

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>PLAINTIFF'S REPLY TO</u>
)	<u>DEFENDANT BRIGHT BUILDERS,</u>
Christopher Prince, Sheldon Shelley, Prince)	<u>INC.'S RESPONSE TO ORDER TO</u>
Distribution, LLC, and Bright Builders,)	<u>SHOW CAUSE</u>
Inc.)	
)	
Defendants.)	

Plaintiff Roger Cleveland Golf Company, Inc. ("Plaintiff" or "Cleveland") hereby respectfully submits this Reply to Defendant Bright Builders, Inc.'s ("Bright Builders") Response to the Court's December 3, 2010 Order to Show Cause ("Order").

Cleveland submits to the Court that Bright Builders' meritless, two-page Motion for Summary Judgment was brought for improper purposes. As support for its position, Cleveland asserts that Bright Builders purposefully ignored the numerous factual disputes contained in the record and brought the motion so that Cleveland would be forced to provide the legal research that Bright Builders had been unwilling to conduct on its own. This type of improper motion practice should not be countenanced by this Court. For the reasons stated more thoroughly herein, Cleveland respectfully requests that this Court order Bright Builders to pay Cleveland's fees and costs associated with responding to Bright Builders' Motion for Summary Judgment.

A. Bright Builders Failed to Cite to Any Legal Authority to Support the Grounds for its Motion for Summary Judgment.

Bright Builders' two-page Motion for Summary Judgment does not contain a single cite to any legal authority, let alone any legal authority on the issue of Bright Builders' liability. In fact, it does not even provide the Court with rote citations to the rule of procedure under which

the motion was filed or provide authority for the legal standard under which the motion was to be decided. In seeking to excuse this fatal omission, Bright Builders advances the argument that "there is simply no case law which supports the extension of trademark liability to the facts of this case." Response at pg. 3. This misguided assertion is a wholly incorrect statement applying the facts of this case to applicable law.

While Bright Builders attempts to paint contributory and vicarious trademark liability as a new concept, this doctrine is firmly rooted in both the common law and case precedent. Bright Builders ignores the fact that Cleveland provided this Court with binding Supreme Court precedent on exactly this topic when it cited to Inwood Lab., Inc. v. Ives Lab., Inc., 456 U.S. 844 (1982), a case decided twenty-eight years ago setting forth the standard for contributory trademark liability. Rather than providing legal argument to this Court by applying the law of contributory and vicarious liability to the facts presented in this case as required by the rules, Bright Builders, instead, simply moved for summary judgment on its "version" of what the rule of law ought to be. Bright Builders' argument that it should be excused for failing to cite any legal authority because no such authority existed is intellectually dishonest and should not be given any weight by this Court.

B. Bright Builders' Improper Purpose in Filing Its Motion

While Bright Builders' Response to the Court's Order to Show Cause spends four pages attempting to explain how its two-page Motion for Summary Judgment complied with the applicable Federal Rule of Civil Procedure and Local Rules governing the same, it fails to set forth any good faith theory that would support a finding that, in a light most favorable to Bright Builders, it should not be liable. Clearly, there are issues of material fact and Bright Builders has offered no theory under which the motion could have been made in good faith. In fact, based

upon Bright Builders' Response, it appears that Bright Builders' purpose in filing the motion was to have Cleveland provide it with the legal research Bright Builders was unwilling to do on its own. In its response, Bright Builders states, "In fact, counsel had requested any such case law from Plaintiffs [sic] knowing that the issue was researched prior to and would be necessary before adding Bright Builders as a defendant." Response at pg. 3.¹ In filing a meritless, two-page long motion for summary judgment that did not contain a single cite to any legal authority, Bright Builders forced Cleveland to respond to the motion, provide its legal authority on the issues, and essentially requested that this Court conduct Bright Builders' research for it. Such tactics should not be condoned by this Court.

CONCLUSION

WHEREFORE, Cleveland respectfully requests that this Court award Cleveland its fees in preparing its opposition to Bright Builders' two page motion for summary judgment which was brought for the improper purposes of harassing Cleveland, needlessly increasing Cleveland's cost of litigation, and providing Bright Builders with the legal research it was unwilling to conduct on its own. Cleveland has attached as Exhibit B an affidavit of fees for the Court's consideration.

[SIGNATURES ON NEXT PAGE]

¹ Contrary to Bright Builders' assertions, an email was provided to counsel for Bright Builders explaining the underlying theories of contributory and vicarious liability with citations to the applicable law. See email attached as Exhibit A.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/John C. McElwaine

John C. McElwaine

Federal Bar No. 6710

E-Mail: john.mcelwaine@nelsonmullins.com

Jeffrey S. Patterson

Federal Bar No. 6603

151 Meeting Street / Sixth Floor

Post Office Box 1806 (29402-1806)

Charleston, SC 29401-2239

(843) 853-5200

Admitted Pro Hac Vice

Christopher S. Finnerty

Massachusetts Bar No. 65732 E-mail:

chris.finnerty@nelsonmullins.com

Morgan T. Nickerson

Massachusetts Bar No. 667290 E-mail:

morgan.nickerson@nelsonmullins.com

One Post Office Square, 30th Floor

Boston, MA 02109

(617) 573-4700

Attorneys for Plaintiff Roger Cleveland Golf Company, Inc.

Charleston, South Carolina

December 14, 2010