

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PACCAR INC., a Washington corporation,)
)
) Plaintiff,)
)
) v.)
)
) MALIBU INTERNATIONAL LIMITED, a)
) California corporation,)
)
) Defendant.)
)

No. 2:09-cv-00477-RAJ
**[PROPOSED] DEFAULT
JUDGMENT AND PERMANENT
INJUNCTION**

SUMMARY OF JUDGMENT

- 1. Judgment Creditor: PACCAR Inc., a Washington corporation.
- 2. Attorney for Judgment Creditor: Lane Powell PC and Kenneth R. Davis II.
- 3. Judgment Debtors: Malibu International Limited, a California corporation.
- 4. Attorney for Judgment Debtor: None.
- 5. Principal Judgment: \$0.00.
- 6. Interest to Date of Judgment: \$0.00.
- 7. Attorneys’ Fees: \$10,995.50.
- 8. Costs: \$1,027.30.
- 9. Interest: \$0.00.

THIS MATTER having come before the above-entitled Court upon the motion of Plaintiff PACCAR Inc. (“Plaintiff” or “PACCAR”) for default judgment and permanent injunction against Defendant Malibu International Limited (“Defendant”), Plaintiff being represented by its attorneys, Lane Powell PC and Kenneth R. Davis II; and Defendant failing

**[PROPOSED] DEFAULT JUDGMENT AND
PERMANENT INJUNCTION**
(No. 2:09-cv-00477-RAJ) - 1

1 to appear or answer; and the Court having considered the Motion for Entry of Default
2 Judgment and Permanent Injunction, the Declaration of Kenneth R. Davis II in Support of
3 Plaintiff's Motion for Entry of Default Judgment and Permanent Injunction, and records and
4 files herein, that judgment against Defendant shall be entered, and being fully advised in the
5 premises; now, therefore, it is hereby

6 ORDERED, ADJUDGED, AND DECREED that Plaintiff have and recover judgment
7 against Defendant for the sum of \$0.00, together with attorneys' fees in the amount of
8 \$10,995.50, and costs in the amount of \$1,027.30. It is further

9 ORDERED, ADJUDGED, AND DECREED that the total amount of said judgment,
10 to-wit: \$12,022.80 shall bear interest at the rate prescribed by 28 U.S.C. § 1961 on the
11 declining balance from the date of judgment until fully paid. It is further

12 ORDERED, ADJUDGED, AND DECREED as follows:

13 1. Plaintiff is the owner of trademarks and trade dress identified in the Complaint
14 filed in this matter (collectively, the "PACCAR Marks").

15 2. Defendant willfully infringed the PACCAR Marks and has engaged in unfair
16 competition under the Lanham Act, 15 U.S.C. § 1125(a), by marketing and/or selling, without
17 license, replica, scale model trucks under trademarks and/or trade dress that are confusingly
18 similar to the PACCAR Marks (the "Infringing Products");

19 3. Defendant has engaged in actions that constitute trademark dilution in
20 violation of 15 U.S.C. § 1125(c) and RCW § 19.77.140;

21 4. Defendant has engaged in actions that constitute trademark infringement and
22 unfair competition and unjust enrichment in violation of Washington Consumer Protection
23 Act, RCW § 19.86.020, with regard to the PACCAR Marks; and

24 5. Upon order of this Court, Defendant, its officers, agents, servants, and
25 employees, and all persons in active concert or participation with it who receive actual notice
26 of this injunction, are permanently enjoined from, without authorization, manufacturing,

[PROPOSED] DEFAULT JUDGMENT AND
PERMANENT INJUNCTION
(No. 2:09-cv-00477-RAJ) - 2

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1 importing, advertising, marketing, offering for sale or selling in the United States any product
2 and/or trade dress which infringes the PACCAR Marks, including, but limited, to the
3 Infringing Products. It is further

4 ORDERED, ADJUDGED AND DECREED:

5 6. That Defendant and all of its agents, officers, employees, representatives,
6 successors, assigns, attorneys, and all other persons acting for, with, by, through, or under
7 authority from Defendant, or in concert or in participation with Defendant, and each of them,
8 be enjoined preliminarily and permanently from:

9 a. using the PACCAR Marks, or any copy, reproduction, colorable
10 imitation, or simulation of the PACCAR Marks on or in connection with Defendant's goods
11 or services;

12 b. using any trademark, service mark, name, logo, design, or source
13 designation of any kind on or in connection with Defendant's goods or services that is a copy,
14 reproduction, colorable imitation, or simulation of, or confusingly similar to the trademarks,
15 trade dresses, service marks, names, or logos of PACCAR;

16 c. using any trademark, trade dress, service mark, name, logo, design, or
17 source designation of any kind on or in connection with Defendant's goods or services that is
18 likely to cause confusion, mistake, deception, or public misunderstanding that such goods or
19 services are produced or provided by PACCAR or are sponsored or authorized by or in any
20 way connected or related to PACCAR;

21 d. using any trademark, service mark, name, logo, design, or source
22 designation of any kind on or in connection with Defendant's goods or services that dilutes or
23 is likely to dilute the distinctiveness of the trademarks, service marks, names, or logos of
24 PACCAR; and

1 e. passing off, palming off, or assisting in passing off or palming off,
2 Defendant's goods or services as those of PACCAR, or otherwise continuing any and all acts
3 of unfair competition as alleged in this Complaint.

4 7. That Defendant be ordered to recall all products bearing the PACCAR Marks,
5 or any other confusingly similar mark or dress, which have been shipped by Defendant or
6 under its authority to any customer, including, but not limited to, any wholesaler, distributor,
7 retailer, consignor, or marketer, and also to deliver to each customer a copy of this Court's
8 order as it relates to said injunctive relief against Defendant;

9 8. That Defendant be ordered to deliver for impoundment and for destruction all
10 products, bags, boxes, labels, tags, signs, packages, receptacles, advertising, sample books,
11 promotional material, stationery, or other materials in the possession, custody, or under the
12 control of Defendant that are found to adopt, infringe, or dilute any of the PACCAR Marks or
13 that otherwise unfairly compete with PACCAR and its products and services;

14 9. That Defendant be compelled to account to PACCAR for any and all profits
15 derived by Defendant from the sale or distribution of infringing goods as described in this
16 Complaint;

17 10. That PACCAR be awarded its reasonable attorneys' fees, disbursements, and
18 costs of this action pursuant to 15 U.S.C. § 1117, in the amount of \$12,022.80;

19 11. That PACCAR be awarded such other and further relief as this Court deems
20 just and equitable; and

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23 [Remainder of this page intentionally left blank.]
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1 12. Final judgment is hereby entered in favor of Plaintiff and against Defendant
2 with respect to Defendant's infringement of the PACCAR Marks. All other claims are
3 dismissed with prejudice.

4 DATED this ____ day of January 2010.

7 _____
8 JUDGE/CLERK
9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON

11 Presented by:

12 LANE POWELL PC

13 By: /s/ Parna A. Mehrbani, WSBA No. 41631, for:
14 Kenneth R. Davis II, WSBA No. 21928
15 Lane Powell PC
16 601 SW Second Avenue, Suite 2100
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17 Attorneys for Plaintiff