

1 Neil A. Goteiner (State Bar No. 083524)  
 2 Dennis M. Cusack (State Bar No. 124988)  
 3 Carly O. Alameda (State Bar No. 244424)  
 4 Farella Braun & Martel LLP  
 5 235 Montgomery Street, 17th Floor  
 6 San Francisco, CA 94104  
 7 Telephone: (415) 954-4400  
 8 Facsimile: (415) 954-4480  
 9 E-mail: ngoteiner@fbm.com, dcusack@fbm.com,  
 10 calameda@fbm.com

11 Attorneys for Plaintiff  
 12 COUPONS, INC.

13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA  
 15 SAN JOSE DIVISION

16 COUPONS, INC.,

17 Plaintiff,

18 vs.

19 JOHN STOTTMIRE, and DOES 1-10,

20 Defendants.

Case No. 5:07-CV-03457 HRL

**COUPONS' MEMORANDUM OF POINTS  
 AND AUTHORITIES IN OPPOSITION TO  
 DEFENDANT STOTTMIRE'S MOTION  
 FOR SANCTIONS PURSUANT TO RULE  
 11 OF THE FEDERAL RULES OF CIVIL  
 PROCEDURE**

Date: November 4, 2008  
 Time: 10:00 a.m.  
 Courtroom: 2, 5<sup>th</sup> Floor  
 Judge: Honorable Howard R. Lloyd

21 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

22 The single sentence which Stottlemire protests in his frivolous motion is both true and  
 23 entirely consistent with Coupons' allegations regarding Stottlemire's circumvention software.<sup>1</sup>  
 24 Stottlemire's own motion contradictorily admits the truth of the challenged sentence.  
 25 Stottlemire's second inappropriate sanctions motion underlines why discovery must begin  
 26 without further waste of the parties' and the Court's time. His obvious understanding of

27 <sup>1</sup> We will not repeat the factual and procedural background set forth fully in the parties' briefs on  
 28 Stottlemire's accompanying motion to dismiss, and respectfully refer the Court to those  
 pleadings.

1 Coupons' software, reflected in his own admissions about how his circumvention software works,  
2 also demonstrates the bad faith of his motion: he fully understands the sentence in paragraph 15  
3 of the Third Amended Complaint ("TAC") and that it is true. And he also understands that he  
4 must now proceed with the lawsuit since his Rule 12 attack on the complaint is at an end.

5 This is Stottlemire's second baseless motion for sanctions. We ask that the Court  
6 admonish Mr. Stottlemire to seek permission from the Court or hire counsel, before filing another  
7 one. He should no longer have standing to hide behind his *pro se* status as he wastes Coupon's  
8 and this Court's resources.

## 9 **II. ARGUMENT**

### 10 **A. Legal Standard**

11 Rule 11 sanctions are imposed only in the "exceptional circumstance" where a claim "is  
12 patently unmeritorious or frivolous." *Riverhead Savings Bank v. Nat'l Mortgage Equity Corp.*,  
13 893 F.2d 1109, 1115 (9th Cir. 1990) (quoting *Doering v. Union County Bd. of Chosen*  
14 *Freeholders*, 857 F.2d 1531, 1537 (9th Cir. 1986). "The key question in assessing frivolousness  
15 is whether a complaint states an arguable claim -- not whether the pleader is correct in his  
16 perception of the law." *Hudson v. Moore Bus. Forms Inc.*, 827 F.2d 450, 453 (9th Cir. 1987); *see*  
17 *also Associated Bus. Tel. Sys. Corp. v. Cohn*, No. C-93-1570-DLJ, 1994 WL 589487, \*3 (N.D.  
18 Cal. Oct. 4, 1994) ("If, judged by an objective standard, a reasonable basis for the position exists  
19 in both law and in fact at the time the position is adopted, then sanctions should not be imposed.")  
20 (quoting *Golden Eagle Distributing Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1538 (9th  
21 Cir.1986)).

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

26 That the allegation is true, and that Stottlemire's own brief shows that he knows it is true,  
27 obviously precludes any basis for an award of sanctions.

28

1           **B.       TAC ¶ 15 Accurately Describes Coupons’ Technology**

2           We italicize the sentence in Paragraph 15 of the TAC that Stottlemire attacks:

3           Plaintiff’s security features are keyed to individual uniquely identified  
4           computers, rather than to individual people. By allowing or prohibiting  
5           access according to uniquely identified computers, Plaintiff effectively  
6           ensures the desired distribution for coupons, and protection against fraud.  
7           *The features block an individual computer’s access to a particular coupon*  
8           *offer altogether if that computer does not have the proper registry keys in*  
9           *place (has not previously been identified as a unique computer), or where*  
10          that computer has been identified but has previously obtained the allowed  
11          number of particular coupons requested, or where the total number of  
12          coupons intended for distribution has already been printed. (Emphasis  
13          added.)

14          The easiest way to demonstrate Stottlemire’s bad faith is to review how Coupons’ technology  
15          works:

- 16           • An advertiser decides to make available over the Internet a limited number of  
17           downloadable and printable coupons for a particular product. This is called a “coupon  
18           offer.” TAC ¶ 13.
- 19           • A graphic description of the coupon (but not a copy of the coupon itself) appears on a  
20           website. A consumer can click on a “Print Now” link in order to download and print the  
21           coupon. TAC ¶ 11. (Copies of a webscreen from Coupons.com showing the coupon  
22           description for a Quilted Northern coupon, and the actual coupon, are attached hereto as  
23           Exhibits A and B respectively, for the Court’s convenience.)
- 24           • Once the consumer clicks on the print link, several things happen. Coupons’ system  
25           checks to see if the individual computer already has a unique identifier assigned to it. If it  
26           does not, Coupons’ system delivers to the consumer’s computer a unique identifier, which  
27           resides in one or more files in the individual computer. TAC ¶ 16. If it does, the system  
28           proceeds to the next step.
- Prior to clicking the print link, an individual computer has no view or print access to any  
          coupon. This is true even if the computer has already been assigned a unique identifier  
          (because it previously sought to download a coupon from Coupons’ system).

- 1 • Once Coupons’ system has determined that the individual computer has a unique  
2 identifier (either because it already had one or Coupons’ system just gave it one), this  
3 identifier interacts with Coupons’ system to allow, or block, access to and printing of the  
4 desired coupon. The system verifies whether or not the computer has already printed  
5 coupons up to the device limit for that particular coupon offer. Each time the computer  
6 seeks to have a coupon printed, Coupons’ system goes through this verification process.  
7 *Id.*
- 8 • If the device limit for that coupon and that computer has not been reached, the system  
9 sends the coupon file to the printer attached to the computer for printing. If the device  
10 limit (or the campaign limit) has been reached, the system does not allow the coupon file  
11 to be sent and printed. TAC ¶ 20.
- 12 • Thus, without a unique identifier assigned to it and residing in the computer’s files, a  
13 computer cannot obtain access to a coupon. All the consumer can do is look at a  
14 description of the coupon on a webpage.

15 Stottlemire’s circumvention software works by deleting the files in the computer that  
16 contain the unique identifier. By removing the files with the unique identifier, Stottlemire’s  
17 software fools Coupons’ system into believing that the computer has never before obtained access  
18 to the system. This causes Coupons’ system to assign a new identifier to the computer and  
19 effectively refreshes the computer’s ability to access and print coupons beyond what would  
20 otherwise be the device limits.

21 Stottlemire of course cannot pretend that he does not know what “access” means in the  
22 context of Coupons’ technology. He not only has used the system, he studied it to create his  
23 circumvention software. The Complaint in the challenged sentence correctly states that without  
24 the registry keys that contain a unique identifier, all any consumer with a computer can do is view  
25 a description of the coupon. There is no access to the coupon itself, either in display or digital  
26 form. It cannot be printed, which is the only relevance of “access” in the context of Coupons’  
27 technology. There is thus no inconsistency between the statement in TAC ¶ 15, and the other  
28 allegations in the TAC.

1 Stottlemire understands this. This is all set out in Stottlemire’s Motion for Sanctions, at  
2 pp. 4-5, where he describes not only Coupons’ technology, but also how his own circumvention  
3 software works to delete the registry files deposited by Coupons’ system.

4 What is worse, Stottlemire in his brief (at 5:18-25) *actually explains why TAC ¶ 15 is*  
5 *true*. Stottlemire states:

6 Under Plaintiff’s claim it would be impossible for consumers who  
7 had never printed a coupon from Plaintiff’s website to gain access  
8 to Plaintiff’s coupons and print the coupons. Fundamentally, these  
9 consumers would not have the “proper registry keys in place” as  
10 there has never been an opportunity for Plaintiff to identify them as  
11 a unique computer and create the proper registry keys. ***The answer  
to this question can be found elsewhere in Plaintiff’s TAC:  
“When a consumer first request [sic] a coupon from a website,  
Plaintiff delivers to the consumer’s computer a security feature in  
the form of a unique identifier (TAC ¶ 16). This, without doubt,  
is exactly how Plaintiff’s security feature works.***

12 Stottlemire thus admits that he knows that there is no access absent Coupons’ system depositing a  
13 unique identifier into the registry keys in a consumer’s computer. This is how Coupons’ system  
14 enforces device limits on coupon prints. Stottlemire’s software removes the registry keys so as to  
15 refresh the process of seeking access, obtaining a unique identifier, and resetting the device limits  
16 on coupon prints.

17 Stottlemire’s admission thus belies his contention that the following two statements in the  
18 complaint are “exact opposite to one another”: (1) that Coupons’ system blocks all access if the  
19 proper registry keys are not in place; and (2) that Stottlemire gained access by erasing the proper  
20 registry keys. He knows that a computer needs to have registry keys to gain any access, but those  
21 same registry keys interact with Coupons’ system to set limits on the number of prints. By  
22 removing the registry keys, Stottlemire’s program removes the device limit on a particular  
23 coupon offer. That is the dispositive point that exposes his motion as frivolous.

### 24 **III. CONCLUSION**

25 Stottlemire’s sanctions motion confirms both desperation to avoid confronting what he did  
26 and the consequences for it, as well as a willingness to make this case more expensive. The Court  
27 should deny his motion and allow this case to move forward based on the – now virtually  
28 undisputed – facts. The Court should also admonish Stottlemire to seek counsel or the Court’s

1 approval before he files any more Rule 11 motions for sanctions. Because Coupons believes the  
2 case will run more smoothly if Stottlemire has additional legal counsel, Plaintiff would like to  
3 offer to pay up to \$1000 directly to the attorney of his choice for a consultation fee.  
4

5 Dated: October 7, 2008

FARELLA BRAUN & MARTEL LLP

6

7

By: /s/  
Dennis M. Cusack

8

9

Attorneys for Plaintiff  
COUPONS, INC.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28