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TRAFFICSCHOOL.COM, INC. and
8 DRIVERS ED DIRECT, LLC, California companies.

9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 TRAFFICSCHOOL.COM, INC.,
a California corporation; DRIVERS ED
13 DIRECT, LLC, a California limited
liability company,

14 Plaintiffs,

15 vs.

16 ED RIVER, INC., ONLINE GURU, INC.,
17 FIND MY SPECIALIST, INC., and
SERIOUSNET, INC., California
18 corporations; RAVI K. LAHOTI, an
individual; RAJ LAHOTI, an individual;
19 and DOES 1 through 10,

20 Defendants.

) Case No. CV 06-7561 PA (CWx)
) The Honorable Percy Anderson

) **PLAINTIFFS' REQUEST TO STRIKE**
DEFENDANTS' NEWLY SUBMITTED
EXPERT DECLARATION AND
RELATED ARGUMENTS

1 **I. Introduction and Summary of Request**

2 As anticipated, Defendants have improperly submitted new evidence in the form
3 of an expert declaration and argued for a different type of injunction altogether in their
4 Objections filed on June 18, 2008. Defendants blatantly disregarded the Court’s
5 Findings of Fact and Conclusions of Law and Order Finding Defendants Liable for
6 False Advertising (“Findings and Order”) and have also ignored the Court’s invitation
7 for objections based on the *form* of the proposed injunction. Instead, Defendants
8 improperly used the Court’s invitation for objections to file what amounts to a motion
9 for reconsideration or a motion for a new trial. The trial is over but Defendants have
10 sought by their filing to submit new evidence from an expert who was never designated
11 (or cross-examined) on an issue which was considered during the trial. The procedural
12 improprieties are multi-fold and, as a result, Plaintiffs object to the submission and
13 request that the Court strike the new expert declaration and the argument which seeks
14 to persuade the court to “reconsider” its findings on liability or regarding the proper
15 injunctive remedy.

16 **II. The Court Has *Already Ordered* a Splash Screen as the Remedy**

17 The Court has ruled and the parties were supposed to comment only on the
18 Court’s proposed injunction as to the “form of the Court’s proposed permanent
19 injunction.” [Findings and Order, pg. 33:17-18.] The Court did not request an
20 evidentiary hearing, set a further briefing schedule, or otherwise suggest that these
21 objections were meant to be a re-opening of trial. The Court did not invite the parties
22 to persuade the Court to reconsider its findings by submitting new expert testimony.^{1/}

23 Specifically related to injunctive relief, the Court has already *found and ordered*
24 as follows:

25 “Accordingly, *the Court will require* Defendants to employ an
26 acknowledgment page communicating to all visitors to all entry

27 _____
28 ^{1/} Perhaps Defendants felt that they had nothing to lose in disregarding the
Court’s Order and therefore submitted their improper “objections” and new declaration.

1 pages of DMV.ORG that the website is privately owned, and is not
2 the website of any government agency. This acknowledgment page
3 shall include an affirmative click-through that a consumer must
4 choose in order to continue to the DMV.ORG site. The
5 acknowledgment page must also provide links to the websites of the
6 official state agencies that regulate motor vehicles. Such “intercept”
7 devices have been ordered by other courts in the context of
8 telephone connections. [citations omitted.] *The court will issue a*
9 *permanent injunction consistent with this Order.”*

10 [Findings and Order, pg. 29:20 to pg. 30:13 (Emphasis added).]

11 **III. Prejudice to Plaintiffs**

12 Defendants ignored the Court’s Order, and accordingly, Plaintiffs find
13 Defendants’ June 18, 2008 filing objectionable in at least the following respects:

14 1. Defendants’ filing is improper as it is really a motion for reconsideration
15 or a motion for a new trial. Defendants admit as much in their Objections, stating that
16 they request “this Court to reconsider the splash page concept altogether.” [Defendants’
17 Objections, Pg. 4:23-24.] However, Defendants have failed to follow the Local Rule
18 procedures^{2/} for such motions and thus their submission is highly prejudicial to
19 Plaintiffs because Plaintiffs do not have any opportunity to respond to the disguised
20 motion for reconsideration/new trial and the arguments presented therein.

21 2. Defendants’ submission of an expert witness’ declaration after the close
22 of trial – especially when that expert was never designated during trial or in any of
23 Defendants’ required Rule 26 disclosures – is highly improper for obvious reasons:
24 Plaintiffs never had an opportunity to rebut or cross-examine the numerous positions
25 that Mr. Bruce Tognazzini makes in his declaration which are used to support
26 Defendants’ entire argument for why a splash screen should not be utilized.

27 _____
28 ^{2/} For example, L.R. 59-1.3's New Trial Procedures requires an articulation
for why new evidence could not have been produced at trial.

1 3. Finally, Defendants’ position appears to be that the Court should not issue
2 its proposed injunction because a splash screen would hurt Defendants’ business. This
3 is an irrelevant point when the only issue is whether the injunction would serve to
4 prevent the ongoing confusion that Defendants were found liable for intentionally
5 creating in the first place.

6 **IV. Conclusion**

7 For all the foregoing reasons, Plaintiffs respectfully request that the Court strike
8 Defendants’ newly submitted expert declaration and related arguments in the
9 Defendants’ Objections.

10
11 DATED: June 19, 2008

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12 By _____/s/_____

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