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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SMC PROMOTIONS, INC.,
SPECIALTY MERCHANDISE
CORPORATION, and
EMERCHANTCLUB, LLC,

Plaintiffs,

vs.

NICHOLAS DEAN LUNSFORD,
DANIEL K. LUNSFORD,
TIMOTHY DAVID EKELUND JR.,
TRAVIS PROUTY, individually and
dba SMCEBIZ and EBIZCSP, and
EBIZCSP, LLC, an Arizona limited
liability company,

Defendants.

Case No. CV 04-1377 JFW (VBKx)

Hon. John F. Walter

**[PROPOSED] JUDGMENT AND
PERMANENT INJUNCTION**

Date: February 27, 2006

Time: 1:30 p.m.

Ctrm: 16

Complaint Filed: March 1, 2004

Upon the Order To Compel Arbitration entered on July 19, 2004, and the subsequent motion of plaintiffs SMC Promotions, Inc., Specialty Merchandise Corporation (SMC) and eMerchantClub, LLC (collectively "Plaintiffs") for an order pursuant to 9 U.S.C. § 9, confirming the Final Award issued by the Arbitrator, Honorable Richard C. Neal (Retired), on December 30, 2005, pursuant to 17 U.S.C. § 501 et seq.

1 (copyright infringement), 15 U.S.C. § 1116 et seq. (trademark infringement), and 15
2 U.S.C. § 1125(d)(1) (cyberpiracy), and good cause appearing therefor:

3 IT IS HEREBY ADJUDGED, ORDERED AND DECREED that:

4 The Final Award is CONFIRMED in all respects; and

5 IT IS FURTHER ADJUDGED, ORDERED AND DECREED that:

6 A) Defendants Nicholas Dean Lunsford, Daniel K. Lunsford, Timothy David
7 Ekelund Jr., Travis Prouty, individually and doing business as “SMCeBiz” and
8 “eBizCSP,” and eBizCSP, LLC, an Arizona limited liability company (collectively,
9 “**Defendants**”), each of their officers, managers, members, affiliates, agents, servants,
10 employees, consultants, and successors in interest, and all persons acting concert or
11 participation with any of the foregoing, are permanently and forever:

12 ENJOINED AND RESTRAINED from, directly or indirectly, in any manner or for
13 any purpose, whether or not acting as an agent for or on behalf of any other person,
14 including without limitation any member of Plaintiff Specialty Merchandise Corporation:

15 1) Accessing, linking to, copying, downloading, uploading, storing,
16 hosting, possessing, exploiting, or otherwise using any text or graphics, including
17 without limitation any product photographs or descriptions, from, identical or
18 substantially similar to those in any version of the “World of Products” catalog or
19 any of the Internet websites SMC Corp.com, eMerchantClub.com or
20 SMCeCommerce.com, from any source, whether or not in electronic format;

21 2) Selling, designing, building, hosting, continuing to host, linking to,
22 performing any services or processing for, or otherwise facilitating any Internet
23 website containing any text or graphics, including without limitation any product
24 photographs or descriptions, from, identical or substantially similar to those in any
25 version of the “World of Products” catalog or any of the Internet websites
26 SMC Corp.com, eMerchantClub.com or SMCeCommerce.com, from any source,
27 whether or not in electronic format;

1 3) Accessing, linking to, copying, storing, exploiting, or otherwise using
2 any portion of the Members Only section of the SMC Corp.com website, or any
3 electronic data contained thereon, from any source, whether or not in electronic
4 format;

5 4) Doing business under or otherwise using any of the following names
6 or marks, whether alone or combined with any other words, phrases or letters: (a)
7 SMC, eBiz, Specialty Merchandise Corporation, eMerchantClub, World of
8 Products, Forrest Webb; (b) any name using or incorporating the SMC trademark;
9 or (c) any confusingly similar name, or any colorable imitation thereof;
10 (collectively, the **"Infringing Names"**);

11 5) Doing business through, operating, hosting, owning, controlling,
12 linking to, forwarding or otherwise using, in any manner or for any purpose, any of
13 the Internet domains SMCEBiz.com, eBizCSP.com, SMCECommerce.net,
14 SellMoreSMC.com, 1place2shop.com, any domain using or incorporating the SMC
15 trademark or any portion of the Specialty Merchandise Corporation, SMC
16 Promotions, or eMerchantClub names, any confusingly similar domain name, or
17 any colorable imitation thereof, (collectively, the **"Infringing Domains"**);

18 6) Advertising, offering for sale or selling any products or services using
19 any of the Infringing Names, or using any of the Infringing Names in, with, or in
20 connection with any advertisement, solicitation or offer for sale of any product or
21 service to any person, whether or not in electronic form;

22 7) Selling any products or services to, performing any services for,
23 accepting or receiving any money or other consideration from, or soliciting or
24 advertising to, any current or former customer or member of Specialty
25 Merchandise Corporation or eMerchantClub, LLC, including without limitation
26 designing, building, hosting or continuing to host any Internet website for any
27 current or former customer or member of Specialty Merchandise Corporation or
28 eMerchantClub, LLC;

1 8) Committing any act that may cause any past, current or prospective
2 customer or member of Specialty Merchandise Corporation or eMerchantClub,
3 LLC, to believe that any of the Defendants are in any way affiliated with or
4 endorsed by Specialty Merchandise Corporation or SMC;

5 9) Defaming, disparaging or making any false statements about
6 Specialty Merchandise Corporation, SMC Promotions, Inc., or eMerchantClub,
7 LLC, or any of their products or services; or

8 10) Facilitating, or assisting any person in doing, any of the foregoing;

9 B) Each and all of the Infringing Domains are hereby ordered transferred to
10 Plaintiff Specialty Merchandise Corporation; each of the Defendants shall take any and
11 all steps necessary to immediately, absolutely and unconditionally assign and transfer all
12 of the Infringing Domains, and all right, title and interest therein or related thereto, to
13 Plaintiff Specialty Merchandise Corporation; and

14 C) Each of the Defendants shall serve on the Plaintiffs' counsel, John C.
15 Kirkland at Greenberg Traurig, LLP, 2450 Colorado Avenue, Suite 400E, Santa Monica,
16 California 90404, within thirty (30) days after the date of this permanent injunction, a
17 report in writing under oath setting forth in detail the manner and form in which the
18 Defendant has complied with the injunction; and

19 IT IS FURTHER ADJUDGED, ORDERED AND DECREED that:

20 (a) Defendants have and recover nothing from SMC Promotions, Inc., Specialty
21 Merchandise Corporation and eMerchantClub, LLC, and Plaintiffs' bond in support of
22 the Preliminary Injunction shall be exonerated forthwith;

23 (b) Plaintiffs SMC Promotions, Inc., Specialty Merchandise Corporation and
24 eMerchantClub, LLC have and recover from Defendants Travis Prouty, individually and
25 doing business as "SMCeBiz" and "eBizCSP," and eBizCSP, LLC, an Arizona limited
26 liability company, and each of them, the sum of \$1,059,904.00; and, in addition,

27 (c) Plaintiffs SMC Promotions, Inc., Specialty Merchandise Corporation and
28 eMerchantClub, LLC have and recover from Defendants Nicholas Dean Lunsford, Daniel

1 K. Lunsford, Timothy David Ekelund Jr., Travis Prouty, individually and doing business
2 as "SMCeBiz" and "eBizCSP," and eBizCSP, LLC, and each of them, costs in the sum of
3 \$37,176.00.

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5 DATED: *2/2/04*

~~JOHN F. WALTER~~

Hon. John F. Walter
U.S. District Court Judge

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