

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

In re

CASE NO. 9:08-bk-04360-ALP

ULRICH FELIX ANTON ENGLER,  
PRIVATE COMMERCIAL OFFICE, INC.,  
and PCO CLIENT MANAGEMENT, INC.,

CHAPTER 7  
(Substantively Consolidated)

Debtors.

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**TRUSTEE'S REQUEST FOR JUDICIAL NOTICE OF DISTRICT COURT ACTION  
IN CONNECTION WITH FINAL EVIDENTIARY HEARING ON THE MOTION TO  
SUBSTANTIVELY CONSOLIDATE NON-DEBTOR DOUGLAS INVESTMENTS, LLC  
WITH AND INTO THE DEBTORS' BANKRUPTCY ESTATES**

ROBERT E. TARDIF, JR. (hereinafter the "Trustee"), as Chapter 7 Trustee for the substantively consolidated bankruptcy estates of Ulrich Felix Anton Engler, Private Commercial Office, Inc., and PCO Client Management, Inc. (hereinafter referred to collectively as the "Debtors"), by and through his undersigned counsel, hereby files his Request For Judicial Notice Of District Court Action In Connection With Final Evidentiary Hearing On The Motion To Substantively Consolidate Non-Debtor Douglas Investments, LLC With And Into The Debtors' Bankruptcy Estates pursuant to Rule 201 of the Federal Rules of Evidence, and states in support thereof as follows:

1. On April 20, 2010, the Trustee filed a Motion To Substantively Consolidate Non-Debtor Douglas Investments, LLC With And Into The Debtors' Bankruptcy Estates [D.E. 212] (hereinafter the "Motion to Substantively Consolidate").

2. On May 5, 2010, non-creditors Fidelity National Financial, Inc. and Fidelity National Timber Resources, Inc. filed a Motion For Reconsideration Of Order Granting Trustee's Motion To Approve Compromise And Settlement And Opposition To Trustee's

Motion To Substantially Consolidate Non-Debtor Douglas Investments, LLC With And Into Debtors' Bankruptcy Estates [D.E. 363].

3. The Court conducted a preliminary hearing on the Motion to Substantively Consolidate on May 21, 2010 and entered an Order on May 28, 2010 scheduling a final evidentiary hearing on the Motion to Substantively Consolidate for June 17, 2010 at 1:30 p.m. in Tampa, Florida [D.E. 382].

4. The Trustee respectfully requests the Court to take judicial notice pursuant to Rule 201 of the Federal Rules of Evidence of the docket, all pleadings and all papers filed in the case styled *JPMorgan Chase Bank, N.A. v. Ulrich Engler a/k/a Richard Engler, individually, and Private Commercial Office, Inc. d/b/a Ulrich Engler Daytrading, a Florida corporation*, United States District Court for the Middle District of Florida, Case No. 2:07-cv-00124-JES-DNF (hereinafter the "JP Morgan Suit") in connection with the final evidentiary hearing on the Motion to Substantively Consolidate. *See, e.g., Universal Foam v. Kohr (In re Kohr)*, 399 B.R. 284, 287 (Bankr. M.D. Fla. 2008) (court may take judicial notice of the docket and documents filed in litigation related to the debtor) *citing* Fed. R. Evid. 201(b) ("A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."). True and correct copies of the Docket, "Complaint For Injunctive Relief And Damages For False Association (15 U.S.C. § 1125(A)), For Dilution Of And Injury To Business Reputation (15 U.S.C. § 1125(C)) And For Common Law Unfair Competition," Order granting Motion for Entry of Final Consent Judgment and Permanent Injunction, and Final Consent Judgment and Permanent Injunction are attached hereto as Composite Exhibit "A" and are incorporated herein by this reference.

5. The docket, pleadings and papers filed in the JP Morgan Suit may be judicially noticed pursuant to Rule 201 of the Federal Rules of Evidence because they are not subject to reasonable dispute in that they are either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

**WHEREFORE**, the Trustee respectfully requests this Honorable Court to take judicial notice of the docket, pleadings and papers filed in the JPMorgan Suit pursuant to Rule 201 of the Federal Rules of Evidence in connection with the final evidentiary hearing on the Motion To Substantively Consolidate Non-Debtor Douglas Investments, LLC With And Into The Debtors' Bankruptcy Estates and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

GENOVESE JOBLOVE & BATTISTA, P.A.  
*Attorneys for the Trustee*  
200 East Broward Boulevard, Suite 1110  
Fort Lauderdale, Florida 33301  
Telephone: (954) 453-8000  
Telecopier: (954) 453-8010

By: /s/ Robert F. Elgidely  
Robert F. Elgidely, Esq.  
Florida Bar No. 111856  
David C. Cimo, Esq.  
Florida Bar No. 775400  
Theresa Van Vliet, Esq.  
Florida Bar No. 374040

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Trustee's Request For Judicial Notice Of District Court Action In Connection With Final Evidentiary Hearing On The Motion To Substantively Consolidate Non-Debtor Douglas Investments, LLC With And Into The Debtors' Bankruptcy Estates has been filed with the Court and thereby furnished to all

creditors and parties in interest registered on the Court's CM/ECF System on the 15<sup>th</sup> day of June, 2010.

By: /s/ Robert F. Elgidely  
Robert F. Elgidely, Esq.

## COMPOSITE EXHIBIT A

CLOSED, STAYED

**U.S. District Court  
Middle District of Florida (Ft. Myers)  
CIVIL DOCKET FOR CASE #: 2:07-cv-00124-JES-DNF**

JPMorgan Chase Bank, N.A., v. Engler et al  
Assigned to: Judge John E. Steele  
Referred to: Magistrate Judge Douglas N. Frazier  
Cause: 15:1125 Trademark Infringement (Lanham Act)

Date Filed: 03/01/2007  
Date Terminated: 09/19/2007  
Jury Demand: None  
Nature of Suit: 840 Trademark  
Jurisdiction: Federal Question

**Plaintiff**

**JPMorgan Chase Bank, N.A.**

represented by **Maxine Master Long**  
Shutts & Bowen, LLP  
Suite 1500  
201 S Biscayne Blvd  
Miami, FL 33131  
305/358-6300  
Email: mlong@shutts-law.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Stephen Bernard Gillman**  
Shutts & Bowen, LLP  
Suite 1500  
201 S Biscayne Blvd  
Miami, FL 33131  
305/358-6300  
Fax: 305/347-7835  
Email: sgillman@shutts.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Ulrich Engler**  
*also known as*  
Richard Engler

represented by **Robert E. Tardif, Jr.**  
Robert E. Tardif Jr., PA  
PO Box 2140  
Ft Myers, FL 33902  
239/985-4259  
Fax: 239/985-4211  
Email: rtardif@comcast.net  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Tamara Lea Klopenstein**

Spiegel & Utrera, PA  
4th Floor  
1840 Coral Way  
Miami, FL 33145-0605  
305/854-6000  
Fax: 305/857-3700  
Email:  
AttorneyKlopenstein@amerilawyer.com

*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Private Commercial Office, Inc.**  
*a Florida corporation*  
*doing business as*  
Ulrich Engler Daytrading

represented by **Robert E. Tardif, Jr.**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Tamara Lea Klopenstein**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Garnishee**

**SunTrust Bank**

represented by **John A. Barry**  
SunTrust Legal Department  
MC-FL-Orlando-1093  
200 S. Orange Ave.  
Orlando, FL 32801  
407/237-5338  
Fax: 407/237-4797  
Email: john.barry@suntrust.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Trustee**

**Robert E. Tardif, Jr.**

represented by **Robert E. Tardif, Jr.**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Interested Party**

**Reinhard Muller, et al.**

represented by **Roberta A. Colton**  
Trenam Kemker Scharf Barkin Frye  
O'Neill & Mullis, PA

101 E Kennedy Blvd - Ste 2700  
 PO Box 1102  
 Tampa, FL 33602  
 813/227-7486  
 Fax: 813/227-0486  
 Email: racolton@trenam.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Interested Party**

**Roberta A. Colton**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
03/01/2007	<u>1</u>	COMPLAINT for injunctive relief and damages for false association (15U.S.C. 1125(A)), for dilution of and injury to business reputation (15 U.S.C. 1125(C)) and for common law unfair competition against Ulrich Engler, Private Commercial Office, Inc. (Filing fee \$ 350 receipt number F009082) filed by JPMorgan Chase Bank, N.A.,. (Attachments: # <u>1</u> Exhibit A)(js) (Entered: 03/02/2007)
03/02/2007		Summons issued as to Ulrich Engler, Private Commercial Office, Inc.. (js) (Entered: 03/02/2007)
03/02/2007	<u>2</u>	STANDING ORDER: Filing of documents that exceed twenty-five pages. Signed by All Divisional Judges on 8/28/06. (js) (Entered: 03/02/2007)
03/06/2007	<u>3</u>	INTERESTED PERSONS ORDER. Certificate of interested persons and corporate disclosure statement due by 3/19/2007. Signed by Judge All Divisional Judges on 3/6/2007. (BJH, ) (Entered: 03/06/2007)
03/06/2007	<u>4</u>	RELATED CASE ORDER AND NOTICE of designation under Local Rule 3.05 - track 2. Notice of pendency of other actions due by 3/19/2007. Signed by Judge All Divisional Judges on 3/6/2007. (BJH, ) (Entered: 03/06/2007)
03/12/2007	<u>5</u>	CERTIFICATE of interested persons and corporate disclosure statement re <u>3</u> Interested persons order by JPMorgan Chase Bank, N.A.,. (Long, Maxine) (Entered: 03/12/2007)
03/12/2007	<u>6</u>	NOTICE of pendency of related cases re <u>4</u> order of compliance to Local Rule by JPMorgan Chase Bank, N.A., Related case(s): No (Long, Maxine) (Entered: 03/12/2007)
03/16/2007	<u>7</u>	NOTICE by JPMorgan Chase Bank, N.A., of <i>Filing Verified Return of Service on Private Commercial Office, Inc.</i> (Attachments: # <u>1</u> Appendix Return of Service on Private Commercial Office, Inc.)(Long, Maxine) (Entered: 03/16/2007)
04/04/2007	<u>8</u>	NOTICE by JPMorgan Chase Bank, N.A., re <u>3</u> Interested persons order, <u>4</u> Related case order and notice of designation of track 2 , of <i>Service of Court Orders</i> (Long, Maxine) (Entered: 04/04/2007)



04/20/2007	<u>9</u>	NOTICE of Appearance by Tamara Lea Klopenstein on behalf of Ulrich Engler, Private Commercial Office, Inc. (Klopenstein, Tamara) (Entered: 04/20/2007)
04/20/2007	<u>10</u>	ANSWER and affirmative defenses to complaint by Ulrich Engler, Private Commercial Office, Inc..(Klopenstein, Tamara) (Entered: 04/20/2007)
04/23/2007	<u>11</u>	INTERESTED PERSONS ORDER. Certificate of interested persons and corporate disclosure statement due by 5/4/2007 as to the Defendants. Signed by All Divisional Judges on 4/23/2007. (js) (Entered: 04/23/2007)
04/26/2007	<u>12</u>	CASE MANAGEMENT REPORT. (Long, Maxine) (Entered: 04/26/2007)
04/30/2007	<u>13</u>	CERTIFICATE of interested persons and corporate disclosure statement by Ulrich Engler, Private Commercial Office, Inc.. (Klopenstein, Tamara) (Entered: 04/30/2007)
05/04/2007	<u>14</u>	CASE MANAGEMENT AND SCHEDULING ORDER: Final Pretrial Conference set for 2/19/2008 at 09:00 AM in Courtroom A before Judge John E. Steele, Bench Trial set for trial term 3/3/2008 in Courtroom A before Judge John E. Steele. See Order for all deadlines. Signed by Judge Douglas N. Frazier on 5/4/2007. (BJH, ) (Entered: 05/04/2007)
05/24/2007	<u>15</u>	NOTICE by Ulrich Engler, Private Commercial Office, Inc. <i>of Filing Defendant's Rule 26(a)(1) Initial Disclosures</i> (Klopenstein, Tamara) (Entered: 05/24/2007)
06/18/2007	<u>16</u>	Unopposed MOTION to extend time to August 30, 2007 to file JPMC's expert reports by JPMorgan Chase Bank, N.A.,. (Long, Maxine) (Entered: 06/18/2007)
06/25/2007	<u>17</u>	ENDORSED ORDER granting <u>16</u> Agreed Motion for Enlargement of Time. The Plaintiff shall have until August 30, 2007, to disclose expert reports. Signed by Judge Douglas N. Frazier on 6/25/2007. (brh) (Entered: 06/25/2007)
08/17/2007	<u>18</u>	MOTION to compel <i>Discovery and Memorandum of Law in Support Thereof</i> by JPMorgan Chase Bank, N.A.,. (Gillman, Stephen) Motions referred to Magistrate Judge Douglas N. Frazier. (Entered: 08/17/2007)
08/30/2007	<u>19</u>	MOTION for Extension of Time to Complete Discovery by JPMorgan Chase Bank, N.A.,. (Attachments: # <u>1</u> Text of Proposed Order)(Gillman, Stephen) Motions referred to Magistrate Judge Douglas N. Frazier. (Entered: 08/30/2007)
09/06/2007	<u>20</u>	Trademark Report sent to Washington. (kma) (Entered: 09/06/2007)
09/10/2007	<u>21</u>	ORDER granting <u>18</u> Motion to Compel Discovery; and, granting in part and denying in part <u>19</u> Motion for Enlargement of Time. The Plaintiffs expert disclosure deadline is extended until October 10, 2007. Signed by Judge Douglas N. Frazier on 9/10/2007. (brh) (Entered: 09/10/2007)
09/17/2007	<u>22</u>	MOTION for Final Consent Judgment judgment by Ulrich Engler, Private Commercial Office, Inc.. (Klopenstein, Tamara) (Entered: 09/17/2007)
09/18/2007	<u>23</u>	ORDER granting <u>22</u> Motion for entry of final consent judgment and permanent

		injunction. The Clerk shall enter judgment by attaching a copy of the endorsed Final Consent Judgment and Permanent Injunction, terminate any remaining deadlines and motions as moot, and close the case. Signed by Judge John E. Steele on 9/18/2007. (Attachment: #(1) Final Consent Judgment and Permanent Injunction) (RKM) (Entered: 09/18/2007)
09/19/2007	<u>24</u>	JUDGMENT (Signed by Deputy Clerk) (js) (Entered: 09/19/2007)
10/25/2007	<u>25</u>	MOTION to Enforce Judgment by JPMorgan Chase Bank, N.A.,. (Long, Maxine) (Entered: 10/25/2007)
10/31/2007	<u>26</u>	RESPONSE to motion re <u>25</u> MOTION to Enforce Judgment filed by Ulrich Engler, Private Commercial Office, Inc.. (Klopenstein, Tamara) (Entered: 10/31/2007)
10/31/2007	<u>27</u>	MOTION for protective order by Ulrich Engler, Private Commercial Office, Inc.. (Klopenstein, Tamara) Motions referred to Magistrate Judge Douglas N. Frazier. (Entered: 10/31/2007)
10/31/2007	<u>28</u>	MOTION for Tamara Klopenstein to withdraw as attorney by all defendants. (Klopenstein, Tamara) Motions referred to Magistrate Judge Douglas N. Frazier. (Entered: 10/31/2007)
11/02/2007	<u>29</u>	RESPONSE in opposition re <u>28</u> MOTION for Tamara Klopenstein to withdraw as attorney filed by JPMorgan Chase Bank, N.A.,. (Gillman, Stephen) (Entered: 11/02/2007)
11/02/2007	<u>30</u>	RESPONSE to motion re <u>27</u> MOTION for protective order filed by JPMorgan Chase Bank, N.A.,. (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit)(Gillman, Stephen) (Entered: 11/02/2007)
11/02/2007	<u>31</u>	SUPPLEMENT TO RESPONSE (Dkt #29) to Motion to Withdraw by JPMorgan Chase Bank, N.A. (Attachments: # <u>1</u> Exhibit)(Gillman, Stephen) Modified on 11/5/2007 (drn). (Entered: 11/02/2007)
11/05/2007	<u>32</u>	MINUTE ENTRY for proceedings held before Judge John E. Steele : Telephone Conference held on 11/5/2007. Court Reporter: Jeffrey G. Thomas (BMA ) (Entered: 11/05/2007)
11/05/2007	<u>33</u>	ORDER granting <u>25</u> Motion to Enforce Judgment to the extent that defendants will be provided the opportunity to show cause within 11 days; denying <u>27</u> Motion for protective order; denying without prejudice <u>28</u> Motion to withdraw as attorney without prejudice. The Clerk shall send a copy of this Order to Ulrich Engler at the address provided in the Order. See Order for details. Signed by Judge John E. Steele on 11/5/2007. (RKM) (Entered: 11/05/2007)
11/07/2007	<u>34</u>	ENDORSED ORDER granting re <u>31</u> Plaintiff's Supplement to Response to Spiegel & Uteras' Motion to Withdraw as Counsel for Defendants. Signed by Judge Douglas N. Frazier on 11/7/2007. (bas) (Entered: 11/07/2007)
11/13/2007	<u>35</u>	FINAL Trademark Report sent to Washington. (kma) (Entered: 11/13/2007)
11/29/2007	<u>36</u>	MOTION for sanctions by JPMorgan Chase Bank, N.A.,. (Gillman, Stephen) (Entered: 11/29/2007)

11/30/2007	<u>37</u>	RENEWED MOTION to withdraw by Ulrich Engler, Private Commercial Office, Inc.. (Klopenstein, Tamara) Modified on 12/3/2007 (drm). (Entered: 11/30/2007)
11/30/2007	<u>38</u>	RESPONSE in opposition re <u>36</u> MOTION for sanctions filed by Ulrich Engler, Private Commercial Office, Inc.. (Klopenstein, Tamara) (Entered: 11/30/2007)
12/05/2007	<u>39</u>	RESPONSE to motion re <u>37</u> Second MOTION to withdraw filed by JPMorgan Chase Bank, N.A., (Long, Maxine) (Entered: 12/05/2007)
12/27/2007	<u>40</u>	MOTION for postjudgment writ of garnishment by JPMorgan Chase Bank, N.A., (Attachments: # <u>1</u> Writ of Garnishment)(SLU) Motions referred to Magistrate Judge Douglas N. Frazier. (Entered: 12/27/2007)
01/18/2008	<u>41</u>	ORDER granting <u>40</u> Motion for Post Judgment Writ of Garnishment. The Clerk is directed to issue the Writ of Garnishment. Signed by Magistrate Judge Douglas N. Frazier on 1/18/2008. (brh) (Entered: 01/18/2008)
01/22/2008	<u>42</u>	WRIT of Garnishment issued. (drm) (Entered: 01/22/2008)
02/15/2008	<u>43</u>	US Marshal 285 form executed on 2/13/08 for writ of garnishment. (JS) (Entered: 02/16/2008)
02/21/2008	<u>44</u>	ANSWER to Writ of Garnishment by SunTrust Bank. (Nelson, Lynn) (Entered: 02/21/2008)
02/22/2008	<u>45</u>	CERTIFICATE of compliance re <u>41</u> Order on motion for writ of garnishment, <u>42</u> Writ issued / <i>Certificate of Service of Motion and Writ of Garnishment and Notice to Defendant</i> by JPMorgan Chase Bank, N.A., (Long, Maxine) (Entered: 02/22/2008)
02/22/2008	<u>46</u>	CERTIFICATE of compliance re <u>44</u> Answer to Writ of Garnishment / <i>Certificate of Service of Garnishee's Answer and Notice of Right to Dissolve Writ</i> by JPMorgan Chase Bank, N.A., (Long, Maxine) (Entered: 02/22/2008)
02/27/2008	<u>47</u>	NOTICE by JPMorgan Chase Bank, N.A., re <u>41</u> Order on motion for writ of garnishment, <u>42</u> Writ issued, <u>44</u> Answer to Writ of Garnishment / <i>Certificate of Service of Garnishee's Answer and Notice of Right to Dissolve Writ</i> (Long, Maxine) (Entered: 02/27/2008)
03/03/2008	<u>48</u>	RESPONSE re <u>44</u> Answer to Writ of Garnishment / <i>Plaintiff's Reply to Answer of Garnishee SunTrust Bank</i> filed by JPMorgan Chase Bank, N.A., (Long, Maxine) (Entered: 03/03/2008)
03/10/2008	<u>49</u>	MOTION to Limit the Amount of Recovery from the Writ of Garnishment by Ulrich Engler, Private Commercial Office, Inc.. (Klopenstein, Tamara) (Entered: 03/10/2008)
03/20/2008	<u>50</u>	RESPONSE in opposition re <u>49</u> MOTION to Limit the Amount of Recovery from the Writ of Garnishment filed by JPMorgan Chase Bank, N.A., (Gillman, Stephen) (Entered: 03/20/2008)
03/27/2008	<u>51</u>	ORDER denying <u>49</u> Motion to Limit Recovery From the Writ of Garnishment. Signed by Magistrate Judge Douglas N. Frazier on 3/27/2008. (brh) (Entered: 03/27/2008)

		03/27/2008)
03/27/2008	<u>52</u>	MOTION FOR ENTRY OF FINAL JUDGMENT IN GARNISHMENT by JPMorgan Chase Bank, N.A.,. (Attachments: # <u>1</u> Exhibit A)(Gillman, Stephen) (Entered: 03/27/2008)
04/09/2008	<u>53</u>	SUGGESTION of bankruptcy by Reinhard Muller, et al.. (Colton, Roberta) Modified on 4/16/2008 to edit docket text(JS). (Entered: 04/09/2008)
04/15/2008	<u>54</u>	ORDER staying case based on the <u>53</u> Suggestion of Bankruptcy. The Clerk shall add Roberta A. Colton to the docket to receive copies of future filings and forward a copy of this Order to her attention. All pending motions are deferred pending the conclusion of the bankruptcy cases. Signed by Judge John E. Steele on 4/15/2008. (RKM) (Entered: 04/15/2008)
10/17/2008	<u>55</u>	ORDER directing counsel Roberta A. Colton to advise as to the status of the involuntary bankruptcy petition on or before October 22, 2008, or otherwise show cause by that date why sanctions should not be imposed for failure to comply with the Court's Order. Signed by Judge John E. Steele on 10/17/2008. (RKM) (Entered: 10/17/2008)
10/17/2008	<u>56</u>	STATUS REPORT <i>With Respect to Bankruptcy Cases of Defendants</i> by Roberta A. Colton. (Attachments: # <u>1</u> Exhibit A-Orders of Relief)(Colton, Roberta) (Entered: 10/17/2008)
10/20/2008	<u>57</u>	ORDER directing the Clerk to add Robert E. Tardif, Jr. to the docket as Trustee for defendants to receive all future filings, including this Order. Mr. Tardif shall file a status report regarding the bankruptcy status of defendants on or before November 7, 2008, and every 120 days thereafter or when the stay is due to be lifted, whichever occurs first. Signed by Judge John E. Steele on 10/20/2008. (RKM) (Entered: 10/20/2008)
11/21/2008	<u>58</u>	ORDER TO SHOW CAUSE why sanctions should not be imposed for failure to comply with the Court's October 20, 2008 <u>57</u> Order against Robert E. Tardif, Jr. Signed by Judge John E. Steele on 11/21/2008. (RKM) (Entered: 11/21/2008)
11/21/2008	<u>59</u>	RESPONSE re <u>57</u> Order, <u>58</u> Order to show cause <i>for Failure to Comply with Court's Order dated November 21, 2008, and Status Report pursuant to Court's Order dated October 20, 2008</i> by Robert E. Tardif, Jr. (Tardif, Robert) (Entered: 11/21/2008)
03/06/2009	<u>60</u>	STATUS REPORT <i>PURSUANT TO COURT'S ORDER OF OCTOBER 20, 2008</i> by Robert E. Tardif, Jr. (Tardif, Robert) (Entered: 03/06/2009)
08/28/2009	<u>61</u>	MOTION to substitute attorney by SunTrust Bank. (Barry, John) Motions referred to Magistrate Judge Douglas N. Frazier. (Entered: 08/28/2009)
08/31/2009	62	ENDORSED ORDER granting <u>61</u> Garnishee's Motion for substitution of counsel. Lynn F. Nelson, Esquire shall be permitted to withdraw as counsel for the Garnishee, Suntrust Bank. John A. Barry, Esquire, shall be substituted in as attorney for the Garnishee, Suntrust Bank. Signed by Magistrate Judge Douglas N. Frazier on 8/31/2009. (BAS) (Entered: 08/31/2009)

10/17/2009	<u>63</u>	MOTION for release of funds <i>held by the Garnishee, Suntrust Bank, to Robert E. Tardif Jr., Trustee</i> by Robert E. Tardif, Jr. (Tardif, Robert) (Entered: 10/17/2009)
11/10/2009	<u>64</u>	ORDER granting <u>63</u> Motion for Order Directing Garnishee to Release Garnished Funds to Bankruptcy Trustee of Defendants. Signed by Magistrate Judge Douglas N. Frazier on 11/10/2009. (brh) (Entered: 11/10/2009)

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06/15/2010 18:28:21			
<b>PACER Login:</b>	gj0554	<b>Client Code:</b>	10067-000
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	2:07-cv-00124-JES-DNF
<b>Billable Pages:</b>	5	<b>Cost:</b>	0.40

FILED

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
FT. MYERS DIVISION

2007 MAR -1 AM 10:55

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS, FLORIDA

JPMORGAN CHASE BANK, N.A.,

Plaintiff,

CIVIL ACTION No. \_\_\_\_\_

vs.

ULRICH ENGLER A/K/A RICHARD  
ENGLER, individually, and PRIVATE  
COMMERCIAL OFFICE, INC. D/B/A  
ULRICH ENGLER DAYTRADING, a  
Florida corporation.

2:07-cv-124-FtM-29DNF

Defendants.

**COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES  
FOR FALSE ASSOCIATION (15 U.S.C. § 1125(A)),  
FOR DILUTION OF AND INJURY TO BUSINESS REPUTATION  
(15 U.S.C. § 1125(C)) AND FOR COMMON LAW UNFAIR COMPETITION**

The Plaintiff, JPMorgan Chase Bank, N.A. ("JPMC"), by its undersigned attorneys, sues Defendants, Ulrich Engler a/k/a Richard Engler. ("Engler"), and Private Commercial Office, Inc. d/b/a Ulrich Engler Daytrading ("PCO"), and alleges as follows:

**NATURE OF THE CASE**

1. This is an action seeking injunctive relief and damages for violations of the Trademark Act of the United States, more particularly 15 U.S.C. § 1125(a), for dilution and injury to business reputation, and 15 U.S.C. § 1125(c), and for related pendent acts of unfair competition in violation of plaintiff's rights in and to its registered trademarks.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1125(a) (Lanham Act), 28 U.S.C. § 1331 (federal question) and § 1338 (patent, trademark and copyright), and pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction).

3. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. §§ 1391(b) and (c).

### **THE PARTIES**

4. Plaintiff, JPMC, is a national banking association organized and existing under the laws of the United States of America, with its main office in Columbus, Ohio, and it is the successor by merger to The Chase Manhattan Bank ("Chase Manhattan").

5. Defendant Engler is an individual residing and doing business in the State of Florida within this jurisdiction, who operates a business from an office address located at 1217 Cape Coral Parkway, Suite 121, Cape Coral, Florida 33904. Defendant PCO is a Florida corporation with its principal place of business at 1217 Cape Coral Parkway, Suite 121, Cape Coral, Florida 33904. PCO and Engler also do business internationally via the Internet as Ulrich Engler Daytrading.

### **FACTS COMMON TO ALL CAUSES OF ACTION**

6. By this action JPMC seeks to enjoin Engler and PCO and those acting in concert with them, from deliberately attempting to trade upon and thereby damage JPMC's businesses, business reputation, and goodwill by infringing upon JPMC's trademarks and falsely claiming an affiliation with JPMC's predecessor Chase Manhattan.

7. JPMC further seeks an award of damages arising as a result of Engler's and PCO's unlawful conduct.

**The JPMC Trademarks**

8. JPMC and its affiliated and related companies are engaged in general banking and financial matters, including investment advice and securities sales. JPMC owns a group of

9. famous trademarks and trade names which include the designation “The Chase Manhattan Bank”, and, as well, the good will that flows from the use of these trademarks and trade names (collectively the “JPMC Marks”).

10. JPMC’s reputation and good will are the result of, *inter alia*, having continuously provided high quality banking and financial services, including investment advice and securities sales for many years in the United States and in Europe. JPMC uses the JPMC Marks worldwide with respect to its financial services and has used the JPMC Marks during all time periods relevant to the claims of this Complaint, including in the United States and in Europe.

11. In view of their extensive and long term use, the JPMC Marks are famous nationwide and worldwide within the meaning of 15 U.S.C. § 1125(c).

12. Through substantial financial investment and effort, JPMC is known worldwide for its financial expertise, and has established considerable good will and the highest reputation for qualified and well-trained personnel, expertise, and high quality financial products, all of which are now threatened by the acts of Defendants.

**Defendants’ Unlawful Conduct**

13. Upon information and belief, from their Florida base, Defendants Engler and PCO are engaged in the business of providing financial services, including investment advice and securities sales, directed to German-speaking communities, specifically including in Germany, Austria and Switzerland. Defendants hold themselves out as daytrading specialists and investment bankers, promising high investment returns to their customers.



14. Defendants Engler and PCO advertise and promote themselves and their services by claiming that Engler was employed by Chase Manhattan, for more than twenty years, until in or about 2002. A copy of the printout of an internet posting in German (and translated in pertinent part to English) is attached hereto as Exhibit "A". Defendants have also represented that Engler was Chief Trader at Chase Manhattan for derivatives and bank guaranties for a period of ten years. These representations are false, in that Engler has never been an employee of JPMC or Chase Manhattan and they are intended to falsely inflate Engler's experience and affiliations.

15. Notwithstanding JPMC's statutory and common law rights in the JPMC Marks, and with both constructive and actual notice of the JPMC Marks, Defendants, alone or with others not as yet ascertained, have undertaken a concerted scheme, plan and course of conduct designed to trade upon JPMC's reputation and good will by appropriating and infringing the JPMC Marks, thereby causing a likelihood of public confusion as to the source, sponsorship or affiliation of Defendants' services and products and injuring JPMC's business reputation.

16. Defendants have used and continue to use the "The Chase Manhattan Bank" or a substantially similar reference to that designation in interstate and international commerce without the permission, authority, or consent of Plaintiff, JPMC.

17. Upon information and belief, Defendants have and will continue to promote their financial services to customers throughout the United States and Europe, unless enjoined.

18. Upon information and belief, Defendants' false designation of origin of their products and services was intended to and will continue to mislead the public into believing that Defendants are related to or affiliated with JPMC, or endorsed by JPMC.

19. Defendants have had constructive notice of the JPMC Marks and JPMC's rights thereto, since prior to the commencement of Defendants' unlawful conduct described herein.

20. Upon information and belief, Defendants have been at all relevant times aware of JPMC and the JPMC Marks, but nonetheless have acted and are acting in willful and wanton disregard of JPMC's rights by use of the "The Chase Manhattan Bank" designation in connection with the promotion, advertisement and sale of financial services.

**COUNT I - TRADEMARK INFRINGEMENT  
IN VIOLATION OF 15 U.S.C. § 1114**

21. Plaintiff realleges paragraphs 1 through 19 as if fully set forth herein.

22. Defendants' use of the designation "The Chase Manhattan Bank", or substantially similar words, is without the permission, consent, or authorization of JPMC, gives rise to a likelihood of confusion, deception, and mistake among the public and trade as to the source, origin, or sponsorship of Defendants' services and products associated therewith, and constitutes infringement of the JPMC Marks.

23. Upon information and belief, Defendants are using the "The Chase Manhattan Bank" or a substantially similar designation with the willful purpose and intent of misleading the trade and public, and trading upon JPMC's goodwill and reputation.

24. These acts violate the Trademark Act of the United States and constitute infringement of the registered JPMC Marks in violation of 15 U.S.C. § 1114 et seq.

25. On account of Defendants' activities, the trade and public are likely to be and will continue to be confused, misled, or deceived as to the source, origin, or sponsorship of Defendants' services and products, and JPMC is now and will continue to suffer irreparable injury, including injury to its reputation and good will, for which it has no adequate remedy at law.

26. On account of the Defendants' unlawful activities, JPMC has been damaged in an amount not as yet ascertained, but believed to be in excess of one hundred thousand dollars.

**COUNT II - FALSE DESIGNATION OF  
ORIGIN IN VIOLATION OF 15 U.S.C. § 1125(a)**

27. Plaintiff realleges paragraphs 1 through 19 and 21 - 22 as if fully set forth herein.

28. Defendants' use of the "The Chase Manhattan Bank" or a substantially similar designation constitutes the offering of goods and services bearing, and the use of false and misleading descriptions and representations of fact in interstate commerce, and violates the Trademark Act of the United States.

29. By reason of the foregoing, the trade and public are likely to be and will continue to be confused, misled, or deceived, and JPMC is now and will continue to suffer irreparable injury, including injury to its good will and reputation for which it has no adequate remedy at law.

30. Upon information and belief, Defendants are using the "The Chase Manhattan Bank" or a substantially similar designation with knowledge that their use is false, misleading, and deceptive, and with the intent to unfairly compete with JPMC.

31. On account of the Defendants' unlawful activities, JPMC has been damaged in an amount not as yet ascertained, but believed to be in excess of one hundred thousand dollars.

**COUNT III - INJURY TO BUSINESS REPUTATION  
AND DILUTION IN VIOLATION OF 15 U.S.C. § 1125(c)**

32. Plaintiff realleges paragraphs 1 through 19 and 21 - 22 as if fully set forth herein.

33. Defendants' conduct is without the permission, consent, or authorization of JPMC and has and is blurring and tarnishing the reputation of JPMC's unique, widely recognized, distinctive, and famous JPMC Marks, thereby diminishing their value.

34. Upon information and belief, the aforementioned activity is part of a deliberate plan or scheme intended to appropriate and trade upon the good will and reputation of JPMC and was undertaken in total disregard of the resultant damage and injury to it.

35. By reason of the foregoing, Defendants have engaged in, and is continuing to engage in acts which are injuring the business reputation and diluting and blurring the distinctive quality of the JPMC Marks in violation of the Trademark Act of the United States (15 U.S.C. § 1125(c)).

36. By reason of the foregoing, the trade and public are likely to be and will continue to be confused, misled, or deceived, and JPMC is now and will continue to suffer irreparable injury, including injury to its reputation and dilution of the distinctive quality of its JPMC Marks, for which it has no adequate remedy at law.

37. On account of the Defendant's unlawful activities, including their dilution of the JPMC Marks, JPMC has been damaged in an amount not as yet ascertained, but believed to be in excess of one hundred thousand dollars.

**COUNT IV - UNFAIR COMPETITION  
IN VIOLATION OF THE COMMON LAW**

38. Plaintiff realleges paragraphs 1 through 19 and 21 - 22 as if fully set forth herein.

39. This cause of action arises under the common law.

40. Defendants' use of the "The Chase Manhattan Bank" or a substantially similar designation will mislead and confuse the public and trade, and create a likelihood of injury to JPMC's public image and reputation.

41. Upon information and belief, the trade and public are likely to falsely ascribe the attributes and characteristics of JPMC, and its services and products to those offered and sold by

Defendants as a result of their use of the “The Chase Manhattan Bank” or a substantially similar designation.

42. By reason of the foregoing, Defendants have engaged in and are continuing to engage in acts of unfair competition in violation of the common law.

43. Upon information and belief, the use of the “The Chase Manhattan Bank” or a substantially similar designation was undertaken by Defendants with knowledge that doing so is misleading, and with the intent to confuse, mislead, and deceive the trade and consumers, and to unfairly compete with JPMC.

44. By reason of the foregoing, JPMC is now and will continue to suffer irreparable injury, including injury to its good will and reputation for which it has no adequate remedy at law.

45. On account of the Defendants’ unlawful activities, JPMC has been damaged in an amount not as yet ascertained, but believed to be in excess of one hundred thousand dollars.

**COUNT V - DECEPTIVE AND UNFAIR TRADE PRACTICES  
IN VIOLATION OF FLA. STAT. § 501.201 - .213**

45. Plaintiff realleges paragraphs 1 through 19 as if fully set forth herein.

46. This claim arises under the Florida Deceptive and Unfair Trade Practices Act, § 501.201-.213, Fla. Stat. (2005) (“FDUTPA”).

47. Defendants’ acts alleged above constitute deceptive and unfair trade practices, in violation of FDUTPA.

48. By reason of the foregoing, JPMC is now and will continue to suffer irreparable injury, including injury to its good will and reputation for which it has no adequate remedy at law.

49. On account of the Defendants' unlawful activities, JPMC has been damaged in an amount not as yet ascertained, but believed to be in excess of one hundred thousand dollars.

**WHEREFORE**, Plaintiff, JPMC, demands judgment:

a. finding that Defendants have infringed the JPMC Marks and have misled the public by suggesting that they were at any time affiliated with JPMC, that their services and products originate with, are affiliated with, or are sponsored or endorsed by JPMC, and;

b. preliminarily and permanently enjoining and restraining Engler and PCO , its officers, directors, agents, servants, employees, successors, and assigns, and all those acting in concert or participation with it, from:

(i) applying for, registering, activating, trafficking in, using, or displaying any Internet Uniform Resource Locator, domain name, e-mail address, hyperlink, metatag, or web site using any simulation, reference, reproduction, copy, or colorable imitation of the JPMC Marks, or any other trademark, service mark, trade dress, or copyright in which JPMC or its affiliates have an interest;

(ii) performing, imitating, copying, or making unauthorized use of any simulation, reproduction, copy, or colorable imitation of the JPMC Marks, or any other trademark, service mark, or trade dress, in which JPMC or its affiliates have an interest

(iii) manufacturing, having manufactured, producing, having produced, distributing, circulating, selling, offering for sale, advertising, promoting, using, or displaying any services or products using any simulation, reproduction, copy, or colorable imitation of the JPMC Marks, or any other trademark, service mark, or trade dress in which JPMC or its affiliates have an interest;

(iv) making any statement or representation whatsoever, or using any false or misleading descriptions or representations of fact including, but not limited to, any claims of past affiliation with or employment by Chase Manhattan in connection with the manufacture, production, distribution, circulation, sale, offering for sale, advertising, promotion, use, or display of any products or services using any simulation, reproduction, copy, or colorable imitation of the JPMC Marks, or any other trademark, service mark, trade dress, or copyright in which JPMC or its affiliates have an interest;

(v) engaging in any other activity constituting unfair competition with JPMC, or constituting infringement of the JPMC Marks, or any other trademark, service mark or trade dress in which JPMC or its affiliates have an interest, or any of JPMC's rights in, or to use, or to exploit said trademarks, service marks or trade dress or constituting any dilution of the good will, name, or reputation of JPMC; and

(vi) engaging in any other activity constituting infringement of the JPMC Marks, or any other trademark, service mark or trade dress in which JPMC or its affiliates have an interest including, but not limited to, referencing that Engler had any prior employment or affiliation with Chase Manhattan;

c. directing that Engler and PCO, at their own expense, recall all advertising and promotional materials that infringe the JPMC Marks or any other trademark, service mark or trade dress in which JPMC or its affiliates have an interest which were distributed by Defendants including, but not limited to, referencing that Engler had any prior employment or affiliation with The Chase Manhattan Bank or Chase Manhattan and that they publish in all such internet domains a retraction of any affiliation with or employment of Engler with Chase Manhattan;

d. ordering that any other domain names, e-mail addresses, hyperlinks, metatags, or web sites, owned, operated, or controlled by Defendants which use or incorporate any simulation, reproduction, copy, or colorable imitation of the JPMC Marks or any other trademark, service mark or trade dress in which JPMC or its affiliates have an interest be preliminarily and permanently transferred to JPMC and/or forfeited;

e. directing that the Defendants deliver to JPMC's attorneys or representatives for destruction all materials in their possession or under their control which embody the JPMC Marks or any other trademark, service mark or trade dress in which JPMC or its affiliates have an interest including, but not limited to, referencing that Engler had any prior employment or affiliation with Chase Manhattan;

f. directing that Defendants deliver to JPMC's attorneys or representatives for destruction all products, labels, signs, prints, packages, molds, plates, dies, wrappers, receptacles, and advertisements in their possession or under their control bearing any simulation, reproduction, copy, or colorable imitation of the JPMC Marks or any other trademark, service mark or trade dress, in which JPMC or its affiliates have an interest, and any other means of making the same, including, but not limited to, referencing that Engler had any prior employment or affiliation with Chase Manhattan;

g. directing that Defendants file with the Court and serve on JPMC's counsel a report in writing and under oath setting forth in detail the manner in which they have complied with any temporary restraining order, or preliminary or permanent injunction entered herein within thirty (30) days of entry of any such order or injunction;

h. directing such other relief as the Court may deem appropriate to prevent the trade and public from being misled or deceived;

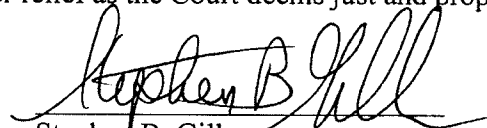


i. directing Defendants to account for actual damages suffered by JPMC including its lost sales, and to account for its unjustly received profits resulting from its infringement of the JPMC Marks, directing that such damages be trebled because of the willful and deliberate nature and character of the infringement, and awarding JPMC judgment against Engler and PCO jointly and severally in that amount;

j. for an assessment of costs, interest, and attorneys' fees incurred by JPMC;  
and

k. for such other and further relief as the Court deems just and proper.





Dated: February 28, 2007




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# EXHIBIT A

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Ulrich Engler startete seine Karriere bei der UBS Bank in der Schweiz und wechselte dann zur Chase Manhattan Bank, wo er 21 Jahre beschäftigt war. Zuletzt bekleidete er dort zehn Jahre lang die Position des Cheftraders für Derivate und Bankgarantiehandel. Der 45-jährige Bankfachwirt für Investment-Banking widmet sich seit 2002 dem Aufbau seines eigenen Daytrading-Unternehmens in Florida. Dabei verfolgt er im Interesse seiner Kunden eine konservative und auf kontinuierlichen, sicheren Erfolg ausgerichtete Strategie.

„Wir handeln grundsätzlich nicht auf Kredit und lassen die Finger von besonders risikoreichen Anlagen wie Optionen, Futures oder Währungen“, so Engler. „Um die Sicherheit für unsere Kunden zu gewährleisten, setzen wir ein striktes, tägliches Trading-Limit und kaufen neue Positionen erst dann, wenn die Vortagesposition zu mindestens 80 Prozent wieder veräußert wurde. Wir sind keine Zocker auf der Jagd nach dem schnellen Dollar, sondern bieten seriösen Aktien-Handel mit System und maximaler Transparenz. Gerne zeigen wir Interessenten unsere monatlichen Performance-Raten der letzten Jahre.“ Mit Hilfe spezieller Software und einer eigenen Prozessplattform analysieren Engler und sein Team im 5-Sekunden-Takt permanent etwa 35.000 Aktien, die auf dem amerikanischen Markt gehandelt werden. Dadurch können auch kleinste Kursbewegungen und Trends zeitnah erfasst und umgehend zum Vorteil der Anleger genutzt werden. Ulrich Engler besitzt eine Börsenzulassung und sein Analyseschwerpunkt liegt ausschließlich im Handelsvolumen (Momentum) der jeweiligen Aktien, speziell im vorbörslichen Handel durch institutionelle Anleger.

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Einzelheiten finden sich auf der neuen Website des Unternehmens unter [www.systembrokerage.com](http://www.systembrokerage.com).

An seinem Erfolg lässt Ulrich Engler auch diejenigen teilhaben, die nicht auf der Sonnenseite des Lebens stehen. Privat unterstützt er das Wohnungsbau-Projekt „Habitat for Humanity“ für bedürftige Familien in den USA mit Zuwendungen in Höhe von jährlich ca. 500.000 US-Dollar. Dabei wird für jeweils 50.000 US-Dollar das Baumaterial für ein komplettes Haus zur Verfügung gestellt.

PRIVATE COMMERCIAL OFFICE, INC.  
1217 Cape Coral Pkwy., # 121, Cape Coral  
Florida 33904, USA  
Ulrich Engler  
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PRIVATE COMMERCIAL OFFICE ist eine Investment Banking Firma in den USA unter Deutscher Geschäftsleitung. Das seit 2002 auf dem Markt agierende Unternehmen betreibt Aktienhandel auf Daytrading-Basis. Mit 20 festen und 50 freien Mitarbeitern bewegt der Geschäftsführer Ulrich Engler ein monatliches Handelsvolumen von ca. 250 Millionen US Dollar. Die Unternehmensstrategie zeichnet sich durch eine konservative Geschäftsphilosophie und den innovativen Einsatz eigener Software und Hardware aus. Zu den Kunden von PRIVATE COMMERCIAL OFFICE zählen sowohl erfahrene Investoren als auch gut situierte Anleger, die ihr Portfolio um attraktive Positionen anreichern wollen.

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**Die letzten 3 von 14  
Kommentaren zu dieser PR-  
Meldung**

**Walter schrieb am 19.01.2007 um  
12:02**

Wenn Herr Engler nun schon seit 2002 sein Geschäft betreibt und bisher - im Laufe von immerhin 4 Jahren - keine Klagen von Investoren gekommen sind, sollte man doch davon ausgehen können daß die Sache seriös ist. Soll sich doch mal ein Anleger melden, der etwas zu bemängeln hat....

Vorurteile sind nicht angebracht - Fakten bringen !

**Thomas K. schrieb am 13.01.2007  
um 09:12**

Schade ist im Übrigen, dass die Firma von Herrn Engler eine Richtigstellung ausschließlich dazu nutzt, um weitere Werbung zu betreiben. Das oben stehende Schreiben dient weniger der Richtigstellung angeblicher Gerüchte als vielmehr der Eigenwerbung für das von Engler geführte Unternehmen. Sorgsam wurde diese Pressemitteilung dann auch flux in alle frei verfügbaren Presseportale gesetzt. Gute Arbeit der PR-Abteilung. Besser wäre aber einfach eine kurze Stellungnahme einer offiziell als glaubwürdig erachteten Prüfstelle. Leider bleibt so ein Beigeschmack.

**Thomas K. schrieb am 13.01.2007  
um 09:01**

So, nun ist ausreichend Werbung im Sinne von Herrn Engler gemacht. Fakt bleibt, es kursieren Gerüchte im Markt, dass eine Anlage über Herrn Engler nicht seriös ist. Egal ob richtig oder falsch, solange es auch nur ein Gerücht gibt ist jeder Anleger, der noch bei Verstand ist, gut beraten sein Geld dort nicht zu investieren, da niemand von uns "Normalbürgern" tatsächlich die Integrität Herrn Englers beurteilen kann. Ich halte mich da an die alte Börsenweisheit: "Wo Rauch ist, ist auch Feuer". Damit fährt man meistens prima.

**Alle Kommentare    Kommentieren  
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JPMorgan Chase Bank, N.A. v. Ulrich Engler and Private Commercial Office, Inc. d/b/a Ulrich Engler Daytrading

Translation of press release posted on German internet website OpenPR, at <http://www.openpr.de/news/102759>

Headline: Successful Daytrader Defends Itself Against Internet-Rumors – Ulrich Engler Daytrading Sees Itself Exposed to Persistent Assertions

Press Release from: Private Commercial Office Inc., published on October 6, 2006 at 08:31:38, in the category Trade, Economy, Finance, Banking and Insurance

Dateline: Munich, October 5, 2006.

Ulrich Engler, German day trading specialist and investment banker, takes steps to vehemently oppose anonymous claims on the internet, that falsely link his name to cases of fraud.

"Unfortunately, vague suspicions from anonymous authors are circulating on the internet, which question my integrity," says Ulrich Engler. "I emphatically reject such assertions; they do not conform to reality on any point.. I do not know how these rumors arose, who is behind such a campaign, or what kind of mistake it represents. The fact is, that in 2003 we paid out 76 %, in 2004 125%, in 2005 107 %, and in the current year to date 65.6% returns to our satisfied customers. I work with many tax and business advisors, as well as legal advisors who recommend our services to their clients. If we didn't take our work seriously, no one would give such a recommendation to their clients."

Ulrich Engler started his career with UBS Bank in Switzerland and then went to Chase Manhattan Bank, where he was employed for 21 years. There he ultimately held for ten years the position of Chief Trader for derivatives and bank guaranties. The 45 year old banker has dedicated himself since 2002 to the development of his own day-trading business in Florida. At the same time he is pursuing for the benefit of his clients a conservative strategy delivering secure and continuing success.

[Following this is a quote from Engler describing his strategy, which is based on "special software" to analyze small shifts in stock prices and cash in on "momentum" by frequent trades. Then follows a link to their new website: [www.systembrokerage.com](http://www.systembrokerage.com)]

[The next paragraph describes how he "shares his success with those not on the sunny side of life" by supporting Habitat for Humanity with "annual donations ca. \$500,000" and \$50,000 for building materials to complete a house.]

[The contact information for PCO follows, with an e-mail address of [urichiee@aol.com](mailto:urichiee@aol.com)]

Private Commercial Office is an investment banking firm in the USA under German management. The firm has been active in the market since 2002, trading stock on a day



trading basis. With 20 permanent employees and 50 associates, manager Ulrich Engler moves a monthly trade volume of about USD\$250 million. The business strategy is distinguished by a conservative business philosophy and an innovative use of its own software and hardware. The clientele of Private Commercial Office includes experienced investors as well as affluent investors, who want to enrich their portfolios.

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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

JP MORGAN CHASE BANK, N.A.,

Plaintiff,

vs.

Case No. 2:07-cv-124-FtM-29DNF

ULRICH ENGLER, PRIVATE COMMERCIAL  
OFFICE, INC.,

Defendants.

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**ORDER**

\_\_\_\_\_This matter comes before the Court on defendants' Motion for Entry of Final Consent Judgment and Permanent Injunction (Doc. #22), filed on September 17, 2007. Defendants seek the entry of the attached Final Consent Judgment and Permanent Injunction with plaintiff's agreement and states that the entry of same will resolve all matters pending in this case. Upon review, the Court will endorse the attached original copy and direct the entry of final judgment based on the consented document.


Accordingly, it is now

**ORDERED:**

1. Defendants' Motion for Entry of Final Consent Judgment and Permanent Injunction (Doc. #22) is **GRANTED**.

2. The Clerk shall enter judgment by attaching a copy of the endorsed Final Consent Judgment and Permanent Injunction, terminate any remaining deadlines and motions as moot, and close the case.

**DONE AND ORDERED** at Fort Myers, Florida, this 18th day of September, 2007.

  
\_\_\_\_\_  
**JOHN E. STEELE**  
United States District Judge

Copies:  
Counsel of record  
DCCD

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
FT. MYERS DIVISION

JPMORGAN CHASE BANK, N.A.,

Case No. 2:07-cv-124-FtM-29DNF

Plaintiff,

vs.

ULRICH ENGLER A/K/A RICHARD  
ENGLER, individually, PRIVATE  
COMMERCIAL OFFICE, INC. D/B/A  
ULRICH ENGLER DAYTRADING, a  
Florida corporation,

Defendants.

/

**FINAL CONSENT JUDGMENT AND PERMANENT INJUNCTION**

THIS CAUSE came before the Court on a Motion filed by Defendants, Ulrich Engler and Private Commercial Office, Inc. for entry of a Final Consent Judgment and Permanent Injunction against defendants Ulrich Engler a/k/a Richard Engler a/k/a Richie Engler ("Engler") and Private Commercial Office, Inc. d/b/a Ulrich Engler Daytrading, a Florida corporation ("PCOI") (collectively Engler and PCOI are "Defendants"). The Court has reviewed the motion and the record herein, and is fully advised in the premises and finds there is good cause for entry of this Final Consent Judgment and Permanent Injunction and further finds as follows:

1. JPMC filed suit seeking injunctive relief and damages based on violations of the Trademark Act, 15 U.S.C. § 1114 et seq.; false designation of origin in violation of 15 U.S.C. § 1125(a); injury to business reputation and dilution in violation of 15 U.S.C. § 1125(c); common law unfair competition; and violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. § 501.201-.213, Fla. Stat. (2005) ("FDUTPA").

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

2. This Court has jurisdiction over the subject matter on this action pursuant to 15 U.S.C. §1125(a) (Lanham Act), 28 U.S.C. § 1331 (federal question) and § 1338 (patent, trademark and copyright), and pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction). Defendants were validly served with the summons and complaint and have appeared through counsel. Accordingly, personal jurisdiction is proper as to Defendants.

3. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. §§ 1391(b) and (c).

### **THE PARTIES**

4. JPMC. is a national banking association organized and existing under the laws of the United States of America, with its main office in Columbus, Ohio, and it is the successor by merger to The Chase Manhattan Bank ("Chase Manhattan").

5. Engler is an individual residing and doing business in the State of Florida within this jurisdiction, who operates a business from an office address located at 1217 Cape Coral Parkway, Suite 121, Cape Coral, Florida 33904. Defendant PCOI is a Florida corporation with its principal place of business at 1217 Cape Coral Parkway, Suite 121, Cape Coral, Florida 33904. PCOI and Engler also do business internationally via the Internet as Ulrich Engler Daytrading.

### **THE JPMC TRADEMARKS**

6. JPMC and its affiliated and related companies are engaged in general banking and financial matters, including investment advice and securities sales.

7. JPMC owns a group of famous trademarks and trade names which include the designation "The Chase Manhattan Bank", and, as well, the good will that flows from the use of these trademarks and trade names (collectively the "JPMC Marks").

8. JPMC's reputation and good will are the result of, *inter alia*, having continuously provided high quality banking and financial services, including investment advice and securities sales for many years in the United States and in Europe. JPMC uses the JPMC Marks worldwide with respect to its financial services and has used the JPMC Marks during all time periods relevant to the claims of this Complaint, including in the United States and in Europe.

9. In view of their extensive and long term use, the JPMC Marks are famous nationwide and worldwide within the meaning of 15 U.S.C. § 1125(c).

10. Through substantial financial investment and effort, JPMC is known worldwide for its financial expertise, and has established considerable good will and the highest reputation for qualified and well-trained personnel, expertise, and high quality financial products, all of which are now threatened by the acts of Defendants.

#### **DEFENDANTS' VIOLATIONS**

11. From Florida, Defendants are engaged in the business of providing financial services, including investment advice and securities sales, directed to German-speaking communities, specifically including in Germany, Austria and Switzerland. Defendants hold themselves out as daytrading specialists and investment bankers, promising high investment returns to their customers.

12. Defendants advertise and promote themselves and their services by claiming that Engler was employed by Chase Manhattan for more than twenty years, until in or about 2002, and that Engler was Chief Trader at Chase Manhattan for derivatives and bank guaranties for a period of ten years. These representations are false, in that Engler has never been an employee of JPMC or Chase Manhattan.

13. Notwithstanding JPMC's statutory and common law rights in the JPMC Marks, and with both constructive and actual notice of the JPMC Marks, Defendants have undertaken a

course of conduct which trades upon JPMC's reputation and good will by appropriating and infringing the JPMC Marks, thereby causing a likelihood of public confusion as to the source, sponsorship or affiliation of Defendants' services and products and injuring JPMC's business reputation.

14. Defendants have used and continue to use the "The Chase Manhattan Bank" or a substantially similar reference to that designation in interstate and international commerce without the permission, authority, or consent of Plaintiff, JPMC.

15. Defendants have and will continue to promote their financial services to customers throughout the United States and Europe, unless enjoined.

16. Defendants' false designation of origin of their products and services will continue to mislead the public into believing that Defendants are related to or affiliated with JPMC, or endorsed by JPMC.

17. Defendants have had constructive notice of the JPMC Marks and JPMC's rights thereto, since prior to the commencement of Defendants' conduct described herein.

18. Defendants have been at all relevant times aware of JPMC and the JPMC Marks, but have acted and are acting in disregard of JPMC's rights by use of the "The Chase Manhattan Bank" designation in connection with the promotion, advertisement and sale of financial services.

**COUNT I - TRADEMARK INFRINGEMENT**  
**IN VIOLATION OF 15 U.S.C. § 1114**

19. Defendants' use of the designation "The Chase Manhattan Bank", or substantially similar words, is without the permission, consent, or authorization of JPMC, gives rise to a likelihood of confusion, deception, and mistake among the public and trade as to the source.

origin, or sponsorship of Defendants' services and products associated therewith, and constitutes infringement of the JPMC Marks.

20. Defendants' use of the "The Chase Manhattan Bank" or a substantially similar designation will mislead the trade and public, and trade upon JPMC's goodwill and reputation.

21. On account of Defendants' activities, the trade and public are likely to be and will continue to be confused, misled, or deceived as to the source, origin, or sponsorship of Defendants' services and products, and JPMC is now and will continue to suffer irreparable injury, including injury to its reputation and good will, for which it has no adequate remedy at law.

22. These acts violate the Trademark Act of the United States and constitute infringement of the registered JPMC Marks in violation of 15 U.S.C. § 1114 et seq.

**COUNT II - FALSE DESIGNATION OF  
ORIGIN IN VIOLATION OF 15 U.S.C. § 1125(A)**

23. Defendants' use of the "The Chase Manhattan Bank" or a substantially similar designation constitutes the offering of goods and services bearing, and the use of false and misleading descriptions and representations of fact in interstate commerce, and violates the Trademark Act of the United States.

24. By reason of the foregoing, the trade and public are likely to be and will continue to be confused, misled, or deceived.



**COUNT III - INJURY TO BUSINESS REPUTATION  
AND DILUTION IN VIOLATION OF 15 U.S.C. § 1125(C)**

25. Defendants' conduct is without the permission, consent, or authorization of JPMC and has and is blurring and tarnishing the reputation of JPMC's unique, widely recognized, distinctive, and famous JPMC Marks, thereby diminishing their value.

26. By reason of the foregoing, the trade and public are likely to be and will continue to be confused, misled, or deceived, and JPMC is now and will continue to suffer irreparable injury, including injury to its reputation and dilution of the distinctive quality of its JPMC Marks, for which it has no adequate remedy at law.

27. By reason of the foregoing, Defendants have engaged in, and are continuing to engage in acts which are injuring the business reputation and diluting and blurring the distinctive quality of the JPMC Marks in violation of the Trademark Act of the United States (15 U.S.C. § 1125(c)).

**COUNT IV - UNFAIR COMPETITION  
IN VIOLATION OF THE COMMON LAW**

28. Defendants' use of the "The Chase Manhattan Bank" or a substantially similar designation will mislead and confuse the public and trade, and create a likelihood of injury to JPMC's public image and reputation.

29. The trade and public are likely to falsely ascribe the attributes and characteristics of JPMC, and its services and products to those offered and sold by Defendants as a result of their use of the "The Chase Manhattan Bank" or a substantially similar designation.

30. By reason of the foregoing, Defendants have engaged in and are continuing to engage in acts of unfair competition in violation of the common law.

**COUNT V - DECEPTIVE AND UNFAIR TRADE PRACTICES  
IN VIOLATION OF FLA. STAT. § 501.201 - .213**

31. Defendants' acts constitute deceptive and unfair trade practices, in violation of FDUTPA.

32. By reason of all of the foregoing, JPMC is now and will continue to suffer irreparable injury, including injury to its good will and reputation for which it has no adequate remedy at law.

Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS THEREFORE ORDERED AND ADJUDGED that:

A. Ulrich Engler a/k/a Richard Engler a/k/a Richie Engler ("Engler") and Private Commercial Office, Inc. d/b/a Ulrich Engler Daytrading ("PCOI") and any of its officers, agents, servants, employees, owners and representatives, and all other person, firms or corporations in active concert or participation with either of them, and all those who receive actual notice by personal service or otherwise, shall be and hereby are permanently enjoined and/or restrained from:

(i) applying for, registering, activating, trafficking in, using, or displaying any Internet Uniform Resource Locator, domain name, e-mail address, hyperlink, metatag, or web site using any simulation, reference, reproduction, copy, or colorable imitation of the JPMC Marks, or any other trademark, service mark, trade dress, or copyright in which JPMC or its affiliates have an interest including, but not limited to the JPMC Marks;

(ii) performing, imitating, copying, or making unauthorized use of any simulation, reproduction, copy, or colorable imitation of the JPMC Marks, or any other trademark, service mark, or trade dress, in which JPMC or its affiliates have an interest including, but not limited to the JPMC Marks;

(iii) manufacturing, having manufactured, producing, having produced, distributing, circulating, selling, offering for sale, advertising, promoting, using, or displaying any services or products using any simulation, reproduction, copy, or colorable imitation of the JPMC, Marks, or any other trademark, service mark, or trade dress in which JPMC or its affiliates have an interest including, but not limited to the JPMC Marks:

(iv) making any statement or representation whatsoever, or using any false or misleading descriptions or representations of fact including, but not limited to, any claims of past affiliation with or employment by JPMC or its predecessor entity The Chase Manhattan Bank in connection with the manufacture, production, distribution, circulation, sale, offering for sale, advertising, promotion, use, or display of any products or services using any simulation, reproduction, copy, or colorable imitation of the JPMC, Marks, or any other trademark, service mark, trade dress, or copyright in which JPMC or its affiliates have an interest including, but not limited to the JPMC Marks:

(v) engaging in any other activity constituting unfair competition with JPMC or constituting infringement of the JPMC, Marks, or any other trademark, service mark or trade dress in which JPMC, or its affiliates have an interest, or any of JPMC's rights in, or to use, or to exploit said trademarks, service marks or trade dress or constituting any dilution of the good will, name, or reputation of JPMC; and

(vi) engaging in any other activity constituting infringement of the JPMC's Marks, or any other trademark, service mark or trade dress in which JPMC's or its affiliates have an interest including, but not limited to, referencing that Engler had any prior employment or affiliation with The Chase Manhattan Bank:

B. Engler and PCOI, at their own expense, shall recall all advertising and promotional materials that infringe the JPMC Marks or any other trademark, service mark or trade dress in which JPMC or its affiliates have an interest which were distributed by Engler and PCOI, including, but not limited to, referencing that Engler had any prior employment or affiliation with The Chase Manhattan Bank or Chase Manhattan and that they publish in all such internet domains a retraction of any affiliation with or employment of Engler with the Chase Manhattan Bank;

C. Any other domain names, e-mail addresses, hyperlinks, metatags, or web sites, owned, operated, or controlled by Engler and PCOI which use or incorporate any simulation, reproduction, copy, or colorable imitation of the JPMC Marks or any other trademark, service mark or trade dress in which JPMC or its affiliates have an interest shall be preliminarily and permanently transferred to JPMC and/or forfeited;

D. Engler and PCOI shall deliver to JPMC's attorneys or representatives for destruction all materials in their possession or under their control which embody the JPMC Marks or any other trademark, service mark or trade dress in which JPMC or its affiliates have an interest including, but not limited to, referencing that Engler had any prior employment or affiliation with the Chase Manhattan Bank;

E. Engler and PCOI shall deliver to JPMC's attorneys or representatives for destruction all products, labels, signs, prints, packages, molds, plates, dies, wrappers, receptacles, and advertisements in their possession or under their control bearing any simulation, reproduction, copy, or colorable imitation of the JPMC Marks or any other trademark, service mark or trade dress, in which JPMC or its affiliates have an interest, and any other means of

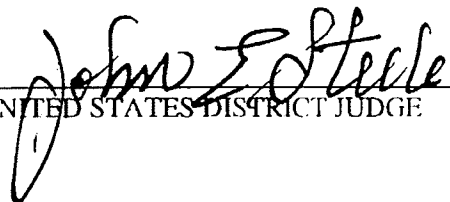
making the same, including, but not limited to, referencing that Engler had any prior employment or affiliation with the Chase Manhattan Bank:

F. Engler and PCOI shall file with the Court and serve on JPMC's counsel within thirty (30) days of entry of this Order, a report in writing and under oath setting forth in detail the manner in which they have complied with the terms of this Order:

G. JPMC is hereby awarded jointly and severally against each defendant attorneys fees on the amount of \$40,500.00 and costs of this action in the amount of \$500.00 (filing fee \$350.00 and service of process \$150.00) for a total monetary judgment of \$41,000.00, plus interest thereon at the lawful rate from the date of this Final Consent Judgment, for which let execution issue.

H. The Court retains jurisdiction of this case and the parties to enforce this judgment and to enter any other and further orders as may be necessary or appropriate.

DONE AND ORDERED in Chambers in Fort Myers, Florida, this ~~18th~~<sup>19th</sup> day of September, 2007.

  
UNITED STATES DISTRICT JUDGE

Copies furnished:

Stephen B. Gillman, Esq.  
Tamara Klopenstein, Esq.