

10-10-2003



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U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

102572413

To the Honorable Commissioner of Patents and Trademarks

Shed original document or copy thereof.

1. Name of conveying party(ies):

Everything For Love.Com Incorporated

- Individual(s)
- General Partnership
- Corporation - Nevada
- Other
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and Address of receiving party(ies):

Name: Dwayne Lacey
 Address: P.O. Box 280
Fremantle
Western Australia 6959

- Individual(s) Great Britain
- Association
- General Partnership
- Limited Partnership
- Corporation

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
 (Designations must be a separate document from Assignment)
 Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

- Assignment - By Court Order
- Change of Name
- Security Agreement
- Merger
- Other

Execution Date: July 17, 2003

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,492,240

Additional numbers attached?

Additional numbers attached? No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Thomas W. Cook
 Internal Address:
 Street Address: P.O. Box 1989
3030 Bridgeway, Suite 425-430
 City: Sausalito
 State: California Zip: 94965

6. Total number of applications and/or registrations involved: 1

7. Total fee (37 CFR 3.41):..... \$ 40.00
 Enclosed
 Authorized to be charged to deposit account

8. Deposit account number: 502532
 Please reference our file number: LACE-101

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

10/09/2003 DBYRNE 00000072 502532 2492240
 01 FC:8521 40.00 DA

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Thomas W. Cook

Name of Person Signing

Signature

October 2

Date

Total number of pages comprising cover sheet:

2003 OCT -7 AM 10:23
 OPR/FINANCE

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

Mail Stop Assignment Recordation Services
 Director of the United States Patent and Trademark Office
 P.O. Box 1450
 Alexandria, Virginia 22313-1450

TRADEMARK
REEL: 002841 FRAME: 0725

1 JOHN C. GIBSON (Cal. State Bar No. 47881)
2 GIBSON & MACPHEE
3 1534 Fifth Avenue, Suite 4
4 San Rafael, California 94901-1818
5 Tel: (415) 485-6911
6 Fax: (415) 485-6994

7 A. PETER RAUSCH, JR. (Cal. State Bar No. 127930)
8 LAW OFFICES OF A. PETER RAUSCH, JR.
9 7488 Shoreline Drive, Suite A-3
10 Stockton, California 95219
11 Telephone: (209) 952-5000
12 Facsimile: (209) 952-5009

13 Attorneys for Plaintiffs, Tender Loving Things, Inc.,
14 dba The Happy Company.

FILED
San Francisco County Superior Court

JUL 16 2003

GORDON PARK LI, Clerk
Deputy Clerk

15 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

16 TENDER LOVING THINGS, INC.,

17 Plaintiff,

18 vs.

19 EVERYTHING FOR LOVE, INC.,

20 Defendants.

CASE NO. 323619

**ORDER GRANTING MOTION TO
ENFORCE AND ENTERING
JUDGMENT PURSUANT TO
SETTLEMENT
(C.C.P. § 664.6)**

Hearing Date: June 25, 2003
Time: 9:30 A.M.
Department: 301
The Honorable David A. Garcia
Trial Date: Not Set - Case Settled

21 The motion of Plaintiff for an order entering judgment pursuant to a written settlement
22 stipulation under Code of Civil Procedure section 664.6 came on regularly for hearing before the
23 Honorable David A. Garcia in Department 301 of the above-entitled court on June 25, 2003.
24 Plaintiff, Tender Loving Things, Inc., ("TLT") appeared by counsel A. Peter Rausch, Jr. of the
25 Law Offices of A. Peter Rausch, Jr. Defendants, Everything For Love, Inc., ("EFL") Wendy
26
27
28

ORDER GRANTING MOTION TO ENFORCE AND ENTERING JUDGMENT PURSUANT TO SETTLEMENT

1 Robbins ("Robbins") and Jorlie McLain ("McLain") appeared by counsel Warren J. Krauss of
2 Sedgwick, Detert, Moran & Arnold, and Donald Lenkszus, appearing *pro hac vice*.

3 The matter having been fully briefed, argued and submitted, and on proof made to the
4 satisfaction of the Court that the motion should be granted.

5 The Court finds that the parties have entered into a written stipulation for settlement in the
6 form of a written agreement, following mediation, which is specifically enforceable under Code
7 of Civil Procedure section 664.6, and TLT is entitled to enforce the settlement agreement by
8 Judgment under C.C.P. Section 664.6.

9 THEREFORE, IT IS HEREBY ORDERED that the motion is granted. Judgment shall be
10 entered in accordance with the terms of the written Stipulation for Settlement dated January 23,
11 2002, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.

12 IT IS FURTHER ORDERED that defendants Robbins, McLain and EFL are permanently
13 enjoined from advertising, selling or offering for sale any Head Massager Device covered by
14 U.S. Patent 6,309,365 ("Patent") that is not manufactured by and purchased from TLT in
15 accordance with the terms of the Settlement Agreement. This injunction shall terminate upon
16 expiration of the Patent.

17 IT IS FURTHER ORDERED that defendants Robbins, McLain and EFL shall provide an
18 accounting to TLT of all sales made by Defendants, from January 23, 2002 to date, of any Head
19 Massager Device. The accounting shall specify whether each such sale is of a Device covered by
20 the Patent or is alleged to have been made of a Device not covered by the Patent. Such
21 accounting shall be made and certified by defendants, and each of them, within thirty (30) days
22 from the date of this Order and Defendants shall supplement such accounting every ninety (90)
23 days thereafter until further order of this Court.

24 IT IS FURTHER ORDERED that all right, title and interest in and to Defendant's
25 trademark "Tingler", for use in connection with the advertising or sale of Head Massager
26 Devices covered by the Patent, shall be and hereby is, transferred and assigned to Dwayne Lacey,
27 but subject to Defendant's receiving from Dwayne Lacey, (i) a non exclusive license back to
28

1 Defendants permitting their use of the trademark in connection with the advertising, sale or offer
2 of sale of any Head Massager Device that is covered by the Patent and manufactured by and
3 purchased from TLT in accordance with the terms of the Settlement Agreement, and (ii) a release
4 of claims as contemplated by the Settlement Agreement. The exclusive or non-exclusive nature
5 of the license back from Dwayne Lacey to Defendants will be subject to the terms set forth in the
6 Settlement Agreement. Defendants will execute appropriate documentation to evidence the
7 trademark assignment.

8 IT IS FURTHER ORDERED that all claims, causes of action and disputes between the
9 parties that existed or could have existed as of the date of execution of the Stipulation for
10 Settlement dated January 23, 2002, are hereby released and such claims are dismissed with
11 prejudice and the parties are permanently restrained and enjoined from asserting or prosecuting
12 any and all such claims. The parties are directed to prepare, execute and exchange appropriate
13 forms of release.

14 IT IS FURTHER ORDERED that the parties shall each bear their own costs.

15 IT IS FURTHER ORDERED that this court retains jurisdiction over the parties in order to
16 enforce and interpret the judgment until performance in full of its terms.

17
18 Dated: 7/17/03


THE HONORABLE DAVID A. GARCIA
JUDGE OF THE SUPERIOR COURT

19 * 323 619

20 APPROVED AS TO FORM:

21 Sedgwick, Detert, Moran & Arnold

22
23 By: Warren J. Krauss, Esq.
24 Attorneys for Defendants Everything For Love, Inc.,
25 Wendy Robbins and Jorlie McLain

Tender Loving Things, Inc.)	CASE NO. 323619
)	
Plaintiff(s).)	REF. NO. 1100034305
)	
vs.)	STIPULATION FOR SETTLEMENT
)	C.C.P. § 664.6
Everything For Love, Inc., et al.)	
)	
Defendant(s))	
)	

This case having come before Hon. Rebecca Westerfield (Ret.) for mediation at the offices of JAMS, and the parties having conferred, it is hereby stipulated that this matter is deemed settled pursuant to the following terms and conditions:

1. _____ shall pay to plaintiff(s) *Parties agree to terms set forth below and attached* and to his/her/their attorney *→* the total sum of \$ _____ in full settlement

and compromise of this action and in release and discharge of any and all claims and causes of action made in this action, and in release and discharge of any and all claims and causes of action arising out of the events or incidents referred to in the pleadings in this action. *And all proceeds identified in attachment*

2. *Parties* Plaintiff(s) agree to accept *terms* said sum in full settlement and compromise of the action and agree that such payment shall fully and forever discharge and release all claims and causes of action, whether now known or now unknown, which *parties have each other* plaintiff(s) has against any and all of the defendants in that action arising out of the incident. *Agreement*

This settlement includes an express waiver of Civil Code § 1542, which states:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

3. *Parties* Plaintiff(s) further agree to sign, acknowledge and deliver to *each other* defendants a standard form of a

EXHIBIT A

agreement over

In a form to be prepared by Counsel

each other

Release of all such claims and causes of action and to sign and deliver to ^{defendants} a standard form of Dismissal with Prejudice of the actions

4. Plaintiff(s) shall protect and indemnify the defendants in said action, (and his/her/their liability insurance carrier(s)) against any and all liens, subrogation claims and other rights that may be asserted by any person against the amount paid in settlement of the action or against any recovery by the plaintiff(s) in the action.

5. Counsel for each of the parties to this agreement represents that he/she has fully explained to his/her client(s) the legal effect of this agreement and of the Release and Dismissal with Prejudice provided for herein and that the settlement and compromise stated herein is final and conclusive forthwith, and each attorney represents that his/her client(s) has freely consented to and authorized this agreement.

6. ^{Final} ~~Payment of the stated settlement amount~~ ^{documentation} shall be made by as soon as reasonably possible.

7. Unless otherwise stated herein, each party will bear its own attorneys' fees and court costs.

8. Other terms and conditions:

See Attached Term sheet

9. Any provisions of Evidence Code §§1115 - 1128 notwithstanding, this agreement may be enforced by any party hereto by a motion under Code of Civil Procedure §664.6 or by any other procedure permitted by law in the Superior Court of SAN FRANCISCO County, or the Federal Action described herein.

10. The provisions of the confidentiality agreement signed by the parties relative to this mediation are waived for purposes of enforcing this agreement as set forth above.

Date: 1-23-02

Timothy C. Houpt
Timothy C. Houpt Esq.
Jones, Waldo, Holbrook & McDonough

Wendy Robbins
Wendy Robbins

Jorli McLain
Wendy Robbins
Everything for Love, Inc.

A. Peter Rausch
A. Peter Rausch Esq.
L/O A. Peter Rausch, Jr.

Mark [Signature]
Tender Loving Things, Inc.

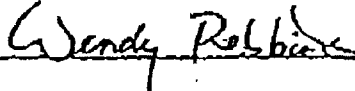

Mark [Signature]
The Happy Company

Mark [Signature]
Mark Juarez

Mediation Settlement Term Sheet

The following terms are part of the settlement agreement between (i) Wendy Robbins, an individual; Jorli McLain, an individual; and Everything for Love, Inc., a Nevada corporation, ("EFL") and (ii) Tender Loving Things, Inc., a California corporation, dba The Happy Company ("TLT").

1. TLT will be the exclusive manufacturer of head massage devices under US Patent # 6309365, for delivery to and sale by EFL. TLT will not be identified as the manufacturer on Tingler packaging. TLT will not advertise or attempt to exploit the exclusive manufacturing role as part of its business or sales. Nothing herein will require any party to misrepresent any fact.
2. Unit price will be \$2.00 each, FOB Shanghai, China, subject to adjustment for documented increases in the cost of copper in excess of 20% over current cost.
3. EFL will pay \$0.90 per unit to TLT (TLT royalty payment).
4. EFL will pay \$0.90 per unit to Lacey (Lacey royalty) as a royalty under the 365 patent.
5. Minimum unit order is 20,000 units. All orders will be accepted and delivered in full. Copies of Bills of lading will be provided to EFL with source identifying information redacted, but order quantities shown. Reasonable terms relating to advanced notice for orders of increased quantity over prior orders will be reflected in a final agreement.
6. Time to produce Product not to exceed 60 days from order, subject to delays related to:
 - a. Chinese New Year (2 week additional delay).
 - b. Acts of God, Terrorism.
 - c. Acts of third parties outside the control of TLT.
7. EFL to assign "Tingler" trademark to Lacey, and sell under exclusive license back of "Tingler" trademark from Lacey. Term consistent with TLT/Lacey agreement. License back subject to minimum annual royalty

 
Page 1

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payment to Lacey of no less than \$90,000 or exclusive license becomes nonexclusive.

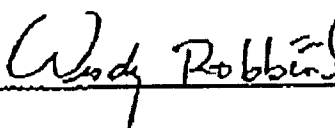
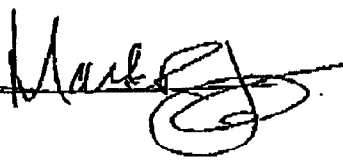
8. TLT will be entitled to sell device under the 365 patent, under "Head Trip" trademark, under agreement with Lacey.
9. Manufacturing orders will be delivered in order of placement.
10. Quality standards will be specified and measured against a sample Product and specs to be mutually selected and agreeable to parties.
 - a. Copper Product.
 - b. Copper tips.
 - c. Cellophane bag.
 - d. Product will be labeled and stamped.
 - e. Insert as provided by EFL.
 - f. Packaged in boxes of 25 units.
 - g. Box labeling as specified by EFL.
 - h. EFL responsible for compliance with China and US law as to labeling.
 - i. Red Velvet Bag packaging will be made available at \$0.25 additional per unit, with card insert designed by EFL and produced and printed by TLT, (4 color / double sided) subject to agreement as to design and ability of TLT to print as requested. Parties to work out details in good faith.
11. Mutually accepted third party will arbitrate quality control issues.
12. All orders must be placed on a mutually approved PO form.
13. Payment terms:
 - a. 50% (\$1.00) upon order placement, (delivery time begins upon receipt of payment).
 - b. 25% (\$0.50) due upon delivery to FOB port.
 - c. 25% (\$0.50) thirty days after delivery to FOB port.
 - d. Lacey royalty payment (\$0.90) thirty days after delivery to FOB port.
 - e. TLT royalty payment (\$0.90) thirty days after delivery to FOB port.
 - f. Escrow cash deposit or irrevocable Letter of Credit equal to royalty payments to be available before product is released to EFL possession at FOB port.

Wendy Robbins

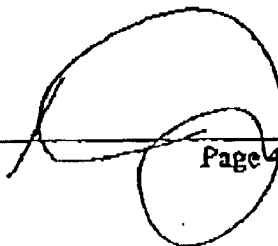
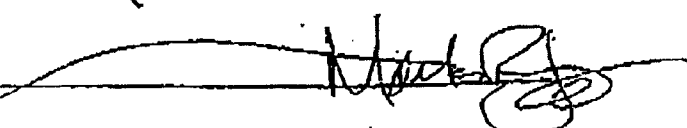
Page 2

Wendy Robbins

- g. Escrow cash deposit or irrevocable Letter of Credit equal to last 25% installment payment to be available before product is released to EFL possession at FOB port.
14. Product to be marked with 365 patent number designation.
 15. \$10,000 in escrow release \$5,000 to TLT and \$5,000 to EFL.
 16. General mutual releases of all claims and dismissal of all action.
 17. Parties compete fairly and agree to comply with specific mutual and mutually agreeable rules and standards of conduct.
 18. Product with Silicon tip available at additional per unit cost not to exceed \$0.20 provided total volume of silicon tip orders does not exceed 20% total annual business. Additional cost not to exceed \$0.35 as to any silicon tip orders in excess of 20% total annual business. TLT will investigate in good faith alternatives for tear shaped silicon and/or tear shaped copper tip at less or no additional cost per unit, with any cost savings passed back to EFL.
 19. Product liability coverage to TLT as additional named insured under CGL policy at \$1M per occurrence.
 20. American made Product will be made available at customer request (verified) provided actual cost to TLT in excess of contract price will be passed on to EFL. Royalty rates \$0.90 / \$0.90 still apply. TLT will give preference to EFL's manufacturer recommendation provided they meet quality control standards.
 21. Customers requesting permission to manufacture directly will be considered on a case by case basis.
 22. EFL units on hand (50,000) may be sold without royalty payments due to TLT.
 23. No disparagement between parties. Mutually agreeable script will be adopted to guide parties public comments regarding the dispute, the resolution and the parties prospective relationship.

24. Final agreement to include ADR provisions with mediation, facilitation and arbitration provisions to be agreed between parties.
25. Agreement subject to approval by Lacey as to terms implicating Lacey rights.
26. TLT and EFL to communicate through designated contacts.
27. TLT and counsel to strongly recommend acceptance of this arrangement by Lacey.
28. All Tingle advertising must bear reference to the US patent by number.
29. Mark Juarez to be a signatory as to releases and non disparagement terms. Wendy and Jorlie individually not subject to personal liability to payment terms. Payment obligations are corporate.
30. EFL's obligation to Lacey is additional to and separate and freestanding from TLT's obligation. EFL will not risk forfeiture of loss of exclusivity by virtue of any conduct of TLT alone. EFL will have independent cure rights relative to the Lacey minimum royalty.
31. EFL and Wendy and Jorlie will obtain releases from Lacey as consideration for Tingle trademark assignment.

Wendy Robbier  Page 

Attachment to Stipulation for Settlement

The terms of this Stipulation for Settlement apply to all proceedings between the parties as of the date of this Stipulation, including, specifically, (i) American Arbitration Association as case number 74 E 181 00775 01 MS, entitled Tender Loving Things, Inc. and Wendy Robbins, Jorli McClain and Everything for Love, Inc., (The "Arbitration"); (ii) California Superior Court, County of San Francisco, as case number 323619, entitled Tender Loving Things, Inc., a California Corporation, dba the Happy Company, Plaintiff, Vs. Wendy Robbins, an Individual; Jorli McClain, an Individual; Everything For Love, Inc., a Nevada Corporation, and Docs 1 Through 50, Inclusive, Defendants, (The "State Action"), (iii) United States District Court for the Northern District of California, San Francisco Division, as case number C 01 3542 (MJJ), entitled Everything For Love, Inc., a Nevada Corporation, Plaintiff, vs. Tender Loving Things, Inc., a California Corporation, dba the Happy Company, Defendant, (The "Federal Action").

**UNITED STATES DEPARTMENT OF COMMERCE
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Registrant: Dwayne Lacey)
Mark: THE TINGLER)
Reg. No.: 2,492,240)
Reg. Date: September 25, 2001)

Mail Stop Assignment Recordation Services
Director of the United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

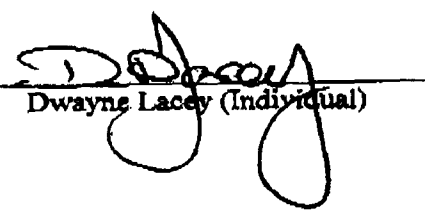
DESIGNATION OF DOMESTIC REPRESENTATIVE

Registrant Dwayne Lacey hereby designates:

THOMAS W. COOK, ESQ.
P.O. Box 1989
3030 Bridgeway, Suite 425
Sausalito, California 94965
United States of America
Telephone number: 415-339-8550
Facsimile number: 415-339-8555

as his domestic representative upon whom notice or process in proceedings affecting Registration Number 2,492,240 may be served.

Dated: Sept. 29, 2003

By: 
Dwayne Lacey (Individual)