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Attorneys for Plaintiff Back To Basics Products, Inc.

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

<p>BACK TO BASICS PRODUCTS, INC., a Utah corporation,</p> <p>Plaintiff,</p> <p>v.</p> <p>PRECISION TRADING CORP., a Florida corporation,</p> <p>Defendant.</p>	<p>CONSENT JUDGMENT, PERMANENT INJUNCTION AND ORDER</p> <p>Civil No. 2:03-CV-00999</p> <p>Judge Dee V. Benson</p>
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Based on the Stipulation and Consent of the parties, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

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1. Definitions:

1.1. The term "Plaintiff" shall mean BACK TO BASICS PRODUCTS, INC., a Utah corporation, and its agents, servants, employees, officers, directors, attorneys, successors, assigns, affiliates and all persons in active concert or participation with Defendant who receive actual notice of this judgment.

1.2. An "affiliate" of a party shall mean any person, corporation or entity: (a) who is controlled by the party, (b) who controls the party, or (c) who is controlled by another person, corporation or entity who also controls the party.

1.3. The term "Plaintiff's patent" as used herein means United States Patent Number 6,527,433.

2. Action and Jurisdiction. This is an action for federal patent infringement, and unfair competition brought under the Federal Trademark (Lanham) Act, 15 U.S.C. § 1125(a) and for unfair competition under the common law. The Court has jurisdiction over the parties to this action and over the subject matter of the causes of action pleaded in the Complaint herein.

3. Establishment of Plaintiff's Patent. For purposes of settlement, Defendant does not dispute that:

3.1. On March 4, 2003, United States Patent Number 6,527,433, a copy of which is attached hereto as Exhibit "A", was duly and legally issued.

3.2. Plaintiff is the exclusive licensee of Plaintiff's patent with full and exclusive right to bring suit and enforce Plaintiff's patent.

4. Defendant's Infringement of Plaintiff's Patent. For purposes of resolving this lawsuit, Defendant admits that it, without authority or license from Plaintiff and during the term of Plaintiff's Patent, sold 22 units of the "Premium Blender for Smoothies Model PB390" smoothie maker in the United States, which, Defendant does not dispute infringes Plaintiff's patent.
5. Injunction. Defendant and all persons in active concert or participation with Defendant who receive actual notice of this judgment by personal service or otherwise shall be, and hereby are, enjoined in the United States and its territories for the term of the Plaintiff's Patent from:
 - 5.1. infringement of the Plaintiff's patent pursuant to applicable law including 35 U.S.C. § 283;
 - 5.2. using in any manner, including but not limited to selling, offering for sale, ordering, owning, marketing, manufacturing, importing, exporting, storing, holding, or retaining whether held in-bond, under consignment or otherwise, from or in the United States, the "Premium Blender for Smoothies Model PB390" smoothie maker, parts therefore or other similar infringing product;
 - 5.3. using in any manner, or authorizing anyone else, to use Plaintiff's name in any manner, whether alone or in combination with any other word or words; and using in any manner any other mark or name which is likely to be confused with Plaintiff's name;
 - 5.4. using Plaintiff's name in any name, including any corporate, actual or fictitious name, of Defendant;
 - 5.5. producing, creating, purchasing, acquiring, selling, distributing, publishing, or commercializing any product, service, packaging, brochure, advertisement, letterhead,

envelope, promotional material, business card, label, item, material, or work of authorship which incorporates or uses Plaintiff's name, alone or in combination with any other word or words;

5.6. producing, creating, purchasing, acquiring, selling, distributing, or publishing the "Use & Care Manual" previously included in the packaging for the "Premium Blender for Smoothies Model PB390" smoothie maker or other publication incorporates, copies or utilizes Plaintiff's descriptions of Plaintiff's products;

5.7. challenging or contesting the validity or enforceability of Plaintiff's patent or any issuance thereof or any of Plaintiff's rights in Plaintiff's patent.

5.7.1. Without limiting the generality of the foregoing, the phrase "using in any manner" shall include any use as a trade name, trademark, or service mark or as any designation to identify or distinguish the business, products or services of Defendant.

6. Destruction of Materials. Subject to the provisions of the previous paragraph, Defendant shall promptly destroy any and all of its labels, packaging, containers, use and care manuals, written instructions, brochures, price lists, letterhead, business cards, forms, works of authorship and other materials of Defendant which bear Plaintiff's name and all products in the United States which infringe Plaintiff's patent including "Premium Blender for Smoothies Model PB390" smoothie makers whether owned, held in-bond, under consignment or otherwise. Within two (2) weeks from the date of this Consent Judgment, Defendant shall certify in writing to Plaintiff and to Plaintiff's counsel that such destruction has been accomplished.

7. Release. Subject to Defendant's full compliance with the terms of this Consent Judgment (i) Plaintiff releases Defendant from any claim of infringement that Plaintiff may have based upon any infringement of Plaintiff's patent and Defendant's use of Plaintiff's name prior to the date of this Consent Judgment; and (ii) Plaintiff covenants not to sue Defendant in connection with the infringement of Plaintiff's patent or the use of Plaintiff's name prior to the date of this Consent Judgment. This release shall not apply to any infringement arising after the date of this Consent Judgment. As of the date of this Consent Judgment, Defendant has no claim against Plaintiff and if any such claim exists it is hereby waived and Plaintiff is released therefrom.
8. Default. In the event of any violation of the terms and conditions of this Consent Judgment by Defendant, Plaintiff shall, at its sole option: (1) be entitled to reopen the above-captioned action and to have the Court enter an appropriate order enforcing this Consent Judgment. In the event Defendant shall violate this Consent Judgment in any way, Defendant shall be liable for Plaintiff's costs and attorneys' fees incurred in enforcing the terms and conditions of this Consent Judgment or in pursuing Plaintiff's claims set forth in the Complaint.
9. Costs. Defendant shall pay Plaintiff \$2,500 as payment in full for damages, attorneys' fees and costs incurred by Plaintiff prior to the date of this Consent Judgment, Permanent Injunction and Order. Defendant shall bear its own attorney fees and costs incurred by it in connection with this action or anything relating to the subject matter of this litigation. With the exception of the \$2,500.00 payment from Defendant to Plaintiff recited in this paragraph, Plaintiff shall bear its own attorney's fees and costs incurred by it in connection with this action or anything relating to the subject matter of this litigation.

10. Jurisdiction and Venue. This Court retains exclusive jurisdiction of the subject matter of this Consent Judgment, Permanent Injunction and Order for all purposes, including without limitation for the purpose of construing, enforcing, or implementing this Consent Judgment. The parties have waived their right to appeal from this final judgment and hereby consent to its entry without further notice. In the event of any litigation alleging a violation of this Consent Judgment or relating thereto, an award of reasonable attorneys' fees and costs shall be granted to the prevailing party, in addition to other available remedies.

DATED this 5TH day of OCTOBER, 2004.



Dee V. Benson
United States District Court Judge

The Undersigned hereby consent to the form and entry of the above Consent Judgment:

DURHAM JONES & PINEGAR



R. Stephen Marshall
J. Mark Gibb
Attorneys for Back to Basics Products, Inc.

PARR WADDOUPS BROWN GEE & LOVELESS



Robert S. Clark
Daniel E. Barnett
Attorneys for Precision Trading Corporation, a Florida Corporation

United States District Court
for the
District of Utah
October 6, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00999

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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