

**IN THE UNITED STATES DISTRICT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

THE GRIP MASTER CO. PTY. LTD.,

Plaintiff,

vs.

THE GRIPMASTER USA, INC.,
AND HARRY E. SEWILL,

Defendants.

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CIVIL ACTION NO. _____
JURY DEMANDED

COMPLAINT

The Grip Master Co. Pty. Ltd. (“GM” or “Plaintiff”) files this Complaint against The Gripmaster USA, Inc. (“GMUSA”) and Harry E. Sewill (“Sewill”) (collectively “Defendants”) and would respectfully show the Court as follows:

PARTIES

1. Plaintiff, The Grip Master Co. Pty. Ltd., is an Australian corporation with its principal place of business in Preston South, Victoria, Australia.
2. Defendant, The Gripmaster USA, Inc., is a Texas corporation with its principal place of business in Conroe, Texas. Defendant may be served with process by serving its registered agent for service of process, Harry E. Sewill at 3828 West Davis, Suite 308-106, Conroe, Texas 77304.
3. Defendant Harry E. Sewill is a resident of Conroe Texas and may be served with process herein at 3828 West Davis, Suite 308-106, Conroe, Texas 77304.

JURISDICTION AND VENUE

4. This civil action asserts a claim for relief for patent infringement that arises under the Patent Laws of the United States (35 U.S.C. §271, et seq.). This civil action also asserts claims for relief for trademark infringement and unfair competition that arise under the Lanham Act (15 U.S.C. § 1051, et seq.). Accordingly, this Court has jurisdiction of this civil action under 28 U.S.C. §§ 1331 and 1338(a). This Court also has jurisdiction over this civil action under 28 U.S.C. §§ 1332 and 1367 based upon diversity among the parties and the amount in controversy being in excess of \$75,000.00, and based on Plaintiffs' claim for relief arising under state law.

5. Venue is proper in this Court under 28 U.S.C. §§ 1400(b) and 1391(c).

FACTUAL BACKGROUND

6. GM was incorporated in Australia on September 30, 1998. GM is in the business of manufacturing original equipment manufactured ("O.E.M.") and replacement ("Aftermarket") grips for golf clubs. GM began selling its grips in the United States on March 2, 1999.

7. On September 17, 2002, United States Patent No. 6,449,803 B1 was duly and legally issued in the name of Ian McConchie for a grip for a handle or shaft. McConchie assigned all of his right, title, and interest in U.S. Patent No. 6,449,803 B1 to GM. A copy of U.S. Patent No. 6,449, 803 B1 is attached hereto as Exhibit A.

8. GM owns a common law trademark for the mark THE GRIP MASTER for golf club grips by virtue of GM's use of the trademark THE GRIP MASTER in the United States beginning March 2, 1999. Moreover, golf club grips covered by U.S. Patent No. 6,449,803 B1 are sold, offered for sale, advertised and promoted in the United States under the mark THE GRIP MASTER.

9. GM's trademark is valid, subsisting, and in full force and effect.

10. The trademark THE GRIP MASTER (the “Mark”) is associated exclusively with GM for use with golf club grips. GM has used the mark THE GRIP MASTER in interstate commerce in the United States continuously since March 2, 1999. As a result of GM’s marketing of its golf club grips and the extensive advertising and other business generation efforts to promote the Mark, the Mark has become well-known in the Houston metropolitan area, the State of Texas, and the United States as identifying GM’s products and business. Customers and potential customers in these areas have come to identify the Mark as originating with GM. Consequently, GM has developed substantial recognition among the consuming public for its high quality products sold under it’s Mark THE GRIP MASTER and has acquired and enjoys a valuable reputation and significant goodwill associated with it’s Mark THE GRIP MASTER and products sold under it’s Mark THE GRIP MASTER.

11. GM’s use of the Mark in the golf club industry has been exclusive. As a result of this exclusive use of the Mark and the long and widespread use that has been made by GM of the Mark, there is substantial recognition and association of the Mark with GM by the consuming public for golf club grips.

12. GM has recently learned that Defendants are promoting, advertising, selling, and offering for sale golf club grips bearing GM’s Mark; however, are not authorized to promote, advertise, sell, or offer for sale golf club grips bearing GM’s Mark. In particular, Defendants, use GM’s Mark THE GRIP MASTER on their products as well as use the moniker “The Grip Master USA” on or in connection with their golf club grips. For example, Defendants advertise, promote, sell, and offer for sale their golf club grips through personal sales calls and over the Internet through the web site www.thegripmasterusa.com. By including GM’s Mark on Defendants’ products, Defendants are infringing upon GM’s trademark rights. Given the

substantial similarity of Defendants' products to GM's genuine products, and the inclusion of GM's Mark on Defendants' products, there is a substantial likelihood that consumers will be confused, misled, or deceived as to the source of Defendants' golf club grips. Accordingly, Defendants are infringing GM's Mark.

13. Moreover, on October 17, 2007, GMUSA filed with the U.S. Patent and Trademark Office an application to register GM's Mark THE GRIP MASTER for golf club grips. This application was assigned Application Serial No. 76/683,027 and identifies GMUSA as the owner of this application. In filing this application, GMUSA fraudulently alleges that it is the owner of the mark THE GRIP MASTER and that no other party has a right to use the mark THE GRIP MASTER in the United States. GMUSA has not only committed fraud on the U.S. Patent and Trademark Office, GMUSA's filing of this trademark application is another act of trademark infringement.

14. Additionally, by virtue of the fact that Defendants' golf club grips are covered by GM's U.S. Patent No. 6,449,803 B1, Defendants golf club grips also infringe U.S. Patent No. 6,449,803 B1.

CAUSES OF ACTION

COUNT I

PATENT INFRINGEMENT OF U.S. PATENT NO. 6,449,803 B1

15. GM repeats and re-alleges the allegations set forth above.

16. GMUSA and Sewill are infringing U.S. Patent No. 6,449,803 B1, by making, using, selling, offering for sale, and/or importing into the United States golf club grips covered by one or more of the claims of U.S. Patent No. 6,449,803 B1, and will continue to do so unless enjoined by this Court.

17. GM has no adequate remedy at law and will suffer irreparable harm and damage as a result of GMUSA and Sewill's acts should GMUSA and Sewill not be enjoined from further acts of infringement.

COUNT II
TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION

18. GM repeats and re-alleges the allegations set forth above.

19. Defendants' improper use of GM's Mark THE GRIP MASTER and sale of their infringing products bearing GM's Mark THE GRIP MASTER is confusing to consumers and constitutes infringement of GM's trademark rights in violation of the Lanham Trademark Act ("Lanham Act"). Defendants' unauthorized use of GM's Mark THE GRIP MASTER violates Section 43 of the Lanham Act which prohibits the use of a trademark in such a manner as is likely to cause confusion as to the source of the goods bearing the trademark. *See* 15 U.S.C. § 1125. Defendants' use of GM's Mark THE GRIP MASTER also violates Section 32 of the Lanham Act prohibiting the unauthorized use of a trademark which is likely to cause confusion. *See* 15 U.S.C. § 1114.

20. Defendants are currently selling their infringing golf club grips under GM's Mark THE GRIP MASTER and will continue to do so unless enjoined from doing so by this Court. If Defendants are allowed to continue to sell under an infringing mark, the distinctiveness of GM's Mark will be diminished or destroyed. GM will also lose its goodwill created by its Mark. The continuing acts of Defendants are jeopardizing the goodwill of GM and its valuable Mark, and such acts have caused and are causing irreparable injury to GM and to the consuming public. Unless the acts of the Defendants complained of herein are enjoined by this Court, they will continue to cause irreparable injury to GM and to the public, for which there is no adequate

remedy at law. Accordingly, GM seeks injunctive relief prohibiting the infringing acts by Defendants complained of herein.

21. Additionally or, in the alternative, GM seeks an accounting and its actual and consequential damages resulting from Defendants' infringing acts. Moreover, GM seeks punitive, additional, and enhanced damages from Defendant.

22. As evidenced by Defendants' promotion of their infringing products as "The Grip Master USA" grips, Defendants have been, and currently are, aware of the valuable trademark rights of GM. Therefore, on information and belief, the above-described activities have been willful.

23. On information and belief, Defendants will continue to undertake such activities which infringe GM's Mark THE GRIP MASTER unless enjoined by the Court.

24. As a consequence of these activities and the impairment to GM's goodwill, reputation, and customer base, GM has been irreparably harmed to an extent not yet determined and will continue to be irreparably damaged by such acts in the future unless Defendants are immediately and, after trial, permanently enjoined by this Court from continuing his unlawful activity.

COUNT III
WILLFUL PATENT AND TRADEMARK INFRINGEMENT

25. GM repeats and re-alleges the allegations set forth above.

26. On September 3, 2007, GM sent two letters to Defendants informing them that Defendants were in possession of GM's golf club grips under the Mark THE GRIP MASTER, that Defendants had not fully paid for those golf club grips, and that Defendants were no longer permitted to sell GM's golf club grips. As a result, any manufacture, use, sale, offer for sell, or importation into the United States by Defendants after at least as early as October 5, 2007, of any

golf club grip distributed by GM under the Mark THE GRIP MASTER would be an infringement of GM's patent and trademark rights. Despite GM's letters, Defendants continued to at least offer for sale and sell GM's patented golf club grips under GM's Mark THE GRIP MASTER. And, to this day Defendants continue to knowingly and willfully infringe Plaintiffs' patent and trademark rights. As such, Defendants' patent and trademark infringement is willful.

COUNT IV
TRADEMARK INFRINGEMENT AND
UNFAIR COMPETITION UNDER TEXAS LAW

27. GM repeats and re-alleges the allegations set forth above.

28. The acts of Defendants complained of above constitute trademark infringement and unfair competition under the common law of the State of Texas. As a result of the infringement and unfair competition by Defendants, GM has suffered and will continue to suffer injury and damage in an amount yet to be determined. Upon information and belief, the acts of infringement by Defendants have resulted in substantial unjust profits and unjust enrichment on the part of Defendants in an amount yet to be determined. Such acts of trademark infringement and unfair competition are causing harm to GM.

29. The continuing acts of Defendants are jeopardizing the goodwill of GM and its valuable Mark, and such acts have caused and will continue to cause irreparable injury to GM and to the consuming public. Unless the acts of the Defendants complained of herein are enjoined by this Court, they will continue to cause irreparable injury to GM and to the public, for which there is no adequate remedy at law. Additionally or in the alternative, GM seeks an accounting and its actual and consequential damages as a result of Defendant's infringing acts which have resulted in confusion among the public. Moreover, GM seeks punitive and enhanced damages for Defendant's willful conduct.

COUNT V
TRADEMARK DILUTION UNDER TEXAS LAW

30. GM repeats and re-alleges the allegations set forth above.

31. The facts set out above demonstrate that Defendants are diluting the exclusivity and distinctiveness of the Mark in violation of the Texas Anti-Dilution Act. Defendants' unauthorized use of GM's Mark constitutes a dilution of GM's Mark and injures GM's business reputation, in violation of TEX. BUS. & COM. CODE § 16.29.

32. As a result of the dilution by Defendants, GM has suffered, and is suffering, injury and damage in an amount yet to be determined. Upon information and belief, the acts of dilution by Defendants have resulted in and are currently resulting in substantial unjust profits and unjust enrichment on the part of Defendants in an amount yet to be determined. GM seeks injunctive relief to prevent this type of injury from continuing. Additionally or in the alternative, GM seeks an accounting and damages.

COUNT VI
REQUEST FOR MONETARY RELIEF,
TREBLE DAMAGES AND ATTORNEYS' FEES AND COSTS

33. GM repeats and re-alleges the allegations set forth above.

34. The acts of Defendants complained of above have resulted in trademark infringement and unfair competition. Accordingly, pursuant to 15 U.S.C. § 1117(a), GM is entitled to recover 1) Defendants' profits; 2) any damages sustained as a result of Defendants' infringing acts; and 3) the costs associated with these causes of action. GM is also entitled to all damages adequate to compensate GM for Defendants' infringement of U.S. Patent No. 6,449,803 B1, but in any event, not less than a reasonable royalty.

35. Moreover, GM is entitled to an award of treble damages, as well as an award of punitive damages, pursuant to 15 U.S.C. § 1117(b) and 35 U.S.C. § 285 as a result of the

extenuating circumstances of this case, Defendants' intentional use of the Mark, infringement of U.S. Patent No. 6,449,803 B1, and their gross, wanton, and/or willful conduct.

36. Furthermore, as a result of Defendants' actions, GM has been required to retain the services of counsel to represent it in this matter, and it has been forced to incur and is presently incurring attorneys' fees in order to enforce its patent and trademark rights. These fees and expenses are necessary and reasonable in order to prosecute this matter. Accordingly, GM requests that it be granted an award of attorneys' fees and costs as a result of Defendants' actions.

DEMAND FOR JURY TRIAL

37. GM demands a trial by jury on all claims and issues.

CONCLUSION AND PRAYER

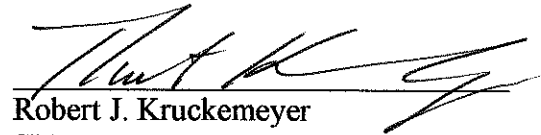
Accordingly, Plaintiff The Grip Master Co. Pty. Ltd. prays for entry of judgment:

- a. finding that Defendants have infringed U.S. Patent No. 6,449,803 B1;
- b. enjoining Defendants and their agents, servants, employees, and attorneys, and those persons acting in concert, or participation with them from continuing to infringe U.S. Patent No. 6,449,803 B1;
- c. for an accounting for damages for Defendants' patent infringement;
- d. finding Defendants' patent infringement willful and this case be deemed exceptional pursuant to 35 U.S.C. § 285 and an assessment of interest and costs against Defendants, including Plaintiff's reasonable attorney's fees;
- e. finding that Defendants have infringed and diluted GM's common law trademark rights in the Mark THE GRIP MASTER;
- f. finding that Defendants have falsely and intentionally mislead consumers by directly or indirectly representing that infringing products are endorsed by, sponsored by, or affiliated with GM;
- g. finding that Defendants have engaged in unfair competition;
- h. enjoining Defendants, their officers, directors, agents, employees, representatives, successors, assigns, if any, and those in privity or concert with them from further

acts that would amount to infringement of GM's common law trademark rights in the Mark THE GRIP MASTER, dilution of GM's goodwill associated with GM's Mark THE GRIP MASTER, or unfair competition;

- i. awarding GM all damages caused by the acts of Defendants and all profits of Defendants from acts complained of, and/or all costs to GM caused by Defendants' activities complained of herein;
- j. trebling the damages and profits awarded to GM as authorized by 15 U.S.C. § 1117;
- k. granting GM pre-judgment and post-judgment interest on the damages caused to GM by reasons of Defendants' activities complained of herein at the highest rates allowed by law;
- l. finding that this is an exceptional case and awarding GM its reasonable and necessary attorneys' fees in accordance with 15 U.S.C. § 1117;
- m. awarding costs to GM; and
- n. awarding GM such other and further relief, at law or in equity, as the Court may deem just and proper under the circumstances.

Respectfully submitted,



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