

**John McElwaine**

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**From:** John McElwaine  
**Sent:** Tuesday, July 06, 2010 2:20 PM  
**To:** Paul Doolittle  
**Subject:** RE: Interrogatories, Documents

Paul,

We feel that Bright Builder's is liable for trademark infringement under a theory of contributory liability. In the Fourth Circuit, contributory liability for trademark infringement exists if a defendant (1) intentionally induces another to infringe on a trademark, or (2) continues to supply a product with actual or constructive knowledge that the recipient is using the product to engage in trademark infringement. *Size, Inc. v. Network Solutions, Inc.*, 255 F.Supp.2d 568, 572 (E.D.Va. 2003) (citing *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844, 854 (1982)). In this case, we believe that the evidence will show that Bright Builder's knew that Mr. Price would be selling counterfeit golf clubs. One need only look to the name of the website that Bright Builder's agreed to host: CopyCatGolfClubs.com.

Additionally, we believe that Bright Builder's acted as Mr. Prince's agent in marketing the CopyCatGolfClubs.com website. Vicarious liability for trademark infringement arises upon a finding of a principal-agent relationship. *American Tel. & Tel. Co. v. Winback & Conserve Program*, 42 F.3d 1421, 1430-31 (3rd Cir. 1994).

We look forward to your client's response. Best regards,

- John

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**From:** Paul Doolittle [mailto:paul@j-dlaw.com]  
**Sent:** Saturday, July 03, 2010 7:20 AM  
**To:** John McElwaine  
**Subject:** Re: Interrogatories, Documents

They really feel like they did nothing wrong. Do you have anything outlining their liability You could share with me so I can enlighten them?

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On Jul 2, 2010, at 1:12 PM, "John McElwaine" <[john.mcelwaine@nelsonmullins.com](mailto:john.mcelwaine@nelsonmullins.com)> wrote:

Pau,

That is not a problem. Can we get a response to the demand?

Have a great weekend.