

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

Roger Cleveland Golf Company, Inc.,	)	Civil Action No. 2:09-2119-MBS
	)	
Plaintiff,	)	
	)	
vs.	)	<b>DEFENDANT BRIGHT BUILDERS,</b>
	)	<b>INC.'S MEMORANDUM IN SUPPORT</b>
Christopher Prince, Sheldon Shelley, Prince	)	<b>OF ITS MOTION FORREMITTITUR</b>
Distribution, LLC, and Bright Builders,	)	<b>AND TO ALTER OR AMEND THE</b>
Inc.	)	<b>JUDGMENT</b>
	)	
Defendants.	)	

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The Defendant Bright Builders, Inc., respectfully submits this Memorandum in support of its Motion for Remittitur, and To Alter or Amend the Judgment.

NATURE OF THE CASE

Plaintiff filed its Amended Complaint in the present action naming Defendants Christopher Prince, Prince Distribution, LLC, Sheldon Shelley and Bright Builders, Inc., as party defendants on March 23, 2010. . Plaintiff alleged Defendant Bright Builders is liable for (1) Contributory and/or Vicarious Trademark Infringement under the Lanham Act 15 U.S.C. §1051, *et seq.*; (2) Unfair Competition under South Carolina Common Law; (3) Trademark Infringement under South Carolina Common Law; and (4) Violation of the South Carolina Unfair Trade Practices Act (“SCUTPA”), S.C. Code § 39-5-10, *et seq.* The trial proceeded before a jury which returned a verdict in favor of Plaintiff.

Pursuant to Fed. R. Civ. P. 59, Defendant Bright Builders moves for the entry of judgment granting remittitur and altering or amending the judgment.

## STATEMENT OF THE FACTS

During the trial of the case, Defendant Prince admitted to knowingly infringing on Cleveland's trademarks and selling counterfeit Cleveland brand golf clubs. *See* Prince Testimony at 14:1-16; 16:3-7; 46:25 – 47:6 (hereinafter "Ex. A"). Prince further testified that he merely informed Bright Builders that he was selling "copied" clubs on his website and he did not tell them he was selling counterfeit illegal golf clubs because nor did he ask their advice on how to do such because he did not think Bright Builders would approve of him selling illegal counterfeit goods on his website and it was a violation of his Hosting Agreement with Bright Builders. Ex. A at 51:21-23; 52:1-5; 67:7-8. Despite Prince's admissions and the lack of any evidence indicating Bright Builders knew or had reason to know Prince was undertaking such actions, the jury found both parties liable. *See* Jury Verdict Form (hereinafter "Ex. B"). More surprisingly, the jury awarded more than twenty seven times the amount of damages against Bright Builders as it did against Prince, and the Court ordered Plaintiff may recover such damages from the parties. *See* Ex. B; Judgment (hereinafter "Ex. C").

## ARGUMENT

Fed. R. Civ. P. 59 provides that "the court may, on motion, grant a new trial on all or some of the issues . . . after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court."

"[A] remittitur, used in connection with Federal Rule of Civil Procedure 59(a), is the established method by which a trial judge can review a jury award for excessiveness. Remittitur is a process . . . by which the trial court orders a new trial unless the plaintiff accept a reduction in an excessive jury award. Indeed, if a court finds that a jury award is

excessive, it is the court's duty to require a remittitur or order a new trial." *Atlas Food Systems and Services, Inc. v. Crane Nat'l Vendors, Inc., et al.*, 99 F.3d 587, 593, 1996 U.S. App. LEXIS 28085 (4th Cir. 1996). Trial court has broad discretion in granting or refusing new trial, and court, believing that judgment for damages is excessive and against weight of evidence, may order remittitur and alternatively direct that there be new trial if plaintiff refuses to accept it. *Holmes v Wack* 464 F2d 86, 16 FR Serv 2d 928. (1972, CA10 Okla).

The Defendant, Bright Builders, Inc., hereby specifically requests a reduction in the damages awarded for violation of the Lanham Act. As this Court is well aware, the jury assessed damages against Christopher Prince in the amount of \$2,500.00 per mark, and assessed damages against Bright Builders, Inc. in the amount of \$70,000.00 per mark. While these amounts are within the statutory limits under the Lanham Act, these amounts are not justified and reasonable.

First, as noted above, the Court will recall that Christopher Prince admitted he engaged in counterfeiting activity; whereas Bright Builders maintained throughout the case that it had no direct knowledge of any counterfeiting activities being conducted by Mr. Prince. In fact, Plaintiff's counsel did not even argue the direct knowledge of Bright Builders having specific knowledge regarding Prince's counterfeiting activities.

Further, it is uncontested that Bright Builders did not make any profit from the counterfeit golf clubs sold by Prince. All of the profit went directly to Prince and was not shared in any way with Bright Builders. Prince admitted that Bright Builders did not share in any profits from the sale of any counterfeit goods.

As the Court will recall, there was extensive testimony from Greg Cole about the extreme financial hardship the business was currently experiencing. Further, the Tax Returns indicating no profits for Bright Builders were entered into evidence by the Plaintiff's counsel. Therefore, Bright Builders is in exactly the same position as Prince with regards to paying any judgment.

CONCLUSION

Based on the above and pursuant to Fed. R. Civ. P. 59, Defendant Bright Builders, Inc., respectfully requests that this Court grants Remittitur and Alters or Amends the judgment to reduce the \$70,000.00 per mark verdict rendered against Bright Builders to \$2,500.00 as this was the amount that was assessed against the direct infringer. This would be just as Bright Builders did not take any actions with regards to selling, marketing, delivering, distributing, or profiting from any illegal golf clubs sold by Prince. In fact, Prince reaped all the benefits and took all the actions. Therefore, at a maximum, the most Bright Builders should be held liable for is the same amount that the actual counterfeiter is responsible for by way of verdict. Therefore, we respectfully request that the Court reduce the \$70,000.00 verdict amount against Bright Builders, Inc. to \$2,500.00.

Respectfully submitted,

s/Paul J. Doolittle

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Dated: April 11, 2011

CERTIFICATION

This is to certify that a copy of the Motion for Remittitur and Altering or Amending the Judgment and Memorandum in Support of Defendant Bright Builders' Motion for Remittitur and Altering or Amending the Judgment was hand delivered and/or mailed this day, via first class mail, postage prepaid, to the following:

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