

No. C-39569

ELECTROMEDICAL PRODUCTS
INTERNATIONAL, INC.

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IN THE DISTRICT COURT OF

PALO PINTO COUNTY, TEXAS

29TH JUDICIAL DISTRICT

V.

RAY B. SMITH

FINAL ORDER AND JUDGMENT OF CONTEMPT

On December 9, 2008, January 29, 2009, June 23, 2009, and August 5, 2009, came on to be heard Plaintiff's First Amended Motion to Enforce Permanent Injunction and Hold Defendant in Contempt for Violation of Permanent Injunction. Plaintiff ELECTROMEDICAL PRODUCTS INTERNATIONAL, INC. ("EPII") appeared by its authorized representatives and through counsel; and Defendant RAY B. SMITH ("Dr. Smith") appeared in person and through counsel.

The permanent injunction at issue is contained within this Court's Final Judgment dated August 11, 2003, which, among other things, ordered as follows:

ORDERED, that Defendant Ray Smith be and hereby is commanded to return any and all copies, whether currently held in paper or electronic or disk format, of all unpublished manuscripts, monologues, articles, books, and studies, whether in draft or final form, that were written on the subject of CES, TENS and/or wound healing while an employee of Plaintiff or thereafter, including, but not limited to, all copies of "*Cranial Electrotherapy Comes of Age.*" The Court finds that all manuscripts, monologues, articles, books, and studies written by Defendant Ray Smith on the subject of CES, TENS and/or wound healing during or after his employment with Plaintiff are the property of Plaintiff and Defendant may not disclose, disseminate, lecture upon, publish, use or permit the disclosure, dissemination, publication, or use of any of the materials listed above.

FILED

ORDER

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OCT 16 2009
James Glover
JAMES GLOVER
DIST. CLERK, PALO PINTO CO., TEXAS
AT 2:20 PM-AM
By: Sherry Robinson Deputy

The Court, having considered EPII's motion and Dr. Smith's opposition, and having heard the witnesses and reviewed the admitted exhibits, finds that Defendant Dr. Smith's 2007 book entitled *Cranial Electrotherapy Stimulation, Its First Fifty Years, Plus Three: A Monograph* ("Smith's 2007 Book") is more than substantially the same as the contents of Plaintiff EPII's 2003 Manuscript, which is EPII's property.

Based upon these findings, the Court is of the opinion that Defendant Dr. Smith has knowingly violated this Court's permanent injunction issued August 11, 2003, by (i) materially using EPII's 2003 Manuscript in the publication of Dr. Smith's 2007 Book, and (ii) by failing to return to EPII all copies and/or notes of his work on EPII's 2003 Manuscript. Therefore, the Court is of the opinion that EPII's motion to enforce permanent injunction and for contempt should be in all respects GRANTED; It is, therefore,

ORDERED that said Plaintiff EPII's First Amended Motion to Enforce Permanent Injunction and Hold Defendant in Contempt for Violation of Permanent Injunction be, and the same is hereby, in all respected GRANTED. Defendant Dr. Smith is found in contempt of this Court's August 11, 2003 permanent injunction prohibiting his publication of the information within EPII's 2003 Manuscript, and further requiring his return to Plaintiff of all copies and drafts of EPII's 2003 Manuscript.

The Court, therefore, orders the following remedies:

1. Dr. Smith is hereby found in contempt and ordered to be incarcerated in the Palo Pinto county jail for 180 days.
2. Within 30 days of the signing of this Order, Dr. Smith, at his sole expense, shall recall all copies of Dr. Smith's 2007 Book that have been printed, sold, or

otherwise distributed, either directly by himself, or through any employer, and/or through any third parties pursuant to his direction or control, expressly including, but not limited to, amazon.com and barnesandnoble.com; and shall thereafter produce all recovered books to Plaintiff's counsel within 30 days of Dr. Smith's receipt. Dr. Smith shall fully and concurrently reimburse all purchasers and/or distributors of same, including purchase price, shipping costs, and all other reasonable expenses.

3. Within 30 days of the signing of this Order, Dr. Smith shall issue written instruction to Fisher Wallace Laboratories, in a form to be approved by Plaintiff's counsel, directing Fisher Wallace Laboratories to remove Dr. Smith's 2007 Book from Fisher Wallace's website, and to return to Dr. Smith all copies of Dr. Smith's 2007 Book, which Dr. Smith shall forward to Plaintiff's counsel within 30 days of Dr. Smith's receipt of same.
4. Within 30 days of the signing of this Order, Dr. Smith shall issue written apologies, in forms acceptable to the Court, to both this Court, for violating the Court's lawful orders, and to Plaintiff, for Dr. Smith's prohibited use of Plaintiff's proprietary information.
5. Within 30 days of the signing of this Order, Dr. Smith shall return, and seek any and all non-parties to return, any and all manuscripts, monologues, articles, books and studies that were written by Dr. Smith on the subject of CES, TENS, and/or wound healing while an employee of Plaintiff, or based upon information acquired

during such employment, and/or his work with same, pursuant to this Court's Final Judgment, dated August 11, 2003.

6. Within 30 days of the signing of this Order, Dr. Smith shall provide an accounting of all compensation and other consideration received by and/or promised to Dr. Smith arising from the sale of his 2007 Book, and/or the writing of same as an employee, agent, or contractor for himself or others. Within 60 days of delivery to Plaintiff of Dr. Smith's accounting, Plaintiff may make application to this Court for disgorgement and/or other relief regarding same.

Dr. Smith's jail sentence specified in item 1 above is hereby suspended, contingent upon his full and timely performance of the instruction items 2 through 6 above, failing which he shall present himself to this Court for incarceration under item 1 above and coercive confinement thereafter until the contempt is purged.

It is further hereby ORDERED, ADJUDGED, AND DECREED that Plaintiff have judgment against Dr. Smith for Plaintiff's necessary and reasonable attorney's fees incurred herein in the sum of \$52,000; and EPII is further conditionally awarded an additional \$10,000 in the event of any appeal hereof by Dr. Smith; and is further conditionally awarded an additional \$5,000 in the event of either party's appeal to the Texas Supreme Court; plus an additional \$5,000 if the Supreme Court grants review.

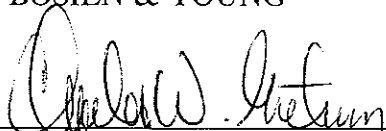
SIGNED this 16th day of October, 2009.


PRESIDING JUDGE

APPROVED AS TO FORM:

COKINOS, BOSIEN & YOUNG

BY: _____



CHARLES W. GETMAN
Bar No. 07831200
ANTHONY T. GOLZ
Bar No. 24059834
Four Houston Center
1221 Lamar Street, 16th Floor
Houston, Texas 77010-3039
(713) 535-5500
Fax: (713) 535-5533

SCOTT A. ELDER
Bar No. 24007149
2221 E. Lamar Boulevard, Suite 750
Arlington, Texas 76006
(817) 635-3651
Fax: (817) 635-3633

Attorneys for Plaintiff
ELECTROMEDICAL PRODUCTS
INTERNATIONAL, INC.

HALLETT & PERRIN, P.C.

BY: _____

JAMES N. HENRY, JR.
Bar No. 00793936
2001 Bryan Street, Suite 3900
Dallas, Texas 75201
(214) 953-0053
Fax: (214) 922-4141

Attorneys for Defendant
RAY B. SMITH

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