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12 Attorneys for Plaintiff,  
13 The Upper Deck Company, Inc.,  
14

15 UNITED STATES DISTRICT COURT

16 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

17	THE UPPER DECK COMPANY, INC., a	)	No.: <b>'12CV1923 CAB JMA</b>
18	Nevada Corporation,	)	
19		)	<b>COMPLAINT FOR:</b>
20	Plaintiff,	)	<b>(1) DECLARATORY RELIEF</b>
21		)	<b>JURY DEMAND</b>
22	v.	)	
23		)	
24	EXECUTIVE TRADING, LLC,, a Washington	)	
25	Limited Liability Company,	)	
26		)	
27	Defendants.	)	
28		)	

29 Plaintiff THE UPPER DECK COMPANY, INC. (“Plaintiff”), by and through its attorneys  
30 of record, for its Complaint, states as follows:

31 **PARTIES**

32 1. Plaintiff THE UPPER DECK COMPANY, INC. is a world-wide sports and  
33 entertainment company that, among other things, develops and sells trading cards. Plaintiff is a  
34 corporation duly organized and in good standing under the laws of the State of Nevada and is  
35 authorized to conduct business in the State of California. Plaintiff’s principal place of business is  
36 now 2251 Rutherford Road, Carlsbad, CA 92008. Previously, and during times which may be



1 sided, produced in color, of a certain standard size, with a subject person on the front (e.g. a  
2 sports star like Michael Jordan, or an entertainment icon like Marylyn Monroe) and with certain  
3 biographical information about that subject person on the back of the card.

4 8. As part of its successful business strategy, Plaintiff strives to stay topical and  
5 provide highly sought-after and currently-relevant content and products for consumers, including  
6 in the trading card sector.

7 9. It was natural, then, for Plaintiff, starting years ago, to develop certain limited-  
8 edition trading cards relevant to American politics and American history. For instance, in 2008,  
9 before Defendant even existed, Plaintiff developed and distributed trading cards depicting  
10 various candidates for the 2008 U.S. Presidential race, including Barrack Obama and Sarah Palin.  
11 After the election, in 2009, Plaintiff developed and distributed President Barrack Obama cards.  
12 In 2009 and 2010, when the news was abuzz with speculation over what kind of pet dog the  
13 Obamas would choose to be the “First Pet,” Plaintiff created a series of Obama dog cards  
14 depicting “Bo” the Portuguese Water Dog that the Obamas rescued and made the “First Dog.”

15 10. Also in 2009, Plaintiff developed and distributed cards depicting former  
16 Presidents Ronald Reagan and George H.W. Bush.

17 11. Over the years, Plaintiff has developed and distributed cards depicting all 44  
18 Presidents and, starting in around 2003, developed and distributed special edition “cut-signature”  
19 card inserts where consumers might get lucky and open a pack of cards to find a special card  
20 with a certain political figure’s signature inside.

21 12. All of Plaintiff’s political cards mentioned above were used as rare, special, and  
22 limited-edition random inserts in packs of already-existing trading card lines such as baseball  
23 cards. The idea was that consumers would be drawn to the rarity of the special political insert  
24 cards and the prospect of being lucky and finding one in a pack of, say, Upper Deck baseball  
25 cards, would promote sales.

26  
27  
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1           13. As far back as the 1990s, furthermore, Plaintiff developed American history  
2 trading cards depicting important figures from America's political history and/or important  
3 political developments in our nation's history. These American history cards were sold as a  
4 stand-alone set/product.

5           14. The idea for political cards is by no means new. As far back as the late 1800s,  
6 trading cards (or their equivalent) started to appear depicting important American political  
7 figures. In the 1960s, John F. Kennedy cards were developed and distributed.

8           15. In continuing with its business, it was very natural, then, for Plaintiff to develop  
9 and distribute cards related to what is now one of the biggest domestic news, social, and political  
10 topics: the 2012 Presidential Election.

11           16. While the idea sprung to life well before then, and has its roots in Plaintiff's earlier  
12 forays into political cards; starting on or around February 21, 2012 Plaintiff began randomly  
13 including nine special limited-edition "World of Politics" cards in their already-popular "World of  
14 Sports" trading card packs. To promote sales of the sports cards, Plaintiff randomly inserted one  
15 "World of Politics" card into one of every 40 packs of the "World of Sports" series.

16           17. The politicians depicted on the "World of Politics" limited edition insert cards  
17 included President Barack Obama, Mitt Romney, Newt Gingrich, Michele Bachmann, Ron Paul,  
18 Herman Cain, Sarah Palin, Rick Perry, and Rick Santorum (depicted throwing a baseball).  
19 Consistent with well-known industry techniques and standards, the cards are of the standard size, in  
20 color, containing a photo of one of these politicians on the front, with some biographical  
21 information about that politician on the back.

22           18. The "World of Politics" cards were and are only available to the public as a rare  
23 random insert into certain packs of "World of Sports" cards. None of the "World of Politics" cards  
24 are or ever were sold separately and they are and always have been meant to promote the "World of  
25 Sports" cards as an appeal to collectors who often seek rare card variations.

26           19. As outlined above, Plaintiff has an extensive history with political cards and even  
27 with using rare inserts of political cards in other card sets, such as the "World of Politics" inserts at  
28

1 issue here. In fact, the practice of using relatively rare inserts or components within established  
2 trading card sets is well-known and well-utilized in the industry.

3 20. Defendant is an online retailer conducting, upon information and belief, business  
4 and sales in all fifty states, including California. Defendant was formed relatively recently: in  
5 February of 2009.

6 21. Whereas Plaintiff created, for inclusion in regular sports card packs, limited  
7 edition political card inserts of only a few political figures; Defendant exclusively sells whole  
8 boxes and sets of politically-focused trading cards such as their “112th Congress Trading Cards”  
9 set. According to their website, Defendant sells sets including “all members of the Legislative,  
10 Executive, and Judicial branches of the U.S. Federal Government.” Defendant also markets and  
11 sells trading cards specifically-tailored for politicians running for office who want to promote  
12 their own political campaigns through trading cards.

13 22. Also unlike Plaintiff’s cards, Defendant’s cards are a non-industry-standard size.

14 23. Defendant’s focus is also more on education as opposed to entertainment.  
15 Defendant’s “Mission” statement is to create “a world-class educational, entertaining, and  
16 valuable political trading card that will help those concerned learn and share about members of  
17 Government.”

18 24. In July of 2012, Defendant sent Plaintiff a litigation demand letter accusing  
19 Plaintiff of “stealing” their “ideas” for political cards, of violating certain alleged Copyrights, and  
20 demanding that Upper Deck pay Plaintiff \$350,000. It is entirely unclear how Defendant came  
21 up with that number. The demand figure, as well as the demand letter itself suggests nothing  
22 more than a shakedown of Plaintiff. Plaintiff started developing and distributing political cards  
23 well before Defendant even existed.

24 25. Plaintiff, therefore, seeks a declaration from this honorable Court rejecting  
25 Defendant’s meritless and spiteful contentions, and declaring Plaintiff’s development and use of  
26 the limited-edition “World of Politics” insert cards to be lawful and valid.

27 26. Defendant also claims that Plaintiff violated a “Confidentiality Agreement”  
28 entered into between Plaintiff and Defendant when Defendant sought out Plaintiff early on in its

1 formation and pitched the idea of selling stand-alone complete sets of figures within the  
2 Legislative, Executive, and Judicial branches of our government. Defendant sought a business  
3 relationship with Plaintiff to help develop whole educational sets depicting already-elected  
4 officials as a stand-alone product and on non-standard card stock. Plaintiff ultimately elected not  
5 to dive into this different area and stuck, instead, with its tested method of inserting special cards  
6 depicting popular candidates/hopefuls (as well as some already-elected officials), on standard  
7 stock, as rare promotional inserts in existing card sets. Defendant's threats and contentions are  
8 wholly without merit.

9 **FIRST CLAIM FOR RELIEF**

10 **Declaratory Relief**

11 **(Against All Defendants)**

12 27. Plaintiff repeats and incorporates by reference all of the above paragraphs as if set  
13 forth in full here.

14 28. An actual controversy arose and now exists between Plaintiff and Defendant  
15 concerning their respective rights and duties in that Plaintiff contends development and distribution  
16 of its limited-edition "World of Politics" cards as inserts into existing sports card packs is entirely  
17 lawful, proper, and valid and that Plaintiff's activities do *not* violate (and are wholly consistent  
18 with) jurisprudence regarding trade secrets, Copyrights (e.g. 17 U.S.C. Section 504), and any  
19 contracts existing between Plaintiff and Defendant. Defendant disputes these contentions and  
20 assert that Plaintiff must cease its current (and long-standing) practices related to political trading  
21 cards and/or must pay Defendant princely sums.

22 29. Plaintiff respectfully requests a judicial determination of its rights and duties, and a  
23 declaration as to Plaintiff that it may continue its existing development and distribution of the  
24 "World of Politics" cards.

25 30. A judicial declaration is necessary and appropriate at this time under the  
26 circumstances in order that Plaintiff may ascertain its rights and duties regarding its distribution of  
27 "World of Politics" cards. Defendant threatens to seriously obstruct Plaintiff's practices and will  
28 therefore impose a significant financial and operational burden on Plaintiff if this issue is not

1 resolved. Although Plaintiff has attempted to resolve these issues informally with Defendant, such  
2 efforts were unsuccessful. As a result, Plaintiff exhausted all informal remedies and has no other  
3 alternative but to seek judicial intervention and a declaration deeming Plaintiff's distribution  
4 practices lawful and halting Defendant's wrongful and baseless attempts to obstruct Plaintiff's  
5 legitimate business practices and squeeze nuisance monies from Plaintiff.

6 **PRAYER**

7 WHEREFORE, Plaintiff prays for judgment against Defendant and each of them, as  
8 follows:

- 9 A. For a declaration that Plaintiff's development and distribution of the "World of Politics"  
10 cards does not violate any common or statutory law related to trade secrets, does not  
11 violate 17 U.S.C. Section 504 or any other statutory or common Copyright laws, and  
12 does not violate any agreements between the parties, and that Defendant must cease any  
13 further efforts to impede and/or otherwise threaten to disrupt Plaintiff's distribution of  
14 the "World of Politics" cards.
- 15 B. For attorneys' fees and costs of litigation where available.
- 16 C. For such other and further relief as the Court deems proper.

17 **JURY DEMAND**

18 Plaintiff hereby demands a trial by jury.

19  
20 Dated: August 3, 2012

**NICHOLAS & BUTLER, LLP**

s/ Alex Tomasevic

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22 \_\_\_\_\_  
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24 Alex M. Tomasevic  
25 Mei-Ying M. Imanaka  
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27 The Upper Deck Company, Inc.  
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