

Civil No. 84-1585-E(CM)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

(Title Omitted in Printing)

SPECIAL VERDICT FORM

(July 11, 1988)

We, the jury in the above-entitled case, unanimously  
conclude and find as follows:

I

ALTER EGO

Do you find by a preponderance of the evidence that  
SORBOTHANE, INC. (aka SORBO, INC.) and/or  
HAMILTON-KENT MANUFACTURING COMPANY,  
INC. was the agent or alter ego of BTR, INC.?

If your answer is "Yes", mark "X" after the name of  
that defendant in column "A."

If your answer is "NO", mark "X" after the name of  
that defendant in column "B."

	(A)	(B)
	<u>"YES"</u>	<u>"NO"</u>
<i>Defendant</i>		
SORBOTHANE, INC. (aka SORBO, INC.)	<u>Yes</u>	<u>          </u>
HAMILTON-KENT MANUFACTURING COMPANY, INC.	<u>Yes</u>	<u>          </u>

You will be asked later in this form to determine the amount of money that would fairly and reasonably compensate SORBOTURF ENTERPRISES for its damages, if any, proximately caused by the alleged wrongful acts of the defendants. At the end of this form, there is a page identifying *each* defendant and the claims for which plaintiffs contend that the defendant is liable. You will be asked to assess damages for *each* defendant and *each* claim separately.

If you answer "yes" to the above question as to SORBOTHANE, INC. (aka SORBO, INC.), then you must also assess damages against BTR, INC., as well as SORBOTHANE, INC. (aka SORBO, INC.), for the damages caused by SORBOTHANE, INC., if any. By way of example, if you find that SORBOTHANE, INC. must pay damages to SORBOTURF ENTERPRISES on the breach of contract claim, then you must assess damages not only against SORBOTHANE, INC., but also against BTR, INC. for that claim.

If you answer "yes" to the above question as to HAMILTON-KENT MANUFACTURING COMPANY, INC., then you must also assess damages against BTR, INC., as well as HAMILTON-KENT MANUFACTURING COMPANY, INC., for the damages caused by HAMILTON-KENT MANUFACTURING COMPANY, INC., if any. By way of example, if you find that HAMILTON-KENT MANUFACTURING COMPANY, INC. must pay damages to SORBOTURF ENTERPRISES on the fraud claim, then you must assess damages not only against HAMILTON-KENT MANUFACTURING COMPANY, INC., but also against BTR, INC. for that claim.

## II

## FRAUD

Do you find from a preponderance of the evidence that any of the following defendants committed fraud upon SORBOTURF ENTERPRISES?

If your answer is "YES", mark "X" after the name of that defendant in column "A."

If your answer is "NO", mark "X" after the name of that defendant in column "B."

	(A) <u>"YES"</u>	(B) <u>"NO"</u>
<i>Defendant</i>		
SORBOTHANE, INC. (aka SORBO, INC.)	<u>X</u>	<u>        </u>
HAMILTON-KENT MANUFACTURING COMPANY, INC.	<u>X</u>	<u>        </u>
SPECTRUM SPORTS, INC.	<u>        </u>	<u>X</u>
KENNETH M. LEIGHTON	<u>X</u>	<u>        </u>
KENNETH B. LEIGHTON, JR.	<u>        </u>	<u>X</u>

## III

## BREACH OF ORAL CONTRACT

Do you find by a preponderance of the evidence that any of the following defendants breached an oral contract with SORBOTURF ENTERPRISES relating to its athletic distributorship?

If your answer is "YES", mark "X" after the name of that defendant in column "A."

If your answer is "NO", mark "X" after the name of that defendant in column "B."

	(A) "YES"	(B) "NO"
<i>Defendant</i>		
HAMILTON-KENT MANUFACTURING COMPANY, INC.	<u>X</u>	_____
SORBOTHANE, INC. (aka SORBO, INC.)	<u>X</u>	_____

IV

BREACH OF CONTRACT  
STATUTE OF FRAUDS—ATHLETIC  
DISTRIBUTORSHIP

1. Do you find that the alleged oral contract related to the athletic distributorship could be performed within one year from the date it was made?

Yes   X  

No           

If you answered "Yes" to Question No. 1, please do not answer Question Nos. 2 or 3.

2. Do you find that defendants HAMILTON-KENT MANUFACTURING COMPANY, INC. and/or SORBOTHANE, INC. (aka SORBO, INC.) induced SORBOTURF ENTERPRISES to seriously change its position in reasonable reliance on the contract, and that unconscionable injury to SORBOTURF ENTERPRISES would result from a refusal to enforce the contract?

Yes           

No           

3. Do you find that defendants HAMILTON-KENT MANUFACTURING COMPANY, INC. and/or SORBOTHANE, INC. (aka SORBO, INC.) would be unjustly enriched by a refusal to enforce the contract?

Yes           

No

If you answered "No" to Question No. 1, the statute of frauds *will* bar plaintiffs' recovery, if any, on their claim for breach of contract relating to the athletic distributorship, unless you answered "Yes" to either Question Nos. 2 or 3.

If you answered "yes" to either Question Nos. 2 or 3, the statute of frauds will *not* bar plaintiffs' recovery, if any, on their claim for breach of contract relating to the athletic distributorship.

*BREACH OF ORAL CONTRACT*

Do you find by a preponderance of the evidence that any of the following defendants breached an oral contract with SORBOTURF ENTERPRISES relating to its equestrian distributorship?

If your answer is "YES", mark "X" after the name of that defendant in column "A."

If your answer is "NO", mark "X" after the name of that defendant in column "B."

	(A) <u>"YES"</u>	(B) <u>"NO"</u>
<i>Defendant</i>		
HAMILTON-KENT MANUFACTURING COMPANY, INC.	<u>X</u>	<u>          </u>
SORBOTHANE, INC. (aka SORBO, INC.)	<u>X</u>	<u>          </u>

VI  
BREACH OF CONTRACT  
STATUTE OF FRAUDS—EQUESTRIAN  
DISTRIBUTORSHIP

1. Do you find that the alleged oral contract relating to the equestrian distributorship could be performed within one year from the date it was made?

Yes   X  

No           

If you answered "Yes" to Question No. 1, please do not answer Question Nos. 2 or 3.

2. Do you find that defendants HAMILTON-KENT MANUFACTURING COMPANY, INC. and/or SORBOTHANE, INC. (aka SORBO, INC.) induced SORBOTURF ENTERPRISES to seriously change its position in reasonable reliance on the contract, and that unconscionable injury to SORBOTURF ENTERPRISES would result from a refusal to enforce the contract?

Yes           

No           

3. Do you find that HAMILTON-KENT MANUFACTURING COMPANY, INC. and/or SORBOTHANE, INC. (aka SORBO, INC.) would be unjustly enriched by a refusal to enforce the contract?

Yes           

No           

If you answered "No" to Question No. 1, the statute of frauds *will* bar plaintiffs' recovery, if any, on their claim for breach of contract relating to the equestrian distributorship, unless you answered "Yes" to either Question Nos. 2 or 3.

If you answered "Yes" to either Question Nos. 2 or 3, the statute of frauds *will not* bar plaintiffs' recovery, if  
breach of contract relating to the



## VII

BAD FAITH DENIAL OF THE EXISTENCE  
OF AN ORAL CONTRACT

Do you find by a preponderance of the evidence that any of the following defendants have, in bad faith, denied the existence of an oral contract with SORBOTURF ENTERPRISES regarding SORBOTURF's status as a distributor of Sorbothane products?

If your answer is "YES", mark "X" after the name of that defendant in column "A."

If your answer is "NO", mark "X" after the name of that defendant in column "B."

	(A) "YES"	(B) "NO"
<i>Defendant</i>	<u>          </u>	<u>          </u>
HAMILTON-KENT MANUFACTURING COMPANY, INC.	<u>    X    </u>	<u>          </u>
SORBOTHANE, INC. (aka SORBO, INC.)	<u>    X    </u>	<u>          </u>

## VIII

VIOLATION OF CALIFORNIA BUSINESS  
& PROFESSIONS CODE SECTION 17200,  
UNFAIR COMPETITION

Do you find by a preponderance of the evidence that any of the following defendants engaged in unfair competition in violation of California Business and Professions Code section 17200?

If your answer is "YES", mark "X" after the name of that defendant in column "A."

If your answer is "NO", mark "X" after the name of that defendant in column "B."

	(A) "YES"	(B) "NO"
<i>Defendant</i>		
SORBOTHANE, INC. (aka SORBO, INC.)	<u>  X  </u>	<u>      </u>
HAMILTON-KENT MANUFACTURING COMPANY, INC.	<u>  X  </u>	<u>      </u>
SPECTRUM SPORTS, INC.	<u>  X  </u>	<u>      </u>
KENNETH M. LEIGHTON	<u>  X  </u>	<u>      </u>
KENNETH B. LEIGHTON, JR.	<u>  X  </u>	<u>      </u>

## IX

INTERFERENCE WITH PROSPECTIVE  
BUSINESS ADVANTAGE

Do you find by a preponderance of the evidence that any of the following defendants interfered with the prospective business advantage of SORBOTURF ENTERPRISES?

If your answer is "YES", mark "X" after the name of that defendant in column "A."

If your answer is "NO", mark "X" after the name of that defendant in column "B."

	(A) "YES"	(B) "NO"
<i>Defendant</i>		
SORBOTHANE, INC. (aka SORBO, INC.)	<u>  X  </u>	<u>      </u>
HAMILTON-KENT MANUFACTURING COMPANY, INC.	<u>  X  </u>	<u>      </u>
SPECTRUM SPORTS, INC.	<u>  X  </u>	<u>      </u>
KENNETH M. LEIGHTON	<u>  X  </u>	<u>      </u>
KENNETH B. LEIGHTON, JR.	<u>  X  </u>	<u>      </u>

X

## CONVERSION

Do you find from a preponderance of the evidence that any of the following defendants converted the property of SORBOTURF ENTERPRISES?

If your answer is "YES", mark "X" after the name of that defendant in column "A."

If your answer is "NO", mark "X" after the name of that defendant in column "B."

	(A) "YES"	(B) "NO"
<i>Defendant</i>		
SORBOTHANE, INC. (aka SORBO, INC.)	<u>X</u>	_____
HAMILTON-KENT MANUFACTURING COMPANY, INC.	<u>X</u>	_____
KENNETH M. LEIGHTON	<u>X</u>	_____

## XI

VIOLATION OF SECTION 1 OF THE  
SHERMAN ACT, RESALE PRICE FIXING

Do you find by a preponderance of the evidence that any of the following defendants violated section 1 of the Sherman Act, title 15 U.S. Code, by engaging in resale price fixing of Sorbothane products?

If your answer is "YES", mark "X" after the name of that defendant in column "A."

If your answer is "NO", mark "X" after the name of that defendant in column "B."

	(A) "YES"	(B) "NO"
<i>Defendant</i>		
SORBOTHANE, INC. (aka SORBO, INC.)	X	
HAMILTON-KENT MANUFACTURING COMPANY, INC.	X	
SPECTRUM SPORTS, INC.		X
KENNETH M. LEIGHTON	X	
KENNETH B. LEIGHTON, JR.		X

## XII

VIOLATION OF SECTION 1 OF THE  
SHERMAN ACT, MARKET ALLOCATION

Do you find by a preponderance of the evidence that any of the following defendants violated section 1 of the Sherman Act, title 15 U.S. Code, by engaging in a market allocation with the other manufacturer of Sorbothane products?

If your answer is "YES", mark "X" after the name of that defendant in column "A."

If your answer is "NO", mark "X" after the name of that defendant in column "B."

	(A) "YES"	(B) "NO"
<i>Defendant</i>		
SORBOTHANE, INC. (aka SORBO, INC.)	X	_____
HAMILTON-KENT MANUFACTURING COMPANY, INC.	X	_____
KENNETH M. LEIGHTON	X	_____

## XIII

VIOLATION OF SECTION 2 OF THE SHERMAN  
ACT—MONOPOLIZING, ATTEMPTING TO  
MONOPOLIZE AND CONSPIRING  
TO MONOPOLIZE

Do you find by a preponderance of the evidence that any of the following defendants violated section 2 of the Sherman Act by monopolizing, attempting to monopolize, and/or conspiring to monopolize the market for Sorbothane products?

If your answer is "YES", mark "X" after the name of that defendant in column "A."

If your answer is "NO", mark "X" after the name of that defendant in column "B."

	(A) "YES"	(B) "NO"
<i>Defendant</i>		
SORBOTHANE, INC. (aka SORBO, INC.)	<u>  X  </u>	<u>        </u>
HAMILTON-KENT MANUFACTURING COMPANY, INC.	<u>  X  </u>	<u>        </u>
SPECTRUM SPORTS, INC.	<u>  X  </u>	<u>        </u>
KENNETH M. LEIGHTON	<u>  X  </u>	<u>        </u>
KENNETH B. LEIGHTON, JR.	<u>  X  </u>	<u>        </u>

## XIV

VIOLATION OF SECTION 16600 OR 16700  
OF THE CALIFORNIA BUSINESS & PROFESSIONS  
CODE—CARTWRIGHT ACT

Do you find by a preponderance of the evidence that any of the following defendants violated section 16600 or section 16700 of the California Cartwright Act?

If your answer is "YES", mark "X" after the name of that defendant in column "A."

If your answer is "NO", mark "X" after the name of that defendant in column "B."

	(A) "YES"	(B) "NO"
<i>Defendant</i>		
SORBOTHANE, INC. (aka SORBO, INC.)	X	
HAMILTON-KENT MANUFACTURING COMPANY, INC.	X	
SPECTRUM SPORTS, INC.		X
KENNETH M. LEIGHTON	X	
KENNETH B. LEIGHTON, JR.		X



VIOLATION OF SECTION 1962, TITLE 18  
U.S. CODE—THE RACKETEERING ACT

Do you find by a preponderance of the evidence that any of the following defendants violated section 1962(a), title 18 U.S. Code—the Racketeering Act?

If your answer is "YES", mark "X" after the name of that defendant in column "A."

If your answer is "NO", mark "X" after the name of that defendant in column "B."

	(A) "YES"	(B) "NO"
<i>Defendant</i>		
SORBOTHANE, INC. (aka SORBO, INC.)	X	
HAMILTON-KENT MANUFACTURING COMPANY, INC.	X	
SPECTRUM SPORTS, INC.		X
KENNETH M. LEIGHTON	X	
KENNETH B. LEIGHTON, JR.		X

## XVI

VIOLATION OF SECTION 1962, TITLE 18  
U.S. CODE—THE RACKETEERING ACT

Do you find by a preponderance of the evidence that any of the following defendants violated section 1962(b), title 18 U.S. Code—the Racketeering Act?

If your answer is "YES", mark "X" after the name of that defendant in column "A."

If your answer is "NO", mark "X" after the name of that defendant in column "B."

	(A) "YES"	(B) "NO"
<i>Defendant</i>		
SORBOTHANE, INC. (aka SORBO, INC.)	X	_____
HAMILTON-KENT MANUFACTURING COMPANY, INC.	X	_____
SPECTRUM SPORTS, INC.	X	_____
KENNETH M. LEIGHTON	X	_____
KENNETH B. LEIGHTON, JR.	X	_____

## XVII

VIOLATION OF SECTION 1962, TITLE 18  
U.S. CODE—THE RACKETEERING ACT

Do you find by a preponderance of the evidence that any of the following defendants violated section 1962(c), title 18 U.S. Code—the Racketeering Act?

If your answer is "YES", mark "X" after the name of that defendant in column "A."

If your answer is "NO", mark "X" after the name of that defendant in column "B."

	(A) "YES"	(B) "NO"
<i>Defendant</i>		
SORBOTHANE, INC. (aka SORBO, INC.)	<u>  X  </u>	<u>      </u>
HAMILTON-KENT MANUFACTURING COMPANY, INC.	<u>  X  </u>	<u>      </u>
SPECTRUM SPORTS, INC.	<u>  X  </u>	<u>      </u>
KENNETH M. LEIGHTON	<u>  X  </u>	<u>      </u>
KENNETH B. LEIGHTON, JR.	<u>  X  </u>	<u>      </u>

## XVIII

VIOLATION OF SECTION 1962, TITLE 18  
U.S. CODE—THE RACKETEERING ACT

Do you find by a preponderance of the evidence that any of the following defendants violated section 1962(d), title 18 U.S. Code—the Racketeering Act?

If your answer is "YES", mark "X" after the name of that defendant in column "A."

If your answer is "NO", mark "X" after the name of that defendant in column "B."

	(A) <u>"YES"</u>	(B) <u>"NO"</u>
<i>Defendant</i>		
SORBOTHANE, INC. (aka SORBO, INC.)	<u>X</u>	<u>      </u>
HAMILTON-KENT MANUFACTURING COMPANY, INC.	<u>X</u>	<u>      </u>
SPECTRUM SPORTS, INC.	<u>X</u>	<u>      </u>
KENNETH M. LEIGHTON	<u>X</u>	<u>      </u>
KENNETH B. LEIGHTON, JR.	<u>X</u>	<u>      </u>

## XIX

## DAMAGES

If you find for SORBOTURF ENTERPRISES on any of its claims, you must determine, based on a preponderance of the evidence, the amount of money, if paid now in cash, that would fairly and reasonably compensate SORBOTURF ENTERPRISES for its damages, if any, proximately caused by the wrongful acts of any of the defendants. The following pages identify the name of each defendant and the claims for which plaintiffs contend that the defendant is liable. If you find that any of the defendants are liable on any of the claims, you may award damages to the plaintiffs against those defendants. Should you decide to award damages, please assess damages for *each* defendant and *each* claim separately and without regard to whether you have already awarded the same damages on another claim or against another defendant. The court will insure that there is no double recovery. The verdict will *not* be totaled.

## SORBOTHANE, INC. (aka SORBO, INC.)

<i>Count</i>	<i>Compensatory Damages</i>
I. Fraud	<u>\$1.743M</u>
II. Breach of Oral Contract	<u>\$1.743M</u>
III. Bad Faith Denial of the Existence of an Oral Contract	<u>\$1.743M</u>
IV. Violation of California Business & Professions Code Section 17200, Unfair Competition	<u>\$1.743</u>
V. Interference With Prospective Business Advantage	<u>\$1.743</u>
VI. Conversion	<u>\$1.743</u>
VII. Violation of Section 1 of the Sherman Act, Title 15, Resale Price Fixing	<u>\$1.743</u>
III. Violation of Section 1 of the Sherman Act, Title 15, Market Allocation	<u>\$1.743</u>
IX. Violation of Section 2 of the Sherman Act—Monopolizing, Attempting to Monopolize and/or Conspiring to Monopolize	<u>\$1.743</u>
X. Violation of Section 16600 or 16700 of the California Business & Professions Code—Cartwright Act	<u>\$1.743</u>
XI. Violation of Section 1962, Title 18 U.S. Code—The Racketeering Act	<u>\$1.743</u>

(ASSESS DAMAGES FOR EACH CLAIM  
SEPARATELY; VERDICT WILL NOT  
BE TOTALED)

HAMILTON-KENT MANUFACTURING  
COMPANY, INC.

<i>Count</i>	<i>Compensatory Damages</i>
I. Fraud	\$1.743M
II. Breach of Oral Contract	\$
III. Bad Faith Denial of the Existence of an Oral Contract	\$
IV. Violation of California Business & Professions Code Section 17200, Unfair Competition	\$
V. Interference With Prospective Business Advantage	\$
VI. Conversion	\$
VII. Violation of Section 1 of the Sherman Act, Title 15, Resale Price Fixing	\$
VIII. Violation of Section 1 of the Sherman Act, Title 15, Market Allocation	\$
IX. Violation of Section 2 of the Sherman Act—Monopolizing, Attempting to Monopolize and/or Conspiring to Monopolize	\$
X. Violation of Section 16600 or 16700 of the California Business & Professions Code—Cartwright Act	\$
XI. Violation of Section 1962, Title 18 U.S. Code—The Racketeering Act	\$1.743M

(ASSESS DAMAGES FOR EACH CLAIM SEPARATELY; VERDICT WILL NOT BE TOTALED)

BTR, INC.

<i>Count</i>	<i>Compensatory Damages</i>
I. Fraud	<u>\$1.743M</u>
II. Breach of Oral Contract	\$ ↑
II. Bad Faith Denial of the Existence of an Oral Contract	\$
V. Violation of California Business & Professions Code Section 17200, Unfair Competition	\$
V. Interference With Prospective Business Advantage	\$
I. Conversion	\$
I. Violation of Section 1 of the Sherman Act, Title 15, Resale Price Fixing	\$
I. Violation of Section 1 of the Sherman Act, Title 15, Market Allocation	\$
C. Violation of Section 2 of the Sherman Act—Monopolizing, Attempting to Monopolize and/or Conspiring to Monopolize	\$
C. Violation of Section 16600 or 16700 of the California Business & Professions Code—Cartwright Act	\$
I. Violation of Section 1962, Title 18 U.S. Code—The Racketeering Act	↓ <u>\$1.743M</u>

(ASSESS DAMAGES FOR EACH CLAIM  
SEPARATELY; VERDICT WILL NOT  
BE TOTALED)



## SPECTRUM SPORTS, INC.

<i>Count</i>	<i>Compensatory Damages</i>
I. Fraud	\$ -0-
II. Violation of California Business Professions Code Section 17200, Unfair Competition	\$1.743M
III. Interference With Prospective Business Advantage	\$1.743M
IV. Violation of Section 1 of the Sherman Act, Title 15, Resale Price Fixing	\$ -0-
V. Violation of Section 2 of the Sherman Act—Monopolizing, Attempting to Monopolize and/or Conspiring to Monopolize	\$1.743M
VI. Violation of Section 16600 or 16700 of the California Business & Professions Code—Cartwright Act	\$ -0-
VII. Violation of Section 1962, Title 18 U.S. Code—The Racketeering Act	\$1.743M

(ASSESS DAMAGES FOR EACH CLAIM  
SEPARATELY; VERDICT WILL NOT  
BE TOTALED)

## KENNETH M. LEIGHTON

<i>Count</i>	<i>Compensatory Damages</i>
I. Fraud	\$1.743M
II. Violation of California Business & Professions Code Section 17200, Unfair Competition	\$
III. Interference With Prospective Business Advantage	\$
IV. Conversion	\$
V. Violation of Section 1 of the Sherman Act, Title 15, Resale Price Fixing	\$
VI. Violation of Section 1 of the Sherman Act, Title 15, Market Allocation	\$
VII. Violation of Section 2 of the Sherman Act, Monopolizing, Attempting to Monopolize and/or Conspiring to Monopolize	\$
VIII. Violation of Section 16600 or 16700 of the California Business & Professions Code—Cartwright Act	\$
IX. Violation of Section 1962, Title 18 U.S. Code—The Racketeering Act	\$1.743M

(ASSESS DAMAGES FOR EACH CLAIM  
SEPARATELY; VERDICT WILL NOT  
BE TOTALED)

## KENNETH B. LEIGHTON, JR.

<i>Count</i>	<i>Compensatory Damages</i>
I. Fraud	\$ -0-
II. Violation of California Business & Professions Code Section 17200, Unfair Competition	\$1.743M
III. Interference With Prospective Business Advantage	\$1.743M
IV. Violation of Section 1 of the Sherman Act, Title 15, Resale Price Fixing	\$ -0-
V. Violation of Section 2 of the Sherman Act—Monopolizing, Attempting to Monopolize and/or Conspiring to Monopolize	\$1.743M
VI. Violation of Section 16600 or 16700 of the California Business & Professions Code—Cartwright Act	\$ -0-
VII. Violation of Section 1962, Title 18 U.S. Code—The Racketeering Act	\$1.743M

(ASSESS DAMAGES FOR EACH CLAIM  
SEPARATELY; VERDICT WILL NOT  
BE TOTALED)

DATED: 7/11/88  
San Diego, California

/s/ WARREN J. JOHNSON  
FOREPERSON OF THE JURY