

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

FELD MOTOR SPORTS, INC.

v.

TRAXXAS, LP

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CASE NO. 4:14-CV-543
LEAD
Judge Mazzant

MEMORANDUM OPINION AND ORDER

Pending before the Court is Traxxas, LP's Renewed Motion for Judgment as a Matter of Law, Motion for New Trial or Alternative Motion to Amend/Modify the Judgment (Dkt. #168). After reviewing the relevant pleadings and the relevant trial testimony and evidence, the Court finds that the motion should be denied.

PROCEDURAL BACKGROUND

On April 14, 2014, Traxxas LP ("Traxxas") filed its action against Feld Motor Sports, Inc. ("Feld") in the 429th District Court of Collin County, Texas, in which it sought declaratory relief, stating that it did not owe Feld royalties on the two-wheel drive Brushless Stampede ("the Stampede VXL"), the Nitro Stampede, and the Stampede 4x4 (*See* Dkt. #3 in 4:14-cv-463). On July 11, 2014, the case was removed to the Eastern District of Texas, and filed as *Traxxas, LP v. Feld Motor Sports, Inc.*, No. 4:14-cv-463 (E.D. Tex. 2014) (Dkt. #1).

On July 11, 2014, Feld filed its action against Traxxas in the United States District Court for the Eastern District of Virginia, in which it alleged that Traxxas has breached the License Agreement, breached the implied covenant of good faith and fair dealing, failed to pay audit expenses, and failed to pay interest on late payments (Dkt. #1). On August 15, 2014, the case

was transferred to the Eastern District of Texas, and filed as *Feld Motor Sports, Inc. v. Traxxas, LP*, No. 4:14-cv-543 (E.D. Tex. 2014) (Dkt. #21).

On April 3, 2015, Traxxas filed its Motion for Summary Judgment (Dkt. #51). On April 27, 2015, Feld filed its response (Dkt. #84). On May 11, 2015, Traxxas filed its reply (Dkt. #97). On May 21, 2015, Feld filed its sur-reply (Dkt. #105).

On April 3, 2015, Feld filed its Motion for Summary Judgment (Dkt. #54). On April 27, 2015, Traxxas filed its response (Dkt. #81), and file its objections to Feld's Summary Judgment Evidence (Dkt. #80). On May 11, 2015, Feld filed its reply (Dkt. #92), and filed its response to Traxxas's objections (Dkt. #96). On May 21, 2015, Traxxas filed its sur-reply (Dkt. #109), and it reply to its objections (Dkt. #108). On June 1, 2015, Feld filed its sur-reply to Traxxas's objections (Dkt. #111). On May 11, 2015, Traxxas filed its objections to Feld's summary judgment opposition evidence (Dkt. #100). On May 21, 2015, Feld filed its response (Dkt. #104). On June 1, 2015, Traxxas filed its reply (Dkt. #112). On June 11, 2015, Feld filed its sur-reply (Dkt. #113). On July 31, 2015, the Court denied both Traxxas's Motion for Summary Judgment and Feld's Motion for Summary Judgment, finding that material fact issues existed in the case (Dkt. #118).

On June 12, 2015, Feld filed its Motion to Consolidate Cases and to Remain as Plaintiff (Dkt. #98 in 4:14-cv-463). Also on June 12, 2015, Traxxas filed its Unopposed Motion to Consolidate Cases and Opposed Motion to Establish Order of Proof (Dkt. #99 in 4:14-cv-463). On June 23, 2015, Feld filed its response to Traxxas's moton (Dkt. #101 in 4:14-cv-463). On June 24, 2015, Traxxas filed its response to Feld's motion (Dkt. #102 in 4:14-cv-463). On June 24, 2015, the Court held a hearing on consolidation. Following the hearing, the Court ordered the matters *Feld Motor Sports, Inc. v. Traxxas, LP*, No. 4:14-cv-543, and *Traxxas, LP v. Feld*

Motor Sports, Inc., No. 4:14-cv-463, to be consolidated (Dkt. #103 in 4:14-cv-463). However, the Court held its determination as to which case would be the lead case until a later date (Dkt. #103 in 4:14-cv-463). On July 31, 2015, after considering the relevant pleadings, the Court determined that Feld would remain as Plaintiff in the consolidated cases, and that the No. 4:14-cv-543 case would be the lead case in the consolidated action (Dkt. #119 in 4:14-cv-543).

The trial began on August 24, 2015. At the close of Feld's case-in-chief, Traxxas made a motion for judgment as a matter of law, in which it requested that the Court grant judgment as a matter of law in favor of Traxxas, as Feld had not proved its case. The Court denied Traxxas's motion. On August 31, 2015, Feld requested judgment as a matter of law, which the Court denied. On September 1, 2015, the jury rendered its verdict and found the following: (1) the parties intended the License Agreement to include (a) the Stampede Brushless VXL; (b) the Stampede Brushed 4x4; (c) the Stampede Brushless 4x4 VXL; and (d) the Nitro Stampede, when calculating royalties; and (2) Traxxas owed Feld \$955,620.30 in unpaid royalties under the License Agreement (Dkt. #162).

On October 7, 2015, Traxxas filed its Renewed Motion for Judgment as a Matter of Law, Motion for New Trial or Alternative Motion to Amend/Modify the Judgment (Dkt. #168). On October 26, 2015, Feld filed its response (Dkt. #173). On November 5, 2015, Traxxas filed its reply (Dkt. #176). On November 16, 2015, Feld filed its sur-reply (Dkt. #179).

FACTUAL BACKGROUND

At trial, Mark Abernethy ("Abernethy") testified that he began communicating with Kent Poteet ("Poteet") at Traxxas regarding a potential licensing arrangement between the two companies (Abernethy Trial Tr. (8/25/2015) at 10:9-21; Trial Ex. 12). On July 14, 2010, Abernethy sent an email to Poteet regarding Feld's "potential opportunity to be working with

Traxxas on a line of Monster Jam branded R/C monster trucks.” (Trial Ex. 13). In the email, Abernethy refers to the “Stamped R/C Vehicles” and discusses the wholesale cost of \$150 (*See* Trial Ex. 13). Abernethy testified that he received the information from Poteet (Abernethy Trial Tr. (8/25/2015) at 22:3-23:5; 25:10-18). Abernethy testified that a meeting between Feld and Traxxas was scheduled for July 28, 2010, for members of Feld’s sponsorship and licensing teams to meet with Traxxas’ executive team (Abernethy Trial Tr. (8/25/2015) at 21:5-16).

Abernethy testified that the meeting took place on July 28, 2010. Abernethy, Tim Murray, Alison Lort, John Leiber, and Suzanne Ludera represented Feld at the meeting, while Mike Jenkins (“Jenkins”), Tommy DeWitt (“DeWitt”), and Poteet represented Traxxas (Abernethy Trial Tr. (8/26/2015) at 2:14-3:4). The meeting took place at Traxxas headquarters in Plano, Texas (Abernethy Trial Tr. (8/26/2015) at 3:3-4). Abernethy testified that Traxxas products were displayed along a wall with probably forty to fifty vehicles on display (Abernethy Trial Tr. (8/26/2015) at 3:11-20). DeWitt also testified that “the majority of everything [Traxxas] sold was in the conference room.” (DeWitt Trial Tr. at 15:10-16:20).

DeWitt testified that the meeting was “introducing Feld to the product” and doing a kind of “show and tell.” (DeWitt Trial Tr. at 17:1-7). Although DeWitt remembers that Traxxas showed Feld “[t]he Stampedes[,]” he testified that there wasn’t specific talk about any distinction between Stampede models (DeWitt Trial Tr. at 19:6-20:19). Abernethy also testified that during the July 28, 2010 meeting there was no specific discussion about the vehicles, but just an overview (Abernethy Trial Tr. (8/26/2015) at 5:24-6:6).

Following the meeting, Feld and Traxxas continued to negotiate on the terms of the License Agreement. On July 30, 2010, Abernethy sent Poteet an email, in which he thanked him for the meeting, and gave him a revised proposal that included an asterisk (Trial Ex. 17). The

asterisk stated, “[t]his sliding scale takes into consideration that Traxxas will be converting the Stamped line of R/C vehicles 100% to Monster Jam branded vehicles. It also takes into consideration that the Stamped line sells 30,000 units per year. If the Stamped line off [sic] R/C vehicles does not sell 30,000 units per year, then we’ll need to adjust this sliding scale.” (Trial Ex. 17). On August 4, 2010, Poteet responded to Abernethy’s email, and in his revised proposal referred to “these Stampedes.” (Trial Ex. 19).

On August 16, 2010, Abernethy sent another revised proposal to Poteet, in which he stated, “This takes into consideration that Traxxas will be converting the Stamped line of R/C vehicles 100% to Monster Jam branded vehicles. It also takes into consideration that the Stamped line sells 30,000 units per year. If the Stamped line off R/C vehicles does not currently sell 30,000 units per year, then we’ll need to re-adjust.” (Trial Ex. 22). On September 2, 2010, Abernethy sent a revised proposal to Poteet, in which he stated, “[t]he Stamped line of R/C’s will be converted to MJ branded vehicles.” (Trial Ex. 24). Poteet forwarded the email to Jenkins, and Jenkins told him to “[a]dd Stampede sales in to a total to get to the 30k.” (Trial Ex. 25).

Milo Mattorano (“Mattorano”) testified that during the final stages of negotiations, he was the lead negotiator for Traxxas (*See* Mattorano Trial Tr. (8/28/2015) at 26:11-27:15). Between September 21, 2010, through September 24, 2010, Feld and Traxxas sent a proposed License Agreement back-and-forth (*See* Trial Exs. 39, 215, 216, 217, 218, 219).

On October 11, 2010, Traxxas sent Feld a fully executed version of the Monster Jam License Agreement (the “License Agreement”) (Tr. Ex. 11). The License Agreement gave Traxxas the right to use certain Intellectual Property of Feld in the marketing and sale of Traxxas’s R/C trucks. (Tr. Ex. 11). In return, Feld would be paid a royalty on those sales. (Tr. Ex. 11). Specifically, the Licensing Agreement, in relevant states:

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