

**FILED**

AUG 30 2004

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

----- X  
YANMAR COMPANY, LTD., a Japanese corporation,  
and YANMAR DIESEL AMERICA CORPORATION,  
an Illinois Corporation,

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

Plaintiffs,

: Case No. CIV-S 04-1438 DFL  
GGH

v.

WALLACE INTERNATIONAL TRADING CO., INC.,  
and MICHAEL D. WALLACE

Defendants.

**LODGED**

AUG 24 2004

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
DEPUTY CLERK

----- X  
**CONSENT ORDER, JUDGMENT AND  
PERMANENT INJUNCTION**

WHEREAS, pursuant to the agreement of the parties and in order to settle all claims between the Plaintiffs, YANMAR COMPANY, LTD. ["YCL"] and YANMAR DIESEL AMERICA CORPORATION ["YDAC"] and the Defendants WALLACE INTERNATIONAL TRADING CO. ["Wallace International"] and MICHAEL D. WALLACE ["Wallace"] [collectively "the Settling Defendants"], YCL, YDAC and the Settling Defendants have entered into a non-confidential Settlement Agreement dated August 9, 2004 (The "Settlement Agreement") which resolves all issues between the Plaintiffs and the Settling Defendants (but not other Defendants) pending in the Georgia Action and the California Action as defined in the Settlement Agreement to which this Exhibit is annexed:

WHEREAS, as part of the Settlement Agreement, the parties have consented to the entry of this Consent Order, Judgment and Permanent Injunction;

8

WHEREAS, for and in consideration of the mutual covenants and agreements contained in the Settlement Agreement, the Defendants have consented to permanent injunctive relief as set forth in this Consent Order, Judgment and Permanent Injunction;

WHEREAS, the parties agree that this Consent Order, Judgment and Permanent Injunction is sufficiently specific, that it is reasonable in scope, and that it is not overbroad;

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Permanent Injunction

Settling Defendants, and each of them, together with their assigns, predecessors in interest, successors in interest, divisions, all affiliated parent or subsidiary corporations or entities, agents, officers, employees, managers, supervisors, shareholders, representatives, attorneys, partners, joint venturers, and any and all other persons or entities who at any time acted or purported to act on their behalf are hereafter prevented from engaging in or undertaking any of the following activities:

(a) Importing, distributing, offering for distribution, circulating, selling, offering for sale, advertising, promoting, brokering the import and/or sale of, and/or facilitating the import and/or sale of Yanmar® Japanese Local Market tractors or Zen-Noh Japanese Local Market tractors manufactured by Plaintiff YCL's predecessor-in-interest [collectively, "the accused tractors"].

(b) Using any false designation of origin or false description which can or is likely to lead the trade or public or individuals erroneously to believe that any Yanmar® Japanese Local Market tractor or Zen-Noh Japanese Local Market tractor originally manufactured by Plaintiff

YCL's predecessor-in-interest, or any part or component thereof, has been licensed, sponsored, approved, or authorized by or for Plaintiffs, when such is not true in fact;

(c) Engaging in any other activity constituting an infringement of any of Plaintiffs' trademarks or of Plaintiff's rights in, or right to use or to exploit these trademarks or constituting any dilution of Plaintiffs' name, reputation, or goodwill; and

(d) Assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in paragraphs 1(a) through 1(c) above.

## 2. Notification

Immediately after the execution of the Settlement Agreement, and in no event later than twenty (20) days after its execution, Wallace will send a Notification, attached to the Settlement Agreement as Exhibit "C", to each of its dealers or former dealers throughout the United States of which he is aware, indicating that Wallace will no longer have any involvement with the accused tractors. Wallace shall provide Plaintiffs with copies of each of these notification letters to its dealers and former dealers. For a period of not less than two (2) years, Wallace will, at his own expense, create and maintain a computer link between Wallace International's former website address (which had previously been shut down) and: YDAC's "Important Safety Notice"; and a copy of the executed and court-approved "Consent Order, Judgment and Permanent Injunction", the form of which is contained in Exhibit "A" to the Settlement Agreement.

## 3. Non-Confidentiality/Non-Opposition to Yanmar

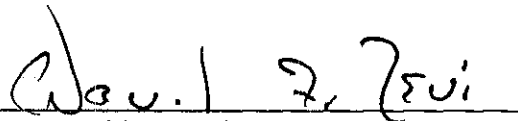
The Settling Defendants understand that the terms and conditions of this settlement are not confidential. The Settling Defendants will not directly or indirectly oppose Plaintiffs' efforts

to protect their trademarks and reputation and enhance public safety by fighting gray market activity in other jurisdictions by other entities.

4. Continuing Jurisdiction of Court

The Parties agree that the United States District Court for the Eastern District of California shall continue to have jurisdiction of the California Action and of the Settlement Agreement to the extent necessary to enforce the Settlement Agreement and the Injunction.

IT IS SO ORDERED, ADJUDGED AND DECREED this 26 day of August  
\_\_\_\_\_, 2004.

A handwritten signature in black ink, appearing to read "David F. Levi", is written over a horizontal line.

David F. Levi  
United States District Judge

Agreed and Consented to by:

  
For Wallace International

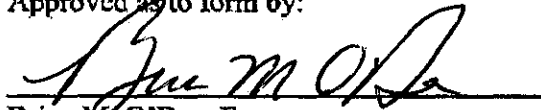
Dated: 8/9/04

Agreed and Consented to by:

  
Michael D. Wallace

Dated 8-9-04

Approved as to form by:

  
Brian M. O'Dea, Esq.  
McNichols, Randick, Odea  
& Tooliatos, LLP  
5000 Hopyard Road  
Pleasanton, California 94588-3348  
(925) 460-3700  
(925) 460-0969 (facsimile)  
Attorneys for Defendants

Agreed and Consented to by:

\_\_\_\_\_  
For Yanmar Company, Ltd.

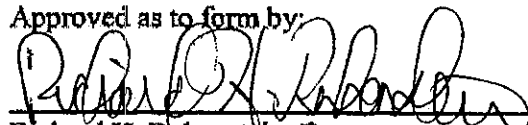
Dated:

Agreed and Consented to by:

\_\_\_\_\_  
For Yanmar Diesel America Corporation

Dated:

Approved as to form by:

  
Richard H. Rubenstein, Esq.  
Wilson, Elser, Moskowitz, Edelman  
& Dicker LLP  
150 East 42<sup>nd</sup> Street  
New York, New York 10017-5639  
(212) 490-3000  
(212) 490-3038 (facsimile)  
Attorneys for Plaintiffs

*Original  
Signature Page*

Agreed and Consented to by:

\_\_\_\_\_  
For Wallace International

Dated:

Agreed and Consented to by:

\_\_\_\_\_  
Michael D. Wallace

Dated

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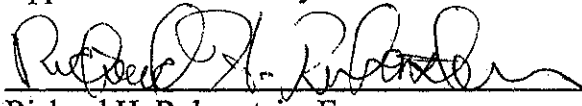
Dated:

Agreed and Consented to by:

  
\_\_\_\_\_  
For Yanmar Diesel America Corporation

Dated: 8.9.04

Approved as to form by:

  
\_\_\_\_\_  
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& Dicker LLP  
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(212) 490-3038 (facsimile)  
Attorneys for Plaintiffs

Agreed and Consented to by:

\_\_\_\_\_  
For Wallace International

Dated:

Agreed and Consented to by:

\_\_\_\_\_  
Michael D. Wallace

Dated

Approved as to form by:

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& Tooliatos, LLP  
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Pleasanton, California 94588-3348  
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(925) 460-0969 (facsimile)  
Attorneys for Defendants

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For Yanmar Company, Ltd.

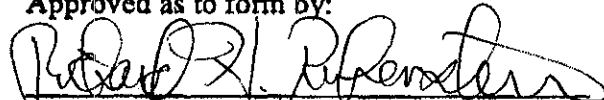
Dated: Aug 9, 2009.

Agreed and Consented to by:

\_\_\_\_\_  
For Yanmar Diesel America Corporation

Dated:

Approved as to form by:

  
\_\_\_\_\_  
Richard H. Rubenstein, Esq.  
Wilson, Elser, Moskowitz, Edelman  
& Dicker LLP  
150 East 42<sup>nd</sup> Street  
New York, New York 10017-5639  
(212) 490-3000  
(212) 490-3038 (facsimile)  
Attorneys for Plaintiffs

United States District Court  
for the  
Eastern District of California  
August 30, 2004

\* \* CERTIFICATE OF SERVICE \* \*

2:04-cv-01438

Yanmar Company Ltd

v.

Wallace Intl

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on August 30, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

James D Boughey  
Edelman and Dicker  
650 California Street  
14th Floor  
San Francisco, CA 94108-2718

HV/DFL


VC/GGH

Richard H Rubenstein  
PRO HAC VICE  
Wilson Elser Moskowitz Edelman and Dicker  
150 East 42nd Street  
23rd Floor  
New York, NY 10017-5639

Brian Michael O'Dea  
Randick and O'Dea  
1800 Harrison  
Suite 2350  
Oakland, CA 94612

Jack L. Wagner, Clerk

BY:

  
Deputy Clerk