

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior Judge Walker D. Miller

Civil Action No. 09-cv-02308-WDM-MJW

PHILIP DALY, d/b/a TAR TAR PRINTING
And/or PROPRINT WEAR,

Plaintiff,

v.

UNITED STATES FENCING ASSOCIATION,

Defendant.

ORDER ON JOINT MOTION TO ENTER CONSENT DECREE

Miller, J.

This case is before me on the parties' Joint Motion to Enter Consent Decree, filed October 8, 2010 (ECF No. 48). In the motion, the parties indicate they have settled the case and they move, in furtherance of that settlement, for entry of a tendered Consent Decree, Order, and Judgment (Consent Decree). They have also submitted a Stipulation for Dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) to become effective upon entry of the Consent Decree.¹ I have reviewed the parties' Joint Motion and the tendered Consent Decree and Stipulation for Dismissal.

I will accept, without finding, the facts as stipulated to by the parties in the tendered Consent Decree. The stipulations include that defendant United States Fencing Association's trademark registrations and common-law trademarks, which are described

¹ I deem the Stipulation unnecessary. By this Order, I direct the Clerk of the Court to enter judgment, based on the terms of the Order, dismissing the case with prejudice according to the parties' agreement.

in paragraph 2, *infra*, and which form a substantial part of the subject of the Counterclaims, are valid and enforceable and have been infringed by plaintiff Philip Daly, d/b/a Tar Tar Printing and/or Proprint Wear. Based upon these facts and stipulations, I concur with the proposed relief in the Consent Decree and with the parties' request for dismissal of the case with prejudice.

Accordingly, it is ordered:

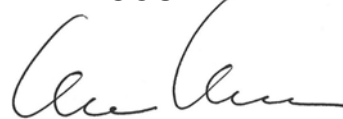
1. I have jurisdiction over the subject matter and parties to this action, and venue is proper in this judicial district.
2. Daly and each of its principals, owners, officers, agents, servants, employees, suppliers, attorneys, successors and assigns, and all persons in active concert, participation and privity with them, are preliminarily and permanently restrained and enjoined from using, marketing, selling, offering to sell, advertising or publicizing unauthorized goods ("gray market" products) bearing the marks "USA FENCING," as described in U.S. Reg. No. 3,748,965 and in U.S. Ser. No. 77/754,640 (published for opposition August 3, 2010); "UNITED STATES FENCING ASSOCIATION," as described in U.S. Reg. No. 3,630,593; "USFA"; and "US FENCING" (collectively "the Trademarks") or any other name, term, phrase, mark, device, or symbol which so resembles or is similar to the Trademarks, and are hereby permanently enjoined from any further unlawful use of the marks or colorable imitation thereof, except as permitted in Paragraph 2.
3. Notwithstanding Paragraph 2, concurrently with the entry of this Order and of a Judgment in this case, the Parties have indicated that they have entered into a Settlement Agreement and Mutual Release, with part of the Settlement Agreement

including a grant by the defendant United States Fencing Association to plaintiff Philip Daly of a limited license under which Daly may use the Trademarks according to the terms and restrictions of that agreement, and conduct by Daly in compliance therewith shall not constitute a violation of this Order or the Judgment entered thereon.

4. I decline the parties' invitation to retain jurisdiction, noting that either party may bring an action to enforce this Order.
5. Each party is to bear its own legal costs and attorneys' fees associated with this action.
6. Daly shall reimburse the USFA for any costs or expenses incurred related to the enforcement of this Order and the Judgment entered hereon, including, but not limited to, reasonable attorneys' fees.
7. Based upon the parties' agreement, this case is dismissed with prejudice.
8. The Clerk of the Court shall enter Judgment in accordance with the terms of this Order.

DATED at Denver, Colorado, on April 6, 2011.

BY THE COURT:



s/ Walker D. Miller
United States District Judge