

ELECTROMEDICAL PRODUCTS INTERNATIONAL, INC. EFFORTS TO PROTECT ITS INTELLECTUAL PROPERTY

Over the past several years, Electromedical Products International, Inc. (“EPII”) has been forced to legally deal with what it asserts is improper use of its technology and copies of its technology from former employees, distributors and competitors in the electromedical field. Below is an outline of each of the legal actions EPII brought in an effort to protect its intellectual property.

Electromedical Products International, Inc. v. Ray Smith

On February 7, 2003, EPII filed suit against Ray Smith, who served as the Vice President of Science for EPII up until his termination on January 31, 2003. In its petition, EPII alleged that Dr. Smith had breached his Non-Disclosure/Non-Circumvention Agreement with EPII by providing trade secrets to Dr. Harold Stecker, Owner of the Healthpax CES device and by attempting to publish a book written on behalf of EPII after his termination. EPII requested a Texas District Court to issue an injunction enjoining Dr. Smith from disclosing, publishing and/or using EPII’s confidential information and trade secrets and enjoining Dr. Smith from competing with EPII in any business similar to EPII for a period of three years from the date of termination.¹

The lawsuit went to trial on July 29, 2003, and the court issued a judgment permanently enjoining Ray Smith from directly or indirectly participating in a business in a similar capacity to EPII’s business and from disclosing, disseminating, lecturing upon publishing, using or permitting the disclosure of any and all information disclosed to Ray Smith during his employment with EPII. Ray Smith was additionally ordered to return all copies of all unpublished manuscripts, monologs, articles, books and studies written on the subject of CES, TENS and/or wound healing while an employee of EPII or thereafter. Dr. Smith was also ordered to return all copies of the manuscript he was working on at the time of his dismissal, “*Cranial Electrotherapy Comes of Age.*” Finally, Dr. Smith was ordered to pay EPII for its attorneys’ fees in the amount of \$14,800.00 and ordered to reimburse EPII for its costs in recovering data from Ray Smith’s work computer, such amount being \$5,200.²

¹ Original Petition and Application for Injunction Relief, Cause No. C39569, *Electromedical Products Int’l, Inc. vs. Ray Smith*; In the 29th Judicial District of Palo Pinto County, Texas; filed February 7, 2003.

² Final Judgment, Cause No. C39569, *Electromedical Products Int’l, Inc. vs. Ray Smith*; In the 29th Judicial District of Palo Pinto County, Texas, entered into on August 11, 2003, by Judge Jerry Ray.

On October 2, 2003, the court made its findings of fact and conclusions and found in particular that:

1. Prior to and following Ray Smith's termination, EPII discovered or was provided with correspondence between Smith and third parties that led it to be concerned that Smith was violating the terms of his Non-Disclosure and Non-Circumvention Agreement;
2. Following Dr. Smith's termination on January 31, 2003, Smith emailed Hayworth Press stating that he had lost his job due to a large company layoff and that he wanted to continue working on the manuscript from home;
3. On February 7, 2003, Smith emailed Hayworth Press asking for a new contract for him to enter into to write the manuscript, and he also indicated that he was in communication with a manufacturer of a CES device who had asked for 200 copies of the manuscript when it was published;
4. On February 26, 2003, Smith sent an email to T. K. Wolf, an EPII distributor, regarding the possibility of him working at T. K. Wolf;
5. At a February 21, 2003 hearing, the court entered into an order enjoining Smith from publishing or using confidential business information or from participating in a business with similar capacity to EPII's until further ordered by the court;
6. On March 14, 2003, Smith sent an email to Hayworth Press stating that "the judge concluded that EPII had not shown any case against me" at the February 21, 2003, hearing;
7. During his employment with EPII, Smith directed customers of EPII to competitor's products on several occasions; and
8. During his employment with EPII, Smith continued research with distributors after EPII had directed him not to continue research.³

At the trial, Ms. Nancy Campbell, President of Therapeutic Resources, Inc. appeared and testified on Dr. Smith's behalf. Therapeutic Resources was a former distributor of EPII's products, whom EPII had terminated around the same time of Dr. Smith's termination from EPII. During her testimony, Ms. Campbell discussed a product that she was selling on behalf of Dr. Harold Stecker and his company, Health Directions, Inc. She testified that Dr. Stecker had created a copy of the Alpha-Stim device and was selling it under his label, the Healthpax.⁴

³ *Electromedical Products Int'l, Inc. v. Ray Smith*, Findings of Fact and Conclusions of Law entered into on October 2, 2003.

⁴ Trial Transcript, *Electromedical Products Int'l, Inc. vs. Ray Smith*; Cause No. C39569; In the 29th Judicial District of Palo Pinto County, Texas, July 29, 2003.

Following the Final Judgment entered into by the District Court, Dr. Smith filed an appeal with the Texas Eleventh Court of Appeals. The Court of Appeals reviewed the case and upheld the judgment of the trial court.⁵

UPDATE- EPII learned in 2008 that Dr. Smith had proceeded with the publication of his book. EPII alerted the Palo Pinto County District Court of this activity and on August 5, 2009, the Court found Dr. Smith in violation of its initial Injunction and held Dr. Smith in Contempt of Court for his violation of the initial Order. In its signed order dated October 16, 2009, the Court gave Dr. Smith thirty days to meet several obligations with regards to removing the book from the marketplace, and if those obligations are not timely met then Dr. Smith was ordered to present himself for incarceration until such time as the contempt is purged. A copy of the Court's Final Order and Judgment of Contempt is found below.

⁵ Memorandum Opinion, *Ray Smith v. Electromedical Products Int'l, Inc.*, Texas Court of Appeals – 11th District, August 18, 2005.

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

..... PAGE 1

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.

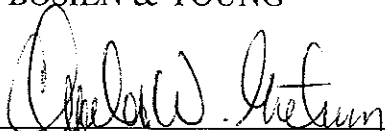
SIGNED this 16th day of October, 2009.


PRESIDING JUDGE

APPROVED AS TO FORM:

COKINOS, BOSIEN & YOUNG

BY: _____



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Electromedical Products International, Inc. v. Therapeutic Resources, Inc. and Nancy Campbell

Following its victory over Ray Smith, EPII had another issue to deal with, two of its former distributors were apparently developing, manufacturing and selling a CES device with technology copied from EPII's Alpha-Stim CES device. Therapeutic Resources, Inc. and its president, Nancy Campbell, "Therapeutic Resources," and Dr. Harold Stecker and Health Directions, Inc., "Health Directions," had both signed Non-Disclosure and Non-Competition Agreements while distributors for EPII.

Shortly after the Smith trial was completed, EPII sent a demand letter to Therapeutic Resources demanding it cease and desist all sales of competing CES devices and copies of EPII's technology. Therapeutic Resources responded by filing a suit in Federal District Court in the State of Washington seeking a declaratory ruling that the agreements EPII sought to enforce were non-binding and unenforceable. After months of legal maneuvering to determine where the suit should be heard, the Federal District Court in Washington State ruled that EPII could arbitrate its claims against Therapeutic Resources in Dallas, Texas.

EPII had learned from a doctor in Florida that Therapeutic Resources had committed "bait and switch" tactics by using EPII's sales material to sell the Health Directions' CES device. Nancy Campbell admitted to selling the Health Directions' CES Device, which she purchased through yet another former distributor of EPII's, Mr. Larry Paros.⁶

After EPII terminated Therapeutic Resources distributorship in 2003, Ms. Campbell filed an anonymous complaint with the FDA alleging that EPII kept two sets of books and misrepresented the effectiveness of its products. This resulted in a full-scale investigation of EPII by the FDA, and EPII was exonerated. Ms. Campbell admitted to filing the complaint with the FDA.⁷

During the arbitration, it was also revealed that EPII had notified Nancy Campbell back in 2000 that Dr. Stecker had a new device on the market. Ms. Campbell told EPII that she would "keep her ears open and let [EPII] know" if Ms. Campbell heard anything about the new device being on the market. In actuality, Therapeutic Resources was selling Stecker's CES device at that time.⁸

Terry Eberhart, a distributor for EPII, testified during the arbitration that Ms. Campbell called him six months before the hearing and tried to get Mr. Eberhart to sell the Stecker CES device, using the better Alpha-Stim in the clinic to lure in the customer and then sell them the lower priced Stecker CES device in a classic "bait and switch."⁹

⁶ Arbitrator's Award, *Electromedical Products Int'l, Inc. v. Therapeutic Resources, Inc. and Nancy Campbell*, American Arbitration Association, Cause No. 71181 M 00181 04, November 14, 2005, pp. 5-6.

⁷ *Id.* at 6.

⁸ *Id.* at 8-9.

⁹ *Id.* at 11-12.

Following a two-day hearing, the arbitrator issued his order on November 14, 2005. In the order the arbitrator concluded the following:

1. Ms. Campbell is using her knowledge gained as an EPII distributor to attempt to recruit EPII distributors to sell Stecker's CES device;
2. Ms. Campbell and Therapeutic Resources breached their non-competition and non-disclosure agreement with EPII;
3. The Non-Disclosure and Non-Competition Agreement was binding and enforceable;
4. The arbitrator enjoined Nancy Campbell and Therapeutic Resources from contacting any distributor of EPII's and attempting to (i) sell such distributor products similar to EPII's Alpha-Stim, or to (ii) cease being an EPII distributor; and
5. Awarded EPII damages in the total amount of \$61,462.00.¹⁰

At the conclusion of the arbitration, EPII went back to the Federal Court in Washington to have the arbitrator's award entered into by the court and to collect outstanding attorney's fees from Ms. Campbell and Therapeutic Resources. The parties entered into a confidential settlement agreement settling the remaining outstanding issues between them.

Electromedical Products International, Inc. v. Harold Stecker, Health Directions, Inc., Lawrence Paros, and Neurobics, Inc.

Upon learning of Dr. Stecker's activities in the CES field, EPII also requested he cease and desist from violating the terms of his non-competition and non-disclosure agreement. When Dr. Stecker also questioned the validity of his non-competition and non-disclosure agreement EPII filed suit to enforce the terms of the agreement.

At issue was a new setting on Stecker's CES device, the Healthpax. The original version of the Healthpax only provided a 100 hertz setting. Following Dr. Stecker's time as an EPII distributor, he reintroduced the Healthpax back on the market, this time with an added .5 hertz setting. EPII hired an independent expert, Dr. Mohammed Ferdjallah of the University of Tennessee, to compare the .5 hertz setting on the Healthpax with the .5 hertz setting on the Alpha-Stim. Dr. Ferdjallah concluded that the .5 hertz waveform on the Healthpax was identical to the Alpha-Stim's .5 hertz waveform and that the similarity could not be the product of random design.¹¹ Based upon this report, it was EPII's belief that Dr. Stecker had copied EPII's .5 hertz waveform.

¹⁰ *Id.* at 10, 11 and 15-16.

¹¹ Dr. Mohammed Ferdjallah, Time and Frequency Analysis of Alpha-Stim and Healthpax, July 19, 2005.

On June 30, 2004, EPII and Dr. Stecker settled their case. In the settlement Dr. Stecker agreed to:

1. Remove the Healthpax from the market and cease all sales until the .5 hertz setting could be removed from the device;
2. Avoid any future sales of devices with copies of EPII's technology.
3. Destroy all plans and specifications showing how EPII's technology was copied;
4. Remove the .5 hertz setting from all Healthpax devices returned for servicing; and
5. Cease sales of the Healthpax to a list of former EPII distributors.¹²

Dr. Stecker also acknowledged that he was the sole owner of the Healthpax technology, and no other person could lay claim to the technology.¹³

During the course of the litigation with Nancy Campbell, EPII discovered that Dr. Lawrence Paros and his company, Neurobics, Inc. had teamed up with Dr. Stecker in developing the .5 hertz setting. Following the settlement agreement with EPII, Dr. Stecker assigned his interest in the .5 hertz setting to Dr. Paros, who began to produce the CES Ultra.

Like the Healthpax, the CES Ultra contained a 100 hertz setting and a .5 hertz setting. Dr. Mohammed Ferdjallah issued another report in which he determined the .5 hertz setting in the CES Ultra was also a duplication of the Alpha-Stim .5 hertz setting. EPII then filed suit against Dr. Paros, Neurobics, Inc. and Neuro-Fitness, LLC to enforce the terms of Dr. Paros' own non-competition and non-disclosure agreement and against Dr. Stecker and Health Directions, Inc. for violation of the first settlement agreement.

On April 30, 2007 the Federal District Court in Fort Worth, Texas entered a final judgment and permanent injunction enjoining both Dr. Stecker and Dr. Paros, and their companies, from manufacturing, selling or distributing any CES product emitting a waveform similar to EPII's .5 hertz waveform, and from publishing or using, or allowing others to publish or use, any technology similar to EPII's .5 hertz waveform.

The permanent injunction was part of a settlement agreement entered into by and between the parties. In addition to the restrictions stated in the injunction, Dr. Paros and Dr. Stecker agreed to pay EPII a total of \$31,000 in damages.¹⁴

¹² Settlement Agreement, *Electromedical Products Int'l, Inc. v. Health Directions, Inc. and Harold Stecker*; In the 29th Judicial District Court, Palo County, Texas, June 30, 2004.

¹³ *Id.* at 3. Permanent Injunction, *Electromedical Products Int'l, Inc. v. Health Directions, Inc., et al.*, Civil Action No. 4:06CV289A; U. S. District Court, Northern District of Texas, Dallas Division, April 30, 2007.

Electromedical Products International, Inc. v. Stephen Satra

Dr. Stecker and Dr. Paros revealed to EPII during the litigation that Stephen Satra had developed the .5 hertz setting for them. Both Paros and Stecker indicated that perhaps Mr. Satra had “reverse-engineered” the Alpha-Stim’s .5 hertz waveform to develop the .5 hertz setting used in the Healthpax and CES Ultra.

EPII filed suit against Mr. Satra, seeking to enjoin him from copying EPII’s proprietary information. Mr. Satra agreed to settle the matter and agreed to cease and desist from selling, manufacturing or developing any CES device with technology similar to EPII’s .5 hertz waveform setting.¹⁵ The Federal District Court entered into a Final Judgment enjoining Mr. Satra from such activities.

Conclusion

With the Satra matter settled, EPII successfully brought to conclusion its efforts to protect its products from being copied and sold by its former employees, distributors, competitors and their associates. EPII takes the protection of its proprietary information very seriously. EPII conducts significant research on its products, and efforts by others to “piggyback” on EPII’s research by the copying of its products cannot be permitted.

¹⁴ Settlement and Release Agreement, *Electromedical Products Int’l, Inc. v. Health Directions, Inc., et al.*, Civil Action No. 4:06CV289A; U. S. District Court, Northern District of Texas, Dallas Division, February 27, 2007.

¹⁵ Final Judgment and Permanent Injunction, *Electromedical Products Int’l, Inc. v. Stephen Satra*, Civil Action No. 4:07CV343Y, U. S. District Court, Northern District of Texas, Dallas Division, January 18, 2009.