

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

AMENDED MOTION
FOR DEFAULT JUDGMENT

COMES NOW BidZirk, LLC (“BidZirk”), Daniel G. Schmidt, III (“Schmidt”) and Jill Patterson (“Patterson”), Plaintiffs in the above-captioned action, and file this their amended motion for default judgment pursuant to Fed. R. Civ. P. 55, and show the Court as follows:

1.

Plaintiffs commenced the above-captioned action on January 10, 2006. Plaintiffs forwarded to Defendant a waiver of service, which Defendant declined to return.

2.

On January 24, 2006, Plaintiffs obtained from the Court a summons, which was served on Defendant with a copy of the complaint on January 25, 2006. Defendant’s responsive pleadings were due filed on or before February 14, 2006. See Fed. R. Civ. P. 12(a)(1)(A).

3.

Defendant filed no responsive pleadings, and no motion for extension of time, on or before February 14, 2006.

4.

Plaintiffs are entitled to entry of default pursuant to Fed. R. Civ. P. 55(a) and default judgment pursuant to Fed. R. Civ. P. 55(b).

5.

Plaintiffs request a hearing pursuant to Fed. R. Civ. P. 55(b)(2) during which they will present proof of damages, and the Court may thereafter enter judgment consistent with its findings. Plaintiffs specifically request the following relief: (1) judgment against Defendant for infringement and dilution of Plaintiff BidZirk's trademarks in the amount of \$100,000, trebled pursuant to 15 U.S.C. § 1117(b) to \$300,000, plus attorneys' fees of \$7,367.00; (2) judgment against Defendant for defamation of Plaintiff Schmidt, in the amount of \$50,000 as special damages and \$100,000 as general damages for humiliation, suffering and emotional distress; (3) judgment against Defendant for invasion of Plaintiff Schmidt's privacy, in the amount of \$50,000 as special damages and \$100,000 as general damages for emotional distress; (4) judgment against Defendant for invasion of Plaintiff Patterson's privacy, in the amount of \$50,000 as special damages and \$100,000 as general damages for emotional distress; and (5) injunctive relief against Defendant providing that he (a) cease immediately infringing BidZirk's trademarks; (b) report to the Court within 30 days of issuance of the injunction regarding what steps he has taken to comply with the Court's order; (c) cease immediately use of the likenesses and identities of Plaintiff Schmidt and Plaintiff Patterson; and (d) cease posting on any web blog site (or "blog"), including www.jackwhispers.blogspot.com for a period not less than five years.

6.

A proposed order is submitted contemporaneously herewith.

WHEREFORE, Plaintiffs pray that the Court grant their motion, direct the Clerk to enter default in the instant action, grant Plaintiffs' request for hearing and enter default judgment as requested in Paragraph 5 above.

This 15th day of February, 2006.

/s/ Kevin M. Elwell

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CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing AMENDED MOTION FOR DEFAULT JUDGMENT by depositing same in the United States Mail in a properly-addressed envelope with adequate postage affixed to:

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

This 15th day of February, 2006.

/s/ Kevin M. Elwell

KEVIN M. ELWELL
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