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 6 WALKER & ZANGER, INC.

7
 8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

11 WALKER & ZANGER, INC., a corporation,
 12 Plaintiffs,

13 vs.

14 LA CASTELLON TILE & STONE, INC., a
 corporation (dba LA CASTELLON
 15 TILE/HARDWOOD/BATH,
 CHEAPERFLOORS.COM, YFLOOR.COM,
 16 LA CASTELLON.COM); LA CASTELLON,
 INC., a corporation (dba LA CASTELLON
 17 TILE/HARDWOOD/BATH,
 CHEAPERFLOORS.COM, YFLOOR.COM,
 18 LA CASTELLON.COM) and DOES 1-100,
 19 Defendants.

) Case No. C-13 774 MEJ
) Assigned to Magistrate Judge Maria-Elena
) James, San Francisco Courthouse,
) Courtroom B

) ~~PROPOSED~~ CONSENT JUDGMENT
) AND PERMANENT INJUNCTION AS TO
) DEFENDANT MOHAMED (AKA MAX)
) GURDAL ERTEM (DESIGNATED AS
) DOE 1)

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 22
 23 This Consent Judgment and Permanent Injunction is made pursuant to the terms of the
 24 parties' settlement of this action and the concurrently filed Stipulation for [Proposed] Consent
 25 Judgment and Permanent Injunction as to Defendant Mohamed (aka Max) Gurdal Ertem
 26 (Designated as Doe 1) with reference to the following facts:

27 A. Plaintiff WALKER & ZANGER, INC. (hereinafter, "Plaintiff" or "Walker
 28 Zanger") in this action has alleged I(*inter alia*) trademark infringement, trademark dilution, false

1 designation of origin, and false advertising and unfair competition in violation of the Lanham Act,
2 and unfair competition under California State law against LA CASTELLON TILE & STONE,
3 INC., LA CASTELLON, INC. and DOES 1-100 (collectively, "Defendants"), arising out of
4 postings on CheaperFloors.com, on Walker Zanger's Facebook page, and on online directories
5 (DesignBiz.com, FloorBiz.com, and Tile-Stone-Stores.com) and has sought monetary damages
6 and injunctive relief against Defendants' continued alleged false advertising, unfair business
7 practices, and infringing use of Walker Zanger's trademarks and copyrighted material. Walker
8 Zanger in this action has also sought (*inter alia*) reimbursement of its attorney fees and costs.

9 B. MOHAMED (AKA MAX) GURDAL ERTEM ("Ertem"), an individual, who
10 presently does business in Nevada at 2780 South Jones Boulevard, Suite 3728, Las Vegas, Nevada
11 89146, has represented that he owns and operates hundreds of domain names and websites,
12 including (without limitation) CheaperFloors.com and YFloor.com. The above-mentioned
13 postings (on CheaperFloors.com, no Walker Zanger's Facebook page, and on online directories
14 (DesignBiz.com, FloorBiz.com, and Tile-Stone-Stores.com)) were done by Ertem and/or his
15 agents or employees (including, without limitation, persons who presently use or have previously
16 used the names Brice Lee and Wee Le). Persons who presently use or have previously used the
17 names Brice Lee and Wee Le are presently agents and employees of Ertem and are presently
18 subject to Ertem's direction and control.

19 C. Walker Zanger has filed a DOE AMENDMENT TO COMPLAINT
20 (DESIGNATING MOHAMED (AKA MAX) GURDAL ERTEM AS DOE 1) which designates
21 Ertem as Defendant DOE 1 in the Lawsuit. Ertem has accepted service of the Summons and
22 Complaint and the DOE AMENDMENT TO COMPLAINT (DESIGNATING MOHAMED (aka
23 MAX) GURDAL ERTEM AS DOE 1). Ertem (by signing the accompanying stipulation or
24 otherwise) has made a general appearance in this case. Ertem has irrevocably consented to the
25 jurisdiction of this Court.

26 D. Ertem has represented that he is no longer affiliated with LA CASTELLON TILE
27 & STONE, INC. or LA CASTELLON, INC. and, in reliance upon Ertem's representations,
28 Walker Zanger has filed a notice of dismissal of LA CASTELLON TILE & STONE, INC. and LA

1 CASTELLON, INC. from this action.

2 E. Walker Zanger has acquired and uses trademarks, including (without limitation) the
3 following:

- 4 • “WALKER & ZANGER,” U.S. Registration Nos. 2,682,961 and 3,188,720;
- 5 • “WALKER & ZANGER,” U.S. Registration No. 2,222,404;
- 6 • “COTE D’OR,” U.S. Registration No. 2,723,661;
- 7 • “IMPERIUM,” U.S. Registration No. 2,842,228;
- 8 • “OPUS ANTICATO,” U.S. Registration No. 2,680,352;
- 9 • “PARADIGM,” U.S. Registration No. 3,166,241;
- 10 • “PAVIA ANTICO,” U.S. Registration No. 3,440,638;
- 11 • “SHABUT,” U.S. Registration No. 2,668,559;
- 12 • “TRIBECA,” U.S. Registration No. 2,831,239; and
- 13 • “WATERFALL,” U.S. Registration No. 3,725,145.

14 F. Walker Zanger sells and distributes its products (*inter alia*) through its own
15 showrooms and catalogues, as well as through its authorized dealers. Neither Ertem nor any of his
16 websites or entities (including, without limitation, CheaperFloors.com and YFloor.com) have ever
17 been authorized Walker Zanger dealers.

18 G. Walker Zanger’s allegations arise out of and relate to (*inter alia*) Ertem’s alleged
19 postings on CheaperFloors.com, on Walker Zanger’s Facebook page, and on online directories
20 (DesignBiz.com, FloorBiz.com, and Tile-Stone-Stores.com).

21 H. Ertem denies any wrongdoing but in order to resolve this dispute agree to the terms
22 herein; and

23 I. Plaintiff Walker Zanger and Defendant Ertem have agreed to have the following
24 Consent Judgment and Permanent Injunction, subject to this Court’s approval.

25

26 WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS
27 FOLLOWS:

28 1. This Court has subject matter jurisdiction over the federal claims pursuant to 15

1 U.S.C. § 1121, 28 U.S.C. §§ 1331, 1338(a) and 1338(b) and has supplemental jurisdiction over the
2 related state law claims pursuant to 28 U.S.C. § 1367.

3
4 A Permanent Injunction shall be entered as follows:

5 2. Defendant MOHAMED (AKA MAX) GURDAL ERTEM, an individual
6 (“Ertem”), and all past and present and future agents, employees, attorneys, representatives,
7 assigns, trustees, successors, heirs, devisees, administrators, executors, and all other persons and
8 entities acting in concert or participation with Ertem, and all other persons and entities acting on
9 Ertem’s behalf or under his direction or control (including, without limitation, Brice Lee, Wee Le,
10 CheaperFloors.com, YFloor.com, and all other websites owned or operated by Ertem at the
11 present time or in the future) shall now knowingly use in commerce any of the trademarks
12 “WALKER & ZANGER,” U.S. Registration Nos. 2,682,961 and 3,188,720, “WALKER &
13 ZANGER ,” U.S. Registration No. 2,222,404, “COTE D’OR,” U.S. Registration No.
14 2,723,661, “IMPERIUM,” U.S. Registration No. 2,842,228, “OPUS ANTICATO,” U.S.
15 Registration No. 2,680,352, “PARADIGM,” U.S. Registration No. 3,166,241, “PAVIA
16 ANTICO,” U.S. Registration No. 3,440,638, “SHABUT,” U.S. Registration No. 2,668,559,
17 “TRIBECA,” U.S. Registration No. 2,831,239, “WATERFALL,” U.S. Registration No.
18 3,725,145, or any confusingly similar name or trademark, or any other trademark registered to or
19 used by Walker Zanger (or any confusingly similar name or trademark), in any marketing,
20 promotion, advertisement, distribution, sales, or which in connection with which such use is
21 otherwise likely to cause confusion or to cause mistake or to deceive (including, without
22 limitation, any usage on Facebook or CheaperFloors.com or YFloor.com or on any other website
23 (whether owned and operated by Ertem or by a third party) or any usage as meta tags, search
24 terms, domain names, or keywords anywhere on the Internet).

25 3. Defendant MOHAMED (AKA MAX) GURDAL ERTEM, an individual
26 (“Ertem”), and all past, present and future agents, employees, attorneys, representatives, assigns,
27 trustees, successors, heirs, devisees, administrators, executors, and all other persons and entities
28 acting in concert or participation with Ertem, and all other persons and entities acting on Ertem’s

1 behalf or under his direction or control (including, without limitation, Brice Lee, Wee Le,
2 CheaperFloors.com, YFloor.com, and all other websites owned or operated by Ertem at the
3 present time or in the future) shall not make any false designation of origin, false or misleading
4 description of fact, or false or misleading representation of fact relating to Walker Zanger or any
5 of its products. For example, without in any way limiting the above-stated terms, Defendant
6 MOHAMED (AKA MAX) GURDAL ERTEM and all past, present and future agents, employees,
7 attorneys, representatives, assigns, trustees, successors, heirs, devisees, administrators, executors,
8 and all other persons and entities acting in concert or participation with Ertem, and all other
9 persons and entities acting on Ertem's behalf or under his direction or control (including, without
10 limitation, Brice Lee, Wee Le, CheaperFloors.com, YFloor.com, and all other websites owned or
11 operated by Ertem) shall not state, represent, imply, or otherwise suggest that they carry, sell,
12 distribute, or have ever carried, sold, or distributed any Walker Zanger products.

13 4. Defendant MOHAMED (AKA MAX) GURDAL ERTEM, an individual
14 ("Ertem"), and all past, present and future agents, employees, attorneys, representatives, assigns,
15 trustees, successors, heirs, devisees, administrators, executors, and all other persons and entities
16 acting in concert or participation with Ertem, and all other persons and entities acting on Ertem's
17 behalf or under his direction or control (including, without limitation, Brice Lee, Wee Le,
18 CheaperFloors.com, YFloor.com, and all other websites owned or operated by Ertem at the
19 present time or in the future) shall not engage or participate in any act of selling, licensing,
20 manufacturing, copying, reproducing, counterfeiting, publishing, posting on the Internet
21 distributing, producing a colorable imitation of, publicly displaying, or otherwise using of any of
22 Walker Zanger's copyrighted works (including, without limitation, Walker Zanger's products, as
23 well as product designs and photographs and text from Walker Zanger's catalogues, Walker
24 Zanger's webpage, Walker Zanger's promotional materials, and Walker Zanger's Facebook page)
25 or any derivative works (of Walker Zanger's copyrighted works) or of otherwise infringing upon
26 any of Walker Zanger's copyrights.

27 5. Defendant MOHAMED (AKA MAX) GURDAL ERTEM, an individual
28 ("Ertem"), and all past, present and future agents, employees, attorneys, representatives, assigns,

1 trustees, successors, heirs, devisees, administrators, executors, and all other persons and entities
2 acting in concert or participation with Ertem, and all other persons and entities acting on Ertem's
3 behalf or under his direction or control (including, without limitation, Brice Lee, Wee Le,
4 CheaperFloors.com, YFloor.com, and all other websites owned or operated by Ertem at the
5 present time or in the future) shall not engage or participate in any act of selling or publicly
6 displaying any genuine Walker Zanger products.

7 6. Defendant MOHAMED (AKA MAX) GURDAL ERTEM, an individual
8 ("Ertem"), and all past, present and future agents, employees, attorneys, representatives, assigns,
9 trustees, successors, heirs, devisees, administrators, executors, and all other persons and entities
10 acting in concert or participation with Ertem, and all other persons and entities acting on Ertem's
11 behalf or under his direction or control (including, without limitation, Brice Lee, Wee Le,
12 CheaperFloors.com, YFloor.com, and all other websites owned or operated by Ertem at the
13 present time or in the future) shall not engage or participate in any act of making or creating (or of
14 attempting to make or create) any link, tag, posting, entry of text, or other input on Walker
15 Zanger's Facebook page or on any other webpage which Walker Zanger owns or operates.

16 7. Defendant MOHAMED (AKA MAX) GURDAL ERTEM, an individual
17 ("Ertem"), and all past, present and future agents, employees, attorneys, representatives, assigns,
18 trustees, successors, heirs, devisees, administrators, executors, and all other persons and entities
19 acting in concert or participation with Ertem, and all other persons and entities acting on Ertem's
20 behalf or under his direction or control (including, without limitation, Brice Lee, Wee Le,
21 CheaperFloors.com, YFloor.com, and all other websites owned or operated by Ertem at the
22 present time or in the future) shall not engage or participate in any act otherwise infringing
23 WALKER ZANGER'S rights.

24 8. In the event that either Plaintiff Walker Zanger or Defendant Ertem or any related
25 parties are required to make application to this Court to enforce the terms of this Consent
26 Judgment or the parties' confidential Settlement Agreement, such prevailing party shall be entitled
27 to recover from the non-prevailing other party (or parties), all reasonable attorney fees and
28 expenses related to such enforcement and appropriate sanctions in the discretion of this Court.

1 9. This Court shall retain subject matter and personal jurisdiction over the parties for
2 the interpretation and enforcement for all purposes of the parties' said confidential Settlement
3 Agreement and this Consent Judgment and Permanent Injunction.

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6 Dated: May 2, 2013



United States District Court Magistrate Judge
MARIA ELENA JAMES

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