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11 UNITED STATES DISTRICT COURT  
 12 CENTRAL DISTRICT OF CALIFORNIA

14 TRAFFICSCHOOL.COM, INC., a  
 15 California corporation; DRIVERS ED  
 16 DIRECT, LLC., a California limited  
 liability company,

17 Plaintiffs,

18 v.

19 EDRIVER, INC., ONLINE GURU,  
 20 INC., FIND MY SPECIALIST, INC.,  
 and SERIOUSNET, INC., California  
 21 corporations; RAVI K. LAHOTI, an  
 individual; RAJ LAHOTI, an  
 individual; DOES 1 through 10,

22 Defendants.

Case No. CV067561 PA (CWx)  
*The Hon. Percy Anderson*

**DEFENDANTS' MOTION FOR  
 JUDGMENT ON PARTIAL  
 FINDINGS**

**[Fed. R. Civ. P. 52(c)]**

Complaint Filed: November 28, 2006  
 Trial Commenced: November 6, 2007

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. Procedural History and Introduction**

3 At the close of Plaintiffs' case-in-chief, Defendants moved for  
4 judgment on partial findings pursuant to Fed. R. Civ. P. 52(c) on the grounds that  
5 Plaintiffs failed to present evidence that could support liability as to any defendant  
6 other than Online Guru, Inc., the manager of the DMV.ORG website.<sup>1</sup> (Reporter's  
7 Daily Trial Transcript ("RDT"), Nov. 7, 2007, 143:17-24.) Other named defendants  
8 include EDriver, Inc., Find My Specialist, Inc., SeriousNet, Inc., Ravi Lahoti, and  
9 Raj Lahoti. The Court requested post-trial briefing on the issue. (Trial Transcript,  
10 Nov. 8, 2007, 4:14-22.) Defendants therefore hereby submit this brief in support of  
11 its motion for judgment on partial findings.

12 **2. Judgment Should Be Entered Against Plaintiffs On Their Claims Against**  
13 **All Defendants Other Than Online Guru**

14 **2.1 Standard For Motion For Judgment on Partial Findings**

15 Under Fed. R. Civ. P. 52(c), a party may move for judgment as a matter  
16 of law where an issue has been fully heard and a claim or defense cannot be  
17 maintained or defeated without a favorable finding on that issue

18 Where the judge, sitting as trier of fact, is persuaded that plaintiff failed  
19 to sustain its burden of proof, the motion dispenses with the need for defendant to  
20 produce any evidence. Rule 52 allows either party to move for judgment at the  
21 close of the opposing party's case or at any time after a party has been heard fully on  
22 an issue. See FED. R. CIV. P. 52(c) Adv. Comm. Notes (1993); See Geddes v.  
23 Northwest Missouri State Univ., 49 F.3d 426, 429, fn. 7 (8th Cir. 1995).

24 In ruling on a motion for judgment under Rule 52(c), the trial court  
25

26 <sup>1</sup> In making this motion, Defendants in no way concede that a liability finding  
27 is appropriate as to Online Guru. Rather, Defendants merely submit that the  
28 utter lack of evidence to support liability of the other defendants should  
support a judgment under 52(c) as to the other defendants.

1 may "weigh the evidence, resolve any conflicts in it, and decide for itself where the  
2 preponderance lies." See International Union of Oper. Engineers, Local Union 103  
3 v. Indiana Const. Corp., 13 F.3d 253, 257 (7th Cir. 1994). The weighing of  
4 evidence may include assessing witness credibility and drawing reasonable  
5 inferences. See Roth v. American Hosp. Supply Corp., 965 F.2d 862, 865 (10th Cir.  
6 1992); Winning Ways, Inc. v. Holloway Sportswear, Inc., 913 F.Supp. 1454, 1460  
7 (D. KS 1996).

## 8 **2.2 Standard For Individual Liability For False Advertising**

9 To establish liability for false advertising by entities or individuals  
10 other than Online Guru, the operator of the website, Plaintiffs must establish that the  
11 individual in question actively and knowingly participated in the unfair competition.  
12 Babbit Electronics, Inc. v. Dynascan Corp., 38 F.3d 1161, 1184 (11<sup>th</sup> Cir. 1994)  
13 (personal responsibility hinges on active and knowing participation); Wechsler v.  
14 Macke Int'l. Trade, Inc., 486 F.3d 1286, 1292 (Fed. Cir. 2007) (applying 9th circuit  
15 law in patent context; personal liability must be supported by personal culpability).

## 16 **2.3 Standard For Conspiracy**

17 Plaintiffs have improperly alleged a state law claim for civil conspiracy  
18 to violate the Lanham Act against all defendants, including individual defendants.

19 Civil conspiracy under California law is not a separate and distinct  
20 cause of action. Entm't Research Group, Inc. v. Genesis Creative Group, Inc., 122  
21 F.3d 1211, 1228 (9<sup>th</sup> Cir. 1997). Conspiracy depends upon an underlying state tort.  
22 In this case, the alleged wrong is false advertising under the federal Lanham Act.  
23 But, federal law does not tack on conspiracy liability under the Lanham Act.  
24 15 U.S.C. § 1125(a) (saying only that liability extends to "Any person who ... uses  
25 ..."); and see Synthes (U.S.A.) v. Globus Medical, Inc., 2005 U.S. Dist. LEXIS  
26 19962 (E.D.Pa.) (civil conspiracy liability grounded in one of four state torts, not  
27 co-pending Lanham Act claim); and Sunlight Saunas, Inc. v. Sundance Sauna, Inc.,  
28 427 F.Supp.2d 1032 (D.Kan. 2006) (civil conspiracy claim based upon state

1 defamation tort, not co-pending Lanham Act claim). Moreover, civil conspiracy  
2 will not lie against an agent for conspiring with a principal (i.e., the individual  
3 defendants conspiring with the corporate entities for whom they act). Accuimage  
4 Diagnostics Corp. v. Terarecon, Inc., 260 F.Supp.2d 941, 947-48 (N.D. Cal. 2003).

5 Plaintiffs' efforts to plead this claim are inadequate as a matter of law.  
6 Accuimage, supra, 260 F.Supp.2d at 948 (conspiracy must be alleged clearly and  
7 cannot be alleged "indiscriminately ... between and among all defendants").  
8 (Compare TAC, ¶ 11, Claims 1 and 2 (headings only).)

9 If there were a state law civil conspiracy claim that could be tacked to a  
10 false advertising claim under the Lanham Act, then Plaintiffs would have to  
11 establish the following elements for state law civil conspiracy:

- 12 1. Formation and operation of the conspiracy.
- 13 2. Damage to plaintiffs.
- 14 3. From a wrongful act done by defendant in furtherance of the common design.  
15 Rusheen v. Cohen, 37 Cal.4<sup>th</sup> 1048 (2006).

16 **3. Plaintiffs Failed To Offer Evidence Sufficient To Establish Liability Of**  
17 **Any Defendant Other Than Online Guru**

18 In addition to Online Guru, the manager of the website, Plaintiffs also  
19 named as defendants EDriver, Inc., Find My Specialist, Inc., SeriousNet, Inc., and  
20 individuals Raj Lahoti and his brother Ravi Lahoti. (TAC, ¶¶ 6, 8-10.)

21 **3.1 Summary Of Evidence Offered**

22 EDriver. Literally, the only evidence at trial as to EDriver is that it  
23 owns the DMV.ORG domain name. (11/6 RDT 21:6-8.)

24 Find My Specialist, Inc. At trial, Plaintiffs showed merely that FMS  
25 owns many domain names that redirect to DMV.ORG. (11/6 RDT 21:9-24.)

26 Plaintiffs also demonstrated that FMS owns the TeenDriversEducation  
27 domain; but, evidence showed that third party Golden State Private School owns  
28 and manages its content. (11/6 RDT 119:1-6, 124:2-125:17, and 126:14-127:1.)

1           Ravi Lahoti. Plaintiffs did not call Ravi Lahoti at trial.  
2           Plaintiffs did offer evidence that Ravi registered the DMV.ORG  
3 domain name originally. (Moretti Depo. 17:12-15.) Plaintiffs also offered  
4 deposition testimony from Moretti indicating that he believed that Ravi had agreed  
5 with Raj that they should continue using the domain, time unspecified. (Moretti  
6 Depo. 129:1-17.) In the same testimony, Moretti indicated that Ravi's duties consist  
7 of domain name management. (Id.)

8           Plaintiffs also offered deposition testimony of Ravi Lahoti about his  
9 ownership and management of various other domain names. (Ravi Lahoti Depo.  
10 37:2-62:7.) Much of this testimony is subject to pending objections. (Defendants'  
11 Objections to Plaintiffs' Designated Deposition Testimony, Objections 3.1-3.4.)

12           SeriousNet, Inc.  
13           SeriousNet, Inc. is not part of the BizGroups companies and is owned  
14 solely by Ravi Lahoti. (11/7 RDT 102:7-14.)

15           Plaintiffs offered evidence that SeriousNet owns or has owned various  
16 domain names, some of which redirect, or have redirected at times, to DMV.ORG.  
17 (11/7 RDT 93:21-95:24; and Ravi Lahoti Depo. 37:2-62:7 (subject to objections).)

18           Raj Lahoti.  
19           Defendants of course concede that Raj Lahoti is active in the business  
20 of Online Guru in managing the DMV.ORG domain name, including that he  
21 oversees search engine marketing and search engine optimization for the company.  
22 This is not disputed.

23           However, there is no evidence whatsoever to support a finding that  
24 Raj Lahoti knowingly engaged in any false advertising. To the contrary, the  
25 evidence shows that:

- 26           • DMV.ORG has always utilized disclaimers and clarifying language on its site  
27           (Raj Lahoti Decl. ¶¶ 25-27; Trial Exhibits 623-625);

28

- 1 • DMV.ORG's search engine marketing sponsored listings actually resemble  
2 the organic listing that Google and Yahoo post for DMV.ORG, suggesting  
3 that Google and Yahoo view those descriptions as reasonable (11/6 RDT  
4 97:23-99:2, 99:19-100:19, 102:10-104:17; and Trial Exhibits 323, 324 (p. 2),  
5 and 670-671);
- 6 • DMV.ORG's use of disclaimers and clarifying language substantially exceeds  
7 what is done, or not done, by others including plaintiffs (Defendants' RJN,  
8 Items 11-13 (other similar type sites, no disclaimers); 11/6 RDT 205:25-  
9 206:25 (no disclaimer on DrivingLinks.com); Trial Exhibit 20  
10 (DrivingLinks.com); 11/7 RDT 20:4-8 (no disclaimers on  
11 FloridaTrafficSchool.com); and
- 12 • DMV.ORG, under Raj's direction, has made voluntary changes to reinforce  
13 the message that there is no affiliation with the government (Raj Lahoti Decl.  
14 ¶¶ 29-34; Trial Exhibit 631).

### 15 **3.2 The Evidence Does Not Support Liability Of Any Of These** 16 **Defendants**

17 The evidence outlined above simply does not demonstrate any intent to  
18 engage in false advertising or plan to assist in false advertising. Contrast Transgo,  
19 Inc. v. Ajac Transmission Parts, 768 F.2d 1001, 1021 (9<sup>th</sup> Cir. 1985) (president's  
20 individual liability affirmed where evidence amply demonstrated "instrumental role"  
21 of president in "copying" plaintiffs products and "marketing the imitations as if they  
22 were Transgo's products"); and Donsco, Inc. v. Casper Corporation, 587 F.2d 602  
23 (3<sup>rd</sup> Cir. 1978) (personal liability of owner found where owner delivered plaintiff's  
24 certificate of authenticity to designer for copying); and Babbit Electronics, Inc. v.  
25 Dynascan Corp., 38 F.3d 1161, 1184 (11<sup>th</sup> Cir. 1994) (personal liability found where  
26 individuals admitted they were personally involved in purchase and sale of  
27 infringing products after receipt of notice by plaintiff that such conduct was in  
28 violation of plaintiff's rights).

1 In contrast to cases where the evidence put the other defendants in clear  
2 and knowing violation of law, here there is no such evidence.

3 EDriver merely owns the domain name DMV.ORG.

4 FMS and SeriousNet also merely own domain names; there is no  
5 evidence that they are in any way responsible for the content of the DMV.ORG  
6 website, much less that they knowingly engaged in the false advertising alleged in  
7 the complaint.

8 And, Ravi Lahoti has not been shown to be active in the management  
9 of DMV.ORG website except in the most general sense; there is no evidence of  
10 specific conduct by Ravi Lahoti that suggests he knowingly assisted DMV.ORG to  
11 mislead consumers as to an affiliation between DMV.ORG and the government.

12 Raj Lahoti, although active in the management of the DMV.ORG  
13 website, engaged in no conduct from which an inference of intentional false  
14 advertising could be drawn. To the contrary, his management of the DMV.ORG  
15 website suggests just the opposite, namely that both before and since the litigation  
16 he has voluntarily taken steps to post disclaimers and clarifying language both on  
17 the website and in search engine marketing to draw the distinction between  
18 DMV.ORG and the government.

19 When Raj Lahoti's conduct in these areas is compared to that of others,  
20 including plaintiffs, it becomes apparent that his conduct is among the least  
21 blameworthy. Plaintiffs use no disclaimers on sites like FloridaTrafficSchool.com  
22 and DrivingLinks.com. Others behave in a similar way.

23 In short, because there is no evidence to suggest that any defendant  
24 actively and knowingly assisted the alleged false advertising, these other defendants  
25 are entitled to judgment as a matter of law under Fed. R. Civ. Proc. 52(c).

26 **4. Conclusion**

27 For these reasons, Defendants request that this Court enter judgment as  
28 a matter of law against Plaintiffs as it relates to their claims against all defendants

1 other than Online Guru, Inc., the manager of the website.

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DATED: November 14, 2007

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By



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