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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TERAGREN LLC, a Washington limited liability company,)	
)	No. C07-5612-RBL
)	
Plaintiff,)	
)	ANSWER, AFFIRMATIVE DEFENSES,
v.)	AND COUNTERCLAIMS OF
)	DEFENDANT SMITH AND FONG
SMITH & FONG COMPANY, a California corporation,)	COMPANY
)	
Defendant.)	
)	JURY TRIAL DEMANDED

Defendant Smith & Fong Company (hereinafter, "Smith & Fong Co." or "Defendant"), by and through its attorneys, hereby answers the Complaint filed by Plaintiff Teragren LLC (hereinafter, "Teragren," or "Plaintiff") as follows:

1. Defendant admits that Plaintiff has filed a one-count Complaint alleging infringement of a patent relating to bamboo products. Defendant denies the remaining allegations of paragraph 1 of the Complaint.
 2. Defendant admits, on information and belief, that Plaintiff is a Washington limited liability company with its principal place of business located at Bainbridge Island, Washington.
 3. Defendant admits that Smith & Fong Co. is a California corporation.
- Defendant further admits that PLYBOO is a registered trademark owned by Defendant and

1 used in connection with some of Defendant's goods, and that it does business in the state of
2 Washington and in this judicial district. Defendant denies the remaining allegations of
3 paragraph 3 of the Complaint.

4 4. Defendant admits that this Court has jurisdiction over the asserted claims.

5 5. Defendant admits that venue is proper in this Court. Defendant denies the
6 remaining allegations of Paragraph 5 of the Complaint.

7 6. On information and belief, Defendant admits that U.S. Patent No. 5,543,197
8 entitled "Parallel Randomly Stacked, Stranded Laminated Bamboo Boards and Beams" ("the
9 '197 Patent") was issued to Jay Plaehn on or about August 6, 1996. Defendant denies the
10 remaining allegations of paragraph 6 of the Complaint.

11 7. Defendant lacks sufficient information to admit or deny the allegations of
12 paragraph 7 of the Complaint, and on that basis denies the allegations of paragraph 7 of the
13 Complaint.

14 8. Defendant lacks sufficient information to admit or deny the allegations of
15 paragraph 8 of the Complaint, and on that basis denies the allegations of paragraph 8 of the
16 Complaint.

17 9. Paragraph 9 of the Complaint states legal contentions to which no answer is
18 required. Defendant admits that Plaintiff has sent letters to Defendant alleging that Plaintiff
19 has certain rights arising out of the '197 Patent. Defendant denies any remaining factual
20 allegation of paragraph 9 of the Complaint.

21 10. Defendant admits that PLYBOO® is a registered trademark owned by
22 Defendant and used in connection with some of Defendant's goods and services, including
23 bamboo flooring and plywood and related goods. Defendant admits that it sells bamboo
24 flooring and plywood under its PLYBOO® mark and trade name. Defendant denies the
25 remaining allegations of paragraph 10 of the Complaint.
26

1 11. Defendant admits that PLYBOO STRAND® is a registered trademark owned
2 by Defendant and used in connection with some of Defendant's goods, including bamboo
3 flooring and plywood and related goods.

4 12. Defendant admits that some of its PLYBOO STRAND® brand products are
5 made using a process commonly or colloquially referred to as a strand process. Defendant
6 denies the remaining allegations in paragraph 12 of the Complaint.

7 13. Defendant admits that it has described a strand process as follows:

8 Mixing strands of bamboo with a low-VOC adhesive, Plyboo® Strand™ is
9 manufactured using high levels of compression. With all strips oriented in the
10 same direction, the shredded bamboo mass is thrashed and then, under extreme
11 pressure, compressed by 75% to yield high-density planks. After a kiln-drying
and milling process the planks are sanded and finished, giving them their
trademark Plyboo® Strand™ look.

12 Defendant denies the remaining allegations of paragraph 13 of the Complaint.

13 14. In response to paragraph 14 of the Complaint, Defendant incorporates its
14 answers to paragraphs 1 through 13 of this Answer as if fully set forth herein.

15 15. Defendant denies the factual allegations of paragraph 15 of the Complaint.
16 The remaining allegations of paragraph 15 are legal contentions, to which no answer is
17 required.

18 16. Defendant denies the factual allegations of paragraph 16 of the Complaint.
19 The remaining allegations of paragraph 16 are legal contentions, to which no answer is
20 required.

21 17. Defendant denies the factual allegations of paragraph 17 of the Complaint.
22 The remaining allegations of paragraph 17 are legal contentions, to which no answer is
23 required.

24 18. Answering Plaintiff's prayer for relief, Defendant denies that Plaintiff is
25 entitled to any relief and denies the factual allegations contained within Plaintiff's prayer for
26 relief. The remaining statements contained in Plaintiff's prayer for relief are denied because

1 they are legal contentions, to which no pleading response is required.

2 **AFFIRMATIVE DEFENSES**

3 In further reply to Plaintiff's claims, and as affirmative defenses thereto, Defendant
4 alleges as follows:

5 1. Plaintiff's claims are barred in whole or in part by:

6 a. the statute of limitations; or

7 b. the doctrines and principles of waiver, estoppel, unclean hands,
8 inequitable conduct and latches.

9 2. The Complaint fails to state a claim upon which relief may be granted.

10 3. Defendant did not infringe, has not infringed and is not infringing any valid
11 claim of the '197 Patent, either directly or under the doctrine of equivalents.

12 4. The '197 Patent is, on information and belief, invalid for failure to satisfy the
13 requirements for patentability of one or more of the sections of the Patent Act, Title 35,
14 United States Code (hereinafter "35 U.S.C.").

15 5. The '197 Patent is, on information and belief, invalid for failing to meet the
16 written description and/or enablement requirements under 35 U.S.C. § 112.

17 6. The '197 Patent is, on information and belief, invalid for failing to meet the
18 best mode requirement under 35 U.S.C. § 112.

19 7. The '197 Patent is, on information and belief, invalid for failing to meet the
20 definiteness requirement under 35 U.S.C. § 112.

21 8. The '197 Patent is, on information and belief, invalid for failure to meet the
22 conditions of patentability of one or more of the subsections of 35 U.S.C. § 102.

23 9. The '197 Patent is, on information and belief, invalid under 35 U.S.C. § 102
24 because the alleged inventor did not invent the subject matter sought to be patented in the
25 '197 Patent.

1 10. The '197 Patent is, on information and belief, invalid for failure to meet the
2 conditions of patentability of one or more of the subsections of 35 U.S.C. § 103.

3 11. The '197 Patent is, on information and belief, unenforceable because it was
4 obtained through misrepresentations and/or fraud on the United States Patent and Trademark
5 Office. On information and belief, the putative inventor of the '197 Patent represented that he
6 was the inventor with knowledge that subject matter of the claims of the '197 Patent was
7 invented by another and had previously been offered for sale by another in the United States.

8 12. The '197 Patent is, on information and belief, unenforceable because Plaintiff,
9 whether alone or acting in concert with others, has knowingly misused the '197 Patent by
10 asserting and threatening to assert patent infringement without regard to whether the accused
11 products infringe, or by wrongfully seeking to extend the '197 Patent beyond its lawful scope.
12 Plaintiff's misuse and its effects continue.

13 13. Plaintiff has failed to mitigate any alleged damages.

14 14. Defendant acted innocently and in good faith.

15 15. The prior art so limits and restricts the scope of the '197 Patent claims that
16 Defendant cannot be considered to have infringed Teragren's rights.

17 16. Plaintiff is not entitled to injunctive relief because any alleged injury to
18 Plaintiff is neither immediate nor irreparable, and adequate remedies at law are available to
19 Plaintiff.

20 17. Plaintiff is estopped from construing any claim of the '197 Patent to cover or
21 include, either literally or by application of the Doctrine of Equivalents, any product made,
22 used, imported, sold, or distributed by the Defendant, as a result of acts, representations,
23 admissions, or omissions made during the prosecution of the patent application that matured
24 into the '197 Patent.

25 18. Plaintiff lacks standing to bring or maintain the present suit because it is not
26 the exclusive licensee of the '197 Patent in the United States.

1 marketplace), and innovation (by attempting to control the types of bamboo strand products
2 that enter the marketplace).

3 4. Smith & Fong Co. seeks damages and declaratory relief for Teragren's
4 activities by which Teragren has attempted to monopolize the market for all bamboo strand
5 products. As set forth herein, Teragren's illegal conduct is exemplified by its fraudulent
6 procurement and enforcement of the '197 Patent. In addition Teragren has committed other
7 illegal and unfair acts involving, *inter alia*, its pattern and practice of conditioning sub-
8 licenses to coercive and anticompetitive terms, interference with present and prospective
9 relationships between Smith & Fong Co., and other similarly situated competitive parties, and
10 their suppliers, distributors, and customers, and other acts of unfair competition.

11 5. For these reasons, as set forth below, Smith & Fong Co. seeks damages, treble
12 damages for violations of the United States antitrust and trademark laws, and preliminary and
13 permanent injunctive relief. In addition, Smith & Fong Co. asks this Court to declare the '197
14 Patent invalid and unenforceable, and further to declare that Smith & Fong's current and
15 anticipated activities and bamboo strand products do not infringe any claim of the '197 Patent.

16 **JURISDICTION AND VENUE**

17 6. This Court has original jurisdiction over the subject matter of these
18 counterclaims pursuant to 28 U.S.C. §§ 1331 (Federal Question), 1338(a) (Patents and Unfair
19 Competition), and 28 U.S.C. §§ 2201(a) (Declaratory Judgment), and over the other claims
20 set forth below by virtue of 28 U.S.C. § 1338(b), and supplemental jurisdiction, 28 U.S.C. §
21 1367.

22 7. Venue is proper pursuant to 28 U.S.C. §§ 1391(a) and 1391(b).

23 **THE PARTIES**

24 8. Defendant Smith & Fong Company is a California Corporation with a place of
25 business located at 475 Sixth Street, San Francisco, California, 94103.

1 The '197 Patent would not have issued but for the false representation of the putative
2 inventor.

3 19. The '197 Patent is, on information and belief, unenforceable because Plaintiff,
4 whether alone or acting in concert with others, has knowingly misused the '197 Patent by
5 asserting and threatening to assert patent infringement without regard to whether the accused
6 products infringe, and by wrongfully seeking to extend the '197 Patent beyond its lawful
7 scope. Plaintiff's misuse and its effects continue.

8 20. On information and belief, Plaintiff has not conducted an infringement analysis
9 to determine whether all strand bamboo products sold in the U.S. and Mexico, including for
10 example flooring, flooring accessories, plywood, and panels, are subject to any patent rights
11 owned by Teragran.

12 21. On information and belief, Plaintiff has falsely represented, and continues to
13 represent, that all strand bamboo products sold in the U.S. and Mexico, including flooring,
14 flooring accessories, plywood, and panels, are subject to patent rights owned by Plaintiff.

15 22. On information and belief, not all strand bamboo products sold in the U.S. and
16 Mexico, and certainly none of the products imported, sold, or offered for sale by Smith &
17 Fong Co., are subject to patent rights allegedly owned by Plaintiff.

18 23. On information and belief, Plaintiff has falsely represented, and continues to
19 falsely represent, that its patent rights allow Plaintiff to control the quality of all strand
20 bamboo products, including, by way of example and not limitation, strand bamboo flooring.

21 24. On information and belief, Plaintiff's infringement claims are brought in bad
22 faith with knowledge that Defendant does not infringe any valid rights of Plaintiff in the '197
23 Patent.

24 25. On information and belief, Plaintiff's claims are brought in bad faith with
25 knowledge that '197 Patent is invalid and/or unenforceable.
26

1 26. The relevant product market in this matter is for bamboo strand products,
2 including for example bamboo strand flooring, plywood, veneers, panels, structural parts, and
3 related accessories (“the Market”). The geographic market is the United States. Teragren has
4 sought or maintained a monopoly position in the Market at all relevant times herein.

5 27. Bamboo strand products are not reasonably interchangeable with other
6 products in the Market.

7 28. Currently, Teragren maintains, and has acknowledged maintaining, a
8 substantial share of the Market, itself claiming that a substantial amount of the bamboo strand
9 products currently being imported and sold into the United States is authorized under
10 Teragren’s alleged exclusive license to the ’197 Patent, and are subject to Teragren’s sub-
11 licenses. Teragren threatens, and has attempted, to adopt and hold a monopoly position, and
12 has claimed that any and all bamboo strand products sold in the Market are subject to
13 Teragren’s alleged exclusive rights to the ’197 Patent, and by implication, the anti-
14 competitive sub-license terms complained of herein.

15 29. Because of the scope and unique functionality of the bamboo strand products,
16 such products are essential for competitive viability in the marketplace in which Smith &
17 Fong Company and others strive to compete. Without competitive access to said bamboo
18 strand products, free of the anti-competitive sub-license terms complained of herein, Smith &
19 Fong Company and others are, and would be, at a severe competitive disadvantage in the
20 Market.

21 30. On information and belief, Plaintiff has market power in the relevant Market,
22 or in the alternative, Plaintiff is dangerously likely to establish market power in the relevant
23 Market.

1 **COUNT I**

2 **DECLARATORY JUDGEMENT OF PATENT INVALIDITY**

3 31. Defendant incorporates by reference each of the averments contained in the
4 foregoing paragraphs as though fully set forth herein.

5 32. An actual controversy exists between Plaintiff and Defendant regarding the
6 validity of the claims of the '197 Patent.

7 33. Defendant therefore requests a Declaratory Judgment that the claims of the
8 '197 Patent are invalid.

9 **COUNT II**

10 **DECLARATORY JUDGEMENT OF NON-INFRINGEMENT**

11 34. Defendant incorporates by reference each of the averments contained in the
12 foregoing paragraphs as though fully set forth herein.

13 35. An actual controversy exists between Plaintiff and Defendant regarding
14 whether any valid claim of the '197 Patent is infringed by Defendant.

15 36. Defendant therefore requests a Declaratory Judgment that Defendant does not
16 infringe any valid claim of the '197 Patent.

17 **COUNT III**

18 **DECLARATORY JUDGEMENT OF UNENFORCEABILITY**

19 37. Defendant incorporates by reference each of the averments contained in the
20 foregoing paragraphs as though fully set forth herein.

21 38. An actual controversy exists between Plaintiff and Defendant as to whether
22 Plaintiff committed inequitable conduct before the Patent and Trademark Office during
23 prosecution of the '197 Patent.

24 39. An actual controversy exists between Plaintiff and Defendant regarding
25 whether Plaintiff has misused and is misusing the '197 Patent.

26 40. Defendant therefore requests a Declaratory Judgment that the '197 Patent is

1 unenforceable.

2 **COUNT IV**

3 **UNFAIR COMPETITION UNDER 15 U.S.C. § 1125**

4 41. Defendant incorporates by reference each of the averments contained in the
5 foregoing paragraphs as though fully set forth herein.

6 42. Plaintiff's false and misleading description of fact, and false and misleading
7 representations of fact regarding Plaintiff's alleged rights and control over all stranded
8 bamboo products falsely represents the characteristics of Plaintiff's and Defendant's goods,
9 and deceives and is likely to deceive others regarding the nature and characteristics of
10 Plaintiff's and Defendant's products, and as such constitutes unfair competition in violation of
11 Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

12 43. Plaintiff had actual knowledge that its statements and representations were
13 false and misleading. Plaintiff's false and misleading descriptions and representations of fact
14 were knowing, willful, and deliberate, making this an exceptional case within the meaning of
15 15 U.S.C. § 1117.

16 44. Defendant has been, will continue to be, and is likely to be damaged by
17 Plaintiff's false and misleading descriptions and representations of fact, and other acts of
18 unfair competition in a manner and amount that cannot be fully measured or compensated in
19 economic terms.

20 45. Plaintiff's actions have damaged, and will continue to damage, Defendant's
21 market, reputation, and goodwill, and may discourage current and potential customers from
22 dealing with Defendant. Such irreparable harm will continue unless Plaintiff's acts are
23 restrained and/or enjoined.

24 46. Defendant has been damaged by Plaintiff's actions in an amount to be proven
25 at trial.

1 COUNT V

2 VIOLATIONS OF SECTION 2 OF THE SHERMAN ACT

3 47. Defendant incorporates by reference each of the averments contained in the
4 foregoing paragraphs as though fully set forth herein.

5 48. On information and belief, the '197 Patent was fraudulently procured and
6 would not have issued but for the fraudulent procurement.

7 49. On information and belief, Plaintiff has threatened, or engaged in, litigation
8 without an objective basis therefore against Defendant, as well as against other manufacturers,
9 importers, sellers, consumers, and distributors of bamboo strand products for the improper
10 purpose of monopolizing the Market for all stranded bamboo products.

11 50. Defendant, and others similarly situated in the Market, have sought or
12 negotiated for sub-licenses to the '197 Patent, but such efforts have been futile because of
13 Teragren's conditioning of such sub-licenses on exorbitant and anti-competitive terms as
14 herein alleged.

15 51. On information and belief, Plaintiff, whether acting alone or in concert with
16 others, has specifically conditioned any sub-license to import, market, sell, or distribute
17 bamboo strand products on agreement to terms that extend the '197 Patent beyond its lawful
18 scope.

19 52. On information and belief, Plaintiff, whether acting alone or in concert with
20 others, has specifically attempted to fix prices on bamboo strand products in the relevant
21 Market, by conditioning a sub-license to export, import, market, sell, or distribute bamboo
22 strand products into the relevant Market on agreement to terms that establish minimum
23 market prices, thereby curtailing competition and harming the competitive marketplace.

24 53. On information and belief, Plaintiff, whether acting alone or in concert with
25 others, has specifically attempted to allocate market share for bamboo strand products in the
26 relevant Market, by conditioning a sub-license to export, import, market, sell, or distribute

1 bamboo strand products into the relevant Market on an agreement to terms that reserves to
2 Teragren the right to control the division or allocation of geographic markets or customers,
3 thereby damaging the competition and the competitive marketplace.

4 54. On information and belief, Plaintiff, whether acting alone or in concert with
5 others, has specifically attempted to enforce exclusive dealing for bamboo strand products in
6 the relevant Market, by conditioning any sub-license to export, import, market, sell, or
7 distribute bamboo strand products into the relevant Market on an agreement to terms whereby
8 each purchaser must buy exclusively from one supplier designated by Teragren for a certain
9 period of time, thereby foreclosing a substantial dollar volume, or a substantial market share,
10 to competitors such as Smith & Fong Co.

11 55. On information and belief, Plaintiff, whether acting alone or in concert with
12 others, has specifically attempted to enforce tying, and/or concerted refusal to deal,
13 arrangements for bamboo strand products in the relevant Market, by conditioning any sub-
14 license to export, import, market, sell, or distribute bamboo strand products into the relevant
15 Market on an agreement to terms whereby each sub-licensee must also agree, directly or
16 indirectly, to also sub-license a patent issued in the People's Republic of China, Patent No.
17 1133533, that is itself unenforceable, invalid, or not infringed by bamboo strand products
18 exported to the Market, or must agree not to deal with any party allegedly in breach of said
19 patent as determined by Teragren. By doing so, Teragren has impermissibly sought to
20 exclude competitors or competitive activity from the Market, and is further in violation of § 3
21 of the Clayton Act, 15 U.S.C. § 14.

22 56. By reason of the conduct alleged herein, Teragren has abused its patent rights,
23 if any such rights are cognizable at law, by attempting to monopolize the Market in order to
24 impose exorbitant and anti-competitive conditions upon access to the Market, and the bamboo
25 strand products, without any business justification for such conduct.
26

1 57. By reason of the conduct alleged herein, and as a direct and proximate result
2 therefrom, Smith & Fong Co., and others similarly situated in the Market, have been
3 damaged in that they cannot have access to, or their continuing access to, bamboo strand
4 products, has been conditioned, or is threatened to be conditioned upon exorbitant and
5 anticompetitive practices complained of herein. Consumers in the Market are also damaged
6 by these threatened or actual monopolistic practices, by anticompetitive prices, and reduced
7 consumer choice.

8 58. By the acts and practices recited hereinabove, Teragren has knowingly,
9 willfully, and specifically attempted to monopolize the Market in violation of the Sherman
10 Act, 15 U.S.C. § 2. Teragren's attempt to monopolize the Market is accompanied by a
11 dangerous probability of success as a consequence of the practices recited herein, all to the
12 detriment and harm of Smith & Fong Co. and others in the Market.

13 59. Plaintiff's actions, including the pricing and distribution restraints that are
14 central to its monopolistic licensing scheme, have proximately damaged, and will continue to
15 damage, Defendant's access to bamboo strand products, market share, reputation, and
16 goodwill. Plaintiff's actions have also discouraged, and may continue to discourage current
17 and potential suppliers, distributors, and customers from dealing with Defendant and others
18 similarly situated in the Market, thereby causing further injury-in-fact.

19 60. By reason of the continuing nature of Teragren's aforementioned unlawful
20 acts, and the financially uncertain effect thereof, Smith and Fong Co. has no adequate remedy
21 at law, has been irreparably injured, and is entitled to preliminary and permanent injunctions
22 enjoining Teragren from continuing its monopolistic activities.

23 61. Defendant has been damaged by Plaintiff's unlawful monopolistic acts and
24 practices in an amount to be proven at trial.

1 COUNT VI

2 CONSUMER PROTECTION ACT

3 62. Defendant incorporates by reference each of the averments contained in the
4 foregoing paragraphs as though fully set forth herein.

5 63. Plaintiff's false representations and monopolization and attempted
6 monopolization of the Market constitute violations of the Washington Consumer Protection
7 Act, R.C.W. §§ 19.86.020, 19.86.030, 19.86.040 and 19.86.050.

8 64. By reason of the conduct alleged herein, Teragren has abused its patent rights,
9 if any such rights are cognizable at law, by attempting to monopolize the Market in order to
10 impose exorbitant and anti-competitive conditions upon access to the Market, and the bamboo
11 strand products, without any business justification for such conduct, which is damaging to the
12 public interest in violation of the Washington Consumer Protection Act, R.C.W. § 19.86.020.

13 65. By reason of the conduct alleged herein, and as a direct and proximate result
14 therefrom, Smith & Fong Co., and others similarly situated in the Market, have been
15 damaged in that they cannot have access to, or their continuing access to, bamboo strand
16 products, has been conditioned, or is threatened to be conditioned upon exorbitant and
17 anticompetitive practices complained of herein. Consumers in the Market are also damaged
18 by these threatened or actual monopolistic practices, by anticompetitive prices, and reduced
19 consumer choice.

20 66. Defendant has been, will continue to be, and is likely to be damaged by
21 Plaintiff's false and misleading descriptions and representations of fact, and other acts of
22 unfair competition in a manner and amount that cannot be fully measured or compensated in
23 economic terms.

24 67. Plaintiff's actions have damaged, and will continue to damage, Defendant's
25 market, reputation, and goodwill, and may discourage current and potential customers from
26

1 dealing with Defendant. Such irreparable harm will continue unless Plaintiff's acts are
2 restrained and/or enjoined.

3 68. Defendant has been damaged by Plaintiff's actions in an amount to be proven
4 at trial.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Defendant Smith & Fong Co. prays for relief and judgment as
7 follows:

8 1. That the Complaint be dismissed with prejudice.

9 2. That the Court declare that the '197 Patent is invalid.

10 3. That the Court declare that Defendant did not, does not and has not infringed,
11 directly, contributorily, or by inducement, any valid and enforceable claim of the '197 Patent.

12 4. That the Court declare that the '197 Patent is unenforceable.

13 5. That Plaintiff, its respective officers, agents, servants, employees, and
14 attorneys, and all others in active concert or participation with Plaintiff, and each of them, be
15 preliminarily and permanently enjoined and restrained from:

16 a. All acts of unfair competition, including making false representations that
17 all bamboo flooring products are covered by Plaintiff's patents or controlled by
18 Plaintiff, and all acts in violation of the antitrust laws;

19 b. From making any claims to any person or entity that Smith & Fong
20 Co.'s products infringe the '197 Patent;

21 c. From interfering with, or threatening to interfere with, the manufacture,
22 sale, license, distribution, or use of bamboo strand products by Smith & Fong Co., its
23 allied parties, suppliers, distributors, customers, licensees, successors or assigns, and
24 others;

25 d. From instituting or prosecuting any lawsuit or proceeding, placing in
26 issue the right of Smith & Fong Co., its allied parties, suppliers, distributors,

1 customers, licensees, successors or assigns, and others to make, use, or sell bamboo
2 strand products.

3 6. That Plaintiff be required to pay Defendant such damages as Defendant has
4 sustained, or will sustain, in consequence of Plaintiff's false description and representation,
5 unfair competition, and to account for all gains, profits, and advantages derived by Plaintiff
6 that are attributable to such unlawful acts, and that such damages be trebled, as provided by
7 15 U.S.C. § 1117, or as otherwise permitted by law.

8 7. That Plaintiff be required to pay Defendant such damages as Defendant has
9 sustained, or will sustain, in consequence of Plaintiff's violations of antitrust laws, and to
10 account for all gains, profits, and advantages derived by Plaintiff that are attributable to such
11 unlawful acts, and that such damages be trebled, as provided by 15 U.S.C. § 15, or as
12 otherwise permitted by law.

13 8. That Plaintiff be required to pay Defendant such damages as Defendant has
14 sustained, or will sustain, in consequence of Plaintiff's false description and representation,
15 unfair competition, and to account for all gains, profits, and advantages derived by Plaintiff
16 that are attributable to such unlawful acts, and that such damages be trebled, as provided by
17 RCW § 19.86.090, or as otherwise permitted by law.

18 9. That Plaintiff be required to pay Defendant such damages as Defendant has
19 sustained, or will sustain, in consequence of Plaintiff's violations of antitrust laws, and to
20 account for all gains, profits, and advantages derived by Plaintiff that are attributable to such
21 unlawful acts, and that such damages be trebled, as provided by RCW § 19.86.090, or as
22 otherwise permitted by law.

23 10. For disgorgement of profits related to the illegal conduct complained of herein.

24 11. That this Court award Defendant its reasonable attorneys' fees and costs of suit
25 herein.

26 12. That this Court grant prejudgment and post judgment interest to Defendant.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on December 28, 2007 a copy of the foregoing ANSWER,
3 AFFIRMATIVE DEFENSES AND COUNTERCLAIMS OF DEFENDANT SMITH AND
4 FONG COMPANY was served on attorneys registered to receive service by email through the
5 Western District of Washington Electronic Case Filing System to the following:

6 Ramsey M. Al Salam
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10 PERKINS COIE
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12 Seattle, WA 98101

13 /s/ Nima A. Seyedali
14 Nima A. Seyedali