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5 Counsel for Defendant

7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

10 GREGORY RICKS,
11 Plaintiff,
12 v.
13 BMEzine.COM, LLC,
14 Defendant.

Case No. 2:08-cv-01174-PMP-GWF

DECLARATION OF KEVIN WIMBERLY IN
SUPPORT OF COUNTERCLAIM

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16 1. The undersigned, being warned that willful false statements and the like so
17 made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the
18 United States Code, declares that he is qualified to make all statements herein from his
19 own personal knowledge.

20 2. My name is Kevin Wimberly, and I am a member of the Florida Bar, am over
21 the age of 18 years, and I am otherwise competent to make all of the statements in this
22 Declaration.

23 3. I am independent of BMEzine.com, LLC, and have no motivation to provide
24 this Declaration except for the fact that the facts herein are my opinion and are truthful.

25 4. I began getting tattooed in 1998, and I am closely acquainted with many
26 tattoo artists, tattoo shop owners, and those simply interested in the art. I attend tattoo
27 conventions, and I consider myself a tattoo enthusiast.

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1 5. To satisfy my upper-level writing requirement in law school, I wrote a paper
2 entitled, "Tattooed Identity: Resolving the Tension Between Statutory Copyright Law,
3 Identity, and Skeptical Subculture." The paper focused on the various intellectual property
4 issues surrounding tattoos and the way that artists respond to legal protection.

5 6. In researching my paper, BME was one of the first places I visited for source
6 material due to its massive amount of relevant useful content. I was aware of a legal topics
7 column written by Marisa Kakoulas in which she interviewed many prominent tattoo artists
8 in an attempt to gauge their reaction to copyright ownership in tattoos. The article,
9 published in BME in December 2003, was extremely popular and set off a firestorm in the
10 tattoo community, and it is what inspired me to write my paper.

11 7. In addition to using BME for academic reasons, I have used BME since at
12 least the year 2000 for ideas before getting new tattoos. Most of the artists who have
13 tattooed me have examples of their work on BME.

14 8. The entire tattooing, body piercing, and body art community refers to
15 BMEzine.com, LLC and its various other enterprises such as the BME Fest, BME
16 Scholarship, BME News, etc., as simply "BME."

17 9. There are no other companies, publications, nor any other vendors or
18 commentators of any kind that use the designation BME for any purpose except to refer to
19 the BME company, which is legally referred to as BMEzine.com, LLC.

20 10. When I, or any other persons with whom I am familiar, hear the name "BME,"
21 we immediately identify this as meaning that the content or event or production under that
22 name was produced by BMEzine.com, LLC, or was sponsored thereby.

23 11. The name "BME" cannot identify any other organization or person in this
24 industry.

25 12. If any other company used the designation BME, it would confuse me and
26 anyone else in this marketplace as to the source or origin of the goods or services provided
27 under that name.

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1 13. BME has a reputation in this industry for producing quality content, having
2 high ethical standards, and BME has an enormous amount of good will built up under that
3 name.

4 14. Since "BME" can only identify goods produced by BMEzine.com, LLC, if
5 anyone else were to use this name on their products or services, this would cause
6 considerable confusion in the marketplace.

7 15. If any other party were to use the name "BME" in this marketplace, it would
8 only serve to trade upon the reputation and goodwill that BMEzine.com, LLC has generated
9 under this famous name.

10 16. I received a phone call from Attorney Marc Randazza the week of April 26,
11 2008, and he informed me that he was working on something for "BME." My immediate
12 reply was, "Oh, some of my work is on there." By that statement, I meant that some
13 pictures of my tattoos are available for viewing on BME. Mr. Randazza then suggested
14 without further comment that I review the website at www.BME.com. A true and correct
15 copy of the BME.com website as it appeared at the time of my visit, is attached as Annex 1
16 to this Declaration.

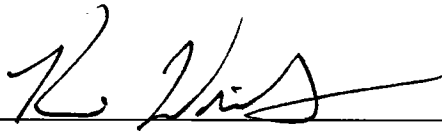
17 17. Upon viewing the website at www.BME.com, I first thought that BME had
18 changed its website's layout to a radically new design. The picture of a tattoo artist and
19 other tattoo links suggested that the website was still associated with what I know to be
20 BME.

21 18. Upon closer inspection I realized that this could not be "the" BME because the
22 content had the telltale signs of a "parked" Internet page. Clicking the links on the page
23 simply brought up auto-generated searches. At that point I realized that www.BME.com
24 was not what is widely known as "BME."

25 19. However, my initial confusion was only rectified because a) I am already
26 intimately familiar with BME's websites, and b) I am a high tech and Internet savvy
27 consumer. Had either of these facts not been present, I most likely would have concluded
28 that BME.com was merely a poor-quality website rife with irrelevant advertising.

Dated: 11/6/2008

Kevin Wimberly

Signed: 

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