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2 LODGED RECEIVED

Honorable James L. Robart
Note for Consideration: 11/8/06

3 NOV 16 2006

4 AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 DEPUTY

6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 CMSI, INC.,

No. CV6-00488 JLR

10 Plaintiff,

STIPULATION FOR ENTRY OF
PARTIAL SUMMARY JUDGMENT
DISMISSING COUNT ONE OF
CMSI'S AMENDED COMPLAINT
WITH RESERVATION OF APPEAL
RIGHTS

11 v.

12 PACIFIC CYCLE, INC.,

Defendant.

NOTE FOR CONSIDERATION:
NOVEMBER 8, 2006

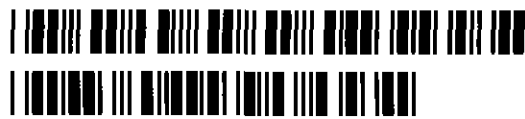
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15 STIPULATION

16 Plaintiff CMSI, Inc. and defendant Pacific Cycle, Inc., by and through their
17 undersigned counsel, stipulate as follows:

18 1. On September 15, 2006, the Court issued its Order denying CMSI's motion for
19 preliminary injunction (the "Order") (Doc. No. 64). In the Order, the Court held that CMSI
20 cannot as a matter of law prevail on its claim of reverse passing off under the Lanham Act, 15
21 U.S.C. § 1125(a). Order at p. 3.

22 2. For the reasons stated in the Court's Order and based on the entire record
23 presented to the Court on CMSI's motion for preliminary injunction, including all
24 submissions of both parties, the parties stipulate that the Court may issue partial summary
25 judgment dismissing Count One of CMSI's Amended Complaint.
26

STIPULATION - 1
Case No. CV6-00488 JLR



06-CV-00488-ORD

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1 3. Plaintiff CMSI has agreed to this stipulation solely for the purpose of avoiding
2 the expense of opposing a motion for partial summary judgment by defendant based on the
3 Court's Order. Notwithstanding its agreement to enter into this stipulation, CMSI maintains
4 and reserves its objections both to the Court's Order and to the order below based on it.
5 Further, CMSI expressly and unequivocally reserves its right to appeal from both the Order
6 and the stipulated order below granting partial summary judgment on Plaintiff CMSI's claim
7 under 15 U.S.C. § 1125(a) based on the Order, after entry of a final decision pursuant to 28
8 U.S.C. § 1291.

9 4. By entry of this stipulation and order, Pacific Cycle does not intend to stipulate
10 or agree to the revival or renewal of any of CMSI's rights that may have been waived or
11 otherwise lapsed.

12 STIPULATED TO this 8th day of November, 2006.

13 PRESTON GATES & ELLIS LLP

 FORSBERG & UMLAUF, P.S.

14
15 By /s/ Marc C. Levy _____

 By /s/ Roy A. Umlauf _____

16 Marc C. Levy, WSBA #19203

 Roy A. Umlauf, WSBA #15437

17 Gregory F. Wesner, WSBA #30241

 Kenneth M. Roessler, WSBA #31886

18 Jonathan H. Harrison, WSBA # 31390

19 Attorneys for Plaintiff CMSI, Inc.

 KELLEY DRYE & WARREN

 David Rammelt, *pro hac vice*

 Kenn Brotman, *pro hac vice*

20 Attorneys for Defendant Pacific Cycle, Inc.


21 ORDER

22 Based on the foregoing stipulation, the entire record presented to the Court on Plaintiff
23 CMSI's motion for preliminary injunction (Doc. No. 13), including all submissions of both
24 parties, and for the reasons stated in the Court's Order of September 15, 2006 denying
25 CMSI's motion for preliminary injunction, the Court finds that there is no genuine issue of
26

1 material fact and that defendant Pacific Cycle is entitled to judgment as a matter of law
2 dismissing Count One of CMSI's amended complaint alleging a violation of the Lanham Act,
3 15 U.S.C. § 1125(a).

4 DONE IN OPEN COURT this 16th day of November, 2006.

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Honorable James L. Robart

Presented By:
PRESTON GATES & ELLIS LLP

By /s/ Marc C. Levy
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Attorneys for Plaintiff CMSI, Inc.