

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.)	<u>Consent Motion for Leave to File First</u>
)	<u>Amended Complaint</u>
Christopher Prince, Sheldon Shelley and)	
Prince Distribution, LLC.)	
)	
Defendants.)	

Pursuant to Rules 15 and 21 of the Federal Rules of Civil Procedure, the Plaintiff, Roger Cleveland Golf Company, Inc., with the consent of the Defendants Christopher Prince and Prince Distribution, LLC,¹ moves for leave to amend the Complaint to add Bright Builders, Inc., as a defendant to the above-captioned matter. In support of this Motion, the parties would respectfully show the following:

1. On August 12, 2009, Plaintiff initiated this action for trademark infringement and unfair competition relating to the sale of counterfeit Cleveland Golf brand golf clubs over the internet, specifically through websites owned by the defendants. On September 17, 2009, Defendants Christopher Prince and Prince Distribution, LLC (collectively "Defendants") timely filed their Answer.

2. Since that time, Plaintiff has been diligently moving forward with both informal and formal discovery. Plaintiff has met with and interviewed Defendant Sheldon Shelley, has issued third-party subpoenas to Microsoft and PayPal for records related to the Defendants' websites, and has served written discovery, including interrogatories, requests for production and requests for admission, on Defendants Christopher Prince and Prince Distribution, LLC. As the

¹ Defendant Sheldon Shelley has failed to appear in this action and, as such, is in default.

Defendants' responses are now past due, counsel for Plaintiff is working with Defendants' counsel to receive responses without having to burden the Court with a discovery dispute.

3. On February 18, 2010, the deposition of Defendant Christopher Prince was taken, where, for the first time, Bright Builders, Inc.'s role in the creation and support of the business model and websites through which Plaintiff's trademarks were infringed was revealed. Plaintiff and its counsel were wholly unaware of Bright Builders, Inc. ("Bright Builders") and its integral role in the infringement complained of in the Complaint prior to this time.

4. Since this deposition, Plaintiff and its counsel have undertaken the necessary research to ensure a proper basis for bringing suit against Bright Builders exists and, having done so, an amended complaint naming Bright Builders as a party to this action on the grounds that it is, at the very least, secondarily liable for the infringement described in the Complaint has been drafted. A copy of this proposed First Amended Complaint is attached hereto as Exhibit A. Defendants have consented to the substantive amendments to the allegations contained in the First Amended Complaint, leave of which to amend is to be liberally granted under Rule 15(a)(2) of the Federal Rules of Civil Procedure.

5. Although Rule 15 sets forth the procedure for amending pleadings, Rule 21 governs the addition of parties sought through such amendments. *See Age of Majority Educational Corp. v. Preller*, 512 F.2d 1241, 1245-46 (4th Cir. 1973) (plaintiff's motion to amend complaint, filed after defendants submitted responsive pleadings to the original complaint, to add parties governed by Rule 21). Rule 21 states that "[o]n motion or on its own, the court may at any time, on just terms, add or drop a party." Fed. R. Civ. P. 21.

6. Here, the addition of Bright Builders is without question justified. Plaintiff's claims against Bright Builders arise out of the same transaction or occurrence as the original

claims in the Complaint. As described in the proposed First Amended Complaint, Bright Builders participated in the design, building, marketing, and support of the business model and websites through which Plaintiff's trademarks were infringed, including but not limited to instructing Defendants on search engine optimization and methods of embedding keywords, such as Plaintiff's federally registered trademarks, into metadata within Defendants' websites and providing Defendants a complete "Bright Builder Help Team" which, among other things, located vendors to supply the counterfeit products sold through Defendants' websites. (*See* Proposed First Amended Compl. ¶¶ 19-31.) Indeed, given the extent to which it was involved with the underlying infringement of Plaintiff's trademarks, this lawsuit should come to no surprise to Bright Builders, which knew or should have known from the name of one of Defendants' websites, "copycatclubs.com", from the text contained thereon claiming to be a leading website for "copied" clubs, from the use of Chinese wholesalers to provide clubs for resale on Defendants' websites, and from the use of Plaintiff's trademarks as metatags for those websites that it was participating in trademark infringement. Furthermore, Plaintiff and its counsel cannot be said to have been dilatory in moving to add Bright Builders as a defendant given that, despite their diligence in proceeding with discovery, they only became aware of Bright Builders' material contribution to the infringement which lies at the core of this lawsuit during the deposition of Defendant Prince approximately one month ago.

7. In the event that the Court grants the consent motion to amend the Complaint to add Bright Builders to the suit, the parties propose that the scheduling order governing this case be amended so as to allow for the addition of this new party. A consent motion concerning such an amendment will be submitted to the Court for its consideration.

WHEREFORE, the parties pray the Court that the Plaintiff be granted leave to file the amended complaint to add Bright Builders, Inc., as a defendant.

WE SO MOVE:

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