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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

XCENTRIC VENTURES, LLC, an Arizona
corporation, d/b/a
"RIPOFFREPORT.COM"; ED
MAGEDSON, an individual,

Plaintiff,

v.

WILLIAM "BILL" STANLEY, an
individual; WILLIAM "BILL" STANLEY
d/b/a DEFAMATION ACTION.COM;
WILLIAM "BILL" STANLEY d/b/a
COMPLAINTREMOVER.COM;
WILLIAM "BILL" STANLEY aka JIM
RICKSON; WILLIAM "BILL" STANLEY
aka MATT JOHNSON; ROBERT RUSSO,
an individual; ROBERT RUSSO d/b/a
COMPLAINTREMOVER.COM;
ROBERT RUSSO d/b/a
DEFENDMYNAME.COM; ROBERT
RUSSO d/b/a QED MEDIA GROUP,
L.L.C.; QED MEDIA GROUP, L.L.C.;
QED MEDIA GROUP, L.L.C. d/b/a
DEFENDMYNAME.COM; QED MEDIA
GROUP, L.L.C. d/b/a
COMPLAINTREMOVER.COM;
DEFAMATION ACTION LEAGUE, an
unincorporated association; and
INTERNET DEFAMATION LEAGUE, an
unincorporated association,

Defendants.

Case No. CV07-00954 PHX NVW

**DEFENDANTS ROBERT
RUSSO's, QED MEDIA GROUP's,
L.L.C., AND INTERNET
DEFAMATION LEAGUE,
L.L.C.'S RESPONSE TO
PLAINTIFFS' NOTICE OF
LODGING PRELIMINARY
INJUNCTION**

Defendants Robert Russo, QED Media Group, L.L.C., and Internet Defamation
League L.L.C. ("The QED Defendants") hereby respond to Plaintiffs' Notice of Lodging

1 Preliminary Injunction. The QED Defendants object to Plaintiffs’ proposed Preliminary
2 Injunction on the grounds set forth below. Plaintiffs submit as an alternative the QED
3 Defendants’ proposed Preliminary Injunction attached as Exhibit A.

4 **1. PLAINTIFFS’ PROPOSED ORDER IMPOSES OBLIGATIONS ON THE QED**
5 **DEFENDANTS THAT SUBSTANTIALLY AND UNFAIRLY DIFFER FROM THE**
6 **RELIEF ORIGINALLY SOUGHT BY PLAINTIFFS IN THEIR APPLICATION**
7 **FOR A PRELIMINARY INJUNCTION.**

8 The QED Defendants and their counsel prepared for the May 17, 2007 preliminary
9 injunction hearing based on the relief requested and the evidence delivered prior to that
10 hearing. Plaintiffs’ original Application seeks to collectively enjoin all of the named
11 “Defendants and their officers, agents, employees, independent contractors, or other
12 persons acting under their supervision and control or at their request” from numerous
13 categories of activities set forth in Plaintiffs’ original proposed preliminary injunction.
14 (*See* Plaintiffs’ May 10, 2007 Preliminary Injunction Application and the proposed
15 “Preliminary Injunction” submitted to the Court at the May 17, 2007 hearing.)

16 Plaintiffs did not request in their original application a mandatory injunction
17 holding Defendants jointly responsible for affirmatively *removing* information that
18 already exists on the internet. Accordingly, if the relief originally sought by Plaintiffs
19 had been granted as set forth in Plaintiff’s proposed injunction, each particular Defendant
20 would be responsible for removing from the internet existing published information
21 controlled by that particular Defendant.

22 As explained by Robert Russo in his Declaration accompanying this Response, it
23 would be impossible for the QED Defendants to remove the websites identified in
24 Plaintiffs’ proposed Preliminary Injunction because none of the QED Defendants own,
25 control, operate, direct the operation of, manage, or have, or have ever had, any affiliation
26 with any of those websites. (*See generally* 5/23/2007 Russo Declaration, Exhibit B.)
27 Indeed, documents delivered by Plaintiffs to the QED Defendants before the hearing
28 appear to clearly establish that Defendant Stanley created the subject websites. The

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1 QED Defendants did not instruct or even suggest that Stanley create those sites.
2 (5/23/2007 Russo Declaration at 22-24.)

3 In effect, the relief requested by Plaintiffs as it pertains to the QED Defendants'
4 involvement in the subject websites has changed from a prohibitory to a mandatory
5 injunction. *See In Re Microsoft Corporation Antitrust Litigation*, 333 F.3d 517, 525 (4th
6 Cir. 2003). The showing necessary to obtain a mandatory injunction is higher than that
7 for a prohibitory injunction in that the right to mandatory injunctive relief must be
8 "indisputably clear." *Id.* (internal citation omitted). The evidence presented at the hearing
9 did not make it "indisputably clear" that the QED Defendants are responsible for the
10 subject websites. Indeed, that evidence firmly established that Defendant Stanley controls
11 those sites. Moreover, the Russo Declaration at Exhibit B, which was prepared to address
12 the new exhibits and testimony presented by Plaintiffs at the hearing, refutes Plaintiffs'
13 attempt to tie the QED Defendants to the subject websites.

14 It would be an unfair violation of the QED Defendants' due process rights to enter
15 a mandatory injunction compelling an impossible action not originally requested by
16 Plaintiffs in their application. Such an injunction would immediately subject the QED
17 Defendants to contempt over which they have no control to avoid.

18 On the date of this filing (after this Response was nearly complete), Plaintiffs'
19 counsel forwarded an email apparently sent to her by Defendant Stanley on Sunday,
20 May 20, 2007. (*See* forwarded email from Stanley to Speth attached at Exhibit C.) Until
21 reading this email from Plaintiffs' counsel, counsel for the QED Defendants was not
22 aware of the email. Nor were the QED Defendants. (5/23/2007 Russo Declaration, ¶ 30.)
23 This email demonstrates Stanley's apparent intention to openly ignore any orders from the
24 Court. This email further demonstrates the unfairness of requiring the QED Defendants to
25 remove websites that are not only beyond their control, but that are controlled by a party
26 who has stated his intention to openly defy any order to remove them.

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1 Accordingly, the QED Defendants’ proposed preliminary injunction revises the
2 mandatory injunction section to require action only by such Defendants capable of taking
3 such action.

4 **2. THE PLAINTIFFS’ PROPOSED PRELIMINARY INJUNCTION IS FAR TOO BROAD**
5 **IN ITS RESTRICTION OF ACTIVITY RELATED TO “ROR CUSTOMERS” AND**
6 **ATTEMPTS TO ENJOIN LAWFUL CONDUCT THAT MAY UNFAIRLY RESTRICT**
7 **THE QED DEFENDANTS’ BUSINESS ACTIVITIES.**

8 Section 3 of the “Order” portion of Plaintiffs’ proposed injunction prohibits various
9 actions involving “ROR Customers.” This section does not define exactly what is meant
10 by an “ROR Customer,” but Plaintiffs presumably intend to mean any of the users of the
11 ripoffreport.com site who have posted information. Plaintiffs do not have standing to
12 obtain an injunction on behalf of these potentially thousands of unnamed and therefore
13 unknown persons and/or entities. Accordingly, the QED Defendants’ proposed
14 preliminary injunction omits Section 3 of the Order portion.

15 Additionally, paragraph g in Section 3 prohibits the “creating, posting, hosting,
16 or transmitting over the internet any private and/or personal information about a ROR
17 Customer.” Such an order would potentially restrict the lawful transmission of such
18 information about persons or entities who may have given permission to do so, and who
19 Defendants may not be aware constitute a “ROR Customers.” For this additional reason,
20 paragraph g should be omitted from the injunction.

21 Paragraph h prohibits “sending spam (unsolicited e-mail) to a ROR Customer.”
22 There is nothing unlawful or otherwise wrongful about sending unsolicited e-mails.
23 Moreover, because Plaintiffs conceal the identity of the users of their site, the QED
24 Defendants cannot know whether an email recipient might constitute a “ROR Customer.”
25 For this additional reason, paragraph h should be omitted from the injunction.

26 **3. PLAINTIFFS’ PROPOSED PRELIMINARY INJUNCTION SUGGESTS FINDINGS OF**
27 **FACT THAT WERE NOT PROVEN AT THE PRELIMINARY INJUNCTION HEARING.**

28 The QED Defendants strongly dispute any involvement in the wrongful actions
alleged by Plaintiffs. The QED Defendants are confident that those allegations will be
entirely disproved upon a complete presentation of evidence at trial that places the limited

1 evidence presented by Plaintiffs at the preliminary injunction hearing in its proper context.
2 Nevertheless, the QED Defendants understand that the Court has granted Plaintiffs'
3 Application for a Preliminary Injunction based on the evidence presented at the hearing.
4 The QED Defendants further understand that the Court must make appropriate findings of
5 fact to support the entry of the injunction. In that regard, the QED Defendants suggest the
6 following revisions to the Plaintiffs' proposed findings that more accurately and narrowly
7 reflect findings that may be inferred from the evidence presented. The suggested
8 revisions do not in any way constitute an admission by the QED Defendants to any
9 wrongful conduct, even if the revised finding continue to state or imply that wrongful
10 conduct may have been committed by any of the QED Defendants. Nor does the QED
11 Defendants' decision to not suggest revisions to any other portion of the proposed
12 findings of fact constitute an admission of any wrongful conduct alleged by such
13 unrevised findings:

14 First, the QED Defendants suggest its revisions to paragraph 18 of the Findings
15 of Fact to limit the finding of purportedly concerted efforts by Defendants Stanley and
16 Russo.

17 Second, the QED Defendants suggest its revisions to paragraph 19 to find that the
18 joint involvement between Defendants Stanley and Russo is with respect to at least one or
19 more of the alleged actions, as opposed to every alleged action.

20 Third, the QED Defendants suggest its revisions to paragraph 24 because, as
21 explained in Mr. Russo's May 23, 2007 Declaration, the evidence did not prove that the
22 QED Defendants were involved in the conduct alleged.

23 Fourth, the QED Defendants suggest that paragraph 25 be omitted because the
24 evidence did not prove bad faith or malice with respect to the QED Defendants and
25 because proving bad faith and malice is not a prerequisite to obtaining the preliminary
26 injunction.

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1 **4. CONCLUSION**

2 For the reasons set forth above, the QED Defendants request that the Court's
3 Preliminary Injunction include the revisions contained in the proposed Preliminary
4 Injunction attached as Exhibit A.

5 If the Court is inclined to enter an injunction that orders the mandatory removal of
6 the subject websites by the QED Defendants, the QED Defendants request that the Court
7 enter the injunction now without such an order and schedule a hearing to permit the QED
8 Defendants to prove their lack of participation in creating those websites and their
9 inability to remove them. Defendant Russo is willing to fly from Maine to Arizona to
10 participate in such a hearing. (*See* 5/23/07 Russo Declaration at ¶ 29.)

11 DATED this 23rd day of May, 2007.

12 SNELL & WILMER L.L.P.

13
14 By /s/ Michael K. Dana
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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2007 I electronically transmitted the foregoing
to the Clerk's Office using the CM/ECF System for filing to the following CM/ECF
participant:

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I further certify that on May 23, 2007, I served a courtesy copy of the
aforementioned document and transmittal of a Notice of Electronic Filing by mail on
the following:

The Honorable Neil V. Wake
United States District Court
401 West Washington Street,
Phoenix, Arizona 85003

/s/ E. E. Szafranski