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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

MYSTERY METHOD CORPORATION, a
California corporation; NICHOLAS BENEDICT,

Plaintiffs,

v.

ERIK von MARKOVIK, an individual; STAN
TAYL, an individual; NORTEK SOLUTIONS,
INC.; and DOBS 1 through 50, inclusive,

Defendants.

CASE NO.: BC 363431
[Assigned to Hon. Richard Fruin, Dept. 15]

**EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND
ORDER TO SHOW CAUSE REGARDING
PRELIMINARY INJUNCTION**

Complaint Filed: December 15, 2006

1 Plaintiffs Mystery Method Corporation ("MMC") and Nicholas Benedict ("Benedict") hereby
2 apply to the court, *ex parte*, for the issuance of a Temporary Restraining Order ("TRO") and Order to
3 Show Cause ("OSC") re: Preliminary Injunction, enjoining and restraining defendants Erik von
4 Markovik and Stan Tayi and each of them, and their agents, representatives, attorneys and any persons
5 acting in concert with them or on their behalf from committing any act, or causing any act to be
6 committed, that would discontinue, modify, alter, or disrupt the "mysterymethod.com" domain or its
7 website www.mysterymethod.com in any manner including but not limited to the (i) any activities that
8 would redirect or disrupt traffic to or from the "mysterymethod.com" domain or the
9 www.mysterymethod.com website, (ii) any activities that would transfer or remove the
10 "mysterymethod.com" domain or the www.mysterymethod.com website from MMC's server to another
11 server, and (iii) to the extent defendants have already committed any of these acts, and/or transferred
12 ownership of the "mysterymethod.com" domain and the www.mysterymethod.com website to
13 themselves (or any of them), defendants are ordered to return ownership and control of the
14 "mysterymethod.com" domain and the www.mysterymethod.com website to MMC and to restore the
15 www.mysterymethod.com website to the condition it was in on February 2, 2007 before 4:00 p.m.

16 Plaintiffs further request an Order to Show Cause ("OSC") re: Preliminary Injunction requiring
17 defendants to show cause why they, their agents, representatives, attorneys, and any persons acting in
18 concert with them or on their behalf, should not be enjoined or restrained from committing any of the
19 above-described acts, and should not be ordered to return ownership and control of the
20 "mysterymethod.com" domain and the www.mysterymethod.com website to MMC and to restore the
21 www.mysterymethod.com website to the condition it was in on February 2, 2007 before 4:00 p.m. to the
22 extent defendants have already committed any of the above conduct.

23 This *ex parte* application is made pursuant to California Code of Civil Procedure Section 525,
24 California Rule of Court 379, and any other authorities cited herein on the grounds that good cause
25 warrants this Court issuing a TRO and an OSC re: Preliminary Injunction.

26 Plaintiffs previously sought issuance of a TRO and OSC regarding the relief requested above on
27 December 15, 2006 in Department 85 of the above-entitled court. The Court was too busy to hear the
28 matter on that date, and, before the matter could be heard again on the next business date, the parties

1 reached a tentative resolution and plaintiffs relied thereon in refraining from returning to Court for the
2 requested relief at that time. (Edelson Decl., ¶¶ 2, 3.) Despite exhaustive settlement discussions and
3 two full days of mediation, the parties have been unable to reach a formal resolution thereby warranting
4 the instant application. (Id., ¶¶ 4-8 & Exs. 34-40.) Further, on or about February 3, 2007, defendants
5 altered the appearance of the Site and in effect removed all of MMC's content from the Site in violation
6 of the parties' standstill agreement, which was to remain in effect pending the outcome of the instant
7 Application. (Id., ¶¶ 4-8 & Exs. 34-40; Benedict Decl., ¶ 39 & Ex. 32.) It was restored on February 4,
8 2007, at the demand of plaintiffs' counsel, but this shows that there is a threat the Site will be disabled or
9 altered again immediately if a restraining order is not granted, as it is under the complete control and
10 subject to the complete whim of defendants at this time. (Benedict Decl., ¶¶ 40, 41.)

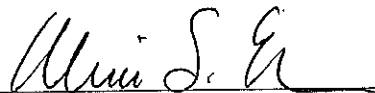
11 Pursuant to California Rule of Court 379, plaintiffs timely notified both defendants, as well as
12 their known legal representatives, of this ex parte application by email (Edelson Decl., ¶¶ 5-8 & Exs. 39,
13 40.)

14 This Application will be based on the attached Memorandum of Points and Authorities and the
15 Declarations of Nicholas Benedict, Alexander Ross and Alisa Edelson filed concurrently herewith, the
16 proposed order submitted herewith, matters of which this Court may take judicial notice, any other
17 others records and pleadings on file in this matter, all other evidence in support thereof, and any oral
18 argument presented to the Court.

19 DATED: February 4, 2007

KULIK, GOTTESMAN, MOUTON & SIEGEL, LLP

20 By



Glen L. Kulik, Esq.

Alisa S. Edelson

Attorneys for Plaintiffs Mystery Method
Corporation and Nicholas Benedict

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MEMORANDUM OF POINTS AND AUTHORITIES

1. INTRODUCTION.

Defendants Erik von Markovik ("von Markovik") and Stan Tayi ("Tayi"), who are former employees of plaintiff Mystery Method Corporation ("MMC"), have stolen MMC's principal asset, the domain¹ "mysterymethod.com" ("Domain"). The Domain controls and directs internet traffic to the website www.mysterymethod.com ("Site") where MMC's customers purchase its products and services. Nearly all of MMC's revenue is derived from the Site. On February 3, 2007 in violation of a standstill agreement to not alter the Domain or Site, defendants completely removed MMC's content from the Site and posted a split screen that instructs internet users to go to other websites. On February 4, 2007, at the demand of plaintiffs' counsel that the standstill agreement be honored which was in effect while the parties mediated their dispute, the Site was restored pending this hearing. However, it is patently clear that unless a temporary restraining order is issued today, defendants will alter the Domain forthwith thereby effectively destroying its value and MMC's business along with it. MMC's income during 2006 has been \$2,737,127.02, more than 90% percent of which was generated by sales on this Domain. Unless a restraining order is issued today, MMC will for all practical purposes be out of business. In contrast, there is no harm to defendants if the restraining order is issued to preserve the status quo.

MMC is a corporation formed on April 21, 2005 to operate a business that would market, promote, and sell a step-by-step program designed to educate men on how to meet, attract and build relationships with women. Plaintiff Nicholas Benedict ("Benedict") is, and from the outset has been, the sole officer, director and shareholder of MMC. The Domain and Site is the primary source through which MMC markets itself to its customers, who buy products and services from MMC on its website. Although von Markovik had some clients of his own prior to the formation of this business, more than 90% of MMC's customers were acquired after this business started based on a website design financed by MMC. MMC and Benedict have been the only owners of the Domain since September 2005, though they had been using the Domain since the year before. Currently, due to Benedict's efforts and

¹ In the simplest terms, a domain is translated into an IP address that directs the internet user to a website. Ross Declaration, ¶ 3.

1 corporate funds for the past two years, the website bears no resemblance in design or functionality to the
2 website that existed when the business first started.

3 von Markovik was the company's key employee aside from Benedict. He was in charge from the
4 beginning of the creative aspects of the operation whereas Benedict was responsible for all business
5 activities. Tayi was hired by MMC as its website consultant from Spring 2005 through September 2006.
6 Tayi's relationship with MMC was terminated in September 2006. After Tayi's departure, MMC went
7 to access its Network Solutions² account but was unable to do so. MMC contacted Network Solutions
8 and learned that someone with a user I.D. named "Matador" changed the name on the account on
9 October 10, 2006 from MMC to von Markovik. "Matador" is a name used by Tayi. Tayi and von
10 Markovik, who had terminated his relationship with MMC on October 16, 2006, both refused to disclose
11 the new password or restore ownership of the Domain to MMC.

12 From the time of December 2006, the parties have engaged in extensive settlement discussions
13 including attending two mediation sessions. The parties agreed that no disruption of the Domain and
14 Site would occur pending the outcome of these discussions. They further agreed if a settlement could
15 not be reached plaintiffs could return to Court to seek a TRO and that no such disruption would occur
16 until the Court ruled on the TRO. On February 2, 2007, the parties concluded that they could not reach
17 a settlement and that plaintiffs would return to Court on February 5, 2007 to seek injunctive relief. On
18 February 3, 2007, plaintiffs altered the Site and in effect removed all of MMC's content from the Site
19 including its marketing information and mechanisms that enable MMC's customers to purchase its
20 products and services. The Site was restored the following day only after plaintiffs' counsel demanded
21 defendants comply with and honor the standstill agreement.

22 Thus, plaintiffs seek an order against von Markovik and Tayi and those acting in concert with
23 them from committing any act, or causing any act to be committed, that would discontinue, modify,
24 alter, or disrupt the "mysterymethod.com" domain or its website www.mysterymethod.com in any
25 manner including but not limited to the (i) any activities that would redirect or disrupt traffic to or from
26 the "mysterymethod.com" domain or the www.mysterymethod.com website, (ii) any activities that

27
28 ² Network Solutions is a company that provides a variety of internet services including the registration
of ownership of domain names.

1 would transfer or remove the "mysterymethod.com" domain or the www.mysterymethod.com website
2 from MMC's server to another server, and (iii) to the extent defendants have already committed any of
3 these acts, and/or transferred ownership of the "mysterymethod.com" domain and the
4 www.mysterymethod.com website to themselves (or any of them), defendants should be ordered to
5 return ownership and control of the "mysterymethod.com" domain and the www.mysterymethod.com
6 website to MMC and to restore the www.mysterymethod.com website to the condition it was in on
7 February 2, 2007 prior to 4:00 p.m.

8 If the relief is not granted today, MMC's customers will no longer be able to order MMC's
9 services and products. Presently, more than 90% of MMC's sales are ordered on the website in its
10 current form from MMC's customers. As further discussed below, defendants efforts to systematically
11 dismantle MMC and its ability to survive should be enjoined immediately.

12 **2. FACTUAL BACKGROUND.**

13 On August 25, 2004, Benedict and von Markovik entered into a written contract to form a joint
14 venture to market, promote and sell the "Mystery Method" technique which is a step-by-step program
15 designed to educate men on how to meet, attract and build relationships with women ("Agreement").
16 (Benedict Decl. ¶ 3, Ex. 1.) Under the Agreement, (a) von Markovik contributed to the joint venture
17 all intellectual property, including but not limited to the trademark "Mystery Method," the domain name
18 "mysterymethod.com" ("Domain") that directs internet users to a physical website
19 www.mysterymethod.com ("Site"), and the "Mystery Method" technique to the joint venture; (b) All
20 Mystery Method concepts, techniques, and business practices remain proprietary to the joint venture; (c)
21 von Markovik would be responsible for the creative aspects of the business including product
22 development and teaching seminars for the purpose of teaching men to attract women; (d) Benedict
23 would be responsible for all aspects of the business affairs of the company including marketing, website
24 development, and overseeing all employees; and (d) Cash flow would be apportioned at 75% to von
25 Markovik and 25% to Benedict. (Id.)

26 On September 21, 2004, with the full knowledge and concurrence of von Markovik, Benedict
27 registered the trademark "Mystery Method" in his name and later assigned the trademark to MMC. (Id.,
28 ¶ 4 & Ex. 2.)

1 The Agreement was for a term of six months at the conclusion of which it "may be renewed."
2 (Id., ¶ 5 & Ex. 1.) The Agreement further provided that "[a]t any time, the parties may agree to amend
3 any term in this agreement by mutual consent." (Id. Ex. 1.)

4 By the end of the six month term Benedict and von Markovik agreed to continue and expand
5 their relationship. They orally agreed a corporation would be formed to carry on the business and that
6 the corporation would own all the assets the parties had contributed to the joint venture. Further, they
7 agreed the profits of the corporation and all cash flow would be divided 50% to von Markovik and 50%
8 to Benedict. Finally, they agreed that Benedict would be the sole shareholder and sole officer and
9 director of the corporation at least until von Markovik's immigration status in the United States was
10 settled, which never occurred as a result of which Benedict has been and remains the sole shareholder of
11 MMC at all times. (Id., ¶ 5.)³

12 In reliance on the foregoing oral agreement, which amended the Agreement, MMC was
13 incorporated on April 21, 2005 with Benedict as the officer, director and shareholder and von Markovik
14 as a key, highly paid employee. Benedict had quit his full-time employment and turned down a job
15 offer so that he could focus his attention and efforts full-time on MMC's business activities which had
16 already expanded to creative aspects including teaching workshops and training MMC's instructors.
17 The business operated in 2005 and 2006. Over time MMC hired a number of employees and prospered.
18 (Id., ¶ 6.) von Markovik knew that MMC had been incorporated ---emails were sent to von Markovik
19 from the corporation's email account, the corporation's bylaws were emailed to von Markovik, and von
20 Markovik signed an agreement to which MMC was a party. (Id., ¶ 7 & Exs. 3-5.)

21 In the Spring of 2005, Benedict posted an advertisement on the Site for an internet consultant
22 who would work for MMC on its Site in exchange for free products and services usually offered by
23 MMC to its clients. (Id., ¶ 8.) Tayi responded to the advertisement and was retained to provide internet
24 consulting services for MMC for this form of compensation. (Id.) However, from January to August

25 ³ While, MMC does not know all of the facts, Benedict understood that von Markovik (who is a
26 Canadian citizen) was either not in the United States legally or was here on a visa that did not allow him
27 to work in this country. von Markovik was supposedly trying to establish his legal residency and work
28 status, and MMC paid an attorney to assist him. Until the situation was corrected, von Markovik did not
want to do anything legally to draw attention to himself and for that reason the parties agreed he would
not be a shareholder in MMC though von Markovik would be entitled to 50% of the profits and
responsible for 50% of the obligations. Benedict Decl., ¶ 6.

1 2006, Tayi was paid a monthly consulting fee. (Id., ¶ 9.) In addition to his consulting work, from
2 approximately July 2005 to October 2006, Tayi also worked as an instructor for MMC and taught
3 various seminars. (Id., ¶ 10.) He formally resigned on October 27, 2006. (Id.)

4 In or about mid June 2005, von Markovik instructed Benedict to register the Domain to MMC.
5 (Id. ¶ 11 & Exs. 7, 8.) Shortly thereafter, in or about July 2005, Tayi set up MMC's account with the
6 domain name registrar Network Solutions so that MMC could register its ownership of various domain
7 names including but not limited to "mysterymethod.com." (Id., ¶ 12 & Ex. 9.) When Tayi set up this
8 account, he set up and selected the password information that is required to log into the account. (Id., ¶
9 13.) From July 2005 to late September 2006, Tayi frequently changed the password without MMC's
10 knowledge. (Id., ¶ 13 & Ex. 10.)

11 In or about September 2005, von Markovik decided he did not want to teach anymore of the
12 seminars or workshops and so advised MMC. He continued to provide product development services
13 though his work altogether for MMC continued to diminish. He continually promised Benedict he
14 would do more but he never did though he continued to be paid a large salary. As a result, Benedict was
15 forced to spend an extensive amount of time to recruit, manage and train the instructors. (Id., ¶ 14.)

16 On or about October 19, 2005, as a result of Benedict's efforts, MMC entered into a publishing
17 contract with St. Martin's Press for a book entitled "The Mystery Method: How to Get a Woman into
18 Bed in 7 Hours" (the "St. Martin's Press book"). The relevant terms of this contract are: (a) MMC
19 would be the owner of the book's copyright, (b) von Markovik and a former MMC instructor Chris
20 Odom ("Odom") would write the book as a work for hire on behalf of MMC (both acknowledged in
21 writing that MMC would be the sole owner of the copyright); and (c) von Markovik and Odom would be
22 credited as authors. (Id., ¶ 15 & Exs. 5, 11.)

23 In January 2006, with von Markovik working less and less on the business of MMC, another oral
24 agreement was reached between von Markovik and Benedict. At that time, it was decided that von
25 Markovik would continue to receive 50 percent of the profits of MMC if he continued to work full time
26 within the business, or he would receive 25 percent of the profits if he chose to work part time while
27 focusing on other career opportunities. (Id., ¶ 16.)
28

1 In or about June 2006, Benedict asked Tayi to register the domain "attractwomenonline.com" in
2 the name of MMC under its Network Solutions account. (Id., ¶ 17 & Ex. 12.) Tayi orally
3 misrepresented to Benedict in June 2006 that he registered this domain name to MMC but with another
4 domain name registrar GoDaddy.com. (Id., ¶ 17 & Ex. 13.) In fact, Tayi registered this domain name to
5 himself instead of MMC. (Id., ¶ 17 & Ex. 14.)

6 After frequent and rampant problems with the website's functionality, in early September 2006
7 Tayi was informed his relationship with MMC would be terminated at the end of September. Despite
8 repeated requests in September and October 2006, Tayi never gave plaintiffs the password information
9 for the operation of MMC's website. (Id., ¶ 18.)

10 On or about October 10, 2006, Tayi conspired with von Markovik to change MMC's Network
11 Solutions account holder information to reflect von Markovik instead of MMC as the account holder and
12 Benedict as the primary contact. (Id., ¶ 19 & Ex. 15.) As more fully discussed above, Tayi was given
13 access and set up this account through his employment with MMC for internet consulting services which
14 had ended in late September 2006. Once Tayi and von Markovik unlawfully changed the account
15 information to reflect von Markovik as the account holder, the registration of the Domain was
16 effectively transferred from MMC to von Markovik. (Id., ¶ 19 & Ex. 15.) This transfer was completed
17 on or about October 15, 2006. (Id.) von Markovik then registered the Domain with another registrar
18 GoDaddy.com. (Id., ¶ 20 & Ex. 16.) These acts were performed without plaintiffs' knowledge, consent,
19 authorization or approval. (Id., ¶ 21.) In fact, Tayi was required to seek Benedict's approval to make
20 any such changes to MMC's business activities or accounts. (Id. & Ex. 17.)

21 In late October 2006, plaintiffs discovered the above unlawful transfer when Benedict attempted
22 to access the Network Solutions account online and learned the account had been transferred and the
23 password was changed and reset. (Id., ¶ 19 & Ex. 15.) Plaintiffs then contacted Network Solutions who
24 determined the account was unlawfully transferred and eventually restored the account back to MMC.
25 (Id., ¶ 22.) However, the Domain could not be restored to MMC because von Markovik had already
26 transferred it to another domain name registrar GoDaddy.com. (Id., ¶¶ 20, 22 & Exs. 16, 18, 19.)

27 When Benedict and von Markovik entered into the Agreement in August 2004, the Domain
28 consisted of a one page website that merely provided contact information if any person was interested in

1 the "Mystery Method" technique. (Id., ¶ 23 & Ex. 20.) From the time of the Agreement to the present,
2 Benedict spent considerable time and expense to design and develop the domain to promote and market
3 MMC's business activities. (Id., ¶ 24 & Ex. 21.) He spent most of the past two years making the
4 development, improvement and overall maintenance of the website one of his top priorities. (Id., ¶ 24.)
5 Largely due to plaintiffs' efforts, the website has completely transformed since it first existed in August
6 2004 in look and functionality. (Id., ¶¶ 23, 24 & Exs. 20, 21, 23.) It is a fairly popular website and has
7 approximately 5,600 web pages linked to it. (Id. ¶ 24 & Ex. 22.)

8 Currently, the Site is the primary source of information for and about MMC and its business
9 activities. (Id., ¶ 25.) On the website, customers, of which approximately 90 to 95% were acquired after
10 the Agreement was formed, can purchase seminars, CDs, DVDs, and ebooks. (Id., ¶ 25 & Exs. 21, 23.)
11 More than ninety percent of MMC's revenue, which for 2006 was \$2,737,127.02, is generated by this
12 website. (Id., ¶ 27 & Ex. 24.) Over fifty percent of the website's traffic comes from direct access,
13 which means the internet user just types in the domain "www.mysterymethod.com." (Id., ¶ 26.) The
14 remaining traffic comes from other sites that link to this domain or from search engines. (Id.)

15 If one of the defendants modified or altered the site to the extent traffic was redirected, the
16 internet user could end up at another site believing it to be our website. If internet users cannot access or
17 get to MMC's website by the domain "www.mysterymethod.com," then with the less traffic received,
18 MMC will lose money because there will be no one or less individuals to purchase MMC's services or
19 products. (Id., ¶ 28; Ross Decl., ¶¶ 3-7.)

20 On October 16, 2006, von Markovik notified Benedict that he was terminating the Agreement.
21 Shortly thereafter, on October 16, 2006, von Markovik notified Benedict that he was terminating the
22 Agreement. (Benedict Decl., ¶ 29 & Ex. 25.) He further reserved the right to alter or modify traffic as
23 he saw fit after the two month notice period expired on December 17, 2006. (Id., ¶ 30 & Ex. 26.).

24 On or about November 29, 2006, Tayi caused the website "mysterymethod.com" to temporarily
25 shut down for nearly the whole business day. (Id. ¶ 33.) Apparently, he installed a software license on
26 the Site that would expire on a monthly basis unless he renewed the license. (Id. ¶¶ 31, 32 & Exs. 27,
27 28.) When Tayi demanded payment for monies that MMC and Benedict purportedly withheld, he
28

1 permitted the license to expire which caused the website to shut down even though the parties were
2 discussing the validity of Tayi's claim. (Id. ¶¶ 31-33 & Exs. 27, 28.)

3 Due to the theft of the Domain and shutting down of the Site, MMC was forced to create an
4 alternative website to have a secure place to operate its company website and protect sensitive customer
5 and trade secret information. MMC there moved its website to www.themysterymethod.com
6 and began to direct existing customers to this site during the first week of December 2006. Prior to this
7 date, the website www.themysterymethod.com did not have any content posted on it. Once
8 www.mysterymethod.com was restored, MMC implemented a redirect, such that an internet user who
9 would type in www.mysterymethod.com would automatically be redirected to
10 www.themysterymethod.com. (Id. ¶ 34 & Ex. 29.) As this redirection was seamless, most users would
11 not even be aware that they were on www.themysterymethod.com website because this website contains
12 the same content and looks exactly the same as www.mysterymethod.com looked before the redirect.
13 (Id. ¶¶ 34, 35 & Ex. 21, 29.)

14 The website www.mysterymethod.com and the domain "mysterymethod.com" are still vital to the
15 ongoing operations of MMC, as most external links from other websites still point to
16 www.mysterymethod.com. (Id. ¶ 36.) Also, most of the visitors who access
17 www.themysterymethod.com website directly do so by first typing in www.mysterymethod.com. (Id.)

18 In or about November or December 2006, von Markovik and Tayi went into business together
19 along with Odom, a former MMC instructor who resigned on the same date as Tayi. Their company
20 Venusian Arts has a website located at "www.venusianarts.com." (Id. ¶ 37 & Ex. 30.) From October to
21 November 2006, approximately six instructors including Tayi himself resigned from MMC to work for
22 this new business venture known as Venusian Arts. (Id. ¶ 37.)

23 In late January 2007, Venusian Arts began to request the password and username of MMC's
24 clients to the "Mystery Lounge" which is an online service that permits MMC students to log onto the
25 website and email questions to MMC instructors and to each other. Although membership to
26 "Mystery's Lounge" is free, these clients cannot become members unless they have purchased a seminar
27 or some type of instruction program from MMC or are otherwise sponsored for membership. In
28 exchange for MMC password and username information, Venusian Arts offered a free membership to

1 their own VIP lounge. In addition, Venusian Arts are actually taking the MMC's customer's password
2 and username information and logging onto MMC's website. (Id. 38 & Ex. 31.)

3 As a result of several discussion talks including mediation, defendants agreed to not to tamper
4 with or alter the Site or Domain including not to disrupt the redirect. (Id. ¶ 38; Edelson Decl. ¶ 4 & Ex.
5 34.) Since von Markovik is the owner of the Domain (albeit through unlawful means), he has the ability
6 to control the redirect from www.mysterymethod.com to www.themysterymethod.com --- he can cancel
7 this redirect or even redirect www.mysterymethod.com to his website www.venusianarts.com. In
8 addition, he can completely dismantle or shut down the Site. (Benedict Decl. ¶ 39; Ross Decl. ¶¶ 5, 6.)
9 This standstill was to remain in effect until the all settlement negotiations failed and the Court ruled on
10 the Application. (Edelson Decl., ¶¶ 4-8 & Exs. 34-40; Benedict Decl. ¶ 39.)

11 On February 3, 2007 in violation of the standstill agreement, defendants removed the redirect
12 from www.mysterymethod.com to www.themysterymethod.com. Defendants also removed the entire
13 content of MMC's marketing and sales materials and replaced the Site's content with a posting that
14 permits internet users to go to other websites. Internet users could not view or access MMC's website
15 unless they type in www.themysterymethod.com. (Benedict Decl. ¶ 40 & Ex. 32.) Defendants restored
16 the Site only after plaintiffs' counsel demanded they comply with and honor the standstill agreement.
17 (Id. ¶ 41.)

18 **3. PLAINTIFF IS ENTITLED TO A TEMPORARY RESTRAINING ORDER AND**
19 **PRELIMINARY INJUNCTION TO ENJOIN DEFENDANTS VON MARKOVIK AND STAN**
20 **FROM ANY ACTIVITIES THAT WOULD DISCONTINUE, MODIFY, ALTER OR DISRUPT**
21 **THE DOMAIN OR ITS WEBSITE AND AN ORDER TO RETURN AND RESTORE THE**
22 **WEBSITE.**

23 **A. Injunctive Relief Is Warranted Under Code of Civil Procedure Section 526**

24 Code of Civil Procedure section 526(a) enumerates various circumstances that warrant injunctive
25 relief, the following of which are applicable in this case: (2) the continuance of an act during the
26 litigation that would produce great or irreparable injury to a party; (3) a party is doing or threatening to
27 do some act in violation of the rights of another party respecting the subject of the action and that tends
28

1 to render judgment ineffectual; (4) pecuniary compensation would not afford adequate relief; and (5) it
2 would be extremely difficult to ascertain damages.

3 Each of the above enumerated statutory bases applies. If defendants are permitted to further
4 disrupt the operations of the Domain and Site, this would constitute an act during litigation that would
5 not only cause great and irreparable injury, but would destroy MMC's business. As discussed above,
6 defendants have threatened to do just and on February 3, 2007 fulfilled these threats and dismantled the
7 Site. Any judgment in favor of plaintiffs in the underlying action which would determine (i) the parties'
8 rights under the Agreement, (ii) whether defendants misappropriated MMC's confidential proprietary
9 information, and (iii) whether defendants converted MMC's corporate assets would now be rendered
10 wholly ineffectual based on defendants' conduct. Finally, monetary damages would be extremely
11 difficult to ascertain and could not adequately compensate plaintiffs for the destruction of MMC's
12 business.

13 **B. Injunctive Relief Is Warranted Under California Rule of Court 379(g)**

14 Similarly to CCP section 526(a), California Rule of Court 379(g) permits injunctive relief ex
15 parte where irreparable harm or immediate danger exists. As discussed above and in the Declarations of
16 Nicholas Benedict (¶¶ 24-28, 39-41 & Exs. 21-24, 32) and Alexander Ross (¶¶ 3-7 & Ex. 33),
17 irreparable harm clearly exists because the existence of MMC's business depends on a functioning
18 website --- particularly a website that is already known to and used by MMC's customers to purchase
19 products and services in addition to the links to MMC's affiliates. (Benedict Decl. (¶¶ 24-28, 39-41 &
20 Exs. 21-24, 32.) Moreover, an immediate danger exists to the extent von Markovik has in fact
21 dismantled the Site despite an agreement not to do so. (Edelson Decl., ¶¶ 4-8 & Exs. 34-40; Benedict
22 Decl. ¶¶ 39-41 & Ex. 32.) Thus, if Site is shut down or further disrupted, MMC's business activities
23 will be nearly obliterated.

24 **C. Return to the Status Quo and Balance of the Equities Warrant Injunctive Relief**

25 California case strongly supports the requested relief. "If the denial of an injunction would result
26 in great harm to the plaintiff, and the defendants would suffer little harm if it were granted, then it is an
27 abuse of discretion to fail to grant the preliminary injunction." Robbins v. Superior Court, 38 Cal.3d
28 199, 205 (1985). Thus, the purpose of injunctive relief is to preserve the status quo until a final

determination of the action has been made. Cal. State Univ., Hayward v. Nat'l Collegiate Athletic Ass'n., 47 Cal.App.3d 533, 543 (1975).

Here, plaintiffs' business will be destroyed if MMC is forced to "cease and desist" its business operations by any further tampering or redirecting of the website. (Benedict Decl., ¶¶ 24-28, 39-41 & Exs. 21-24, 32; Ross Decl. ¶¶ 3-7.) Conversely, it is clear that defendants would not be harmed by any injunction to return to and maintain the status quo as it has existed since MMC was first formed. von Markovik is entitled to any payments owed under the Agreement and its modifications. In fact, an injunction would actually benefit von Markovik to the extent he is paid any additional monies while this action is awaiting the OSC hearing or trial. Further, an injunction would have little to no effect on Tayi because Tayi is no longer compensated for services that he no longer renders to MMC. Under these circumstances, injunctive relief should issue so that the Court can determine the parties' rights, not the defendants acting alone acting with no legal basis and in an unprecedented fashion.

Under Robbins, supra, 38 Cal.3d at 206, the Court can also consider whether the party seeking injunctive relief has shown a reasonable probability that it will prevail on the merits. Here, the facts, summarized above and as set forth in the attached Declarations demonstrate MMC possesses the right to use and control the website, defendants unlawfully transferred this asset from MMC to von Markovik, while attempting to dismantle the corporation and sabotage its business activities. Thus, plaintiffs have made an overwhelming showing that they have more than a reasonable probability to prevail and as such are entitled to injunctive relief.

4. CONCLUSION.

For all of the above reasons, it is respectfully submitted that this Court grant the TRO and an OSC as requested.

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