

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DANIEL F. PRIMEAU, IV
5605 KRAUS RD
CLARENCE, NEW YORK 14031,

and

RODAC-USA INCORPORATED
5605 KRAUS RD
CLARENCE, NEW YORK 14031,

Plaintiffs,

vs.

JAMES BONIS, individually, and
d.b.a. PYRAMONT NORTH AMERICA
170 KENWICK DRIVE
ROCHESTER NEW YORK 14623,

PYRAMONT GLOBAL MERCHANDISING CONSORTIUM, LTD.
INTERNATIONAL TRADE CENTER, SUITE 92547
ROCHESTER, NEW YORK 14692,

C. FRANK MILLER
2380 S. HILTON
SPRINGFIELD, MISSOURI 65807,

Civil Action No.

DARK OPERATIONS FIGHTING KNIVES, L.L.C.
individually and d.b.a. DARK OPS FIGHTING KNIVES
1320 S. GLENSTONE #26
SPRINGFIELD MISSOURI 65807,

COMPLAINT AND
DEMAND FOR A JURY
TRIAL

and

DARK OPS HOLDINGS
2030 W. WOODLAND
SPRINGFIELD, MISSOURI 65807,

Defendants.

Plaintiffs DANIEL PRIMEAU and RODAC-USA, INC. by their attorneys Kloss,
Stenger, Kroll & LoTempio, against each and every Defendant, upon information and belief,
allege:

I. PARTIES

1. Plaintiff DANIEL F. PRIMEAU, IV is an individual and resides at 5605 Kraus Road, in the Town of Clarence, in the State of New York.

2. Plaintiff RODAC-USA, INC. is a corporation organized and existing under the laws of the State of New York with a place of business at 5605 Kraus Road, in the Town of Clarence, in the State of New York.

3. Upon information and belief, Defendant JAMES BONIS is an individual and resides at 170 Kenwick Drive, in the City of Rochester, in the State of New York.

4. Upon information and belief, Defendant JAMES BONIS does business as PYRAMONT NORTH AMERICA with a place of business at 170 Kenwick Drive in the City of Rochester, in the State of New York.

5. Upon information and belief, Defendant PYRAMONT GLOBAL MERCHANDISING CONSORTIUM, LTD is a corporation organized and existing under the laws of the State of New York with a place of business at the International Trade Center, Suite 92547, in the City of Rochester, in the State of New York.

6. Upon information and belief, Defendant James Bonis entered into all transactions herein alleged 1) individually, 2) d.b.a. Pyramont North America and/or 3) on behalf of Pyramont Global Merchandising Consortium, Ltd as its President or Chief Executive Officer. Hereinafter, all three entities shall be referred to as Defendants Pyramont.

7. Upon information and belief, Defendant C. FRANK MILLER is an individual and resides at 2380 S. Hilton in the City of Springfield, in the State of Missouri.

8. Upon information and belief, Defendant DARK OPERATIONS FIGHTING KNIVES, L.L.C., individually, and d.b.a. DARK OPS FIGHTING KNIVES is a corporation

organized and existing under the laws of the State of Missouri with a place of business at 1320 South Glenstone No. 26 in the City of Springfield, in the State of Missouri.

9. Upon information and belief, Defendant DARK OPS HOLDINGS is a corporation organized and existing under the laws of the State of Missouri with a place of business at 2030 West Woodland in the City of Springfield, in the State of Missouri.

10. Upon information and belief, Defendant C. Frank Miller entered into all transactions herein alleged 1) individually; 2) on behalf of Dark Operations Fighting Knives, LLC, individually and d.b.a. Dark Ops Fighting Knives as President or Chief Executive Officer; and/or 3) on behalf of Dark Ops Holdings as its President or Chief Executive Officer. Hereinafter, the above entities shall be referred to as Defendants Dark Ops.

II. JURISDICTION AND VENUE

11. This cause of action is for infringement of a U.S. design patent and arises under the patent laws of the United States, Title 35 of the United States Code. The Court has jurisdiction over this cause of action under said Title 35 and under 28 U.S.C. Section 1400(b) inasmuch as the Defendants reside in this judicial district and/or have committed acts of infringement therein. The venue is proper under 28 U.S.C. § 1400(b) as, upon information and belief, Defendants reside within the Western District of New York, have a regular and established place of business within the Western District of New York, and/or have committed acts of infringement within the Western District of New York.

IV. BACKGROUND

12. In March 2003, Plaintiffs had a table at a gun show in Rochester, New York at which they displayed the Rocom 6 flashlight, a prototype flashlight with the capability to attach to a rifle.

13. The Rocom 6 flashlight was an original design created by Plaintiff Primeau, who applied for a U.S. design patent of such on October 15, 2002.

14. The Rocom 6 flashlight was a precursor to the flashlight that was patented by Plaintiff Primeau, known as the Firearm Mountable Electromagnetic Radiation Device, Patent No. US D522,084 S (hereinafter, the '084 Patent).

15. Defendants Pyramont and Plaintiffs entered into an oral agreement whereby Defendants Pyramont would advertise the Rocom 6 flashlight in exchange for a three-percent commission of the sales of such.

16. In reliance on this agreement, on or around October 2003, Plaintiffs increased production of the Rocom 6 flashlight to enable Plaintiffs to have 1,000 units on hand as demanded by Defendants Pyramont.

17. On June 16, 2003, Plaintiff Primeau, as the inventor, completed revisions to the Rocom 6 flashlight and applied for a U.S. design patent, referring to the revised product as the X-11 flashlight. Plaintiffs marked all products designed under such revisions as "Patent Pending."

18. On or about December 2003, while the X-11 patent was pending, Plaintiffs shipped a X-11 unit to Defendants Pyramont.

19. Shortly thereafter, Defendants Pyramont contacted Plaintiffs and both parties negotiated a modification to their business arrangement.

20. Defendants Pyramont desired to advertise the X-11 flashlight in lieu of the Rocom 6 flashlight. Defendants Pyramont also desired to buy 1,000 units of the X-11 flashlight from Plaintiffs to sell to other consumers, allegedly Moteng. Both parties agreed that Defendants

Pyramont would purchase 1,000 units of the X-11 flashlight at a rate of \$90.00 per unit plus shipping.

21. From May 24, 2004 to May 4, 2005, Plaintiffs shipped a total of 995 units to Defendants Pyramont.

22. Plaintiffs received the following payments from Defendants Pyramont: \$4,000.00 on June 28, 2004; \$26,000.00 on September 13, 2004; \$20,000.00 on March 4, 2005; and \$10,000.00 on June 20, 2005.

23. As the inventor, Plaintiff Primeau completed further revisions of the design of the X-11 flashlight and re-filed the application for a U.S. design patent on February 22, 2005. All products manufactured by Plaintiffs under this design were marked "Patent Pending."

24. On May 30, 2006, the '084 Patent was duly and legally issued on application by Daniel F. Primeau, IV for a novel and inventive ornamental design of a Firearm Mountable Electromagnetic Radiation Device. Attached hereto as *Exhibit A*.

25. In the fall of 2005, Plaintiffs found that a product infringing the '084 Patent was being sold through the Internet by Defendants Dark Ops as the "Hellfire X-11 – Dark Ops Tactical Hellfire Flashlight," listing Dark Ops listed as the manufacturer.

26. Plaintiffs pursued their own marketing of the '084 Patent, labeling it as the "Viper X-11" and posting it for sale on their website, correctly stating that Plaintiff Primeau was the manufacturer of the product.

27. In January 2006, Plaintiffs contacted Defendant Miller, president of Defendant Dark Ops LLC and Dark Ops Holdings and informed Defendants that Plaintiffs were the manufacturers and rightful owners of the '084 Patent and that Defendants Pyramont were unauthorized to sell beyond 1,000 units of the '084 Patented product.

28. Shortly after Plaintiffs' conversation with Defendant Miller, Defendants Pyramont sent to Plaintiffs via email a letter which Defendant Bonis prepared without the input of the Plaintiffs that purported to be from Plaintiffs to Defendant Miller.

29. Defendant Bonis wanted Plaintiffs to sign the letter and forward it to Defendant Miler. However, because the letter grossly mischaracterized Defendant Bonis' relationship with the Plaintiffs in regard to the design, license to sell, and the manufacture of the flashlight protected by the '084 Patent, Plaintiffs refused to sign the letter.

30. After Plaintiffs communicated to Defendant Bonis that Plaintiffs would not sign the letter, Defendant Bonis threatened to "take the product overseas" and "steal" the product from Plaintiffs.

31. Plaintiffs issued a Cease and Desist letter to Defendants Pyramont on January 23, 2006, (attached hereto as *Exhibit B*) which defined the Plaintiffs' understanding of the parties' relationship.

32. Upon information and belief, Defendants Pyramont have knowingly manufactured, assembled, marketed and sold and continue to manufacture, assemble, market and sell a product which infringes on the '084 Patent granted to Plaintiffs.

33. Upon information and belief, Defendants Dark Ops have knowingly manufactured, assembled, marketed and sold and continue to manufacture, assemble, market and sell a product which infringes on the '084 Patent granted to Plaintiffs.

V. COUNT I - INFRINGEMENT OF THE US D522,084 PATENT

34. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 33 of the Complaint.

35. On May 30, 2006, U.S. Design Patent No. US D522,084 S was duly and legally issued on application by Daniel F. Primeau, IV for a novel and inventive ornamental design of a Firearm Mountable Electromagnetic Radiation Device. Said patent granted to Plaintiff Primeau right, title, and interest in and to the invention of the '084 Patent, and said patent has at all times been, and is still, owned by Plaintiff Primeau.

36. Defendants Pyramont have been and still are infringing the aforesaid '084 Patent by manufacturing, assembling, and selling all elements utilizing the design described in said design patent within this District and elsewhere.

37. Defendants Dark Ops have been and still are infringing the aforesaid '084 Patent by manufacturing, assembling, and selling all elements utilizing the design described in said design patent within this District and elsewhere.

38. Plaintiffs manufacture and sell goods made in accordance with and embodying said design of said design patent, and all of the goods heretofore sold by Plaintiffs since the issuance of said patent have borne proper notice of said patent, pursuant to 35 U.S.C. § 287.

39. Notwithstanding said notice of infringement, all Defendants in complete disregard thereof and in deliberate knowing and wanton disregard of the rights of the Plaintiffs, proceeded with the manufacture and sale of said infringing goods, and have been, and upon information and belief, are still manufacturing or causing to be sold, such infringing goods, thereby deriving unlawful gains and profits, and will continue to do so by continued infringement of said patent in deliberate, knowing, and wanton disregard of the rights of Plaintiffs and to Plaintiffs' irreparable damage, unless restrained by this Court.

40. The patented invention has been infringed by a device that is substantially the same thing, used in substantially the same way, to achieve substantially the same result. In this

case, Defendants, instead of inventing a new device, essentially copied the invention by appropriating the essence of it while barely avoiding the literal language of the patent's claims.

41. Upon information and belief, Defendants have by their aforementioned infringement of '084 Patent unlawfully derived substantial profits and gains that Plaintiffs would otherwise have received.

42. Plaintiffs have been greatly and irreparably damaged by reason of Defendants' infringement, and unless Defendants are enjoined by this Court, they will continue their acts of patent infringement to Plaintiffs' irreparable harm and to Defendants' unjust enrichment and gain.

43. Plaintiffs have no adequate remedy at law and cannot obtain relief save in this Court by an injunction, accounting and damages.

VI. COUNT II – BREACH OF CONTRACT

44. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 33 of the Complaint.

45. Plaintiffs and Defendants Pyramont entered into a verbal contract whereby Plaintiffs agreed to provide Defendants Pyramont with 1,000 units of the flashlight protected by the '084 Patent for resale and Defendants Pyramont agreed to pay Plaintiffs \$90.00 plus shipping costs for each unit.

46. Plaintiffs shipped a total of 995 units to Defendants Pyramont. To date, Plaintiffs have received \$60,000.00 in payment. A total of \$89,930.00 was due and, thus, \$29,930.00 remains due and owing.

VII. COUNT III – PUNITIVE DAMAGES

47. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 33 of the Complaint.

48. The actions and inactions of each of the Defendants as specifically alleged herein above were grossly unjust and involved high moral culpability and were of such a character as to indicate that they were the result of reckless, wanton, and willful disregard for the rights of the Plaintiffs. Therefore, said Defendants are guilty of such negligence and conscious disregard for the rights of others for which they should be held liable in punitive and exemplary damages to the Plaintiffs.

WHEREFORE, Plaintiffs demand that judgment as follows:

a) that Defendants, their officers, agents, servants, employees and attorneys and all persons in active concert with them, or any of them, be preliminarily and permanently enjoined from infringing the '084 Patent by manufacturing, using, or selling any articles embodying the ornamental design of said patent or by inducing others to commit any such acts of infringement;

b) that Defendants be required to account for and pay over to Plaintiffs all profits realized by Defendants from the unlawful acts complained of herein;

c) that Plaintiffs be awarded damages incurred as a result of Defendants' unlawful acts complained of herein, said damages to be trebled because of the willful nature of Defendants' said acts;

d) that Defendants Bonis, individually, and d.b.a. Pyramont North America and Defendant Pyramont Global Merchandising Consortium, LTD are in breach on contract and owe Plaintiffs \$29,930.00; and

e) that Plaintiffs have such other and further relief as this Court may deem just and proper, together with reasonable attorneys' fees and the costs and disbursements of this action.

VIII. JURY DEMAND

49. The Plaintiffs, pursuant to Rule 38 of the Federal Rules of Civil Procedure, demand that all issues of fact in this case be tried to a properly impaneled jury.

Dated: August 21, 2007
Buffalo, New York

Respectfully submitted,

s/ David W. Kloss

DAVID W. KLOSS

Attorney for Plaintiffs
Kloss, Stenger, Kroll & LoTempio
69 Delaware Avenue, Suite 1003
Buffalo, New York 14202
Telephone (716) 847-2923
dwkloss@klosslaw.com

EXHIBIT A



US00D522084S

(12) **United States Design Patent** (10) **Patent No.:** **US D522,084 S**
Primeau, IV (45) **Date of Patent:** **** May 30, 2006**

(54) **FIREARM MOUNTABLE
ELECTROMAGNETIC RADIATION DEVICE**

(76) Inventor: **Daniel F Primeau, IV**, 5605 Kraus
Rd., Clarence, NY (US) 14031

(**) Term: **14 Years**

(21) Appl. No.: **29/223,935**

(22) Filed: **Feb. 22, 2005**

(51) **LOC (8) Cl.** **22-01**

(52) **U.S. Cl.** **D22/109**

(58) **Field of Classification Search** D22/108-110,
D22/199; 33/245 247, 261, 265; 42/100 103,
42/111, 124

See application file for complete search history.

(56) **References Cited**

U.S. PATENT DOCUMENTS

D420,718 S * 2/2000 Otteman et al. D22/109

D424,651 S * 5/2000 Primeau, IV D22/110
D427,275 S * 6/2000 Gilmore D22/109
D432,617 S * 10/2000 Bechtel D22/108
6,381,895 B1 * 5/2002 Keeney et al. 42/124

* cited by examiner

Primary Examiner—Catherine R. Oliver

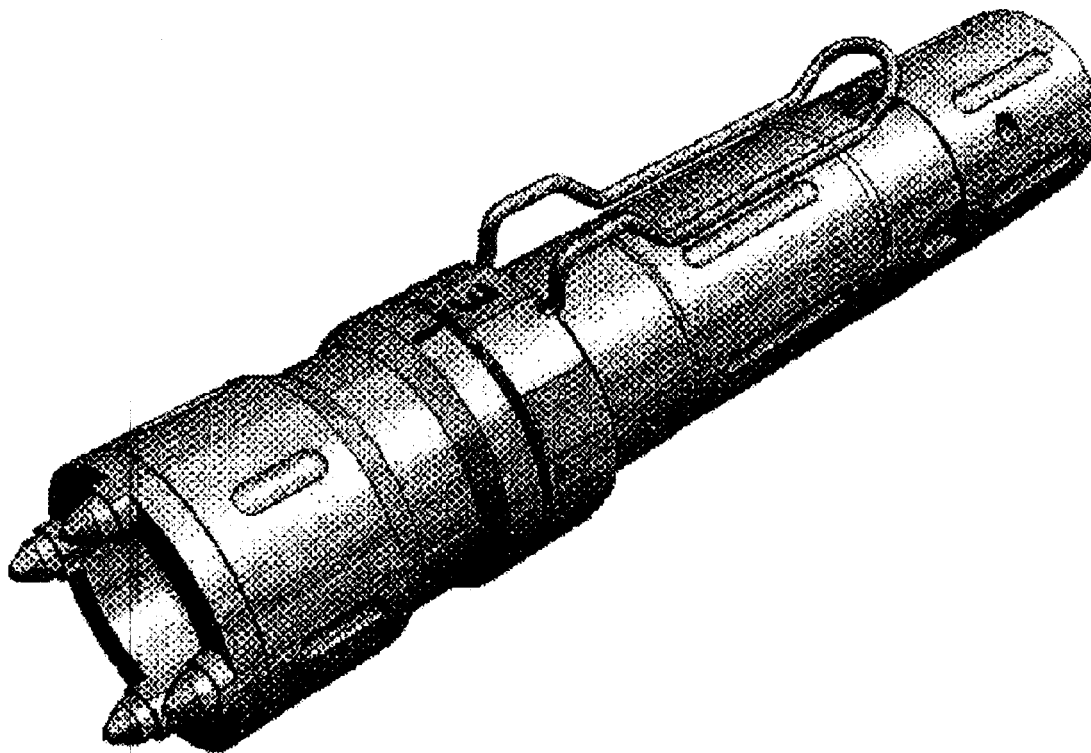
(57) **CLAIM**

I claim the ornamental design for a firearm mountable
electromagnetic radiation device, as shown and described.

DESCRIPTION

FIG. 1 is a ¼ of my new design.
FIG. 2 is a left side view of my new design.
FIG. 3 is a right side view of my new design.
FIG. 4 is a top view of my new design.
FIG. 5 is a bottom view of my new design.
FIG. 6 is a front view of my new design; and,
FIG. 7 is a rear view of my new design.

1 Claim, 4 Drawing Sheets



U.S. Patent

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US D522,084 S

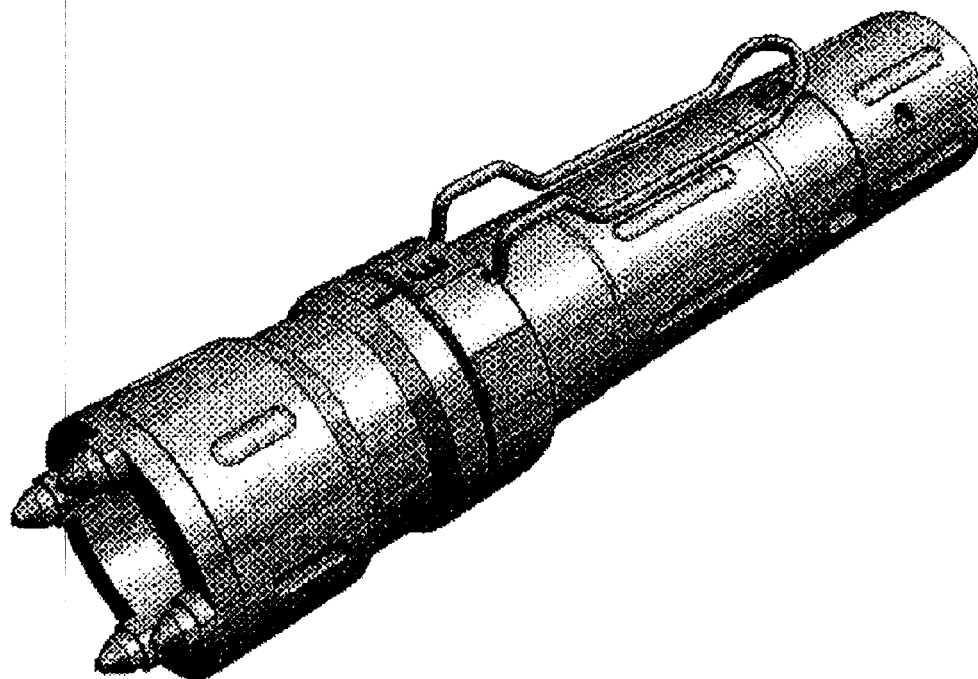


FIG. 1

U.S. Patent

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US D522,084 S

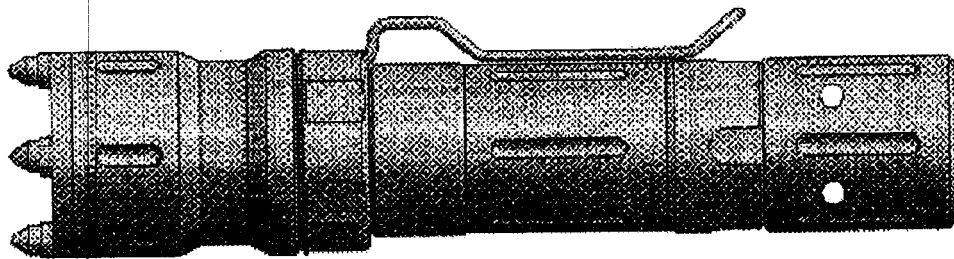


FIG.2

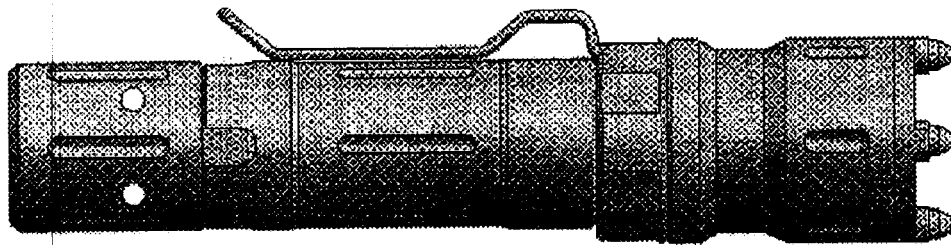


FIG.3

U.S. Patent

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US D522,084 S

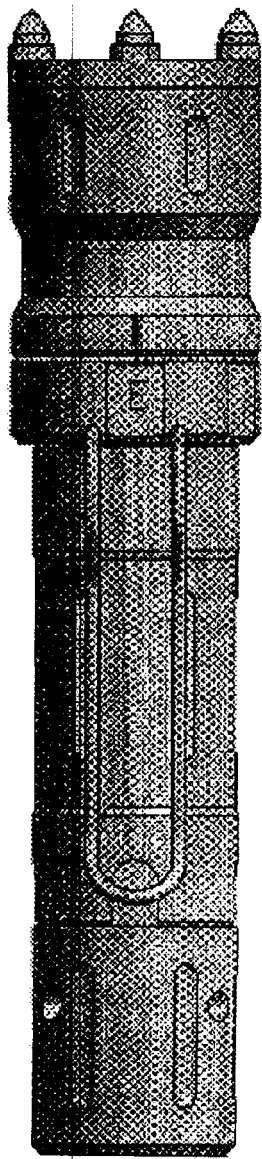


FIG. 4

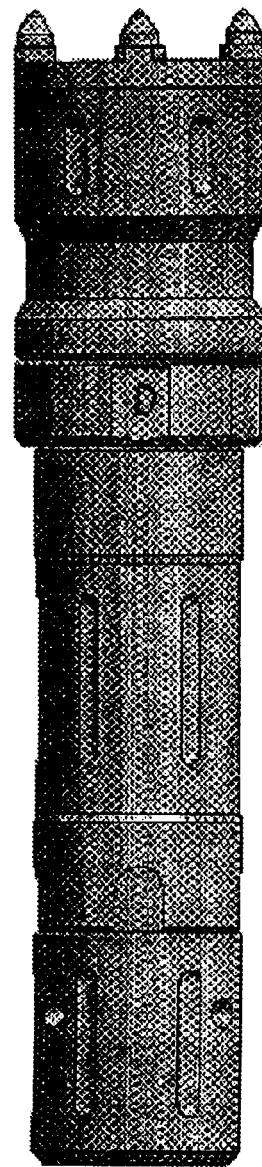


FIG. 5

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US D522,084 S

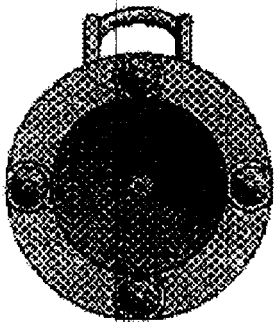


FIG.6

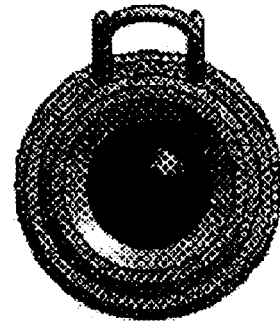


FIG.7

EXHIBIT B

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January 23, 2006

By Mail and Fax to 585-359-1995

Pyramont Global Merchandising Consortium Ltd.

International Trade Center, Suite 92547

Rochester, NY 14692

Attn: James Bonis, President

Dear Mr. Bonis:

This office represents Rodac-USA, Incorporated ("Rodac") with respect to the marketing of its products, including its proprietary tactical assault lights. It is our understanding that Rodac produced 1,000 lights on a private label basis for your firm during 2005 under the trademark "Hellfire XII" for which it has only received partial payment. The 1,000 light order was to serve as the basis for discussions to determine the feasibility of a more formal relationship between the parties. No such agreement was ever reached by the parties.

It has come to our client's attention that you are continuing to market its proprietary light under the trademark "Hellfire XII" beyond the 1,000 lights previously sold to you and to represent to prospective purchasers that Pyramont has exclusive manufacturing and distribution rights to Rodac's proprietary design.

You are hereby directed to cease and desist any and all misrepresentations with respect to the existence of any legal relationship between Rodac and Pyramont or the existence of any marketing or manufacturing rights in the Rodac proprietary tactical assault light. Further, upon resale of all of the original 1,000 lights, you are directed to remove any display of the image of the Rodac light from your marketing materials, including your website. Finally, you are directed to remit full payment to Rodac for the 1,000 lights previously delivered to you.

If you fail to cease and desist from your activities or to pay all amounts owing to Rodac, Rodac intends to exercise all of its legal and equitable rights against you to the fullest extent permitted by law to protect its business and intellectual property.

Very truly yours,

Diane J. McMahon

Cc: Daniel Primeau