

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-HLH

LOCAL RULE 26.03 ANSWERS
TO INTERROGATORIES

COMES NOW BidZirk, LLC (“BidZirk”), Daniel G. Schmidt, III (“Schmidt”) and Jill Patterson (“Patterson”), Plaintiffs the above-captioned action, and pursuant to Local Civil Rule 26.03, hereby file their answers to interrogatories, and show the Court as follows:

1.

A short statement of the facts of the case.

RESPONSE

BidZirk is an internet auction listing and consignment business; Schmidt and Patterson are principals in BidZirk. In May 2005, Defendant listed a large number of items with BidZirk. Defendant was ultimately dissatisfied with the prices received for his consigned goods. Defendant wrote and published a four-part series of entries on his personal web log (or “blog”) website, www.jackwhispers.com, in which he infringed BidZirk’s trademarks, defamed Schmidt, and invaded the privacy of Schmidt and Patterson. Plaintiffs demanded through counsel that Defendant cease infringement of BidZirk’s marks, but Defendant refused. Defendant failed to

answer Plaintiff's complaint in the time allowed, and the clerk entered default. Plaintiffs filed a motion for default judgment, which was scheduled for hearing. At the hearing, Defendant claimed that he had attempted to respond to Plaintiffs' complaint, and the Court set aside the default. Plaintiffs moved for a preliminary injunction, seeking to halt Defendant's infringement of BidZirk's trademarks. The Court through Magistrate Judge Catoe recommended that BidZirk's motion for preliminary injunction be denied. BidZirk's objections to the report are due filed on or before April 4, 2006.

2.

The names of fact witnesses likely to be called by the parties and a brief summary of their expected testimony.

RESPONSE

At this time, Plaintiffs' witnesses will be limited to themselves.

3.

The names and subject matter of expert witnesses (if no witnesses have been identified, the subject matter and field of expertise should be given as to experts likely to be offered).

RESPONSE

Plaintiffs have not determined who, if anyone, they will employ as an expert witness in this action. Plaintiffs may have occasion to hire an economics expert, and may hire an expert in advertising and marketing.

4.

A summary of the claims or defenses with statutory and/or case citations supporting the same.

RESPONSE

BidZirk seeks injunctive relief, actual damages and attorneys' fees for violation of 15 U.S.C. 1125(c), the Federal Trademark Dilution Act. Schmidt seeks actual and punitive damages for defamation, see Hampton v. Conso Prods., 808 F. Supp. 1227 (1992). Schmidt and Patterson each seek actual and punitive damages for invasion of privacy, see Swinton Creen Nursery v. Edisto Farm Credit, 334 S.C. 469 (1999) .

5.

Absent special instructions from the assigned judge, the parties shall propose dates for the following deadlines listed in Civil Local Rule 16.02: (a) exchange of Fed. R. Civ. P. 26(a)(2) expert disclosures; and (b) completion of discovery.

RESPONSE

The Court has set June 16, 2006 as the date for Fed. R. Civ. P. 26(a)(2) disclosures. The Court has set August 7, 2006 as the date for completion of discovery.

6.

The parties shall inform the Court whether there are any special circumstances which would affect the time frames applied in preparing the scheduling order.

RESPONSE

Not applicable.

7.

The parties shall provide any additional information requested in the Pre-Scheduling Order (Local Civil Rule 16.01) or otherwise requested by the assigned trial judge.

RESPONSE

Not applicable.

This 4th day of April, 2006.

/s/ Kevin M. Elwell

KEVIN M. ELWELL
USDC Bar No. 9706

K.M. ELWELL, P.C.
111 East North Street
Greenville, South Carolina 29601
(864) 232-8060
(404) 759-2124 e-facsimile
kmelwell@kmelwell.com

Attorneys for Plaintiffs BidZirk, LLC,
Daniel G. Schmidt, III and Jill Patterson

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-HLH

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing LOCAL RULE 26.03 ANSWERS TO INTERROGATORIES by depositing same in the United States Mail in a properly-addressed envelope with adequate postage affixed to:

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

This 4th day of April, 2006.

/s/ Kevin M. Elwell

KEVIN M. ELWELL
USCD Bar No. 9706

K.M. ELWELL, P.C.
111 East North Street
Greenville, South Carolina 29601
(864) 232-8060
(404) 759-2124 e-facsimile
kmelwell@kmelwell.com

Attorneys for Plaintiffs BidZirk, LLC,
Daniel G. Schmidt, III, and Jill Patterson