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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION

13 COUPONS, INC., ) Case No. 5:07-cv-03457 HRL  
14 )  
Plaintiff, )  
15 )  
v. )  
16 ) Date: December 4, 2007  
JOHN STOTTLEMIRE, and DOES 1-10, ) Time: 10:00 am  
17 ) Courtroom: 2  
Defendants. ) Judge: Hon. Howard R. Lloyd  
18 )

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20 **HOLLIS BETH HIRE AND WILSON SONSINI GOODRICH & ROSATI'S**  
21 **MEMORANDUM OF POINTS AND AUTHORITIES IN**  
**OPPOSITION TO DEFENDANT STOTTLEMIRE'S MOTION FOR SANCTIONS**  
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1 Hollis Beth Hire and Wilson Sonsini Goodrich & Rosati (collectively, “Counsel”) submit  
2 this memorandum of points and authorities in opposition to Defendant John Stottlemire’s  
3 (“Stottlemire’s”) motion for sanctions pursuant to Rule 11 of the Federal Rules of Civil  
4 Procedure (the “Motion”).<sup>1</sup>

5 **I. PRELIMINARY STATEMENT**

6 **A. INTRODUCTION**

7 The First Amended Complaint (“FAC”) is well-grounded in law and fact and reflects a  
8 thorough pre-filing investigation by Counsel. Stottlemire’s Motion for sanctions is, at best, a  
9 rehashing of his weak and nonsensical arguments for summary judgment. At worst, the Motion  
10 is a frivolous attempt to deflect attention from his own wrongdoing. The Court should deny the  
11 motion in its entirety.

12 First, Stottlemire claims that the allegations in the FAC are “false,” yet he does not point  
13 to any factual allegations that lack evidentiary support. Indeed, all factual allegations in the FAC  
14 are supported by ample documentary evidence and, if necessary, witness testimony.

15 Second, Stottlemire’s argument focuses on claims in the FAC that his conduct is in  
16 violation of the Digital Millennium Copyright Act (“DMCA”). As explained below in detail, the  
17 FAC is well grounded in the existing law regarding the DMCA.

18 Lastly, Stottlemire argues that the FAC was filed for an improper purpose: “to instill  
19 unfounded fear in Defendant.” This argument must fail as it is premised on Stottlemire’s  
20 incorrect assertion that the FAC has no legal merit. Once it is clear that the FAC is a  
21 nonfrivolous assertion of Plaintiff’s rights, there is no basis to argue that the purpose of the FAC  
22 was to instill unfounded fear. Moreover, there is no support for Stottlemire’s position that the  
23 FAC was filed for any reason other than to seek appropriate remedies for his conduct.

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25  
26 <sup>1</sup> A notice of withdrawal and substitution of counsel has been filed in this matter, substituting  
27 Farella Braun + Martel LLP as counsel for Plaintiff Coupons, Inc. (Plaintiff’). Therefore,  
28 Counsel is filing this separate opposition to Stottlemire’s Motion.

1 For these reasons, Stottlemire’s Motion cannot support grounds for Rule 11 sanctions,  
2 and, in any event, the Court, in its discretion, should decline to impose them.

3 **B. FACTUAL BACKGROUND**

4 Plaintiff’s allegations in this action, as stated clearly in its FAC, are for violations of the  
5 DMCA’s anti-circumvention provisions and related state claims. Plaintiff provides online,  
6 printable coupons to consumers and to online retailers and businesses, which then provide such  
7 coupons to consumers. With the delivery of these coupons to consumers, Plaintiff delivers to the  
8 user’s computer security features which prevent the printing of more than the authorized number  
9 of coupons (for most coupons, the consumer is allowed two prints, but the number sometimes  
10 varies). Stottlemire created, offered to the public in chat room forums, and distributed by email  
11 or other messaging services a method of deleting the security features and a software program  
12 that deleted the security features, all for the purpose of allowing users to print more than the  
13 authorized number of coupons. Because Plaintiff’s coupons are works subject to copyright  
14 protection, Stottlemire’s actions violate the anti-circumvention provisions of 17 U.S.C. § 1201.

15 **C. PROCEDURAL POSTURE**

16 Plaintiff filed its initial complaint on July 2, 2007, and its FAC on August 29, 2007. On  
17 September 24, 2007, Stottlemire filed a motion to dismiss the FAC, and, in the alternative, for  
18 summary judgment (“MSJ”). Also on September 24, 2007, Stottlemire sent a copy of his  
19 proposed Motion for sanctions to Counsel, demanding that the FAC be withdrawn in its  
20 entirety. Counsel indicated to Stottlemire that Plaintiff was not interested in withdrawing its  
21 FAC, and Stottlemire filed the present Motion for sanctions on October 15, 2007.<sup>2</sup>

22 The MSJ was originally set for hearing on November 13, 2007, and the present Motion  
23 for sanctions was originally set for hearing on November 20, 2007. On October 17, 2007,  
24 Plaintiff retained the law firm of Farella Braun + Martel LLP (the “Farella firm”) to replace its  
25 existing counsel, Wilson Sonsini Goodrich & Rosati (the “WSGR firm”). Plaintiff filed a

26 \_\_\_\_\_  
27 <sup>2</sup> The Motion erroneously refers to Hollis Beth Hire as lead counsel.  
28

1 withdrawal and substitution of counsel on October 19, 2007. After discussing a stipulated  
2 extension of time to oppose the motions, the Farella firm and Stottlemire were unable to come  
3 to an agreement, and the Farella firm requested an extension from this Court on October 22,  
4 2007. Stottlemire opposed the request, ostensibly on the ground that he would have opposed  
5 the withdrawal of the WSGR firm from the case.<sup>3</sup> In an order on October 24, 2007, the Court  
6 reset the hearing dates for both of Stottlemire’s motions to December 4, 2007.

7 **II. LEGAL STANDARD**

8 Rule 11 sanctions are imposed only in the “exceptional circumstance” where a claim “is  
9 patently unmeritorious or frivolous.” *Riverhead Savings Bank v. Nat’l Mortgage Equity Corp.*,  
10 893 F.2d 1109, 1115 (9th Cir. 1990) (quoting *Doering v. Union County Bd. of Chosen*  
11 *Freeholders*, 857 F.2d 1531, 1537 (9th Cir. 1986); *Gaiardo v. Ethyl Corp.*, 835 F.3d 479, 483  
12 (3d Cir. 1987)). *See also Cooler & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990) (stating  
13 that Rule 11 motions “must be read in light of concerns that it will. . . chill vigorous advocacy”).  
14 For these reasons, “The key question in assessing frivolousness is whether a complaint states an  
15 arguable claim -- not whether the pleader is correct in his perception of the law.” *Hudson v.*  
16 *Moore Bus. Forms Inc.*, 827 F.2d 450, 453 (9th Cir. 1987); *see also Associated Bus. Tel. Sys.*  
17 *Corp. v. Cohn*, No. C-93-1570-DLJ, 1994 WL 589487, \*3 (N.D. Cal. Oct. 4, 1994) (“If, judged  
18 by an objective standard, a reasonable basis for the position exists in both law and in fact at the  
19 time the position is adopted, then sanctions should not be imposed.”) (quoting *Golden Eagle*  
20 *Distributing Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1538 (9th Cir.1986)).

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22  
23 <sup>3</sup> It is unclear why Stottlemire would have opposed the withdrawal of the WSGR firm from the  
24 case. Stottlemire’s opposition seems to imply that WSGR’s withdrawal would excuse it from  
25 responding to the pending sanctions motion. However, it is well settled that the Rule 11  
26 obligations lie with the attorney who signed, and therefore certified, the pleading at issue (as well  
27 as that attorney’s law firm). Counsel always assumed it would be forced to oppose and appear at  
28 a hearing to argue in opposition to this Motion, and Counsel never indicated otherwise. Indeed,  
in a conversation with Stottlemire, after confirming to Stottlemire that the Farella firm would  
now be handling the case, Counsel confirmed that she would still be attending the hearing on the  
motion for sanctions. *See Declaration of Hollis Beth Hire* (“Hire Decl.”) ¶ 1.

1           The relevant sections of Rule 11 require that attorneys, by their signatures on pleadings,  
2 certify that “(1) [the pleading] is not being presented for any improper purpose, such as to  
3 harass or to cause unnecessary delay or needless increase in the cost of litigation;” that “(2) the  
4 claims, defenses, and other legal contentions therein are warranted by existing law or by a  
5 nonfrivolous argument for the extension, modification, or reversal of existing law or the  
6 establishment of new law;” and that “the allegations and other factual contentions have  
7 evidentiary support.” Fed. R. Civ. P. 11(b). Violations of the obligations above can result in  
8 sanctions against a party and its counsel. *See* Fed. R. Civ. P. 11(c).

9           When, as here, a complaint is the subject of a Rule 11 motion, the inquiry should focus  
10 on: “(1) whether the complaint is legally or factually baseless from an objective perspective,  
11 and (2) if the attorney has conducted a reasonable and competent inquiry before signing and  
12 filing it.” *Holgate v. Baldwin*, 425 F.3d 671, 676 (9th Cir. 2005) (internal quotations and  
13 citation omitted).

14           In *Dioptics Medical Products, Inc. v. Maui Jim, Inc.*, No. C-05-01885 MJEDL, 2006  
15 WL 463527, \*1 (N.D. Cal. Feb. 24, 2006), the Court denied the defendant’s motion for  
16 sanctions, because even though “th[e] case [was] not a model of pre-filing inquiry . . . the[e] case  
17 [was] not so egregious as to warrant sanctions under Rule 11, because Plaintiff had some good  
18 faith basis before filing the complaint.” The *Dioptics Medical* court further noted that, as here  
19 “[t]he issues that Defendant raises are more appropriately brought as a motion for summary  
20 judgment.” *Id.*

21           Stottlemire thus bears the heavy burden to show that the FAC is “objectively  
22 unreasonable” and unwarranted by existing law or by a nonfrivolous argument for the law's  
23 extension, that its allegations have no evidentiary support, or that the FAC itself was presented  
24 for an improper purpose. *See* Fed. R. Civ. P. 11(b). Stottlemire’s Motion does not and cannot  
25 meet this burden.

1 **III. ARGUMENT**

2 **A. The Facts in the FAC Were Alleged After Ample Investigation and Research,**  
3 **and Are Based on Compelling Evidence**

4 Counsel's investigation prior to filing the FAC was more than reasonable. Indeed, such  
5 investigation revealed compelling documents and witnesses to support Plaintiff's allegations.  
6 *See* Hire Decl. ¶¶ 3-6. Counsel reviewed the documents and interviewed the witnesses prior to  
7 filing the FAC. *See id.*

8 One witness, Ed (Bud) Miller, is Executive Director of a coupon industry watchdog  
9 organization called The Coupon Information Group. *See* Declaration of Ed Miller ("Miller  
10 Decl.") ¶ 1. Mr. Miller observed Stottlemire's statements during Miller's routine monitoring  
11 of several online coupon forums. *See* Miller Decl. ¶¶ 2-3. Stottlemire made statements in the  
12 Coupon Queen Forum and in email correspondence that indicate the primary design of the  
13 software: to circumvent Plaintiff's technology that imposes print limitations on coupons. For  
14 example, on the Coupon Queen Forum, a user that Plaintiff believes to be Stottlemire posted  
15 that he "recently posted information on another site (dealideal) on how to beat the limitation  
16 imposed by the software provided by coupons.com and would allow users of that software to  
17 print an unlimited number of coupons from the coupons.com website," and then that he had  
18 "created a small exe file [a software program] that will remove the limitations placed by the  
19 coupons.com software;" and "If anyone wishes it [the exe file], send me a PM [private  
20 message] and I'll gladly send it your way." *See* Miller Decl., ¶ 4, Exh. 2. When Ed Miller  
21 wrote to Stottlemire, requesting the software, Stottlemire provided it via email. *See* Miller  
22 Decl., ¶¶ 6-7, Exh. 3. Stottlemire also delivered the software to at least one other person. *See*  
23 Declaration of Jeffrey Weitzman ("Weitzman Decl.") ¶ 6, Exh. 1.

24 Plaintiff, who is in the best position to know the details and the efficacy of the print  
25 limiting technology, described the security features to Counsel, and Counsel installed the  
26 coupon printer software on personal computers to become familiar with the process of  
27 accessing and printing coupons, as well as the security features that limit such activities. *See*  
28 Hire Decl. ¶ 5. Such inquiries and investigation into the nature of Plaintiff's security features

1 were more than objectively reasonable. *See, e.g., Oliveri v. Thompson*, 803 F2d 1265, 1277  
2 (2nd Cir. 1986) (holding that an attorney may normally rely on information obtained from the  
3 client as to which the client has first-hand knowledge: An attorney is not required “to pass  
4 judgment on the credibility of his client on pain of a monetary sanction.”).

5 Discussion and testing of the coupon printing software revealed that the print limitations  
6 are far from “easy” to remove, as Stottlemire claims. *See Weitzman Decl.* ¶ 9; *Hire Decl.* ¶ 6.  
7 Counsel’s use of the coupon printer on personal computers confirmed the representation from  
8 Plaintiff: that an average user who is not seeking a means to circumvent Plaintiff’s print  
9 limitations would not even notice Plaintiff’s security features, let alone go to great lengths to  
10 locate them, remove them, then re-install the coupon printer, so the user could re-print the  
11 desired coupons. *See Hire Decl.* ¶ 6. Stottlemire’s conduct, however, offered all users  
12 information about how to locate and remove the security files, and a software program which  
13 purported to complete all of these steps for the user. *See Miller Decl.* ¶ 4, Exh. 2. Though  
14 Stottlemire is now attempting to claim that he is a crusader for hard drive cleanliness, merely  
15 helping users to rid their hard drives of vestigial files, Stottlemire’s own statements belie his  
16 true intent: to “allow users of that software to print an unlimited number of coupons from the  
17 coupons.com website.” *See id.*

18 Based on this evidence, it was not only reasonable for Counsel to allege that Stottlemire  
19 violated 17 U.S.C. § 1201, it was likely sufficient to support summary judgment on the claim.

20 **B. Claims in the FAC Are Not Baseless, and Are Warranted Under Existing**  
21 **Law**

22 Stottlemire does not seriously dispute the evidentiary support for the facts as stated above  
23 – Stottlemire only takes issue with the conclusion that such conduct violates the DMCA. Motion  
24 at 6-10.

1 As explained in detail in Plaintiff’s opposition to Stottlemire’s MSJ, the allegations in the  
2 FAC are sufficient to support a claim under the DMCA’s anti-circumvention provisions. For the  
3 same reasons, such claims are warranted by the existing law.<sup>4</sup>

4 **1. Stottlemire’s Conduct Violates 17 U.S.C. § 1201 on Its Face**

5 Plaintiff claims violations of 17 U.S.C. § 1201 and related state claims.<sup>5</sup> Specifically,  
6 Stottlemire’s conduct is in violation of two subsections of § 1201<sup>6</sup>:

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9 <sup>4</sup> Two law school professors have already weighed in on the question of whether Plaintiff’s  
10 DMCA claims are reasonable. Stottlemire has sought publicity on the subject of this lawsuit in  
11 various public forums, including an article in the Wired online magazine. See Hire Decl. ¶ 7,  
12 Exh. 1. After explaining Plaintiff’s claims, based on a fairly complete account of the facts stated  
above, the article cites the opinions of two “legal experts,” both of whom believe that Plaintiff  
likely has a case under the DMCA:

13 “I think it’s a pretty broad statute,” says Carl Tobias, a professor at the  
14 University of Richmond School of Law. “It may cover this. I think it does  
15 give companies a lot of leverage and a lot of power.” Jim Gibson, a  
16 University of Virginia School of Law visiting scholar who teaches  
copyright law, suggests Stottlemire might be swimming in legally murky  
waters at best. “He might be in trouble for providing technology that is  
designed for essentially hacking around copyright protection,” Gibson  
says.

17 <sup>5</sup> Stottlemire does not argue that Plaintiff’s state law claims are unwarranted or baseless; he only  
18 argues that the DMCA claims in Plaintiff’s FAC are “false” and “misleading.” See Motion at 6,  
11, 13-14.

19 <sup>6</sup> The full text of 17 U.S.C. §§ 1201(a)(2) and 1201(b)(1) reads:

20 1201(a)(2): No person shall manufacture, import, offer to the public, provide, or otherwise traffic  
21 in any technology, product, service, device, component, or part thereof, that –

22 (A) is primarily designed or produced for the purpose of circumventing a technological measure  
that effectively controls access to a work protected under this title.

23 (B) has only limited commercially significant purpose or use other than to circumvent a  
24 technological measure that effectively controls access to a work protected under this title; or

25 (C) is marketed by that person or another acting in concert with that person with that person’s  
26 knowledge for use in circumventing a technological measure that effectively controls access to a  
work protected under this title.

27 1201(b)(1): No person shall manufacture, import, offer to the public, provide, or otherwise traffic  
28 in any technology, product, service, device, component, or part thereof, that -

1 • 1201(a)(2) provides a “ban on trafficking,” to prohibit manufacturing or otherwise  
2 trafficking in any product that is primarily designed for the purpose of circumventing a  
3 technological measure that effectively controls access to a copyrighted work. *See* 3  
4 Melville B. Nimmer & David Nimmer, Nimmer on Copyright § 12A.03 (2007)  
5 (abbreviating this section as a “ban on trafficking.”).

6 • 1202(b)(1) lists “additional violations,” which prohibit manufacturing or  
7 otherwise trafficking in any product that is primarily designed for the purpose of  
8 circumventing a technological measure that effectively protects a right of a copyright  
9 owner in a work. *See id.*

## 10 2. Stottlemire’s Arguments Are Unavailing

11 Stottlemire’s substantive arguments in this Motion for sanctions are based on Plaintiff’s  
12 alleged inability to support a claim for the ban on trafficking violation of 17 U.S.C.  
13 § 1201(a)(2) under *Lexmark International, Inc. v. Static Control Components, Inc.*, 387 F.3d  
14 522 (6th Cir. 2004) and *Chamberlain Group, Inc. v. Skylink Techs., Inc.*, 381 F.3d 1178, 1203  
15 (Fed. Cir. 2004). Specifically, Stottlemire argues that the allegations in the FAC are “false”  
16 and “misleading” because Plaintiff’s works are not (1) effectively controlled by a technological  
17 measure, (2) which has been circumvented, such that that third parties can now access the work  
18 without authorization, as required by *Lexmark* and *Chamberlain*. Motion at 6-10.

19 First, it should be noted that *Chamberlain* (a Federal Circuit case applying Seventh  
20 Circuit law) and *Lexmark* (a Sixth Circuit case) are not controlling authority for this District  
21

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22 (A) is primarily designed or produced for the purpose of circumventing protection afforded by a  
23 technological measure that effectively protects a right of a copyright owner under this title in a  
work or a portion thereof;

24 (B) has only limited commercially significant purpose or use other than to circumvent protection  
25 afforded by a technological measure that effectively protects a right of a copyright owner under  
this title in a work or a portion thereof; or

26 (C) is marketed by that person or another acting in concert with that person with that person's  
27 knowledge for use in circumventing protection afforded by a technological measure that  
effectively protects a right of a copyright owner under this title in a work or a portion thereof.  
28

1 Court. Given that Stottlemire bases his entire argument on cases that are not controlling  
2 precedent, it is even more of a stretch to conclude that Plaintiff’s and Counsel’s claims in the  
3 FAC were “baseless” and “unwarranted under existing law” and are unwarranted under any  
4 “nonfrivolous argument for the extension, modification, or reversal of existing law.” *See* Fed.  
5 R. Civ. P. 11(b).

6 Second, even if the Court applies *Chamberlain* and *Lexmark*, neither case addresses the  
7 required showing for a prima facie case under the additional violations of 17 U.S.C.  
8 § 1201(b)(1). Both cases only address the required showing for violations of 17 U.S.C.  
9 § 1201(a)(2). Therefore, even if the Court were to find that a claim under 17 U.S.C. §  
10 1201(a)(2) was “unwarranted,” (which it should not, given that Plaintiff’s claims are well-  
11 grounded in the existing law), sanctions should still be denied because Stottlemire does not  
12 present any arguments relating to a deficiency in the FAC to support a claim for violations of  
13 17 U.S.C. § 1201(b)(1).

14 Though Stottlemire’s Motion could be denied based on either of the issues above, even  
15 if his arguments are considered in turn, it is still clear that Stottlemire’s Motion for sanctions  
16 must be denied, as the facts alleged in the FAC are more than sufficient to establish a  
17 nonfrivolous claim under §§ 1201(a)(2) and 1201(b)(1).

18 **a) Effectively control access**

19 Stottlemire argues that Plaintiff’s technology does not effectively control access to its  
20 online coupons, and therefore the allegations in the FAC are “false” and “misleading.” *See*  
21 Motion at 6. Stottlemire’s argument is based on a misunderstanding (or misrepresentation) of  
22 both the holding of *Lexmark*, and the essential functions of Plaintiff’s technology. Plaintiff has  
23 not had any opportunity to present evidence of the details of its technological measures, and  
24 cannot do so without an appropriate protective order in place. Weitzman Decl. ¶ 4. However,  
25 without delving into the details of Plaintiff’s technology, it is still clear that Stottlemire’s  
26 argument is untenable.

27 Stottlemire argues that Plaintiff’s technology does not effectively control access because  
28 the unique identifiers that Plaintiff assigns to a user’s computer can be removed “easily.” *See*

1 Motion at 7. However, the DMCA does not require that the technological measures be  
2 impenetrable; if it did, the anti-circumvention provisions would serve no purpose: “a  
3 precondition for DMCA liability is not the creation of an impervious shield to the copyrighted  
4 work. Otherwise, the DMCA would apply only when it is not needed.” *Lexmark*, 387 F.3d at  
5 549 (citations omitted). *See also Universal City Studios, Inc. v. Reimerdes*, 111 F. Supp. 2d 294,  
6 317-18 (SDNY 2000) (rejecting defendant’s argument that plaintiff’s technological measure does  
7 not “effectively control access” because it is only a “weak cipher”). Moreover, Stottlemire  
8 presents no evidence of such alleged ease of removal. In fact, the vast majority of users do not  
9 seek out the unique identifiers, and the same vast majority of users would not be able to identify  
10 the unique identifiers (without the assistance of Stottlemire or another highly technologically  
11 savvy individual who took pains to do so). *See Weitzman Decl.* ¶ 9.

12 Stottlemire also appears to argue that a measure is ineffective if everyone is in possession  
13 of some part of the raw materials required to disable the technological measure (i.e., the delete  
14 key). Motion at 7. Surely everyone is in possession of some tools required to disable all  
15 technological controls – some circumvention devices would require screwdrivers, yet the  
16 prevalence of screwdrivers does not render them meaningless. Likewise, other circumvention  
17 devices require code written with the keys on a keyboard, yet common possession of computer  
18 keyboards does not negate their effectiveness, either. *See RealNetworks, Inc. v Steambox, Inc.*,  
19 No. 2:99CV02070, 2000 WL 127311, \*9 (W.D. Wash Jan. 18, 2000) (holding that a protection  
20 device is effective if, when used in the “ordinary course of operation,” it limits access to a  
21 copyrighted work).

22 **b) Circumvention and Authorization**

23 Stottlemire argues that the claims in the FAC are not warranted by the existing law  
24 because Plaintiff did not “withhold authorization” from Stottlemire. *See Motion at 8-10.* This  
25 argument is premised on a misunderstanding of the DMCA. To support his position, Stottlemire  
26 quotes an ambiguous sentence in *Chamberlain*: “The plain language of the statute [§ 1201(a)(3)]  
27 therefore requires a plaintiff alleging circumvention (or trafficking) to prove that the defendant’s  
28

1 access was unauthorized.” Motion at 8; MSJ at 7 (quoting 381 F.3d at 1193). Therefore,  
2 Stottlemire claims, Plaintiff has made a frivolous claim under the DMCA.

3           However, *Chamberlain* itself clarifies this point later in the opinion: “A plaintiff alleging  
4 a violation of 1201(a)(2) must prove [in part]: . . . a valid copyright on a work . . . that *third*  
5 *parties* can now access . . . without authorization . . .because of a product that the defendant  
6 [trafficker] . . . designed or produced.”<sup>7</sup> 381 F.3d at 1203 (emphasis added). Therefore,  
7 *Chamberlain* itself makes clear – with respect to the requirements for a prima facie case – that  
8 the trafficker’s device must allow unauthorized *third-party* access to a copyrighted work (as  
9 Stottlemire’s circumvention instructions and software allowed unauthorized third parties (readers  
10 of coupon forums) access to its coupons). *See* 381 F.3d at 1203. Neither the statute nor  
11 *Chamberlain* requires Plaintiff to allege or to prove that the *trafficker’s* actions were  
12 unauthorized. *See id.*

13           Stottlemire makes much of the lack of a license agreement.<sup>8</sup> *See* Motion at 8. However,  
14 nothing in the DMCA, or even in *Chamberlain*, requires a license agreement. In the context of  
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16 <sup>7</sup> The entirety of the *Chamberlain* standard for proving a prima facie case under 17 U.S.C.  
17 § 1201(a)(2) is stated and discussed in Plaintiff’s Opposition to Stottlemire’s MSJ.

18 <sup>8</sup> Because Stottlemire refers to Exhibit D of his Request for Judicial Notice in his Motion for  
19 sanctions (*see* Motion at 8), Counsel states its objections to such evidence on the following  
20 grounds:

20 • Judicial notice is only appropriate when a fact is “not subject to reasonable dispute in that  
21 it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable  
22 of accurate and ready determination by resort to sources whose accuracy cannot reasonably be  
questioned.” Fed. R. Evid. 201. Nearly all of Stottlemire’s exhibits are ineligible based on this  
standard, including Exhibit D.

23 • Exhibit D contains unauthenticated printed pages allegedly from websites as available on  
24 certain dates. Without testimony establishing the source and authenticity of the documents, they  
25 are inadmissible pursuant to Fed. R. Evid. 901. In addition, all Exhibits to the Request for  
Judicial Notice are irrelevant to Stottlemire’s Motion, and are therefore inadmissible pursuant to  
Fed. R. Evid. 402.

26 Because the Exhibits in his Request for Judicial Notice filed in connection with the MSJ are  
27 inadmissible, Stottlemire cannot rely on any of them to support his motion for sanctions. As  
28 such, to the extent any of Stottlemire’s arguments rely on these documents the arguments must  
be disregarded.

1 *Chamberlain*, the court held that the plaintiff was required to provide an explicit restriction of the  
2 use of the subject garage door system, if plaintiff intended to bar its competitor from offering an  
3 interoperable garage door opener. *See* 381 F.3d at 1203-04. The *Chamberlain* court determined  
4 that this explicit restriction was necessary in light of the widely held marketplace perception that  
5 a consumer could use a universal garage door opener with any garage door system, including the  
6 plaintiff's system. *See id.* The marketplace expectation is different in the context of online  
7 coupons. *See* Weitzman Decl. ¶ 10. Regardless, Plaintiff does (and did) provide notice of  
8 explicit restrictions to its users, including a notice for each and every coupon which states that  
9 the user's print limit has been reached when the user has printed the coupons the authorized  
10 number of times. *See* Weitzman Decl. ¶ 8, Exh. 3. With such facts, Plaintiff's claim under the  
11 DMCA is far from "legally baseless," and Stottlemire's Motion must be denied. *See Holgate v.*  
12 *Baldwin*, 425 F.3d at 676.

13 **C. The FAC Was Not Filed for an Improper Purpose**

14 With no evidentiary support, Stottlemire argues that Plaintiff filed the FAC to "instill  
15 unfounded fear in Defendant, Defendant's family, and any other person who uses their  
16 software."<sup>9</sup> *See* Motion at 10-11. This argument relies completely on Stottlemire's misguided  
17 premise that the claims are baseless, which, as shown above, is faulty. Once it is established that  
18 Plaintiff and Counsel filed the FAC based on facts supported by ample evidence and claims  
19 warranted by the existing law, there is no reason to believe that Plaintiff filed the FAC for any  
20 reason other than to seek relief for Stottlemire's violations of 17 U.S.C. § 1201.

21 Stottlemire further argues that Plaintiff's settlement offer (particularly one that required  
22 no payment unless Stottlemire violated its terms), and "history" of prior lawsuits (including two  
23 actions against past violators in the last four years) somehow prove that Plaintiff had an improper  
24 purpose in filing the FAC. Certainly a generous offer to Stottlemire to resolve the pending

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26 <sup>9</sup> This section of the Motion appears only to reference Plaintiff, but because Counsel is not  
27 specifically excluded from Stottlemire's allegations of improper purpose, Counsel responds  
28 substantively to the arguments.

1 lawsuit and the filing of two prior lawsuits to enforce Plaintiff's rights under a completely  
2 different section of the DMCA (17 U.S.C. § 1202, which governs alterations of copyright  
3 management information) do not help Stottlemire meet his burden of showing an improper  
4 purpose. *See, e.g., Allen v. Van Hoy*, Civ. No. 92-906-FR, 1993 WL 369311, \*3 (D. Or. Sept. 8,  
5 1993) (“[F]or a claim of harassment to be sustained on the basis of successive filings, there must  
6 exist an identity of parties involved in the successive claim, and a clear indication that the repeat  
7 claim was resolved in the earlier one.”) (citations and quotations omitted). If anything, such  
8 actions demonstrate that Plaintiff is consistently enforcing its rights against Stottlemire and other  
9 violators when appropriate, for the purpose of stopping the violative conduct, and not for  
10 vindictive monetary gain. Stottlemire's arguments are further suspect given his shockingly weak  
11 basis for filing this Motion for sanctions; the lack of any legitimate argument or evidence to  
12 support this Motion begs the question of Stottlemire's purpose in filing the Motion, and it seems  
13 unlikely that the purpose was proper.

14 **D. The Court, in Its Discretion, Should Deny Sanctions**

15 Based on the arguments above, Stottlemire has not met his burden to show that the FAC  
16 was frivolous or baseless, or filed for an improper purpose. The motion should therefore be  
17 denied.

18 **IV. CONCLUSION**

19 For the reasons stated above, Counsel respectfully requests that the Court deny  
20 Stottlemire's motion for sanctions against Hollis Beth Hire and Wilson Sonsini Goodrich &  
21 Rosati.

22 Dated: November 13, 2007

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

24 /s/ Hollis Beth Hire

25 John L. Slafsky  
Hollis Beth Hire

26 For Counsel Hollis Beth Hire and Wilson  
27 Sonsini Goodrich & Rosati

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