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Bennett Marine wins patent lawsuit

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Trim tab manufacturer Bennett Marine was awarded judgments totaling more than \$250,000 from Lenco Marine, company president Richard DeVito Jr., and Rinker Boats in a patent infringement case dating from 2004.

Last week, a U.S. District Court judge in the Southern District of Florida ordered Lenco Marine and DeVito to pay \$248,858 and Rinker to pay \$27,680 to Bennett Marine.

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Rinker was found liable for direct infringement of U.S. patent No. 5,113,780. Lenco Marine and DeVito were found liable for inducement to infringe on the patent, and Lenco Marine was found liable for breaching a 2003 settlement agreement between the parties.

Rinker president Kim Sobocm was also included in the lawsuit, but no judgment was issued against him.

The patent is for the auto tab retractor, a device that retracts the trim tabs when the boat's ignition is turned to the off position. Bennett received the patent in 1992.

EW hat this ruling means is that product innovation is still protected and that patent infringement would be tolerated in this industry, Bennett Marine president Blake Bennett said in a statement. Our customers can feel confident about doing business with a company that stands behind its products and defends the competitive advantage these products provide.

When Soundings Trade Only spoke with Bennett Marine in 2007, prior to the case going to trial in 2009, the company said it was seeking \$10 million in damages and attorney's fees. However, Bennett said Wednesday that he was pleased with the recent ruling.

ESince it was never our desire to sue anyone, the size of the judgment does not affect our satisfaction with the verdict, he told Soundings Trade Only in an e-mail. The ruling brings the case to an updated status, for which we are grateful. The findings of willful patent violation open the door for us to seek repayment of an astounding amount of legal fees that were invested in this case.

DeVito was on vacation and could not be reached for comment, according to the person answering the phone at Lenco Marine. Additional calls for comment from the company were not returned. A spokesman for Rinker, which is owned by Nautic Global Group, said the company was not interested in commenting on the issue.

The court case follows a settlement agreement in 2003, when Lenco paid Bennett royalties and damages of more than \$25,000 while not admitting infringement, according to court documents. As part of the settlement, Lenco was to advise boatbuilders not to wire the products to the ignition in order to prevent the builders from violating the patent.

EThe court does find, however, that in 2006 Lenco began manufacturing and selling infringing devices which are designed to be wired through the tachometer gauge, thereby indirectly resulting in the trim tabs retracting upon removal of electrical power from the engine," court documents said.

EThe court finds this conduct to constitute patent infringement. The court also finds that because of the design, manufacture and sale of these devices, which were developed for the specific purpose and intent of trying to circumvent the '800 patent, Lenco induced infringement by Rinker and others," court papers said.

The documents add that DeVito and Lenco assured customers that there was no patent problem and that Bennett's claims were not that huge of a deal.

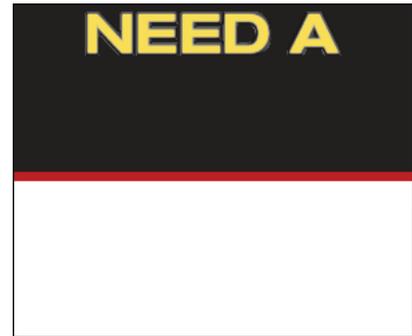
Court documents also show that in 2004 Lenco and Rinker entered into an indemnification agreement and that Rinker believed it was protected from suit.

ESince April 2007, Rinker has been wiring Lenco's [auto tab retractor] to the tachometer [gauge] instead of the key switch as before, so that upon removal of power from the boat's engine, the ATR still retracts," according to court documents. Thus, Lenco's actions encouraged and induced Rinker to do so.



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The court added, however, that lost profits were not an appropriate measure of damages for the case and rejected the testimony of Bennett's damages expert.

The court rejects Bennett's contention that the royalty rate agreed to in the settlement agreement is a reasonable royalty rate, the judge said in his decision. The court concludes that the royalty rate contained in the settlement agreement is not a true reflection of market royalty rate since it was entered into under the threat of litigation. A reasonable royalty rate for any infringement by Lenco and Rinker is based on the discounted retail price of the ATR provided by Bennett to OEM boatbuilders.

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