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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

OUT OF THE BOX)
ENTERPRISES, LLC, A)
TEXAS LIMITED LIABILITY)
COMPANY,)

Plaintiff,)

v.)

EL PASEO JEWELRY)
EXCHANGE, INC., A NEVADA)
CORPORATION; EL PASEO)
JEWELRY, INC., A)
CALIFORNIA CORPORATION;)
RAJU MEHTA, AN)
INDIVIDUAL; IVAN)
KALENSKY, AN INDIVIDUAL,)

Defendants.)

Case No. EDCV 10-01858
VAP (DTBx)

FINAL JUDGMENT

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

This action came on regularly for trial on July 11, 2012, in Courtroom 2 of the above entitled Court, the Honorable Virginia A. Phillips, United States District Judge presiding. Plaintiff Out of the Box Enterprises, LLC appeared by its attorneys Lawrence B. Steinberg and Janet R. Nalbandyan of the law firm Buchalter Nember and

1 Defendants El Paseo Jewelry Exchange, Inc., El Paseo
2 Jewelry, Inc., Raju Mehta and Ivan Kalensky appeared by
3 their attorneys, Daryl M. Crone, Gerald E. Hawxhurst and
4 Joshua P. Gelbart of the law firm Crone Hawxhurst LLP.

5

6 A jury of eight persons was regularly impaneled and
7 sworn to try the action. Witnesses were sworn and
8 testified.

9

10 On July 24, 2012, after hearing the evidence, the
11 arguments of counsel and the instructions given to the
12 jury, the jury retired to consider its verdict, and on
13 July 25, 2012, returned its special verdict by way of
14 answers to the questions propounded to it, as follows:

15

16 **Question No. 1:** Did Defendants advertise falsely by
17 claiming that they would pay 92 percent of the spot
18 market price for gold jewelry, and by failing to do so?

19

20 **Answer:** YES

21

22 (If "YES," please proceed to Question No. 2; if "No,"
23 please sign and date this form and inform the bailiff
24 that you have completed your deliberations.)

25

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1 **Question No. 2:** Were Defendants' false advertisements
2 that they would pay 92 percent of the spot market price
3 for gold jewelry intentionally false?
4

5 **Answer:** YES
6

7 (Please proceed to Question No. 3.)
8

9 **Question No. 3:** Did Defendants prove that their false
10 advertisement that they would pay 92 percent of the spot
11 market price of gold jewelry did not actually deceive or
12 have a tendency to deceive any customers?
13

14 **Answer:** NO
15

16 (If "Yes," please sign and date this form and inform
17 the bailiff that you have completed your deliberations;
18 if "No," please proceed to Question No. 4.)
19

20 **Question No. 4:** Was Defendants' false advertisement
21 that they would pay 92 percent of the spot market price
22 for gold jewelry "material," in that it was likely to
23 influence the sales decisions of customers who sold their
24 gold jewelry to Defendants?
25

26 **Answer:** YES
27
28

1 (If "Yes," please continue to Question No. 5; if
2 "No," please sign and date this form and inform the
3 bailiff that you have completed your deliberations.)
4

5 **Question No. 5:** Did Defendants' false advertisement
6 that they would pay 92 percent of the spot market price
7 for gold jewelry cause Plaintiff injury in the form of
8 lost sales to Defendants or loss of good will?
9

10 **Answer:** YES
11

12 Phase II commenced with a jury trial on July 25,
13 2012. On July 26, 2012, after hearing the evidence, the
14 arguments of counsel and the instructions given to the
15 jury, the jury retired to consider its verdict, and
16 returned its special verdict by way of answers to the
17 questions propounded to it, as follows:
18

19 **Question No. 1:** What amount of profits did Plaintiff
20 lose as a result of the false advertising?
21

22 **Answer:** \$1,500,000.00
23

24 (Please proceed to Question No. 2.)
25

26 **Question No. 2:** What amount of profits did Defendants
27 warn as a result of the false advertising?
28

1 **Answer:** \$880,355.00

2

3 On October 3, 2012, the Court filed its Order: (1)
4 denying enhancement of the \$1,500,000 lost profits award;
5 (2) finding equitable the jury's advisory award of
6 \$880,355 in profits El Paseo earned; (3) finding
7 defendants Raju Mehta and Ivan Kalensky jointly and
8 severally liable with the other defendants for the entire
9 judgment; (4) denying injunctive relief for Out of the
10 Box; (5) denying restitution for Out of the Box; (6)
11 finding El Paseo was not entitled to prevail on its
12 unclean hands defense; and (7) denying attorney's fees
13 for Out of the Box.

14

15 On February 8, 2012, the parties stipulated to
16 dismissal of El Paseo's counterclaims against Out of the
17 Box.

18

19 On May 11, 2012, the Court granted summary judgment
20 in favor of Defendants on Out of the Box's claim for
21 intentional interference with prospective economic
22 advantage.

23

24 By reason of the verdict and Orders described above,

25

26 **NOW, THEREFORE, IT IS ADJUDGED, ORDERED AND DECREED THAT:**

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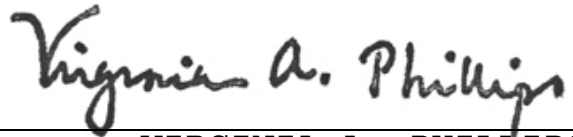
- 1 1. El Paseo's Counterclaims are dismissed with
2 prejudice;
- 3 2. Judgment is hereby entered in favor of El Paseo on
4 Out of the Box's claim for intentional interference
5 with prospective economic advantage;
- 6 3. Judgment is hereby entered, in favor of Out of the
7 Box against Defendants on Out of the Box's claim for
8 violation of the Lanham Act, 15 U.S.C. § 1125(a);
- 9 4. Judgment is hereby entered, in favor of Out of the
10 Box against Defendants on Out of the Box's claim for
11 violation of California Business and Professions Code
12 § 17200, et seq.;
- 13 5. Judgment is hereby entered, in favor of Defendants on
14 Out of the Box's claim for violation of California
15 Business & Professions Code § 17500, et seq.;
- 16 6. Out of the Box shall be entitled to recover from
17 Defendants the amount of \$1,500,000 for Out of the
18 Box's lost profits as a result of Defendants' false
19 advertising. Enhancement of this award is denied.
- 20 7. Out of the Box shall be entitled to recover from
21 Defendants the amount of \$880,355 in disgorgement of
22 El Paseo's profits earned as a result of the
23 Defendants' false advertising.
- 24 8. Defendants El Paseo Jewelry Exchange, Inc., El Paseo
25 Jewelry, Inc., Raju Mehta, and Ivan Kalensky are
26 jointly and severally liable for the entire judgment.

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- 1 9. Out of the Box's request for injunctive relief
2 against El Paseo is denied.
- 3 10. Out of the Box's request for restitution for amounts
4 El Paseo underpaid to Out of the Box's investigators
5 for gold sales is denied.
- 6 11. El Paseo's affirmative defense of unclean hands to
7 Out of the Box's Lanham Act claim is denied.
- 8 12. This is not an exceptional case within the meaning of
9 15 U.S.C. § 1117(a)(3) warranting an award of
10 attorney's fees.
- 11 13. This Court shall retain jurisdiction over this matter
12 to remedy any violation of the terms set forth
13 herein.

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15 The Court orders that such judgment be entered.

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18 Dated: October 30, 2012



VIRGINIA A. PHILLIPS
United States District Judge

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