

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

RAOUL SETROUK and
MSINTELLIGENCE MSI MARKET
SURVEY INTELLIGENCE SÀRL,

Plaintiffs,

vs.

PHILIP MORRIS INTERNATIONAL
INC.,

Defendant.

Index No.: 654062/2020

**AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiffs Raoul Setrouk and MSIntelligence MSI Market Survey Intelligence Sàrl, upon knowledge of their own actions and upon information and belief as to all other matters, alleges as follows:

INTRODUCTION

1. This action arises from the wrongful conduct of Philip Morris International, Inc. subsequent to the conclusion of its longstanding business relationship of 25 years with Mr. Raoul Setrouk and his company, MSIntelligence MSI Market Survey Intelligence Sàrl.

2. Philip Morris is the well-known cigarette manufacturer; its empire includes both the Marlboro and Parliament brands, and its iQos smoke-free products. Its website indicates: “PMI [Philip Morris] products are sold in over 180 markets. In many of these, we hold the no. 1 or no. 2 positions by market share. Six of the top 15 international brands in the world are ours.”

3. This case involves Plaintiffs’ role in combatting the international trafficking in contraband cigarettes.

4. In some markets, cigarettes are heavily taxed, which has the effect of leading many consumers to seek out lower-priced alternatives in order to save money. Consequently,

cigarettes move from low-taxed or untaxed jurisdictions to high-tax jurisdictions (such as from Virginia to New York, or from Algeria to France). They are moved by the mafia, terror, or other criminal organizations, or just simply individual truck drivers who break the law.

5. Thus, in the same jurisdiction (or country), the tax-paid market and the non-tax-paid market represent two distinct market options.

6. Tobacco companies know this, of course, and have a financial interest to flood low-tax cigarette markets with enormous quantities of cigarettes. Big tobacco knows that the excess will flow, as contraband, to high-tax markets. They do not want to lose their market share even in this very largely illegal secondary market. Like any large company, if a large tobacco company wanted to produce in “regular” manner, it could rely on its solid knowledge of its actual market share in each country, city, or even neighborhood and manufacture accordingly.

7. Raoul Setrouk and MSIntelligence have developed high-performance solutions and tools to analyze the share of these tobacco tax-paid and non-tax-paid markets. MSIntelligence is the global leader in analytics used in combatting the flow of these counterfeit and contraband cigarettes. Over the course of the past two decades, the results of MSIntelligence’s studies have provided widely relied-upon data in the fight against illicit tobacco. Its tracking and measuring research is relied upon by NGOs, as well as tax and regulatory enforcement authorities.

8. But the tobacco industry, and especially PMI, has diverted the initial objective of these studies to transform them into a lobbying and propaganda tool.

9. Philip Morris, like other big tobacco companies, seeks to portray itself as combating the flow of contraband cigarettes, which has very important health and fiscal consequences and attracts criminal organizations.

10. Cultivating this image is vital for maintaining relationships with domestic governments. To that end, Philip Morris previously engaged MSIntelligence and touted its research—sometimes honestly and sometimes distortedly—in its investor reports and in interfacing with various governments throughout the world.

11. While Philip Morris and MSIntelligence were productively working together, Philip Morris took advantage of their seemingly positive relationship to make off with Plaintiffs' intellectual property.

12. Specifically, during the course of their contractual relationship, Philip Morris was able to misappropriate Plaintiffs' methodology, intellectual property, and trade secrets.

13. But this dispute does not arise under their previous contract. To the contrary, since terminating their relationship, Philip Morris has been unlawfully using Plaintiffs' methodology, intellectual property, and trade secrets outside of their relationship.

14. Consequently, this lawsuit seeks to hold Philip Morris liable for its unlawful use of Plaintiffs' intellectual property; its unfair competition; its misappropriation of trade secrets and methodologies; and its unjust enrichment.

PARTIES

15. Plaintiff Raoul Setrouk is a citizen of Israel.

16. Plaintiff MSIntelligence MSI Market Survey Intelligence Sàrl ("MSI") is a market research and business intelligence company based in Geneva, Switzerland. Mr. Setrouk is the sole principal and owner of MSI. MSI was formed in 2002.

17. Defendant Philip Morris International, Inc. ("PMI") is a Virginia corporation with its principal place of business at 120 Park Avenue, New York, New York.

18. On paper, Plaintiffs previously did business with various units of PMI, including but not limited to:
- a. PMI Global Services Inc. (a Delaware corporation with its principal executive office at 120 Park Avenue, New York, New York);
 - b. Philip Morris International Management S.A. (Switzerland);
 - c. Philip Morris Products S.A. (Switzerland);
 - d. Philip Morris Sabanci Pazarlama ve Satis A.S. (a Turkish subsidiary of PMI);
 - e. Philip Morris Management Services (Middle East) Limited (a subsidiary of PMI based in Dubai, United Arab Emirates);
 - f. Philip Morris France S.A.S. (a French subsidiary of PMI);
 - g. Philip Morris Italia S.r.l. (an Italian subsidiary of PMI);
 - h. Philip Morris New Zealand Ltd. (New Zealand);
 - i. Philip Morris Limited (United Kingdom);
 - j. Philip Morris Finland Oy (Finland);
 - k. Philip Morris Benelux BVBA (Belgium);
 - l. Philip Morris Ltd. (Israel);
 - m. Philip Morris Asia Limited (a PMI subsidiary based in Hong Kong, China); and
 - n. Philip Morris (Australia) Limited (an Australian subsidiary of the Hong Kong entity Philip Morris Asia Limited).¹

19. In reality, however, the various Philip Morris entities are alter egos of each other, controlled as one common enterprise, with liability lying with Philip Morris International, Inc.

20. Directors, officers, and employees freely moved between the New York-based structures (including Philip Morris International, Inc. and PMI Global Services Inc.), the

¹ The instant action does not, however, arise from Plaintiffs' previous engagements. To the contrary, as detailed below, the instant action arises from PMI's use of Plaintiffs' trade secrets and intellectual property outside of their previous business relationship.

European subsidiaries (e.g. France, Italy, and Switzerland), and other subsidiaries, without clear lines drawn between the companies. These officers and employees exercised control over the daily operations of the subsidiaries.

21. By way of two examples among many, André Calantzopoulos serves as the Chief Executive Officer of Philip Morris International, Inc. (New York) and as President of Philip Morris Products S.A. (Switzerland). Similarly, Massimo Andolina is listed as the Senior Vice President of Philip Morris International, Inc. (New York) and as Adm. Vice-President of Philip Morris Products S.A. (Switzerland).

22. They did so because the subsidiaries are not and were not actually independent entities. Instead, the subsidiaries exist solely as business conduits and instrumentalities to serve the parent. Consequently, it is not surprising that PMI would claim that PMI has no employees – it doesn't need to, when the corporate structures are without actual form.

23. And while various paper subsidiaries may have various paper boards, the reality is that the board of directors of the parent company, Philip Morris International, Inc. (New York) — which has no employees — asserts that it actually controls the “day-to-day operations of the Company.”² In other words, even Philip Morris International, Inc. declares that the various subsidiaries are mere instrumentalities to conduct the parent's day-to-day business.

24. As another example, PMI Global Services Inc. (New York) and Philip Morris Global Brands Inc. (New York) share officers and employees, and also share office space with Philip Morris International, Inc. (New York). Philip Morris International, Inc. (New York) even uses the corporate jet of PMI Global Services Inc. (New York).

² https://www.pmi.com/resources/docs/default-source/our_company/corp-gov-guidelines_2020.pdf?sfvrsn=45490ab4_4

25. For instance, Ann Marie Kaczorowski, who is ostensibly an officer of PMI Global Services Inc. (New York), *and* Philip Morris Global Brands Inc. (New York), *and* holds herself out as working for Philip Morris International, Inc. (New York), uses an email address (like other PMI employees and executives) of a domain (pmi.com) that is ostensibly owned by Philip Morris Products S.A. (Switzerland).

26. By way of yet another example, Philip Morris's business in Ukraine claims to have been harmed by the Ukrainian government's actions. Consequently, Philip Morris recently filed a claim against the government of Ukraine at the International Centre for Settlement of Investment Disputes (Washington, D.C.), naming as plaintiffs Philip Morris International Inc. (U.S.), Philip Morris Global Brands Inc. (U.S.), Philip Morris Brands Sarl (Switzerland), Orecla Sarl (Switzerland), Philip Morris Products S.A. (Switzerland), Philip Morris S.A. (Switzerland), Philip Morris Ukraine Private JSC (Ukraine), and Philip Morris Sales and Distribution LLC (Ukraine).

27. Like the instant claim, the Ukraine-related action shows that the various entities are not independent, but rather alter egos, one of the next.

28. In this case, the wrongs cannot be said to have been committed by any one of the various PMI entities with which Plaintiffs historically did business. Instead the liability is entirely attributable to PMI; its subsidiaries are its alter egos and PMI exercises dominance and control over them.

JURISDICTION & VENUE

29. This Court has jurisdiction under CPLR 301 because: Defendant PMI has its principal place of business in New York State; solicits business in New York State; derives substantial revenue from the sale of services or merchandise in New York State; and/or regularly

transacts business in New York State. For example, as noted above, PMI (New York) directs the “day-to-day operations of the Company.”

30. Pursuant to CPLR 503, Plaintiffs designate New York County as the place of trial.

FACTS

31. Although the conduct of PMI at issue in this lawsuit is recent, stemming from 2018 to the present, the parties’ relationships date back to 1995.

32. Mr. Setrouk’s work in combatting the flow of smuggled cigarettes is an outgrowth of his own experience: PMI engaged him to distribute cigarettes in Libya, where PMI itself could not directly sell tobacco due to the U.S. sanctions. Thereafter, as detailed below, Mr. Setrouk transformed from being involved in the flow of contraband to directly working to combat it.

A. 1995–1999: Distributing Cigarettes in North Africa

33. Mr. Setrouk’s relationship with PMI dates to 1995, when he served as a direct importer for PMI in Chad (in north-central Africa) through his companies Lenstar and INC.

34. At the time, Libya (which shares a border with Chad) was subject to a United States embargo, which meant that PMI could not lawfully do business in Libya, whether directly or indirectly.

35. Nonetheless, PMI was selling cigarettes for the Libya market as well, using Mr. Setrouk’s route through Chad to impart an artificial ignorance of PMI’s violations of the Libyan sanctions.³

³ See, e.g., Bonner & Drew, Cigarette Makers Are Seen As Aiding Rise in Smuggling, Aug. 25, 1997 (“If the companies say they do not [know sales are headed for the black market, ‘It’s a lie,’ said Corrado Bianchi, who said he had sold Philip Morris cigarettes as a dealer in Switzerland Much of Europe’s tobacco trade takes place in Switzerland, where Philip Morris and Reynolds have their European headquarters. Swiss law basically does not view selling cigarettes to people who smuggle them into another country as a crime.”).

36. As part of effectuating this plan, in 1997, PMI asked Mr. Setrouk to paper the cigarette imports to Chad and Libya through PMI's partner Al Rashideen in Dubai ("Rashideen"). PMI's objective was to bring together sensitive and/or prohibited markets from Africa / Middle East region, and thus blurring the lines through a single entity.

37. Once Rashideen was involved, the distribution continued in the same manner as before, but Rashideen provided all of the invoices and shipping documents to Mr. Setrouk through its subsidiary Transafrika Ltd. (Transafrika was aptly-named, given the trans-shipping from Chad into Libya.)

38. All of the tobacco products that Mr. Setrouk was distributing in Chad and Libya were made in the United States.

39. Meanwhile, Rashideen was also distributing, via its Transafrika subsidiary, substantial quantities of PMI's tobacco products to other countries subject to the US embargo. And Rashideen continued trading in "cigarettes in transit" on behalf of PMI at least until 2010.

40. Mr. Setrouk's relationship with PMI went to the very top. He was directly managed—including with respect to the PMI to Rashideen to Chad to Libya trafficking route—by the most senior officers of PMI.

41. While Mr. Setrouk has long since stopped his involvement in tobacco distribution, PMI continues to this day to distribute cigarettes through Rashideen in several countries including Algeria, Egypt, Jordan, the Gulf states, and throughout Africa.

42. Indeed, Mr. Setrouk's research (through MSI) shows that most of the contraband and smuggled products found in European countries or in conflict zones originate from the very close Rashideen-PMI partnership.

43. By way of another example involving the Rashideen-PMI partnership, recent press reports from Algeria detail volumes of tobacco that cannot be destined by the domestic,

Algerian retail market and instead can only be explained by the knowing manufacture by PMI for the illegal export market.⁴

B. 2001–2013: Worldwide Investigation Services

44. In 1999, however, PMI suddenly ended Mr. Setrouk's distribution of its tobacco products by way of Rashideen.

45. The following year, PMI, through Marc Firestone, who is the General Counsel and President of External Affairs, agreed to compensate Mr. Setrouk for its termination through three components: (i) a significant cash payment; (ii) a fictitious, annual consultant contract, with the understanding that it would be renewed twice, for a total of three years, to be paid without the provision of actual services; and (iii) the continued distribution of PMI tobacco products (separate from Rashideen) at a pre-determined level, including an artificial 30% discount intended as disguised further compensation.

46. Mr. Setrouk was not content with this arrangement. Instead, he invested in transforming the knowledge that he had gained through his years of tobacco distribution for PMI and other manufactures to instead become a force for good in the tobacco industry.

⁴ Algerian customs enforcement seized last year more than 617,000 packs of contraband cigarettes originating from PMI's Algerian manufacturing. *See* Démantèlement d'un réseau international de cigarettes à Oran, Feb. 12, 2020, <http://www.aps.dz/societe/101530-demantelement-d-un-reseau-international-de-cigarettes-a-oran?tmpl=component&print=1>.

Separately, the press reported that Sheikh Al-Sheebani, the principal in PMI's joint venture with an Emirati-Algerian tobacco company (STAEM), managed to depart Algeria with 20 suitcases of cash packed into his private jet, leaving behind six lowly officers who were sentenced to 20-year prison terms for their role. *See* Cheikh Al-Sheebani, Les valises de devises à l'aéroport d'Alger et les 6 officiers condamnés à 20 ans de prison ferme par le tribunal militaire de Blida, Aug. 28, 2019, <https://algeriepart.com/2019/08/29/exclusif-cheikh-al-sheebani-les-valises-de-devises-a-l-aeroport-d-alger-et-les-6-officiers-condamnes-a-20-ans-de-prison-ferme-par-le-tribunal-militaire-de-blida/>.

These reports clearly derive from the profitable trans-Mediterranean smuggling route as low-tax North African cigarettes flood into European markets.

47. To that end, Mr. Setrouk began to design and implement strategies against counterfeiting and later against illicit products. And he transformed PMI's fictitious consultant engagement to a real service, through his company Worldwide Investigation Services ("WIS"), fighting counterfeiting and the illicit trade in cigarettes.

48. Starting in 2001, WIS conducted a wealth of investigative, consulting, and other operations for PMI, spanning more than 12 years.

49. The sensitive and confidential nature of certain assignments required a great deal of trust between the parties. Indeed, PMI sometimes provided contracts, purchase orders, or invoices to cover those assignments which included descriptions that were at times quite different from the actual assignment entrusted. Accordingly, Mr. Setrouk regularly interfaced directly with the highest level of management at PMI to receive his actual directions and orders.

50. By way of example of WIS's role, under the direction of Till Olbrich (then an associate at Wachtell, Lipton, Rosen & Katz and until very recently a Vice President & Associate General Counsel at PMI), WIS led an investigation of a German national who was involved in the large-scale manufacture and distribution of counterfeit PMI products. During the course of the investigation, Mr. Olbrich approved the purchase of a substantial quantity of counterfeit PMI products from the German counterfeiter, in order to evidence his illegal activities. Then, in an effort to manufacture criminal jurisdiction in the United States, Mr. Olbrich approved an order of counterfeit PMI products from him for delivery in the United States with counterfeit American tax stamps.

51. Overall, WIS made substantial contributions WIS with respect to the fight against illicit tobacco and its key people.

52. Ultimately, Mr. Setrouk work with respect to WIS stopped in 2013 when he decided to not take on further engagements from PMI. While WIS's work is not at issue here, it is part of the history of the parties' relations.

C. 2002–Present: MSI and the Empty Pack Surveys

53. Meanwhile, faced with the growth of the counterfeit market and other smuggled tobacco products, Mr. Setrouk developed an innovative methodology to study the domestic consumption of smokers in order to assess the volumes of these illicit products. His work in conducting surveys had already begun with WIS and Mr. Setrouk eventually created Plaintiff MSIntelligence MSI Market Survey Intelligence to lead this analytic work.

54. MSI created and developed the empty pack survey (“EPS”), which was previously also known as “empty discarded pack,” or “EDP”.

55. While the EPS methodology and intellectual property are extremely detailed and highly developed, in brief, MSI engages in rigorous, highly designed activities to collect empty cigarette packs from the streets throughout the world and studies their origins in a statistically valid manner.

56. The EPS methodology and intellectual property were entirely conceived, designed, developed, and funded by MSI, wholly independently from PMI. MSI financed and defined all the prerequisites and methods required for the execution of the surveys, including but not limited to sampling structure, geographic zoning and segmentation, enriched data, on-site collection methodology, data entry methodology, online platform structure, etc.

57. MSI deployed the EPS worldwide. Over time, its work included the sectorization of more than 14,600 collection zones, in more than 1,626 cities, and in more than 100 countries.

58. MSI did not only collect the data. It also designed and deployed a large number of sophisticated analytical tools for measuring and tracking the flow of illicit cigarettes.

59. When MSI commenced its EPS studies, it was the only independent agency performing such a role. MSI expended a tremendous amount of effort and money to develop the EPS methodology and intellectual property, and the value of the information that EPS brought to the industry was immeasurable.

60. In or about 2003 or 2004, however, PMI had changed its internal rules for suppliers, including consultants like MSI, and began the process for engaging other firms to perform tobacco market analysis. But those firms could not possibly have duplicated the sophisticated EPS methodology and intellectual property that MSI had conceived and developed. So PMI started to share MSI's methodologies with new competitors and, in exchange, PMI guaranteed that MSI would have a much larger volume of PMI's business than its competition.

61. In 2004, PMI employees visited MSI's representative offices in Israel to learn more about MSI's new analysis processes. MSI gave a presentation that included demonstrating its new IT platform, which it had developed specifically for EPS.

62. In 2005, based on the same process, PMI developed its own platform and demanded that survey providers work only from its new tool.

63. Meanwhile, by 2005, PMI invited the other major manufacturers (e.g., British American Tobacco, Japan Tobacco International, and Imperial Tobacco Limited) to participate financially in these studies to receive the results under the full control and supervision of PMI.

64. Eventually, MSI's method and the resulting industry collaboration became widely adopted as the gold standard in the industry. And PMI directed MSI to disseminate its findings, including by appearing in the media in several countries (including Norway, Finland, Denmark, Sweden, and France).

D. WSPM and the Termination of the PMI–MSI Relationship

65. Until 2018, WSPM, an Israeli company led by Daniel Touati, a former Mossad agent, had been one of MSI's strategic subcontractors tasked with managing and carrying out the EPS fieldwork.

66. In August 2018, MSI ended its collaboration with WSPM, as a consequence of the discovery of WSPM's abusive invoicing and embezzlement of funds. MSI is currently pursuing these issues in litigation in Israeli court against WSPM.

67. Because of its role as a strategic contractor, WSPM had access to all of MSI's tools, methodologies, trade secrets, intellectual property, and business proposals.

68. Consequently, contemporaneously with terminating its relationship with WSPM, MSI informed PMI (through an August 2018 meeting in Mr. Firestone's office in Lausanne) of the significant risks of WSPM misappropriating MSI's resources and using them to unfairly compete. In response, Mr. Firestone guaranteed that PMI would never countenance such improper competition. Nonetheless, at the end of 2018, WSPM emerged as an independent agency, having made off with MSI's trade secrets and knowledge.

69. PMI nonetheless engaged WSPM and, in 2019, MSI's business was reduced by more than 45%.⁵

70. Moreover, Mr. Touati serves as a distributor for the elite Israeli spyware company NSO, and it appears that PMI may have engaged NSO, by way of Mr. Touati and WSPM, to utilize NSO's Pegasus spyware system for its strategic ends. *See, e.g.*, A New Age of Warfare: How Internet Mercenaries Do Battle for Authoritarian Governments, N.Y. Times, Mar. 21, 2019,

⁵ PMI's act of engaging WSPM was in complete derogation of the parties' contract, which specifically states that PMI would not engage MSI's subcontractors for a period of at least one year *following* the termination of the PMI–MSI contract.

<https://www.nytimes.com/2019/03/21/us/politics/government-hackers-nso-darkmatter.html>.

Indeed, PMI's decision to work with Mr. Touati raises that specter of whether PMI engages Mr. Touati for extra-contractual services, including obtaining NSO technology for its own illicit use. (We note that the Mossad, and its veterans including Mr. Touati, maintain close relations with NSO, given the emerging role of NSO in global surveillance.)

71. The formerly good relations between PMI and MSI deteriorated, and PMI—seeking to excuse its conduct with respect to WSPM—became very intrusive in the organization of MSI and also involved in the relations between MSI and its subcontractors.

72. Moreover, MSI faced entirely unwarranted and inappropriate harassment from some PMI employees.

73. Finally, in light of this ongoing harassment, MSI sent a letter on July 4, 2019 seeking an amicable resolution of the matter. Then, on February 5, 2020, Mr. Setrouk met in Geneva with PMI's Swiss lawyer and PMI's representative, Irina Piazzoli.

74. Recognizing its potential liability, PMI offered a resolution of the matter, but PMI refused to discuss a resolution which would confirm the rightful owner of the intellectual property: MSI. And MSI, of course, could not part with its intellectual property without just compensation.

E. PMI's history of data manipulation

75. Although MSI designed EPS to be a pure measure of the level of illegal trade in tobacco products, PMI has over time transformed the EPS survey results into a means to tout its purported involvement in the fight against illicit trade, all while nonetheless participating itself in the transborder flow of tobacco.

76. But contrary to PMI's public persona as a concerned corporate citizen,⁶ PMI has engaged in a repeated, wide-spread effort to (a) warp, distort, and mis-use EPS results to serve PMI's own ends; (b) deflect attention from PMI's misdeeds, often times under the guise of "independent" third parties, such as reports produced by KPMG (the international accounting firm); and (c) fail to acknowledge, much less report, such material misinformation to its shareholders or industry partners.

77. Indeed, PMI has turned the results of the EPS surveys into yet another tool for serving the company's own goals, to the detriment of its partners, competitors, and government regulators.

78. PMI has been able to do so by steadfastly *not* publishing or sharing original MSI EPS reports, which would show PMI's illicit tobacco presence, but instead only publishing its own spin ("interpretation") on the reports.

79. PMI today uses EPS reports as political instruments to target certain "illicit competitors," to lobby against taxes, and to recharacterize PMI's own transnational and transborder flow of its products.⁷ For example:

⁶ See, e.g., Testimony of M. Firestone, Sr. V.P. and Gen. Counsel to PMI; U.S. Comm'n on Security and Cooperation in Europe, July 19, 2017, <https://www.csce.gov/sites/helsinkicommission.house.gov/files/Firestone%27s%20Testimony.pdf>. In his testimony, Mr. Firestone claimed that "PMI has a clear business imperative to combat this problem and ensure our products are legally sold in the market for which they are intended." And he further asserted that "[s]upply chain control ... makes sound commercial sense for us." But, as demonstrated herein, these assertions were merely a public façade designed to disguise PMI's actual role in international tobacco trafficking.

⁷ Several studies have reported on PMI's (and other large tobacco companies') systematic efforts to inflate the contraband cigarette market. Such a market allows PMI to then argue that every tobacco control policy will lead to increases in smuggling, "claiming higher taxes encourage more people to buy cigarettes illegally, for example, or that plain packaging makes it easier for counterfeiters to copy big brands." At the same time, however, independent research shows that roughly two-thirds of illicit cigarettes worldwide originate from the tobacco companies

(continued...)

- a. When the characteristics of the packages and in particular their origin were not in line with PMI's objectives of local markets, PMI unilaterally modified these characteristics without asking the other EPS survey participants.
- b. In other instances, PMI demanded the removal of certain EPS reports (including in the European Union and Latin America) on the grounds that the results of the surveys did not match PMI's expectations.
- c. PMI furthermore sought to reframe how EPS results (e.g., Mexico, Quarter 4, 2019) were reported, to obscure the fact that PMI counterfeit products had been found.
- d. While Nicolas Otte⁸ was the Director of PMI's Latin American zone, PMI manipulated several EPS reports to highlight the influence of foreign brands designated as illicit. Specifically, PMI misidentified the origin of certain illicit brands as being Chinese, when in fact, such cigarettes were sourced from Guatemala. As a result, PMI was able to obtain reductions or increases in taxes, as best fit its strategic ends.

80. PMI's manipulation of data, however, extends beyond EPS reports and results.

81. For example, for years, PMI has paid KPMG for an annual report with respect to tobacco smuggling.⁹ KPMG's purportedly "independent" report is broadly shared with governmental authorities and NGOs in furtherance of the fight against illicit tobacco. It is also widely disseminated in the financial and other media to shine on a positive light on PMI's (supposed) performance in this arena.

themselves. At best, tobacco companies like PMI are failing to control their supply chain—overproducing and oversupplying tobacco products, leading to a planned overflow into the illegal market. *See, e.g., A. Gallagher & A. Gilmore, Big Tobacco Is Consistently Overstating Black Market In Cigarettes—New Findings*, The Conversation, Aug. 23, 2018, <https://theconversation.com/big-tobacco-is-consistently-overstating-black-market-in-cigarettes-new-findings-101931>.

⁸ Mr. Otte has held various positions at PMI, including serving in Brand Integrity, Illicit Trade Strategies & Prevention, and Illicit Trade Prevention.

⁹ PMI has sought to introduce an artificial distance between itself and the report, allowing the report to be stamped by an "independent third party," when in fact the entire content is controlled by PMI. To that end, in previous years the KPMG report was commissioned by the Royal United Services Institute for Defence and Security Studies, an institute funded by PMI.

82. The KPMG reports, however, are notable for their blind spots—particularly those involving PMI.¹⁰ By way of example, KPMG’s 2020 investigation looked at 2019 EPS data collected in France, and found the following:

- a. That for Q3, over 34% of the examined packs were not intended for the French market (i.e., were “non-domestic”). Of these non-domestic packs, nearly 60% were PMI products—i.e., over 20% of the total French market was composed of un-taxed PMI products. Nonetheless, KPMG (at PMI’s direction) did not include the Q3 survey results in its report.
- b. That approximately 4.5% of the French cigarette market consisted of Algerian Marlboros—i.e., cigarettes smuggled across the Mediterranean—resulting in an annual tax loss to France of €400 to €500 million stemming from these Algerian Marlboros alone. KPMG nevertheless omitted such EPS results in its report, again to the benefit of PMI.

83. These facts strongly indicate that PMI intentionally and actively flooded the Algerian market with low-cost cigarettes, knowing that a steady flow of such cigarettes would be resold in France. (*See* press reports, *supra* note 4.)

84. Further, the Center for the Analysis of Terrorism clearly identified the direct and essential connection between the financing of terrorism and the flow of contraband tobacco from Algeria to France.¹¹ Yet it appears that PMI knowingly sought to hide its role in supporting this illicit cigarette economy.

¹⁰ A. Gilmore et al., *Towards A Greater Understanding Of The Illicit Tobacco Trade In Europe: A Review Of The PMI Funded ‘Project Star’ Report*, *Tobacco Control*, 23:e51–e61 (2014), <https://tobaccocontrol.bmj.com/content/23/e1/e51>.

¹¹ Center for Analysis of Terrorism, *Financement du terrorisme: la contrebande et la contrefaçon de cigarettes* (March 2015), <http://cat-int.org/index.php/2015/03/30/financement-du-terrorisme-la-contrebande-et-la-contrefacon-de-cigarettes/?lang=en>

F. PMI's bad acts harm the public health and public fisc

85. As a consequence of these manipulations, the KPMG reports do not reflect the reality of PMI's actions on the ground. Instead, they result in the hiding, diminishing, and minimizing of PMI's role in this illicit tobacco market.

86. There are several significant resulting consequences, including:

- a. Health and enforcement policies are affected. Governmental authorities that rely on KPMG's skewed findings make health policy decisions and direct their limited resources accordingly. For example, instead of focusing on plain pack measures, or other public health harm reduction methods, governments are forced to divert their efforts to an illicit cigarette trafficking problem of PMI's own creation.
- b. Enforcement and fiscal policies are misdirected. KPMG's reports—by minimizing PMI's role in supporting the contraband cigarette economy—cause governmental authorities to miss opportunities to confront the underlying origin of such problems more directly, and as a result, cause such authorities to lose out on billions of dollars in potential tax revenue.
- c. Investors are affected, as they are deceived by the wide dissemination by PMI of these manipulated reports. Indeed, PMI uses these reports to reassure the public about its ability to control a major problem in the tobacco industry and, concomitantly, to deter unwarranted scrutiny of its own contribution to the trafficking problem.
- d. International anti-smuggling efforts are disrupted. By repeatedly highlighting KPMG's distorted results, PMI is able to systematically postpone discussions which might require it to set up a track and trace system that complies with the recommendations made by the World Health Organization ("WHO").

87. Indeed, PMI has gone out of its way to avoid implementing the WHO's recommendations. On information and belief, PMI's track and trace vendor for the European Union is composed of former PMI employees—a clear conflict of interest. And PMI's European Union track and trace system is unable to track or trace packs of cigarettes originating outside the EU—a glaring loophole that belies PMI's public commitment to supply chain control. Moreover, it appears that PMI's non-EU track and trace vendors are ill-equipped for the task. Indeed, aa

recent news article notes that over 600,000 packs of cigarettes—of what appears to be PMI's Marlboro brand—were seized last year in Algeria. *See supra*, note 4.

88. In short, PMI has a long history of manipulating purportedly “independent” data (e.g., KPMG reports, EPS results, etc.) to the company's own advantage, and to the clear detriment of the public weal.

G. PMI's weak data security

89. In the same vein, PMI has sought to hide the security vulnerabilities with its current tobacco data reporting platform, the “CUBE.” This platform includes both MSI's (misappropriated) zoning data, as well as the survey results reflecting other industry participants. In total, it represents some \$70 to \$80 million worth of data.

90. This platform was the subject of a serious security breach as recently in 2018. MSI put PMI on notice of the breach by email dated November 25, 2018, informing PMI that the platform could be accessed without credentials and without any control.

91. PMI has done little to remedy these vulnerabilities, putting the data of its own suppliers at further risk.

92. Furthermore, PMI's weak data security raises ongoing questions with respect to its \$7 billion investment in its iQos vaping product. Unlike traditional tobacco products, the iQos system offers PMI “the ability to harvest personal data about users' smoking habits.”¹² The CUBE data breach raises the question, at a minimum, as to whether PMI is able to conform with GDPR and other international data security regimes in rolling out this massive collection of its

¹² See Lasseter et al., *Special Report: Philip Morris device knows a lot about your smoking habit*, May 15, 2018, <https://www.reuters.com/article/us-tobacco-iqos-device-specialreport/special-report-philip-morris-device-knows-a-lot-about-your-smoking-habit-idUSKCN1IG1IY>.

customers' personal data in connection with iQos or, whether, like its issues with CUBE, it is putting its customers' personal data at risk.

FIRST CAUSE OF ACTION
Unfair Competition

93. Plaintiffs repeat and reallege each and every allegation in the preceding paragraphs, as if set forth in full herein.

94. Plaintiffs fully own the EPS methodology and intellectual property, which they independently created and funded, and which includes:

- a. the algorithms for the collection of empty packs (including collection methodology and field supervision);
- b. the methodology and rules for the training of collectors;
- c. the methodology for neighborhood sectorization;
- d. the database of more than sectorized 14,600 collection points, in more than 1,626 cities, in 100 countries;
- e. the development of a platform including a pictures library allowing the automation of data entry, identification of tobacco packs, and the storage of massive amounts of data;
- f. the methodology and rules surrounding the data entry of empty packs (including labeling, packaging, and data entry);
- g. the rules concerning the identification of packs (PIR);
- h. the rules for control after data entry (QA); and
- i. the rules relating to the transmission of these packs for forensic analysis (delivery organization).

95. The EPS methodology and intellectual property constitute Plaintiffs' trade secrets.

They guarded these trade secrets, sharing only parts with certain discrete clients.

96. Although PMI previously had contracts with MSI, the contracts are clear that they transfer to PMI only the intellectual property created expressly in connection with particular contracted-for services.

97. PMI's purchase orders to MSI—the actual services to be rendered—were country specific. In turn, the “Work Product” that was delivered to PMI was a specific report created by MSI for that country or city. Notably, MSI billed on the same basis to all of its clients, meaning that PMI never remunerated MSI for the EPS intellectual property.

98. For example, when PMI issued a purchase order to MSI for a report as to Mexico, PMI could then freely distribute that Mexico report because MSI assigned its rights *in that report*.

99. But MSI did *not* transfer its underlying trade secrets and intellectual property each time that PMI commissioned a new country-specific report. Indeed, the contracts, as one would expect, expressly reserve to MSI the full rights in and value of its own intellectual property.

100. These intellectual properties and trade secrets were *not* conveyed by way of the “Services” contracted for by PMI.

101. And, accordingly, this is not a dispute that is “arising under” those contracts. To the contrary, this dispute inherently arises *outside* of those contracts because PMI is improperly using MSI's intellectual property and trade secrets without compensation.

102. In addition, since the end of 2018, PMI has actively encouraged and contracted with MSI's competitors, including but not limited to WSPM, for EPS services, and improperly shared with them MSI's trade secrets and intellectual property, including those described *supra*, Paragraph 94.

103. PMI worked with WSPM despite knowing that WSPM had improperly obtained MSI's trade secrets and intellectual property and was improperly using them in performing EPS

services. And PMI knew that WSPM had additional confidential information from MSI, including its particular business proposals, customer and suppliers lists, and MSI's detailed methodologies. *And* PMI knew that WSPM had even resorted to base unlawful means of competition, creating a company named MSIntelligroup to cause marketplace confusion with Mr. Setrouk's MSIntelligence.

104. Yet PMI assured Mr. Setrouk on multiple occasions that it would, under no circumstances, contract with WSPM or other former employees of MSI for EPS services, given the risk of unfair competition. Among others, PMI's promises occurred during the August 21, 2018 meeting between Messrs. Setrouk and Firestone, the purpose of which was to review and address the substantial risks of unfair competition posed by WSPM. Mr. Firestone indicated that such acts of unfair competition would be unacceptable to PMI and that, in his capacity as General Counsel, he would issue a communication warning to all interested parties. Thereafter, Frank Bode communicated to his counterpart at Altria (a spin off from PMI) that Altria should also not engage in this unfair competition and also asked Mr. Setrouk to broadly inform the industry as to the legal dispute between MSI and WSPM. Mr. Setrouk complied with Mr. Bode's request in good faith.

105. Nonetheless, PMI betrayed that trust and engaged in bad faith conduct by nonetheless promoting, and aiding and abetting, the unfair competition, improperly taking MSI's trade secrets and intellectual property, and diverting MSI's business to its competitors, including but not limited to WSPM.

106. As a result, Plaintiffs have suffered direct and consequential damages, and are entitled to recover compensatory damages, including opportunity costs, and punitive damages in an amount to be proven at trial.

SECOND CAUSE OF ACTION
Misappropriation

107. Plaintiffs repeat and reallege each and every allegation in the preceding paragraphs, as if set forth in full herein.

108. As set forth above, PMI possesses confidential information belonging to Plaintiffs. Mr. Setrouk and his related companies entirely designed and developed the EPS methodology and intellectual property, both in terms of the objectives sought and the technical and organizational methods employed. Furthermore, they bore the entire costs of development and deployment.

109. As set forth above, the EPS methodology and intellectual property constitute their trade secret. They guarded these trade secrets, sharing only parts with certain discrete clients.

110. Defendant has exploited the trade secrets for its own enrichment and with the intent of depriving Plaintiffs of their rights.

111. Defendant has continued to use the EPS methodology and intellectual property to pursue its own interests and enrichment. PMI is using that information in breach of a confidence or duty, knowing that this information contains trade secrets or other confidential and proprietary information belonging to Plaintiffs.

112. Moreover, upon information and belief, Defendant has stolen, copied, communicated and/or transmitted the EPS methodology and intellectual property, or caused it to be stolen, copied, communicated and/or transmitted, to MSI's competitors, including but not limited to WSPM, Ipsos, and Nielsen. PMI has further misappropriated these trade secrets by knowingly employing and/or contracting with competitors of MSI who have unlawfully appropriated the EPS methodology and intellectual property without MSI's express or implied consent.

113. The foregoing conduct constitutes misappropriation of trade secrets because Defendant knew or had reason to know at the time it used the EPS methodology and intellectual property without express or implied consent that the EPS methodology or intellectual property was acquired under circumstances giving rise to a duty to limit its use.

114. Defendant's unauthorized use and misappropriation of trade secrets has caused Plaintiffs actual damages. Plaintiffs are entitled to recover compensatory damages, including opportunity costs, attorneys' fees, and other damages in an amount to be proven at trial.

115. Furthermore, because Defendant's misappropriation of trade secrets was wanton, willful and malicious, Plaintiffs are further entitled to, and hereby seek, an award of punitive damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION
Quantum Meruit and Unjust Enrichment

116. Plaintiffs repeat and reallege each and every allegation in the preceding paragraphs, as if set forth in full herein.

117. As a consequence of Defendant's conduct, the tools and methodologies that were fully developed and financed by Plaintiffs, including those described *supra*, Paragraph 94, were captured and diverted for the benefit of PMI.

118. Defendant has been unjustly enriched in that it has not compensated Plaintiffs for its use of the EPS methodology and intellectual property.

119. As alleged above, Defendant has stolen, copied, communicated and/or transmitted the EPS methodology and intellectual property, or caused it to be stolen, copied, communicated and/or transmitted, to MSI's competitors, including but not limited to WSPM, Ipsos, and Nielsen. Consequently, Defendant is able to perform EPS analysis, and procure EPS

services, at rates below the actual cost that would reflect Plaintiffs' actual investment in the methodology and intellectual property.

120. Because there is no valid and enforceable contract between Plaintiffs and Defendant to license or otherwise permit the continued use of the EPS methodology and intellectual property by Defendant, Plaintiffs are entitled to recover in quantum meruit.

121. Accordingly, Plaintiffs are entitled to recover the reasonable value of Defendant's unlicensed use of its EPS methodology and intellectual property.

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DEMAND FOR JURY TRIAL

122. Plaintiffs respectfully demand a trial by jury on all claims so triable asserted herein.

WHEREFORE, Plaintiffs pray that the Court award relief, as follows:

- (i) a judgment against Defendant for MSI's damages, including all other actual and compensatory damages as well as disgorgement of any ill-gained profits, in an amount to be determined at trial, but not less than \$40,000,000, plus interest, plus an award of punitive damages in an amount to be determined at trial; and
- (ii) any and all such other and further relief as the Court may deem just, proper and equitable, including an award of reasonable attorneys' fees and the costs and disbursements of this action.

Dated: February 2, 2021

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