

# Exhibit C

1 competition. Cal. Business and Professions Code § 17204. Jacobsen's choice to purchase  
2 defendants' products occurred as a result of his own volition, not as a result of any alleged unfair  
3 conduct. Additionally, Jacobsen has not suffered an injury to any property interest in the  
4 decoderpro.com domain name since DecoderPro is a JMRI Project trademark, not a mark of  
5 Jacobsen's. Amended Complaint, ¶ 43. To the extent Jacobsen's unfair competition claim  
6 survives preemption by the Copyright Act, Jacobsen has failed to state a claim on which relief  
7 can be granted. Fed. R. Civ. P. 12(b)(6).

8 **D. Count 6 of the Amended Complaint should be dismissed for failure to join Jerry Britton**  
9 **as an indispensable party**

10 To the extent that Count 6 requests declaratory relief requiring the transfer of the  
11 decoderpro.com domain name, Jerry Britton is an indispensable party. Plaintiff, in effect,  
12 requests that this Court declare the settlement agreement between Matt Katzer and Jerry Britton  
13 to be unenforceable. Memorandum in Opposition at 14. This type of relief is not available to  
14 Jacobsen under the Lanham Act, nor can Jacobsen request that this Court adjudicate an attack on  
15 the terms of a negotiated agreement (to which he is not a party) without joining all parties to that  
16 agreement to this action. See Memorandum in Support at 10.

17 **E. Defendants Motions to Strike irrelevant material in the Amended Complaint should be**  
18 **granted**

19 Contrary to plaintiff's assertion, *Tapley v. Lockwood Green Eng'rs, Inc.*, 502 F.2d 559  
20 (8<sup>th</sup> Cir. 1974) most certainly does hold that a Fed. R. Civ. P. 12(f) motion may be used to strike  
21 a prayer for relief when the damages sought are not recoverable as a matter of law. This Court  
22 cited *Tapley* for exactly this proposition as recently as 2005. See *Wells v. Bd. Of Trs. Of the Cal.*  
23 *State Univ.*, 393 F.Supp.2d 990 (N.D. Cal. 2005). Numerous other courts have held similarly.  
24 See, e.g. *Miglianccio v. Midland Nat'l Life Ins. Co.*, 436 F. Supp. 1095, 1100 (C.D. Cal. 2006)  
25 (citing the holding in *Tapley* that a Court may strike a prayer for relief that is not available as a  
26 matter of law under Rule 12(f) and stating that "[t]he essential function of a Rule 12(f) motion is