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Filing date: **10/22/2018**

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

Proceeding	91243541
Party	Defendant WEEDS, INC.
Correspondence Address	GREGG ROBERT ZEGARELLI TECHNOLOGY & ENTREPRENEURIAL VENTURES LA PO BOX 113345 PITTSBURGH, PA 15241 mailroom.grz@zegarelli.com no phone number provided
Submission	Motion to Suspend for Civil Action
Filer's Name	Gregg Zegarelli
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Signature	/Gregg Zegarelli/
Date	10/22/2018
Attachments	20181022 Opposition Motion to Suspend.pdf(501835 bytes) A. Complaint w EX Reduced.pdf(1163581 bytes) B. Answer, Counterclaim Reduced.pdf(279866 bytes) C. Answer to Counterclaim Reduced.pdf(784637 bytes) C.0 Answer to Counterclaim Reduced.pdf(23235 bytes) C.1 Answer to Counterclaim Reduced.pdf(5569079 bytes) C.2 Answer to Counterclaim Reduced.pdf(5423657 bytes) C.3 Answer to Counterclaim Reduced.pdf(4369327 bytes)

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

In re: :
:
WEEDS, INC. :
:
Serial No.: 87/764,630 : Opposition: 91,243,541
Mark: "WEEDS" :
:

INNOVATION HQ, INC. :
:
Opposer, :
:
v. :
:
WEEDS, INC. :
:
Applicant. :
:
:

MOTION TO SUSPEND PROCEEDINGS

Notice of Pending Federal Lawsuit

Applicant hereby requests that the Board grant a suspension of the above-captioned proceeding pursuant to 37 C.F.R §2.117(a) as a result of a prior pending action in the United States District Court for the Western District of Pennsylvania, captioned, **WEEDS, INC. v. INNOVATION HQ, INC.**, Case No. 2:17-cv-01533-DSC-MPK ("**federal lawsuit**") which will have a bearing on this proceeding. [Id.; TMBP 510.02(a)]

A copy of the Complaint is attached hereto as Exhibit A, the Counterclaim as Exhibit B, and the Answer to Counterclaim as Exhibit C.

The federal lawsuit was filed on December 22, 2017 and the counterclaim on July 30, 2018, both prior to the filing of this proceeding.¹

Applicant's earlier Complaint against Opposer in the federal lawsuit has counts for Count I - Declaration of Ownership, Count II - Violation Of Anti-Cybersquatting Consumer Protection Act ("ACPA") 15 U.S.C. § 1125(d), Count III - Unfair Competition by Infringement of Common Law Rights, Count IV - Violation Of Lanham Act by Use of False Designation in Interstate Commerce, Count V - Dilution in Violation of Pennsylvania Anti-Dilution Statute, Count

¹Applicant further references Cancellation No. 92,069,490 regarding Registration No. 3,308,883, between the same parties, and the motion to suspend filed therein on the same grounds.

VI - Violation Of 73 P.S. 201-1, Count VII - Common Law Trademark Infringement, and Count III - Equitable Relief. Opposer's counterclaim in the federal lawsuit has counts for Count I - Cancellation, Count II - Reverse Domain Hi-Jacking, Count III - Tortious Interference.

The combination of claims and counterclaims in the federal lawsuit subsume and exceed all issues that would be addressed in this duplicative cancellation action, noting Opposer relies upon averments of "genericness" within its Count I for the same opposition of mark at issue herein. See Counterclaim, Exhibit B, ¶93-94. Applicant's Count I in the federal lawsuit seeks a declaration of the parties' relative rights to the mark at issue. See Complaint, Exhibit A, ¶36.

The discovery to be sought by the parties and the relief sought is fully subsumed by the federal lawsuit, in that discovery in the federal lawsuit will include not only the issues regarding the propriety of Applicant's application, but also all issues regarding this matter, including infringement, a panoply of other federal state law claims, revenue and legal damages.

The precise questions before this Board in this proceeding is more limited than what will need to be resolved within a larger scope, and, for judicial efficiency and fairness to the parties, should be resolved in one complete proceeding. In order to resolve all issues arising from, related to and in connection with the rights of Applicant *vis a vis* Opposer relating to the general questions presented and related injury, Applicant/Plaintiff in the federal lawsuit instituted the prior pending federal lawsuit against Opposer.

The federal court will be addressing a superset of registrations, applications, facts, common law rights, evidence, *res judicata* in prior federal judicial proceedings, review of the record that speaks for itself, claims, parties and issues far greater than those issues now before the Board, including but not limited to, priority of use, infringement, legal damages, unfair competition, violations of state and federal statutes, etc., the federal court is the proper and more efficient forum in which to resolve the entire dispute between these parties. Timing is best served now, prior to the costs of document production and deposition discovery.

Moreover, to supplement the legal and factual basis set forth above, which Applicant believes is sufficient grounds for the relief sought by Applicant herein, Applicant has come to understand that the key witnesses for Applicant are located in a foreign nation. Therefore, Applicant seeks the

full scope of adducement of evidence permitted by the Federal Rules of Civil procedure and the United States Western District of Pennsylvania.

If the motion to suspend the opposition is not granted by the Board, then prejudice to Applicant will occur, including, but not limited to, a significant duplication of proceedings, the procedural posture of the proceedings growing more complex, and the cost to the parties and the United States Government would increase significantly.

WHEREFORE, Applicant hereby requests that this proceeding be suspended under 37 C.F.R. 2.117 pending the determination in the lawsuit **WEEDS, INC. v. INNOVATION HQ, INC.**, Case No. 2:17-cv-01533-DSC-MPK in the United States District Court for the Western District of Pennsylvania.

October 22, 2018

Respectfully submitted,
s/Gregg R. Zegarelli/
Attorney for Applicant

Gregg R. Zegarelli, Esq.
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Technology & Entrepreneurial
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Summerfield Commons Office Park
Pittsburgh, PA 15241-2565

CERTIFICATE OF SERVICE

The following person or persons have been served by United States first class mail, postage pre-paid, as well as by electronic mail, on this date:

October 28, 2018

Brian Samuel Malkin, Esq.
FERENCE & ASSOCIATES LLC
409 Broad Street
Pittsburgh, PA 15143
uspto@ferencelaw.com

Respectfully submitted,
s/Gregg R. Zegarelli/
Attorney for Applicant

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WEEDS, INC.,	Plaintiff,	JURY TRIAL DEMANDED
v.		CIVIL ACTION NUMBER:
INNOVATION HQ, INC.,	Defendant.	

COMPLAINT

Plaintiff, for its Complaint, hereby avers that the online Internet infrastructure is based upon a public license and trust in registrars, and their transparent, fair and neutral administration of domain names; however, the Defendant in this action is using the system contrary to the premise of public license, for self-profit and in such a manner as to interfere with the intellectual property rights and operations of Plaintiff; to wit:

THE PARTIES

1. Plaintiff, WEEDS, INC., has been doing business using the "WEEDS" brand since 1966, owning a United States Trademark Registration for "WEEDS" U.S. Reg. No. 3,308,883, declared incontestable long ago on November 2, 2012, and with a place of business at 1010 Franklin Drive, Suite 3, Smock, Fayette County, Pennsylvania, 15480, USA.

2. Although discovery is continuing:

a. **Regarding weeds.com** (the **"Domain Name"**):

i. **"GoDaddy.com, LLC"** (**"GoDaddy"**) is the registrar for **"weeds.com"**. See Exhibit 1. GoDaddy has an address of operations at 14455 N Hayden Road, Scottsdale, AZ 85260.

ii. As of July 6, 2017, GoDaddy's official registrar WHOIS database information for weeds.com indicated that Defendant **"Domains By Proxy, LLC"** was registrant owner organization of **"weeds.com"**. See Exhibit 1.

iii. **"Domains by Proxy, LLC"** uses the **"domainsByProxy.com"** domain for the administration of ownership of **"weeds.com"**. See Exhibit 1.

iv. **"DomainsByProxy.com"** is owned by **"Go Daddy Operating Company, LLC"**. Go Daddy Operating Company, LLC has an address at 14455 N Hayden Road, Scottsdale, AZ 85260. See Exhibit 2.

v. Go Daddy Operating Company, LLC has the same address as Domains By Proxy, LLC.

vi. After Plaintiff initiated a domain name dispute regarding **"weeds.com"** with the World Intellectual Property Association (**"WIPO"**) shortly after July 6, 2017, the registration information was unilaterally updated by GoDaddy, as licensed registrar, such that registration information for **"weeds.com"** was intentionally changed to indicate that Innovation HQ, Inc. as the registrant owner organization of **"weeds.com"**, rather than GoDaddy's Domains By Proxy, LLC. See Exhibit 3.

vii. Innovation HQ, Inc. (**"Innovation"**) is an **"off-shore"** company located at PO Box 990 Lower Factory Road, St. Johns. Exhibit 3.

3. Registrars are responsible, under a license from ICANN, to administer to conduct the administration of domain name registration in a transparent, fair and neutral manner, and not in a commercially disruptive manner. Moreover, ICANN requires that WHOIS data information be accurate.

NATURE OF ACTION

4. Plaintiff does business using the trademark "WEEDS" (the "Mark"), and, subject to the claims as set forth herein, this is an action generally for trademark infringement, dilution of trademark rights, unfair competition, and domain name cybersquatting.

5. Plaintiff has a United States Trademark Registration for "WEEDS," U.S. Reg. No. 3,308,883, declared "incontestable" on November 2, 2012. See Exhibit 4.

6. Defendant has no bona fide or legitimate interests in the Domain Name and is using the Mark without authority or permission in violation of Plaintiff's legal rights at common law and/or as granted by statute.

JURISDICTION

7. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1331, 1338(a) and (b), federal questions involving infringement of a mark, joined with claims for unfair competition. Pendant jurisdiction over other claims arising from the same nucleus of operative facts lies in consideration of judicial economy, convenience, and fairness to litigants.

8. Defendant has purposefully availed itself of the jurisdiction of this venue, within the United States and this Commonwealth, by the direct and continued advertisement of "weeds.com" into these United States and this Commonwealth of Pennsylvania, and the injury is occurring this Commonwealth.

JURISDICTION AND VENUE

9. The venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c).

STATEMENT OF FACTS

10. Plaintiff hereby incorporates by this reference paragraphs 1 through the prior paragraph of this pleading, inclusive, as fully set forth herein at length.

11. Plaintiff registered the Mark has been doing business using the "WEEDS" brand since 1966.

12. Plaintiff owns a United States Trademark Registration for "WEEDS" U.S. Reg. No. 3,308,883, declared incontestable on November 2, 2012. See Exhibit 4.

13. Plaintiff has the exclusive right, title and interest in and to the Mark for which the registration carry a statutory presumption of exclusive ownership.

14. Plaintiff's Mark is distinctive and has satisfied the requirements for statutory incontestability. See Exhibit 4.

15. Plaintiff has used and contributed significant time, money and effort to establishing business and good will associated with the Mark, and materials used and sold in conjunction with the Mark.

16. Registrar GoDaddy is a fiduciary, acting as registrar, and by way of license as a registrar, is part of a "stakeholder" system of governance; indeed, ICANN's public mission statement states the following:

ICANN is a not-for-profit public-benefit corporation with participants from all over the world dedicated to keeping the Internet secure, stable and interoperable. It promotes competition and develops policy on the Internet's unique identifiers. Through its coordination role of the Internet's naming system, it does have an important impact on the expansion and evolution of the Internet.

17. The Defendant does not have any legitimate business interest in the Domain Name.

18. As a result of the exact proximity and similarity of the names, and if not made more clear by the conscious concealment of Defendant's situs, it is believed and averred that:

a. Defendant purposefully, intentionally and willfully used the Mark or a formative thereof knowing that Defendant's term continues to create or is likely to create an association and confusion in the marketplace, and causes significant dilution to the value of the Mark.

b. By said activity, Defendant has intentionally, recklessly and wantonly engaged in a course of conduct that has damaged Plaintiff.

c. Defendant's infringement of the Mark is likely to cause or is causing damage to Plaintiff.

d. Defendant has used the Mark or a formative thereof that is, consists of, or comprises, a mark which so resembles the Mark and not abandoned, as to be likely, when used on or in connection with the goods or services identified with the Mark to cause confusion, mistake, deceive, lessen the ability of Plaintiff to distinguish itself in the marketplace, cause confusion, mistake and/or an untrue sponsorship, affiliation or association, and/or otherwise be in violation of law. Exhibit 6.

19. Based upon information and belief, each board member or other manager or trustee who is natural person, participated in, coordinated, authorized and approved the scheme to infringe upon Plaintiff's rights. Each such person had actual and constructive knowledge of the rights of Plaintiff, but proceeded for the wrongful purposes averred in this Complaint. Furthermore, each such person has, notwithstanding filing this action, continued their participation in the ongoing acts of infringement, unfair competition, dilution of Plaintiff's Mark and reputation as well as otherwise averred herein.

20. Defendant's actions infringe upon Plaintiff's common law rights as well as rights pursuant to the Lanham Act, including, but not limited to, Section 43(a) thereof.

21. Plaintiff believes that the Defendant's ostensible omission of commercial contact information clearly evidences that Defendant, and each of the human actors causing Defendant's illegal actions, do not desire to place themselves in a position to be found in order to thwart and to contradict proper legal process, whether resulting from trademark infringement, unfair competition, and investigation.

22. By ostensible omission, there is no human being identified as a Registrant Contact, and there is no human being identified as an Administrative Contact for the Domain Name, and there is no human being identified as a Technical Contact, in violation of the ICANN requirements. Indeed, no human beings who will take responsibility for the continually renewed registration in bad faith, using private registrations, corporations, and jurisdictions off-shore from the United States, notwithstanding that the Defendant is systematically and purposefully availing itself of business opportunities, advertising and sales in the United States.

23. Defendant purposefully solicits business transactions in the United States, and the advertisements for the extortive brokering sales of the United States. See Exhibit 5.

24. It is asserted that the Registrar operates within a public license of operations, a socially transparent duty, and as a public fiduciary for the fair administration of Domain Name for which they are socially entrusted.

25. Defendant is acting in a concerted manner that clearly violates the Lanham Act, and more particularly the Anticybersquatting Consumer Protection Act ("**ACPA**"), 15 U.S.C. § 1125(d).

26. The Defendant is offering the identical and confusingly similar Domain Name for sale, and without any legitimate or bona fide use with such similarity of bad faith usage under the Rules (and illegal usage under ACPA).

27. The Domain Name is identical or confusingly similar to a trademark or service mark in which the Plaintiff has rights;

a. Plaintiff has been using "WEEDS" at common law for more than 50 years ago, and owns United States Registration No. 3,308,883 "WEEDS", declared "incontestable" and duly renewed and valid subsisting;

b. The Domain Name at issue is weeds.com. The Domain Name is identical to the name of the trademarks and service marks of the Plaintiff;

c. The Defendant has no rights or legitimate interests in respect of the Domain Name;

d. It is believed and therefore averred that the Defendant's action violates not only the Uniform Domain Name Dispute Resolution Policy, but also including, but not limited to, the United States Anticybersquatting Consumer Protection Act ("**ACPA**"), 15 U.S.C. § 1125(d). Indeed,

the Defendant is offering the Domain Name for sale, and without any bona fide use;

e. Among other things otherwise set forth in this Complaint, the Domain Name clearly and convincingly have been acquired for no other purpose but unlawful brokering, sale and/or auction, for exorbitant prices, in an extortive manner;

f. The indexing creates initial interest confusion and interferes with legitimate business by the brand owner;

g. The uses and indexing are commonly used by United States residents, but Defendant uses a proxy registrant outside of the United States, with additional secrecy and anonymity. Indeed, the registrations are all by "proxy" concealing the true identity of the substantive registrant and beneficiary, and the secrecy is for no legitimate reason.

h. Plaintiff intends in this proceeding or otherwise to determine the concealed beneficiary and principal actors injuring Plaintiff. Plaintiff reserves all rights to damages against the registrars and the owners for conduct which is to aid and abet the process of said brokers, sale and/or auction.

28. At no time whatsoever, including neither at the time of initial registration, nor at any time of additional registration by renewal, has the Defendant: (i) used or demonstrably prepared to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services; (ii) ever have been commonly known by the Domain Name, nor acquired trademark or service mark rights; and (iii) made a legitimate commercial, noncommercial or fair use of the Domain Name, but only intending for illegal commercial profit, gain and to misleadingly divert consumers or to tarnish the trade mark or service mark at issue as a mechanism to extort such profit and gain from the owner of

the validly subsisting United States Trademark Registration who clearly and incontestably has a legitimate interest in the Domain Name.

29. The Domain Name was registered in bad faith, was intentionally registered by renewal in bad faith, and is continuing to be used in bad faith.

30. Plaintiff acquired common law trademark rights in the United States in the year 1966 and has been using the "WEEDS" brand continuously since 1966, for more than 50 years in intrastate and interstate commerce, acquiring common law rights thereby, and has used the brand in multiple different states within the United States.

31. The Defendant recently registered the respective Domain Name after Plaintiff acquired common law trademark rights, federal trademark rights, and after the date of Plaintiff's United States trademark registration.

32. Defendant is tarnishing Plaintiff's brand and incontestable United States Trademark Registration.

33. Defendant did not acquire, and did not register by renewal, the Domain Name with any bona fide intention of commercial usage, has expressly offered the Domain Name for sale at exorbitant prices, and simply registered the Domain Name for the purpose of extracting a profit payment from Plaintiff in gross without any appurtenant commercial value, which is not permissible under the law of trademarks.

(a) Defendant registered, has acquired, and has registered by renewal, the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to the Plaintiff who is the owner of the trade mark or service mark, or to a competitor of the Plaintiff, for valuable consideration in excess of documented out-of-pocket costs directly related to the Domain Name; (b) Defendant has reg-

istered the Domain Name, and has continued to register by renewal to Domain Name, in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding Domain Name; (c) Respondent has registered the Domain Name, and has continued to register by renewal to Domain Name, primarily for the purpose of disrupting the business of a competitor within the context of the Domain Name usage and acquisition, by not holding the Domain Name silently for use or while developing a commercial enterprise with relevant trademark rights, but redirecting visitors to other sites; and/or (d) by using the Domain Name, Defendant has intentionally attempted to attract, for commercial gain, Internet users to another web site or other online location, by creating a likelihood of confusion with the Plaintiff's mark as to the source, sponsorship, affiliation, or endorsement of the web site or location or of a product or service on the web site or location.

(b) Defendant clearly registered, registered by renewal, and have used the Domain Name in bad faith and with the intent of making commercial gain by unlawful brokering, sale and/or auction, for exorbitant prices, in an extortive manner, and clearly evidenced by "for sale" in gross and not appurtenant to any substantive enterprise. See Exhibits 5.

34. As set forth above, Defendant uses layer upon layer of clandestine entities and foreign jurisdictions, as well as a "post office" for address, in a commonly used scheme of "international layering."

a. GoDaddy, even though a licensed registrar, and for a profit, will keep an owner of a domain name a secret from public transparency, which it does not release except under compulsion of legal process. The legal process required is for a party claiming injury pays significant filing fees of approximately \$1,500 per domain name to, for

example, to WIPO in an administrative action, or to institute legal judicial action.

b. The purposeful concealment of situs information by foreign Defendant is ostensibly to avoid and otherwise to thwart the ability of the public to locate the Defendant or any of the human actors acting in concert and causing injury, resulting from trademark infringement, unfair competition, or other investigation.

COUNT I

DECLARATION OF OWNERSHIP

35. Plaintiff hereby incorporates by this reference paragraphs 1 through the prior paragraph of this pleading, inclusive, as fully set forth herein at length.

36. Plaintiff is entitled to declaration of exclusive ownership of the Mark and all formatives thereof likely to cause confusion

COUNT II

VIOLATION OF ANTICYBERSQUATTING CONSUMER PROTECTION ACT ("ACPA")
15 U.S.C. § 1125 (D)

37. Plaintiff hereby incorporates by this reference paragraphs 1 through the prior paragraph of this pleading, inclusive, as fully set forth herein at length.

38. As set forth above, Defendant has violated the ACPA and is entitled to the compelled transfer of the Domain Name.

COUNT III

UNFAIR COMPETITION BY INFRINGEMENT OF COMMON LAW RIGHTS

39. Plaintiff hereby incorporates by this reference paragraphs 1 through the prior paragraph of this pleading, inclusive, as fully set forth herein at length.

40. Defendant's acts constitute unfair competition and an infringement of Plaintiff's common law rights in the Mark. The acts by Defendant are unfair competition in violation of the common law of the Commonwealth of Pennsylvania.

41. Defendant's acts as alleged herein were committed with the intent to pass off and palm off Defendant's goods as the goods of Plaintiff, and with the intent to deceive and to defraud the public.

COUNT IV

**VIOLATION OF LANHAM ACT BY USE OF FALSE DESIGNATION
IN INTERSTATE COMMERCE**

42. Plaintiff hereby incorporates by this reference paragraphs 1 through the prior paragraph of this pleading, inclusive, as fully set forth herein at length.

43. Defendant's acts are in violation of 15 U.S.C.S. § 1125(a), Lanham Act 43(a), 43(d), Defendant has used in connection with the aforesaid goods and/or services a false designation or origin, by domain name and otherwise, false or misleading description and representation of fact which is likely to cause confusion, and to cause mistake, and to deceive as to the affiliation, connection, or association of Defendant with Plaintiff and as to the origin, sponsorship and approval of Defendant's goods, services and commercial activities by Plaintiff.

COUNT V

DILUTION IN VIOLATION OF PENNSLVANIA ANTI-DILUTION STATUTE

44. Plaintiff hereby incorporates by this reference paragraphs 1 through the prior paragraph of this pleading, inclusive, as fully set forth herein at length.

45. Defendant has made commercial use of the Mark, a designation owned by Plaintiff, in connection with goods and/or services which Defendant has used and transported in United States interstate commerce. Defendant's acts are in violation of 54 PA.C.S. §1124 in that they have caused dilution of the distinctive quality of the Mark, all to the irreparable injury to and damage of Plaintiff within the market.

46. Defendant's acts have lessened the capacity of the Mark to identify and to distinguish the goods of Plaintiff. Defendant acts have caused dilution, blurring and tarnishment of the unique association which have heretofore existed between the Mark and goods made and/or services rendered by Plaintiff.

47. The Mark is a distinctive and famous mark. The Mark has been used in connection with the goods and services regarding which it appears including on and through the Internet to consumers and those in the trade, are in substantially exclusive use, and are registered, as alleged heretofore.

48. Defendant committed the acts averred herein willfully and with the intent to cause dilution of the Mark and Plaintiff's rights and reputation.

COUNT VI

VIOLATION OF 73 P.S. 201-1

49. Plaintiff hereby incorporates by this reference paragraphs 1 through the prior paragraph of this pleading, inclusive, as fully set forth herein at length.

50. The acts by Defendant are unfair competition and are in violation of 73 P.S. 201-1, et seq.

51. Such unfair competition is causing Plaintiff damage thereby, and Plaintiff is entitled to statutory treble damages thereby as a result of the intentional actions averred herein.

COUNT VII

COMMON LAW TRADEMARK INFRINGEMENT

52. Plaintiff hereby incorporates by this reference paragraphs 1 through the prior paragraph of this pleading, inclusive, as fully set forth herein at length.

53. Defendant is acting in an intentional and wanton manner in order to deceive the public by passing off and are thereby causing confusion in the marketplace as to the origin of the services offered, and Plaintiff is being harmed thereby.

54. Defendant is in violation of 54 Pa. Pa.C.S.A. 1101, et seq.

COUNT VIII

EQUITABLE RELIEF

55. Plaintiff hereby incorporates by this reference paragraphs 1 through the prior paragraph of this pleading, inclusive, as fully set forth herein at length.

56. The damages being incurred by Plaintiff, including the public confusion over the origin of goods and services are of a nature that money alone cannot remedy and Plaintiff is being irreparably harmed thereby.

ALLEGATION OF DAMAGES

57. The damages being incurred by Plaintiff, including the public confusion over the origin of goods and services are of a nature that money alone cannot remedy and Plaintiff is being irreparably harmed thereby.

58. By reason of Defendant acts as alleged herein, Plaintiff has and will suffer damage to its business, reputation and good will and the loss of sales and profits Plaintiff would have made but for Defendant's acts.

59. Defendant threatens to continue to do the acts complained of herein, and unless restrained and enjoined, will continue to do so, all to Plaintiff's irreparable damage. It would be difficult to ascertain the amount of compensation which could afford Plaintiff adequate relief for such continuing acts, and a multiplicity of judicial proceedings would be required. Plaintiff's remedy at law is not adequate to compensate it for injuries threatened.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

1. **Injunctive Relief.** 1(a). **Enjoin Defendant.** That this Court grant an injunction pursuant to the powers granted it under 15 U.S.C.A § 1116, enjoining and restraining Defendant, and Defendant's agents, servants and employees from directly or indirectly using the Mark

or any other mark, word or name similar to the Mark which is likely to cause confusion, mistake or to deceive.

That this Court, pursuant to the power granted it under 15 U.S.C.S. § 1118, transfer the Domain Name to Plaintiff, as well as order that all webpages, indices, labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of Defendant bearing the Mark and all plates and other means of making the same, shall be delivered up to the Court for destruction.

1(b). **Enjoin Defendant's Agents, Advertisers, Rellers, etc.**

That this Court grant an injunction enjoining and restraining Defendant and its domain registrars, social media sites, index engines, web hosts, agents, advertisers, distributors, resellers, servants and employees from (1) directly or indirectly using the Mark or any other mark, word or name similar to the Mark which are likely to cause confusion and (2) continuing any and all acts of unfair competition as herein alleged.

1(c). **Specific Performance.** That this Court order that Defendant notify all advertisers, agents, internet service providers and other contributing in the infringement to cease and desist contributing to the infringement, including but not limited to causing the re-indexing of all search engines on the Internet, as well as transferring the Domain Name bearing the Mark to Plaintiff.

2. **Declaration.** Declare that Plaintiff has and shall have the exclusive and continued right to continue to use the Mark, including formatives thereof.

3. **Accounting.** That Defendant be required to account to Plaintiff for any and all profits derived by Defendant from the sale of

its goods and for all damages sustained by Plaintiff by reason of said acts of infringement and unfair competition complained of herein.

4. **All Permissible Damages.** 4(a) **Compensatory Damages.**

That the Court award Plaintiff compensatory damages in an amount to be proven at trial;

4(b) **Statutory Damages.**

That this Court award Plaintiff statutory damages, pursuant to Federal and Pennsylvania law to the fullest extent provided by the respective statutes averred herein;

4(c) **Treble Damages.**

That this Court award Plaintiff TREBLE the amount of actual damages suffered by Plaintiff, pursuant to the statutes providing for such treble damages as averred herein.

4(d) **Punitive and Exemplary Damages.**

That this Court award punitive and exemplary damages against Defendant and in favor of Plaintiff in a sum to be determined at trial by reason of Defendant's fraud and palming off.

5. **Cost of Litigation.**

That this Court award Plaintiff the costs of this action.

6. **Attorneys' Fees.**

That this Court award Plaintiff all of its attorney fees.

7. **Additional Damages.**

Furthermore, that this Court grant such other and further relief as it shall deem to be just and proper.

Dated: November 22, 2017

/s/Gregg Zegarelli/
Gregg R. Zegarelli, Esq.
Counsel for Plaintiff
PA I.D. #52717

Z E G A R E L L I
Technology & Entrepreneurial
Ventures Law Group, P.C.
2585 Washington Road, Suite 134
Summerfield Commons Office Park
Pittsburgh, PA 15241
412.833.0600

Domain Name: WEEDS.COM

Registry Domain ID: 1735673_DOMAIN_COM-VRSN

Registrar WHOIS Server: whois.godaddy.com

Registrar URL: <http://www.godaddy.com>

Update Date: 2017-01-04T19:59:34Z

Creation Date: 1998-08-08T04:00:00Z

Registrar Registration Expiration Date: 2019-08-07T04:00:00Z

Registrar: GoDaddy.com, LLC

Registrar IANA ID: 146

Registrar Abuse Contact Email: abuse@godaddy.com

Registrar Abuse Contact Phone: +1.4806242505

Domain Status: clientTransferProhibited <http://www.icann.org/epp#clientTransferProhibited>

Domain Status: clientUpdateProhibited <http://www.icann.org/epp#clientUpdateProhibited>

Domain Status: clientRenewProhibited <http://www.icann.org/epp#clientRenewProhibited>

Domain Status: clientDeleteProhibited <http://www.icann.org/epp#clientDeleteProhibited>

Registry Registrant ID:

Registrant Name: Registration Private

Registrant Organization: Domains By Proxy, LLC

Registrant Street: DomainsByProxy.com

Registrant Street: 14455 N. Hayden Road

Registrant City: Scottsdale

Registrant State/Province: Arizona

Registrant Postal Code: 85260

Registrant Country: US

Registrant Phone: +1.4806242599

Registrant Phone Ext:

Registrant Fax: +1.4806242598

Registrant Fax Ext:

Registrant Email: WEEDS.COM@domainsbyproxy.com

Registry Admin ID:

Admin Name: Registration Private

Admin Organization: Domains By Proxy, LLC



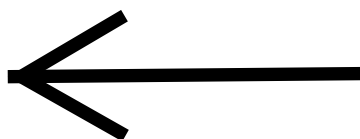
Search the WHOIS Database

Enter a domain name to search

Search

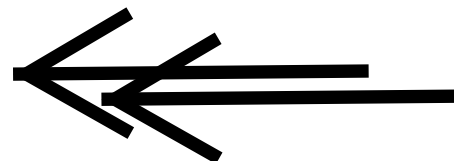
WHOIS search results

Domain Name: DOMAINSBYPROXY.COM
 Registry Domain ID: 82552227_DOMAIN_COM-VRSN
 Registrar WHOIS Server: whois.godaddy.com
 Registrar URL: http://www.godaddy.com
 Update Date: 2011-11-01T21:39:07Z
 Creation Date: 2002-01-16T00:48:59Z
 Registrar Registration Expiration Date: 2021-11-01T11:59:59Z
 Registrar: GoDaddy.com, LLC
 Registrar IANA ID: 146



Registrar Abuse Contact Email: abuse@godaddy.com
 Registrar Abuse Contact Phone: +1.4806242505
 Domain Status: clientTransferProhibited <http://www.icann.org/epp#clientTransferProhibited>
 Domain Status: clientUpdateProhibited <http://www.icann.org/epp#clientUpdateProhibited>
 Domain Status: clientRenewProhibited <http://www.icann.org/epp#clientRenewProhibited>
 Domain Status: clientDeleteProhibited <http://www.icann.org/epp#clientDeleteProhibited>

Registry Registrant ID:
 Registrant Name: Domain Administrator
 Registrant Organization: Go Daddy Operating Company, LLC



Registrant Street: 14455 N Hayden Rd Suite 219
 Registrant City: Scottsdale
 Registrant State/Province: Arizona
 Registrant Postal Code: 85260
 Registrant Country: US
 Registrant Phone: +1.4805058800
 Registrant Phone Ext:
 Registrant Fax: +1.4805058844
 Registrant Fax Ext:

Registrant Email: companynames@godaddy.com
 Registry Admin ID:
 Admin Name: Domain Administrator
 Admin Organization: Go Daddy Operating Company, LLC
 Admin Street: 14455 N Hayden Rd Suite 219
 Admin City: Scottsdale
 Admin State/Province: Arizona
 Admin Postal Code: 85260
 Admin Country: US
 Admin Phone: +1.4805058800
 Admin Phone Ext:
 Admin Fax: +1.4805058844
 Admin Fax Ext:
 Admin Email: companynames@godaddy.com
 Registry Tech ID:

Tech Name: Domain Administrator
 Tech Organization: Go Daddy Operating Company, LLC
 Tech Street: 14455 N Hayden Rd Suite 219
 Tech City: Scottsdale
 Tech State/Province: Arizona
 Tech Postal Code: 85260
 Tech Country: US
 Tech Phone: +1.4805058800
 Tech Phone Ext:
 Tech Fax: +1.4805058844
 Tech Fax Ext:
 Tech Email: companynames@godaddy.com
 Name Server: CNS1.SECURESERVER.NET
 Name Server: CNS2.SECURESERVER.NET
 Name Server: CNS3.SECURESERVER.NET
 DNSSEC: unsigned
 URL of the ICANN WHOIS Data Problem Reporting System: http://wdprs.internic.net/
 >>> Last update of WHOIS database: 2017-09-11T19:00:00Z <<<

For more information on Whois status codes, please visit <https://www.icann.org/resources/pages/epp-status-codes-2014-06-16-en>

The data contained in GoDaddy.com, LLC's WHOIS database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records.



Let's talk!

For any other purpose is expressly forbidden without the prior written consent of GoDaddy.com, LLC. By submitting an inquiry, you agree to the terms of usage and limitations of warranty. In particular, you agree to this data to allow, enable, or otherwise make possible, disclosure of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes.

Please note: the registrant of the domain name is specified in the "registrant" section. In most cases, GoDaddy.com, LLC is not the registrant of domain names listed in this database.

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Search the WHOIS Database

Enter a domain name to search Search

WHOIS search results

Domain Name: WEEDS.COM
 Registry Domain ID: 1735673_DOMAIN_COM-VRSN
 Registrar WHOIS Server: whois.godaddy.com
 Registrar URL: http://www.godaddy.com
 Update Date: 2017-01-04T19:59:34Z
 Creation Date: 1998-08-08T04:00:00Z
 Registrar Registration Expiration Date: 2019-08-07T04:00:00Z
 Registrar: GoDaddy.com, LLC
 Registrar IANA ID: 146
 Registrar Abuse Contact Email: abuse@godaddy.com
 Registrar Abuse Contact Phone: +1.4806242505
 Domain Status: clientTransferProhibited <http://www.icann.org/epp#clientTransferProhibited>
 Domain Status: clientUpdateProhibited <http://www.icann.org/epp#clientUpdateProhibited>
 Domain Status: clientRenewProhibited <http://www.icann.org/epp#clientRenewProhibited>
 Domain Status: clientDeleteProhibited <http://www.icann.org/epp#clientDeleteProhibited>
 Registry Registrant ID:
 Registrant Name: Innovation HQ, Inc.
 Registrant Organization: Innovation HQ, Inc.
 Registrant Street: PO Box 990 Lower Factory Road
 Registrant City: St Johns
 Registrant State/Province: Not Applicable
 Registrant Postal Code: 00000
 Registrant Country: AG
 Registrant Phone: +1.8153018012
 Registrant Phone Ext:
 Registrant Fax: +1.8153018012
 Registrant Fax Ext:
 Registrant Email: emailregistrarinfo@innovationhq.com
 Registry Admin ID:
 Admin Name: Innovation HQ, Inc.
 Admin Organization: Innovation HQ, Inc.
 Admin Street: PO Box 990 Lower Factory Road
 Admin City: St Johns
 Admin State/Province: Not Applicable
 Admin Postal Code: 00000
 Admin Country: AG
 Admin Phone: +1.8153018012
 Admin Phone Ext:
 Admin Fax: +1.8153018012
 Admin Fax Ext:
 Admin Email: emailregistrarinfo@innovationhq.com
 Registry Tech ID:



From: TMOfficialNotices@USPTO.GOV
Sent: Friday, November 2, 2012 11:01 PM
To: mailroom.grz@zegarelli.com
Subject: Trademark RN 3308883: Official Notice of Acceptance and Acknowledgement under Sections 8 and 15 of the Trademark Act

Serial Number: 78715892
Registration Number: 3308883
Registration Date: Oct 9, 2007
Mark: WEEDS(STANDARD CHARACTER MARK)
Owner: WEEDS, INC.

Nov 2, 2012

NOTICE OF ACCEPTANCE UNDER SECTION 8

The declaration of use or excusable nonuse filed for the above-identified registration meets the requirements of Section 8 of the Trademark Act, 15 U.S.C. §1058. **The Section 8 declaration is accepted.**

NOTICE OF ACKNOWLEDGEMENT UNDER SECTION 15

The declaration of incontestability filed for the above-identified registration meets the requirements of Section 15 of the Trademark Act, 15 U.S.C. §1065. **The Section 15 declaration is acknowledged.**

The registration will remain in force for the class(es) listed below for the remainder of the ten-year period, calculated from the registration date, unless canceled by an order of the Commissioner for Trademarks or a Federal Court.

Class(es):
044

TRADEMARK SPECIALIST
POST-REGISTRATION DIVISION
571-272-9500



REQUIREMENTS FOR MAINTAINING REGISTRATION

WARNING: Your registration will be canceled if you do not file the documents below during the specified time periods.

Requirements in the First Ten Years

What and When to File: You must file a declaration of use (or excusable nonuse) **and** an application for renewal between the 9th and 10th years after the registration date. See 15 U.S.C. §§1058, 1059.

Requirements in Successive Ten-Year Periods

What and When to File: You must file a declaration of use (or excusable nonuse) **and** an application for renewal between every 9th and 10th-year period, calculated from the registration date. See 15 U.S.C. §§1058, 1059.

Grace Period Filings

The above documents will be considered as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

*****The USPTO WILL NOT SEND ANY FURTHER NOTICE OR REMINDER OF THESE REQUIREMENTS. THE REGISTRANT SHOULD CONTACT THE USPTO ONE YEAR BEFORE THE EXPIRATION OF THE TIME PERIODS SHOWN ABOVE TO DETERMINE APPROPRIATE REQUIREMENTS AND FEES.*****

To view this notice and other documents for this application on-line, go to <http://tdr.uspto.gov/search.action?sn=78715892>. NOTE: This notice will only be available on-line the next business day after receipt of this e-mail.

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EXHIBIT
4

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- » [Home Gardening](#)
- » [Flora](#)
- » [Horticulture](#)
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- » [Horticulture Magazines](#)
- » [Green Plants](#)
- » [House Plants](#)

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Search Ads

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WEEDS, INC.,)
)
Plaintiff,)
)
v.) Case No. 2:17-cv-01533-MPK
)
INNOVATION HQ, INC.,)
)
Defendant.)

ANSWER AND COUNTERCLAIMS

AND NOW comes Defendant Innovation HQ, Inc. and, for its Answer and Counterclaims to the Complaint of Plaintiff Weeds, Inc., states as follows:

1. Defendant admits that Plaintiff is the record owner of U.S. Trademark Registration No. 3,308,883. Defendant lacks knowledge or information sufficient to form a belief whether the remaining allegations of Paragraph 1 of the Complaint are true.

2. Defendant admits sections (i) - (v) of paragraph 2 of the Complaint. As to section (vi), Defendant admits that GoDaddy provides a proxy registration service under which the registrant of a domain name is identified upon notice of a dispute and that Defendant was identified as the registrant of the domain name in the ordinary course of operation of that service. As to section (vii), Defendant admits to its mailing address but lacks knowledge or information sufficient to form a belief as to what Plaintiff means by “off-shore”.

3. Defendant admits the allegations of Paragraph 3 of the Complaint.



4. Defendant lacks sufficient knowledge or information to form a belief as to the allegations of Paragraph 4 of the Complaint as to how Plaintiff conducts business and admits that this action purports to be for the identified causes of action.

5. Defendant admits that Plaintiff is the record owner of the identified trademark registration. Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 5 of the Complaint.

6. Defendant denies the allegation of Paragraph 6 of the Complaint as to Defendant's bona fide or legitimate interests in the domain name. Defendant denies that authority or permission of Plaintiff is required to use the domain name, and Defendant further denies that Plaintiff has legal rights under common law or by statute in the alleged mark.

7. Defendant admits the allegations of Paragraph 7 of the Complaint as to subject matter jurisdiction.

8. Defendant denies the allegations of Paragraph 8 of the Complaint.

9. Defendant denies the allegations of Paragraph 9 of the Complaint.

10. Paragraph 10 of the Complaint does not require an answer.

11. Because Paragraph 11 of the Complaint is grammatically nonsensical and not capable of denial or admission, Defendant lacks knowledge or information sufficient to form a belief as to the truth of those allegations.

12. Defendant admits that Plaintiff is the record owner of the identified trademark registration. Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 12 of the Complaint.

13. Paragraph 13 of the Complaint states a legal conclusion. To the extent that any fact is alleged in Paragraph 13, it is denied.

14. Defendant denies the allegations of Paragraph 14 of the Complaint.

15. Plaintiff lacks sufficient knowledge or information to form a belief as to the allegations of Paragraph 15 of the Complaint.

16. Defendant admits that GoDaddy is a domain name registrar accredited by ICANN. Defendant denies that GoDaddy is a fiduciary. Defendant lacks sufficient knowledge or information to form a belief as to the remaining allegations of Paragraph 16 of the Complaint.

17. Defendant denies the allegations of Paragraph 17 of the Complaint.

18. Defendant denies the allegations of Paragraph 18 of the Complaint.

19. Defendant denies the allegations of Paragraph 19 of the Complaint.

20. Defendant denies the allegations of Paragraph 20 of the Complaint.

21. Defendant is without sufficient knowledge or information to form a belief as to what Plaintiff believes. To the extent that any facts are alleged in Paragraph 21 of the Complaint, they are denied.

22. Defendant denies that any ICANN required information is or has been omitted from the registration data for the domain name. Defendant denies that

ICANN requires a human being to be identified as any contact for a domain name.

The remaining allegations of Paragraph 22 of the Complaint are denied.

23. Defendant admits it solicits business in the United States. The remaining allegations of Paragraph 23 of the Complaint are denied.

24. Defendant admits that Plaintiff asserts the things it claims to assert in Paragraph 24. The remaining allegations of Paragraph 24 of the Complaint are denied.

25. Defendant denies the allegations of Paragraph 25 of the Complaint.

26. Defendant admits it has offered the domain name for sale. Defendant denies the remaining allegations of Paragraph 26 of the Complaint.

27. Defendant denies the allegations of Paragraph 27 of the Complaint.

28. Defendant denies the allegations of Paragraph 28 of the Complaint.

29. Defendant denies the allegations of Paragraph 29 of the Complaint.

30. Defendant denies the allegations of Paragraph 30 of the Complaint.

31. Defendant denies the allegations of Paragraph 31 of the Complaint.

32. Defendant denies the allegations of Paragraph 32 of the Complaint.

33. Defendant denies the allegations of Paragraph 33 of the Complaint.

34. Defendant denies the allegations of Paragraph 34 of the Complaint.

Count I

35. Defendant incorporates its answers to Paragraphs 1 through 34 of the Complaint.

36. Defendant denies the allegations of Paragraph 36 of the Complaint.

Count II

37. Defendant incorporates its answers to Paragraphs 1 through 36 of the Complaint.

38. Defendant denies the allegations of Paragraph 38 of the Complaint.

Count III

39. Defendant incorporates its answers to Paragraphs 1 through 38 of the Complaint.

40. Defendant denies the allegations of Paragraph 40 of the Complaint.

41. Defendant denies the allegations of Paragraph 41 of the Complaint.

Count IV

42. Defendant incorporates its answers to Paragraphs 1 through 41 of the Complaint.

43. Defendant denies the allegations of Paragraph 43 of the Complaint.

Count V

44. Defendant incorporates its answers to Paragraphs 1 through 43 of the Complaint.

45. Defendant denies the allegations of Paragraph 45 of the Complaint.

46. Defendant denies the allegations of Paragraph 46 of the Complaint.

47. Defendant denies the allegations of Paragraph 47 of the Complaint.

48. Defendant denies the allegations of Paragraph 48 of the Complaint.

Count VI

49. Defendant incorporates its answers to Paragraphs 1 through 48 of the Complaint.

50. Defendant denies the allegations of Paragraph 50 of the Complaint.

51. Defendant denies the allegations of Paragraph 51 of the Complaint.

Count VII

52. Defendant incorporates its answers to Paragraphs 1 through 51 of the Complaint.

53. Defendant denies the allegations of Paragraph 53 of the Complaint.

54. Defendant denies the allegations of Paragraph 54 of the Complaint.

Count VIII

55. Defendant incorporates its answers to Paragraphs 1 through 54 of the Complaint.

56. Defendant denies the allegations of Paragraph 56 of the Complaint.

57. Defendant denies the allegations of Paragraph 57 of the Complaint.

58. Defendant denies the allegations of Paragraph 58 of the Complaint.

59. Defendant denies the allegations of Paragraph 59 of the Complaint.

WHEREFORE Innovation HQ respectfully requests that this Court enter judgment in its favor and against Weeds, Inc. and award Innovation HQ its damages, the costs of this action and such other relief as this Court deems to be appropriate.

ADDITIONAL DEFENSES

60. Defendant is a duly incorporated entity of Antigua and Barbuda.

61. Defendant has registered and used the domain name <weeds.com> since as early as December 21, 2001 for purposes of providing information about weeds and for purposes of advertising products and services relating to weeds.

62. Defendant's continuous registration and use of the domain name <weeds.com> for over 16 years is senior to any claim of trade or service mark rights Plaintiff has ever made in the word "weeds" per se.

60. Plaintiff's claims against Defendant are barred by the Doctrine of Laches.

61. Plaintiff's claims against Defendant are barred by the Doctrine of Unclean Hands.

62. Plaintiff's claims are barred by Plaintiff's acquiescence in Defendant's use of the domain name <weeds.com> by Defendant for over 16 years.

63. Plaintiff's claims are barred by the invalidity of the federal registration on which Plaintiff relies.

64. Plaintiff's state-law claims are barred by the generic character of Plaintiff's claimed mark.

65. Defendant's registration and use of the domain name <weeds.com> is senior to Plaintiff's claim of rights in "WEEDS" as a trade or service mark.

66. Defendant's registration of the domain name <weeds.com> is senior to any claim by Plaintiff in "WEEDS" as a distinctive trade or service mark.

WHEREFORE Innovation HQ respectfully requests that this Court enter judgment in its favor and against Weeds, Inc. and award Innovation HQ its attorney's fees, the costs of this action and such other relief as this Court deems to be appropriate.

COUNTERCLAIMS

The following allegations are common to all Counterclaims:

67. The word "weed" is both a noun and a verb. As a verb, "to weed", the word is generic to the action of removing weeds.

68. The word "weeds" is the third person present tense conjugation of "to weed" and is generic to the action of weeding. Plaintiff alleges that it weeds the premises of its customers.

69. "Incontestability" under the Lanham Act does not render a registered mark immune to a determination that it is invalid on grounds of being generic or on grounds that the mark was registered by fraud on the United States Patent and Trademark Office.

70. On or about 1 May 2002, Plaintiff filed U.S. Trademark Application No. 78125465 ("the '465' application) for a figurative logo bearing the textual elements "W WEEDS INC."

71. In an Official Action dated 24 September 2002, the United States Patent and Trademark Office (USPTO) refused Plaintiff's application, stating inter alia, "The applicant must insert a disclaimer of 'WEEDS' and 'INC.' in the application because the wording is merely descriptive of the goods/services."

72. Plaintiff acquiesced in this finding of the USPTO and disclaimed the word “WEEDS” from its application.

73. Plaintiff made no claim in the ‘465 application that the terms “WEEDS” was distinctive of Plaintiff.

74. Plaintiff’s ‘465 application issued as U.S. Trademark Registration No. 2819572 on 2 March 2004, bearing the disclaimer, “NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE “WEEDS” and “INC.” APART FROM THE MARK AS SHOWN.”

75. Plaintiff’s U.S. Trademark Registration No. 2819572 and the public notice therein of Plaintiff’s disclaimer of rights in the word “weeds” apart from the logo therein were issued more than two years after Defendant had initially registered and begun using the <weeds.com> domain name for the purpose of providing information and advertising relating to weeds.

76. At the time Defendant registered the domain name, Plaintiff’s claimed mark was not distinctive.

77. On 19 September 2005, Plaintiff filed U.S. TM App. Ser. No. 78715892 (“the ‘892 Application”) to register the word “WEEDS” as a mark for “Vegetative and weed control services” on an intent-to-use basis.

78. The ‘892 Application, claiming an intent to use “WEEDS” as a mark in the future, was filed by Plaintiff more than four years junior to Defendant’s registration of the <weeds.com> domain name.

79. During prosecution of the '892 Application, the USPTO again refused to register "WEEDS" as a mark for a business which weeds its customer's premises.

80. In response to the USPTO's refusal of the '892 Application, Plaintiff made two arguments in order to induce allowance of the application by the USPTO.

81. The first argument advanced by Plaintiff was to claim that this Court had found "WEEDS" to be a distinctive mark of Plaintiff. Plaintiff submitted no such judgment, decision, declaration or opinion of this Court to the USPTO.

82. Instead of providing what Plaintiff claimed to be a decision of this Court in support of its first argument, Plaintiff instead provided a mere docket listing of a case styled *Weeds, Inc. v. Weeds No More, Inc., et al.*, 2:02-cv-00288-DWA filed in this Court in 2002 (the "*Weeds No More Case*"), and which was co-pending with Plaintiff's '465 Application.

83. The *Weeds No More Case*, referenced by Plaintiff in the '892 application, involved a number of claims against a competitor in the weed control business and was not solely premised on a claim of distinctiveness of "WEEDS" as a trade or service mark.

84. Plaintiff misled the USPTO by deliberately omitting to provide any judgment of this Court finding "WEEDS" to be a distinctive mark, and instead argued to the USPTO that :

In that case, Applicant sued defendant for trademark infringement. Defendant filed a motion to dismiss, and Plaintiff's position was that its mark is suggestive. The Examining Attorney can review the docket in the early stages regarding the plethora of motions by Defendants relating to motions to dismiss.

Initially, the Western District initially ruled in favor of Defendant. See Docket #21. Applicant timely objected arguing the mark was suggestive and the case should not be dismissed. See Docket #22. Ultimately, the Western District agreed with Applicant and Defendants' 12(b)(6) motion was denied. See Docket #36.

85. Denial of the defendant's motion to dismiss in the *Weeds No More* Case was not an affirmative judgment on the merits of Plaintiff's claims. It was merely a decision that Plaintiff had sufficient pleaded its claims.

86. Plaintiff deliberately mischaracterized this Court's denial of a 12(b)(6) motion in the *Weeds No More* case in order to induce allowance of the '892 application.

87. Moreover, the docket entry in the *Weeds No More* Case to which Plaintiff directed the USPTO in the '892 application, Docket #36, did not even actually deny a motion to dismiss. Instead it is a Report and Recommendation by the Honorable Ila J. Sensenich, Magistrate Judge of this Court, submitted on 25 August 2003.

88. Subsequent to the docket references made by Plaintiff in the '892 application, the earlier '465 application remained pending and subject to amendment by Plaintiff, and yet Plaintiff did not traverse the finding of descriptiveness by the USPTO in that co-pending application by likewise claiming that this Court had found "WEEDS" to be a distinctive mark of Plaintiff. Instead, Plaintiff allowed the '465 application to go to allowance with the disclaimer of rights in "WEEDS" per se as a mark. Plaintiff did so because Plaintiff was, and is, fully aware that this Court's denial of the 12(b)(6) motion in that litigation did not

amount to a decision of this Court that “WEEDS” was or is a distinctive mark for weed control services.

89. Plaintiff’s second argument for allowance of the ‘892 application was that the word “weeds” is not descriptive of a weed service, because the noun “weed” refers to an unwanted plant and not to a service for removing them. Plaintiff’s second argument was crafted to mislead the USPTO by avoiding mention of the fact that “weed” is also a verb, such that someone who “weeds” a lawn, garden, or other premises is engaged in the service of weed control.

90. In the ‘892 Application, Plaintiff further claimed a date of “first use” of “WEEDS” as a mark of 3 August 2007, which is more than five years after Defendant’s registration of the domain name <weeds.com> in 2001.

91. In reliance on Plaintiff’s misleading and false assertions, the USPTO issued Plaintiff’s U.S. Trademark Registration No. 3308883 on 9 October 2007, which is also more than five years after Defendant’s registration of the domain name <weeds.com> in 2001.

Count I - Cancellation

92. The allegations of Paragraphs 67 through 91 of these Counterclaims are incorporated by reference herein.

93. Plaintiff committed fraud on the USPTO in order to induce allowance of the ‘892 application, and thus Plaintiff’s U.S. Trademark Registration No. 3308883 should be cancelled.

94. Plaintiff's alleged mark is generic Plaintiff's U.S. Trademark Registration No. 3308883 should be cancelled.

Count II - Reverse Domain Hi-Jacking

95. The allegations of Paragraphs 67 through 94 of these Counterclaims are incorporated by reference herein.

96. In order to administer disputes which may arise between a trademark claimant and a registrant of a .com domain name, the accrediting body of domain name registrars (the Internet Corporation for Assigned Names and Numbers or "ICANN"), requires registrars, such as GoDaddy in this instance, to implement decisions rendered under an administrative policy called the "Uniform Domain-Name Resolution Policy" or UDRP.

97. In August 2017, despite Defendant's registration and use of the domain name since 2001 and long prior to any trademark registration by Plaintiff, any application for registration by Plaintiff, or any claim of distinctiveness or rights in "WEEDS" by Plaintiff, Plaintiff filed a complaint under the UDRP against Defendant's registration and use of the <weeds.com> domain name with the World Intellectual Property Organization (WIPO), which is authorized by ICANN to adjudicate claims under the UDRP.

98. WIPO assigned a three-member panel of experts (the "WIPO Panel") to adjudicate the UDRP dispute.

99. By written decision of November 23, 2018, the WIPO Panel unanimously rejected all of Plaintiff's claims and instead determined that Plaintiff

was attempting Reverse Domain Name Hijacking. A copy of that panel's decision is attached to this pleading as Exhibit A.

100. In relation to the word "weed" the WIPO Panel appointed by WIPO stated, "As a verb, it means, 'remove unwanted plants from (an area of ground)'. See English Oxford Living Dictionaries at 'www.oxforddictionaries.com/definition/weed' (visited on November 16, 2017)."

101. The WIPO Panel additionally found:

First, it appears that Respondent registered the disputed domain name on November 12, 2004 at the latest, before Complainant filed, on September 19, 2005, its application for its WEEDS mark Reg. No. 3,308,883, which registered on October 9, 2007. The Panel notes that absent special circumstances or scenarios, this timeline does not suggest registration in bad faith. [...]

In this regard, the Panel notes that – as mentioned by Respondent – Complainant also owns a United States trademark registration for W WEEDS INC., Reg. No. 2,819,572, Reg. Date March 2, 2004, filed on May 1, 2002, and claiming December 21, 2000 as date of first use / first use in commerce. In particular, the Panel also notes that in this mark the term "weeds" is disclaimed.

[...]

In sum, the Panel concludes that Complainant failed to establish that the disputed domain name was registered and is being used in bad faith.

102. The WIPO Panel rejected Plaintiff's UDRP Complaint.

103. The WIPO Panel additionally found Plaintiff's UDRP Complaint to be an abuse of process and reverse domain hi-jacking on the part of the Complainant, stating:

The Panel notes that Complainant is represented by IP counsel. Thus is [sic] should have been quite clear from the outset that Respondent had registered a domain name consisting of a common, descriptive, dictionary word, before Complainant filed its application for the WEEDS mark.

In addition, it is well established that invoking a common law mark – as did Complainant – requires providing the Panel with concrete evidence of secondary meaning / acquired distinctiveness, which Complainant failed to submit.

Lastly, while Complainant contended that Respondent registered the disputed domain name primarily to sell it to Complainant, it made no mention of the fact that it was Complainant's Vice-President who had first contacted Respondent to make an inquiry about the purchase of the disputed domain name.

For these reasons, the Panel finds that the Complaint is an attempt at Reverse Domain Name Hijacking.

104. The UDRP does not itself provide for monetary damages, as WIPO does not have a mechanism for enforcing such awards. However, 15 U.S.C. § 1114(2)(D)(iv) provides:

(iv) If a registrar, registry, or other registration authority takes an action described under clause (ii) based on a knowing and material misrepresentation by any other person that a domain name is identical to, confusingly similar to, or dilutive of a mark, the person making the knowing and material misrepresentation shall be liable for any damages, including costs and attorney's fees, incurred by the domain name registrant as a result of such action.

105. Upon Plaintiff's filing of the UDRP complaint, which the WIPO Panel found to be abusive, the registrar locked the domain name and thus disabled Defendant's ability to control the domain name registration information.

106. Prior to Plaintiff's filing of the UDRP complaint, which the WIPO Panel found to be abusive, Defendant had contracted with GoDaddy to maintain the registration under GoDaddy's "Domains By Proxy" privacy service. Such services are ordinarily provided by domain registrars in the ordinary course of business to registrants who prefer not to receive spam or other abusive email at a publicly displayed email address. In the ordinary course of domain registration procedures, when a UDRP complaint is filed, the registrar discontinues the privacy service and provides the underlying contact information of the domain registrant.

107. Pursuant to Plaintiff's filing of the UDRP complaint, which the WIPO Panel found to be abusive, GoDaddy duly and properly removed the privacy service from the domain name and displayed Defendant's complete and accurate contact information through which Plaintiff was indeed able to serve process in this Proceeding. At no time has Defendant provided false contact information to the registrar in connection with Defendant's longstanding registration and use of the domain name.

108. Defendant incurred substantial expense in defending against Plaintiff's frivolous and abusive UDRP complaint and is thus entitled to an award of damages under 15 U.S.C. § 1114(2)(D)(iv).

Count III - Tortious Interference

109. The allegations of Paragraphs 67 through 108 of these Counterclaims are incorporated by reference herein.

110. Prior to the filing of its frivolous and abusive UDRP complaint, Plaintiff was aware that Defendant had contracted for domain registration and proxy registration services with the registrar GoDaddy. Plaintiff was further aware that filing its UDRP complaint would cause GoDaddy to impair Defendant's receipt of services under the registration agreement with GoDaddy.

111. In its decision, the WIPO Panel additionally found that Plaintiff knew or should have known its UDRP filing was devoid of merit and abusive, stating:

The Panel notes that Complainant is represented by IP counsel. Thus is should have been quite clear from the outset that Respondent had registered a domain name consisting of a common, descriptive, dictionary word, before Complainant filed its application for the WEEDS mark.

112. Plaintiff nonetheless proceeded with its meritless UDRP complaint, further knowing that such action would substantial impair Defendant's receipt of registration and proxy services under the relevant registration contract with GoDaddy.

113. Defendant has incurred substantial harm as a consequence of Plaintiff's knowing and bad faith interference with Defendant's receipt of services under Defendant's contract with GoDaddy.

PRAYER FOR RELIEF

Wherefore, Defendant prays that this Court enter judgment in its favor and against Plaintiff and grant relief to Defendant as follows:

1. That this Court dismiss Plaintiff's Complaint;
2. That this Court cancel Plaintiff's U.S. Trademark Reg. No. 3308883;

3. That this Court award Defendant its costs and fees under 15 U.S.C. § 1114(2)(D)(iv).

4. That this Court award Defendant statutory damages in the amount of \$100,000 under 15 U.S.C. § 1117(D).

5. That this Court award such other relief to Defendant as the Court finds to be just.

Respectfully submitted,

Dated: July 30, 2018

/s/ Stuart C. Gaul, Jr.
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WIPO
WORLD INTELLECTUAL PROPERTY ORGANIZATION

WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Weeds, Inc. v. Registration Private, Domains By Proxy, LLC / Innovation HQ, Inc.

Case No. D2017-1517

1. The Parties

Complainant is Weeds, Inc. of Aston, Pennsylvania, United States of America (“United States”), represented by Technology & Entrepreneurial Ventures Law Group, PC, United States.

Respondent is Registration Private, Domains By Proxy, LLC of Scottsdale, Arizona, United States / Innovation HQ, Inc. of St Johns, Antigua and Barbuda, represented by Muscovitch Law P.C., Canada.

2. The Domain Name and Registrar

The disputed domain name <weeds.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 3, 2017. On August 4, 2017, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 7, 2017, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on August 9, 2017 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on August 18, 2017. Complainant filed a second amended Complaint on September 6, 2017.

The Center verified that the Complaint together with the amended Complaints satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint and amended Complaints, and the proceedings commenced on September 20, 2017. In accordance with the Rules, paragraph 5, the due date for Response was October 10, 2017. On September 27, 2017, Respondent requested the automatic four calendar day extension for response under paragraph 5(b) of the Rules. The Center notified the Parties that the new due date for Response was October 14, 2017. The Response was filed with the Center on October 13, 2017.

EXHIBIT A

The Center appointed Roberto Bianchi, W. Scott Blackmer and Adam Taylor as panelists in this matter on November 9, 2017. The Panel finds that it was properly constituted. Each member of the Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

Complainant Weeds, Inc. is a Pennsylvania, United States, corporation, incorporated on September 28, 1966. The company specializes in industrial and commercial weed control. It mostly operates in the mid-Atlantic and mid-Western states of the United States.

Complainant owns a United States trademark registration for WEEDS, Reg. No. 3,308,883, Reg. Date October 9, 2007, filed on September 19, 2005, covering vegetative and weed control services in International Class 44, and claiming August 3, 2007 as date of first use and first use in commerce.

Complainant also owns a United States trademark registration for W WEEDS INC., Reg. No. 2,819,572, Reg. Date March 2, 2004, filed on May 1, 2002, covering weed control services in International Class 44, and stating December 21, 2000 as date of first use / first use in commerce. There is a disclaimer stating, "No claim is made to the exclusive right to use "weeds" and "Inc." apart from the mark as shown."

Respondent is in the business of investing in generic and descriptive domain names for resale and for development as website businesses.

According to the Whois data provided by the Registrant, the record for the disputed domain name was created on August 8, 1998. According to a printout from the corresponding Whois database as reported by Domain Tools, Respondent registered the disputed domain name in 2001 or on November 12, 2004 at the latest.

Presently, the initial page of the website at the disputed domain name, entitled "Weeds.com" displays the following related links: "Container Gardening", "Fine Gardening", "Flora", "Gardening", "Green Plants", "Herb Gardening", "Home Gardening", "Horticulture", "Horticulture Magazines" and "House Plants". The webpage also includes a link with a legend stating, "Click here to buy Weeds.com for your website name!"

5. Parties' Contentions

A. Complainant

Complainant contends as follows:

The disputed domain name is identical to the WEEDS trademark mark in which Complainant has rights. Complainant has been using the mark WEEDS at common law since September 28, 1966, and owns United States trademark Reg. No. 3,308,883 for WEEDS, declared incontestable, duly renewed and valid subsisting (Annexes 11, 12 and 13).

Respondent has no rights or legitimate interests in respect of the disputed domain name. Respondent is acting including, but not limited to, in a manner that violates not only the UDRP, but also the United States Anticybersquatting Consumer Protection Act ("ACPA"), 15 U.S.C. § 1125(d).¹

Respondent is offering the disputed domain name for sale (See Annexes 4–6), and without any *bona fide* use (See Annexes 7–9). The disputed domain name has been acquired for no other purpose but unlawful brokering, sale and/or auction, for exorbitant prices, in an extortive manner. Moreover, the uses and indexing are

commonly used by United States residents, but Respondent uses a proxy registrant outside of the United States, with additional extra payment made for secrecy and anonymity, concealing the true identity of the substantive registrant and beneficiary.

At no time whatsoever, including neither at the time of initial registration, nor at any time of additional registration by renewal, has Respondent: (i) used or demonstrably prepared to use, the disputed domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; (ii) ever has been commonly known by the disputed domain name, nor acquired trademark or service mark rights; or (iii) made a legitimate commercial, noncommercial or fair use of the disputed domain name, but only intending for illegal commercial profit, gain and to misleadingly divert consumers or to tarnish the trade mark or service mark at issue as a mechanism to extort such profit and gain from the owner of the validly subsisting US Trademark Registration who clearly and incontestably has a legitimate interest in the disputed domain name.

The disputed domain name was registered in bad faith and is continuing to be used in bad faith. Complainant acquired common law trademark rights in the United States in the year 1966 and has been using the WEEDS brand continuously since 1966, for more than 50 years in intrastate and interstate commerce, acquiring common law rights thereby, and has used the brand in multiple different states within the United States. (See Annex 14–15.) Respondent recently registered the disputed domain name after Complainant acquired common law trademark rights, and after the date of Complainant's United States trademark registration. (See Annexes 1–3, Annex 11.)

Respondent is tarnishing Complainant's brand and incontestable US Trademark Registration. Respondent did not acquire, and did not register by renewal, the disputed domain name with any *bona fide* intention of commercial usage, has expressly offered the disputed domain name for sale at an exorbitant price, and simply registered the disputed domain name for the purpose of extracting a profit payment from Complainant in gross without any appurtenant commercial value, which is not permissible under the law of trademarks.

Respondent registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant who is the owner of the trademark or service mark, or to a competitor of Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name.

Respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name. Respondent has registered the disputed domain name, primarily for the purpose of disrupting the business of a competitor within the context of the domain name usage and acquisition, by not holding the domain name silently for use or while developing a commercial enterprise with relevant trademark rights, but re-directing visitors to other sites. By using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to another website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

Lastly, Respondent clearly registered and has used the disputed domain name in bad faith and with the intent of making commercial gain by unlawful brokering, sale and/or auction, for exorbitant prices, in an extortive manner, and clearly evidenced by "for sale" in gross and not appurtenant to any substantive enterprise. (See Annexes 4 – 9.)

B. Respondent

Respondent contends the following:

Complainant relies on its USPTO registered trademark, Registration No. 3,308,883, for WEEDS in connection with “vegetative and weed control services”, registered October 9, 2007, with a claimed date of first use August 3, 2007. Complainant did not mention its other USPTO registered trademark, Registration No. 2,819,572, for W WEEDS INC. & Design, registered March 2, 2004, which featured a disclaimer as follows: “No claim is made to the exclusive right to use “weeds” and “Inc.” apart from the mark as shown.” Thus Complainant disclaimed the term “weeds”. Complainant however, also claims to have “been using “WEEDS” at common law since September 28, 1996, more than 50 years ago” (See Complaint at page 6, paragraph 12). First, it is obvious that 1996 is not quite “50 years ago”, although in fairness sometimes things feel much longer than they actually are. Secondly, however, Complainant’s allegation of common law rights predating its trademark registration is curious, considering by its own express admission to the USPTO, Complainant first used WEEDS on August 3, 2007. Accordingly, either Complainant breached its certification to the Panel in this proceeding or it breached its certification to the USPTO. In any event, Complainant has not provided an iota of evidence to support its claim of common law trademark rights, and as such can only rely upon its aforementioned registered trademark rights.

Respondent acknowledges that Complainant’s registered trademark for WEEDS is identical to the disputed domain name as understood by the UDRP, and as such Complainant meets the first part of the three-part UDRP test.

As to rights or legitimate interests in respect of the disputed domain name, although Complainant curiously failed to even mention that the word “weeds” is an extraordinarily common and well-known dictionary word, this fact is indisputable. It has been long-held in UDRP disputes, that where a domain name is a ‘generic’ dictionary word, the first person to register it in good faith is entitled to the domain name and this is considered a “legitimate interest”.

Complainant’s main “point” that Respondent has no rights or legitimate interests in the disputed domain name appears to be that the disputed domain name was “acquired for no other purpose but unlawful brokering, sale and/or auction, for exorbitant prices, in an extortive manner” (See Complaint at page 7, paragraph B(ii)). It has long been held that speculating in and trading in generic or descriptive domain names such as the disputed domain name, can indeed constitute a legitimate interest under the Policy (See *Havanna S.A. v. Brendhan Hight, Mdnh Inc.*, [WIPO Case No. D2010-1652](#), and *Allocation Network GmbH v. Steve Gregory*, [WIPO Case No. D2000-0016](#), “such a practice may constitute *use of the domain* name in connection with a *bona fide* offering of goods or services (*i.e.* the sale of the domain name itself”). If a respondent’s interest in the dictionary word domain name is unrelated to Complainant’s trademark, a legitimate interest may be found (See *Kis v. Anything.com Ltd.*, [WIPO Case No. D2000-0770](#)). As stated by the majority of the panel in *HP Hood LLC v. hood.com*, NAF Claim No. 0313566, “an established domain name resale enterprise that restricts its portfolio in a good faith effort to avoid misleading the public qualifies has a legitimate interest and a defense under Section 4(c)”.

When a domain name is descriptive, and is being used by a respondent as a descriptor of the site’s intended content or theme, a complainant will have failed to show a lack of rights or legitimate interests in a disputed domain name (See *Advanced Drivers Educ. Prods. & Training, Inc. v. MDNH, Inc.*, NAF Claim No. 0567039). As clearly shown in Annex “T”, *supra*, Respondent, prior to notice of any dispute, has used the disputed domain name for informative articles related to the dictionary meaning of weeds. See *Ministre des Relations internationales, de la Francophonie et du Commerce extérieur (Minister of International Relations, La Francophonie and External Trade)*, acting in this proceeding for and on behalf of the Government of Québec v. *Anything.com, Ltd.*, [WIPO Case No. D2013-2181](#) (the use of a descriptive term for a corresponding informational website is a legitimate interest). Respondent has also used the disputed domain name for advertising related to same. Pursuant to the [WIPO Overview of WIPO Panel Views on Selected UDRP](#)

[Questions](#), Third Edition (“WIPO Overview 3.0”), [section 2.6](#), “Panels have generally recognized that use of a domain name to post parking and landing pages or PPC links may be permissible in some circumstances”, particularly where “the PPC links genuinely relate to the generic meaning of the domain name at issue”.

The general ‘for sale notice’ that Complainant complains of is not evidence of a lack of rights or legitimate interest whatsoever – in fact it is evidence of the opposite. As held in *Havanna S.A. v. Brendhan*

Hight, Mdnh Inc., [WIPO Case No. D2010-1652](#), selling domain names with commercial value can itself be a *bona fide* offering of goods or services, and a “general offer” to sell a generic domain name is not evidence of bad faith, “absent any specific intent derived from exploitation of the goodwill associated with an incidental trademark”.

Complainant complains that Respondent’s use of a privacy service somehow demonstrates a lack of rights or legitimate interests, with no explanation at all. As held by the unanimous panel in *Mediaset S.p.A. v.*

Didier Madiba, Fenicius LLC, [WIPO Case No. D2011-1954](#), the use of privacy services in general is not objectionable. Respondent never hindered legal proceedings, and Respondent’s registration was openly registered for at least 12 years until July 2, 2015, as shown in Response Annex V. It was cutting down on spam that led to the use of a privacy service, not any intention of hindering legal proceedings.

Lastly, upon registration of the disputed domain name, the only person who had any rights or legitimate interests in the disputed domain name was Respondent since Complainant had no trademark rights at that time.

As to bad faith, Complainant accuses Respondent of having “recently registered the Domain Name after Complainant acquired common law trademark rights and federal trademark rights and registration” (See Complaint at page 8, paragraph C(ii)). This allegation is false. Complainant has not established any common law rights predating its 2007 trademark and its claimed 2007 date of first use. Complainant’s Annex 14 is merely a certificate of incorporation and provides no basis for finding common law trademark rights. In any event, Complainant has already admitted that it only started using its mark in 2007 as per its trademark registration. Moreover, the single current screenshot of its website that Complainant provides in its Annex 15 does nothing to demonstrate any basis for common law trademark rights that pre-date its trademark registration. Accordingly, Respondent’s registration of the disputed domain name in 2001 or 2004 at the latest pre-dated Complainant’s trademark rights.

It is well-established that in general, a finding of bad faith registration cannot be made with respect to a trademark that did not exist at the time of registration of the disputed domain name (See [WIPO Overview 3.0, section 3.8.1](#)). UDRP panels routinely determine that a domain name could not have been registered in bad faith when the registration pre-dates a trademark right (See *Telecom Italia S.p.A. v. NetGears LLC*, NAF Claim No. 0944807 (finding Respondent could not have registered or used the disputed domain name in bad faith where Respondent registered the disputed domain name before Complainant began using the mark)).

Respondent submits that since the disputed domain name was registered in 2001 or 2004 at the very latest and years before Complainant even commenced use of its mark in 2007, there can be no finding of registration in bad faith, and the Complaint can be dismissed on that basis alone.

Moreover, absent proof that a generic domain name was registered for the purpose of profiting from a complainant’s trademark rights, there can be no finding of bad faith registration and use. See *Ultrafem, Inc. v. Warren Royal*, NAF Claim No. 0097682).

Complainant also claims, without any explanation or proof whatsoever, that Respondent is “tarnishing” its brand. Indeed, it is inexplicable how this could even be so considering that Complainant has no monopoly over the common term, “weeds”. It is important to bear in mind the limited scope of the ICANN UDRP. The UDRP is not intended to serve as a means of broadly enforcing trademark rights, nor is it intended to address claims of “tarnishment” or “dilution” (See, e.g., Second Staff Report on Implementation Documents for the UDRP and also *Intel Corporation v. Intelsitio Mexico, Jesús Guerrero Jiménez*, [WIPO Case No. D2012-0718](#)).

Complainant also alleges that Respondent “simply registered the domain name for the purpose of extracting a profit payment from Complainant in gross without any appurtenant commercial value which is not permissible under the law of trademarks” (See Complaint at page 8, paragraph C(iv)). As held in *Havanna S.A. v. Brendhan Hight, Mdnh Inc.* [WIPO Case No. D2010-1652](#), selling domain names with commercial value can itself be a *bona fide* offering of goods or services, and a “general offer” to sell a generic domain name is not evidence of bad faith, “absent any specific intent derived from exploitation of the goodwill associated with an incidental trademark”.

At no time did Respondent solicit the sale from Complainant; it was the other way round — Respondent, via a domain name broker, responded to an offer to purchase initiated by Complainant. This, however, was never disclosed by Complainant. As shown in Response Annex W, on February 13, 2005, the Vice-President of Complainant, with an email address of [xx]@weedsinc.com, made an inquiry regarding the purchase of the disputed domain name. He was advised of the purchase price of USD 294,118, and responded that he was not interested in the disputed domain name at that price. He made no reference to any purported trademark rights or claim, and apparently just wanted to purchase the disputed domain name.

Responding to an offer to purchase is not considered bad faith (See *Murad, Inc. v. Stacy Brock*, NAF

Claim No. 1430865). Furthermore, an offer to sell a domain name that a party otherwise has rights to, is not bad faith; rather, it is nothing more than a legitimate effort to sell property properly owned by the party (See *Personally Cool v. Name Administration*, NAF Claim No. 1474325). If a registrant has a legitimate interest in a domain name and did not register it in bad faith, as in this case, the registrant is entitled to offer its business asset for sale at market price and this is not bad faith (See *Etam, plc v. Alberta Hot Rods*, [WIPO Case No. D2000-1654](#)). The price quoted was entirely in line with market prices for a descriptive word domain name, and no evidence has been offered to the contrary. As can be readily seen from NameBio and DNJournal, there is an active secondary market for such domain names containing generic terms (See Annex “Y”). As the lawful registrant, Respondent has the right to sell the domain name for whatever price it deems appropriate regardless of the value that Complainant or an appraiser may ascribe to the domain name (See *Personally Cool, supra*).

Complainant makes an obtuse reference at Page 8, Paragraph C(iv)(a) and (v) of the Complaint to ‘renewal’ of the Domain Name, and makes a similar reference, without explanation at Page 7, Paragraph B(v). It is well established that renewal of a domain name by the same registrant does not amount to a new registration for the purposes of the Policy (See [WIPO Overview 3.0, section 3.9](#)).

Aside from the fact that Complainant had no trademark rights when the disputed domain name was registered (so any search *would not* have revealed them), it is well-established that Respondent was under no obligation to search the records of foreign trademark offices, and that foreign trademark registrations do not put domestic domain name registrants on constructive notice of foreign trademarks (See for example, *uwe GmbH v. Telepathy, Inc.*, [WIPO Case No. D2007-0261](#)).

Even if Respondent had knowledge of Complainant, which is denied, that would not have prevented Respondent from registering the domain name in good faith since the domain name corresponded to such a common term, without any monopoly or fame held by Complainant. In fact, in Complainant’s own state of

Pennsylvania, there are numerous 'weeds' businesses, including Weed's Inn, Weeds & Seeds Inc., Weed's Corners Holding Company Inc., Weeds Flower Shop, and Weeds Studio, to name a few (See Annex "Z"; Pennsylvania Secretary of State Search results).

Given the abundant evidence of common descriptive usage of "weeds" and in the absence of any evidence of targeting Complainant or its mark whatsoever, there is no evidentiary basis for concluding that Respondent registered the disputed domain name in bad faith (See *Nationwide Mutual Insurance Company v. Tim Parker*, [WIPO Case No. D2014-0655](#) (where a respondent registers a domain name consisting of "dictionary" terms because Respondent has a good faith belief that the domain name's value derives from its generic or descriptive qualities, the use of the domain name consistent with such good faith belief may establish a legitimate interest)).

Lastly, Complainant has not even made any express and specific allegation of bad faith use, other than that the oblique allegation that the disputed domain name was being offered for sale to the general public. Complainant did not even allege that there is anything wrong with Respondent's use of the disputed domain name for contextual advertising or its prior use for articles and information about weeds. Accordingly, there is no real allegation to be rebutted in this regard, but for the sake of completeness, the appropriateness of pay-per-click ("PPC") use of a generic domain name was discussed at length in *McMullen Argus Publishing Inc. v. Moniker Privacy Services/Jay Bean, MDNH, Inc.*, [WIPO Case No. D2007-0676](#) and is confirmed in the [WIPO Overview 3.0, section 2.9](#).

That is precisely what has occurred here. Even examining Complainant's own evidence (*i.e.* the screenshot of weeds.com at Complainant's Annex 7), it is obvious that all the links are related to gardening and plants, and not even to weed removal, although even that would be fine, since Respondent was not using "weeds" as a trademark, but rather as a descriptor. Respondent was using the domain name not in the trademark sense, but in the descriptive sense, and was entitled to do so (See; *Sweeps Vacuum & Repair Center, Inc. v. Nett Corp.*, [WIPO Case No. D2001-0031](#) (<sweeps.com>). As held in *Harvard Lampoon, Inc. v. Reflex Publishing Inc.*, [WIPO Case No. D2011-0716](#) (<lampoon.com>), "the Policy was not intended to permit a party who elects to register or use a common term as a trademark to bar others from using the common term in a domain name, unless it is clear that the use involved is seeking to capitalize on the goodwill created by the trademark owner" (and also see *N2COM v. Whois Privacy Services / Domain Admin, Xedoc Holding SA*, [WIPO Case No. D2017-1220](#)).

Reverse Domain Name Hijacking. Initiating domain name dispute resolution proceedings necessarily involves putting the parties to a considerable expenditure of time and in many cases cost and the Policy must not be used unless Complainant has a reasonable and credible belief it is entitled to succeed. In particular, proceedings must not be commenced in a brash and totally unjustifiable attempt to pressure a domain name owner into releasing a legitimately held domain name that considerably pre-dates any trademark rights held by Complainant (See *Proto Software, Inc. v. Vertical Axis, Inc/PROTO.COM*, [WIPO Case No. D2006-0905](#)).

Allegations of reverse domain name hijacking have been upheld in circumstances where a respondent's use of a domain name could not, under any fair interpretation of the facts, have constituted bad faith, and where a reasonable investigation would have revealed the weaknesses in any potential complaint under the Policy (See *Rohl, LLC v. ROHL SA*, [WIPO Case No. D2006-0645](#)). Where a complainant should have known its case was fatally weak and was represented by counsel and filed no evidence beyond a mere assertion, it may be concluded that the arguments and evidence advanced by Complainant fall well short of those required to establish a colorable right, and RDNH may be found (See *Zenni Optical, LLC. v. DNS Administrator / Cykon Technology Limited*, [WIPO Case No. D2009-1594](#)). Where a complaint was brought in knowing disregard of the likelihood that Respondent possessed legitimate interests because a domain name is generic, RDNH may be found (See *Dan Zuckerman v. Vincent Peeris*, [WIPO Case No. DBIZ2002-00245](#) (<shoes.biz>)). Where a

complainant is represented by intellectual property counsel who even on a rudimentary examination of the Policy and its application in this area should have appreciated that the complaint could not succeed since Respondent's domain name had been registered prior to any trade-mark rights being acquired, RDNH may be found (See for example, *Software, Inc. v. Vertical Axis, supra*). It is also noteworthy that the Complaint did not reference or rely upon a single case, demonstrating a likely willful blindness to the easily available case law which would have been immensely helpful in appreciating that there was no merit to Complainant's contentions.

This is a classic "Plan B" case, as described by *TOBAM v. M. Thestrup / Best Identity*, [WIPO Case No. D2016-1990](#), i.e. "using the Policy after failing in the marketplace to acquire the disputed domain name".

Complainant wanted to buy the disputed domain name and it was only after that didn't work, that it concocted this Complaint and proceeded headlong without conducting any basic due diligence.

6. Discussion and Findings

A. Identical or Confusingly Similar

With a printout from the USPTO's trademark database for Reg. No. 3,308,883, Complainant has shown to the satisfaction of the Panel that for purposes of Policy paragraph 4(a)(i) it has rights in the WEEDS service mark.

Complainant contends and Respondent acknowledges that Complainant's registered trademark for WEEDS is identical to the disputed domain name. The Panel agrees that the disputed domain name is identical to Complainant's registered mark WEEDS. The first element of the Policy is thus met.

B. Rights or Legitimate Interests

Given the Panel finding on bad faith below, the Panel need not consider the issue of rights or legitimate interests in the disputed domain name. See *Tufco Technologies, Inc., Tufco LP, Hamco Manufacturing and Distributing LLC v. Hamco Alabama, LLC*, [WIPO Case No. D2011-1451](#) ("The [p]anel declines to rule on this element of the Policy, since the [p]anel finds (below) that the [d]omain [n]ame was not registered and is not being used in bad faith").

C. Registered and Used in Bad Faith

The Panel notes there is a consensus among UDRP panels that for a domain name to be registered in bad faith, the registrant must have known of, and targeted, the trademark in issue at the time of the domain name registration. In the present case, Respondent denies that it was aware of Complainant's WEEDS mark when the disputed domain name was registered. In the opinion of the Panel, the record on the case file supports this claim of Respondent for various reasons.

First, it appears that Respondent registered the disputed domain name on November 12, 2004 at the latest, before Complainant filed, on September 19, 2005, its application for its WEEDS mark Reg. No. 3,308,883, which registered on October 9, 2007. The Panel notes that absent special circumstances or scenarios, this timeline does not suggest registration in bad faith. See [WIPO Overview 3.0, section 3.8](#), "Can bad faith be found where a domain name was registered before the complainant acquired trademark rights? 3.8.1 [...] Subject to scenarios described in 3.8.2 below, where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent. (This would not however impact a panel's assessment of a complainant's standing under the first UDRP element.)".

In this regard, the Panel notes that – as mentioned by Respondent – Complainant also owns a United States trademark registration for W WEEDS INC., Reg. No. 2,819,572, Reg. Date March 2, 2004, filed on May 1, 2002, and claiming December 21, 2000 as date of first use / first use in commerce. In particular, the Panel also notes that in this mark the term “weeds” is disclaimed.

Second, Complainant contends that it has been using the mark WEEDS at common law since September 28, 1966, the date of incorporation of Complainant Weeds, Inc. However, Complainant fails to submit persuasive evidence that the term “weeds” had acquired secondary meaning at the time of the registration of the disputed domain name. Having in mind that “weed” is a descriptive, dictionary word,² such specific evidence is essential for a complainant invoking a common law mark. See [WIPO Overview 3.0, section 1.3](#) (“What does a complainant need to show to successfully assert unregistered or common law trademark rights? To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant’s goods and/or services. Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys. [...] Specific evidence supporting assertions of acquired distinctiveness should be included in the complaint; conclusory allegations of unregistered or common law rights, even if undisputed in the particular UDRP case, would not normally suffice to show secondary meaning. In cases involving unregistered or common law marks that are comprised solely of descriptive terms which are not inherently distinctive, there is a greater onus on the complainant to present evidence of acquired distinctiveness / secondary meaning.”)

As to the use of the disputed domain name, the Panel notes that presently, the homepage of the “www.weeds.com” website, entitled “Weeds.com”, displays the following related links: “Container Gardening”, “Fine Gardening”, “Flora”, “Gardening”, “Green Plants”, “Herb Gardening”, “Home Gardening”, “Horticulture”, “Horticulture Magazines” and “House Plants”. The webpage includes a link stating, “Click here to buy Weeds.com for your website name!” The disputed domain name is very much a generic word, and Respondent has a business of registering generic words and using them for PPC advertising portals. In the Panel’s view, it does not seem probable that the owners of a Caribbean company that purchases and sells generic domain names, and generates revenue from them through relevant pay-per-click advertising links, would be aware of a regional weed-control company and find their brand an appealing target for cybersquatting. Respondent denies such knowledge and intent, and the Panel does not see sufficient reason to disbelieve it, on the present record.

Complainant also contends that the disputed domain name has been acquired for unlawful brokering, sale and/or auction, for exorbitant prices, in an extortive manner, and primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant or to a competitor of Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name. Complainant submits as evidence of Respondent’s bad faith purpose a printout of the website at the disputed domain name showing that the domain name is being offered for sale at USD 250,000.

To this, Respondent replies that selling domain names with commercial value can itself be a *bona fide* offering of goods or services, and a “general offer” to sell a generic domain name is not evidence of bad faith, absent any specific intent derived from exploitation of the goodwill associated with an incidental trademark. Respondent adds that it did not solicit the sale from Complainant, and that it was Complainant’s Vice-President who made an inquiry regarding the purchase of the disputed domain name. Respondent further contends that it simply responded via a domain name broker to this offer initiated by Complainant, a fact that Complainant never

disclosed. Complainant's Vice-President was advised of the purchase price of USD 294,118, and responded that he was not interested in the purchase at that price, making no reference to any purported trademark rights or claim.

The Panel concludes that Complainant failed to prove that Respondent has registered the disputed domain name primarily for the purpose to sell it to Complainant or to a competitor of Complainant, which indicates that Policy paragraph 4(b)(i) is not applicable. See *BERNINA International AG v. Domain Administrator, Name Administration Inc. (BVI)*, [WIPO Case No. D2016-1811](#) (“[T]here is no evidence that the Respondent was purposefully trying to sell the disputed domain name to the Complainant to take advantage of the Complainant's trade mark rights. Nor was this offer, made in response to a general, anonymous inquiry, evidence that the Respondent's acquisition of the disputed domain name, some nine years earlier, was for the purpose of sale to the Complainant – which is a fact that the Complainant must establish if the Complainant wants to prove bad faith registration as to its trade mark rights under paragraph 4(b)(i) of the Policy.”)

The Panel believes that offering for sale a domain name registered for its value as a generic and descriptive term and without targeting a mark should not be considered an evidence of bad faith, in particular where the registrant used the domain name in its meaning as a generic / descriptive / dictionary word. *i.e.*, in a non-distinctive sense, as appears to have consistently done Respondent since the domain name registration in 2004. See [WIPO Overview 3.0, section 3.1.1](#) (“How does a complainant prove that a respondent has registered or acquired a domain name primarily to sell the domain name to the complainant (or its competitor) for valuable consideration in excess of the respondent's costs related to the domain name? [...] “The use to which the domain name is put, particularly the absence of circumstances indicating that the respondent's aim in registering the disputed domain name was to profit from or exploit the complainant's trademark, can inform a panel's assessment of the respondent's intent. Such circumstances notably include credible pre-complaint website content corresponding to a dictionary meaning of the term comprising the domain name, as opposed to targeting the trademark owner or its competitor.”) See also *Diltex, S.A. de C.V. v. Domain Administration, Web Development Group Ltd / Privacydotlink Customer 269486*, [WIPO Case No. D2015-0082](#) (“Respondent has conceded that it registered the disputed domain name because it might have a resale value greater than the cost of registration. Respondent has conceded that it is a “domainer”. Registering domain names for the purpose of resale is not bad faith under the Policy. In order to prove bad faith registration and use, Complainant must demonstrate that Respondent knew or reasonably should have known of its trademark rights at the time Respondent registered the disputed domain name, and that Respondent nonetheless registered the disputed domain name to sell based on goodwill value associated with Complainant's trademark. Respondent is within its rights to register a generic or commonly descriptive term in expectation or hope that it will prove to have a value to a third party and may eventually be sold at a profit.”)

Complainant also contends that Respondent registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, that Respondent registered the disputed domain name primarily for the purpose of disrupting the business of a competitor, and that by using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to another website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location. The Panel notes that Complainant failed to submit any evidence whatsoever in support of such contentions, which are denied by Respondent.

In sum, the Panel concludes that Complainant failed to establish that the disputed domain name was registered and is being used in bad faith.

D. Reverse Domain Name Hijacking

The Panel notes that Complainant is represented by IP counsel. Thus it should have been quite clear from the outset that Respondent had registered a domain name consisting of a common, descriptive, dictionary word, before Complainant filed its application for the WEEDS mark.

In addition, it is well established that invoking a common law mark – as did Complainant – requires providing the Panel with concrete evidence of secondary meaning / acquired distinctiveness, which Complainant failed to submit.

Lastly, while Complainant contended that Respondent registered the disputed domain name primarily to sell it to Complainant, it made no mention of the fact that it was Complainant's Vice-President who had first contacted Respondent to make an inquiry about the purchase of the disputed domain name.

For these reasons, the Panel finds that the Complaint is an attempt at Reverse Domain Name Hijacking.

7. Decision

For the foregoing reasons, the Complaint is denied.

In addition, the Panel finds that the Complaint is an attempt at Reverse Domain Name Hijacking.

Roberto Bianchi
Presiding Panelist

W. Scott Blackmer
Panelist

Adam Taylor
Panelist
Date: November 23, 2017

¹In this regard, the Panel notes that the Complainant filed a federal action against Respondent in the United States District Court for the Western District of Pennsylvania on November 22, 2017, in which the Complainant alleged Respondent also violated the United States Lanham Act and in particular the ACPA.

²As a noun, “weed” means, *inter alia*, “a wild plant growing where it is not wanted and in competition with cultivated plants; any wild plant growing in salt or fresh water; Cannabis (informal); Tobacco (informal). As a verb, it means, “remove unwanted plants from (an area of ground)”. See English Oxford Living Dictionaries at “www.oxforddictionaries.com/definition/weed” (visited on November 16, 2017).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Answer was served upon the following via this Court's ECF system, on this 30th day of July, 2018:

Gregg R. Zegarelli, Esquire
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(Counsel for Weeds, Inc.)

/s/ Stuart C. Gaul, Jr.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WEEDS, INC.,

Plaintiff,

v.

INNOVATION HQ, INC.,

Defendant.

JURY TRIAL DEMANDED

CIVIL ACTION NUMBER:
2:17-cv-01533-MPK

COUNTERCLAIM DEFENDANT'S ANSWER
AND AFFIRMATIVE DEFENSES

ANSWER TO COUNTERCLAIM

67. It is admitted that the term “weed” can be used as a noun and a verb, insofar as when used grammatically as such and when not used as a trademark; otherwise denied. Regarding the verb usage averment, upon information and belief, the dictionary consulted by Counterclaim Defendant did not define the verb, “to weed”, as the “action of removing weeds”; the averment is denied. Regarding the noun averment, it is admitted that the word “weed” can be the common name for a weed, insofar as when used grammatically as such; otherwise denied. As to the averment regarding whether any term is “generic,” it is well-settled as a matter of law that the designation of “generic” is a term of art in trademark law and no response is required; however, to the extent that any response is required for this part of the averment, it is denied. Any and all other averments in paragraph 67 are denied.

68. It is admitted that the term “weeds” could be used grammatically in the third person in a sentence in a non-trademark/non-source identifier manner, such as the term “staples” in the third person, such as “John weeds” or “Jane staples.” By way of further answer, the answer set forth in

paragraph 67 is incorporated herein by this reference. Any and all other averments in paragraph 68 are denied.

69. The averments in Counterclaim Defendant's paragraph 69 are not facts as such, but are bald summary legal characterizations and conclusions of law depending upon applicable abstract contexts to which no response is required. To the extent that a response is required, the averments in paragraph 69 are denied.

70. It is admitted that, on or about 1 May 2002, Plaintiff filed U.S. Trademark Application No. 78/125,465, which was registered at U.S. Reg. No. 2,819,572 (the "**x572 U.S. Logo Registration**"). It is admitted that the x572 Logo Registration is for a logo mark rather than a word, and also contains the text "WEEDS INC."; otherwise denied. To any extent that the averment suggests that the x572 U.S. Logo Registration is the word registration grounding Plaintiff's Complaint, referenced at paragraph 1 of the Complaint, U.S. Reg. No. 3,308,883, (the "**x883 U.S. Word Registration**") , it is to the same extent denied. Any and all other averments in paragraph 70 are denied.

71. The averment references a document that speaks for itself and mischaracterizes the context of the application file. It is admitted that the x572 U.S. Logo Registration had a disclaimer, "No claim is made to the exclusive right to use "WEEDS" and "INC." *apart from the mark as shown.*" (emphasis added) . The application file for x572 U.S. Logo Registration speaks for itself and no response is required; to the extent that any response is required, any and all averments not otherwise expressly admitted in paragraph 71 are denied. By way of further response, the averments set forth in paragraph 70 hereof are incorporated herein by this reference.

72. The averment made in paragraph 72 regarding the x572 U.S. Logo Registration is denied, it being understood that Counterclaim Plaintiff is referencing the x572 U.S. Logo Registration and not the x883 U.S. Word Registration pleaded in paragraph 1 of Plaintiff's Complaint that does not have a disclaimer. Any and all averments not otherwise expressly admitted in paragraph 72 are denied.

73. The averments made in paragraph 73 regarding the x572 U.S. Logo Registration are denied.

74. The averments made in paragraph 74 regarding the x572 U.S. Logo Registration are admitted, understanding, by way of further answer, Plaintiff did not make any claim, in that particular application for a logo registration, to the terms apart from the logo mark as shown.

75. The averments made in paragraph 75 regarding the x572 U.S. Logo Registration are denied.

76. The averment made in paragraph 77 is denied.

77. Admitted.

78. The averments made in paragraph 78 are denied, except only the filing date is as set forth in paragraph 77.

79. The averments made in paragraph 79 are references to a record that speaks for itself and to which no response is required; to the extent that any response is required said averment is denied, except it is admitted that the Examining Attorney stated as a matter of record, “Although the examining attorney has refused registration, applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.”

80. Averment 80 misstates and mischaracterizes the communication which is in writing and speaks for itself; to the extent that a response is required the averments in paragraph 80 are denied. By way of further answer, Counterclaim Defendant attaches as Exhibit 1, being the actual communication, said exhibit reflecting the communication from Plaintiff in response to the Examining Attorney’s invitation for argument and evidence as aforesaid. By way of further answer, it is noted that the Examining Attorney is a licensed attorney, duty-bound to credify, to interpret and finally to judge the state of the law first-hand. The undersigned fairly restated its legal position of applicant’s distinction and applicable law, citing directly to supporting case law for the Examining Attorney’s first-hand review. The Examining Attorney was not bound to accept or to rely upon any argument; if anything, the Examining Attorney is trained to cross-verify and to scrutinize. As to evidence provided to the Examining Attorney, the undersigned forthrightly provided the official copy of the official case docket, which contained the officially-entered denominations and summaries for each docket entry, and providing the direct reference to the Examining Attorney regarding the averred *Weeds No More* case.

81. The averments of paragraph 81 are denied, and Counterclaim Defendant incorporates by this reference its response in paragraph 80.

82. The averments of paragraph 82 are denied, and Counterclaim Defendant incorporates by this reference its response in paragraph 80.

83. The averments of paragraph 83 are argumentative, legal conclusions, and a re-characterization of claims and case posture, to which no response is required. The case history, legal

conclusions and filings therein speaking for themselves, Counterclaim Plaintiff apparently seeking to litigate a case within a case. To the extent that a response is required, Plaintiff denies the averments of paragraph 83, and Counterclaim Defendant incorporates by this reference its response in paragraph 80.

84. The averments of paragraph 84 are denied, and Counterclaim Defendant incorporates by this reference its response in paragraph 83.

85. The averments of paragraph 85 are denied, and Counterclaim Defendant incorporates by this reference its response in paragraph 83.

86. The averments of paragraph 86 are denied, and Counterclaim Defendant incorporates by this reference its response in paragraph 83.

87. The averments of paragraph 87 are denied, and Counterclaim Defendant incorporates by this reference its response in paragraph 83.

88. The averments of paragraph 88 are argumentative, conjecture, speculation, legal conclusions, and a re-characterization of claims and external case posture, to which no response is required. The case history, legal conclusions and filings therein speaking for themselves, Counterclaim Plaintiff apparently seeking to litigate a case within a case. To the extent that a response is required, Plaintiff denies the averments of paragraph 88, and Counterclaim Defendant incorporates by this reference its response in paragraph 80.

89. The averments of paragraph 89 are denied, and Counterclaim Defendant incorporates by this reference its response in paragraph 88.

90. It is admitted only that the application claimed date of use that is “at least as early as” the date set forth in the application. Any and all other averments in paragraph 90 are denied.

91. The averments of paragraph 91 are denied, and Counterclaim Defendant incorporates by this reference its response in paragraph 88.

Count I - Cancellation

92. The averments of paragraphs 67 through 91 are hereby incorporated herein by this reference.

93. The averment contained in paragraph 93 is denied.

94. The averment contained in paragraph 94 is denied.

WHEREFORE, Counterclaim Defendant asserts that Counterclaim Plaintiff's Count I is without legal grounds or merit, and should be dismissed with attorneys' fees and costs awarded. Counterclaim Defendant re-asserts the prayer for relief set forth in its Complaint.

Count II - Reverse Domain Hi-Jacking

95. The averments of paragraphs 67 through 94 are hereby incorporated herein by this reference.

96. It is admitted only that ICANN exists and that a UDRP exists, but the averred characterization, legal conclusions, summary, applicability and/or relevance as averred are expressly denied. Any and all averments to the extent not expressly admitted in paragraph 96 are denied.

97. Counterclaim Defendant admits only that a UDRP claim was made; otherwise denied. Without limiting the generality of the foregoing denial:

- a. it is denied that the UDRP is a jurisdiction or agency of the United States of America protecting United States persons;
- b. it is denied that the UDRP is a process of the United States of America or a statute determined by the legislative process of the United States of America;
- c. it is denied that the UDRP applies United States of America laws;
- d. it is denied that the UDRP permits discovery;
- e. it is denied that the UDRP permits presentation of witnesses and cross-examination, being a documents-only process;
- f. it is denied that a determination of the UDRP is binding upon this Court;
- g. it is denied that the UDRP result provides standing or a claim for relief;
- h. it is denied that a decision of the UDRP is probative, material, relevant and not otherwise highly prejudicial to a determination of the merits in this case.

98. It is admitted that an international-member panel as averred was convened to resolve a UDRP claim based upon the UDRP. Any and all averments to the extent not expressly admitted in paragraph 98 are denied.

99. It is admitted that the specific claim made under the UDRP, and only under the UDRP, based upon the standards for the UDRP, not constrained to United States law, conducted on documents, and without a hearing, cross-examination or any discovery, did not grant the claim made

by Plaintiff. Any determination speaks for itself, in light of the process and scope by which that determination is made, and, accordingly, no response is required; to the extent that a response is required, the averments in paragraph 99 are denied. Any and all averments to the extent not expressly admitted in paragraph 99 are denied, and Counterclaim Defendant incorporates its answer in paragraph 97.

100. Counterclaim Defendant purports to restate a statement in the UDRP procedure that speaks for itself within its own scope and context, and is accordingly denied. To the extent that any response is required, the averment made in paragraph 100 is denied, except Counterclaim Defendant admits the existence in the world of the UDRP determination without admitting any effect thereby, legal or otherwise, pursuant to the case made herein. By way of further denial, Counterclaim Defendant incorporates its answer in paragraph 97.

101. The averments of paragraph 101 are denied, and Counterclaim Defendant incorporates by this reference its response in paragraph 100.

102. It is admitted that the UDRP process did not grant the relief requested; otherwise denied, and Counterclaim Defendant incorporates by this reference its response in paragraph 100.

103. Counterclaim Defendant incorporates by this reference its response in paragraph 102.

104. It is admitted that the UDRP does not provide for monetary damages. As to the averment of the referenced portion of a statute, its existence of the Lanham Act is admitted and speaks for itself which is a legal conclusion to which no response is required. Except as otherwise expressly admitted, the averments in paragraph 104 are denied.

105. The averment made in paragraph 105 is denied, except only that it upon information and belief, the UDRP has a process for a control of the domain name during dispute resolution. Any and all other averments, including the characterizations, in paragraph 105 are denied, and Counterclaim Defendant incorporates by this reference its response in paragraph 102.

106. Plaintiff denies the averments in paragraph 106, except that Plaintiff is without information to form a belief as to spam being the reason to conceal identity but also to conceal illegitimate activity, and admits only that Counterclaim Plaintiff chose to keep its identity concealed forcing Counterclaim Defendant to incur substantial costs. By way of further answer, Counterclaim Defendant incorporates by this reference its response in paragraph 102.

107. Plaintiff admits that contact information was concealed until the UDRP proceeding or an order of court. Any and all other averments in paragraph 107 are denied. By way of further answer, Counterclaim Defendant incorporates by this reference its response in paragraph 102.

108. The averments in paragraph 108 are denied.

WHEREFORE, Counterclaim Defendant asserts that Counterclaim Plaintiff's Count II is without legal grounds or merit, and should be dismissed with attorneys' fees and costs awarded. Counterclaim Defendant re-asserts the prayer for relief set forth in its Complaint.

Count III - Tortious Interference

109. The allegations of Paragraphs 67 through 108 of these Counterclaims are incorporated by reference herein.

110. The averments contained in paragraph 110 are denied, except that Plaintiff admits that the UDRP was applicable to the UDRP proceeding and that the Counterclaim Plaintiff has a relationship with GoDaddy for domain hosting and privacy services. Any and all other averments, including the characterizations, in paragraph 105 are denied, and Counterclaim Defendant incorporates by this reference its response in paragraph 102.

111. The averments of paragraph 111 are denied, and Counterclaim Defendant incorporates by this reference its response in paragraph 102.

112. The averments contained in paragraph 112 are denied.

113. The averments contained in paragraph 113 are denied.

WHEREFORE, Counterclaim Defendant asserts that Counterclaim Plaintiff's Count III is without legal grounds or merit, and should be dismissed with attorneys' fees and costs awarded. Counterclaim Defendant re-asserts the prayer for relief set forth in its Complaint.

AFFIRMATIVE DEFENSES

114. Counterclaim Plaintiff fails to state a claim or claims upon which relief may be granted.

115. Counterclaim Plaintiff lacks standing.
116. Counterclaim Plaintiff's claims are barred by the doctrine of unclean hands.
117. Counterclaim Plaintiff's claims are barred by the doctrine of waiver.
118. Counterclaim Plaintiff's claims are barred by the doctrines of estoppel.
119. Counterclaim Plaintiff's claims are barred by the doctrines of privilege, justification and/or excuse.
120. Counterclaim Plaintiff's claims are barred by non-use.
121. Counterclaim Plaintiff's claims are barred by the doctrine of abandonment.
122. Counterclaim Plaintiff's claims are barred by in-gross offer of sale without appurtenant legitimate business interests.
123. Counterclaim Plaintiff's claims are barred by the incontestability of Counterclaimed Defendant's trademark registration.
124. Counterclaim Plaintiff's claims are barred because the Counterclaim Defendant's registered trademark is the legal equivalent of the domain name.
125. Counterclaim Plaintiff's claims are barred by the doctrine of presumptive anticipatory bad faith.
126. Counterclaim Plaintiff's claims are barred by the doctrine of bad faith by anticipatory interference.
127. Counterclaim Plaintiff's claims are barred because Counterclaim Defendant is the senior user of any mark relevant hereto and Counterclaim Defendant has priority of use.
128. Counterclaim Plaintiff's claims are barred by the doctrine of speculative damages, and failure of damage or legally cognizable damage.
129. Counterclaim Plaintiff's claims are barred because of failure of any trademark usage of the mark, or legally cognizable use granting trademark rights.
130. Counterclaim Plaintiff's claims are barred because Counterclaim Plaintiff has not utilized the mark at issue as a cognizable trademark, or source-origin identifier.
131. Counterclaim Plaintiff's claims are barred because Counterclaim Plaintiff did not oppose Counterclaim Defendant's registrations when available to do so.
132. Counterclaim Plaintiff's claims are barred because the United States Patent and Trademark Office cannot be "defrauded" by legal arguments, not having any justifiable reliance upon legal questions for which the examining agent is a licensed attorney, and more particularly when

forthrightly presented with the source evidence official docket of judicial proceedings that included the official denominations of the entries referenced, and a full judicial record available and of which to take notice.

133. Counterclaim Plaintiff's claims are barred because it acquired the domain name for resale.

134. Counterclaim Plaintiff's claims are barred by bad faith registration and renewal of registration.

135. Counterclaim Plaintiff's claims are barred because it renewed and continues to renew the domain name solely for resale.

136. Counterclaim Plaintiff's claims are barred because it is the in business of warehousing domain names for resale.

137. Counterclaim Plaintiff's claims are barred by bad faith.

138. Counterclaim Plaintiff's claims are barred by lack of legitimate interest.

139. Counterclaim Plaintiff's claims are barred because the domain name at issue was acquired for warehousing the trademarked term for resale, which is not a legitimate or bona fide interest as contemplated by law.

140. Counterclaim Plaintiff's claims are barred because the Defendant is in the business of warehousing domains and trademarked terms for resale, which is not a legitimate or a bona fide interest as contemplated by law.

Dated: August 17, 2018

/s/Gregg Zegarelli/

Gregg R. Zegarelli, Esq.
Counsel for Plaintiff
PA I.D. #52717

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CERTIFICATE OF SERVICE

Plaintiff certifies that Plaintiff believes that all parties have been or will be duly served by the Western District Court CM/ECF electronic filing system.

August 17, 2018

Respectfully submitted,

/Gregg R. Zegarelli/

Gregg R. Zegarelli, Esq.
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Response to Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	78715892
LAW OFFICE ASSIGNED	LAW OFFICE 117
MARK SECTION (no change)	
ARGUMENT(S)	
<p>Applicant understands the point raised by the Examining Attorney regarding descriptiveness. This issue the subject-matter in a trademark infringement action by the Applicant, as Plaintiff, in the United States District Court for the Western District of Pennsylvania, <u>Weeds v. Weeds No More</u>, Case No. 02-0288. The documents are public record and the undersigned supplies the docket.</p> <p>In that case, Applicant sued defendant for trademark infringement. Defendant filed a motion to dismiss, and Plaintiff's position was that its mark is suggestive. The Examining Attorney can review the docket in the early stages regarding the plethora of motions by Defendants relating to motions to dismiss.</p> <p>Initially, the Western District initially ruled in favor of Defendant. See Docket #21. Applicant timely objected arguing the mark was suggestive and the case should not be dismissed. See Docket #22. Ultimately, the Western District agreed with Applicant and Defendants' 12(b)(6) motion was denied. See Docket #36.</p> <p>The Court was ultimately persuaded by the fact that the mark registrations for "Staples" Reg. 1,459,182 and "Spoons" 1,199,137 were made part of the more abstract <u>Canfield Co. v. Honickman</u>, 808 F.2d 291, 306 (3rd Cir. 1986) argument for the first time in the objection to the ruling (#22). These registrations were used to apply the Canfield formula and demonstrate the point that the Applicant does not sell weeds and it is not a descriptive of the service.</p> <p>Applying the Canfield formula, the term "weeds" for a service relating to vegetative control services is suggestive of that service. It is not the name of the service, nor does it describe the service. It does suggest the service in the same manner as "staples" (a noun) suggests a retail service that sells (verb) staples, "spoons" (noun) suggests a restaurant service that sells (verb) food, and "weeds" (noun) suggests a service that sells (verb) vegetative control services. And, to further the point, "staples" actually sells staples, "spoons" does not sell spoons and Applicant does not sell weeds. This is not an example of descriptiveness, such as in the "superope" line of cases, where the mark "superope" for ropes is descriptive of the actual thing sold, great--that is, super--ropes.</p> <p>Accordingly, Applicant respectfully requests that the Examining Attorney approve the application for publication.</p>	
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_661349726-113705755_Weeds_Docket_History.pdf
CONVERTED PDF FILE(S) (32 pages)	\\TICRS\EXPORT3\IMAGEOUT3\787\158\78715892\xml1\RO A0002.JPG
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DESCRIPTION OF EVIDENCE FILE	Docket of United States Western District Court in Weeds v. Weeds No More
SIGNATURE SECTION	
RESPONSE SIGNATURE	/Gregg Zegarelli/
SIGNATORY'S NAME	Gregg Zegarelli
SIGNATORY'S POSITION	Attorney
DATE SIGNED	09/27/2006
AUTHORIZED SIGNATORY	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Sep 27 12:02:32 EDT 2006
TEAS STAMP	USPTO/ROA-XX.XXX.XX.XX-20 060927120232760011-787158 92-34069aeadf98397b694a10 fccf7e7a6c7-N/A-N/A-20060 927113705755496

Response to Office Action

To the Commissioner for Trademarks:

Application serial no. **78715892** has been amended as follows:

Argument(s)

In response to the substantive refusal(s), please note the following:

Applicant understands the point raised by the Examining Attorney regarding descriptiveness. This issue the subject-matter in a trademark infringement action by the Applicant, as Plaintiff, in the United States District Court for the Western District of Pennsylvania, *Weeds v. Weeds No More*, Case No. 02-0288. The documents are public record and the undersigned supplies the docket.

In that case, Applicant sued defendant for trademark infringement. Defendant filed a motion to dismiss, and Plaintiff's position was that its mark is suggestive. The Examining Attorney can review the docket in the early stages regarding the plethora of motions by Defendants relating to motions to dismiss.

Initially, the Western District initially ruled in favor of Defendant. See Docket #21. Applicant timely objected arguing the mark was suggestive and the case should not be dismissed. See Docket #22. Ultimately, the Western District agreed with Applicant and Defendants' 12(b)(6) motion was denied. See Docket #36.

The Court was ultimately persuaded by the fact that the mark registrations for "Staples" Reg. 1,459,182 and "Spoons" 1,199,137 were made part of the more abstract *Canfield Co. v. Honickman*, 808 F.2d 291, 306 (3rd Cir. 1986) argument for the first time in the objection to the ruling (#22). These registrations were used to apply the Canfield formula and demonstrate the point that the Applicant does not sell weeds and it is not a descriptive of the service.

Applying the Canfield formula, the term "weeds" for a service relating to vegetative control services is suggestive of that service. It is not the name of the service, nor does it describe the service. It does suggest the service in the same manner as "staples" (a noun) suggests a retail service that sells (verb) staples, "spoons" (noun) suggests a restaurant service that sells (verb) food, and "weeds" (noun) suggests a service that sells (verb) vegetative control services. And, to further the point, "staples" actually sells staples, "spoons" does not sell spoons and Applicant does not sell weeds. This is not an example of descriptiveness, such as in the "superope" line of cases, where the mark "superope" for ropes is descriptive of the actual thing sold, great--that is, super--ropes.

Accordingly, Applicant respectfully requests that the Examining Attorney approve the application for publication.

Evidence

Evidence in the nature of Docket of United States Western District Court in *Weeds v. Weeds No More* has been attached.

Original PDF file:

[evi_661349726-113705755 . Weeds Docket History.pdf](#)

Converted PDF file(s) (32 pages)

[Evidence-1](#)

[Evidence-2](#)

[Evidence-3](#)

[Evidence-4](#)

[Evidence-5](#)

[Evidence-6](#)

[Evidence-7](#)

[Evidence-8](#)

[Evidence-9](#)

[Evidence-10](#)

[Evidence-11](#)

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[Evidence-29](#)
[Evidence-30](#)
[Evidence-31](#)
[Evidence-32](#)

Response Signature

Signature: /Gregg Zegarelli/ Date: 09/27/2006

Signatory's Name: Gregg Zegarelli

Signatory's Position: Attorney

Serial Number: 78715892

Internet Transmission Date: Wed Sep 27 12:02:32 EDT 2006

TEAS Stamp: USPTO/ROA-XX.XXX.XX.XX-20060927120232760

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CLOSED

U.S. District Court
Western District of Pennsylvania (Pittsburgh)
CIVIL DOCKET FOR CASE #: 2:02-cv-00288-DWA

WEEDS, INC. v. WEEDS NO MORE, INC., et al
Assigned to: Chief Judge Donetta W. Ambrose
Demand: \$0
Cause: 15:1121 Trademark Infringement

Date Filed: 02/04/2002
Jury Demand: Both
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Plaintiff

WEEDS, INC.

represented by Gregg R. Zegarelli
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V.

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Defendant

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Defendant

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ATTORNEY TO BE NOTICED

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Movant

WEST AMERICAN INSURANCE
COMPANY

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ATTORNEY TO BE NOTICED

Lucinda E. Davis
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/04/2002	1	COMPLAINT ; jury demand Filing Fee \$ 150.00 Receipt # 2205 (ksa) (Entered: 02/05/2002)
02/05/2002	2	ORDER REFERRING CASE to Mag. Judge Ila J. Sensenich (signed by Judge Donetta W. Ambrose on 2/5/02) CM all parties of record. (ksa) (Entered: 02/05/2002)

02/13/2002	3	DISCLOSURE statement by WEEDS, INC. (ksa) (Entered: 02/14/2002)
02/13/2002	4	AMENDED COMPLAINT by WEEDS, INC. (Answer due 2/27/02 for ALDEN E. BOWEN, for JO ANNE GOLDEN, for JOHN STONE, for THOMAS STEWART IV, for THOMAS STEWART III, for WEEDS NO MORE, INC.) amending [1-1] complaint (ksa) (Entered: 02/14/2002)
03/11/2002	5	WAIVER OF SERVICE Returned Executed as to WEEDS NO MORE, INC. on 2/18/02 Answer due on 4/19/02. (ksa) (Entered: 03/12/2002)
03/11/2002	6	WAIVER OF SERVICE Returned Executed as to THOMAS STEWART III on 2/18/02 Answer due on 4/19/02. (ksa) (Entered: 03/12/2002)
03/11/2002	7	WAIVER OF SERVICE Returned Executed as to THOMAS STEWART IV on 2/18/02 Answer due on 4/19/02. (ksa) (Entered: 03/12/2002)
03/11/2002	8	WAIVER OF SERVICE Returned Executed as to JOHN STONE on 2/18/02 Answer due on 4/19/02. (ksa) (Entered: 03/12/2002)
03/11/2002	9	WAIVER OF SERVICE Returned Executed as to JO ANNE GOLDEN on 2/18/02 Answer due on 4/19/02. (ksa) (Entered: 03/12/2002)
03/11/2002	10	WAIVER OF SERVICE Returned Executed as to ALDEN E. BOWEN on 2/18/02 Answer due on 4/19/02. (ksa) (Entered: 03/12/2002)
04/09/2002	11	ANSWER to Restated Complaint by ALDEN E. BOWEN (Attorney James L. Weisman); jury demand (ksa) (Entered: 04/09/2002)
04/16/2002	12	NOTICE of Attorney Appearance for WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN by Ray F. Middleman, Brian Samuel Malkin (ksa) (Entered: 04/17/2002)
04/16/2002	13	MOTION by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN for enlargement of Time pursuant to F.R.C.P. 6(b) to respond to pltf's complaint with Proposed Order. (ksa) (Entered: 04/17/2002)
04/17/2002	14	Consent to defts' Motion for Enlargement of Time pursuant to F.R.C.P. 6 (b). (ksa) (Entered: 04/17/2002)
04/25/2002		ORDER upon motion granting [13-1] motion for enlargement of Time pursuant to F.R.C.P. 6(b) to respond to pltf's complaint, reset Answer deadline to 5/20/02 for JO ANNE GOLDEN, for JOHN STONE, for THOMAS STEWART IV, for THOMAS STEWART III, for WEEDS NO MORE, INC. (signed by Mag. Judge Ila J. Sensenich on 4/24/02) CM all parties of record. (ksa) (Entered: 04/26/2002)
05/20/2002	15	MOTION by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN pursuant to FRCP 12 , and for Attorney Fees pursuant to 17 USC 505 with Proposed Order. (plh) (Entered: 05/21/2002)
05/20/2002	16	BRIEF by WEEDS NO MORE, INC., THOMAS STEWART III,

		THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN in support of [15-1] motion pursuant to FRCP 12 by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC., [15-2] motion for Attorney Fees pursuant to 17 USC 505 by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (plh) (Entered: 05/21/2002)
05/31/2002	17	ORDER, Response to Motion set to 6/21/02 for [15-1] motion pursuant to FRCP 12 , and set Reply Brief deadline to 7/12/02 (signed by Mag. Judge Ila J. Sensenich on 5/31/02) CM all parties of record. (ksa) (Entered: 06/03/2002)
06/21/2002	18	RESPONSE by WEEDS, INC. to [15-1] motion pursuant to FRCP 12 by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC., [15-2] motion for Attorney Fees pursuant to 17 USC 505 by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (ksa) (Entered: 06/21/2002)
06/21/2002	19	AMENDED RESPONSE by WEEDS, INC. to [15-1] motion pursuant to FRCP 12 by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC., [15-2] motion for Attorney Fees pursuant to 17 USC 505 by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (ksa) (Entered: 06/24/2002)
07/11/2002	20	Reply BRIEF in support of [15-1] motion pursuant to FRCP 12 by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC., [15-2] motion for Attorney Fees pursuant to 17 USC 505 by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (ksa) (Entered: 07/12/2002)
10/29/2002	21	REPORT AND RECOMMENDATION of Mag. Judge Ila J. Sensenich signed on 10/28/02 Recommending that [15-1] motion pursuant to FRCP 12 be granted as to Counts I, II, III, and X, and be denied as to Count XV. It is further recommended that Defts' Motion to Dismiss Pltf's pendant state claims be denied, [15-2] motion for Attorney Fees pursuant to 17 USC 505 be denied ; The parties have 10 days from the date of service to file objections to this Report and Recommendation. (ksa) (Entered: 10/29/2002)
11/07/2002	22	OBJECTION by WEEDS, INC. to [21-1] report and recommendations pursuant to F.R.C.P. 72(A). (ksa) (Entered: 11/08/2002)
11/18/2002	23	RESPONSE by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN to [22-1] objection by WEEDS, INC. (ksa) (Entered: 11/19/2002)
11/27/2002	24	MEMORANDUM ORDER, set Amended Pleadings deadline to 12/11/01 (signed by Mag. Judge Ila J. Sensenich on 11/27/02) CM all parties of record. (ksa) Modified on 12/06/2002 (Entered: 11/29/2002)

12/05/2002	25	AMENDED MEMORANDUM ORDER, IT IS HEREBY ORDERED that pltf is allowed until 12/17/02 to file an amended complaint. reset Amended Pleadings deadline to 12/17/02 (signed by Mag. Judge Ila J. Sensenich on 12/3/02) CM all parties of record. (ksa) (Entered: 12/06/2002)
12/17/2002	26	AMENDED COMPLAINT by WEEDS, INC. (Answer due 12/31/02 for ALDEN E. BOWEN, for JO ANNE GOLDEN, for JOHN STONE, for THOMAS STEWART IV, for THOMAS STEWART III, for WEEDS NO MORE, INC.) amending [4-1] amended complaint by WEEDS, INC. (ksa) (Entered: 12/18/2002)
12/24/2002	27	MOTION by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN for Enlargement of Time pursuant to F.R.C.P. 6(b) to respond to the pltf's complaint with Proposed Order. (ksa) (Entered: 12/26/2002)
12/27/2002	28	RESPONSE by WEEDS, INC. in opposition to [27-1] motion for Enlargement of Time pursuant to F.R.C.P. 6(b) to respond to the pltf's complaint by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (ksa) (Entered: 12/27/2002)
12/27/2002	29	ORDER, that the Clerk of Court shall strike defts' motion to dismiss and for counsel fees as moot; IT IS FURTHER ORDERED that defts shall respond to the amended complaint by 1/31/03 reset Answer deadline to 1/31/03 for ALDEN E. BOWEN, for JO ANNE GOLDEN, for JOHN STONE, for THOMAS STEWART IV, for THOMAS STEWART III, for WEEDS NO MORE, INC. IT IS FURTHER ORDERED that the parties are allowed 10 days from this date to appeal this order to a district judge pursuant to Rule 72.1.3B of the Local Rules for Magistrates. (signed by Mag. Judge Ila J. Sensenich on 12/27/02) CM all parties of record. (ksa) (Entered: 12/30/2002)
01/17/2003	30	MOTION pursuant to F.R.C.P. 12 by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN to Dismiss pltf's amended complaint with Proposed Order. (ksa) (Entered: 01/21/2003)
01/17/2003	31	BRIEF in support of [30-1] motion to Dismiss pltf's amended complaint pursuant to F.R.C.P. 12 by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (ksa) (Entered: 01/21/2003)
01/22/2003	32	MOTION by ALDEN E. BOWEN to Dismiss amended complaint pursuant to Rule 12(b), Fed.R.Civ.P. with Proposed Order. (ksa) (Entered: 01/23/2003)
01/30/2003	33	ORDER, Brief in Support set to 2/20/03 for [32-1] motion to Dismiss amended complaint pursuant to Rule 12(b), Fed.R.Civ.P., set to 2/20/03 for [30-1] motion to Dismiss pltf's amended complaint , and Response to Motion set to 3/13/03 for [32-1] motion to Dismiss amended complaint pursuant to Rule 12(b), Fed.R.Civ.P., set to 3/13/03 for [30-1] motion to

		Dismiss pltf's amended complaint . IT IS FURTHER ORDERED that the parties shall have a continuing obligation to advise the court of any settlement neegotiations. (signed by Mag. Judge Ila J. Sensenich on 1/30/03) CM all parties of record. (ksa) (Entered: 01/31/2003)
03/13/2003	34	RESPONSE by WEEDS, INC. in opposition to [32-1] motion to Dismiss amended complaint pursuant to Rule 12(b), Fed.R.Civ.P. by ALDEN E. BOWEN, [30-1] motion to Dismiss pltf's amended complaint by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (ksa) (Entered: 03/14/2003)
03/13/2003	35	BRIEF by WEEDS, INC. in opposition to [32-1] motion to Dismiss amended complaint pursuant to Rule 12(b), Fed.R.Civ.P. by ALDEN E. BOWEN, [30-1] motion to Dismiss pltf's amended complaint by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (ksa) (Entered: 03/14/2003)
08/25/2003	36	REPORT AND RECOMMENDATION of Mag. Judge Ila J. Sensenich signed on 8/25/03 Recommending that [32-1] motion to Dismiss amended complaint pursuant to Rule 12(b), Fed.R.Civ.P. be denied, [30-1] motion to Dismiss pltf's amended complaint be denied ; It is recommended that defts' motion to dismiss Counts I, II, III, XI, XV, XVI and XVII for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure be denied. It is further recommended that defts' Motion to Dismiss Count XVI and state law claims for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure be denied. It is further recommended that any recovery by pltf be limited to actual damages. The parties have 10 days from the date of service to file objections to this Report and Recommendation. (ksa) (Entered: 08/25/2003)
09/04/2003	37	Pltf's statement of non-objection. (ksa) (Entered: 09/05/2003)
09/18/2003	38	MEMORANDUM ORDER denying [32-1] motion to Dismiss amended complaint pursuant to Rule 12(b), Fed.R.Civ.P., denying [30-1] motion to Dismiss pltf's amended complaint. IT IS FURTHER ORDERED that any recovery by pltf under Count XVI is limited to actual damages. adopting [36-1] report and recommendations (signed by Chief Judge Donetta W. Ambrose on 9/18/03) CM all parties of record. (ksa) (Entered: 09/19/2003)
10/08/2003	39	Stipulation by WEEDS, INC., WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN, ALDEN E. BOWEN for enlargement of Time to prepare a proper response to pltf's amended complaint . (ksa) (Entered: 10/08/2003)
10/08/2003		Deadline updated; reset Answer deadline to 10/17/03 for ALDEN E. BOWEN, for JO ANNE GOLDEN, for JOHN STONE, for THOMAS STEWART IV, for THOMAS STEWART III, for WEEDS NO MORE, INC. (ksa) (Entered: 10/08/2003)
10/15/2003		ORDER upon motion granting [39-1] stipulation for enlargement of Time to prepare a proper response to pltf's amended complaint (signed

		by Mag. Judge Ila J. Sensenich on 10/14/03) CM all parties of record. (ksa) (Entered: 10/16/2003)
10/17/2003	40	ANSWER by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN to amended complaint (ksa) (Entered: 10/20/2003)
10/17/2003		COUNTERCLAIM by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN against WEEDS, INC. (ksa) (Entered: 10/20/2003)
10/28/2003	41	ANSWER by ALDEN E. BOWEN to amended complaint; jury demand (ksa) (Entered: 10/29/2003)
11/04/2003	42	ORDER, set Scheduling Conference for 10:30 12/9/03 . IT IS FURTHER ORDERED that at least 21 days prior to the conference counsel shall meet as required by Rule 26(f) of the Federal Rules of Civil Procedure and shall discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case. They shall arrange for the disclosures required by Rule 26(a)(1) and shall develop a proposed discovery plan that includes their views and proposals concerning items (1) to (4) of Rule 26(f). The report shall be filed by 11/10/03 (at least 7 days prior to the scheduling conference.) In accordance with the Federal Rules of Civil Procedure, Rule 72(a) the parties are allowed 10 days from the date of service to file objections to this order. (signed by Mag. Judge Ila J. Sensenich on 11/4/03) CM all parties of record. (ksa) Modified on 11/06/2003 (Entered: 11/05/2003)
11/04/2003	43	REPLY by WEEDS, INC. to [0-1] counter claim by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (ksa) (Entered: 11/05/2003)
11/05/2003	44	AMENDED ORDER that a scheduling conference is scheduled for 12/9/03 at 10:30 am pursuant to Local Rule 16.1.1 and Rule 16 of the Federal Rules of Civil Procedure in the above-entitled action and shall be held in room 518B US Post Office and Courthouse Building, Pittsburgh, PA. IT IS FURTHER ORDERED that at least 21 days prior to the conference counsel shall meet as required by Rule 26(f) of the Federal Rules of Civil Procedure and shall discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case. They shall arrange for the disclosures required by Rule 26(a)(1) and shall develop a proposed discovery plan that includes their views and proposals concerning items (1) to (4) of Rule 26(f). The report shall be filed by 12/2/03 (at least 7 days prior to the scheduling conference.) In accordance with the Federal Rules of Civil Procedure, Rule 72(a) the parties are allowed 10 days from the date of service to file objection to this order. (signed by Mag. Judge Ila J. Sensenich on 11/5/03) CM all parties of record. (ksa) (Entered: 11/06/2003)
12/02/2003	45	MOTION by WEEDS, INC. for Protective Order with Proposed Order. (ksa) (Entered: 12/02/2003)
12/02/2003	46	Defts' joint report on Rule 26(f) conferences. (ksa) (Entered: 12/02/2003)

12/05/2003	47	MOTION by ALDEN E. BOWEN for Summary Judgment with Proposed Order. (ksa) (Entered: 12/05/2003)
12/05/2003	48	BRIEF in support of [47-1] motion for Summary Judgment by ALDEN E. BOWEN (ksa) (Entered: 12/05/2003)
12/05/2003	49	STATEMENT OF Uncontested MATERIAL FACTS in support of motion for summary judgment by ALDEN E. BOWEN (ksa) (Entered: 12/05/2003)
12/09/2003	50	MOTION by WEEDS, INC. to postpone ruling on deft Bowen's (Prediscovery) Motion for Summary Judgment with Proposed Order. (ksa) (Entered: 12/09/2003)
12/10/2003	51	Scheduling Conference held 12/9/03 before Mag. Judge Ila J. Sensenich [Reporter: none]. Motion to amend to be filed by 1/5/04; Scheduling conference set for 2/10/04 at 2:00. (ksa) (Entered: 12/10/2003)
12/10/2003		Deadline updated; set Amended Pleadings deadline to 1/5/04 , and set Scheduling Conference for 2:00 2/10/04 (ksa) (Entered: 12/10/2003)
12/10/2003	52	PROTECTIVE ORDER (signed by Mag. Judge Ila J. Sensenich on 12/9/03) CM all parties of record. (ksa) (Entered: 12/10/2003)
12/10/2003		ORDER upon motion granting [50-1] motion to postpone ruling on deft Bowen's (Prediscovery) Motion for Summary Judgment. Pltf shall not be required to respond to deft Bowens motion for summary judgment until further order. (signed by Mag. Judge Ila J. Sensenich on 12/9/03) CM parties of record. (ksa) (Entered: 12/10/2003)
12/15/2003	53	MOTION by ALDEN E. BOWEN for Magistrate Judge's recusal with Proposed Order. (ksa) (Entered: 12/15/2003)
12/19/2003		ORDER upon motion granting [53-1] motion for Magistrate Judge's recusal, for reasons set forth in 28 USC 455(a) (signed by Mag. Judge Ila J. Sensenich on 12/17/03) CM all parties of record. (crw) (Entered: 12/19/2003)
12/19/2003		CASE NO LONGER REFERRED TO Mag. Judge Ila J. Sensenich (crw) (Entered: 12/19/2003)
01/05/2004	54	SECOND AMENDED COMPLAINT by WEEDS, INC. (Answer due 1/20/04 for ALDEN E. BOWEN, for JO ANNE GOLDEN, for JOHN STONE, for THOMAS STEWART IV, for THOMAS STEWART III, for WEEDS NO MORE, INC.) amending [26-1] amended complaint by WEEDS, INC. (ksa) (Entered: 01/06/2004)
01/08/2004	55	ORDER REFERRING CASE to Magistrate Judge Francis X. Caiazza (signed by Chief Judge Donetta W. Ambrose on 1/7/04) CM all parties of record. (ksa) (Entered: 01/08/2004)
01/13/2004	56	MOTION by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN pursuant to F.R.C.P. to Dismiss pltf's second amended complaint with

		Proposed Order. (ksa) (Entered: 01/13/2004)
01/13/2004	57	BRIEF in support of [56-1] motion pursuant to F.R.C.P. 12 to Dismiss pltf's second complaint by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (ksa) (Entered: 01/13/2004)
01/13/2004	58	ORDER, set Status Conference for 9:00 1/30/04 (signed by Magistrate Judge Francis X. Caiazza on 1/13/04) CM all parties of record. (ksa) (Entered: 01/14/2004)
01/13/2004	59	Praecipe to enter Appearance for WEEDS, INC. by Henry M. Sneath, Kathryn M. Kenyon (ksa) (Entered: 01/14/2004)
01/14/2004	60	MOTION by ALDEN E. BOWEN to Dismiss second amended complaint pursuant to Rule 12(b), Fed.R.Civ.P. with Proposed Order. (ksa) (Entered: 01/14/2004)
01/16/2004	61	MOTION by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN to disqualify pltf's counsel with Proposed Order. (ksa) (Entered: 01/16/2004)
01/20/2004	62	ORDER, Response to Motion set to 1/30/04 for [61-1] motion to disqualify pltf's counsel (signed by Magistrate Judge Francis X. Caiazza on 1/20/04) CM all parties of record. (ksa) (Entered: 01/20/2004)
01/23/2004	63	MOTION by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN for Enlargement of Time pursuant to F.R.C.P. 6(b) to file their objections and responses to pltf's First Set of Requests for Production with Proposed Order. (ksa) (Entered: 01/23/2004)
01/28/2004	64	Joint Stipulation by WEEDS, INC., WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN, ALDEN E. BOWEN to reschedule status conference with proposed order. (ksa) (Entered: 01/28/2004)
01/28/2004		ORDER upon motion granting [64-1] stipulation to reschedule status conference, reset Status Conference for 9:00 2/20/04 (signed by Magistrate Judge Francis X. Caiazza on 1/28/04) CM all parties of record. (ksa) (Entered: 01/28/2004)
01/29/2004	65	RESPONSE by WEEDS, INC. in opposition to [63-1] motion for Enlargement of Time pursuant to F.R.C.P. 6(b) to file their objections and responses to pltf's First Set of Requests for Production by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (ksa) (Entered: 01/30/2004)
01/30/2004	66	RESPONSE by WEEDS, INC. in opposition to [61-1] motion to disqualify pltf's counsel by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (ksa) (Entered: 02/02/2004)

01/30/2004	67	BRIEF in support of [66-1] opposition response by WEEDS, INC. (ksa) (Entered: 02/02/2004)
02/04/2004	68	MOTION by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN for enlargement of Time pursuant to F.R.C.P. 6(b) to file their objections and responses to pltf's second set of requests for production with Proposed Order. (ksa) (Entered: 02/04/2004)
02/10/2004	69	MOTION by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN to Strike interrogatories in violation of F.R.Civ.P. 33(a) with Proposed Order. (ksa) (Entered: 02/10/2004)
02/19/2004	70	BRIEF by WEEDS, INC. in opposition to [69-1] motion to Strike interrogatories in violation of F.R.Civ.P. 33(a) by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (ksa) (Entered: 02/19/2004)
02/19/2004	71	RESPONSE by WEEDS, INC. in opposition to [69-1] motion to Strike interrogatories in violation of F.R.Civ.P. 33(a) by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (ksa) (Entered: 02/19/2004)
02/19/2004	72	RESPONSE by WEEDS, INC. in opposition to [68-1] motion for enlargement of Time pursuant to F.R.C.P. 6(b) to file their objections and responses to pltf's second set of requests for production by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (ksa) (Entered: 02/19/2004)
02/19/2004	73	MOTION by WEEDS, INC. for detailed scheduling order with Proposed Order. (ksa) (Entered: 02/20/2004)
02/23/2004		ORDER upon motion denying without prejudice [61-1] motion to disqualify pltf's counsel (signed by Magistrate Judge Francis X. Caiazza 2/4/04) CM all parties of record. (sealed) (Entered: 02/23/2004)
02/23/2004		ORDER upon motion denying as moot [63-1] motion for Enlargement of Time pursuant to F.R.C.P. 6(b) to file their objections and responses to pltf's First Set of Requests for Production (signed by Magistrate Judge Francis X. Caiazza on 2/20/04) CM all parties of record. (ksa) (Entered: 02/23/2004)
02/23/2004		ORDER upon motion denying as moot [68-1] motion for enlargement of Time pursuant to F.R.C.P. 6(b) to file their objections and responses to pltf's second set of requests for production (signed by Magistrate Judge Francis X. Caiazza on 2/20/04) CM all parties of record. (ksa) (Entered: 02/23/2004)
02/23/2004		ORDER upon motion denying as moot [69-1] motion to Strike interrogatories in violation of F.R.Civ.P. 33(a) (signed by Magistrate Judge Francis X. Caiazza on 2/20/04) CM all parties of record. (ksa) (Entered: 02/23/2004)

02/23/2004		ORDER upon motion denying [73-1] motion for detailed scheduling order (signed by Magistrate Judge Francis X. Caiazza on 2/23/04) CM all parties of record. (ksa) (Entered: 02/23/2004)
02/26/2004	74	ORDER denying without prejudice [60-1] motion to Dismiss second amended complaint pursuant to Rule 12(b), Fed.R.Civ.P., denying without prejudice [47-1] motion for Summary Judgment denying without prejudice [56-1] motion pursuant to F.R.C.P. to Dismiss pltf's second amended complaint (signed by Magistrate Judge Francis X. Caiazza on 2/25/04) CM all parties of record. (ksa) (Entered: 02/26/2004)
04/12/2004	75	ORDER REFERRING CASE to Mag. Judge Lisa P. Lenihan (signed by Magistrate Judge Francis X. Caiazza on 4/12/04) CM all parties of record. (crw) (Entered: 04/12/2004)
04/16/2004	76	ANSWER by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN to second amended complaint (ksa) (Entered: 04/19/2004)
04/16/2004		COUNTERCLAIM by THOMAS STEWART III against WEEDS, INC. (w/doc. #76). (ksa) (Entered: 04/19/2004)
04/16/2004		COUNTERCLAIM by WEEDS NO MORE, INC. against WEEDS, INC. (w/doc. #76). (ksa) (Entered: 04/19/2004)
04/28/2004	77	ANSWER by WEEDS, INC. to [0-1] counter claim by WEEDS NO MORE, INC., [0-1] counter claim by THOMAS STEWART III, [0-1] counter claim by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (aen) (Entered: 04/29/2004)
04/29/2004	78	Status Conference set for 11:00 5/17/04 (tt) (Entered: 04/29/2004)
05/05/2004	79	AMENDED ANSWER and reply and affirmative defenses to counterclaims of defts, Thomas Stewart, III and Weeds No More, Inc. : amends [77-1] counterclaim answer by WEEDS, INC. (ksa) (Entered: 05/05/2004)
05/17/2004	80	Status Conference held 5/17/04 before Mag. Judge Lisa P. Lenihan [Reporter: none] (tt) (Entered: 05/18/2004)
05/17/2004	81	ORDER, that depositions shall be scheduled not earlier than 6/1/04 ; Discovery cutoff to 10/1/04 ; Pretrial Statements for Plaintiffs due 11/1/04 ; Pretrial Statements for Defendants due 11/22/04 ; Depositions of experts shall commence no sooner than 12/31/04 with a deadline of 1/31/05 . (signed by Mag. Judge Lisa P. Lenihan on 5/17/04) CM all parties of record. (tt) (Entered: 05/18/2004)
07/02/2004	82	MOTION by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN to Quash subpoenas with Proposed Order. (ksa) (Entered: 07/02/2004)
07/02/2004	83	SECOND MOTION by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE

		GOLDEN to Quash subpoenas with Proposed Order. (ksa) (Entered: 07/02/2004)
07/06/2004		ORDER upon motion granting [82-1] motion to Quash subpoenas. The subpoenas directed to the First Federal Savings and Loan Association of Greene County, National City Bank, and Larry Krznicaric are quashed as overly broad. (signed by Mag. Judge Lisa P. Lenihan on 7/6/04) CM all parties of record. (ksa) (Entered: 07/07/2004)
07/06/2004		ORDER upon motion granting [83-1] motion to Quash subpoenas. The subpoenas directed to Cincinatti Bell Long, Verizon, Bell Atlantic, NOS, and Santa Maria Stewart are quashed. (signed by Mag. Judge Lisa P. Lenihan on 7/6/04) CM all parties of record. (ksa) (Entered: 07/07/2004)
07/15/2004	84	MOTION by WEEDS, INC. to Compel with Proposed Order. (ksa) (Entered: 07/16/2004)
07/15/2004	85	MOTION by WEEDS, INC. for Reconsideration of [0-0] order, [0-0] order and or response to motion to quash subpoenas with Proposed Order. (ksa) (Entered: 07/16/2004)
07/16/2004	86	Stipulation as to second amended complaint by WEEDS, INC., ALDEN E. BOWEN with proposed order. (ksa) (Entered: 07/16/2004)
07/19/2004		ORDER upon stipulation granting [86-1] stipulation as to second amended complaint. The answer to the first amended complaint shall be deemed the respective answer to the second amended complaint. (signed by Mag. Judge Lisa P. Lenihan on 7/16/04) CM all parties of record. (tt) (Entered: 07/19/2004)
07/22/2004	87	Minute entry: Response to Motion set to 7/29/04 for [84-1] motion to Compel (tt) (Entered: 07/22/2004)
07/22/2004	88	ANSWER by ALDEN E. BOWEN to amended complaint; jury demand (ces) (Entered: 07/23/2004)
07/22/2004	89	NOTICE from ct. of briefing schedule (ces) (Entered: 07/26/2004)
07/22/2004		Document no. 89 Response to Motion set to 7/29/04 for [85-1] motion for Reconsideration of [0-0] order, [0-0] order (ces) (Entered: 07/26/2004)
07/29/2004	90	RESPONSE by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN to [85-1] motion for Reconsideration of [0-0] order, [0-0] order by WEEDS, INC. (ksa) (Entered: 07/29/2004)
07/29/2004	91	RESPONSE by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN to [84-1] motion to Compel by WEEDS, INC. (ksa) (Entered: 07/29/2004)
08/06/2004		ORDER denying [85-1] motion for Reconsideration of [0-0] order, [0-0] order (signed by Mag. Judge Lisa P. Lenihan on 8/5/04) CM all parties of record (with 90). (ces) (Entered: 08/09/2004)

08/12/2004	92	Hearing on Motion re: [84-1] motion to Compel by WEEDS, INC. set for 10:30 8/31/04 (plh) (Entered: 08/12/2004)
08/19/2004	93	RENEWED MOTION by ALDEN E. BOWEN for Summary Judgment . (ksa) (Entered: 08/19/2004)
08/19/2004	94	STATEMENT OF UNCONTESTED MATERIAL FACTS in support of renewed motion for summary judgment by ALDEN E. BOWEN (ksa) (Entered: 08/19/2004)
08/19/2004	95	BRIEF in support of [93-1] motion for Summary Judgment by ALDEN E. BOWEN (ksa) (Entered: 08/19/2004)
08/20/2004	96	MOTION by WEEDS, INC. to Strike [93-1] motion for Summary Judgment by ALDEN E. BOWEN with Proposed Order. (ksa) (Entered: 08/20/2004)
08/24/2004	97	Hearing on Motion re: [96-1] motion to Strike [93-1] motion for Summary Judgment by ALDEN E. BOWEN by WEEDS, INC. set for 10:30 8/31/04 (ksa) (Entered: 08/25/2004)
09/01/2004	98	Hearing on Motion held 8/31/04 re: [96-1] motion to Strike [93-1] motion for Summary Judgment by ALDEN E. BOWEN by WEEDS, INC., [84-1] motion to Compel by WEEDS, INC. [Reporter: Monica Chandler]. Motion to strike motion for summary judgment argued. The Court agrees to allow deposition of attorney Chris Klein, after which the defts will know if they need to amend the motion for summary judgment or not. If they do, they will get 30 days to file amended motion and pltf to get 30 days to respond. If they choose to stand on the existing motion for summary judgment, pltf will file response no later than 30 days after the deposition is taken. Atty Klein's deposition to be held no later than 9/15/04. Motion to Compel argued. The parties argue numerous aspects of the outstanding motion, and the Court rules on each one as they are brought up. The court will issue an order regarding the two motions discussed. Judgment argued. The Court agrees to allow deposition. (ksa) Modified on 09/07/2004 (Entered: 09/01/2004)
09/01/2004	99	ORDER granting in part, denying in part [84-1] motion to Compel as detailed in the record of the argument. IT IS FURTHER ORDERED that should any discrepancies regarding the interpretation of the Court's rulings arise, counsel shall first order a transcript filed with the Clerk of Court from Powers Garrison & Hughes Court Reporting & Video Services. Any motion resembling a motion to compel or motion for protective order shall be automatically denied without the transcript having first been filed. IT IS FURTHER ORDERED that in accordance with the Magistrates Act, 28 USC 636(b)(1)(A), and Local Rule 72.1.3, the parties are allowed 10 days from the date of service to file an appeal from this order to the District Court. Any opposing party shall have 7 days from the date of service of the appeal to respond thereto. (signed by Mag. Judge Lisa P. Lenihan on 9/1/04) CM all parties of record. (ksa) (Entered: 09/02/2004)
09/01/2004	100	ORDER denying [96-1] motion to Strike [93-1] motion for Summary

		Judgment by ALDEN E. BOWEN. IT IS FURTHER ORDERED that the deposition of atty Chris Klein shall be held on or before 9/15/04. IT IS FURTHER ORDERED that defense counsel shall file a notice with the Clerk of Court within 2 business days whether or not an amended motion for summary judgment will be filed. IT IS FURTHER ORDERED that if defts do intend to file an amended motion for summary judgment, they shall do so no later than 10/15/04, and pltf shall respond no later than 11/15/04. set Motion Filing deadline to 10/15/04 . If defts do not intend to file an amended motion, then pltf shall respond to the current motion for summary judgment no later than 10/15/04. Response to Motion set to 10/15/04 for [93-1] motion for Summary Judgment . IT IS FURTHER ORDERED that in accordance with the Magistrates Act, 28 U.S.C. 636 (b)(1)(A), and Local Rule 72.1.3, the parties are allowed 10 days from the date of service to file an appeal from this order to the District Court. Any opposing party shall have 7 days from the date of service of the appeal to respond thereto. (signed by Mag. Judge Lisa P. Lenihan on 9/1/04) CM all parties of record. (ksa) (Entered: 09/02/2004)
09/02/2004	101	THIRD MOTION by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN to Quash subpoenas with Proposed Order. (ksa) (Entered: 09/02/2004)
09/08/2004	102	MOTION by ALDEN E. BOWEN for Protective Order pursuant to the provisions of Rule 26(c), Fed.R.Civ.P. with Proposed Order. (ksa) (Entered: 09/08/2004)
09/09/2004	103	REPLY by WEEDS, INC. to [101-1] motion to Quash subpoenas by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (ksa) (Entered: 09/10/2004)
09/10/2004	104	Certified TRANSCRIPT for date of 8/31/04 before Magistrate Judge Lisa Pupo Lenihan. Court Reporter: Monica R. Chandler. (ksa) (Entered: 09/10/2004)
09/13/2004	105	REPLY by WEEDS, INC. to [102-1] motion for Protective Order pursuant to the provisions of Rule 26(c), Fed.R.Civ.P. by ALDEN E. BOWEN (ksa) (Entered: 09/13/2004)
09/13/2004	106	NOTICE OF APPEAL by WEEDS, INC. of Magistrate Decision [99-1] order dated 9/1/04 to District Judge. (ksa) (Entered: 09/14/2004)
09/16/2004	107	Stipulation by WEEDS, INC., WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN, ALDEN E. BOWEN for Dismissal of Counterclaim of Weeds No More, Inc's to pltf's amended complaint at pages 27-28 and Weeds No More, Inc's Counterclaim to Pltf's second amended complaint at page 5 with proposed order. (ksa) (Entered: 09/16/2004)
09/17/2004	108	NOTICE of intention not to file amended motion for summary judgment by ALDEN E. BOWEN (ksa) (Entered: 09/17/2004)
09/17/2004		ORDER upon motion denying [101-1] motion to Quash subpoenas subject to the final rulings of the District Court as to the scope of the

		deposition. (signed by Mag. Judge Lisa P. Lenihan on 9/17/04) CM all parties of record. (ksa) (Entered: 09/17/2004)
09/17/2004		ORDER upon motion granting in part, denying in part [102-1] motion for Protective Order pursuant to the provisions of Rule 26(c), Fed.R.Civ.P. IT IS ORDERED, ADJUDGED and DECREED that deft Alden E. Bowen shall not be required to respond to pltf's second set of interrogatories directed to deft Bowen. The remainder of the motion is denied, however deft is not required to respond to request for production, 1,2,3,7,8,9,10,11,12. Deft is also not required to respond to request for admission 30 through 37 and 56, 57. (signed by Mag. Judge Lisa P. Lenihan on 9/17/04) CM all parties of record. (ksa) Modified on 09/30/2004 (Entered: 09/17/2004)
09/17/2004	109	Discovery Conference held 9/17/04 before Mag. Judge Lisa P. Lenihan [Reporter: none]. Telephonic discovery conference on motion to quash subpoena of Stewart Accountant, Tom Krznaris; and Bowen Motion for Protective Order on written discovery. Note that although the counterclaims have been dismissed Mr. Sneath has not been discharged and has been requested to continue to assist in the case by pltf and its counsel. Page 43 of the recent hearing transcript is in error (line 12) and the court agreed to make the correction. The court was advised that there are numerous errors in the transcript. Counsel will advise the court of those that are substantive and corrections will be made. The deposition of Melissa Drennon will not take place until her physician releases her. Pltf may serve her with written interrogatories. Pltf will make a declaration as to whether Earl Antes will be a trial witness. Orders will be entered on the two pending discovery motions. Bowen's responses to the recently served discovery, to the extent not quashed, are due 10/4/04. Bowen is not going to file an amended motion for summary judgement. Pltf's reply is due 10/14/04. (ksa) (Entered: 09/17/2004)
09/17/2004		Deadline updated; Response to Motion set to 10/14/04 for [93-1] motion for Summary Judgment (ksa) (Entered: 09/17/2004)
09/28/2004		ORDER upon motion granting [107-1] stipulation for Dismissal of Counterclaim of Weeds No More, Inc's to pltf's amended complaint at pages 27-28 and Weeds No More, Inc's Counterclaim to Pltf's second amended complaint at page 5 (signed by Chief Judge Donetta W. Ambrose on 9/27/04) CM all parties of record. (ksa) (Entered: 09/28/2004)
09/29/2004		ORDER denying [106-1] Magistrate appeal as the Magistrate Judge's order is neither clearly erroneous nor contray to law. (signed by Chief Judge Donetta W. Ambrose on 9/29/04) CM all parties of record. (w/doc. #106) (ksa) (Entered: 09/29/2004)
10/13/2004	110	MOTION by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN for Protective Order with Proposed Order. (ksa) (Entered: 10/14/2004)
10/15/2004	111	Stipulation by WEEDS, INC., ALDEN E. BOWEN for Dismissal of

		pltf's claims against Alden E. Bowen with prejudice with proposed order. (ksa) (Entered: 10/15/2004)
10/18/2004	112	REPLY by WEEDS, INC. to [110-1] motion for Protective Order by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (ksa) (Entered: 10/18/2004)
10/20/2004		ORDER upon motion granting [110-1] motion for Protective Order. The deposition of Larry Krznic shall be limited in its scope so as to exclude financial information concerning the TNT business. Mr. Krznic may be asked if funds of Weeds No More, Inc. was co-mingled with funds of TNT & vice versa, with reasonable follow-up questioning if that question is answered in the affirmative. (signed by Mag. Judge Lisa P. Lenihan on 10/20/04) CM all parties of record. (ksa) (Entered: 10/20/2004)
10/22/2004		ORDER upon motion granting [111-1] stipulation for Dismissal of pltf's claims against Alden E. Bowen with prejudice (signed by Chief Judge Donetta W. Ambrose on 10/21/04) CM all parties of record. (ksa) (Entered: 10/25/2004)
10/25/2004	113	MOTION by WEEDS, INC. for enlargement of Time to file its pretrial statement and expert narrative report with Proposed Order. (ksa) (Entered: 10/26/2004)
10/28/2004	114	NOTICE OF APPEAL by WEEDS, INC. of Magistrate Decision [0-0] order dated 10/20/04 to District Judge. (ksa) (Entered: 10/29/2004)
11/01/2004		ORDER upon motion granting [113-1] motion for enlargement of Time to file its pretrial statement and expert narrative report. Any and all other deadlines are hereby modified to thirty days after their previously scheduled date. reset Plaintiffs Pretrial Statements deadline for 12/1/04 (signed by Mag. Judge Lisa P. Lenihan on 11/1/04) CM all parties of record. (ksa) (Entered: 11/02/2004)
11/01/2004	115	STIPULATED MOTION by WEEDS, INC. to file confidential documents under protective seal with Proposed Order. (ksa) (Entered: 11/02/2004)
11/01/2004	116	PRETRIAL STATEMENT by WEEDS, INC. (ksa) (Entered: 11/02/2004)
11/08/2004	117	Status Conference (via telephone) held 11/8/04 before Mag. Judge Lisa P. Lenihan [Reporter: none]. Discussed motion to quash Kanarik depo in light of atty's eyes only documents. Ct. Opinion that pltf could inquire into all transfers of funds between TNT & WNM & terms thereof. Could also ask if TNT had similar dealings with other corporations. Limited time frame - same as prior rulings. Pltf atty, to draft a stipulation of scope of depo & send to deft for review. If can agree, will advise Court. (ksa) (Entered: 11/08/2004)
11/15/2004		ORDER upon motion granting [115-1] motion to file confidential documents under protective seal. IT IS ORDERED that pltf is permitted to file the expert report of Karl Jarek, Alpern, Rosenthal & Co., including

		any modifications, amendments and/or supplementations thereto, under protective seal. It is further ordered that the parties may designate further documents to be filed under protective seal in the future under condition that the parties have 30 days to object to such designation. (signed by Mag. Judge Lisa P. Lenihan on 11/12/04) CM all parties of record. (ksa) (Entered: 11/16/2004)
11/19/2004	118	SUPPLEMENT by WEEDS, INC. to [114-1] Magistrate appeal by WEEDS, INC. (ksa) (Entered: 11/19/2004)
12/01/2004	119	MOTION by WEEDS, INC. to Compel deft Thomas R. Stewart, on behalf of deft Weeds No More, Inc., to execute and serve on pltf's counsel IRS Forms 4506 and 4506-T within 5 days of the entering of this Order with Proposed Order. (ksa) (Entered: 12/02/2004)
12/01/2004	120	Amended and restated PRETRIAL STATEMENT by WEEDS, INC. (ksa) (Entered: 12/02/2004)
12/01/2004	121	EXPERT REPORT and Supplemental Expert Report of Karl Jarek of Alpern Rosenthal, Inc. by WEEDS, INC. (FILED UNDER SEAL) (ksa) (Entered: 12/02/2004)
12/06/2004	122	MOTION by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN to Strike [121-1] expert report by WEEDS, INC. with Proposed Order. (ksa) (Entered: 12/06/2004)
12/07/2004	123	MOTION by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN to Strike [121-1] expert by WEEDS, INC. with Proposed Order. (ksa) (Entered: 12/07/2004)
12/09/2004	124	REPLY by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN to [119-1] motion to Compel deft Thomas R. Stewart, on behalf of deft Weeds No More, Inc., to execute and serve on pltf's counsel IRS Forms 4506 and 4506-T within 5 days of the entering of this Order by WEEDS, INC. (ksa) (Entered: 12/09/2004)
12/10/2004	125	Supplemental Memorandum ORDER regarding motion for protective order granting [110-1] motion for Protective Order. The deposition of Larry Krznaric shall be limited in its scope relative to the TNT business as follows: Pltf may inquire as to (A) transactions within the knowledge of deponent involving the transfer of funds between TNT and Weeds No More, Inc., including (1) amounts of said transactions, (2) methods of accounting relative to same, (3) agreements existing between the two entities; and (B) similar transactions between TNT and other business entities, whereby TNT has paid the business expenses of such entities. The time frame of all such inquiries shall be limited to the six months immediately preceding the date of incorporation of Weeds No More, Inc. (4-10-00), or October 10, 1999, to present. (signed by Mag. Judge Lisa P. Lenihan on 12/9/04) CM all parties of record. (ksa) (Entered: 12/10/2004)

12/10/2004	126	REPLY by WEEDS, INC. to response to [119-1] motion to Compel deft Thomas R. Stewart, on behalf of deft Weeds No More, Inc., to execute and serve on pltf's counsel IRS Forms 4506 and 4506-T within 5 days of the entering of this Order by WEEDS, INC. (ksa) (Entered: 12/10/2004)
12/10/2004	127	RESPONSE by WEEDS, INC. to [122-1] motion to Strike [121-1] expert report by WEEDS, INC. by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (ksa) (Entered: 12/10/2004)
12/13/2004		ORDER that pltf's are to produce within 10 days all documentation pltf's expert relied upon in reaching their opinions and conclusions in pltf's expert report. (signed by Mag. Judge Lisa P. Lenihan on 12/13/04) CM all parties of record. (w/doc. #122) (ksa) Modified on 12/13/2004 (Entered: 12/13/2004)
12/16/2004	128	NOTICE OF APPEAL by WEEDS, INC. of Magistrate Decision [125-1] order dated 12/9/04 to District Judge. (ksa) (Entered: 12/16/2004)
12/20/2004		ORDER denying [128-1] Magistrate appeal as the order of the Magistrate Judge dated 12/9/04 is neither clearly erroneous nor contrary to law. (signed by Chief Judge Donetta W. Ambrose on 12/20/04) CM all parties of record. (w/doc. #128) (ksa) Modified on 12/20/2004 (Entered: 12/20/2004)
12/22/2004	129	PRETRIAL STATEMENT by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN (ksa) (Entered: 12/22/2004)
12/27/2004	130	ORDER that pursuant to agreement with counsel, and pursuant to Rule 53 of the Federal Rules of Civil Procedure, Heather S. Heidelbaugh, Esq. is hereby appointed as Discovery Master in the above lawsuit. The role of the discovery master shall be to act as recipient of certain federal tax returns and certifying documents from the Internal Revenue Service relative to Weeds, Inc. and Weeds No More, Inc. Pltf shall be responsible for the fees of the discovery master. (signed by Mag. Judge Lisa P. Lenihan on 12/24/04) CM all parties of record. (ksa) (Entered: 12/28/2004)
12/28/2004	131	MOTION by WEEDS, INC. for Henry M. Sneath and Kathryn M. Kenyon to Withdraw as Attorney with Proposed Order. (ksa) (Entered: 12/28/2004)
01/03/2005	132	Hearing on Motion held 12/23/04 re: [119-1] motion to Compel deft Thomas R. Stewart, on behalf of deft Weeds No More, Inc., to execute and serve on pltf's counsel IRS Forms 4506 and 4506-T within 5 days of the entering of this Order by WEED NO MORE, INC. [Reporter: Patricia Sherman]. Counsel argue the motion in front of the Court. The Court offers to appoint a discovery master in this case. The Court withholds ruling on the motion until 12/30/04, to give counsel time to investigate the idea of having a discovery master appointed. Counsel are to inform the Court as to their decision and provide the Court with the appropriate proposed order if a master is to be appointed. If so, said

		master will be paid by the pltf. If no proposed order is forthcoming, then deft and pltf are both ordered, no later than 12/30/04, to send an authorization for release of tax returns and transcripts for years 2000 through 2003. The information is to be released to each party's counsel. Counsel will provide opposing counsel with a complete copy of everything received from the IRS. Other outstanding issues of the case are addressed. The Court orders that deft is to provide pltf with a list of all spray customers contacted from 10/2000 through 5/2001. Pltf also asks for defense counsel to provide all documents used by the defense expert within 10 days. Defense counsel agrees, and notes that all of those documents may have already been produced. A status conference will be scheduled for late March or early April. (ksa) (Entered: 01/04/2005)
01/03/2005		ORDER upon motion granting [131-1] motion for Henry M. Sneath and Kathryn M. Kenyon to Withdraw as Attorney (Terminated attorney Kathryn M. Kenyon for WEEDS, INC., attorney Henry M. Sneath for WEEDS, INC. (signed by Mag. Judge Lisa P. Lenihan on 1/3/05) CM all parties of record. (ksa) (Entered: 01/04/2005)
03/02/2005	133	MOTION by WEEDS, INC. for Enlargement of Time in which to complete the remaining depositions with Proposed Order. (ksa) (Entered: 03/02/2005)
03/03/2005		ORDER upon motion granting [133-1] motion for Enlargement of Time in which to complete the remaining depositions. IT IS ORDERED that pltf is given until 3/15/05 with which to complete the remaining deposition of Larry Krznaric. The applicable Scheduling Order is revised in accordance herewith. The taking of expert depositions shall be ruled upon by the trial judge. No further extensions shall be granted. (signed by Mag. Judge Lisa P. Lenihan on 3/3/05) CM all parties of record. (ksa) (Entered: 03/04/2005)
03/09/2005		Consent to proceed before a US Magistrate Judge by depts received. (ksa) (Entered: 03/09/2005)
03/16/2005	134	Case Management Conference held 3/16/05 before Chief Judge Donetta W. Ambrose [Reporter: none]. Discovery is over. Remaining claims: trademark; false advertising; trade dress; copyright infringement & state claims (breach of duty of loyalty, misappropriation of trade secrets & assets, unjust enrichment, tortious interference). Deft to file summary judgment on trade dress; confusion; copyright & false advertising. Pltf to file summary judgment on false advertising; copyright; misappropriation. Deft's expert to focus on damages & profits. Pltf's expert to focus on lost profits and unjust enrichment & intermingling. New Local Rule 56 - strict compliance with its page limitations. Summary judgment motions due 4/18/05; Responses due 5/18/05; No replies. Parties expect 7 days for trial. Court informed parties that she tracks time, to be used however attys desire. (ksa) (Entered: 03/16/2005)
03/16/2005		Deadline updated; set Summary Judgment Deadline for 4/18/05 , and set Response to Motion for Summary Judgment Deadline for 5/18/05 (ksa) (Entered: 03/16/2005)

04/11/2005	135	MOTION by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN to Quash subpoenas with Proposed Order. (ksa) (Entered: 04/11/2005)
04/11/2005	136	Minute entry:, Response to Motion set to 4/21/05 for [135-1] motion to Quash subpoenas , and Brief in Opposition set to 4/21/05 for [135-1] motion to Quash subpoenas (ksa) (Entered: 04/11/2005)
04/12/2005	137	Tele-conference re: motion to quash held 4/12/05 before Chief Judge Donetta W. Ambrose [Reporter: none]. Motion at Docket #135 discussed. Motion denied as moot, deft going to withdraw motion. (ksa) (Entered: 04/13/2005)
04/12/2005		ORDER upon motion denying as moot [135-1] motion to Quash subpoenas, deft having agreed to withdraw this motion. (signed by Chief Judge Donetta W. Ambrose on 4/12/05) CM all parties of record. (ksa) (Entered: 04/13/2005)
04/13/2005	138	ORDER REFERRING CASE BACK to Chief Judge Donetta W. Ambrose. (signed by Mag. Judge Lisa P. Lenihan on 4/12/05) CM all parties of record. (ksa) (Entered: 04/13/2005)
04/18/2005	139	MOTION by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN for Summary Judgment with Proposed Order. (jsp) (Entered: 04/18/2005)
04/18/2005	140	BRIEF by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN in support of [139-1] motion for Summary Judgment by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (jsp) (Entered: 04/18/2005)
04/18/2005	141	CONCISE STATEMENT OF FACTS by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN (jsp) (Entered: 04/18/2005)
04/18/2005	142	APPENDIX to [139-1] motion for Summary Judgment by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC., [140-1] support brief by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC., [141-1] by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (jsp) (Entered: 04/18/2005)
04/18/2005	143	MOTION by WEEDS, INC. for Summary Judgment Under FRCP 56 with Proposed Order. (ces) (Entered: 04/19/2005)
04/18/2005	144	CONCISE STATEMENT OF MATERIAL FACTS by WEEDS, INC. (ces) (Entered: 04/19/2005)
04/18/2005	145	BRIEF by WEEDS, INC. in support of [143-1] motion for Summary Judgment Under FRCP 56 by WEEDS, INC. (ces) (Entered: 04/19/2005)
05/18/2005	146	BRIEF by WEEDS NO MORE, INC., THOMAS STEWART III,

		THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN in opposition to [143-1] motion for Summary Judgment Under FRCP 56 by WEEDS, INC. (plh) (Entered: 05/18/2005)
05/18/2005	147	DEFTS' RESPONSIVE CONCISE STATEMENT (plh) (Entered: 05/18/2005)
05/18/2005	148	INDEX FOR DEFTS' by WEEDS NO MORE, INC., THOMAS STEWART III, THOMAS STEWART IV, JOHN STONE, JO ANNE GOLDEN to [142-1] appendix (plh) (Entered: 05/18/2005)
05/18/2005	149	BRIEF by WEEDS, INC. in opposition to [139-1] motion for Summary Judgment by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (ces) (Entered: 05/19/2005)
05/18/2005	150	RESPONSE by WEEDS, INC. to [141-1] Concise Statement of Facts by JO ANNE GOLDEN, JOHN STONE, THOMAS STEWART IV, THOMAS STEWART III, WEEDS NO MORE, INC. (ces) (Entered: 05/19/2005)
05/18/2005	151	Index for APPENDIX to [149-1] brief in opposition by WEEDS, INC. (ces) (Entered: 05/19/2005)
06/01/2005	152	ORDER assigning the case to Judge Schwab for the purpose of settlement and ADR purposes only. (signed by Chief Judge Donetta W. Ambrose on 6/1/05) CM all parties of record. (tt) (Entered: 06/01/2005)
06/06/2005	153	MOTION by WEEDS, INC. to file attorneys eyes only documents under protective seal with Proposed Order. (ksa) (Entered: 06/07/2005)
06/07/2005	154	MOTION by WEEDS, INC. for leave to depose material witness with Proposed Order. (ksa) (Entered: 06/07/2005)
06/09/2005		ORDER upon motion denying as moot [153-1] motion to file attorneys eyes only documents under protective seal, as the motions for summary judgment have already been decided. (signed by Judge Donetta W. Ambrose on 6/9/05) CM all parties of record. (ksa) (Entered: 06/10/2005)
06/09/2005	155	ORDER, to reset Case Management Order Deadlines: Motion in Limine due 7/18/05 ; Response to Motion in Limine due 7/28/05 ; Proposed Voir Dire due 8/1/05 ; Joint Proposed Jury Instructions due 8/1/05 ; The Court hereby imposes a settlement deadline of 8/1/05 ; Pretrial Statements for Plaintiffs due 6/27/05 ; Pretrial Statements for Defendants due 7/20/05 ; Jury Trial set for 8/23/05 - 8/26/05 and 8/29/05 - 9/2/05; (signed by Chief Judge Donetta Ambrose on 6/9/05) CM all parties of record. (ksa) (Entered: 06/10/2005)
06/09/2005	156	OPINION and ORDER denying [139-1] motion for Summary Judgment granting in part, denying in part [143-1] motion for Summary Judgment Under FRCP 56. Pltf's motion for summary judgment is granted as to expenses claimed by deft, Thomas Stewart, III, which were incurred more than four years prior to the filing of his counterclaim; Pltf's motion

		for summary judgment is granted as to deft, Thomas Stewart's, III, claim for computer-related expenses to the extent that deft may only pursue such expenses in the amount of \$7,000.00; and Plt's motion for summary judgment is denied as to deft's claims for theft loss, commissions, liquidated damages and for deft's claim under the Wage Payment and Collection Law. (signed by Chief Judge Donetta W. Ambrose 6/9/05) CM all parties of record. (ksa) (Entered: 06/10/2005)
06/13/2005	157	Tele-conference on motion to take deposition held 6/13/05 before Chief Judge Donetta W. Ambrose [Reporter: none]. Plt's counsel to let court know immediately if can't schedule deposition in June. Order that depo take place in June. (ksa) (Entered: 06/14/2005)
06/13/2005		ORDER upon motion granting [154-1] motion for leave to depose material witness. IT IS ORDERED that pltf is given leave to depose Ms. Chechuck on 6/24/05. The deposition must be taken during the month of June. (signed by Chief Judge Donetta W. Ambrose on 6/13/05) CM all parties of record. (ksa) (Entered: 06/14/2005)
06/13/2005	158	STIPULATED MOTION by WEEDS, INC. for authorization to release address and contact information with Proposed Order. (ksa) (Entered: 06/14/2005)
06/16/2005		ORDER upon motion denying [158-1] motion for authorization to release address and contact information absent some confirmation from Ms. Chechuck, this court will not require the Fayette County Domestic Relations Office to release her address. (signed by Chief Judge Donetta W. Ambrose on 6/15/05) CM all parties of record. (ksa) (Entered: 06/17/2005)
06/16/2005	159	ORDER of Court setting settlement conference. set Settlement Conference for 9:30 7/16/05 in Courtroom 7, 9th Floor, USPO & Courthouse, Pittsburgh, PA. (signed by Judge Arthur J. Schwab on 6/1/05) CM all parties of record. (ksa) (Entered: 06/20/2005)
06/21/2005	160	ORDER that, in anticipation of the settlement conference scheduled before Judge Schwab on 7/6/05, within 2 business days of the conference, the parties shall submit a proposed settlement agreement to the Court. (signed by Judge Arthur J. Schwab on 6/21/05) CM all parties of record. (ksa) (Entered: 06/22/2005)
06/27/2005	161	SECOND AMENDED PRETRIAL STATEMENT filed by WEEDS, INC. (ksa) (Entered: 06/29/2005)
07/18/2005	162	MOTION in Limine I: To Exclude Certain Evidence of Confusion by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. (Attachments: # 1 Proposed Order)(crw,) (Entered: 07/18/2005)
07/18/2005	163	BRIEF in Support re 162 MOTION in Limine to exclude certain evidence of confusion filed by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. (crw,) (Entered: 07/18/2005)

07/18/2005	164	MOTION in Limine II: To exclude defendants' Irrelevant Personal Information by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. (Attachments: # 1 Proposed Order)(crw,) (Entered: 07/18/2005)
07/18/2005	165	BRIEF in Support re 164 MOTION in Limine filed by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. (crw,) (Entered: 07/18/2005)
07/18/2005	166	MOTION in Limine III: To Exclude Tainted Testimony of Robert Holchin by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. (Attachments: # 1 Proposed Order)(crw,) (Entered: 07/18/2005)
07/18/2005	167	BRIEF in Support re 166 MOTION in Limine filed by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. (crw,) (Entered: 07/18/2005)
07/18/2005	168	MOTION in Limine IV: to exclude evidence of certain expenses by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. (Attachments: # 1 Proposed Order)(crw,) (Entered: 07/18/2005)
07/18/2005	169	BRIEF in Support re 168 MOTION in Limine filed by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. (crw,) (Entered: 07/18/2005)
07/18/2005	170	MOTION in Limine V: To Exclude written police investigation reports by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. (Attachments: # 1 Proposed Order)(crw,) (Entered: 07/18/2005)
07/18/2005	171	BRIEF in Support re 170 MOTION in Limine filed by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. (crw,) (Entered: 07/18/2005)
07/18/2005	172	NOTICE of Motion in Limine Certificate by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN re 164 MOTION in Limine, 162 MOTION in Limine, 168 MOTION in Limine, 170 MOTION in Limine, 166 MOTION in Limine (crw,) (Entered: 07/18/2005)
07/18/2005	174	MOTION in Limine to Exclude Testimony of Defendants' Proffered Expert Witnesses from Hill Barth and King by WEEDS, INC.. (Attachments: # 1 Part 2 of 6 # 2 Part 3 of 6 # 3 Part 4 of 6 # 4 Part 5 of 6 # 5 Part 6 of 6)(jsp) (Entered: 07/19/2005)
07/18/2005	175	MOTION in Limine to Exclude Exhibits at Time of Trial by WEEDS, INC. (jsp) (Entered: 07/19/2005)
07/18/2005		Proposed order re: Document #174 received from WEEDS, INC. (jsp) (Entered: 07/19/2005)
07/18/2005	176	Errata re Remark by WEEDS, INC. Reason for Correction: not docketed

		as attachment to motion. (jsp) (Entered: 07/19/2005)
07/19/2005	173	PRETRIAL STATEMENT filed by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN.. (Malkin, Brian) (Entered: 07/19/2005)
07/20/2005		CLERK'S OFFICE QUALITY CONTROL MESSAGE. re 173 Pretrial Statement. ERROR: Typed name omitted by s/. CORRECTION: Attorney advised of signature requirements. Attorney to resubmit with signature, using Errata event. This message is for informational purposes only. (crw,) (Entered: 07/20/2005)
07/21/2005	177	PRETRIAL STATEMENT filed by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN.. (Malkin, Brian) (Entered: 07/21/2005)
07/25/2005	178	Proposed Voir Dire by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. (Malkin, Brian) (Entered: 07/25/2005)
07/25/2005	179	RESPONSE to Motion re 175 MOTION in Limine, 174 MOTION in Limine to Exclude Expert Testimony filed by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN, ALDEN E. BOWEN. (Attachments: # 1 Exhibit Defendants' Expert Supplemental Report# 2 Exhibits for Defendants Response to Plaintiff's Motion in Limine)(Malkin, Brian) Modified on 9/6/2005 to correct typo (ksa). (Entered: 07/25/2005)
07/26/2005	180	AMENDED DOCUMENT by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. Amendment to 171 Brief in Support of Motion to Exclude Evidence of Written Police Report. (Malkin, Brian) (Entered: 07/26/2005)
07/26/2005	181	Minute Entry for proceedings held before Judge Donetta W. Ambrose : Telephone Conference held on 7/26/2005. Daubert Hearing set for 8/23/2005 immediately following the Jury Selection. (jlh) (Entered: 07/26/2005)
07/27/2005	182	RESPONSE to Motion re 166 MOTION in Limine to Exclude Tainted Testimony of Robert Holchin filed by WEEDS, INC.. (Attachments: # 1 Exhibit Deposition Transcript of Holchin)(Moskal, Dennis) (Entered: 07/27/2005)
07/27/2005	183	RESPONSE to Motion re 162 MOTION in Limine to Exclude Evidence of Confusion filed by WEEDS, INC.. (Moskal, Dennis) (Entered: 07/27/2005)
07/28/2005	184	RESPONSE to Motion re 170 MOTION in Limine to Exclude Police Investigation Reports filed by WEEDS, INC. (Moskal, Dennis) Modified on 8/1/2005 (ksa). ERROR: Wrong event selected. (Entered: 07/28/2005)
07/28/2005	185	RESPONSE to Motion re 168 MOTION in Limine to Exclude Evidence of Certain Expenses filed by WEEDS, INC.. (Moskal, Dennis) Modified

		on 8/1/2005 (ksa,). ERROR: Wrong event selected. (Entered: 07/28/2005)
07/28/2005	186	RESPONSE to Motion re 164 MOTION in Limine to Exclude Personal Information filed by WEEDS, INC.. (Moskal, Dennis) Modified on 8/1/2005 (ksa). ERROR: Wrong event selected. (Entered: 07/28/2005)
07/28/2005	189	BRIEF in Opposition re 170 MOTION in Limine to exclude Police Investigation Reports filed by WEEDS, INC. Document previously filed electronically. (ksa) (Entered: 08/01/2005)
07/28/2005		CLERK'S OFFICE QUALITY CONTROL MESSAGE. ERROR: re 185 Response to Motion Wrong event selected. CORRECTION: Re-docketed as Brief in Opposition re 168 MOTION in Limine to Exclude Evidence of Certain Expenses filed by WEEDS, INC.. This message is for informational purposes only. (ksa) (Entered: 08/01/2005)
07/28/2005	190	BRIEF in Opposition re 168 MOTION in Limine to exclude evidence of certain expenses filed by WEEDS, INC. Document previously filed electronically. (ksa) (Entered: 08/01/2005)
07/28/2005	191	CLERK'S OFFICE QUALITY CONTROL MESSAGE. ERROR: re 186 Response to Motion Wrong event selected. CORRECTION: Re-docketed as Brief in Opposition to Motion re 164 MOTION in Limine to Exclude Personal Information filed by WEEDS, INC. This message is for informational purposes only. (ksa) (Entered: 08/01/2005)
07/28/2005	192	BRIEF in Opposition re 164 MOTION in Limine to Exclude Personal Information filed by WEEDS, INC. Document previously filed electronically. (ksa) (Entered: 08/01/2005)
07/29/2005	187	First MOTION to Extend Time for settlement and submitting jury instructions by WEEDS, INC.. (Moskal, Dennis) (Entered: 07/29/2005)
08/01/2005	188	First MOTION to Amend/Correct 186 Response to Motion to Exclude Evidence of Personal Matters by WEEDS, INC.. (Attachments: # 1 Exhibit Supplemental Exhibit and Depo Transcript)(Moskal, Dennis) (Entered: 08/01/2005)
08/01/2005		CLERK'S OFFICE QUALITY CONTROL MESSAGE. ERROR: re 184 Response to Motion Wrong event selected. CORRECTION: Re-docketed as Brief in Opposition re 170 MOTION in Limine to Exclude Police Investigation Reports filed by WEEDS, INC.,. This message is for informational purposes only. (ksa) (Entered: 08/01/2005)
08/01/2005	193	Proposed Voir Dire by WEEDS, INC.. (Moskal, Dennis) Modified on 8/2/2005 (ksa). ERROR: Wrong event selected. (Entered: 08/01/2005)
08/01/2005	194	Proposed Voir Dire by WEEDS, INC.. (Moskal, Dennis) (Entered: 08/01/2005)
08/01/2005	197	Proposed Points for Charge by WEEDS, INC. (ksa) Modified on 8/2/2005 (ksa). Document previously filed electronically. (Entered: 08/02/2005)

08/02/2005	195	Proposed Jury Instructions by WEEDS, INC.. (Moskal, Dennis) (Entered: 08/02/2005)
08/02/2005	196	ORDER granting 187 Motion to Extend Time (re) the settlement deadline and joint jury instructions. Proposed Jury Instructions due by 8/2/2005. Signed by Judge Donetta W. Ambrose on 8/1/05. (jlh) (Entered: 08/02/2005)
08/02/2005		CLERK'S OFFICE QUALITY CONTROL MESSAGE. ERROR: re 193 Proposed Voir Dire Wrong event selected. CORRECTION: Re-docketed as Proposed Points for Charge. This message is for informational purposes only. (ksa) (Entered: 08/02/2005)
08/02/2005	198	Proposed Jury Instructions by WEEDS, INC., WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. (Malkin, Brian) Modified on 8/18/2005 (ksa). ERROR: Wrong event selected. (Entered: 08/02/2005)
08/02/2005	203	Proposed Points for Charge by WEEDS, INC., WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. (ksa) (Entered: 08/18/2005)
08/15/2005	199	OPINION & ORDER granting in part and denying in part as set forth in Opinion 162 ; Motion in Limine, granting in part and denying in part as set forth in Order 164 ; Motion in Limine, denying without prejudice 166 ; Motion in Limine, denying without prejudice 168 ; Motion in Limine, granting in part and denying in part 170 as set forth in Order; Motion in Limine granting 188 Motion to Amend/Correct. Signed by Judge Donetta W. Ambrose, Chief Judge on 08/15/2005.(adb) Modified on 8/18/2005 to correct typos (ksa). (Entered: 08/15/2005)
08/15/2005	200	Minute Entry for proceedings held before Judge Donetta W. Ambrose : Telephone Conference held on 8/11/2005. (jlh) Modified on 8/15/2005 (jlh,). (Entered: 08/15/2005)
08/15/2005	201	Minute Entry for proceedings held before Judge Donetta W. Ambrose : Telephone Conference held on 8/12/2005. (jlh) (Entered: 08/15/2005)
08/15/2005	202	OPINION & ORDER denying 175 Plaintiff's Motion in Limine to Exclude Exhibits. Signed by Judge Donetta W. Ambrose, Chief Judge on 08/15/2005.(adb) (Entered: 08/15/2005)
08/18/2005		CLERK'S OFFICE QUALITY CONTROL MESSAGE. ERROR: re 198 Proposed Jury Instructions Wrong event selected. CORRECTION: Re-docketed as Proposed Points for Charge. This message is for informational purposes only. (ksa,) (Entered: 08/18/2005)
08/22/2005	204	TRIAL BRIEF on <i>Plaintiff's Claims</i> by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. (Malkin, Brian) (Entered: 08/22/2005)
08/22/2005	205	TRIAL BRIEF on <i>Defendants' Counterclaims and Defenses</i> by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. (Malkin, Brian) (Entered: 08/22/2005)

		08/22/2005)
08/22/2005	206	MOTION to Intervene for the Limited Purpose of Submitting Special Interrogatories in the Event of a Jury Verdict of Monetary Damages Against One or More Defendants by OHIO CASUALTY INSURANCE COMPANY, SCOTTSDALE INSURANCE COMPANY, WEST AMERICAN INSURANCE COMPANY. (Attachments: # 1 Proposed Order)(ksa) (Entered: 08/22/2005)
08/22/2005	207	BRIEF in Opposition re 206 MOTION to Intervene <i>Brief in Opposition to Motion to Intervene</i> filed by WEEDS, INC.. (Attachments: # 1 # 2) (Zegarelli, Gregg) (Entered: 08/22/2005)
08/22/2005	208	BRIEF in Opposition re 206 MOTION to Intervene <i>Amended Certificate of Service to Plaintiff's Brief in Opposition to Motion to Intervene</i> filed by WEEDS, INC. (Zegarelli, Gregg)ERROR: Wrong event selected Modified on 9/7/2005 (ksa). (Entered: 08/22/2005)
08/22/2005	212	AMENDED Certificate of Service by WEEDS, INC. Amendment to 207 Brief in Opposition to Motion. (ksa) (Entered: 09/07/2005)
08/24/2005	209	Minute Entry for proceedings held before Judge Donetta W. Ambrose : Jury Selection held on 8/23/2005, Settlement Conference held on 8/23/2005. Case Settled. (Court Reporter Virginia Pease) (jlh) (Entered: 08/24/2005)
08/24/2005	210	ORDER denying 174 Motion in Limine . Signed by Judge Donetta W. Ambrose on 8/23/05. (jlh) (Entered: 08/24/2005)
08/24/2005	211	ORDER DISMISSING CASE, CASE CLOSED. Signed by Judge Donetta W. Ambrose on 8/23/05. (jlh) (Entered: 08/24/2005)
09/07/2005		CLERK'S OFFICE QUALITY CONTROL MESSAGE. re 207 Brief in Opposition to Motion. ERROR: Attachments not described correctly or no description was provided. CORRECTION: Attachment description corrected. This message is for informational purposes only. (ksa) (Entered: 09/07/2005)
09/07/2005		CLERK'S OFFICE QUALITY CONTROL MESSAGE. ERROR: re 208 Brief in Opposition to Motion Wrong event selected. CORRECTION: Re-docketed as Amended Certificate of Service. This message is for informational purposes only. (ksa) (Entered: 09/07/2005)
11/16/2005	213	TRANSCRIPT of Proceedings held on 8/23/2005 before Judge Ambrose. Court Reporter: Virginia Pease. Request for Redaction of specific personal identifiers 12/1/2005. (ksa) (Entered: 11/16/2005)
02/20/2006	214	First MOTION to Enforce Judgment <i>and Award Sanctions</i> by WEEDS, INC. (Moskal, Dennis) Modified on 2/24/2006 ERROR: MULTIPLE RELIEF DOCUMENT FILED AS ONE RELIEF; RE-FILED BY COURT (ksa). (Entered: 02/20/2006)
02/20/2006	218	MOTION to Enforce Judgment, MOTION for Sanctions by WEEDS, INC. (ksa) (Entered: 02/24/2006)

02/22/2006	215	First MOTION to Amend/Correct 214 First MOTION to Enforce Judgment <i>and Award Sanctions</i> by WEEDS, INC. (Attachments: # 1 Proposed Order Supplemental Proposed Order)(Moskal, Dennis) Modified on 2/24/2006 ERROR: Wrong event selected. Document removed from public view and redocketed correctly. (ksa) (Entered: 02/22/2006)
02/22/2006	219	SUPPLEMENT by WEEDS, INC. to 218 Motion to Enforce Judgment, Motion for Sanctions. (Attachments: # 1 Proposed Order). Document previously filed electronically (ksa) (Entered: 02/24/2006)
02/23/2006	216	NOTICE: Response to Plaintiff's Motion to Enforce Consent Judgment (Docket No. 214) due by 3/2/2006. (jlh) Modified on 2/24/2006 to correct typo (ksa). (Entered: 02/23/2006)
02/23/2006	217	Errata re 216 Notice of Hearing. Reason for Correction: misstated that briefs in support and in opposition are limited to 20 pages and any exhibits must be 20 pages or summarized within 20 pages. (Should have read briefs in opposition only). (jlh) Modified on 2/24/2006 to correct typo (ksa). (Entered: 02/23/2006)
02/24/2006		CLERK'S OFFICE QUALITY CONTROL MESSAGE re 214 First MOTION to Enforce Judgment <i>and Award Sanctions</i> ERROR: Multiple Relief Document filed as one Relief; CORRECTION: Re-filed correctly by Court. Attorney also advised that all proposed orders are to be filed as attachments to the motion being filed. This submission will remain on the docket unless otherwise ordered by the Court. This message is for informational purposes only. (ksa) (Entered: 02/24/2006)
02/24/2006		CLERK'S OFFICE QUALITY CONTROL MESSAGE. ERROR: re 215 First MOTION to Amend/Correct 214 First MOTION to Enforce Judgment <i>and Award Sanctions</i> Wrong event selected. CORRECTION: Re-docketed as Supplement to Motion to Enforce Judgment and Award Sanctions. This message is for informational purposes only. (ksa) (Entered: 02/24/2006)
03/01/2006	220	RESPONSE to Motion re 215 First MOTION to Amend/Correct 214 First MOTION to Enforce Judgment <i>and Award Sanctions</i> , 218 MOTION to Enforce Judgment MOTION for Sanctions filed by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. (Attachments: # 1 Exhibit to Response)(Malkin, Brian) Modified on 3/20/2006 to correct typo (ksa). (Entered: 03/01/2006)
03/01/2006	221	First MOTION for Leave to File Evidence to Supplement Motion to Enforce Consent Judgment by WEEDS, INC. (Attachments: # 1 Proposed Order # 2 Exhibit Documentary evidence of non-compliance) (Moskal, Dennis) Modified on 3/20/2006 to correct typo (ksa). (Entered: 03/01/2006)
03/03/2006	222	STATUS REPORT by WEEDS, INC. (Moskal, Dennis) Modified on 3/20/2006 to correct typo (ksa). (Entered: 03/03/2006)

03/06/2006	223	Minute Entry for proceedings held before Judge Donetta W. Ambrose: Telephone Conference held on 3/3/2006. (Court Reporter none.) (jlh) Modified on 3/22/2006 to correct typo (ksa). (Entered: 03/06/2006)
03/06/2006	224	ORDER granting 221 Motion for Leave to File Evidence in Support of its Motion to Enforce Consent Judgment. Signed by Judge Donetta W. Ambrose on 3/3/06. (jlh) Modified on 3/22/2006 to correct typo (ksa). (Entered: 03/06/2006)
03/07/2006	225	First MOTION for Attorney Fees by WEEDS, INC. (Attachments: # 1 Proposed Order # 2 Exhibit Time Slip Entries)(Moskal, Dennis) Modified on 3/22/2006 to correct typo (ksa). (Entered: 03/07/2006)
03/10/2006	226	RESPONSE to Motion re 225 First MOTION for Attorney Fees filed by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Proposed Order) (Malkin, Brian) Modified on 3/22/2006 to correct typos (ksa). (Entered: 03/10/2006)
03/10/2006	227	RESPONSE to Motion re 225 First MOTION for Attorney Fees filed by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Proposed Order) (Malkin, Brian) Modified on 3/22/2006 ERROR: DOCUMENT 227 IS A DUPLICATE OF DOCUMENT 226 (ksa). (Entered: 03/10/2006)
03/13/2006	228	First MOTION to Strike 227 Response to Motion,, 226 Response to Motion, by WEEDS, INC. (Attachments: # 1 Proposed Order)(Moskal, Dennis) Modified on 3/27/2006 to correct typo (ksa). (Entered: 03/13/2006)
03/14/2006	229	MEMORANDUM OPINION & ORDER granting 218 Motion to Enforce Judgment; granting 218 Motion for Sanctions; and denying 225 Motion for Attorney Fees as set forth in the Opinion accompanying this Order. It is also Ordered that Plaintiff's request for a compliance hearing in the future is DENIED. Signed by Judge Donetta W. Ambrose, Chief Judge on 03/14/2006.(adb) (Entered: 03/14/2006)
03/14/2006	230	ORDER denying 228 Motion to Strike. Signed by Judge Donetta W. Ambrose on 3/14/06. (jlh) Modified on 3/27/2006 to correct typo (ksa). (Entered: 03/14/2006)
03/14/2006	231	First MOTION for Clarification of <i>Memorandum Opinion Dated March 14, 2006</i> by WEEDS, INC. (Attachments: # 1 Proposed Order)(Moskal, Dennis) Modified on 3/27/2006 to correct typo (ksa). (Entered: 03/14/2006)
03/14/2006	232	RESPONSE to Motion re 231 First MOTION for Clarification <i>Memorandum Opinion Dated March 14, 2006</i> filed by WEEDS NO MORE, INC., THOMAS STEWART, III, THOMAS STEWART, IV, JOHN STONE, JO ANNE GOLDEN. (Attachments: # 1 Proposed Order Denying Plaintiff's Motion to Clarify Order)(Malkin, Brian) Modified on

		3/27/2006 to correct typo (ksa). (Entered: 03/14/2006)
03/15/2006	233	First MOTION for Leave to File Response to Defendants' Response to Motion to Clarify by WEEDS, INC. (Attachments: # 1 Proposed Order) (Moskal, Dennis) Modified on 3/27/2006 document linkage modified, document linked to document #232 and attachment named (ksa). (Entered: 03/15/2006)
03/15/2006	234	ORDER denying 231 Motion for Clarification. Signed by Judge Donetta W. Ambrose on 3/15/06. (jlh) Modified on 3/27/2006 to correct typo (ksa). (Entered: 03/15/2006)
03/15/2006	235	ORDER denying 233 Motion for Leave to File Response. Signed by Judge Donetta W. Ambrose on 3/15/06. (jlh) Modified on 3/27/2006 to correct typo (ksa). (Entered: 03/15/2006)
03/20/2006		CLERK'S OFFICE QUALITY CONTROL MESSAGE re 220 Response to Motion, ERROR: Proposed Order was made part of main document. CORRECTION: Attorney advised that in future proposed orders are to be made attachments to the main document. This message is for informational purposes only. (ksa) (Entered: 03/20/2006)
03/22/2006		CLERK'S OFFICE QUALITY CONTROL MESSAGE re 227 Response to Motion,, 226 Response to Motion, ERROR: Documents are duplicates. CORRECTION: Duplicate document No. 227 terminated. These submissions will remain on the docket unless otherwise ordered by the Court. This message is for informational purposes only. (ksa) (Entered: 03/22/2006)
03/27/2006		CLERK'S OFFICE QUALITY CONTROL MESSAGE re 233 First MOTION for Leave to File Response to Defendants' Response to Motion to Clarify ERROR: Document incorrectly linked. CORRECTION: Linked to appropriate document. Also attachment was not described, attachment description corrected. This message is for informational purposes only. (ksa) (Entered: 03/27/2006)

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