

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. )

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

PHILIP RUSS SMITH, )

MOTION FOR PRELIMINARY INJUNCTION

Defendant. )

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COMES NOW BidZirk, LLC (“BidZirk”), Daniel G. Schmidt, III (“Schmidt”) and Jill Patterson (“Patterson”), Plaintiffs in the above-captioned action, and file this their motion for preliminary injunction pursuant to 15 U.S.C. § 1116(a) and Fed. R. Civ. P. 65, and show the Court as follows:

1.

Defendant operates an internet web site under the URL [www.jackwhispers.blogspot.com](http://www.jackwhispers.blogspot.com).

2.

In December 2005, Defendant published a series of postings to the jackwhispers web site that defamed Plaintiffs and made unauthorized use of the registered trademark of BidZirk.

3.

Despite repeated demands, Defendant has refused to remove the offending internet postings, which continue to be available to the public for viewing.

4.

The postings at [www.jackwhispers.blogspot.com](http://www.jackwhispers.blogspot.com) constitute infringement of BidZirk's trademark, and are subject to injunction pursuant to 15 U.S.C. § 1116(a) and 15 U.S.C. § 1125(c).

5.

Plaintiffs have filed contemporaneously herewith their memorandum of law in support of the instant motion.

6.

Plaintiffs pray that the Court (1) schedule a hearing with all due haste, given the ongoing, immediate and irreparable harm visited upon BidZirk; (2) issue a preliminary injunction pending the trial of this action; and (3) award to BidZirk its damages as proved, as well as its attorneys' fees, pursuant to 15 U.S.C. § 1117(a) and 15 U.S.C. § 1125(c).

This 13<sup>th</sup> day of February, 2006.

/s/ Kevin M. Elwell

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KEVIN M. ELWELL  
USDC Bar No. 9706

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CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing MOTION FOR  
PRELIMINARY INJUNCTION by hand delivery to:

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

This 13<sup>th</sup> day of February, 2006.

/s/ Kevin M. Elwell

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