

**Kevin Elwell**

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**From:** Philip Smith [adzoox@yahoo.com]  
**Sent:** Wednesday, March 29, 2006 9:02 AM  
**To:** Kevin Elwell  
**Subject:** Rule 26 disclosures/ notes

Mr. Elwell,

I have not received your Rule 26 disclosures as you stated you would forward through email to me and the court.

I also received the injunction ruling. Upon victory and consultation with my attorney I plan to file suit now for breach of contract, harassment, and defamation of character, and punitive for financial loss.

I will also be contacting the DA about fraud concerning the manner in which items are split 50/50 or greater in Bidzirk's favor and how this is not disclosed. Further, I would seek to find Bidzirk a tax shelter business as they do not pull in enough revenue to cover rent at both locations, advertising, and utilities, much less; employment costs.

I plan to note with the DA that it appears as if you are not trying to win this case on merit, but on procedural technicality.

I am going to city hall today to obtain a protest permit and will be protesting Bidzirk in the next few days publicly.

**Point of interest to you:**

While I was arguing that my site is not commercial, the injunction ruling made reference that I do have to be commercial or non commercial ... this clause in the Lanham Act is if someone is selling similar items or items under their own cover with a trademark or servicemark that is not their own. I am not selling anything under the Bidzirk name ... nor has any specific revenue come from the article in question. Bidzirk does not offer editorial opinion, nor any of the products at auction that are advertised on my site. No one will confuse Bidzirk with Jackwhispers. Bidzirk's name is not tarnished by the fact revenue is made from my site.

**My Rule 26 disclosures (may or may not be used):**

eBay ... I have written my eBay Powerseller Rep to send me information concerning the registry of names. Bidzirk is operating under false pretense using previously owned IDs of Jill Patterson. This gives the impression that Bidzirk has been in business longer than is actually true - which is less than one year ... though IDs indicate 3 years. I am friends with several eBay regional reps and may have an expert testify to these facts. I do not know the specific name but I am required to disclose this none the less.

Dave Buzzell (you have address) ... whom you served improperly witnessed and documented the events that took place. he can testify to the validity of any argument that was made in the article.

Frank Watts - owner of the inventory and professional procurement manager.

An appraisal of the inventory by a professional appraiser

Myself - an expert ebay seller

A banking executive from Bank Of America to testify on the validity of post dated/cash if agreed checks.

The contract, a copy of the check, the records printed by Bidzirk that indicate improper splits, late payments, and other accounting errors.

If mediation were granted in this case I might consider not protesting and might consider not officially delivering my countersuit. This is not a bribe or a black mail ... I want this to be over and my losses cut short. The more this is aggravated the more it gets exposed on my website and the worse things look for Bidzirk ... seeming to bully the little guy.

Philip Smith