. BORGHESE: No. Go ahead.

10 THE WITNESS: I'm unable to answer that.

11 MR. TUREK: Okay. I have no further  
12 questions.

13 MR. BORGHESE: Okay. Thanks.

14 MR. TUREK: Ms. Meadors, would you  
15 stipulate that you do not have to read and sign the  
16 transcript in front of a court reporter?

17 THE WITNESS: Yes.

18 MR. TUREK: Thank you.

19 MR. BORGHESE: That's agreed.

20 (The deposition concluded at 11:19 a.m.)

21 \* \* \* \* \*

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1 CERTIFICATE OF DEPONENT

2 PAGE LINE CHANGE

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15 \* \* \* \* \*

16 I, Jennifer K. Smith, deponent herein, do hereby  
17 certify and declare under penalty of perjury the within and  
18 foregoing transcription to be my deposition in said action;  
19 that I have read, corrected and do hereby affix my signature  
20 to said deposition.

21 \_\_\_\_\_  
22 Jennifer K. Smith, Deponent  
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CERTIFICATE OF REPORTER

I, Cindy Magnussen, Certified Court Reporter,  
State of Nevada, do hereby certify:

That I reported the deposition of Jennifer K.  
Smith, commencing on Monday, October 19, 2015, at 9:53 a.m.

That prior to being deposed, the witness was duly  
sworn by me to testify to the truth. That I thereafter  
transcribed my said shorthand notes into typewriting and  
that the typewritten transcript is a complete, true and  
accurate transcription of my said shorthand notes. That  
prior to the conclusion of the proceedings, the reading and  
signing was requested by the witness or a party.

I further certify that I am not a relative or  
employee of counsel of any of the parties, nor a relative or  
employee of the parties involved in said action, nor a  
person financially interested in the action.

In witness whereof, I hereunto subscribe my name  
at Las Vegas, Nevada, this 2nd day of November, 2015.

  
CINDY MAGNUSSEN, RMR, CCR No. 650

# STATE OF GEORGIA

**Secretary of State**  
**Corporations Division**  
**315 West Tower**  
**#2 Martin Luther King, Jr. Dr.**  
**Atlanta, Georgia 30334-1530**

## CERTIFICATE OF ORGANIZATION

I, **Karen C Handel**, the Secretary of State and the Corporations Commissioner of the State of Georgia, hereby certify under the seal of my office that

**KINI KAI SWIMWEAR L.L.C**  
a Domestic Limited Liability Company

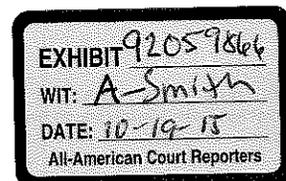
has been duly organized under the laws of the State of Georgia on **02/03/2009** by the filing of articles of organization in the Office of the Secretary of State and by the paying of fees as provided by Title 14 of the Official Code of Georgia Annotated.

WITNESS my hand and official seal in the City of Atlanta  
and the State of Georgia on February 3, 2009



A handwritten signature in cursive script, reading "Karen C Handel".

Karen C Handel  
Secretary of State



February 03, 2009

**ARTICLES OF ORGANIZATION  
FOR GEORGIA LIMITED LIABILITY COMPANY**

**The name of the Limited Liability Company is:**

Kini Kai Swimwear L.L.C

**The principal mailing address of the Limited Liability Company is:**

823 Hyacinth Ln  
Peachtree City, GA 30269

**The Registered Agent is:**

Alexander Joseph Meadors  
823 Hyacinth Ln  
Peachtree City, GA 30269

**County:** Fayette

**The name and address of each organizer(s) are:**

Jennifer Kaye Smith	Alexander Joseph Meadors
823 Hyacinth Ln	823 Hyacinth Ln
Peachtree City, GA 30269	Peachtree City, GA 30269

**The optional provisions are:**

No optional provisions.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Organization on the date set forth below.

**Signature(s):**

Organizer, Jennifer Kaye Smith

**Date:**

February 03, 2009

# STATE OF GEORGIA

**Secretary of State**  
**Corporations Division**  
**315 West Tower**  
**#2 Martin Luther King, Jr. Dr.**  
**Atlanta, Georgia 30334-1530**

## **CERTIFICATE OF VOLUNTARY TERMINATION**

I, **Brian P. Kemp**, the Secretary of State and the Corporations Commissioner of the State of Georgia, hereby certify under the seal of my office that

**KINI KAI SWIMWEAR L.L.C**  
a Domestic Limited Liability Company

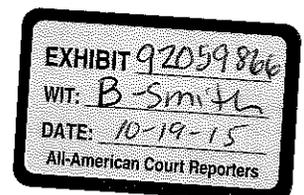
has been duly terminated on **04/14/2010** under the laws of the State of Georgia by the filing of documents in the office of the Secretary of State and by the paying of fees as required by the Official Code of Georgia Annotated and the Rules and Regulations promulgated there under. Attached hereto is a true and correct copy of said documents.

WITNESS my hand and official seal in the City of Atlanta  
and the State of Georgia on April 14, 2010



A handwritten signature in black ink, appearing to read "B. P. Kemp". The signature is written in a cursive, somewhat stylized font.

Brian P. Kemp  
Secretary of State



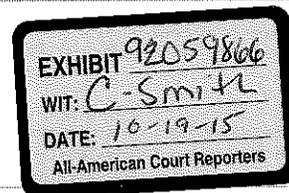
## SIT, INC.

### General Information

**Organization Number** 0259861  
**Name** SIT, INC.  
**Profit or Non-Profit** P - Profit  
**Company Type** KCO - Kentucky Corporation  
**Status** I - Inactive  
**Standing** G - Good  
**State** KY  
**File Date** 6/19/1989  
**Organization Date** 6/19/1989  
**Last Annual Report** 4/14/2010  
**Principal Office** 5905 NEW CUT RD.  
LOUISVILLE, KY 40214  
**Registered Agent** TERRY K. SMITH  
7903 MANSLICK RD.  
LOUISVILLE, KY 40214  
**Common No Par Shares** 2000

### Current Officers

**President** Cathy L Smith  
**Vice President** Terry K Smith  
**Secretary** Jennifer K Smith



### Individuals / Entities listed at time of formation

**Director** TERRY K SMITH  
**Director** ALBERT A SMITH  
**Director** CATHERINE L SMITH  
**Incorporator** TERRY K SMITH  
**Incorporator** CATHERINE L SMITH

### Images available online

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<u>Administrative Dissolution</u>	9/12/2015	1 page	PDF	
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<u>Annual Report</u>	2/27/2007	1 page	tiff	PDF
<u>Annual Report</u>	2/15/2006	1 page	tiff	PDF
<u>Annual Report</u>	10/21/2005	1 page	tiff	PDF

# Commonwealth of Kentucky

259861-A  
261066-D

OFFICE OF  
SECRETARY OF STATE

RECEIVED AND FILED  
JUL 19 1989  
BREMER EHRLER  
Secretary



FRANKFORT,  
KENTUCKY

CERTIFICATE OF ASSUMED NAME

AMOUNT \$20.00  
BREMER EHRLER  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
KRS 365.015  
567903

THIS CERTIFIES THAT THE ASSUMED NAME OF Southern Island Tan

has been adopted by SIT, Inc.

[THE REAL NAME OF THE ENTITY AS DEFINED IN KRS 365.015(1)]

which is a (YOU MUST CHECK ONE)

- General Partnership
  - Corporation
  - Limited Partnership
  - Joint Venture
  - Business Trust
- [Sole Proprietorships are not filed in our office]

organized and existing in the state of Kentucky and whose address in Kentucky is 7903 Manslick Road, Louisville, Kentucky 40214

The Statement of Assumed Name must be executed and acknowledged for a **general partnership**, by all the partners; for a **limited partnership**, by a general partner; for a **business trust**, by the trustees; for a **corporation**, by its President or Vice President and Secretary or Assistant Secretary; for a **joint venture**, by its partners. NOTE: Whenever a corporation is acting as a partner, the certificate must be executed and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of each corporation listed as a partner.

This statement of assumed name has been executed by the business entity by:

Catherine L. Smith  
TITLE Catherine L. Smith TITLE \_\_\_\_\_  
President  
TITLE \_\_\_\_\_ TITLE \_\_\_\_\_  
TITLE \_\_\_\_\_ TITLE \_\_\_\_\_

ACKNOWLEDGEMENT

State of Kentucky }  
County of Jeff } SS  
The forgoing instrument was acknowledged before me this 13 day of July  
19 89, by Catherine L. Smith, Pres

NAME AND TITLE \_\_\_\_\_  
on behalf of SIT, Inc. REAL NAME OF BUSINESS \_\_\_\_\_

Filing Fee is \$20.00.  
Submit with original signatures:  
One copy for Secretary of State and one copy for each county in which you are conducting business.  
\* take check payable to: Kentucky State Treasurer

[Signature]  
Notary Public KY State at Large  
My Commission Expires:  
02-24-93

EXHIBIT 92059866  
WIT: D. Smith  
DATE: 10-19-15  
All-American Court Reporters

## SOUTHERN ISLAND TAN

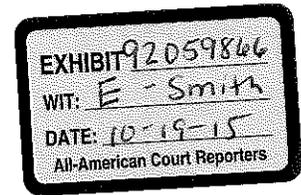
### General Information

**Organization Number** 0259861  
**Name** SOUTHERN ISLAND TAN  
**Company Type** ASC - Assumed Name Corporation  
**Status** I - Inactive  
**State** KY  
**File Date** 7/19/1989  
**Principal Office** 7903 MANSLICK RD.  
 LOUISVILLE, KY 40214

### Current Officers

#### Individuals / Entities listed at time of formation

**Director** TERRY K SMITH  
**Director** ALBERT A SMITH  
**Director** CATHERINE L SMITH  
**Incorporator** TERRY K SMITH  
**Incorporator** CATHERINE L SMITH



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<u>Annual Report</u>	3/1/2011	1 page	<u>tiff</u>	<u>PDF</u>
<u>Amendment</u>	6/24/2010	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	4/14/2010	1 page	<u>PDF</u>	
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<u>Annual Report</u>	3/4/2008	1 page	<u>tiff</u>	<u>PDF</u>
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<u>Annual Report</u>	2/15/2006	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	10/21/2005	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	6/11/2003	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	6/5/2002	1 page	<u>tiff</u>	<u>PDF</u>
<u>Certificate of Withdrawal of Assumed Name</u>	12/7/2001	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	5/15/2001	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	5/2/2000	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	6/11/1999	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	5/6/1998	1 page	<u>tiff</u>	<u>PDF</u>
<u>Annual Report</u>	7/1/1997	1 page	<u>tiff</u>	<u>PDF</u>

Commonwealth of Kentucky  
Trey Grayson, Secretary of State

PARP  
0259861  
Trey Grayson  
Secretary of State  
Received and Filed  
1/12/2009 1:57:23 PM  
Fee receipt: \$15.00

Trey Grayson  
Secretary of State  
P. O. Box 1150  
Frankfort, KY 40602-1150  
(502) 564-3490  
<http://www.sos.ky.gov>

Annual Report  
Web Filing

ARP

Company: SIT, INC.  
Company ID: 0259861  
date filed: 1/12/2009 1:57:23 PM  
Fee: \$15.00

Principal Office  
5905 NEW CUT RD.  
LOUISVILLE, KY 40214

Registered Agent Name/Address  
TERRY K. SMITH  
7903 MANSCLICK RD.  
LOUISVILLE, KY 40214

Current Officers

President	Cathy L Smith	7903 MANSCLICK RD; LOU KY 40214
Secretary	Jennifer K Smith	7903 Mansclick Rd Louisville, Ky 40214
Vice President	Terry K Smith	7903 MANSCLICK RD; LOU KY 40214

Signatures

Signature	Catherine L Smith
Title	Pres

EXHIBIT 92059866  
WIT: F. Smith  
DATE: 10-19-15  
All-American Court Reporters

Commonwealth of Kentucky  
Trey Grayson, Secretary of State

0259861

PARP

Trey Grayson  
Secretary of State  
Received and Filed  
4/14/2010 10:38:36 PM  
Fee receipt: \$15.00

Trey Grayson  
Secretary of State  
P. O. Box 1150  
Frankfort, KY 40602-1150  
(502) 564-3490  
<http://www.sos.ky.gov>

Annual Report  
Online Filing

ARP

**Company:** SIT, INC.  
**Company ID:** 0259861  
**State of origin:** Kentucky  
**Formation date:** 6/19/1989 12:00:00 AM  
**Date filed:** 4/14/2010 10:38:36 PM  
**Fee:** \$15.00

**Principal Office**

5905 NEW CUT RD.  
LOUISVILLE, KY 40214

**Registered Agent Name/Address**

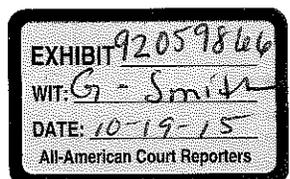
TERRY K. SMITH  
7903 MANSCLICK RD.  
LOUISVILLE, KY 40214

**Current Officers**

President	Cathy L Smith	7903 MANSCLICK RD; LOU KY 40214
Secretary	Jennifer K Smith	7903 Manslick Rd Louisville, Ky 40214
Vice President	Terry K Smith	7903 MANSCLICK RD; LOU KY 40214

**Signatures**

<b>Signature</b>	catherine.smith
<b>Title</b>	pres



SECOND

0259861.09 dcornish  
AMD  
Trey Grayson, Secretary of State  
Received and Filed:  
6/24/2010 9:38 AM  
Fee Receipt: \$40.00



COMMONWEALTH OF KENTUCKY  
TREY GRAYSON, SECRETARY OF STATE

Division of Corporations Business Filings PO Box 718 Frankfort, KY 40602 (502) 564-3490 www.sos.ky.gov	Articles of Amendment (Domestic Profit Corporation) <span style="float: right;">AMD</span>
---	---

Pursuant to the provisions of KRS 271B, the undersigned applies to amend articles of incorporation, and for that purpose, submits the following statements:

1. Name of the corporation on record with the Office of the Secretary of State is

SIT, INC #0259861

(The name must be identical to the name on record with the Secretary of State.)

2. The text of each amendment adopted: Southern Island Tan Inc

(we want this to be our new corporate name)

3. If the amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment, if not contained in the amendment itself, are as follows:

4. The date of adoption of each amendment was as follows: June 21, 2010

5. Check the option that applies (check only one option):

- The amendment(s) was (were) duly adopted by the incorporators prior to issuance of shares.
- The amendment(s) was (were) duly adopted by the board of directors prior to issuance of shares.
- The amendment(s) was (were) duly adopted by the incorporators or board of director without shareholder action as shareholder action was not required.
- If the amendment(s) was (were) duly adopted by the shareholders, the:
  - a) 2 Number of outstanding shares.
  - b) 2 Number of votes entitled to be cast by each voting group entitled to vote separately on the amendment
  - c) 0 Number of votes of each voting group indisputably represented at the meeting.
  - d) 2 The total number of votes in favor of the amendment.
  - e) 0 The number of votes against the amendment.
  - f) 2 The number of votes cast for the amendment by each voting group was sufficient.

6. This application will be effective upon filing, unless a delayed effective date and/or time is provided. The effective date or the delayed effective cannot be prior to the date the application is filed. The date and/or time is \_\_\_\_\_  
(Delayed effective date and/or time)

I declare under penalty of perjury under the laws of Kentucky that the forgoing is true and correct.

<u>Catherine Smith</u> Signature of Officer or Chairman of the Board	Catherine Smith Printed Name	Pres Title	06/21/2010 Date
---	---------------------------------	---------------	--------------------

(09/09)

EXHIBIT 92059866  
 WIT: H-Smith  
 DATE: 10-19-15  
 All-American Court Reporters

## SOUTHERN ISLAND TAN INC

### General Information

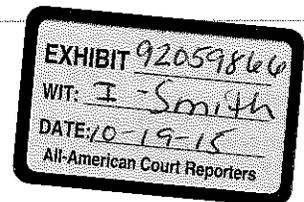
Organization Number	0259861
Name	SOUTHERN ISLAND TAN INC
Profit or Non-Profit	P - Profit
Company Type	KCO - Kentucky Corporation
Status	I - Inactive
Standing	B - Bad
State	KY
File Date	6/19/1989
Organization Date	6/19/1989
Last Annual Report	1/28/2014
Principal Office	7903 MANSLICK ROAD LOUISVILLE, KY 40214
Registered Agent	TERRY K. SMITH 7903 MANSLICK RD. LOUISVILLE, KY 40214
Authorized Shares	2000

### Current Officers

President	<u>Cathy L Smith</u>
Vice President	<u>Terry K Smith</u>
Secretary	<u>Cristi L Smith</u>

### Individuals / Entities listed at time of formation

Director	<u>TERRY K SMITH</u>
Director	<u>ALBERT A SMITH</u>
Director	<u>CATHERINE L SMITH</u>
Incorporator	<u>TERRY K SMITH</u>
Incorporator	<u>CATHERINE L SMITH</u>



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<u>Annual Report</u>	2/27/2007	1 page	tiff PDF

Org ID: 0259861  
2011 Annual Report  
Due June 30, 2011  
State: KY Fee: \$15.00  
0259861



SOUTHERN ISLAND TAN INC

Shaded items cannot be changed on this card.  
Principal Office 5905 NEW CUT RD., LOUISVILLE KY 40214  
Registered Agent TERRY K. SMITH, 7903 MANSLICK RD., LOUISVILLE KY 40214

List the name, address and title of all current officers. All organizations must list at least one (\*) officer, even in the case of a sole officer. Addresses default to principal office unless otherwise specified.

Vice President TERRY K SMITH  
President CATHY L SMITH  
Secretary JENNIFER K SMITH

List the name and address of all directors (if applicable)

Avoid a penalty fee of \$100 by filing online at [www.sos.ky.gov/orgsearch](http://www.sos.ky.gov/orgsearch) OR sign and return to the Office with the required \$15.00 filing fee no later than June 30, 2011.

*X Terry K Smith*  
Signature of officer or chairman of the board (Required) V.P. Title (Required)  
3/12/11 Date (Required)

