# Exhibit B

way for Defendants to respond to Plaintiff's Amended Complaint is by filing an Answer, not an inappropriate motion to "edit" that "does nothing but squander time." <u>Custom Vehicles, Inc. v.</u>
<u>Forest River, Inc.</u>, 464 F.3d 725, 727 (7th Cir. 2006) (Easterbrook, J.). Judge Easterbrook imposed sanctions on the offending party in <u>Custom Vehicles</u>. Plaintiff encourages the Court to do the same to discourage other frivolous "motions to edit" from the Defense.

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### Britton Not Required To Be Joined To Hear Cybersquatting Claim

7 This motion is improper under Rule 12(g) since Defendants could have raised it in their 8 first motion to dismiss. Also, if Defendant Katzer had joined Jacobsen as a party in the Katzer v. 9 Britton litigation in Oregon, this motion would be unnecessary. Katzer did not, and Britton unrepresented by counsel – did not know he could dismiss for failure to join a necessary party, 10 Jacobsen, the holder of the DecoderPro® trademark. Jacobsen finds himself in a situation where 11 12 Katzer has a \$20,000 interest in decoderpro.com, and Britton has possession but cannot transfer it 13 to anyone for fear of being liable for Katzer for that \$20,000. Ex. B, at 6. This situation is unlike 14 any case cited by Defendants. There, all necessary parties were involved in the original contracts, 15 which later litigants sought to invalidate. Jacobsen believes the Court may have personal 16 jurisdiction over Britton or Britton may submit to this Court's jurisdiction. If not, this Court may 17 still fashion relief so that Jacobsen can obtain the decoderpro.com domain name.

Britton is not a necessary party to this action, because complete relief can be afforded in his absence. The answer is simple: this Court orders Katzer to transfer his rights in the settlement agreement to Jacobsen. Jacobsen will re-negotiate the settlement agreement with Britton to remove all terms except that Katzer gets to keep his domain name and Britton gets decoderpro.com without the any restrictions on either party – the way the settlement agreement should have been worded in the first place. Jacobsen believes that Britton will transfer decoderpro.com to him once freed of the restrictions. Thus, complete relief can be given.

Jacobsen also believes this Court can exercise personal jurisdiction over Britton per
Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316 (9th Cir. 1998). Jacobsen believes that Britton
may be willing to submit to the jurisdiction of this Court, or agree to abide by any changes which
Jacobsen and Defendants make to the settlement agreement. Thus, dismissal is not warranted.

Defendants, having imposed onerous requirements on Britton without burdening themselves with the same, curiously argue that Britton would want to defend this "interest" in the settlement agreement. A review of the settlement agreement would suggest to a reasonable person that Britton would want to get out of the agreement, if possible. Thus, Defendants' argument about protecting Britton's "rights" to be liable for \$20,000, never criticize Defendants, never be able to transfer decoderpro.com, and the like, are simply not reasonable or credible.

## G. <u>Count Nine Does Not Require A More Definite Statement Since It Clear What</u> <u>Trademark is at Issue</u>

A motion for a more definite statement should be granted only when a party, through no fault of his own, cannot understand what he is charged with because the pleading is vague and ambiguous. See Fed. R. Civ. P. 12(e). As a threshold matter, Plaintiff filed a claim for trademark <u>dilution</u>, not infringement. It is based, in part, on Defendants' use of the JMRI marks in search engines. JMRI does <u>not</u> have a huge portfolio of trademarks. The Amended Complaint discusses two products – DecoderPro® and PanelPro<sup>TM</sup> – no mention is made of any other registered or common law trademarks. Defendant's motion for a more definite statement should be denied.

# H. Plaintiff Should Be Permitted to Amend His Complaint Per Rule 15 if Needed

Defendants ask this Court to forbid Plaintiff from making any further amendments to his complaint. This request flies in the face of Rule 15(a), which states that leave to amend a complaint should be freely granted. Defendants admit they believe Jacobsen has a breach of contract claim. If the Court agrees, Jacobsen should be permitted to amend his complaint. Defendants complain of delay, but here's the truth: <u>They could file an Answer at any time</u>.

# IV. CONCLUSION

No. C-06-1905-JSW

For the foregoing reasons, Jacobsen asks this Court to deny Defendants' Motions. DATED: November 3, 2006 By /s/

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