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Via email only

J. Peter Staples, Esq.
Chernoff, Vilhauer, McClung & Stenzel, LLP
601 S.W. Second Avenue
Suite 1600
Portland, Oregon 97204-3157

Re: Benchmade and Mentor v. Benson dba Roadside Imports; Your ref: 3446.0180

Dear Pete:

Thank you for your October 17, 2008 offer of compromise. As I view this sort of work, if we can't entertain each other in this process, why bother? So far, we seem to be doing a reasonable job.

My client appreciates your client's dropping of every one of its demands concerning its BALI-SONG trademark, its "Butterfly Design" and "butterfly" knives, apparently in response to my October 8 letter. (By the way, I certainly did note paragraphs 61, 66, 97, 101, 110 and 129 of the Complaint, as well as every other paragraph. My question, however, was whether you actually meant it, in light of history and Rule 11, Fed. R. Civ. P. Given the absence of any more demands on that score, I can only assume that the answer is "no," i.e., you did not actually intend to assert in the Complaint that your client owns rights in the generic word "balisong" or the trivially different and commercially identical word "bali-song." Perhaps you were simply unaware of the meaning of the word when you drafted the pleading, or your own client's actual proper use of its own registered, but nonetheless invalid (for genericness – a defense unaffected by incontestability, as you know) mark *as a noun* at:

http://www.benchmade.com/about_knives/locking_mechanisms.asp.

Fair enough. There *is* common ground underfoot, and not just because we are both members of the fraternity of anglers.)

As far as the Boker Kalashnikov knife is concerned, your reference to "Bokker and Magnum" knives was so clearly a mistake that I simply invited you tell me what you did, in fact, mean to say, as you've now done.

I take it from your letter that you have not found even one additional appearance of the words "Authorized Benchmade Dealer" anywhere in the Roadside Imports website, the inadvertent one you complained of having previously been removed. I also take it that you no longer find any mention of the Benchlite knife on the website, either.

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I agree with you that someone is misleading somebody as to the shipping of Chinese-made knives in "made in USA" boxes. More common ground. We just disagree on who that person is. In any event, no Benchlite knives of any origin are being shipped anymore, as I previously you.

We will make a final decision on what to do about your client's patents shortly.

Benson is not a willful actor and has already remedied your reasonable demands, the sole exception being the patent issues still being considered. Under separate cover and later this week, I'll send a draft settlement agreement for your review. There's no backing off possible on the refusal to take a consent judgment. That's a deal-breaker here; Benson will not voluntarily submit to the contempt power of the district court, regardless of what he is willing to agree and be contractually bound to, and which contract obligations he would respect and perform fully.

Finally, on a much more important matter, I've fished for sturgeon on your Columbia River, too, and hope to try again someday, as my only catch-and-release was of a rather unimpressive youngster, smaller even than some of the stripers we now regularly haul out of the Hudson during the Spring spawning run.

Regards,



Peter C. Schechter
NYC 314067.1