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JS-6

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

3M COMPANY,

Plaintiff,

v.

THE PERFECT PART INC.,
ADAM ZINKER, and
CORY ZINKER,

Defendants.

Case No. 2:20-cv-10540-JVS-JEM

CONSENT JUDGMENT AND
PERMANENT INJUNCTION

Complaint Filed: November 18, 2020

Jury Trial Demanded

Pursuant to the Notice of Settlement and Stipulation for Entry of Consent Judgment and Permanent Injunction between Plaintiff 3M Company (“Plaintiff” and/or “3M”), on the one hand, and Defendants The Perfect Part, Inc., Adam Zinker, and Cory Zinker (together, “Defendants”) on the other (the "Stipulation"), the Court hereby ORDERS, ADJUDICATES and DECREES that judgment and a permanent injunction shall be and hereby is entered as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and over the Stipulating Parties.

1 2. Venue is proper as to the Stipulating Parties in the Central District of
2 California pursuant to 28 U.S.C. § 1391(b).

3 3. The Complaint states *prima facie* claims upon which relief may be
4 granted against the Defendants under 15 U.S.C. §§ 1114(1), 1116(d), 1125(a)(1)(A),
5 and 1125(c) as well as California Business & Professions Code, §§ 17200 et seq. and
6 17500 et seq.

7 4. 3M is the owner of numerous federal trademark registrations, including
8 specifically (i) U.S. Trademark Reg. No. 3,398,329, which covers the standard-
9 character 3M mark in International Classes 9 and 10 for, inter alia, respirators (the
10 “‘329 Registration”), (ii) U.S. Trademark Reg. No. 2,692,036, which covers the 3M
11 logo for, inter alia, a “full line of surgical masks, face shields, and respiratory masks
12 for medical purposes” (the “‘036 Registration”); and (iii) U.S. Trademark Reg. No.
13 2,793,534, which covers the 3M design mark in International Classes 1, 5, and 10
14 for, inter alia, respirators (the “‘534 Registration”), all of which are registered on the
15 Principal Register in the United States Patent and Trademark Office and have become
16 incontestable within the meaning of Section 15 of the Lanham Act, 15 U.S.C. § 1065.

17 5. Since long before Defendants used any “3M” designation or mark, 3M
18 has offered products under its 3M mark, including in connection with 3M-brand
19 respirators.

20 6. As a result of its longstanding use of the 3M mark, the 3M mark has
21 become famous within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. §
22 1125(c).

23 7. From July 2020 through November 2020, Defendants purchased
24 approximately 59,127 masks marked as 3M N95 respirators from five different
25 sellers. Defendants paid these sellers a total of approximately \$265,122.92 for the
26 masks marks as 3M N95 respirators.

27 8. From July 2020 through November 2020, Defendants sold
28 approximately 52,657 of the masks they had purchased to approximately 3,226

1 consumers through eBay.com for a total price of approximately \$394,245.96.
2 Defendants described and contend they believed these masks to be authentic 3M-
3 branded N95 respirators. Defendants sold these masks at prices higher than their
4 purchase price.

5 9. In making the sales described above, Defendants adopted and began
6 using the 3M mark in US commerce. Defendants represented or implied that they
7 had an association or affiliation with, sponsorship by, and/or connection with, 3M
8 and 3M's products. Defendants represented or implied that the products they sold
9 were authentic 3M N95 respirator masks and contend they believed that they were
10 authentic 3M N95 respirator masks.

11 10. After examining evidence provided by 3M via an Attorney's Eyes-Only
12 evidence examination, Defendants acknowledge that one or more of their suppliers
13 may have sold them counterfeit 3M masks and Defendants that Defendants may have
14 unintentionally sold counterfeit 3M masks. Defendant sold these masks, as well as
15 other genuine 3M Masks, at inflated prices several times the prices charged by 3M
16 during the state of emergency that was declared on March 4, 2020 in response to
17 COVID-19.

18 11. 3M contends that Defendants' conduct is likely to cause confusion,
19 mistake, and deception among the relevant consuming public as to the source or
20 origin of Defendants' goods and has deceived the relevant consuming public into
21 believing, mistakenly, that Defendants' goods and associated conduct originate from,
22 are associated or affiliated with, or are otherwise authorized by 3M. Defendants'
23 conduct is also likely to cause confusion or deceive consumers as to the pricing and
24 value of 3M products. Further, Defendants' conduct is likely to dilute the distinctive
25 quality of, and tarnish the reputation of, 3M's famous 3M mark.

26 12. The foregoing conduct by Defendants constitutes trademark
27 infringement under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1), unfair
28 competition and false advertising under Section 43(a) of the Lanham Act, 15 U.S.C.

1 § 1125(a), dilution under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c), and
2 violation of California Business & Professions Code, §§ 17200 et seq. and 17500 et
3 seq.

4 13. Defendants realized approximately \$20,621.62 in profits on the sales of
5 the 3M N95 respirators through eBay.com, and the Court has ordered eBay.com to
6 hold \$20,621.62 in reserve from Defendants' eBay.com seller account.

7 14. As a direct and proximate result of the Defendants' conduct alleged
8 herein, 3M has sustained substantial, immediate, and irreparable injury, and is
9 entitled to monetary relief and an injunction pursuant to 15 U.S.C. §§ 1116-1117.

10 15. Entry of this Consent Judgment and Permanent Injunction is in the
11 public interest.

12 16. Defendants, without admitting the allegations set forth in Plaintiff's
13 Complaint or any wrongdoing on their part, and 3M hereby stipulate to entry of this
14 Consent Judgment and Permanent Injunction.

15 17. Defendants have waived all rights to seek judicial review or otherwise
16 challenge or contest the validity of this Order, and further waive and release any
17 claim they may have against 3M its employees and agents, including any rights that
18 may arise for attorneys' fees or other costs under the Equal Access to Justice Act, 28
19 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847,863-64 (1996).

20 **ORDER**

21 IT IS THEREFORE ORDERED that:

22 1. This Order supersedes the Court's prior temporary restraining orders in
23 this Lawsuit.

24 2. Defendants shall pay 3M the total sum of \$20,621.62 ("Settlement
25 Amount") as set forth in the Settlement and Mutual Release Agreement dated April
26 22, 2021.

27 3. Within three (3) business days of receiving the Settlement Amount, 3M
28 shall file an Acknowledgment of Satisfaction of Judgment with the Court

1 acknowledging that the monetary component of the Consent Judgment and
2 Permanent Injunction has been satisfied and paid in full.

3 4. Defendants, their agents, servants, employees, officers and all persons
4 and entities in active concert and participation with them, are permanently enjoined
5 from any of the following:

6 a. Selling or offering to sell any 3M Products, or otherwise using
7 the 3M mark or any confusingly similar mark unless expressly authorized by
8 3M; and

9 b. Aiding, assisting, or abetting any other individual or entity in
10 doing any act prohibited by this paragraph.

11 5. This Court shall retain jurisdiction to hear and determine all matters
12 arising out of, relating to, and/or otherwise concerning the interpretation and/or
13 enforcement of this Consent Judgment and Permanent Injunction.

14 6. If Defendants are found to be in contempt of, or otherwise to have
15 violated this Consent Judgment and Permanent Injunction, the Stipulating Parties
16 agree that 3M shall be entitled to all available relief which it may otherwise request
17 from the Court, including sanctions for contempt, damages, injunctive relief,
18 attorneys' fees, costs, and any other relief deemed by the Court to be proper in the
19 event of such violation.

20 7. All claims and defenses that were alleged (or that could have been
21 alleged) in the Lawsuit by any of the Stipulating Parties are hereby resolved by this
22 Consent Judgment and Permanent Injunction. However, notwithstanding the
23 generality of the foregoing, this Consent Judgment and Permanent Injunction does
24 not bar Defendants from pursuing subsequent indemnity or contribution claims
25 against one or more third-parties arising from or relating to the matters in this Lawsuit
26 or this Consent Judgment.

27 8. The Stipulating Parties shall each bear their own costs and attorneys'
28 fees incurred in this action.

1 This Consent Judgment and Permanent Injunction constitutes a final judgment
2 on the merits of 3M's claims for purposes of res judicata, collateral estoppel, issue
3 preclusion, and claim preclusion.

4 **IT IS SO ORDERED.**

5 Dated: April 26, 2021



6 _____
7 JAMES V. SELNA
8 UNITED STATES DISTRICT JUDGE

9 **IT IS SO STIPULATED.**

10 Dated: April 26, 2021

11 SAMANTHA FAHR
12 CHRISTOPHER WEIMER

13 By: /s/ Christopher Weimer

14 Christopher Weimer

15 Attorneys for Plaintiff

16 3M COMPANY

17 Dated: April 26, 2021

18 **LAW OFFICE OF PARAG L. AMIN, P.C.**

19 By: /s/ Parag Amin

20 Parag Amin

21 Attorney for Defendants

22 THE PERFECT PART INC., CORY

23 ZINKER, ADAM ZINKER.

SIGNATURE ATTESTATION

Pursuant to Local Rule 5-4.3.4, the undersigned hereby attests that concurrence in the filing of this **STIPULATED CONSENT JUDGMENT AND PERMANENT INJUNCTION** has been obtained from counsel for Defendants and is electronically signed with the express permission of Defendants' counsel.

Dated: April 26, 2021

SAMANTHA FAHR
CHRISTOPHER WEIMER

By: /s/ Christopher Weimer
Christopher Weimer

Attorneys for Plaintiff
3M COMPANY

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