

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 RUSS SMITH, )  
 )  
Defendant. )

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

AFFIDAVIT OF KEVIN M. ELWELL

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CAME BEFORE ME, the undersigned officer duly authorized to administer oaths, Kevin M. Elwell, who, upon being sworn, deposes and states:

1.

My name is Kevin M. Elwell. I am over 18 years of age and am competent in all respects to testify to the matters asserted herein. I have personal knowledge of those matters and know them to be true. This affidavit is given in support of Plaintiffs' motion for preliminary injunction in the above-captioned action, and for any other lawful purpose.

2.

I am counsel for Plaintiffs in the above-captioned action. In connection with my representation, I have had telephone contact with Defendant, and have corresponded with him via letter as well. On December 28, 2005, I received a telephone call from Defendant regarding a letter I had sent to him demanding that he cease publication of BidZirk's trademarks and defamatory remarks regarding Plaintiffs Schmidt and Patterson. Defendant during this

conversation informed me that he makes a practice of recording all of his telephone conversations, and that he was in fact recording our conversation.

3.

During me December 28, 2005 telephone conversation with Defendant, he offered to remove material from his web site, [www.jackwhispers.blogspot.com](http://www.jackwhispers.blogspot.com), in return for a payment of \$500 from Plaintiffs. Defendant contended that \$500 was money he was owed from BidZirk as unpaid eBay auction proceeds.

4.

Defendant has refused all demands to cease infringement of BidZirk's trademarks, and his conduct has necessitated the preparation and filing of BidZirk's motion for preliminary injunction in this case.

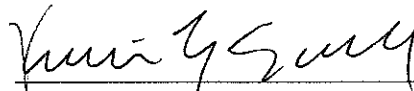
5.

I have spent 24.6 hours through the filing of BidZirk's motion for preliminary injunction on research, drafting, compiling exhibits and preparing the papers for electronic filing with the Court. My hourly rate for this work is \$250 per hour, which is commensurate with my experience, prevailing rates in the community and the sort of legal work being performed. BidZirk's total legal fees and expenses related to preparation of its motion for preliminary injunction, for which my firm, K.M. Elwell, P.C., is actually charging BidZirk, total \$6,150.00, plus related costs and expenses of \$212.00, or \$6,367.00.

6.

BidZirk seeks recovery of attorneys' fees and expenses of \$6,367.00, pursuant to 15 U.S.C. § 1125(c).

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
KEVIN M. ELWELL

Sworn to and subscribed  
before me this 13<sup>th</sup> day  
of February, 2006.

  
\_\_\_\_\_  
NOTARY PUBLIC

**My Commission Expires  
March 21, 2012**