

Maria Crimi Speth, #012574 (Admitted *Pro Hac Vice*)
JABURG & WILK, P.C.
3200 North Central Avenue, Suite 2000
Phoenix, Arizona 85012
(602) 248-1000

Attorneys for Defendants

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

WHITNEY INFORMATION NETWORK,
INC.; a Colorado corporation,

Plaintiffs,

v.

XCENTRIC VENTURES, LLC, an
Arizona limited liability company;
BADBUSINESSBUREAU.ORG, an
Arizona limited liability company; and ED
MAGEDSON, an individual,

Defendants.

Case No: 2:04-CV-47-ftm-29

**SEPARATE STATEMENT OF FACTS
IN SUPPORT OF
DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

Xcentric Ventures, LLC, (“Xcentric”) and Ed Magedson (“Magedson”) (collectively, the “Defendants”) submit the following Statement of Facts in support of their Motion for Summary Judgment.

1. Plaintiff WHITNEY INFORMATION NETWORK, INC. (“WIN” or “Plaintiff”) is a Florida-based company which advertises through “informercials” seeking to entice consumers to attend “free” seminars to learn how they can earn money investing in real estate. *See* Plaintiff’s First Amended Complaint (“FAC”) ¶¶ 19–22.

2. Defendants operate a website known as “The Rip-Off Report” which is located at www.ripoffreport.com and www.badbusinessbureau.com (“ROR”). *See* Exhibit 1, Declaration of Edward Magedson (“Magedson Dec.”) at ¶ 2.

3. ROR allows consumers to submit online messages chronicling their experiences and opinions about a wide variety of businesses. Magedson Dec. ¶¶ 3–7.

4. These messages are called “reports” or “rebuttals.” Magedson Dec. ¶3.

5. The website is a free resource available to the public as well as government officials, law enforcement, attorneys general, and so forth. This website has been in operation since 1998 and it currently receives millions of hits every week. Since its inception, the site has accumulated almost 8.5 billion page views (meaning pages viewed by a user during a visit to the site). Magedson Dec. ¶4.

6. As of December 13, 2006, the ROR Sites contain almost 220,000 individual reports. Including “rebuttals” (responses to a report), the site contains more than one million unique entries, and receives approximately 500–800 new reports/rebuttals every day. Magedson Dec. ¶5.

7. When a user wants to post a new report, they must first sign up for an account with Rip-Off Report. This process is free, and Xcentric asks the user to provide truthful and accurate information, but it is possible for individuals to sign up for an account using forged or fraudulent names, phone numbers, etc. Given the enormous volume of traffic to the website, like any other popular site with such a high level of traffic, other than a valid email address which is required to obtain an account, Xcentric does not and cannot verify the authenticity of the personal information provided by each user. Magedson Dec. ¶6.

8. Xcentric permits and encourages businesses to post rebuttals addressing the content of reports posted about them. Magedson Dec. ¶7.

9. Any time a user wishes to submit a report or rebuttal, they must sign in with their username and password and submit their report using an online form. When they do so, the ROR server logs the personal account information provided by the user (which is only as accurate as the information originally provided by the user). The server also logs the internet protocol or “IP” address of the user which is a unique number comprised of four sets of one to three digits. When any person logs onto the Internet, their computer is

automatically assigned a unique IP address by their Internet Service Provider (“ISP”) which identifies that computer. While it is possible for a user to provide forged or fake personal information such as a name, it is very difficult, though not impossible, to forge an IP address. Magedson Dec. ¶8.

10. When the user is done writing their report, they click a button to post their story to the ROR Sites. There is no charge for submitting a report. As part of the process of submitting their report, the user creates a title or heading for the report. Magedson Dec. ¶9

11. Once this is done, the story is held until it can be briefly reviewed by Xcentric’s staff of content monitors before it is posted online for other users to view. When a report is reviewed, it is only to confirm that the report does not contain blatantly illegal, inappropriate, or offensive material (i.e., images of pornography, social security numbers, credit card numbers, or physical threats). Any report that contains such material may be deleted or redacted at the discretion of Xcentric staff. Otherwise, reports posted by users of the ROR Sites are not checked for accuracy. As a matter of policy, Xcentric staff does not add to, or rewrite, any of the reports posted by users. Magedson Dec. ¶10.

12. Once a report or rebuttal is submitted to the ROR Site, only persons with administrative access have the ability to make any changes to that report or rebuttal. Magedson Dec. ¶14.

13. Since the beginning of 1993, only the following people, and no one else, have had administrative access to the reports and rebuttals (meaning the ability to make edits to the reports): Ed Magedson, Amy Thompson, G. Young, Heather Norton, Kim Jordan, Jackie Wynne, Kim Smith, Lynda Craven, Mary Jo Baker, C.S. Bowen, Paulette Craven, and Ben Smith. Magedson Dec. ¶15.

14. ROR contains certain postings which mention Plaintiff WIN in a derogatory manner. Magedson Dec. ¶¶ 16.

15. Attached hereto is a complete print of every report posted on ROR regarding WIN. Exhibit 2.

16. Other than Exhibit 2, Defendants know of no other statements on ROR which relate to WIN. Magedson Dec. ¶18.

17. Magedson did not author any of the reports or rebuttals that comprise Exhibit 2. He did not change, alter or edit any of these reports and he did not add content about WIN to any of these reports or rebuttals. He did not author or modify any of the titles to these reports or rebuttals. Magedson Dec. ¶19-21. He did not add the words “rip-off,” “dishonest,” “scam” or any other words to the reports, rebuttals or titles which are in Exhibit 2. Magedson Dec. 20-21.

18. None of the reports and/or rebuttals that are attached as Exhibit 2 were authored or posted by any of Xcentric’s agents. It would be a clear violation of Xcentric’s rules for any agent of Xcentric to author or post a report or rebuttal, or to add any content or words to any report or any report title, without Magedson’s express permission, which was never given. All of these reports and/or rebuttals were written by independent third-party users of the ROR Sites. All persons who have had administrative access since the beginning of 1993 have agreed to supply an Declaration which confirms that they did not author or add any content to any of these statements. Magedson Dec. ¶23.

19. Magedson searched the business records of Xcentric and obtained administrator versions or “admin versions” of each report in Exhibit 2 showing the contact and IP address information logged by their servers at the time each report was submitted. None of the IP addresses match any IP address used by any computer belonging to Xcentric or its agents.¹ Magedson reviewed all of these reports and the admin versions including the personal contact information listed with each and has confirmed that none of the individuals who authored these reports work for Xcentric nor

¹ As set forth in the declaration of Ben Smith, previously submitted to this Court, there were three reports for which Defendants were unable to capture an IP address.

have any of them ever worked for Xcentric. The individuals are simply users of the ROR Site who have independently decided to post messages regarding WIN. Magedson Dec.¶26, 27.

20. None of the reports/rebuttals/statements about WIN contained in Exhibit 2 were authored or created, in whole or in part, by Defendants or their agents. Magedson Dec.; Exhibit 3, Declaration of Kim Jordan ¶ 7; Exhibit 4, Declaration of Paulette Griffith ¶ 7; Exhibit 5, Declaration of Amy Thompson ¶ 7; Exhibit 6, Declaration of Heather Dorton ¶ 7; Exhibit 7, Declaration of Jackie Wynne ¶ 7; Exhibit 8, Declaration of G. Young ¶ 7; Exhibit 9, Declaration of Lynda Craven ¶ 7; Exhibit 10, Declaration of Kim Smith ¶ 7; Exhibit 11, Declaration of Ben Smith ¶6; Exhibit 12, Declaration of Mary Jo Baker; Exhibit 13, Declaration of C.S. Bowen.

21. The Defendants and their agents did not add content or any derogatory words to any of the documents in Exhibit “2” and did not create, author, or add to any titles to the reports or rebuttals. Magedson Dec.; Exhibit 3, Declaration of Kim Jordan ¶ 7; Exhibit 4, Declaration of Paulette Griffith ¶ 7; Exhibit 5, Declaration of Amy Thompson ¶ 7; Exhibit 6, Declaration of Heather Dorton ¶ 7; Exhibit 7, Declaration of Jackie Wynne ¶ 7; Exhibit 8, Declaration of G. Young ¶ 7; Exhibit 9, Declaration of Lynda Craven ¶ 7; Exhibit 10, Declaration of Kim Smith ¶ 7; Exhibit 11, Declaration of Ben Smith ¶6; Exhibit 12, Declaration of Mary Jo Baker; Exhibit 13, Declaration of C.S. Bowen.

DATED this 21st day of June, 2007.

JABURG & WILK, P.C.

s/Maria Crimi Speth
Maria Crimi Speth, Esq.
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of June, 2007, I caused the attached document to be electronically transmitted to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF Registrants:

Steven Neil Lippman
Shawn L. Birken
Scott W. Rothstein
Rothstein Rosenfeld Adler
Suite 1650
401 E Las Olas Blvd
Ft Lauderdale, FL 33301
Attorneys for Plaintiff

Brian J. Stack
Stack, Fernandez, Anderson,
Harris & Wallace, P.A.
1200 Brickell Ave., Suite 950
Miami, FL 33131-3255
Attorneys for Defendant

s/Debra Gower _____