P99000004108

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SECRETARY OF STATE
TALLAHASSEE FLORIDA

10-18-11

stratton LAW FIRM

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Stratton Smith, JD, LLM
Virginia Lee Dickman, PLS†, FRP‡
Susan A. Smith, FRP‡

October 13, 2011

Secretary of State
Corporate Division via Federal Express

Re: Schwartz Consulting Partners, Inc.

Dear Clerk,

Enclosed are the Articles of Dissolution with a Final Judgment that has been recorded in Hillsborough County. This Final Judgment orders the Dissolution of the above corporation.

A check in the amount of $43.75 has also been enclosed to cover the costs.

If you have **any** questions, please give me a call.

Thank you,

*Susan A. Smith, FRP*
Florida Registered Paralegal

**COVER LETTER**

**TO:** Amendment Section
Division of Corporations

**SUBJECT:** Schwartz Consulting Partners, Inc.

**DOCUMENT NUMBER:** P99000004108

The enclosed **Articles of Dissolution** and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

Susan A. Smith, FRP
(Name of Contact Person)

Stratton Law Firm
(Firm/Company)

611 W. Azeele Street
(Address)

Tampa, Florida 33606-2205
(City/State and Zip Code)

For further information concerning this matter, please call:

Susan A. Smith at ( 813 ) 251-1624
(Name of Contact Person) (Area Code & Daytime Telephone Number)

Enclosed is a check for the following amount:

☐ $35 Filing Fee ☒ $43.75 Filing Fee & Certificate of Status ☐ $43.75 Filing Fee & Certified Copy (Additional copy is enclosed) ☐ $52.50 Filing Fee, Certificate of Status & Certified Copy (Additional copy is enclosed)

**MAILING ADDRESS:**
Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

**STREET ADDRESS:**
Amendment Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

FILED
11 OCT 14 PM 12:59
SECRETARY OF STATE
TALLAHASSEE FLORIDA

# ARTICLES OF DISSOLUTION

Pursuant to section 607.1403, Florida Statutes, this Florida profit corporation submits the following articles of dissolution:

FIRST: The name of the corporation as currently filed with the Florida Department of State:

Schwartz Consulting Partners, Inc.

SECOND: The document number of the corporation (if known): P99000004108

THIRD: The date dissolution was authorized: July 8, 2011

Effective date of dissolution if applicable: _____
(no more than 90 days after dissolution file date)

FOURTH: Adoption of Dissolution (CHECK ONE) ( See attached Court Order

☐ Dissolution was approved by the shareholders. The number of votes cast for dissolution was sufficient for approval.

☐ Dissolution was approved by the shareholders through voting groups.

*The following statement must be separately provided for each voting group entitled to vote separately on the plan to dissolve:*

The number of votes cast for dissolution was sufficient for approval by

_____
(voting group)

Signature: _____
(By a director, president or other officer - if directors or officers have not been selected, by an incorporator - if in the hands of a receiver, trustee, or other court appointed fiduciary, by that fiduciary)

Bonita F. Schwartz
(Typed or printed name of person signing)

President
(Title of person signing)

**Filing Fee: $35**

INSTRUMENT#: 2011222586, BK: 20599 PG: 62 PGS: 62 - 75 07/11/2011 at 08:37:42 AM, DEPUTY CLERK:ADANIEL Pat Frank,Clerk of the Circuit Court Hillsborough County

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY
CIVIL DIVISION

40

BONITA B. SCHWARTZ, for and on behalf of SCHWARTZ CONSULTING PARTNERS, INC., a Florida corporation,

Plaintiff,

v.

CASE # ~~10-CA-021049~~ 10-CA-004067

DIVISION: "I"

RODNEY K. KAYTON, ROBERT ILES, and BRAND INTUITION, LLC, a Florida Limited Liability Company, d/b/a STUDY HALL RESEARCH

Defendant.
_____/

## FINAL JUDGMENT

This matter came before the Court on June 13, 14 and 17, 2011, for the trial of all issues. Also, the court took notice of prior exhibits and testimony introduced by the parties at prior hearings. The Court having considered these matters, the filings of the parties, and arguments of counsel, hereby finds as follows:

### A. Factual Background

Bonita Schwartz ("Schwartz") and Robert Kayton ("Kayton") were business partners in Schwartz Consulting Partners, Inc.("SCP"). SCP was a closely held corporation that reported federal income tax as an "S Corporation." Schwartz and Kayton each owned fifty percent of the outstanding shares of SCP and were the only two directors until February 2010. This lawsuit involves the various disputes which arose between these two shareholders.

Schwartz established and operated a marketing research and services firm known as Schwartz Research Services, Inc. ("Research"). Research specialized in performing quantitative marketing research and analysis on behalf of various clients. Quantitative research focuses on consumer data to assist clients in marketing efforts. Research had been in business many years before Schwartz met Kayton. Kayton was introduced to Schwartz by her daughter in 1995. He was working as a restaurant manager when he decided to work for Research. By 1999, Kayton and Schwartz decided to create a qualitative marketing research corporation, SCP. Qualitative marketing research focuses on customer feedback to assist clients in marketing efforts. SCP was a service firm and generated revenue by entering contracts with customers to perform specific projects. Once a project was complete, future business would be dependent on the client's decision to engage in further projects. While there is no guarantee that future work would be forthcoming after a project's completion, the quality of the work and the relationship developed by the individual conducting the project appear to be significant factors in establishing a relationship that would assist in receiving future projects.

After its establishment in 1999, SCP operated successfully for the next several years and generated $648,929 in revenue in 1995. At that time, Schwartz and Kayton decided that they needed to hire an additional key employee in order to expand business and increase revenue. Their search led to an offer of employment being made to Robert Iles ("Iles") on April 4, 2005. Iles was hired and eventually executed an Employment Agreement ("Agreement") with SCP on October 11, 2006. The Agreement contained the following provisions:

> 9. NON-SOLICITATION. During the time that Employee is employed by SCP, and for the eighteen (18) month period immediately following termination of such employment for any reason other than SCP's discontinuance of activities, Employee shall not, directly or indirectly, solicit, divert, entice, take away, divert, entice, take away, hire, or interfere with, or accept employment or business from any of SCP's existing employees, or present and past clients, including all parties with whom SCP is negotiating a business relationship or client contract at such time date of termination, and including, but not limited to, all those accounts SCP has contracted with for research consulting, whether for Employee's own benefit or for the benefit of any person or entity. For purposes of this Agreement, "clients" shall be defined as all clients for whom SCP has done work in the last 18 months prior to termination of Employee's employment.

> 12. NON-COMPETITION. During the time that Employee is employed by SCP and for the eighteen (18) month period following the termination of such employment for any reason, the Employee shall not, directly or indirectly, engage or become interested in, render any service to, enter the employment of, or solicit for any business which is engaged in providing marketing research consulting services, and which is located within the State of Florida....

The addition of Iles expanded SPC's customer base and led SCP to significantly increase its revenue, which peaked in 2008 at $1,377,323. Iles had well established clients and was well regarded for his skills in qualitative marketing research. The other major change in SPC's operation was the decision of Schwartz to reside in Carmel, California, and to cease being active in the daily operation of SCP. She move to Carmel in 2006, and primarily resided there until late 2009. During that time, Schwartz received regular payments from SCP to compensate her for her interest as a shareholder and, through Research, to compensate her for rental payments and other ancillary services performed by the affiliated Schwartz entities.

At the end of 2009, Schwartz returned from California and started to become more active in the business after her three year hiatus. Upon her return, Schwartz and Kayton discussed a buyout of Schwartz's shares of SCP, which did not lead to any significant movement. Also, Schwartz became disenchanted with some of the methods of operation implemented by Kayton during her absence.

In January 2010, Iles had a run in with the receptionist for Research. Schwartz confronted Iles and, on January 27, 2010, suspended him as an employee, without pay. Kayton was at lunch when he was called about the suspension. Upon his return to the office, Schwartz discussed with Kayton her concerns. Their relationship deteriorated over the next several weeks. Ultimately, Schwartz terminated the services of Iles, with cause, and removed Kayton from the board of directors and locked him out of the building. On March 2, 2010, Kayton establish Brand Intuition, LLC, d/b/a Study Hall Research ("Brand Intuition").

Schwartz contends that she became aware that Kayton and Iles were planning to start a competing enterprise and therefore claims that her actions were justify. Kayton claims that he

was merely making alternate plans regarding the buyout Schwartz and had no intent to compete until her actions forced his (and Iles) removal from SCP.

On February 22, 2010, this lawsuit was initiated. Schwartz filed direct and derivative actions on behalf of SCP against Kayton for breach of fiduciary duty, breach of duty of loyalty, conversion of records and intellectual property, and interference with business relationships. Schwartz on behalf of SCP also filed actions against Iles for breach of the restrictive covenants of employment agreement, breach of the employment agreement, conversion of records and property regarding a laptop in his possession, conversion of records and intellectual property, and interference with business relationships. Schwartz on behalf of SCP also sued Brand Intuition for interference with business relationships. Kayton filed a counterclaim against Schwartz for breach of fiduciary duty and Kayton sued for dissolution of SCP. In response, Schwartz filed an election to purchase instead of dissolution. Also, Iles filed a counterclaim against Schwartz for interference with contractual relationships and Iles filed a counterclaim against SCP for breach of the Agreement and unpaid wages.

**B. Fiduciary Duty of Care and Loyalty**

Schwartz and Kayton were shareholders, directors and officers of SCP. As shareholders, they could elect directors at an annual meeting, section 607.0701, Florida Statutes. A director may be removed by the shareholders pursuant to section 607.0808, Florida Statutes, which provides:

607.0808. Removal of directors by shareholders

> (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.
> ...
> (4) A director may be removed by the shareholders at a meeting of shareholders, provided the notice of the meeting states that the purpose, or one of the purposes, of the meeting is removal of the director.

Section 607.0830, Florida Statutes, outlines their obligations as directors, including the following:

607.0830. General standards for directors

> (1) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:
> (a) In good faith;
> (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
> (c) In a manner he or she reasonably believes to be in the best interests of the corporation.
> ...

Also, section 607.0832, Florida Statutes, discusses conflicts of interest for directors. The board of directors may remove an officer pursuant to section 607.0842, Florida Statutes. However, unless a meeting is held, actions by the directors without a meeting require the consent of all directors under section 607.0821, Florida Statutes. The bylaws of SCP do not authorize unilateral action by one shareholder or one director.

On January 27, 2010, Schwartz suspended Iles from employment for up to 30 days as a result of his confrontation with an employee. As president of SCP, it was within Schwartz's authority to take this action, although the Agreement had no provisions regarding suspension. Prior to January 27, 2010, while there were ongoing buyout discussions between Schwartz and Kayton, the evidence does not establish that either Kayton or Iles were planning to leave SCP. However, once Schwartz suspended Iles, both Kayton and Iles started making plans to either buyout Schwartz or leave SCP. On January 29, 2010, Kayton and Iles incorporated Brand Logic, Inc. On that same date, Iles began to have discussions concerning the creation of a logo and branding. Also, Kayton let Schwartz know that after her actions, he was not sure if he wanted to purchase her shares in SCP. On February 12, 2010, the domain name for Study Hall Research was created. On February 18, 2010, Schwartz as president of SCP accepted Kayton's "de facto resignation and voluntary abandonment and resignation as an employee, office and director" of SCP. On that same date she terminated Iles for cause. On February 22, 2010, Kayton resigned as an office and director of SCP. On March 2, 2010, Kayton incorporated Brand Intuition and hired Iles.

The Court would note that both Schwartz and Kayton acted in an inappropriate manner with regard to each other's interest in SCP. With regard to Kayton, he could not actively compete against the business interests of SCP while he was acting as a director and an employee of that firm. There is no evidence to suggest that Kayton actively solicited clients or conducted any transactions, as defined by section 607.0832, Florida Statutes, while he was a director and

employee. Once Kayton resigned as a director and employee, he was free to compete with SCP. However, he should not have created another entity (Brand Logic, Inc.) prior to his resignation. Conversely, Schwartz had no right to unilaterally remove Kayton from the board of directors and terminate his employment. Additionally, Schwartz, as president of SCP, could not terminate Iles with cause pursuant to the Agreement. While it is understandable that Schwartz wanted to take control of the company she founded after a period of semi-retirement, her unilateral action to suspend Iles, who had worked closely with Kayton in developing SCP, facilitated the departure of Kayton. Kayton, on the other hand, in planning for his future, undertook actions that accelerated the level of distrust. Neither Schwartz nor Kayton acted in a forthright manner toward their fifty percent partner.

By March 2, 2010, Schwartz and Kayton had effectively split SCP – Schwartz keeping the name, location, goodwill and certain employees; and Kayton keeping Iles, whom he considered a friend and important business asset, and taking copies of SCP forms.

Based upon these facts, the Court does not make an award to either party. Neither party was able to carry its burden of proof on the claims for breach of fiduciary duty or loyalty.

**C. Dissolution and Fair Value**

Pursuant to chapter 607, Florida Statutes, the Court is charged with responsibility to determine the rights of shareholders in a dissolution action. That chapter provides the following:

607.1430. Grounds for judicial dissolution

> A circuit court may dissolve a corporation or order such other remedy as provided in s. 607.1434:
> ...
> (2) In a proceeding by a shareholder if it is established that:
> (a) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or
> (b) The shareholders are deadlocked in voting power and have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors;...

607.1434. Alternative remedies to judicial dissolution

> In an action for dissolution pursuant to s. 607.1430, the court may, upon a showing of sufficient merit to warrant such remedy:
>
> .....
>
> (3) Order a purchase of the complaining shareholder's shares pursuant to s. 607.1436; or
> (4) Upon proof of good cause, make any order or grant any equitable relief other than dissolution or liquidation as in its discretion it may deem appropriate.

607.1436. Election to purchase instead of dissolution

> (1) In a proceeding under s. 607.1430(2) or (3) to dissolve a corporation, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.
>
> ...
>
> (4) If the parties are unable to reach an agreement as provided for in subsection (3), the court, upon application of any party, shall stay the s. 607.1430 proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under s. 607.1430 was filed or as of such other date as the court deems appropriate under the circumstances.
>
> (5) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate,... Interest may be allowed at the rate and from the date determined by the court to be equitable; however, if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under s. 607.1430(3), it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by petitioner....

The Court finds that the grounds for dissolution have been met under section 607.1430(2), Florida Statutes. Schwartz duly filed an election to purchase instead of dissolution, as permitted by section 607.1436, Florida Statutes. Pursuant to that section, the Court set February 26, 2010, as an appropriate date to determine the fair value of SCP.

At trial, the Court received testimony from two certified public accountants: Stephen Cohen, the expert called by Schwartz; and Diane Womack, the expert called by Kayton. Both experts provided opinions regarding the valuation of business as of Friday, February 26, 2010. (Since the last day of the month was Sunday, February 28, the valuations took the entire month into account.)

Generally, both experts made appropriate adjustments in determining valuation and both experts discussed utilizing the income approach for determining the value of this type of business. While other methods were discussed, the court is of the opinion that the income approach is the best method for analysis of this business. Regarding the fair value of SCP, the main reason that the experts estimates were different was due to the revenue estimates and the adjustment of rental expenses. Ms. Womack's estimate of revenue over emphasizes revenue prior to the economic downturn; whereas Mr. Cohen's estimate of revenue overemphasizes the impact of the downturn. Additionally, with regard to rent payments, the testimony was that payments were made to Research. After reviewing the testimony and reports of the experts, the Court determines that the fair value of SCP is $330,000. Therefore, the fair value of Kayton's fifty percent interest is $165,000. If the election to purchase was ordered, the Court would reserve on any claims for interest or attorney fees. However, as noted below, the Court will invoke its authority under section, 607.1436(1), Florida Statutes, to set aside the election to purchase filed by Schwartz.

**D. Interference with Business Relationship**

In *St. Johns River Water Management District v. Fernberg Geological Services, Inc.*, 784 So.2d 500 at 504-505 (Fla. 5th DCA 2001), the Court reviewed a claim of tortious interference with a business relationship and noted the following:

> The elements of a cause of action based on tortious interference with a business relationship are (1) the existence of a business relationship; (2) the defendant's knowledge of the relationship; (3) the defendant's intentional and unjustified interference with the relationship; and (4) damage to the plaintiff as a result of the breach of the relationship. *Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 647 So.2d 812 (Fla.1994) (citing *Tamiami Trail Tours, Inc. v. Cotton*, 463 So.2d 1126, 1127 (Fla.1985)).
>
> A protected business relationship need not be evidenced by an enforceable contract. *Id.* However, "the alleged business relationship must afford the plaintiff existing or prospective legal or contractual rights." *Register v. Pierce*, 530 So.2d 990, 993 (Fla. 1st DCA), *review denied*, 537 So.2d 569 (Fla.1988). The court in *Ethan Allen* further stated that "[a]s a general rule, an action for tortious interference with a business relationship requires a business relationship evidenced by an actual and identifiable understanding or agreement which in all probability would have been completed if the defendant had not interfered." 647 So.2d at 815.

If the existence of 'business relationship' is established, but is non-exclusive, interference may be justified as legitimate competition. As the Court in *Jay v. Mobley*, 783 So.2d 297 at 299 (Fla. 4th DCA 2001) noted:

> The tort of tortious interference teeters between two competing values-the desire to protect the reasonable expectations of the parties to a business relationship on the one hand, and the need to avoid excessive restrictions on freedom of competition on the other. *See* Bar J Bar Cattle Co. v. Pace, 158 Ariz. 481, 763 P.2d 545, 548 (1988). Florida "recognizes competition between competitors, and if there is an interference with a non-exclusive right this is a privileged interference." Int'l Expositions, Inc. v. City of Miami Beach, 274 So.2d 29, 31 (Fla. 3d DCA 1973).

At trial, Kayton and Iles offered the testimony (either live or by deposition) of several 'clients.' The evidence presented establishes that each marketing project is subject to a discrete contract for services. Further, the evidence did not establish that SCP had an "identifiable understanding or agreement which in all probability would have been completed if the defendant had not interfered." While it is clear that Iles had the respect of many clients, and, therefore, would be contacted if a project was being considered, Iles actions did not cause SCP to lose business. See *Proudfoot Consulting Co. v. Gordon*, 576 F.3d 1223 (11th Cir. 2009). While this Court had previously shifted the burden to Iles on this issue, Iles has met that burden with regard to the claim of tortious interference with a business relationship. (The breach of contract claim is reviewed separately.)

As to Kayton and Brand Intuition, SCP did not establish the claim of tortious interference with a business relationship. Further, Kayton was free to compete with SCP for any clients, including any with an ongoing "business relationship." Conversely, SPC was free to compete for any of Kayton's clients.

Therefore, the Court finds that the claims of SCP for tortious interference with a business relationship have not been established.

**E. Breach of the Employment Agreement executed by Iles**

As noted above, Iles entered into the Agreement on October 11, 2006. The Agreement contains a non-solicitation provision and a non-competition provision which applied during employment and for "the eighteen (18) month period following the termination of such employment." Iles

was terminated on February 18, 2010. The restrictions on solicitation and competition contained in the Agreement are valid and enforceable under section 542.335, Florida Statutes. In *Miller Mechanical, Inc. v. Ruth*, 300 So.2d 11 at 12 (Fla. 1974), the Court held:

> At common law agreements not to compete were usually held void as a restraint on trade and as being contrary to public policy. Auto Club Affiliates, Inc. v. Donahey, 281 So.2d 239 (Fla.App.2d, 1973); Atlas Travel Services, Inc. v. Morelly, 98 So.2d 816 (Fla.App.1st, 1957). When the Legislature adopted Fla.Stat. s 542.12, F.S.A. (the controlling statute in this case), it recognized the public policy arguments against agreements restricting competition, but nonetheless found several exceptions from the general rule to be reasonable. The statute is designed to allow employers to prevent their employees and agents from learning their trade secrets, befriending their customers and then moving into competition with them. The agreement, however, must be reasonable as regards the time during and the area within which the employee is to be prevented from competing with the employer. Capelouto v. Orkin Exterminating Co., 183 So.2d 532 (Fla.1966). In determining the reasonableness of such an agreement, the courts employ a balancing test to weigh the employer's interest in preventing the competition against the oppressive effect on the employee. Capelouto v. Orkin Exterminating Co., Supra; Auto Club Affiliates, Inc. v. Morelly, Supra.
>
> The Court may award damages for breach of contract but the normal remedy is to grant an injunction. Capelouto v. Orkin Exterminating Co., Supra. This is so because of the inherently difficult, although not impossible, task of determining just what damage actually is caused by the employee's breach of the agreement.

However, a party must be diligent in pursuing injunctive relief. This suit was filed February 22, 2010, and Plaintiff's Motion for Temporary Injunction was filed on February 24, 2011. The Court issued its Order Granting Temporary Injunction on March 14, 2011. As the Court in *Vela v. Kendall*, 905 So.2d 1033 at 1034-1035 (Fla. 5th DCA 2005) noted:

> While Mr. Vela raises a number of issues for our consideration, we find merit only in his argument that the injunction should not have been issued. He asserts, essentially, that by granting damages for violation of the restrictive covenant, and by extending the injunction for another two years, Quality has been given a double recovery. We choose to view it from a slightly different perspective.
>
> As a general rule, a trial court cannot by use of an injunction extend the terms of a contract after its termination. There may be times, however, where the equities involved make this a necessary and proper action. *See Florida Power Corp. v. Town of Belleair*, 830 So.2d 852 (Fla. 2d DCA 2002), *decision quashed*, 897 So.2d 1261 (Fla.2005). *See also Florida Power Corp. v. City of Winter Park*, 887 So.2d 1237, 1240-41 (Fla.2004). Quality chose not to seek a temporary injunction during the pendency of this lawsuit, and the non-competition time agreed to by the parties expired well before the trial of this cause. Quality, therefore, was treated with complete fairness by virtue of its recovery of damages for the violation of the

restrictive covenant during the two-year period of its viability. That part of the final judgment that extends the injunction period for two years from the date of the judgment, however, inculcates a term not agreed to by the parties, and erroneously extends the contract terms.

The restrictive period in the Agreement expires on August 18, 2011. The subject business is a service business and Iles contribution to profits is known. This Court is able to quantify that value and award damage for any breach of the Agreement. Damages include loss profits and other consequential losses. SCP's claim for gross income and loans to be awarded as damages is rejected. Neither is appropriately awarded as damages. Also, the failure of SCP to pay Iles his full compensation under the Agreement does not impact SCP ability to enforce the Agreement.

The non-competition provision and, to a lesser degree, the non-solicitation provision are broad. Iles did violate the Agreement as an employee of Brand Intuition. Therefore, the Court determines the damage due to SCP from Iles for his breach of the Agreement at $130,000, which includes compensation to SCP for the lost profit that would have been derived from Iles efforts during the 18 month period. Brand Intuition has been the beneficiary of Iles services. Therefore, Brand Intuition would be jointly responsible with Iles for payment of the damages due to SCP, if SCP is not dissolved. Further, if SCP is not dissolved, the Order Granting Temporary Injunction would remain in force until August 18, 2011, to maintain the status quo, pursuant to the terms of the Agreement.

**F. Other Claims**

SCP claims that Kayton and Iles took copies of its proprietary documents for use by Brand Intuition. Kayton did take copies of these forms, but Iles did not. However, the Court does not find that these forms have any unique value as "intellectual property." Therefore, Kayton would owe SCP $2,500 for copies of the template forms, if SCP is not dissolved.

SCP claims that Iles took its property, a laptop, and erased the hard drive. While the laptop was returned, it should have been returned immediately with its hard drive memory intact. The Court would award SCP $1,000 from Iles on this claim, if SCP is not dissolved. This would be adjusted with the other awards.

Iles claims that SCP breached the Agreement by not paying him his full compensation and mirror stock. Iles is correct and SPC owes Iles $21,000 plus attorney fees. This amount would be an offset to the amount Iles owes SCP, if SCP is not dissolved.

Iles claims Schwartz interfered with the Agreement. The Court finds that Schwartz was acting in her capacity as an officer at the time of her actions. Therefore, Iles cannot recover damages from Schwartz for this claim.

**G. Conclusion**

The Court is of the opinion that a de facto dissolution of SCP occurred on March 2, 2010. By that date, Schwartz asserted control over SCP, kept the employees other than Kayton and Iles, and maintained the location and goodwill of the company. Kayton had resigned, established Brand Intuition and, through Brand Intuition, hired Iles. If the Court were to permit the election to purchase proceed, Schwartz would be given 10 days to pay Kayton the amount of $165,000. Once payment is made, the Court would dismiss the action to dissolve; enter judgment in favor of SCP against Iles and Brand Intuition for $110,000; and enter judgment in favor of SCP against Kayton for $2,500. However, equity requires a different result.

Since a de facto dissolution has occurred and given the aggregate result of the rulings on each individual claim, this Court will exercise its prerogative under Section, 607.1436(1), Florida Statutes, to set aside the election to purchase instead of dissolve file by Schwartz. Further, the Court will order SCP dissolved. Since any outstanding receivables of SCP would have been generated since March 10, 2010, Schwartz shall be entitled to all proceeds derived from the dissolution, except Kayton will be assigned the Agreement, effective March 2, 2010, and the right to use copies of documents. Dissolution of SCP renders moot all pending claims, including any claims for attorney fees.

**WHEREFORE, IT IS ORDERED AND ADJUDGED:**

1. The election to purchase instead of dissolve file by Bonita Schwartz is set aside.
2. Schwartz Consulting Partners, Inc. is hereby dissolved.

3. Schwartz Consulting Partners, Inc. shall wind-up and liquidate the corporation's business and affairs within 90 days in accordance with section 607.1405, Florida Statutes, and notify claimants in accordance with section 607.1406, Florida Statutes.
4. Bonita Schwartz shall receive any assets of Schwartz Consulting Partners, Inc. that result from its liquidation; except, that Robert Kayton is assigned the Agreement, including the right to utilize the services of (and the obligation to compensate) Robert Iles, effective March 2, 2010, and is given the right to use copies of documents.
5. The Temporary Injunction vacated.
6. On all claims by Bonita Schwartz and Schwartz Consulting Partners, Inc. against Robert Kayton and Brand Intuition, LLC, Bonita Schwartz and Schwartz Consulting Partners, Inc. shall take nothing by this action and Robert Kayton and Brand Intuition, LLC shall go hence without day.
7. On all claims by Bonita Schwartz and Schwartz Consulting Partners, Inc. against Robert Iles, individually, Bonita Schwartz and Schwartz Consulting Partners, Inc. shall take nothing by this action and Robert Iles shall go hence without day.
8. On all claims by Robert Kayton against Bonita Schwartz and Schwartz Consulting Partners, Inc., Robert Kayton shall take nothing by this action and Bonita Schwartz and Schwartz Consulting Partners, Inc. shall go hence without day.
9. On all claims by Robert Iles against Bonita Schwartz and Schwartz Consulting Partners, Inc., Robert Iles shall take nothing by this action and Bonita Schwartz and Schwartz Consulting Partners, Inc. shall go hence without day.
10. Each party shall bear their own fees and costs.

**DONE AND ORDERED** this 8th day of July, 2011.

Herbert J. Baumann, Jr.
Circuit Judge

cc:

Stuart Jay Levine, Esq.
601 Bayshore Blvd., Suite # 720
Tampa, FL 33606

Rory B. Weiner, Esq.
601 Bayshore Blvd., Suite # 150
Tampa, FL 33606

**COVER LETTER**

**TO:** Amendment Section
Division of Corporations

**SUBJECT:** Schwartz Consulting Partners, Inc.

**DOCUMENT NUMBER:** P99000004108

The enclosed **Articles of Dissolution** and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

Stratton Smith
(Name of Contact Person)

Stratton Law Firm
(Firm/Company)

611 W. Azeele Street
(Address)

Tampa, Florida 33606
(City/State and Zip Code)

For further information concerning this matter, please call:

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(Name of Contact Person) (Area Code & Daytime Telephone Number)

Enclosed is a check for the following amount:

☐ $35 Filing Fee ☑ $43.75 Filing Fee & Certificate of Status ☐ $43.75 Filing Fee & Certified Copy (Additional copy is enclosed) ☐ $52.50 Filing Fee, Certificate of Status & Certified Copy (Additional copy is enclosed)

**MAILING ADDRESS:**
Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

**STREET ADDRESS:**
Amendment Section
Division of Corporations
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