

Doc. 133

**Excerpts of Jury Trial Testimony of
Stephen Gingrich**

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

ROGER CLEVELAND GOLF)	C/A No. 2:09-2119-MBS
COMPANY, INC.,)	
)	
)	
Plaintiff,)	
)	
VERSUS)	Columbia, SC
)	March 8, 2011
)	
CHRISTOPHER PRINCE, PRINCE)	
DISTRIBUTION, LLC, and)	
BRIGHT BUILDERS, INC.,)	
)	
Defendants.)	
-----)	

EXCERPT OF JURY TRIAL
TESTIMONY OF STEPHEN PAUL GINGRICH

BEFORE THE HONORABLE MARGARET B. SEYMOUR
UNITED STATES DISTRICT JUDGE, and a jury.

Appearances:

For the Plaintiff:	JEFFREY S. PATTERSON, ESQ. JOHN C. MCELWAIN, ESQ. 151 Meeting Street, Sixth Floor Charleston, SC 29401
For Defendant Prince:	CHRISTOPHER D. LIZZI, ESQ. 36 Broad Street Charleston, SC 29401
For Defendant Bright Builders:	PAUL J. DOOLITTLE, ESQ. DOUGLAS M. FRASER, ESQ. P.O. Box 2579 Charleston, SC 29401

1 Court Reporter: Gary N. Smith, CM
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5 Stenotype/Computer-Aided Transcription

6 * * * * *

7 (Jury present)

8 THE COURT: Thank you, you can be seated.

9 Mr. Patterson, you may call your next witness.

10 MR. PATTERSON: May it please the court, Your Honor,
11 we call Steve Gingrich to the stand.

12 STEPHEN PAUL GINGRICH, SWORN

13 DIRECT EXAMINATION

14 BY MR. PATTERSON:

15 Q. Good afternoon, Mr. Gingrich. Could you please state your
16 full name for the jury?

17 A. Stephen Paul Gingrich.

18 Q. And Mr. Gingrich, could you tell the jury where you are
19 presently employed?

20 A. Cleveland Golf-Srixon, Huntington Beach, California.

21 Q. And what is your job title or position with Cleveland Golf?

22 A. I'm the vice-president of human resources and global legal
23 enforcement.

24 Q. And in that position can you just tell the jury generally
25 what you do? What are your job responsibilities?

A. Well, obviously from an HR perspective, I'm responsible for
all employee relation issues, benefits, 401 plan. And from a

1 they primarily dealing with counterfeit or direct copies of
2 Cleveland Clubs?

3 A. Yes, sir.

4 Q. And do they primarily involve internet sales?

5 A. Yes, sir.

6 Q. Now, what does -- are you aware of Mr. Prince and the
7 copycatclubs.com web site, which brings us here today?

8 A. Yes, sir.

9 Q. Can you describe for the jury a little bit how that came to
10 the attention of Cleveland and what steps Cleveland took once
11 it uncovered this web site?

12 A. We monitor the internet every day, looking for signs of
13 people who are marketing our product. Obviously there are
14 certain people that are authorized to be on the internet, we
15 are familiar with those. But there's a percentage of people
16 that are not, and we monitor those on a daily basis.

17 In the case of Mr. Prince, we identified
18 copycatclubs, obvious red flag. There is no such thing as a
19 copycat club. It's a counterfeit, period.

20 Q. And after discovering this web site and looking at this web
21 site, what did Cleveland do next?

22 A. We made a buy. Well, I shouldn't say we. Through our
23 legal representatives, a mystery shopper made a purchase of the
24 product that was being advertised.

25 Several weeks later, we made another buy, still

1 waiting for the product to come in. Once the product was
2 received into the U.S., and we eventually had a chance to take
3 a look at it, identified it as counterfeit, as counterfeit
4 product, then we took the next step, the legal steps that were
5 available to us.

6 Q. In this case, why didn't Cleveland contact Bright Builders
7 originally to report a problem with Mr. Prince's web site?

8 A. We had absolutely no knowledge of Bright Builders at that
9 time.

10 Q. And how or when did Cleveland find out that Bright Builders
11 was even involved at all with Mr. Prince's web site?

12 A. After we were going after Mr. Prince and through his
13 deposition, we learned of how he got involved in the
14 counterfeit business.

15 Q. And the role that Bright Builders had played? And the role
16 that Bright Builders had played?

17 A. Yes, sir.

18 Q. Mr. Gingrich, we have already had moved into evidence some
19 of the counterfeit clubs that were purchased from Mr. Prince's
20 web site, and I know you brought some replica authentic clubs
21 which I would like to show you.

22 Mr. Gingrich, have you had a chance to look at the
23 golf clubs up on the witness stand?

24 A. Yes.

25 Q. And are those clubs that you brought with you from the

1 Q. So, based on your knowledge, there is no such thing as a
2 legitimate copied or counterfeit Cleveland Club?

3 A. Absolutely not.

4 Q. It's either an authentic Cleveland Club or it's not?

5 A. It's either an authentic Cleveland Club or it's a
6 counterfeit club.

7 Q. Now, with regard to the clubs that we just looked at which
8 were sold on Mr. Prince's web site, what is the average cost
9 for the wedges?

10 A. Wedges retail anywhere from 110 to \$120.

11 Q. And the HiBore driver that we looked at, do you know what
12 that retails for?

13 A. 299.

14 MR. PATTERSON: I don't have any further questions of
15 Mr. Gingrich. I will just collect the golf clubs.

16 THE COURT: All right. Cross-examine.

17 MR. LIZZI: I have no questions, Your Honor.

18 MR. DOOLITTLE: Briefly, if it please the court.

19 THE COURT: All right.

20 CROSS-EXAMINATION

21 BY MR. DOOLITTLE:

22 Q. I have two quick questions for you, Mr. Gingrich. You
23 testified about, I believe, the cost of two clubs just now.
24 Can you tell me what you just testified about, those are the
25 cost which -- which clubs was it?

- 1 Q. That's all I want to know, sir.
- 2 A. You are rephrasing it, but I'm just telling you the
3 sequence of events.
- 4 Q. Okay. So, nobody, until Mr. Prince was deposed and he
5 volunteered that the web site was hosted by Bright Builders,
6 nobody from Cleveland inquired, looked, did anything at all to
7 find out where and who was hosting this site with the
8 counterfeit clubs?
- 9 A. In this case, that's correct.
- 10 Q. Okay. And nobody notified Bright Builders, that, "Hey,
11 Mr. Prince has got counterfeit clubs on your site;" is that
12 correct?
- 13 A. I'm sorry?
- 14 Q. Nobody from Cleveland notified Bright Builders that
15 Mr. Prince was selling counterfeit clubs on a web site that
16 they were hosting?
- 17 A. No one knew about Bright Builders.
- 18 Q. Right. Because they didn't look; is that correct, sir?
- 19 A. No one knew about Bright Builders.
- 20 Q. Right. But they could have found out who the host was of
21 Mr. Prince's site without asking him, correct, sir?
- 22 A. I'm -- that's probably a possibility.
- 23 Q. I mean, there --
- 24 A. You are asking if we did. I'm just trying to be clear,
25 that that did not happen. We found out, like I mentioned