

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

OTTER PRODUCTS, LLC and TREEFROG
DEVELOPMENTS, INC.,

Plaintiffs,

v.

MOBILE PHONE PROS LLC; PAUL JOSEPH
RISBAN IV; and PHAYTHE MARQUETTE
FERICH all doing business as “PROLITE94;”
and “JOHN DOES” 1-10;

Defendants.

CASE NO. 7:20-CV-4966 (PMH)(PED)

~~PROPOSED~~ **FINAL JUDGMENT AND
PERMANENT INJUNCTION ON
CONSENT AGAINST
DEFENDANTS PAUL JOSEPH RISBAN
IV and PHAYTHE MARQUETTE
FERICH d/b/a “PROLITE94”**

Plaintiff Otter Products, LLC and Treefrog Developments, Inc. (hereinafter collectively referred to as “Plaintiffs”) and Paul Joseph Risban IV and Phaythe Marquette Ferich, doing business as “prolite94” (hereinafter collectively referred to as “Defendants”) having agreed that a Final Judgment and Permanent Injunction Upon Consent (“Final Judgment”) should be entered between them and good cause appearing therefore:


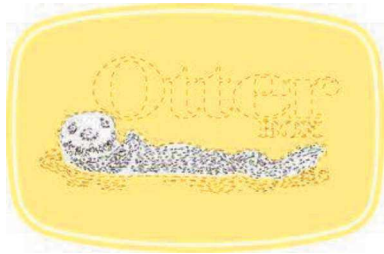
The Court, having considered all pleadings and other documents filed in this action, hereby directs the entry of this Final Judgment against Defendants. Accordingly, the Court does hereby **ORDER, ADJUDGE, AND DECREE** as follows:



1. This Court has jurisdiction over the subject matter of this action.
2. Venue is proper in the Southern District of New York.

3. Defendants are subject to the jurisdiction of this Court pursuant to and in accordance with the laws of the State of New York, the United States Constitution, and Rule 4 of the Federal Rules of Civil Procedure.

4. Plaintiffs are the owners of various trademarks registered with the United States Patent and Trademark Office (“USPTO”). Such trademarks include, but are not limited to the following, among others:

Trademark	USPTO Registration Number	Registration Date	Goods
OTTER BOX	2287619	10/19/1999	IC 028. US 022 023 038 050. G & S: non-metal, water-tight containers for outdoors recreational use.
OTTER BOX	3788535	05/11/2010	IC 009. US 021 023 026 036 038. G & S: Protective cases for handheld electronic devices, namely, portable music players, portable video players, cell phones and computers; specially adapted protective carrying cases for computers.
OTTERBOX	4509483	04/08/2014	IC 042. US 100 101. G & S: Providing a website featuring news and commentary in the field of mobile technology.
OTTERBOX	4602221	09/09/2014	IC 009. US 021 023 026 036 038. G & S: Protective covers and cases for handheld electronic devices, namely, cell phones, portable media players, tablets, personal digital assistants, e-book readers, and computers; protective covers and cases for computers.
DEFENDER SERIES	4616874	10/07/2014	IC 009. US 021 023 026 036 038. G & S: Protective covers and cases for personal electronic devices, namely, cell phones.

DEFENDER SERIES	3623789	05/19/2009	IC 009. US 021 023 026 036 038. G & S: Protective cases for interactive, handheld electronic devices, namely, portable music players, portable video players and tablet computers.
	3791318	05/18/2010	IC 009. US 021 023 026 036 038. G & S: Protective cases for handheld electronic devices, namely, portable music players, portable video players, cell phones and computers; specially adapted protective carrying cases for computers.
	4293603	02/19/2013	IC 009. US 021 023 026 036 038. G & S: Protective cases for handheld electronic devices, namely, portable music players, portable video players, cell phones and computers; specially adapted protective carrying cases for computers.
COMMUTER	3791317	05/18/2010	IC 009. US 021 023 026 036 038. G & S: Protective cases for handheld electronic devices, namely, portable music players, portable video players, cell phones and computers; specially adapted protective carrying cases for computers.
COMMUTER SERIES	3963182	05/17/2011	IC 009. US 021 023 026 036 038. G & S: Protective cases for handheld electronic devices, namely, multifunctional mobile phones, portable music players, portable video players and computers.

	4520890	04/29/2014	<p>IC 009. US 021 023 026 036 038. G & S: Protective cases, carrying cases, casings, and covers for portable electronic devices, namely, cell phones, portable media players, electronic tablets, electronic book readers, and laptop computers; cases and holsters specially adapted for holding or carrying mobile electronic devices, namely, mobile phones, electronic tablets, electronic book readers; accessories specially adapted for mobile electronic devices, namely, belt clips, shoulder straps, and hand straps.</p>
LIFEPROOF	4519288	04/22/2014	<p>IC 009. US 021 023 026 036 038. G & S: Protective cases, carrying cases, casings, and covers for portable electronic devices, namely, cell phones, portable media players, electronic tablets, electronic book readers, and laptop computers; cases and holsters specially adapted for holding or carrying mobile electronic devices, namely, mobile phones, electronic tablets, electronic book readers; accessories specifically adapted for mobile electronic devices, namely, belt clips, shoulder straps, or hand straps sold as a unit with the bags, cases, and holsters.</p>
	4467117	01/14/2014	<p>IC 009. US 021 023 026 036 038. G & S: Protective covers specially adapted for personal electronic devices and communications apparatus, namely, cell phones, lap tops, tablet computers for Ebook, magazine and newspaper reading [, and accessories for cell phones, lap tops, and tablet computers for Ebook, magazine and newspaper reading, namely, belt clips, bar mounts and mount adapters, armbands, and headphone adapters].</p>

			IC 035. US 100 101 102. G & S: On-line retail store services featuring protective covers and accessories for personal electronic devices.
LET'S GO!	4285129	02/05/2013	IC 009. US 021 023 026 036 038. G & S: Protective covers specially adapted for personal electronic devices and communications apparatus, namely, cell phones, lap tops, tablet computers for Ebook, magazine and newspaper reading, and accessories for cell phones, lap tops, and tablet computers for Ebook, magazine and newspaper reading, namely, belt clips, bar mounts and mount adapters, armbands, and headphone adapters.
LIFE JACKET	4354783	06/18/2013	IC 009. US 021 023 026 036 038. G & S: Waterproof protective case for tablet computers.
LIFEPROOF	4057201	11/15/2011	IC 009. US 021 023 026 036 038. G & S: Accessories for electronic goods and communications apparatus, namely, protective housings, carrying cases, cases and covers for portable electronic goods and communications apparatus, namely, cell phones, lap tops, tablet computers for Ebook, magazine and newspaper reading, and portable media players.
FRĒ	4397480	09/03/2013	IC 009. US 021 023 026 036 038. G & S: Protective covers specially adapted for personal electronic devices, and accessories for personal electronic devices, namely, belt clips, bar mounts and mount adapters, armbands, and headphone adapters.

(hereinafter collectively referred to as the "Plaintiffs Registered Trademarks").

5. Plaintiffs are responsible for assembling, finishing, marketing, and selling in interstate commerce high-quality merchandise, including but not limited to protective cell phone cases.

6. Plaintiffs are the exclusive distributor and warrantor in the United States of Plaintiffs' corresponding merchandise, all of which bear one or more of the Plaintiffs Registered Trademarks.

7. Plaintiffs have used the Plaintiffs Registered Trademarks in the United States and in interstate commerce for many years.

8. Defendants agree that the jurisdiction of this Court is retained for the purpose of making any further orders necessary or proper for the construction, implementation, or modification of this Final Judgment, the enforcement and the punishment of any violations thereof.

IT IS ORDERED, ADJUDGED AND DECREED

9. The Final Judgment shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors and assigns, and acquiring companies.

10. Accordingly, the Court hereby permanently enjoins and restrains Defendants and their employees, agents, companies, servants, successors, and assigns, and all those acting in concert or participation therewith, from

- a) using any counterfeit or infringement of the Plaintiffs Registered Trademarks to identify any goods not authorized by Plaintiffs;
- b) counterfeiting or infringing the Plaintiffs Registered Trademarks by importing, manufacturing, distributing, selling, offering for sale, advertising, promoting, displaying any products bearing any simulation, reproduction, counterfeit, or copy of the Plaintiffs Registered Trademarks;
- c) using any simulation, reproduction, counterfeit, or copy of the Plaintiffs Registered Trademarks in connection with the importation, promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of any unauthorized products in such fashion as to relate or connect, or tend to relate or connect, such products in any way to Plaintiffs, or to any goods sold, manufactured, sponsored or approved by, or connected with Plaintiffs;
- d) making any statement or representation whatsoever, or using any false designation of origin or false description, or performing any act, which can or is likely to lead the trade

or public, or individual members thereof, to believe that any services provided, products manufactured, distributed, sold or offered for sale, or rented by Defendants are in any way associated or connected with Plaintiffs;

- e) engaging in any other conduct constituting an infringement of the Plaintiffs Registered Trademarks, of Plaintiffs' rights in, or to use or to exploit, said trademark, or constituting any weakening of Plaintiffs' names, reputations, and goodwill;
- f) infringing Plaintiffs' intellectual property rights in any way; and
- g) importing, manufacturing, distributing, selling, offering for sale, advertising, promoting, displaying any products that bear Plaintiffs Registered Trademarks whether such product is legitimate or not or using Plaintiffs Registered Trademark in any way associated with the importing, manufacturing, distributing, selling, offering for sale, advertising, promoting, displaying of any goods.

11. Pursuant to and in accordance with 15 U.S.C. § 1117(c), the Court hereby Orders Defendants to pay Plaintiffs the sum of \$5,000,000 as an award of damages.

12. In the event that Defendants are ever found by a court of competent jurisdiction to be in violation of this Final Judgment the parties agree that (a) Plaintiffs will be entitled to all normal relief which it may request from the Court; and (b) Plaintiffs will be entitled to recover any and all future and additional damages, fees, and costs incurred by Plaintiffs due to Defendants' violation of this Final Judgment, and judgment shall be entered against Defendants in that full amount.

13. That any act by Defendant in violation of the terms or conditions of this Final Judgment may be considered and prosecuted as contempt of this Court.

14. The sum awarded herein to Plaintiffs is not dischargeable in any bankruptcy proceeding filed by Defendants.

15. That jurisdiction of this Court is retained for the purpose of making any further orders necessary or proper for the construction, implementation, or modification of this Final Judgment, the enforcement thereof, and the punishment of any violations thereof.

16. This Final Judgment shall be deemed served upon the Defendants at the time of the execution by the Court.

17. This action is hereby dismissed without prejudice.

18. This Court reserves and retains jurisdiction of the subject matter of this cause and of the parties hereto for the purpose of enforcing the terms of this Final Judgment.

Dated: <u>November 6</u> , 2020	OTTER PRODUCTS, LLC  By: Kevin M. Sullivan Title: General Counsel
Dated: <u>November 6</u> , 2020	TREEFROG DEVELOPMENTS, INC.  By: Kevin M. Sullivan Its: General Counsel
Dated: <u>11-4</u> , 2020	PAUL JOSEPH RISBAN IV 
Dated: <u>11-5</u> , 2020	PHAYTHE MARQUETTE FERICH 

SO ORDERED:

Dated: November 10, 2020
New York, New York


Philip M. Halpern
United States District Court Judge