

1 Mark B. Mizrahi Esq. (State Bar #179384)  
 mmizrahi@wrslawyers.com  
 2 Lance M. Pritikin, Esq. (State Bar #250754)  
 lpritikin@wrslawyers.com  
 3 Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP  
 11400 W. Olympic Blvd., 9th Floor  
 4 Los Angeles, California 90064  
 PH: 310-478-4100 Ext. 270  
 5 FAX: 310-478-6363

6 Attorneys for Plaintiff,  
 7 International Oddities, Inc.

8 UNITED STATES DISTRICT COURT  
 9 CENTRAL DISTRICT OF CALIFORNIA

10 International Oddities, Inc., a California  
 corporation,

Case No.: CV 12-2259-CAS (RZx)

11 Plaintiff,

12 vs.

**PERMANENT INJUNCTION WITH  
 RESPECT TO DEFENDANT RICK  
 CHERVENAK, AN INDIVIDUAL**

13 Domestic Oddities Wholesale  
 14 Distribution LLC, a Nevada limited  
 liability company, Eric C. Fontenelle, an  
 15 individual, Rick Chervenak, an  
 individual, Brett M. McSpadden, an  
 16 individual, and Derek L. Durbin, an  
 individual,

17 Defendants.  
 18

19  
 20 WHEREAS, plaintiff International Oddities, Inc. (“IO” or “Plaintiff”) has filed  
 21 its complaint in the above-entitled action against Defendant Rick Chervenak, an  
 22 individual (“Chervenak”), among the various other above-named defendants  
 23 (collectively “Defendants”) for trademark infringement, unfair competition, false  
 24 designation of origin, dilution, and cyberpiracy, among other related causes,  
 25 concerning IO’s federally registered trademarks INTERNATIONAL ODDITIES®  
 26 and BLACK WIDOW®;

27 WHEREAS, Defendant Domestic Oddities Wholesale Distribution LLC, a  
 28 Nevada limited liability company ("Domestic Oddities") is in the business of

1 marketing and selling various products over the Internet and through distributors and  
2 retail outlets, including, without limitation, "herbal incense," sometimes referred to  
3 generically as "potpourri," in part, through websites owned, operated, or hosted by one  
4 or more of the Defendants and/or their affiliates;

5 WHEREAS, in exchange for IO's dismissal of the complaint in this Action,  
6 without prejudice, as to Chervenak, only, Chervenak and IO have stipulated to entry  
7 of a permanent injunction as to Chervenak, on the following terms and conditions;

8  
9 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND  
10 DECREED THAT:

- 11 1. This Court has jurisdiction of the subject matter and over Mr. Chervenak.
- 12 2. Mr. Chervenak waives the right to appeal from entry of this Permanent  
13 Injunction With Respect to Defendant Rick Chervenak, an Individual ("Permanent  
14 Injunction").
- 15 3. Plaintiff is a corporation organized under the laws of the State of  
16 California, having an address at 927 Deep Valley Drive, No. 163, Rolling Hills, CA  
17 90274.
- 18 4. Defendant Rick Chervenak is an individual residing in Lehigh Acres,  
19 Florida.
- 20 5. IO's United States Trademark Registration No. 3,001,848 for the mark  
21 INTERNATIONAL ODDITIES in International Class 034 for "non-tobacco smoking  
22 products, namely, herbal tobacco substitute, not for medical use," ("Plaintiff's  
23 INTERNATIONAL ODDITIES Registration") is valid and subsisting and is owned  
24 by IO. This registration has since been granted incontestable status by the USPTO.
- 25 6. For approximately 17 years, Plaintiff has continuously used its  
26 INTERNATIONAL ODDITIES trade name and trademark alone and in combination  
27 with other words and symbols for its herbal smoking and dietary supplement products.  
28 International Oddities' goods have been sold and marketed throughout the United

1 States under the INTERNATIONAL ODDITIES mark. By virtue of such use,  
2 Plaintiff has also acquired common law rights in the trademark and trade name  
3 INTERNATIONAL ODDITIES. Plaintiff's INTERNATIONAL ODDITIES  
4 Registration and its common law rights in the INTERNATIONAL ODDITIES mark  
5 are collectively referred to herein as "Plaintiff's INTERNATIONAL ODDITIES  
6 mark."

7 7. IO's United States Trademark Registration No. 3,168,188 for the mark  
8 BLACK WIDOW in International Class 034, relating to "non-tobacco smoking  
9 products, namely, herbal tobacco substitute, not for medical use," ("Plaintiff's BLACK  
10 WIDOW Registration") is valid and subsisting and is owned by IO. This registration  
11 has since been granted incontestable status by the USPTO. Plaintiff has also acquired  
12 common law rights in the mark/name BLACK WIDOW by virtue of its extensive use  
13 and advertising of goods under this mark/name. Plaintiff's BLACK WIDOW  
14 Registration and its common law rights in the BLACK WIDOW mark/name are  
15 collectively referred to herein as "Plaintiff's BLACK WIDOW mark."

16 8. Plaintiff's BLACK WIDOW mark and Plaintiff's INTERNATIONAL  
17 ODDITIES mark are collectively referred to herein as the "IO TRADEMARKS."

18 9. As a result of Plaintiff's extensive use and advertising, the IO  
19 TRADEMARKS have become well known to the industry and the purchasing public  
20 to designate herbal smoking-related products, among other products, originating from  
21 IO.

22 10. IO has superior rights to exclusive use of the IO TRADEMARKS vis-à-  
23 vis Chervenak.

24 11. Chervenak shall not in the future file or maintain an application for  
25 registration or a registration of any mark comprising or including the IO  
26 TRADEMARKS or any reproductions, copies, counterfeits or colorable imitations  
27 thereof or any terms confusingly similar thereto, including without limitation the  
28 marks "DOMESTIC ODDITIES," "BLACK WIDOW," and/or "WHITE WIDOW,"

1 with the United States Patent and Trademark Office or any other governmental or  
2 state authority.

3 12. Chervenak and each of his employees, agents, servants, successors and  
4 assigns and any entity he has an ownership interest in (unless it is a publicly traded  
5 company in which it/he owns or controls less than 5% of issued and outstanding  
6 voting stock, including any stock that could be converted into voting stock), controls  
7 directly or indirectly or for which he is an officer, director, or provides advice or  
8 direction, and all those in active concert and participation, or affiliated with one or  
9 more of them or under authority of Mr. Chervenak who receive actual notice of this  
10 Permanent Injunction by personal service or otherwise, are hereby enjoined and  
11 restrained from:

12 (a) making, contributing to the making, or inducing others to  
13 make any use of a name, tradename, mark, URL, domain name, or  
14 computer code which comprises or includes one or more of the IO  
15 TRADEMARKS or any reproduction, copy, counterfeit or colorable  
16 imitation thereof or any term(s) confusingly similar thereto, including  
17 without limitation the marks "DOMESTIC ODDITIES," "BLACK  
18 WIDOW," and/or "WHITE WIDOW," especially any such use on or in  
19 connection with herbal incense, "potpourri," herbal tobacco substitutes or  
20 any smoking-related products and accessories (including, without  
21 limitation, lighters, pipes, matchbooks, or any similar goods), sold,  
22 offered for sale, distributed, or imported into the United States or  
23 otherwise advertised, marketed or promoted;

24 (b) offering for sale, selling, distributing, marketing, importing,  
25 advertising, promoting or giving away, or causing to be offered for sale,  
26 sold, distributed, marketed, imported, or given away any goods bearing  
27 one or more of the IO TRADEMARKS or any reproduction, copy,  
28 counterfeit or colorable imitation thereof or any term(s) confusingly

1 similar thereto, including without limitation the marks "DOMESTIC  
2 ODDITIES," "BLACK WIDOW," and/or "WHITE WIDOW";

3 (c) shipping, delivering, distributing, returning, or otherwise  
4 disposing of in any manner other than destruction of packaging, or from  
5 causing to be shipped, delivered, distributed, returned, or disposed of  
6 (other than destroying packaging), products bearing one or more of the  
7 IO TRADEMARKS or any reproduction, copy, counterfeit or colorable  
8 imitation thereof or any term(s) confusingly similar thereto, including  
9 without limitation the marks "DOMESTIC ODDITIES," "BLACK  
10 WIDOW," and/or "WHITE WIDOW";

11 (d) displaying, advertising, or soliciting purchases, or causing to  
12 be displayed, advertised, or solicited, any product under one or more of  
13 the IO TRADEMARKS or any reproduction, copy, counterfeit or  
14 colorable imitation thereof or any term(s) confusingly similar thereto,  
15 including without limitation the marks "DOMESTIC ODDITIES,"  
16 "BLACK WIDOW," and/or "WHITE WIDOW," over the Internet or  
17 otherwise;

18 (e) registering, maintaining, promoting, using, trafficking in, or  
19 engaging in any activities (directly or indirectly) with any domain name,  
20 web page name or URL which includes one or more of Plaintiff's  
21 trademarks (listed in **Exhibit 1** hereto) or any reproductions, counterfeits,  
22 copies or colorable imitations thereof or any terms confusingly similar  
23 thereto, including without limitation the <domesticoddities.com>,  
24 <domesticoddities.net> and <domesticoddities.org> domain names;

25 (f) maintaining, operating, or using (whether directly or  
26 indirectly) or inducing others (including, without limitation Affiliates) to  
27 maintain, operate, or use any web-page, home page, web site, website  
28 content (including, without limitation, that which appears on "hidden

1 pages"), any code whatsoever (including but not limited to metatags,  
2 HTML, XHTML, any computer code, domain names, URLs, sub pages,  
3 extensions, links, or any division or portion thereof, signs, banner ads, or  
4 any other visual media used in connection with any goods/business) that  
5 contains one or more of the IO TRADEMARKS or any reproduction,  
6 copy, counterfeit or colorable imitation thereof or any term(s)  
7 confusingly similar thereto, including without limitation the marks  
8 "DOMESTIC ODDITIES," "BLACK WIDOW," and/or "WHITE  
9 WIDOW" (as used in this document, the capitalized term "Affiliates"  
10 means third-party owned websites/domain names that link to one or more  
11 websites owned, hosted, and/or operated by one of more of the  
12 Defendants);

13 (g) obtaining, registering, transferring, assigning, licensing,  
14 authorizing use, or otherwise displaying (directly or indirectly) of any  
15 domain name or URL which includes one or more of Plaintiff's  
16 trademarks (listed in **Exhibit 1** hereto) or any reproduction, copy,  
17 counterfeit or colorable imitation thereof or any term confusingly similar  
18 thereto, including without limitation the <domesticoddities.com>,  
19 <domesticoddities.net> and <domesticoddities.org> domain names, or  
20 undertaking any such activities to promote or utilize such domain names;

21 (h) identifying itself (directly or through his Affiliates) or any of  
22 his products over the telephone or by any other media (including the  
23 Internet) or printed matter as "International Oddities" or any confusingly  
24 similar term, or any reproduction, counterfeit, copy or colorable imitation  
25 of the "International Oddities" designation, including without limitation  
26 the mark/trade-name "DOMESTIC ODDITIES";

27 (i) infringing, inducing others to infringe, or contributing to the  
28 infringement of any of Plaintiff's trademarks (listed in **Exhibit 1** hereto)

1 or otherwise engaging in unfair competition with IO in any manner or  
2 engaging in any conduct tending to falsely represent or likely to confuse,  
3 mislead or deceive suppliers, purchasers, or any member of the public  
4 into thinking that one or more of the Defendants or their Affiliates or  
5 their products originate from or are affiliated with IO or that IO has  
6 otherwise sponsored, approved, or licensed any products or services of  
7 any of the Defendants or their Affiliates;

8 (j) passing off, inducing or enabling others (including, without  
9 limitation, Defendants' Affiliates) to sell or pass off any product not  
10 Plaintiff's or not produced under the control and supervision of Plaintiff  
11 as approved by Plaintiff for sale under one or more of Plaintiff's  
12 trademarks (listed in **Exhibit 1** hereto); and

13 (k) committing or contributing to any acts calculated to cause  
14 purchasers to believe that any products not Plaintiff's are those sold under  
15 the control and supervision of Plaintiff, or are sponsored or approved or  
16 connected with, guaranteed or produced under the control and  
17 supervision of Plaintiff, or otherwise infringing, inducing others to  
18 infringe, or contributing to the infringement of any of Plaintiff's trade  
19 names or Plaintiff's trademarks (listed in **Exhibit 1** hereto).

20 13. IT IS FURTHER ORDERED that, upon entry of this Permanent  
21 Injunction, Chervenak shall eliminate (and not thereafter resume use of) all references  
22 to or mentions of the IO TRADEMARKS or any reproduction, copy, counterfeit or  
23 colorable imitation thereof or any term(s) confusingly similar thereto, including  
24 without limitation the marks "DOMESTIC ODDITIES," "BLACK WIDOW," and/or  
25 "WHITE WIDOW," from all labels, products, packaging, website content (including,  
26 without limitation, that which appears on "hidden pages"), any code whatsoever  
27 including but not limited to metatags, HTML, XHTML, any computer code, domain  
28 names, URLs, sub pages, extensions, links, or any division or portion thereof, signs,

1 banners and all other visual media under his control and shall terminate all  
2 advertising, under his control, bearing one or more of the IO TRADEMARKS or any  
3 reproduction, copy, counterfeit or colorable imitation thereof or any term(s)  
4 confusingly similar thereto, including without limitation the marks "DOMESTIC  
5 ODDITIES," "BLACK WIDOW," and "WHITE WIDOW," from all third party media  
6 (including, without limitation, that of Defendants' Affiliates), including print  
7 advertising and the Internet.

8 14. IT IS FURTHER ORDERED that, upon entry of this Consent Judgment  
9 and Permanent Injunction, Chervenak shall eliminate any content, including links,  
10 from any and all websites which he owns, controls, or operates that causes or tends to  
11 cause an Internet search engine to list or report a website – not selling goods that  
12 originate from or are otherwise authorized by Plaintiff, including, without limitation,  
13 Defendants' "DOMESTIC ODDITIES," "BLACK WIDOW," or "WHITE WIDOW,"  
14 products – based on a search query that includes one of Plaintiff's trademarks (listed  
15 in **Exhibit 1** hereto) or any reproduction, copy, counterfeit or colorable imitation  
16 thereof or any term confusingly similar thereto.

17 15. In the event that Plaintiff believes that Chervenak has not complied with  
18 one or more of the terms set forth in this Permanent Injunction, then, in lieu of Central  
19 District Local Rule 7-3 procedures, Plaintiff shall notify Chervenak in writing  
20 specifying the nature of such noncompliance. Within seven (7) calendar days from  
21 receipt of such notice from Plaintiff, Chervenak shall notify Plaintiff by written  
22 affidavit whether or not the activity complained of was/is connected with any product  
23 or activity originating from Chervenak or his agents. In the event that, despite said  
24 written affidavit, Plaintiff continues to believe that Chervenak has not complied, or if  
25 the parties have not otherwise resolved the issue of noncompliance within that time to  
26 Plaintiff's satisfaction, then Plaintiff shall be entitled to initiate appropriate legal  
27 action. If Plaintiff notifies Chervenak of more than one instance of noncompliance  
28 that proves to be connected with goods/activities originating from Chervenak or his



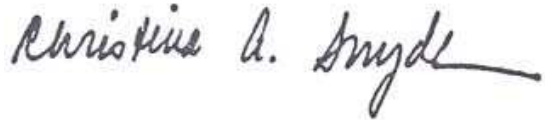
1 agents within a one-year period, then Plaintiff shall be relieved of its duty to provide  
2 notice to Defendants under this paragraph or otherwise comply with the requirements  
3 of Local Rule 7-3 with regard to future violations.

4 16. This Court shall retain jurisdiction to construe, enforce, and implement  
5 this Permanent Injunction.

6 17. Plaintiff may issue subpoenas, pursuant to Fed. R. Civ. P. Rules 26  
7 through 45, as appropriate to enable it to police and enforce compliance with this  
8 Permanent Injunction.

9 18. The prevailing party in any proceeding to enforce the terms of this  
10 Consent Judgment and Permanent Injunction shall be entitled to recover the attorneys'  
11 fees and costs incurred therewith.

12  
13  
14  
15 Dated: May 3, 2012  
16 \_\_\_\_\_



\_\_\_\_\_  
The Honorable Christina A. Snyder,  
United States District Judge

1 **STIPULATION**

2 IT IS HEREBY STIPULATED by and between the parties to the within action  
3 that the foregoing Permanent Injunction With Respect to Defendant Rick Chervenak,  
4 an Individual may be presented to the Court for approval and, when approved and  
5 signed by the Court, may be entered herein, all without further notice, and each party  
6 waives all right to seek review and appeal or otherwise therefrom.

7  
8 Respectfully submitted,

9  
10 Dated: April \_\_, 2012

Wolf, Rifkin, Shapiro, Schulman &  
Rabkin, LLP

11  
12  
13  
14 By: /s/ \_\_\_\_\_

15 Mark B. Mizrahi (CA Bar No. 179384)

16 *Attorneys for Plaintiff,*  
*International Oddities, Inc.*

17  
18  
19 Dated: April \_\_, 2012

Rick Chervenak, an Individual

20  
21  
22 By: /s/ \_\_\_\_\_

23 Rick Chervenak, an Individual

24 *Defendant Appearing Pro se*  
25  
26  
27  
28