

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

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

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

INTRODUCTION

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

2. While they were productively working together, PMI took advantage of their seemingly positive relationship to make off with Mr. Setrouk's companies' intellectual property.

3. Now, having constructively terminated their relationship, PMI faces significant liability for its unlawful use of his intellectual property; its unfair competition; its misappropriation of trade secrets and methodologies; its harassment and reputational harm; and its unjust enrichment.

PARTIES

4. Plaintiff Raoul Setrouk is a citizen of Israel.

5. Plaintiff MSIIntelligence 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.

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

JURISDICTION & VENUE

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

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

FACTS

A. 1995–1999: Distributing Cigarettes in North Africa

9. Mr. Setrouk’s relationship with PMI dates to 1995, when he served as a direct importer for PMI in Chad through his companies Lenstar and INC.

10. At the time, PMI, operating from Switzerland, intended that Mr. Setrouk would also distribute its cigarettes to Libya (which shares a border with Chad), even though Libya was subject to a United States embargo.¹

¹ See, e.g., Bonner & Drew, Cigarette Makers Are Seen As Aiding Rise in Smuggling, 25 Aug. 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

(continued...)

11. In 1997, in order to impart an artificial ignorance of PMI's violations of the Libyan sanctions, PMI asked Mr. Setrouk to paper the cigarette imports through PMI's partner Al Rashideen in Dubai ("Rashideen"). Under the new set up, the distribution was continued in the same manner as before, but Rashideen provided all of the invoices and shipping documents to Mr. Setrouk through its aptly named subsidiary Transafrika Ltd. (At the time, PMI was headquartered in the United States and all of the products that Mr. Setrouk was distributing were made in the United States.) 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.

12. 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.

13. To this day, PMI continues to distribute cigarettes through Rashideen in several countries including Algeria, Egypt, Jordan, the Gulf states, and throughout Africa.

14. 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. (Indeed, 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.²)

Reynolds have their European headquarters. Swiss law basically does not view selling cigarettes to people who smuggle them into another country as a crime.”).

² For example, Algerian customs enforcement recently seized more than 617,000 packs of contraband cigarettes originating from PMI's Algerian manufacturing. *See Démantèlement d'un*
(continued...)

15. In 1999, however, PMI suddenly ended Mr. Setrouk's distribution by way of Rashideen.

16. 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.

B. 2001–2018: WIS, MSI, and the Empty Pack Surveys

17. Mr. Setrouk was not content with receiving a fictional consultant contract. Instead, he determined to transform the knowledge that he had gained through his years of tobacco distribution for PMI and other manufactures. He began to design and implement strategies against counterfeiting and later against illicit products. And he converted PMI's fictitious consultant contract to a real service, through his company Worldwide Investigation Services ("WIS"), fighting counterfeiting and the illicit trade in cigarettes.

réseau international de cigarettes à Oran, 12 Feb. 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, 28 Aug. 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.

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

19. The sensitive and confidential nature of certain assignments required a great deal of trust between the parties. Indeed, these assignments were sometimes covered by apparent contracts which were quite different from the actual assignment entrusted. Accordingly, Mr. Setrouk regularly interfaced directly with the highest level of management at PMI.

20. By way of example of WIS's role, under the direction of Till Olbrich (then an associate at Wachtell, Lipton, Rosen & Katz and now a Vice President & Associate General Counsel at PMI), WIS led an investigation of Mathias Wirtz, a German individual 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 Wirtz, in order to prove Wirtz's illegal activities. Then, in an effort to manufacture criminal jurisdiction in the United States, Mr. Olbrich approved an order of counterfeit PMI products from Wirtz for delivery in the United States with counterfeit American tax stamps. Thanks to WIS's work, Mr. Wirtz was ultimately criminally convicted.

21. Meanwhile, in 2002, faced with the growth of the counterfeit market and other smuggled products, Mr. Setrouk began to develop an innovative methodology to study the domestic consumption of smokers in order to assess the volumes of these illicit products. Mr. Setrouk eventually created MSIntelligence to lead this work.

22. MSI created and developed the empty pack survey ("EPS"). While the 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. In or about 2003, however, PMI had changed its internal rules for suppliers, and began the process for engaging other firms to perform similar work. 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 and data with new competitors and, in exchange, PMI guaranteed that MSI would have a much larger volume of business than its competition.

28. 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.

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

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

30. 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.

31. 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.

32. 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.

33. 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.

34. In 2019, MSI's business was reduced by more than 45%.

35. 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.

36. Moreover, Mr. Touati serves as a distributor for 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,

<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 with 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.)

37. At that time, 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.

38. Moreover, MSI faced entirely unwarranted and inappropriate harassment from some PMI employees. For example:

- a. Daniel Touati has engaged PMI with entirely unfounded and slanderous accusations with respect to Mr. Setrouk. Christophe Baud (PMI's finance director) then demanded a meeting with Mr. Setrouk at PMI's offices on 31 October 2018. The meeting was supposedly for commercial planning, but in actuality was used to address these unsubstantiated and untrue accusations.
- b. On 13 November 2018, Ms. Sibylle Dorta demanded that Mr. Setrouk justify his decision to separate from one of its subcontractors (Meganet), even though the choice of subcontractors clearly belongs solely to MSI.
- c. In January 2019, Ms. Beate Ernst, a PMI project manager, forwarded an entirely fabricated email from a supposed MSI subcontractor, supposedly in Saudi Arabia, who made wholly fictionalized allegations about MSI.
- d. Also in January 2019, SGS Poland, which acts as PMI's intermediary for monitoring EPS results and reports, improperly demanded on four occasions that MSI provide its neighborhood sectorization update for Italy to a competitor agency which then held the Italy contract. The demand then rose up to the PMI level and was repeated by Ms. Ernst.
- e. By email in February 2019 and during in a meeting at PMI's offices in March 2019, Ms. Ernst and Ms. Dorta demanded to receive the personal data of MSI's European

agents without providing guarantees as required by the European GDPR regulation.

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

40. Recognizing its potential liability, PMI offered a resolution of the matter, but PMI refused to discuss a resolution which would properly leave the IP with its rightful owner: MSI.

D. PMI's history of data manipulation

41. EPS, which was originally designed to measure the level of illegal trade in tobacco products, has been transformed over time into a tool allowing PMI to tout its involvement in the fight against illicit trade.

42. Contrary to PMI's public persona as a concerned corporate citizen,³ PMI has engaged in a repeated, wide-spread effort to (a) warp, distort, and mis-use EPS to serve PMI's own ends; (b) deflect attention from PMI's misdeeds, often times under the guise of "independent" third parties, such as KPMG; and (c) fail to acknowledge, much less report, such material misinformation to its shareholders or EPS partners.

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

³ 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, 19 July 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.

44. PMI today uses EPS data as a political instrument to target certain “illicit competitors,” to lobby against taxes, and to recharacterize PMI’s own transnational and transborder flow of its products.⁴ For example:

- 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 data (Mexico, Quarter 4, 2019) was reported, to obscure the fact that PMI counterfeit products had been found.
- d. While Nicolas Otte⁵ 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 fits its strategic ends.

45. PMI’s manipulation of data, however, extends beyond EPS data and reports.

⁴ 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 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, 23 Aug. 2018, <https://theconversation.com/big-tobacco-is-consistently-overstating-black-market-in-cigarettes-new-findings-101931>.

⁵ Mr. Otte has held various positions at PMI, including serving in Brand Integrity, Illicit Trade Strategies & Prevention, and Illicit Trade Prevention.

46. For years, PMI has paid KPMG for an annual report with respect to tobacco smuggling.⁶ 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.

47. The KPMG Report, however, is notable for its blind spots—particularly those involving PMI.⁷ 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 untaxed 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.

48. These facts strongly suggest 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. Indeed, 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

⁶ 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.

⁷ 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>.

from Algeria to France.⁸ Yet it appears that PMI knowingly sought to hide its role in supporting this illicit cigarette economy.

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

49. 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.

50. 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, 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").

51. Indeed, PMI has gone out of its way to avoid implementing the WHO's recommendations. As we understand it, PMI's track and trace vendor for the European Union is composed of former PMI employees—a conflict of interest. PMI's European Union track and

⁸ 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>

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. A recent news article notes that over 600,000 packs of cigarettes—of what appears to be PMI’s Marlboro brand—were seized earlier this year in Algeria. *See* Note 2, *supra*.

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

F. PMI’s weak data security

53. In the same vein, PMI has sought to hide the security vulnerabilities with its current EPS data platform, the “CUBE.” This platform includes both MSI’s zoning data as well as the survey results belonging to all EPS participants. In total, it represents some \$70 to \$80 million worth of data.

54. 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 25 November 2018, informing PMI that the platform could be accessed without credentials and without any control.

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

56. 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.”⁹ The

⁹ *See* Lasseter et al., *Special Report: Philip Morris device knows a lot about your smoking habit*, 15 May 2018, <https://www.reuters.com/article/us-tobacco-iqos-device-specialreport/special-report-philip-morris-device-knows-a-lot-about-your-smoking-habit-idUSKCN1IG1IY>.

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 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

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

58. 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).

59. The EPS methodology and intellectual property constitute Plaintiffs' trade secrets. They guarded these trade secrets, sharing only parts with certain discrete clients.

60. 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. Moreover, the contracts, as one would expect, expressly reserve to MSI the full rights in and value of its own intellectual property.

61. These intellectual properties and trade secrets were *not* conveyed by way of the "Services" contracted for by PMI. Instead, 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.

62. Since the end of 2018, PMI has actively encouraged and contracted with WSPM, despite knowing that WSPM had improperly obtained MSI's trade secrets and intellectual property. 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.

63. 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 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.

64. 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 WSPM.

65. 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

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

67. 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.

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

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

70. 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.

71. 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. 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.

72. 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.

73. 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.

74. 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**

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

76. As a consequence of Defendant's conduct, the tools and methodologies that were fully developed and financed by Plaintiffs were captured and diverted for the sole benefit of PMI.

77. Defendant has been unjustly enriched in that it has not had to compensate Plaintiffs for its use of the EPS methodology and intellectual property.

78. 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.

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

DEMAND FOR JURY TRIAL

80. 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: November 2, 2020
New York, NY

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