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18 UNITED STATES DISTRICT COURT
 19 NORTHERN DISTRICT OF CALIFORNIA
 20 SAN JOSE DIVISION

21 COUPONS, INC.,

22 Plaintiff,

23 vs.

24 JOHN STOTTLEMIRE, and DOES 1-10,

25 Defendants.

Case No. 5:07-CV-03457 HRL

**JOINT CASE MANAGEMENT
 CONFERENCE STATEMENT**

Date: February 5, 2008
 Time: 1:30 p.m.
 Courtroom: 2
 Judge: Honorable Howard R. Lloyd
 Trial:

26 Plaintiff Coupons, Inc. ("Plaintiff") and Defendant John Stottlemire ("Stottlemire") jointly
 27 submit this Case Management Conference Statement pursuant to the Northern District of
 28 California's Standing Order, Civil Local Rule 16-9(a), and Fed. R. Civ. P. 26(f).

1. **JURISDICTION AND SERVICE:** This Court has subject matter jurisdiction
 pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a) for claims arising under the Digital
 Millennium Copyright Act ("DMCA"), and under 28 U.S.C. § 1338(b) for the related state-law
 claims based on unfair competition. This Court also has supplemental jurisdiction over state
 claims under 28 U.S.C. § 1367. There are no issues regarding personal jurisdiction or venue.

1 Stottlemire, the only defendant known to Plaintiff at this time, has been served and appears *pro*
2 *se*. The true names and capacities of defendants Does 1-10 are presently unknown to Plaintiff.

3 **2. BRIEF DESCRIPTION OF THE ALLEGED FACTS:**

4 **A. Plaintiff's allegations are as follows:**

5 Plaintiff is a leading provider of technology which enables businesses to deliver online,
6 printable coupons to consumers. Plaintiff's coupons are works subject to copyright protection
7 under Title 17 of the United States Code. Plaintiff offers a number of security products to its
8 clients to prevent unauthorized copying of its coupons, including proprietary technology that
9 limits the number of times a user can print a coupon. Stottlemire is the owner and operator of the
10 on-line forum called The Coupon Queen, in which consumers discuss and trade coupons (the
11 "Coupon Queen Forum"). Plaintiff alleges that around May 2007 Stottlemire created software
12 and offered a service designed to remove the security features of Plaintiff's product such that a
13 user can print more than the authorized number of coupons offered by Plaintiff (the "Defendant's
14 Software"). Plaintiff alleges that Stottlemire offered the Defendant's Software to the public
15 through the Coupon Queen Forum and transferred the software to the public for the purpose of
16 printing more coupons than Plaintiff's security features allow. Stottlemire has continued to post
17 updated circumvention methods and instructions at least through December 2007.

18 **B. Stottlemire's allegations are as follows:**

19 Plaintiff operates a website which enables businesses to provide coupons to consumers.
20 Consumers are able to print coupons from Plaintiff's website after installing software provided by
21 the Plaintiff. Plaintiff's software uses streaming technology which prevents coupons from being
22 saved to consumer's computer hard drive and from being displayed on consumer's monitor
23 attached to consumer's computer. Through the use of streaming technology, consumers can only
24 print Plaintiff's coupons directly to consumer's printers attached to their computer. Plaintiff's
25 software also assigns a unique identifier to each computer used to print coupons from Plaintiff's
26 website and stores the unique identifier in deceptively named registry keys within the Windows
27 Registry and deceptively named hidden files in the windows sub-directory in an attempt to
28 obscure it from consumers. The unique identifier is used by Plaintiff to track the number of

1 coupons a consumer has received and consequently printed from a given computer and is not
2 assigned to the consumer. When visiting Plaintiff's website, Plaintiff's software is instructed by
3 Plaintiff to search for the unique identifier located on the consumer's computer. If Plaintiff's
4 software does not locate the unique identifier, Plaintiff assigns a unique identifier and Plaintiff's
5 software stores the unique identifier within the deceptively named Windows Registry Keys and
6 files stored on the consumer's hard drive.

7 For four days in May 2007, Defendant Stottlemire offered software which erased the
8 unique identifier from consumer's computer. Defendant's offered software only erased files and
9 registry keys located on consumer's computer and did not modify Plaintiff's software. Plaintiff's
10 software continued to operate as Plaintiff intended. When Plaintiff's software did not find the
11 unique identifier, Plaintiff would simply assign a new unique identifier to the consumer's
12 computer. Software offered by Defendant did not descramble a scrambled work, decrypt an
13 encrypted work, or otherwise avoid, bypass, deactivate or impair Plaintiff's software. Since the
14 four days in May 2007, Defendant Stottlemire has continued to offer software which erases
15 orphaned registry keys and files after third parties uninstall software provided by Plaintiff as
16 Plaintiff's uninstall does not remove all files and registry keys. Defendant Stottlemire has not
17 offered software, circumvention methods or instructions for any other purpose than to completely
18 uninstall Plaintiff's software since those four days in May 2007.

19 **3. LEGAL ISSUES:** The parties have identified the following disputed points of
20 law:

- 21 (a) Whether each of Plaintiff's causes of action in the Second Amended
22 Complaint states a claim on which relief can be granted;
- 23 (b) Whether coupons offered by Plaintiff possesses more than a *de minimis*
24 *quantum* of creativity and are protected by The Copyright Act.
- 25 (c) Whether Plaintiff's coupons are fixed in a tangible medium of expression
26 pursuant to 17 U.S.C. § 102(a);
- 27 (d) Whether Plaintiff's software is defined as a technological measure within
28 the meaning of 17 U.S.C. 1201;

1 (e) Whether Plaintiff's software controls access to a copyrighted work within
2 the meaning of 17 U.S.C. § 1201(a);

3 (f) Whether Plaintiff limits the quantity of coupons a consumer may receive;

4 (g) Whether Plaintiff has provided notice pursuant to California Business &
5 Professional Code 17500 that limitations exist to the number of coupons a consumer may
6 receive.

7 (h) Whether Plaintiff's technology protects an exclusive right granted to the
8 copyright holder within the meaning of 17 U.S.C. 1201(b)

9 (i) Whether Defendant was authorized to use and offer to distribute software
10 which erased Windows registry keys and files from third party computers.

11 (j) Whether software offered by the Defendant either facilitated infringement
12 or infringed upon the exclusive rights granted Plaintiff under The Copyright Act;

13 (k) Whether Plaintiff's software has been circumvented within the meaning of
14 17 U.S.C. § 1201;

15 (l) Whether the Unique Identifier placed on consumer's computer by the
16 Plaintiff for the sole purpose of identifying that consumer's computer is classified as
17 Personal Identifying Information.

18 (m) Whether consumers are authorized to erase files and Windows registry
19 keys from computers they own.

20 (n) Whether Plaintiff has lost revenue or property as a result of software
21 Defendant offered to distribute and can pursue an action under California Business &
22 Professional Code 17200 *et seq.*;

23 (o) Whether Stottlemire engaged in unlawful and unfair business practices, in
24 violation of California Business & Professional Code § 17200 *et seq.*, by creating,
25 offering, and distributing to the public the Defendant's Software;

26 (p) Whether Stottlemire engaged in unfair competition in violation of the
27 common law of the State of California by creating, offering, and distributing to the public
28 the Defendant's Software;

1 (q) Whether Stottlemire engaged in conversion and trespass to chattels under
2 the common law of the State of California by creating, offering, and distributing to the
3 public, Defendant's Software.

4 (r) Whether Defendant's Software caused significant injury to Plaintiff.

5 (s) Whether Defendant's Software caused, or threatened to cause, injury to
6 Plaintiff's computer systems.

7 (t) Whether, in offering Defendant's Software, Defendant caused competitive
8 injury to Plaintiff.

9 (u) Whether Defendant had authorization to use his property in the manner he
10 used it.

11 (v) Whether Defendant had authorization to use property previously owned by
12 Plaintiff in the manner he used it.

13 (w) Whether Defendant's act, in offering the software, was a business act or
14 practice.

15 **4. MOTIONS:** On July 24, 2007, Stottlemire filed an Administrative Motion to
16 Extend Time to Respond to Complaint. On August 1, 2007 the Court granted in part
17 Stottlemire's motion, which Plaintiff opposed, and extended the deadline to respond to the
18 Complaint until September 24, 2007. On September 24, 2007, Stottlemire filed a motion to
19 dismiss and, in the alternative, a motion for summary judgment, a related motion for judicial
20 notice, and a motion for sanctions. On October 22, 2007, Plaintiff filed a motion to continue
21 hearing and case management dates, which Stottlemire opposed and the court denied the motion
22 as moot. On October 24, 2007 the Court, on its own motion reset the Case Management Dates
23 and reset deadlines for Plaintiff to reply to Stottlemire's then pending motions. On November 14,
24 2007, Stottlemire filed an ex-parte motion to strike plaintiff's opposition. The motions were
25 heard on December 4, 2007. On December 12, the court granted in part Stottlemire's motion to
26 dismiss, with leave to amend and denied all other motions. Plaintiff timely filed its second
27 amended complaint. On January 14, 2008, Stottlemire filed an "Administrative Motion to Extend
28 Time To Respond to Second Amended Complaint," which Plaintiff did not oppose, and the court

1 granted this motion in part, extending the deadline to respond to the Second Amended Complaint
2 to February 26, 2008.

3 **5. AMENDMENT TO PLEADINGS:** Plaintiff intends to join additional parties in
4 the event that it identifies the true names of Does 1-10.

5 **6. EVIDENCE PRESERVATION:** Plaintiff is preserving its evidence that is
6 potentially relevant to the case pursuant to its internal document retention policy. Stottlemire is
7 preserving evidence that is potentially relevant to the case.

8 **7. INITIAL DISCLOSURE:** Plaintiff has complied with the initial disclosure
9 requirements of Rule 26. The initial disclosures included a list of individuals who are likely to
10 have discoverable information, a description by category of relevant documents in Plaintiff's
11 control, and a computation of damages.

12 Stottlemire has complied with the initial disclosure requirements of Rule 26. His initial
13 disclosures included a list of individuals who are likely to have discoverable information and a
14 list of documents he may use to support his defense.

15 **8. DISCOVERY:** Plaintiff has initiated limited third party discovery to date, but the
16 parties have not yet exchanged discovery between them.

17 **Proposed Discovery Plan:** Plaintiff will seek discovery of documents, including
18 but not limited to computer files in Stottlemire's possession related to the Defendant's Software
19 and his offer of the Defendant's Software to others, and documents from Stottlemire and others
20 regarding who has received the Defendant's Software and to what extent the Defendant's
21 Software has been used. The parties agree to produce electronically stored information in CD,
22 DVD, or native format where appropriate. Plaintiff will depose Stottlemire and anyone else who
23 has participated with him in creating and offering the Defendant's Software. Plaintiff expects
24 expert discovery regarding the nature of the Defendant's Software and market expectations
25 regarding print limitations for online coupons. The parties may need to discuss a protective order
26 depending on the scope of the discovery requests.

27 Stottlemire will seek discovery of documents, including but not limited to source code in
28 Plaintiff's possession related to Plaintiff's software it provides consumers, source code in

1 Plaintiff's possession related to Plaintiff's server software which provides coupons to consumers,
2 source code in Plaintiff's possession related to Plaintiff's website, communications between
3 Plaintiff's attorney and the United States Copyright Office regarding all copyright registrations
4 Plaintiff has filed with the United States Copyright Office, all communications between Plaintiff
5 and TRUSTe related to Plaintiff's software, all communications between Plaintiff and Wired
6 Magazine related to Plaintiff's software and the Defendant, and all communications between
7 Plaintiff and Information Week Magazine related to Plaintiff's software and the Defendant.

8 Stottlemire will depose Steven Boal, President, CEO, Coupons Inc.; Jeffrey Weitzman,
9 Coupons, Inc.; Lead Programmers for the Plaintiff; Lead Web Developers for the Plaintiff; John
10 Slafsky, attorney for the Plaintiff; Jordan Lau, TRUSTe; David Kravets, Wired Magazine;
11 Thomas Claburn, Information Week Magazine; and any other individuals Stottlemire may learn
12 of, regarding information each may have which invalidates Plaintiff's DMCA claim against
13 Stottlemire. Stottlemire expects expert discovery regarding Plaintiff's server software, Plaintiff's
14 website, Plaintiff's software it provides to consumers and Plaintiff's databases.

15 **9. CLASS ACTIONS:** This is not a class action.

16 **10. RELATED CASES:** There are no related cases or proceedings pending before
17 another judge of this court, or before another court or administrative body.

18 **11. RELIEF:** Plaintiff's prayer for relief seeks legal and equitable relief. Due to the
19 absence of discovery, Plaintiff contends that a specific presentation on damages is premature.
20 However, Plaintiff contends that damages include, but are not limited to, a statutory award of
21 \$2,500 per violation of 17 U.S.C. § 1201, and restitution for Stottlemire's unlawful business
22 practices. Plaintiff also seeks: (a) an order for the preservation of evidence in possession of
23 Stottlemire that is likely to be relevant to the case; (b) an injunction preventing Stottlemire from
24 manufacturing, offering to the public, and providing technology primarily designed for the
25 purpose of circumventing technology measures that effectively control access to Plaintiff's
26 coupons; (c) an order requiring Stottlemire to deliver to Plaintiff all copies of the Defendant's
27 Software, as well as unauthorized copies of Plaintiff's coupons created and printed with the
28 assistance of the Defendant's Software in possession of Stottlemire; (d) an order requiring

1 Stottlemire to deliver to Plaintiff all documents, files, lists, and correspondences reflecting the
2 identities of, and contact information for, the persons to whom Stottlemire provided technology
3 primarily designed for the purpose of circumventing technology measures that effectively control
4 access to Plaintiff's coupons; and (e) an order requiring Stottlemire to file with the Court and
5 serve on Plaintiffs an affidavit setting forth the manner and form in which they have complied
6 with the terms of the injunction. Plaintiff also seeks for Stottlemire to pay to Plaintiff the cost of
7 this action, together with reasonable attorneys' fees and disbursements pursuant to 17 U.S.C. §
8 1203(b), and for the Court to grant such other and further relief as the Court deems just and
9 equitable.

10 Stottlemire contends that Plaintiff is not entitled to any relief and will seek relief pursuant
11 to 17 U.S.C. § 1203(b) if he prevails in this action. Defendant may also file counterclaims against
12 Plaintiff in which he would be entitled relief.

13 **12. SETTLEMENT AND ADR:** The parties have had settlement discussions
14 however cannot agree on the terms of a settlement. Plaintiff is willing to consider Early Neutral
15 Evaluation or referral to a judge for a settlement conference. Defendant requests Early Neutral
16 Evaluation.

17 **13. CONSENT TO JURISDICTION OF MAGISTRATE JUDGE:** The parties
18 consent to the jurisdiction of a Magistrate Judge.

19 **14. OTHER REFERENCES:** The parties do not recommend any references of the
20 case at this time.

21 **15. NARROWING OF ISSUES:** The parties do not have a proposal at present to
22 narrow issues.

23 **16. EXPEDITED SCHEDULE:** The parties do not believe this case is subject to an
24 expedited schedule.

25 **17. SCHEDULING:** Plaintiff's proposed schedule is:

26 (a) Fact Discovery Cutoff: August 15, 2008

27 (b) Designation of Experts: August 31, 2008

28 (c) Expert Discovery Cutoff: September 15, 2008

1 (d) Hearing of Dispositive Motions (including Motions for Summary
2 Judgment: November 15, 2008

3 (e) Trial: January 15, 2009

4 Defendant's proposed schedule is:

5 (a) Fact Discovery Cutoff: August 15, 2008

6 (b) Designation of Experts: October 31, 2008

7 (c) Expert Discovery Cutoff: January 15, 2009

8 (d) Hearing of Dispositive Motions:

9 Motion for Summary Judgment: March 15, 2009

10 (e) Trial: May 15, 2009

11 **18. TRIAL:** Plaintiff has requested a jury trial. Parties expect that the trial will last
12 for four (4) days.

13 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS:**
14 Plaintiff filed a formal notice pursuant to Local Rule 3-16, and is not aware of any non-party
15 interested persons or entities.

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