

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><u>RESPONSE IN OPPOSITION TO</u></b>
	)	<b><u>BRIGHT BUILDERS' MOTION FOR</u></b>
Christopher Prince, Sheldon Shelley, Prince	)	<b><u>REMITTITUR AND TO ALTER OR</u></b>
Distribution, LLC, and Bright Builders,	)	<b><u>AMEND THE JUDGMENT</u></b>
Inc.	)	
	)	
Defendants.	)	

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COMES NOW the Plaintiff, Roger Cleveland Golf Company, Inc. ("Cleveland"), by and through its undersigned attorneys, and hereby submits this response in opposition to Defendant Bright Builders, Inc.'s Motion for Remittitur and to Alter or Amend the Judgment. In support of its opposition, Cleveland states as follows:

**SUMMARY**

On March 10, 2011, a jury returned a substantial verdict in favor of Cleveland. The jury found for Cleveland on all counts and found that both Bright Builders, Inc. ("Bright Builders") and co-defendant Christopher Prince ("Prince") had willfully violated the trademarks rights of Cleveland and had willfully violated the South Carolina Unfair Trade Practices Act. The trial strategies of the co-defendants could not have been more divergent. While Prince admitted liability and testified that he would not sell counterfeit golf clubs again, Bright Builders denied any responsibility for its part in the sale of the counterfeit clubs and its owner testified that should the same set of circumstances happen again today, he would not do anything differently. In its verdict, the jury assessed statutory damages of \$70,000.00 per mark against Bright Builders and \$2,500.00 per mark against co-defendant Prince.

Continuing its pattern of avoiding responsibility, Bright Builders now seeks a remittitur of the statutory damages assessed. Specifically, Bright Builders asks this Court to substitute its judgment for that of Congress and the jury. In support of its motion, Bright Builders fails to argue that the \$70,000.00 statutory damage award is excessive, a requirement for a remittitur motion. Instead, Bright Builders reargues its stance that there is no evidence of wrongdoing on its part, submits to the Court that the company is facing "extreme financial hardship," and asks that the statutory damages be reduced to \$2,500.00. Bright Builders' request is absurd. As an initial matter, the Court must respect a jury award that falls within the statutory range established by Congress. Furthermore, even should this Court find that it has the power to remit a statutory damage award that falls within the statutory range established by Congress, this case presents a textbook example of where it would be entirely inappropriate to do so, as the jury's award of \$70,000.00 represents only 3.5% of the \$2,000,000.00 per mark award that the jury was authorized to award. For these reasons and the reasons set forth *infra*, the Court should deny Bright Builders' Motion for Remittitur.

### LEGAL STANDARD

"At the outset, we note that a remittitur... is the established method by which a trial judge can review a jury award for **excessiveness**. Remittitur is a process, dating back to 1822, by which the trial court orders a new trial unless the plaintiff accepts a reduction in an **excessive** jury award." *Atlas Food Systems and Services, Inc. v. Crane Nat'l Vendors, Inc.*, 99 F.3d 587, 593 (4th Cir. 1996) (emphasis added). "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." *Id.* "A trial judge may not upset the jury's verdict merely because he or she would have decided the case differently." *Coastal Fuels, Inc. v. Caribbean Petroleum Corp.*, 79 F.3d 182, 201 (1st Cir. 1996).

## ARGUMENT

### I. The Court Should Deny Bright Builders' Request For A Remittitur

In a last ditch effort to reduce the jury's verdict, Bright Builders seeks to remit the jury award of \$70,000.00 per mark down to \$2,500.00 per mark. As an initial matter, the Court does not have the authority to disturb a jury award that is within the statutory range set by Congress. Such amounts are, as a matter of law, reasonable and not excessive. Furthermore, the Seventh Amendment requires that juries, not judges, determine the proper amount of statutory damages in a given case or controversy. Despite such rights and Bright Builders' concession that the \$70,000.00 amount is "within the statutory limits under the Lanham Act," it argues that remittitur is proper because the amount is not "justified and reasonable." *See Memorandum in Support of Remittitur*, Docket No. 130, pg 3. However, even should the Court find it has the authority to remit the award (which it should not for the reason stated *infra*), Bright Builders has provided no basis in either fact or law to demonstrate that the jury award is excessive. As the 4th Circuit is clear in that remittitur is only proper upon a showing of excessiveness, Bright Builders has not and cannot show that the jury award is excessive.

#### A. The Court Must Respect the Jury's Damage Award

In counterfeiting cases, the Lanham Act allows for statutory damages of "not less than \$1,000 or more than \$200,000 per counterfeit mark." 15 U.S.C. §1117(c)(1). In cases of willful counterfeiting, statutory damages of up to \$2,000,000.00 per mark are authorized. 15 U.S.C. §1117(c)(2). The Supreme Court – fully aware of the statutory ranges set by Congress – has made it clear that the Seventh Amendment grants the jury with the sole authority to determine "all issues pertinent to an award of statutory damages" including the amount of the award itself. *Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340, 355 (1998). As the jury is charged with deciding

"all issues pertinent to an award of statutory damages," the Court is without power to remit an award of statutory damages that falls within the ranges set by Congress. *Id.*; *see also SESAC, Inc. v. WPNT, Inc.*, 327 F. Supp. 2d 531, 532 (W.D. PA. 2003) (rejecting request for remittitur of statutory damages as "[t]he court should not interfere lightly with a carefully crafted statutory scheme by substituting its judgment for that of the legislature").

Bright Builders does not cite a single case permitting the remittitur of a jury's damage award when the award falls within the range of available damages established by Congress. Statutory damages serve a broad range of purposes including deterrence of future infringement, a rough measure of harm to the trademark owner, and a rough measure of harm to the consuming public. Congress determined the appropriate range of statutory damages with these very goals in mind, and it did so with infringers such as Bright Builders in mind. Any district court judge that superimposes his or her own subjective view on the "correct" amount of statutory damages under the Lanham Act usurps the role of the jury in direct violation of the Seventh Amendment, the Supreme Court's decision in *Feltner*, and impermissibly invades Congress' role of setting statutory damages ranges within the Lanham Act. As such, the Court should not remit the jury's damages award because it falls squarely within statutory ranges set by Congress and because the Seventh Amendment affords the right to have such awards determined by a jury rather than a Court.

**B. The Jury Award is not Excessive**

Even should this Court consider remittitur, the jury's award is not excessive. As explained *supra*, the jury's verdict of only \$70,000.00 per mark falls well within the statutory ranges set by Congress for both willful and non-willful infringement. Given that the jury could have awarded up to \$2,000,000.00 in damages based on its finding of willfulness, there was nothing "excessive" about the award and the award is reasonable as a matter of law. In order for the Court to remit a

jury's damages award, the 4th Circuit requires a showing that the award was excessive. *See Atlas Food Systems and Services, Inc*, 99 F.3d at 593. While Bright Builders argues that the award is unreasonable and unjust (arguments rejected by the jury when determining liability and damages), Bright Builders provides no basis in fact or law as to why the award is excessive when it falls within statutory ranges. Further, Bright Builders ignores the fact that the jury's \$70,000.00 award is a mere 3.5% of the \$2,000,000.00 the Lanham Act authorized the jury to award. Moreover, as a primary purpose of statutory damages is to deter infringement and given Bright Builders' owner's testimony that should the same set of circumstances happen again today, he would not do anything differently, the jury award also adequately and reasonably sets an amount meant to deter Bright Builders from future infringement. Given these facts, the jury award is reasonable as a matter of law and Bright Builders cannot demonstrate the excessiveness required in order to succeed on a motion for remittitur.

### **CONCLUSION**

WHEREFORE, as the Court is without explicit authority to remit a jury's damage award that is within the statutory ranges set by Congress, and because Bright Builders has not and cannot argue that the jury's award is excessive, Bright Builders' Motion for Remittitur and to Alter or Amend the Judgment must be denied.

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