

**Bidzirk, LLC Daniel Schmidt III  
& Jill Patterson**

**Plaintiffs**

**VS**

**Philip J Smith**

**Defendant**

**Civil Action #  
6:06-0109-HMH-WMC**

**Defendant memorandum  
for summary judgement**

MR ELWELL YOUR COPY PRINTED OUT FUNNY AND THE FONT PRINTED SMALLER AND

WITHOUT PROPER JUSTIFICATION

This is the summary judgement memorandum that the Honorable Judge Herlong stated that I could submit:

This is from various legal blogs around the internet. I have provided my own notes in bold:

In response to this gripe post, BidZirk sued Smith for Lanham Act violations, defamation and invasion of privacy. Smith fought back with unspecified counterclaims. At a March 16 hearing, Smith promised to remove all but one of BidZirk's logos. On April 10, the judge denied BidZirk's motion for a preliminary injunction because Smith's use of the trademarks was for news reporting and commentary (which isn't actionable under trademark law). BidZirk has appealed the denial of the preliminary injunction to the Fourth Circuit Court of Appeals.

**[Note that Smith only made these concessions as a good faith gesture and was not required to or asked to remove the additional logos by the court]**

In the Nov. 7 ruling, the judge evaluates BidZirk's motion to dismiss Smith's counterclaims for lack of federal subject matter jurisdiction. Smith's counterclaims relate to his experiences with BidZirk and their dealings in litigation, neither of which the court felt were close enough to BidZirk's claims over the blog post to mandate consolidation, and there was insufficient basis to support federal jurisdiction otherwise. Presumably, Smith can refile his claims against BidZirk in an appropriate state court.

**[Note that all of Bidzirk's claims beyond the Copyright/Service Mark claim were pendant and should thusly be dropped and Bidzirk required to refile in State Court as Smith was]**

Putting aside the procedural technicalities, I'm still stuck on why the plaintiff brought this lawsuit in the first place. Smith posted a very idiosyncratic story to a relatively low-profile blog about a small eBay reseller with 3 storefronts in South Carolina. As a result, I assume that very few people would notice the post, let alone be influenced by it. The lawsuit just escalate the attention paid to the post. Meanwhile, I haven't been able to work through all of the facts, but on its face the trademark claim appears pretty bogus, and the defamation and invasion of privacy claims could be as well. So I have an especially difficult time understanding how this lawsuit is economically rational. Finally, given the website modifications that Smith has already made, I can't figure out why BidZirk thinks that a preliminary injunction is worth pursuing all the way to the Fourth Circuit.

**[Note that Bidzirk no longer operates in Greenville County due to lack of revenue. It has been my contention that this whole business is a tax shelter]**

Of course, there is always the possibility that this lawsuit is not about the merits and instead is just an abusive effort to punish a blogger for speaking out.... In any case, the seeming illogic of this lawsuit illustrates why there are comparatively few blog-related lawsuits. Most of the time, it just doesn't make sense to sue over a blog post.

## Biography

Eric Goldman joined the Santa Clara University School of Law faculty in 2006 as an

Assistant Professor and Director of the school's High Tech Law Institute. Previously, he was an Assistant Professor at Marquette University Law School, General Counsel of Epinions.com, and an Internet transactional attorney at Cooley Godward LLP.

Eric teaches Cyberlaw and Intellectual Property and previously has taught courses in Copyrights, Contracts, Software Licensing and Professional Responsibility.

Eric's research focuses on Internet law, intellectual property, marketing, and the legal and social implications of new communication technologies. Recent papers have addressed topics such as adware/spyware, search engines and spam.

Eric received his BA, *summa cum laude* and Phi Beta Kappa, in Economics/Business from UCLA in 1988. He received his JD from UCLA in 1994, where he was a member of the *UCLA Law Review*, and concurrently received his MBA from the Anderson School at UCLA.

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CASE STUDY

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**Bynog v. SL Green Realty Corp.**, 97 Fair Empl. Prac. Cas. (BNA) 709 (2005) resulted in Plaintiff's failure to get an injunction to stop the blogger from making statements on his website because the Plaintiff could not show irreparable harm.

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This litigation STOPPED me from selling my condo as the Plaintiff attorney threatened attaching any asset that I had from the beginning. I was constantly threatened and harassed about selling my condominium.

The following email was sent to me from Kevin Elwell Plaintiff Attorney on May 3 2006:

*You have already been in possession of these requests for over 200 days, and the allowed response time under the rules is 30 days.*

*You have no absolute right to 'pour over' the proceeds of the sale of real property into another residence, simply because you work from home. If judgment is taken against you, proceeds from the sale of your residence are subject to execution.*

Not only is this untrue, but this email was sent the day after Judge Catoe FURIOUSLY reprimanded the Plaintiff attorney for not following Rule 11 Court procedure by jumping ahead to the punitive

stage of the trial without any merit or precedent to do so.

I therefore claim the following:

The housing market in Greenville SC has since deteriorated since this action was brought against me. I just finished coming close to a closing until the buyer saw the *lis pendens* (eventhough now removed) when doing Title Research. His attorney recommended that he forfeit his earnest money of \$300 and find another residence to purchase I was unable to obtain a statement from the buyer's attorney in such a short period of time. BUT, I can have affidavits submitted that I was in fact moving out and was fully ready to sell and be out by closing on Oct 15 2007.

This litigation was initiated in January 2006. My condo was placed for sale in November 2005. I had several interested parties. I took my condominium off the market to potentially have as an equity asset to obtain a loan if needed for attorney retainer.

My condo payment is \$550/monthly x 21 months of this litigation = \$11,550.00

My regime fee is \$135/monthly x 21 months of this litigation = \$2185.00

My HomeOwner's Association assessed \$135.00 in August of 2007

My insurance is \$155 yearly x 1.75 years = \$271.25

My taxes are \$460 yearly x 1.75 years = 805.00

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Total \$14,946.25

This is the total that I do not feel I would have had to pay out due to this litigation. A COURT ORDERED REMOVAL of the *lis pendens* was made.

Furthermore, I feel I am owed full proceeds from my contract consignment with Bidzirk as the contract states that I will agree to mediation in all disputes. NO MEDIATION took place at ANY time during this litigation. Bidzirk should be required to submit the total revenue received from my consignments and be ordered to return all of the revenue received due to the gross breach of contract and because this litigation has drained ALL proceeds I received from them.

My total expenses for paperwork, attorney, and travel are as follows:

(10) Certified Mailings & Postage Related Costs: Total \$54.31

(8) Envelopes \$8.40

(1) Travel (2X) to Charleston SC to speak with EFF Consultation Attorney x .30 cents a mile =  
\$286.80

(1) Consultation with Jim Carpenter (Carpenter Law Firm) \$300

(1) Consultation with David Wyatt (Attorney for OMG Greenville) \$100 trade for computer repair

The Honorable Judge Herlong said I could make ANY notes in my memorandum for possible sanctions. I therefore put forth the following:

- I walked out of the first deposition after being being physically threatened. The opposing attorney refused to move on after asking me who my customers were by name. I refused to tell him and he stopped the FILMING and COURT RECORDER and hulked over me threatening me calling me a "punk". During both depositions the Plaintiff attorney and Ty Schmidt would laugh after they asked me a harassing question. The SC bar has informed me that this was irresponsible and unquestionably improper for the attorney to do so. It is my contention that the Plaintiff attorney planned that I would leave the deposition to put me in a "not so favorable light" with the court and compel further testimony.

-In the second the second deposition, the Plaintiff attorney stated as his final question, paraphrased, "You say that this matter has depressed you, are you sure you are not depressed because you are 32, unmarried, have no children, no career, live in a rundown condo, and have a junk title car?" The plaintiff and his client smiled and Ty Schmidt even laughed in a raspy, shoulder moving laugh. Again, the SC bar has informed me that this was irresponsible and unquestionably improper for the attorney to do so.

- The plaintiff attorney refused to send me certified mail. I was traveling a lot and without certified mail, I was unable to know (at first) what

was serious and what was not. Also, without certified mail or some sort of proof of delivery, how was the Plaintiff attorney to prove I had received any of his paperwork. Furthermore, Plaintiff attorney claimed multiple hand deliveries. I received one hand delivery in person and saw NO ONE physically after that point.

- I was followed for around a week or maybe more. The Plaintiff attorney put a private investigator on me. What precedent or purpose for? This made me VERY paranoid about the lengths to which this attorney was going to go and scared many of my friends.

- The Plaintiff attorney forced me to reveal trade secret information regarding an invention of mine and also forced me to reveal many of my clients personal information. One subject of a completely unrelated article that I posted was contacted and prompted to say something bad about me. Instead, he contacted me and I posted his letter on my website [see attached]

- The Plaintiff attorney insinuated during deposition that I could not leave the state, nor did I have the financial means to travel. I wasn't sure at the time ... so I cancelled a planned business trip to california to promote my invention and attend a very important Apple Computer conference and event that I have been attending for the last 7 years.

-The Plaintiff attorney purposely prolonged the depositions and therefore exponentially the expenses of obtaining records of my testimony from the Court Recorder and from the Videographer. I was unable to afford my own testimony for examination.

- I was under the impression due to Judge Catoe's order that the entire trial was on hold while the Federal Appeals court was examining the "Preliminary Injunction". I therefore missed and was subsequently denied my right to discovery, admission, and interrogatory. I feel that if a trial were to come to about I would be at a strong disadvantage without this information. I am Pro Se and trying as hard as I can, but this was an honest misunderstanding.

- I would like to make note of two comments from Judge Catoe's Order (Entry #112)

*"This court finds several of the plaintiff's requests are irrelevant, vague, overly broad, and unduly burdensome"*

*"Two of the discovery requests appear to have been made for no other purpose than to antagonize and embarrass the defendant"*

10:39 12:16  
 -----  
 1:06 4:55

These unduly burdensome, irrelevant, and embarrassing/antagonizing requests (and their belligerent and disrespectful insistence in the court for compelled submission) total 11.

One discovery request asked for the entire contents of my hard drive for examination. (Not just Bidzirk information which accounts for less than half a percent of the space on my computer.)

- If this court granted ANY claim or ANY motion the opposing attorney is asking for ... it would set a very dangerous precedent and could prompt 10's of 1000's of lawsuits and possibly be used to revisit and overturn many decisions.

- In an amusing fashion, the ONLY handwritten documentation submitted in this case by the Plaintiff was to the FEDERAL COURT of Appeals. I showed this to 4 separate attorneys; each one laughed. This handwritten submission GREATLY slowed the process of decision for the appeal and was actually a few days late in receipt. [see attached] Please also note that Plaintiff attorney (possibly intentionally) did not put my correct address. I live in 5C not 5B, My name is spelled with (1) L not two ... my neighbor's name is also Phillip (spelled with 2 L's)

- None of the expenses listed are punitive or account for the lost time and potential lost opportunity to act on several of my business ventures.



Mr. Campbell: I am an attorney in Greenville, SC. I represent a client that has filed a federal lawsuit against one Philip Smith (a.k.a. Jackwhispers) for trademark infringement. I have learned that Mr. Smith has attacked/libeled/slandered a number of other folks in his blog, you included. I was wondering if you would mind giving me some idea of your history with this individual, what kinds of contacts you have had with him, what you have done about his personal attacks, if anything, etc. A copy of my client's complaint and motion for preliminary injunction are attached for your review. Thanks for any help.

At my request, Jack Campbell responds with the following letter:

### **An Open Letter To Jackwhispers Readers**

From: of all people... Jack

The past three years has been an interesting time for me, as I chose to move many of my business pursuits from other industries and to focus my efforts in the Apple computer peripherals market space. I have had my ups and downs in that time, and have learned much about the industry, the culture, and the people moving the Apple experience forward these days. And, along the way, I bumped into Philip Smith, publisher of Jackwhispers.

My history with Philip is well known in Mac circles, as most of it has been created in the very bright light of public debate and scrutiny. Philip has disagreed with me almost continually for three years... in almost every way, on almost every topic. We have fussed and feuded over big issues and small. And, he has been a relentless adversary to many of my business activities. At times, clearly, nobody in my life has annoyed me more than Philip, and the merciless attack he launched and sustained against me on both his web site and other web outlets.

I am writing this letter to state my beliefs about the rights of bloggers like Philip to make such public accusations and to foment such public debate as Philip has done with me these years. In a nutshell: Bravo!

Has Philip been a pain in my posterior at times? Yes. Has he infuriated me at times to a degree where I wanted to hurl incendiary devices toward his home in South Carolina? Oh, yes. Do I think Philip should have been gagged and shut down at some point along the way? No way.

We live in interesting times where our definitions of 'media' are being challenged on a near daily basis, where our ideas about the creation and dissemination of information and the rights and abilities of people everywhere to engage in the public activity of doing these things is being expanded regularly. The Web is changing everything at lighting speed. And, in what I think is a wonderful way, it is pushing the way the public can be exposed to and can debate issues small and large back to an earlier time... to a time of the Citizen Journalist.

We are leaving a time when Big Media prints or broadcasts information to us, and we simply gobble it up as gospel, unchallenged. Instead, we are being pulled back to an era -- a great and noble era -- where citizens were expected to hear the news of the day, and receive it with some skepticism, and to engage their own minds and resources in evaluating the claimed statements and drawing their own conclusions. We are reentering an era where citizens must actually begin thinking about the issues of the day with their own minds, and with their own analytical thinking fully engaged. The God of Unimpeachable Big Media is tumbling down.

Philip and his site(s), and his various causes are but a small slice of this overall return of the world to a time of the Citizen Journalist. Facts are not triple checked, beliefs are not screened with an institutionalized editorial policy... people just say what they believe and report what they see around them. And, we as readers and listeners have a larger responsibility to evaluate and judge the merits of the claims. It is a wonderful system... anarchic, yes... but it is the way a democracy should work. Unfettered public speech, coupled with a demand that citizens actually think... well, that system is the root of an open, unencumbered society.

I would not slow this shift to a more open society no matter what the personal issues I face. It is entirely too important of a larger issue for

everyone for it to be stifled for the convenience of one person. So, again, I fully support Philip's right to publish what he sees and to publish his opinions on the web... or anywhere else.

Philip recently had some interaction with a South Carolina based eBay third-party auction services company. And, he has published reports of the things he saw in that process. It seems that the person who owns that company does not believe in the higher values of the Citizen Journalist, as he has not only filed suit against Philip asking to enjoin Philip from publishing Jackwhispers, but has reached out to pull other people into his case... people including me.

*To Mister Complaining Business Guy in South Carolina*, I say this: If you cannot stand public debate of your actions and operations, you are hiding something. And, by legally attacking anyone who disagrees with your beliefs and practices you are simply bullying a small guy, in an effort to continue hiding whatever the details of your business might be that you believe cannot stand the scrutiny of public debate. If you think Philip is wrong, there is a Comments system alive on this site where you enter the debate for yourself. Present your facts and claims against his, and let the public use their own minds to draw their own conclusions

*Mister 3rd Party eBay Auction Services Guy*, if you are a big man, you will be big enough to face criticism openly, and to face it with your own defense. If you are guilty or are too small of a man to do this... well, you will resort to hiring a team of lawyers to bludgeon the little Citizen Journalist into silence.

That said, I am publicly declaring my support of Philip Smith and Jackwhispers in this matter. He is within his rights (as they should exist in this country) to report what he sees, what he believes, and what he thinks. If someone does not like what is said, they have just as much right to counter publish their positions, or to even participate in debate right here. That is pure democracy at work at the grass roots level. And, I support Philip's unequivocal right to be here.

Jack Campbell

Proof of EFF assistance  
and of attorney in  
Charleston

From: Richard Esguerra <richard@eff.org>  
Subject: EFF cooperating attorney response  
Date: June 6, 2007 1:25:50 PM EDT  
To: adzoox@yahoo.com

Phillip,

Here is the contact information for an SC attorney that may be able to provide you with some legal assistance.

Jason Scott Luck  
Seibels Law Firm, P.A.  
165-A King Street  
Charleston, SC 29401  
Office: 843.722.6777  
Fax: 843.722.6781  
www.seibelsfirm.com

I hope this helps. Feel free to let me know how this works out and best of luck on your case.

Regards,  
Richard

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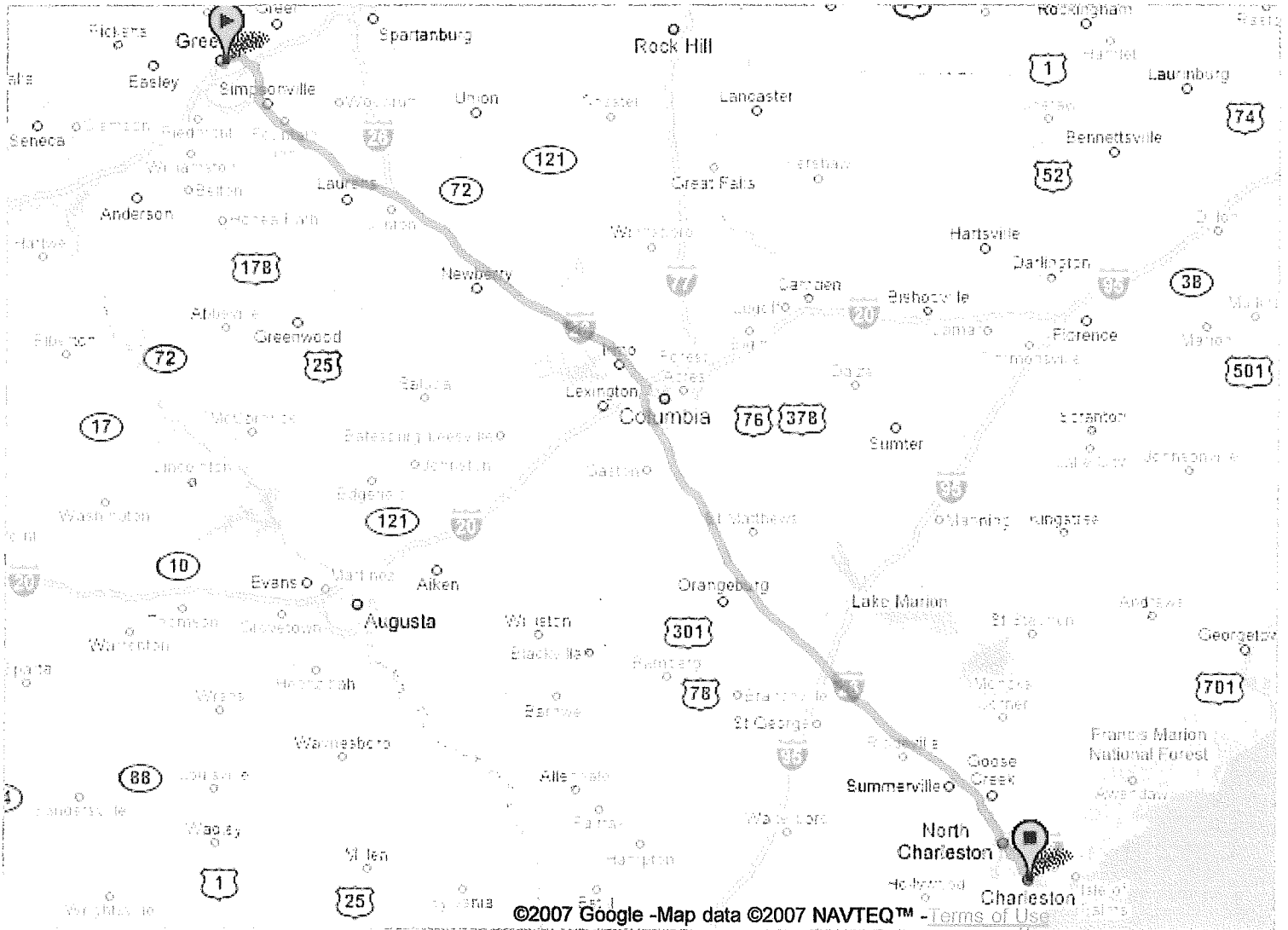
Richard Esguerra  
Referral Coordinator  
Electronic Frontier Foundation  
richard@eff.org  
415-436-9333 x111  
Become an EFF member! -- <http://www.eff.org/support>



Start **601 Cleveland St  
Greenville, SC 29601**  
End **165 King St  
Charleston, SC 29401**  
Travel **214 mi – about 3 hours 20  
mins**

To see all the details that are visible on the screen, use the "Print" link next to the map.

*Pool of distance travelled*



 **601 Cleveland St  
Greenville, SC 29601**

Drive: 214 mi – about 3 hours 20 mins

- 1. Head west on Cleveland St toward Newman St
- ➔ 2. Turn right at McDaniel Ave
- ➔ 3. Turn right at Ridgeland Dr
- ➔ 4. Slight right at Cleveland Park Dr

0.3 mi  
0.4 mi  
1 min  
138 ft  
0.4 mi  
1 min

**HOME**

# CARPENTER LAW FIRM, PC

## OFFICES

**FIRM OVERVIEW**

**ATTORNEY PROFILE**

**OFFICES**

Office Location(s)

Greenville, South Carolina

**LOCATIONS**

819 E. North Street, Suite 230

Greenville, South Carolina 29601

**COMMUNITY INVOLVEMENT**

Telephone: 864-235-1269

Fax: 864-331-3083

**PROFESSIONAL ACTIVITIES**

[james.carpenter@carpenterlawfirm.net](mailto:james.carpenter@carpenterlawfirm.net)

**GENERAL INFORMATION**

**ACHIEVEMENTS**

**NEWS CLIPS**

**CLIENTS**

*If needed for contact  
consulted for fee of  
\$300<sup>00</sup> in December  
2006*

[carpenter-lawfirm.net](http://carpenter-lawfirm.net)



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Federal Appeals submission  
by Plaintiff

I TYPED MINE!!

aweb1  
06-1487

INFORMAL BRIEF

- 1. Jurisdiction (for appellants only)
  - A. What is the name of the court from which you are appealing?  
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CA.
  - B. What is the date(s) of the order or orders you are appealing?  
APRIL 10, 2006

- 2. Timeliness of appeal (for prisoners only)  
When did you give your notice of appeal to a prison officer for mailing to the United States District Court? Enter the exact date: N/A

3. Issues on Appeal

Use the following spaces to tell the United States Court of Appeals for the Fourth Circuit why the judgment under review should be affirmed, reversed, or vacated and remanded. Appellants must provide a brief summary of the facts and arguments that support their position that the judgment under review was wrong. Appellees may rely on the facts and law stated in that judgment or may advance alternative grounds for affirmance or dismissal. The parties may cite case law, but it is not required.

Issue 1.

THE DISTRICT COURT ERRED IN FINDING SMITH'S INTERNET PUBLICATION TO CONSTITUTE "NEWS REPORTING OR NEWS COMMENTARY," AND PRIVILEGED UNDER THE LANHAM ACT.

Supporting Facts and Argument.

SMITH'S PUBLICATION LACKS ANY OF THE CONTROLS OR EDITORIAL SAFEGUARDS OF 'STANDARD' JOURNALISM, AND IS CLEARLY PUBLISHED WITH A DEFAMATORY AND MALICIOUS PURPOSE. DROPPING IS NOT MERELY "NEWS REPORTING" OR NEWS COMMENTARY.

Issue 2.

THE DISTRICT COURT ERRED IN FAILING TO INCLUDE IN ITS "FUNCTIONAL ANALYSIS" OF SMITH'S PUBLICATION THE ACTION THAT ACCOMPANIED SAID PUBLICATION, E.G. THREATS OF CRIMINAL PROSECUTION, PICKETING, COUNTERDEMONSTRATIONS AND A GENERAL INTENT UNDISGUISEDLY TO INJURE B. ZIRK & ITS PRINCIPALS

aweb1  
06-1487

Supporting Facts and Argument.

SMITH'S ACTIVITIES AGAINST BIDZINK INCLUDE COUNTERSUITS  
 WITH NO MERE WHATSOEVER, THREATS TO PICKET, THREATS TO  
 INVOLVE LAW ENFORCEMENT IN BIDZINK'S BUSINESS, AND  
 PUBLICATION OF ADDITIONAL SALVAGING MATERIAL. SMITH  
 OFFERED TO REMOVE THE PUBLICATION IN RETURN FOR  
 MONEY. NO "JOURNALIST" ENGAGES IN SUCH BEHAVIOR.

Issue 3.

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Supporting Facts and Argument.

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06-1487

4. Relief Requested

What do you want the Court of Appeals to do? Identify exactly the relief you seek. (1) REVERSE FINDING OF THE DISTRICT COURT THAT SMITH'S PUBLICATION IS "NEWS REPORTING OR NEWS COMMENTARY"; (2) FIND LANHAM ACT VIOLATION AND GRANT

5. Prior Appeals (for appellants only) B, I LIKE AN INJUNCTION AND DAMAGES

A. Have you filed other appeals in this court? \_\_\_ Yes  No

B. If you checked YES, what are the case names and docket numbers for those appeals and what was the ultimate disposition of each?

Kevin M. Elwell  
Signature

[Notarization Not Required]

KEVIN M. ELWELL  
[Please Print Your Name Here]

CERTIFICATE OF SERVICE  
\*\*\*\*\*

You must serve your papers on appeal on all persons served in the lower court case and complete the following certification:

I certify that on 5/22/06 I mailed a complete copy of this Informal Brief and all attachments to all parties, addressed as shown below.

Kevin M. Elwell  
Signature  
[Notarization Not Required]

[List here each party's name and complete mailing address]

PHILIP L. SMITH  
600 CLEVELAND ST  
APARTMENT 5B  
GREENVILLE SC 29601



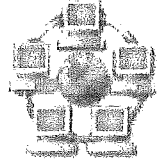
**Your Rights Online: Woman Wins Right to Criticize Surgeon on Website**

Posted by samzenpus on Thursday February 08, @12:05AM

from the tell-it-like-it-is dept.

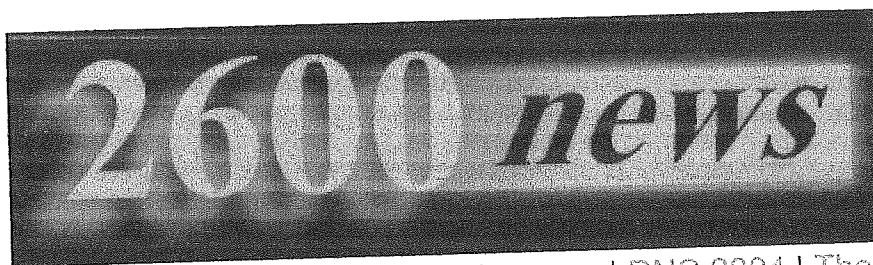
Scoopy writes

"The website of a cosmetic surgery patient critical of her Sacramento surgeon's work is protected free speech, an appeals court said in an opinion that could have statewide implications. The website contains before and after photographs of 33-year-old Georgette Gilbert, who said the surgery left her with one eyebrow higher than the other and a surprised look permanently affixed to her face. The website was challenged in a defamation suit filed by surgeon Jonathan Sykes, a prominent professor and television commentator on the subject of cosmetic surgery. Although the Sacramento-based 3rd District Court of Appeal only mentions Sykes, the opinion suggests that others who use 'hot topics' of public interest in their advertisements and promotions may shed protections against defamation afforded to ordinary citizens."



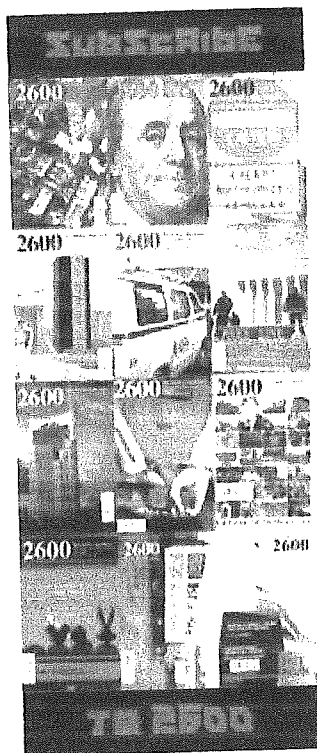
*Precedent*





| Main Page | Off the Hook | Off The Wall | Brain Damage | RNC 2004 | The Magazine | Store | Covers | Meetings |

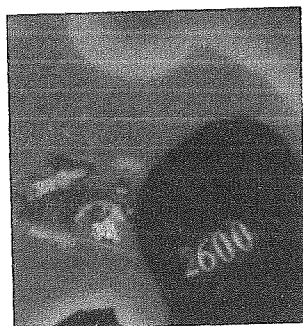
Precedent

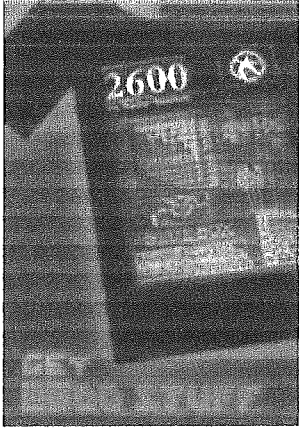


### 2600 WINS FORD LAWSUIT - RIGHT TO LINK UPHELD Posted 23 Dec 2001 01:52:12 UTC

On December 20, a ruling was issued denying Ford's complaint against 2600. Last April Ford Motor Company sued 2600 Enterprises for pointing ~~to~~ generalmotors.com at their website. The judge's decision reaffirms the right of domain name holders to point their websites where they choose. While the court avoided ruling on important First Amendment issues, it flatly rejected all of Ford's trademark infringement claims. "This is a decisive victory and we are absolutely delighted," said attorney Eric Grimm who argued the case for 2600. "The court ruled consistently with the law and all precedent."

In an eleven page decision, Judge Robert H. Cleland of the Eastern Michigan District Court dismissed each of Ford's claims. Ford had asserted that hyperlinking to their website or referring to it in DNS records constituted a variety of trademark violations. Judge Cleland rejected Ford's twisted interpretation of the trademark act, which claimed that by disparaging Ford's mark and preventing it from "fully exploiting the value of its mark" 2600's actions constituted a commercial use. The decision goes on to draw a distinction between cases in which a trademark was included as part of a domain name, and this case in which "Defendants only use of the word "ford" is in its programming code, which does no more than create a





hyperlink--albeit automatic--to Plaintiff's "ford.com" site." He later adding that "... programming code, unlike the unauthorized use of a trademark as a domain name, does not inhibit Internet users from reaching the websites that are most likely to be associated with the mark holder."

The court further strengthens the right to hyperlink by stating that "Trademark law does not permit Plaintiff to enjoin persons from linking to its homepage simply because it does not like the domain name or other content of the linking webpage." Finally the court held that given the lack of "connection with goods or services," the standards for unfair competition are "not satisfied simply because a prospective user of the Internet may face some difficulty in finding the home page he is seeking."

2600 would like to thank Eric Grimm for doing a fantastic job on very short notice, and breaking our longstanding tradition of judicial defeat. We'd also like to thank the Electronic Frontier Foundation for their continued support and all of our readers who have donated their time and money towards this case.

Order Denying Plaintiff's "Motion for Preliminary Injunction" (HTML)

Order Denying Plaintiff's "Motion for Preliminary Injunction" (PDF)

Printer-Friendly Format

2600 Magazine  
P.O. Box 752  
Middle Island, NY 11953  
Telephone: 631-751-2600  
Fax: 631-474-2677

Comments: Webmaster

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The fast and fun way to sell on eBay!



WHAT SELLS WHO CAN SELL HOW IT WORKS AUCTIONS LOCATIONS FEES ABOUT US



### Press Room

#### *Behind the Counter* from the Greenville Journal

BidZirk is featured in the Greenville Journal's 2005 *Behind the Counter*, an inside look at local entrepreneurs and their businesses.

- [Click here](#) to see the details on BidZirk
- [Click here](#) to view the entire issue.

Proof Bidzirk links to same article on their <sup>website</sup> In fact, this is where I found it.

From the beginning ... I could tell the owner was a yes man. Of course, I have to be honest ... eBay is; in and of itself a *yes man paradise*. Many sellers over promise and under deliver.

Although the owner seemed like a yes man ... I had done my home work ... he had owned an ecommerce B2B company called *ChannelLinx*. Tech savvy? Possibly ...

\* ChannelLinx is promoted at the [Bidzirk site](#) indirectly and at the bottom of each page as a technology & design assistance partner.

He explained to me how he had just gotten married and was planning his honeymoon in a week's time.

Wait! He was getting married, going on a honeymoon, and starting a (in his own words) "*multi-location business that will be national in 5 years time*"?

No picture of owner was placed on MY website only the link circled which pointed to (see next page)





Shopping **local** strengthens our **community**.

*Community Journal Photo*

## Jill Patterson & Ty Schmidt

Jill Patterson and Ty Schmidt prepared to start their own business, but they didn't have a great team. Now they do. Patterson and Schmidt decided to go into business together on April 23, 2005, when they successfully partnered into the business arena by forming BidZink, a chain of eBay consignment drop-off stores. They plan to open 5 to 20 of the stores

across the Buffalo, New York area and in Cherrydale Plaza this March.

They decided to open the business after realizing that many people want to sell on eBay but don't know how to get started or manage the transactions. With more than 14 million shoppers spending more than \$1,000 per second on eBay, it's a quick turn was

ty who is from Buffalo, NY, is a physical therapist who founded Professional Rehabilitation, a company that employed almost 700 people by the time he sold it in 1992. He, an Easton native, is an interior designer who will handle the creative side of the business. The couple could have their operation anywhere, but say they are staying right here

*all of this text is in the picture*



© 2005 BidZink, Inc. All rights reserved. BidZink is a registered trademark of BidZink, Inc. BidZink is a service mark of BidZink, Inc.

*This is NOT ON MY SITE*

<http://www.communityjournals.com/btc2005/html/2005BTC049.jpg>

*link location ADDRESS AND PHONE NO*



*Example of inventory we took down records*

Bidzerk (1<sup>st</sup> trip May 2005 to Congaree Rd)

Dave, Rus, John (bidzerk coworker), Ty (owner), Jill (wife), 2 assistants

Each approximately 2GB below by 512MB ECC SDRAM DIMMs, each with Fibre channel card

9GB drives worth \$15+ each  
18.2GB drives worth \$25+ each

Netfinity server  
2-9gigs, one scsi card  
One  
5500 \$250

Netfinity server  
2-9gigs, one scsi card  
One  
5500 \$250

2- Compaq mainframe 100u, holds 25 server cabinets each \$500 each  
Take out 12 outlet cabinet length surge protectors to sell separately \$50 each

Vidar scanner-wide format--truscan select, 2 microscsi model p-21  
3' wide, has stand  
\$400 ???

Netfinity server  
0-9gigs, 3 scsi card  
One  
5500 w/lower 2u rackmount full \$300??

Netfinity server  
2-18.2gigs, 2 lvd scsi card  
One  
7000  
\$350??

Netfinity server  
1-18.2 gigs, one scsi card  
One  
5500  
\$300??

Netfinity server  
2-9gigs, one scsi card  
One