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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MALEM MEDICAL, LTD. and ENURESIS ASSOCIATES, LLC,

Plaintiffs,

v.

THEOS MEDICAL SYSTEMS, INC. and SAKET BHATIA,

Defendants.

AND RELATED COUNTERCLAIMS

CASE NO.: 3:13-cv-05236-EMC

CONSENT DECREE AND ORDER

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiffs and Counter-Defendants MALEM MEDICAL, LTD. and ENURESIS ASSOCIATES, LLC (“PLAINTIFFS”) and Defendants and Counter-Claimants THEOS MEDICAL SYSTEMS, INC. and SAKET BHATIA (“DEFENDANTS”) (collectively, “the Parties”), that the Court shall enter an Order as follows:

DEFENDANTS’ OBLIGATIONS

1. DEFENDANTS will withdraw the opposition to PLAINTIFFS’ Bedwetting Store trademark application within 10 days of entry of this Consent Decree.
2. DEFENDANTS will not use the terms “Malem,” “Bedwetting Store,” “Easy-Clip”, “Secure Grip,” “Quick Detect,” as well as other trademarks and registered trademarks of PLAINTIFFS

1 now and in the future, except in bona fide comparative advertising.

2 3. DEFENDANTS will remove allegedly copyrighted material from their website within
3 10 days of entry of this Consent Decree, and will not use any of PLAINTIFFS copyrighted material
4 in the future.

5 4. DEFENDANTS will remove all meta information containing the terms “Malem” or
6 “Bedwetting Store,” as well as other brands sold by Enuresis Associates, which products are not
7 currently sold by DEFENDANTS. The above conditions shall be accomplished within 30 days of
8 entry of this Consent Decree.

9 5. DEFENDANTS will remove or modify specified statements (see items a-o below) from
10 their website within 10 days of entry of this Consent Decree. DEFENDANTS will also remove these
11 statements from Amazon and eBay websites in all countries within 30 days of entry of this Consent
12 Decree. DEFENDANTS will not be required to guarantee or effect removal of statements made by
13 others, such as third party resellers. This agreement is expressly subject to change in the event that
14 further research, testing, or new information demonstrates that the below statements are verifiable and
15 factually accurate.

16 a. DEFENDANTS will change the statement “#1 doctor recommended bedwetting
17 alarm” to “doctor recommended bedwetting alarm.”

18 b. DEFENDANTS will change the statement “world’s #1 pediatrician
19 recommended alarm” to “widely recommended by pediatricians.”

20 c. DEFENDANTS will remove the statement “urine detection is 50x faster than
21 other bedwetting alarms.” This statement will be reinstated in the event that further research, testing,
22 or new information demonstrates that the statement is verifiable and factually accurate.

23 d. DEFENDANTS will remove the statement “more pediatric urologists
24 recommend Chummie over other alarms.”

25 e. DEFENDANTS will change the statement “Chummie is the only alarm that
26 stops bedwetting” to “Chummie alarms stop bedwetting.”

27 f. DEFENDANTS will change the statement “Chummie’s urine detection area
28 is 100x larger than other alarms” to “Chummie’s urine detection area is significantly larger than other

1 clip sensors.”

2 g. DEFENDANTS will remove all references to the safety of PLAINTIFFS’
3 products, including references to “dangerous safety pins,” “sharp sensors - can cut skin,” and “contain
4 lead and mercury.”

5 h. DEFENDANTS will change references to “over 100,000” to “over 20,000.”
6 This statement will be further revised when new quantitative milestones are reached.

7 i. DEFENDANTS will change the statement “only alarm carried by major
8 retailers in USA, Europe, and Asia” to “carried by major retailers in USA, Europe, and Asia.”

9 j. DEFENDANTS will change the statement “does not cause skin rash caused by
10 all other alarms” to “does not cause skin rash.”

11 k. DEFENDANTS will remove the statement “only bedwetting alarm that has
12 passed the test required to be registered with the United States FDA.”

13 l. DEFENDANTS will change the statement “96% success rate” to “in a study
14 . . . 96% success rate.”

15 m. DEFENDANTS will change the statement “smallest and lightest bedwetting
16 alarm available” to “small and lightweight.”

17 n. DEFENDANTS will change the statement “loudest alarm available” to “loud.”

18 o. DEFENDANTS will remove the statements “faster urine detection equals rapid
19 treatment,” or “faster detection equals quicker treatment.”

20 6. DEFENDANTS will remove from their website all references to patented claims for
21 which no patent has been approved within 10 days of entry of this Consent Decree. DEFENDANTS
22 will also remove these references from Amazon and eBay websites within 45 days of entry of this
23 Consent Decree.

24 7. DEFENDANTS will refrain from making cash payments to individuals in exchange
25 for reviews of their products. This agreement does not apply to the exchange of goods for reviews.

26 8. DEFENDANTS will submit, through Amazon Vendor Central, a letter from their
27 attorneys to Amazon’s Buyers Review Team and Item Update Creation Team. The letter will ask for
28 the removal of all nonverified reviews of Chummie products on all Amazon websites posted between

1 June 1, 2014 and March 31, 2015 on the grounds that the validity of the reviews has come into
2 question. This letter will be sent within 10 days of entry of this Consent Decree. If the subject
3 reviews are not removed within 45 days of the date the letter is sent, DEFENDANTS will send,
4 through Amazon Vendor Central, a second letter from their attorneys to Amazon's Buyers Review
5 Team and Item Update Creation Team. The second letter will reference this Agreement and the
6 Court's Consent Decree, and will identify the specific nonverified reviews to be removed.

7 9. DEFENDANTS will not disparage PLAINTIFFS or any of their products, services,
8 officers, directors, or employees. For purposes of this agreement, disparage means to take any action
9 which could reasonably be expected to adversely affect the reputation of PLAINTIFFS or any of their
10 products, services, officers, directors, or employees. This paragraph does not apply to legitimate
11 business concerns raised by DEFENDANTS or to allegations that PLAINTIFFS have violated this
12 Agreement or this Consent Decree.

13 10. DEFENDANTS will not communicate with any person or entity through the use of a
14 false or assumed identity such that the communication could reasonably be mistaken as coming from
15 PLAINTIFFS or any of their officers, directors, or employees.

16 **PLAINTIFFS' OBLIGATIONS**

17 11. PLAINTIFFS will remove or modify specified factual statements from their website
18 and other published materials (see items a-c below).

19 a. PLAINTIFFS will change the statement "largest marketplace/ distributor of
20 bedwetting products" to "one of the largest."

21 b. PLAINTIFFS will remove the statement "90% success rate within a few
22 weeks."

23 c. PLAINTIFFS will change the statement "each alarm cures, on average, 3
24 children per year" to "each alarm treats, on average, 3 children per year."

25 12. PLAINTIFFS will not use the terms: "Chummie," "One Drop Detection," "Flexitape,"
26 "Comfy-Armband," "Theos Medical Systems," "Better technology for faster treatment," "Active guard
27 monitoring," or "Enhanced protection plus care," or the Chummie logo, Theos Medical Systems logo,
28 or Chummie smiley face, as well as other trademarks and registered trademarks of DEFENDANTS

1 now and in the future, except in bona fide comparative advertising.

2 13. PLAINTIFFS will remove all meta information containing the terms referenced in the
3 above paragraph, as well as other brands sold by DEFENDANTS and not sold by PLAINTIFFS. This
4 shall be accomplished within 30 days of entry of this Consent Decree.

5 14. PLAINTIFFS will refrain from making cash payments to individuals in exchange for
6 reviews of their products. This agreement does not apply to the exchange of goods for reviews.

7 15. PLAINTIFFS will not disparage DEFENDANTS or any of their products, services,
8 officers, directors, or employees. For purposes of this agreement, disparage means to take any action
9 which could reasonably be expected to adversely affect the reputation of DEFENDANTS or any of
10 their products, services, officers, directors, or employees. This paragraph does not apply to legitimate
11 business concerns raised by PLAINTIFFS or to allegations that DEFENDANTS have violated this
12 Agreement or this Consent Decree.

13 16. PLAINTIFFS will not communicate with any person or entity through the use of a false
14 or assumed identity such that the communication could reasonably be mistaken as coming from
15 DEFENDANTS or any of their officers, directors, or employees.

16 **FURTHER ORDERS**

17 17. This Consent Decree is binding on PLAINTIFFS, DEFENDANTS, their officers,
18 agents, servants, employees, affiliates, attorneys, successors, and assigns, as well as those persons in
19 active concert or participation with them and who receive actual notice of this Consent Decree.

20 18. This Consent Decree shall inure to the benefit of, and shall be enforceable by,
21 PLAINTIFFS, DEFENDANTS, their affiliates, successors, and assigns as their respective interests
22 may appear.

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CERTIFICATION OF CONCURRENCE FROM ALL SIGNATORIES

I, Teela A. Crosthwaite, Esq., am the ECF user whose ID and password are being used to file this Consent Decree and Order. In compliance with N.D. Cal. Civ. L.R. 5-1(i)(3), I hereby attest that I have obtained the concurrence of each signatory to this document.

Dated: July 9, 2015

/s/ Teela A. Crosthwaite

TEELA A. CROSTHWAITE, ESQ.