

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

BIDZIRK, LLC, DANIEL G. SCHMIDT,)
III, and JILL PATTERSON,)
)
Plaintiffs,)
)
v.)
)
PHILIP J. SMITH,)
)
Defendant.)

Civil Action No. 6:06-CV-00109-HMH

REQUESTS FOR ADMISSION

COMES NOW BidZirk, LLC (“BidZirk”), Plaintiff in the above-captioned action and, pursuant to Fed. R. Civ. P. 36, propounds these requests for admission to Defendant:

1.

Admit that you initiated business dealings with BidZirk in order that BidZirk would administer auctions of computer equipment on eBay.

2.

Admit that you did not intend at the outset of your business dealings with BidZirk to post information on your blog concerning online auction listing companies.

3.

Admit that you consigned numerous items with BidZirk in an effort to sell a large inventory of computer equipment.

4.

Admit that BidZirk paid you all monies which were due and owing as a result of completed auctions administered by BidZirk.

5.

Admit that you publish a web log (or “blog”) at www.jackwhispers.blogspot.com which is currently titled www.fixyourthinking.com.

6.

Admit that your blog includes numerous references to and advertisements for goods and services, and that these advertisements, when “clicked” by a visitor to your blog, send the visitor to a website specifically promoting the advertised good or service.

7.

Admit that beginning in December 2005, you promoted a pending series of blog postings concerning online auction listing companies.

8.

Admit that you published a four-part posting (the “posting”) on your blog titled “You Gotta be Berserk to use an eBay Listing Company! ”

9.

Admit that your purpose in publishing the posting was to injure and defame BidZirk and its principals.

10.

Admit that you defamed Daniel Schmidt in the posting.

11.

Admit that BidZirk was damaged by the posting.

12.

Admit that you offered to remove BidZirk’s trademarks from the posting in return for a payment of \$500.

13.

Admit that you reposted BidZirk's logo on your blog on December 29, 2005.

14.

Admit that you included a link to a story referencing Mr. Schmidt's and Ms. Patterson's marriage in your article, which included a photographic depiction of the likenesses of Mr. Schmidt and Ms. Patterson.

15.

Admit that you did not have the permission of Jill Patterson or Daniel Schmidt to link the posting to a photograph depicting them.

16.

Admit that you have posted, and continue to post, BidZirk's logo and trademarks on your blog.

17.

Admit that you received actual notice of BidZirk's claim of ownership and exclusive rights to the use of its trademarks, and thereafter have persisted in using BidZirk's trademarks on your blog, without the permission or consent of BidZirk.

18.

Admit that BidZirk is the only eBay listing company mentioned by name in the posting.

19.

Admit that you listed BidZirk on www.ripoffreport.com, claiming that BidZirk paid you less for auctioned items than you were due.

20.

Admit that you publish a website at www.kingkongwrong.blogspot.com that specifically protests against BidZirk and encourages others to do so.

21.

Admit that you posted and continue to post an item on your blog at www.fixyourthinking.com that alleges that BidZirk manipulated an internet search engine to exclude the posting from search results.

22.

Admit that you posted and continue to post a link to the item referenced in Request No. 21 on your website at www.kingkongwrong.blogspot.com.

23.

Admit that you lodged a complaint concerning BidZirk with the South Carolina Better Business Bureau.

24.

Admit that you commenced publication of a separate blog at www.kingkongwrong.blogspot.com for the sole purpose of inciting protests against BidZirk.

25.

Admit that you asserted counterclaims in this action for “causes of action” including tax fraud, breach of contract, and harassment.

26.

Admit that you issued threats to BidZirk and its counsel to involve the district attorney in some form of prosecution of BidZirk and its principals.

27.

Admit that you issued threats to picket BidZirk's store locations.

28.

Admit that you believe yourself to be a person of superior intelligence.

29.

Admit that you believe yourself to be a person of superior writing ability.

30.

Admit that you believe that BidZirk should not be in business.

This 28th day of July, 2006.



KEVIN M. ELWELL

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CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing REQUESTS FOR
ADMISSION by hand delivery to:

Mr. Philip J. Smith
601 Cleveland Street, Apartment 5-C
Greenville, South Carolina 29601

This 28th day of July, 2006.



KEVIN M. ELWELL

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