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 6 Defendant, *pro se*

7 UNITED STATES DISTRICT COURT  
 8 NORTHERN DISTRICT OF CALIFORNIA  
 9 SAN JOSE DIVISION

10 COUPONS, INC., a California corporation,  
 11 Plaintiff,  
 12 vs.  
 13 JOHN STOTTELMIRE, and DOES 1-10,  
 14 Defendant

) Case No.: 5:07-cv-03457-HRL

) **REPLY TO OPPOSITION TO**  
 ) **DEFENDANT’S REQUEST FOR**  
 ) **JUDICIAL NOTICE**

) [Filed concurrently with Reply to Opposition  
 ) to Defendant’s Motion to Dismiss or in the  
 ) Alternative, for Summary Judgment and Reply  
 ) to Opposition to Defendant’s Motion for  
 ) Sanctions Pursuant to Rule 11]

) Date: December 4, 2007  
 ) Time: 10:00 a.m.  
 ) Courtroom: 2, 5<sup>th</sup> Floor  
 ) Judge: Hon. Howard R. Lloyd

15 **REPLY TO OPPOSITION**

16 Plaintiff objects to Defendant’s Request for Judicial Notice citing Federal Rules of  
 17 Evidence 201 and argues Defendant’s evidence is inadmissible pursuant to Federal Rules of  
 18 Evidence 901, among other rules. Defendant has since corrected the requirement of Federal  
 19 Rules of Evidence 901 by filing a Supplement Declaration which authenticates each exhibit  
 20 offered as evidence. The Supplement Declaration has been filed pursuant to Civil Local Rule  
 21 7-3(d) and filed before the reply was filed.

22 Plaintiff’s other objections to Defendant’s evidence filed with Defendant’s Request for  
 23 Judicial Notice are replied to by the Defendant as follows:

24 Plaintiff objects to Exhibits A, D-F and H as irrelevant to Defendant’s Motion and are  
 25 therefore inadmissible pursuant to Federal Rules of Evidence 402.

26 Reply to Opposition to Defendant’s Request for Judicial Notice  
 27 No. C-07-03457 HRL

1 Exhibit A is a properly authenticated exhibit showing Plaintiff's website as it appeared as  
2 late as August 28, 2007. This webpage is relevant as it shows Plaintiff's promise that consumers  
3 may "use as many [coupons] as [they] like." This promise by the Plaintiff directly contradicts  
4 statements made by the Plaintiff that consumers are limited to printing its coupons. The  
5 relevance of this evidence is completely briefed in Defendant's Alternative Motion

6 Exhibit D is a properly authenticated exhibit showing Plaintiff's website as it appeared on  
7 May 22, 2007, and July 12, 2007. This webpage is relevant as it shows Plaintiff's webpage  
8 where download of their software is offered contains no underlying links to Terms of Use, End  
9 User Licensing Agreement or other contractual terms which would require consumer's who  
10 download and install their software to agree to thereby limiting by contract how consumer's may  
11 interact with software offered by the Plaintiff. The relevance of this evidence is completely  
12 briefed in Defendant's Alternative Motion

13 Exhibit E is a printed PDF file downloaded from Professor Benjamin Edelman's website  
14 having the title "A Closer Look at Coupons.com." This PDF file is relevant as it shows  
15 admissions made by the Plaintiff in response to privacy concerns raised by Professor Edelman  
16 and explains in detail how Plaintiff uses the unique ID which would have been erased by  
17 software offered by the Defendant. The PDF file shows Plaintiff assigns the unique ID (also  
18 called "user id" and "device id" by Plaintiff) to the computer of each consumer and further that  
19 consumers "may print coupons from many different computers and each [coupon] would carry a  
20 different [unique id]." The relevance of this evidence is completely briefed in Defendant's  
21 Alternative Motion

22 Exhibit F is a webpage printed from Plaintiff's website as it appeared on September 15,  
23 2007 having the title "Our Technology." This webpage is relevant as it shows admissions by the  
24 Plaintiff that each coupon printed is unique. Unique coupons require separate copyright  
25 protection and are not copies of previously issued coupons. The relevance of this evidence is  
26 completely briefed in Defendant's Alternative Motion

27 Exhibit H is a webpage printed from Defendant's website and is relevant as it explains in  
28 detail how Plaintiff deposits deceptively named registry keys and filenames on a consumer's

1 computer after they have installed the coupon printing software offered by the Plaintiff. The  
2 relevance of this evidence is completely briefed in Defendant's Alternative Motion

3 Plaintiff objects to Exhibits B and C as irrelevant to Defendant's Motion and are  
4 therefore inadmissible pursuant to Federal Rules of Evidence 402. Exhibits B and C are coupons  
5 printed from Plaintiff's website using two different versions of software offered by the Plaintiff,  
6 3.3.0.2 and 4.0.0.2. They are relevant to establish when the coupon is set in its first tangible  
7 medium. A comparison of the coupons reasonably depict that although Plaintiff sends an almost  
8 identical file to consumers, the coupon is set in its first tangible medium differently based upon  
9 the version of the coupon printer software used by the consumer. The relevance of this evidence  
10 is completely briefed in Defendant's Alternative Motion.

11 Plaintiff objects to Exhibit H as hearsay and is therefore inadmissible pursuant to Federal  
12 Rules of Evidence 802. Exhibit H are statements made by the Defendant when the matter was  
13 fresh in Defendant's mind and are thus admissible under Federal Rules of Evidence 803(1).  
14 Additionally, the statements made by the Defendant were a description of his state of mind and  
15 are thus admissible under 803(3).

16 Plaintiff objects to Exhibit G as irrelevant to Defendant's Motion and is therefore  
17 inadmissible pursuant to Federal Rules of Evidence 402. Exhibit G is a complaint Plaintiff filed  
18 against a third party and explains in detail what Plaintiff causes to be printed on each coupon  
19 printed at the request of the consumer and proves that each coupon is unique. The relevance of  
20 this evidence is completely briefed in Defendant's Alternative Motion.

21 Dated: November 19, 2007

/s/

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John A Stottlemire, *pro se*