

AO 120 (Rev. 08/10)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Southern District of New York on the following
 Trademarks or Patents. (the patent action involves 35 U.S.C. § 292.):

DOCKET NO. 15-cv-6850	DATE FILED 8/28/2015	U.S. DISTRICT COURT Southern District of New York
PLAINTIFF Elliott Goldberg & Fabrication Enterprises, Inc.		DEFENDANT Howard Silagy and Accu-Net LLC
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 1738982	12/8/1992	Elliott Goldberg
2		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK HOLDER OF PATENT OR TRADEMARK
1	
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT <div style="font-size: 1.2em; font-family: cursive;"> case closed pursuant to attached order </div>

CLERK RUBY J. KRAJICK <i>Ruby</i>	(BY) DEPUTY CLERK /S/ V. FRROKAJ	DATE 8/31/2015
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: Feb 03 2016

(SETTLEMENT AGREEMENT EXHIBIT A)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ELLIOTT GOLDBERG and
FABRICATION ENTERPRISES, INC.,

Plaintiffs,

- against -

HOWARD SILAGY and
ACCU-NET, LLC,

Defendants.
-----X

Civ. No. 15-cv-6850 (KBF)
ECF Case

**CONSENT DECREE AND
ORDER OF DISMISSAL**

Pursuant to the separate written Settlement Agreement of the parties in the above-entitled action dated January __, 2016 and the written consent below of Plaintiffs Elliott Goldberg ("Goldberg") and Fabrication Enterprises, Inc. ("Fabrication"), (Goldberg and Fabrication collectively, "Plaintiffs") and Defendants Howard Silagy ("Silagy") and Accu-Net LLC ("Accu-Net") (Silagy and Accu-Net collectively, "Defendants"), the Court orders as follows:

I. Prohibited Conduct:

- A. Defendants shall not make any use of the term "Digi-Flex" or of any variant thereof in marketing or promoting or advertising any product;
- B. Defendants shall not state or suggest that "Gripmaster was known as Digi-Flex";
- C. Defendants shall not state or suggest that the Gripmaster or Gripmaster Medical hand and finger exerciser and the "Digi-Flex"



- hand and finger exerciser are the same product with a different name;
- D. Defendants shall not state or suggest that Gripmaster, Silagy, Accu-Net, Pro-Hands Medical and/or any other entity in which Silagy had or has an interest owned and/or sold the "Digi-Flex" trademark;
 - E. Defendants shall not state or suggest that Gripmaster, Silagy, Accu-Net, Pro-Hands Medical and/or any other entity in which Silagy had or has an interest are the inventors or creators, or the original inventors or original creators, of "Digi-Flex", or are or were the sellers, licensors, or licensees of Digi-Flex;
 - F. Defendants shall not state or suggest that Gripmaster or Gripmaster Medical is patented;
 - G. Defendants shall not state or suggest that Gripmaster or Gripmaster Medical is manufactured in the United States (unless production is shifted from Korea to the United States);
 - H. Defendants shall not state or suggest that Gripmaster was continuously sold in the medical market and/or allied health professions markets prior to December 1, 2011;
 - I. Defendants shall not state or suggest that Gripmaster is the No. 1 hand exerciser in any advertising or promotion or marketing in the medical or allied health professions markets;
 - J. Defendants shall not state or suggest, in advertising or promoting or marketing the Gripmaster Medical or Gripmaster products to persons or companies in the allied health professions or medical field, that "Gripmaster is the No. 1 hand exerciser in the world";
 - K. Defendants shall not state or suggest that Gripmaster or Gripmaster Medical has become, or is becoming, the industry standard in the medical and/or allied health professions fields;
 - L. Defendants shall not state or suggest that only Prohands offers three models or three distinct models of hand and finger exercisers, unless there is no other entity that offers three (or more) models of hand and finger exercisers;

- M. Defendants shall not state or suggest that Gripmaster Medical or Gripmaster products are used by "leading certified hand therapists" or are "used and recommended by licensed hand therapists worldwide".

This Paragraph I shall apply whether the words "Gripmaster" or "Gripmaster Medical" are used alone or in conjunction with other words in identifying products sold by Defendants. The Defendants' obligations under this Paragraph I shall take effect ten days after entry of this Consent Decree, except that until December 31, 2016 Defendants may continue to use their own printed promotional material except for any printed material containing any reference to "Digi-Flex". On or before December 31, 2016, Defendants shall destroy any promotional material containing any statement referred to in this Paragraph I(A)-(M) and shall provide Plaintiffs' counsel with an affidavit certifying that all of said material has been destroyed.

II. Enforcement Procedures:

Commencing ten days after the date of entry of this Consent Decree, whenever Defendants are advised in writing by Plaintiffs, or learn from any other source, that a business entity is using a statement in marketing, advertising or promoting Gripmaster products or Gripmaster Medical products that is not consistent with Defendants' obligations set forth in Paragraph I(A)-(M) (a "Non-Conforming Statement"):

A. If the business entity is using one or more Non-Conforming Statements in a printed catalogue or advertising or promotional matter, then:

- (i) Within twenty days after being advised of or learning of an entity's use

of Non-Conforming Statement(s) in a printed catalogue or advertising or promotional matter, Defendants shall provide that entity with copy that does not contain any Non-Conforming Statements and request that within ten days the entity agree in writing to use only the copy provided by Defendants in any catalogue or advertising or promotional matter that is printed more than ninety (90) days after delivery of said request.

(ii) If the entity does not provide the written agreement provided for in sub-paragraph (i) above within ten days after delivery of Defendants' request for same, then Defendants shall notify that entity in writing delivered by overnight delivery service (the "Notice"), that the entity may not use the Non-Conforming Statement(s) in any catalogue or advertising or promotional matter printed more than sixty (60) after delivery of the Notice.

(iii) If any entity that is notified pursuant to sub-paragraph (ii) uses any Non-Conforming Statement in a new catalogue, advertising or promotional matter printed more than sixty (60) days after receipt of the Notice, Defendants may not sell Gripmaster products or Gripmaster Medical products to that entity until the entity's most recently published catalogue and advertising and promotional matter do not contain any Non-Conforming Statements.

(iv) Nothing contained herein shall preclude Defendants from selling Gripmaster or Gripmaster Medical products to entities whose only catalogues, advertisements and promotional matter containing Non-Conforming Statements have been printed either before receipt of the Notice required by sub-paragraph II(A)(ii) or less than sixty (60) days after receipt of the Notice required by sub-paragraph II(A)(ii).

B. If the business entity is using one or more Non-Conforming Statements on a website then:

(i) Within twenty days after being advised of or learning of an entity's use of Non-Conforming Statement(s) on a website, Defendants shall provide that entity with copy that does not contain any Non-Conforming Statements and request that within ten days the entity change its website to use the copy provided by Defendants;

(ii) If the entity does not change its website to use the copy provided by Defendants within ten days after delivery of Defendants' request, or changes its website but does not remove all Non-Conforming Statements, then Defendants shall notify that entity in writing by overnight delivery service (the "Notice"), that the entity may not use the Non-Conforming Statement(s) on its website more than ten days after delivery of the Notice.

(iii) If any entity that is notified pursuant to sub-paragraph (ii) uses any Non-Conforming Statement more than ten days after receipt of the Notice, Defendants may not sell Gripmaster or Gripmaster Medical products to that entity until the entity's website ceases to contain any Non-Conforming Statements.

III. This Consent Decree shall apply to Defendants and to any assignee of either defendant, successor entity, or acquirer of either defendant that sells Gripmaster or Gripmaster Medical products. Defendants shall cause any entity in which they have or come to have a controlling interest to adhere to the terms of the Settlement Agreement and Consent Decree.

IV. The Court retains jurisdiction of this case to and including March 31, 2017 solely for enforcement of this Consent Decree.

V. Except as set forth above, this case shall be, and same hereby is, dismissed with prejudice and without costs. The Clerk is directed to mark the case as terminated.

Dated: New York, New York
January __, 2016

United States District Judge

CONSENTED TO:

 
Howard Silagy

 1/28/2016
Date

ACCU-NET LLC

By: 
Howard Silagy,
Managing Member

 1/28/2016
Date

Elliott Goldberg

Date

FABRICATION ENTERPRISES, INC.

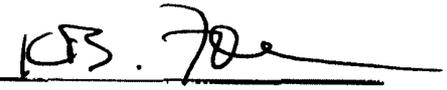
BY: _____
Elliott Goldberg,
President

Date

V. Except as set forth above, this case shall be, and same hereby is, dismissed with prejudice and without costs. The Clerk is directed to mark the case as terminated.

Dated: New York, New York
January __, 2016

2/3/16


United States District Judge

CONSENTED TO:

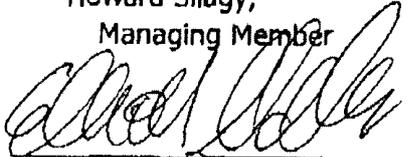
Howard Silagy

Date

ACCU-NET LLC

By: _____
Howard Silagy,
Managing Member

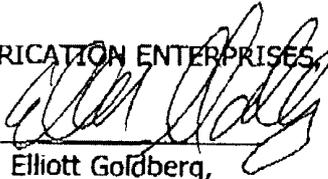
Date



Elliott Goldberg

1/27/16
Date

FABRICATION ENTERPRISES, INC.

BY: 

Elliott Goldberg,
President

1/27/16
Date