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

Roger Cleveland Golf Company, Inc., Plaintiff, vs. Christopher Prince, Sheldon Shelley, Prince Distribution, LLC, and Bright Builders, Inc. Defendants.	)	Civil Action No. 2:09-2119-MBS **DEFENDANT BRIGHT BUILDERS, RESPONSE TO ORDER TO SHOW CAUSE**

The Defendant, Bright Builders, Inc. ("Bright Builders"), hereby responds to this Honorable Court's Order to Show Cause dated December 3, 2010 ("Order"), requiring Defendant to Show Cause "why Bright Builders should not be sanctioned and ordered to pay the costs incurred by Plaintiff in responding to [its Motion for Summary Judgment]", and in support thereof, respectfully states as follows:

Bright Builders respectfully believes that it presented its Motion for Summary Judgment in good faith and believes the motion rightfully complies with Fed. R. Civ. P. Rule 56 and DSC Local Civil Rules 7.04 and/or 7.05.

Fed. R. Civ. P. 56

Fed. R. Civ. P. 56(a) provides that "[a] party claiming relief may move, with or without supporting affidavit*s*, for summary judgment on all or part of the claim." Bright Builders respectfully submits that in full compliance with the letter of Fed. R. Civ. P. 56, Bright Builders did move before this Court . . . "without supporting affidavits, for summary judgment on all [ ] of the claim[s]." Additionally, Bright Builders respectfully

believes that, the brevity of its Motion aside, it made a good faith effort to meet its initial burden required under the rules.

Specifically, Bright Builders pointed out to the Court that "[t]here is no allegation that Bright Builders in any way conspired with or profited from the Defendant Prince selling of illegal golf clubs." Motion at pg. 1. It also provided that "there is no evidence that Bright Builders knew that Mr. Prince was selling fake golf clubs." In good faith effort to comply with its burden, Bright Builders provided evidence in the form of the lack of *any* evidence or specific facts offered by Plaintiff to meet *any* essential element of its case against Bright Builders or to show there is a genuine issue for trial. Bright Builders is unable to proffer specific facts to the Court because there are none that exist.

As such, Bright Builders respectfully believes it complied in good faith with Fed. R. Civ. P. 56 and should not be required to pay the costs incurred by Plaintiff in responding to its Motion for Summary Judgment.

DSC Local Civil Rules 7.04 and 7.05

DSC Local Civil Rule 7.04 requires that "[a]ll motions made . . . shall be timely filed with an accompanying supporting memorandum . . .. However, unless otherwise directed by the Court, a supporting memorandum is not required if a full explanation of the motion as set forth in Local Civil Rule 7.05 is contained within the motion and a memorandum would serve no useful purpose." DSC Local Civil Rule 7.05 provides that "[a] memorandum shall contain: (1) [a] concise summary of the nature of the case; (2) [a] concise statement of the facts . . . with reference to the location in the record; [and] (3) [t]he argument (brevity is expected) relating to the matter before the court for ruling with appropriate citations." DSC Local Rule 7.05.

With regard to DSC Local Civil Rule 7.04, Bright Builders did not include a supporting memorandum with its motion because it believed in good faith that the motion contained "a full explanation of the motion as set forth in Local Civil Rule 7.05 . . . and a memorandum would serve no useful purpose," in that all of the requirements of Local Civil Rule 7.05 are contained in Bright Builders' Motion of Summary Judgment as more fully explained below.

The nature of the case and facts of the case are explained in the motion in that this case is about Prince selling fake golf clubs and Bright Builders' involvement with Prince in selling such fake golf clubs. Prince has admitted he sold fake golf clubs and it is admitted that Bright Builders coached Prince in developing an on-line store front and registered copycatclubs.com with various search engines but, it did not know that fake golf clubs were being sold on such site. See Prince Dep., ECF No. 55-1. It is undisputed that Bright Builders had no direct involvement or direct knowledge regarding the creation of the specific web site nor the actual sale of fake Cleveland golf clubs. It is admitted there were no cites to the record for the facts because it was believed (and is still believed) all parties agree with the facts as asserted in the Motion for Summary Judgment. Bright Builders respectfully asserts it believed it was complying with the over arching intent of the rule and believes this court could find as such.

Bright Builders provides the argument was brief in that there is simply no case law which supports the extension of trademark liability to the facts of this case. In fact, counsel had requested any such case law from the Plaintiffs knowing that the issue was researched prior to and would be necessary before adding Bright Builders as a defendant. Further demonstration of the lack of supporting case law can be seen in the Plaintiff's

Opposition to Bright Builders Summary Judgment motion wherein no 4th Circuit or Supreme Court case is cited as controlling authority. Indeed the Plaintiff has put forth no case, even from other jurisdictions, alluding to the argument that an entity that provides a service to someone who sells an infringing product can be found liable for contributory and/or vicarious liability where the service provider did not have knowledge of the infringement.

Bright Builders respectfully asserts it was in no way trying to harass, needlessly increase the cost of litigation, or cause any unnecessary delay and apologizes to the court as well as the parties for any appearance of such. Bright Builders wanted to bring to the court's attention the lack of supporting precedent for extension of liability in the manner Plaintiff seeks in this case.

WHEREFORE, Defendant Bright Builders respectfully urges this court not to impose sanctions and/or costs in this matter.

Respectfully submitted,

s/Paul J. Doolittle

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