

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-109-HMH

MOTION TO REVISE
SCHEDULING ORDER

COMES NOW BidZirk, LLC (“BidZirk”), Daniel G. Schmidt, III and Jill Patterson, Plaintiffs in the above-captioned action, and make and file this their motion to revise the Court’s March 3, 2006 scheduling order, and show the Court as follows:

INTRODUCTION

Plaintiffs filed this action January 10, 2006, alleging trademark infringement pursuant to 15 U.S.C. § 1125(a)(1)(B) and other supplemental claims including defamation and invasion of privacy. These claims arise from Defendant’s online publication of BidZirk’s trademark in association with libelous material. On February 13, 2006, Plaintiffs moved the Court to grant a preliminary injunction prohibiting Defendant from publishing BidZirk’s trademarks. Subsequent to the entry of the Court’s original order, the Court denied Plaintiffs’ motion for preliminary injunction. The motion is currently on appeal at the Fourth Circuit Court of Appeals, awaiting that court’s decision.

Discovery in the action is set to expire on August 7, 2006. Plaintiffs request that the Court extend the expiration of discovery, and other milestones set forth in the Court's original scheduling order, by 60 days in light of the pending appeal. Plaintiffs' goal in moving for this extension is to prevent repeating certain discovery in the event that Plaintiffs' appeal is remanded with instructions. For this reason, Plaintiffs request that deadlines set forth in the scheduling order, including those respecting discovery, motions, disclosures, pretrial briefs, and jury selection, be extended by 60 days.

ARGUMENT

Courts are vested with power to "manage their own affairs so as to achieve the orderly and expeditious disposition of cases." CareFirst of Md., Inc. v. First Care, P.C., 422 F. Supp. 2d 592, 597 (E.D. Va. 2006) quoting Chambers v. Nasco, Inc., 501 U.S. 32, 43 (1991). The Court has substantial discretion in managing discovery. American Chiropractic v. Trigon Healthcare, 367 F.3d 212, 235-6 (4th Cir. 2004). This power, inherent to the court, should be exercised to ensure the efficient resolution of a pending matter. See Cherrix v. True, 177 F. Supp. 2d 485, 497 n.7 (E.D. Va. 2001).

Fed. R. Civ. P. 6(b) specifically states that when an act "is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion . . . order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order." The requested revision of deadlines established by the Court's original scheduling order falls within this rule.

CONCLUSION

Based upon the foregoing, Plaintiffs pray that the Court grant their motion, and enlarge deadlines in the original scheduling order by a period of 60 days to the following:

1. discovery due by October 6, 2006;
2. motions due by October 15, 2006;
3. disclosures due by December 5, 2006;
4. pretrial briefs due by December 30, 2006; and
5. jury selection to January 6, 2007.

This 28th day of July, 2006.

/s/ Kevin M. Elwell

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CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing MOTION TO REVISE SCHEDULING ORDER upon the following party 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 28th day of July, 2006.

/s/ Kevin M. Elwell
KEVIN M. ELWELL

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