

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
Ft. Myers Division**

Case No. 2:04-cv-47-FtM-34SPC

WHITNEY INFORMATION
NETWORK, INC., a Colorado corporation,

Plaintiff,

v.

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

Defendants.

_____ /

**AFFIDAVIT IN SUPPORT OF
MOTION FOR ADDITIONAL DISCOVERY TIME PURSUANT
TO RULE 56(f), FEDERAL RULES OF CIVIL PROCEDURE TO
RESPOND TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

STATE OF FLORIDA)
 : ss
COUNTY OF BROWARD)

BEFORE ME, the undersigned authority, personally appeared Shawn L. Birken,
who after being first duly sworn, deposed and stated as follows:

- 1. I am Shawn L. Birken and I am over the age of eighteen (18) and am *sui juris*.
- 2. I have personal knowledge of all of the facts contained in this Affidavit.
- 3. I am an attorney at the law firm of Rothstein Rosenfeldt Adler.

4. I prepared Plaintiff's Motion for Additional Discovery Time Pursuant to Rule 56(f), Federal Rules of Civil Procedure to Respond to Defendant's Motion for Summary Judgment and Incorporated Memorandum of Law.

5. I have diligently pursued the discovery of admissible evidence in the above styled action.

6. On March 30, 2007, Plaintiff propounded its First Request for Production and First Set of Interrogatories on Defendants, but has not received a single responsive document, thus necessitating a Motion to Compel which was filed on June 11, 2007.

7. On May 2, 2007, Plaintiff has propounded its Second Set of Interrogatories, as well as Second Request for Production upon Defendants. On May 14, 2007, Plaintiff propounded its Third Set of Interrogatories. Due to Defendants woefully insufficient discovery responses, I personally sent Defendants' counsel a good faith email on June 15, 2007, to obtain better discovery responses. Should Defendants fail to respond to the email, Plaintiff will file a Motion to Compel better answers to the discovery.

8. Plaintiff has set the depositions of Defendant, Ed Magedson and Defendant's corporate representative, to take place on August 1, 2 and 3, 2007. Further, I have personally informed Defendants that we will be setting the deposition of Mary Jo Baker, a former employee of Defendants.

9. I reviewed Defendants' Answer, Affirmative Defenses, and witnesses identified in Defendants' initial disclosures and answers to Plaintiff's Third Set of Interrogatories.

10. As the discovery deadline is October 1, 2007, Plaintiff has acted diligently in attempting to obtain necessary discovery far in advance of the discovery deadlines.

11. In support of their Motion for Summary Judgment, Defendants have included Affidavits of Mr. Magedson, as well as their editors, all of whom averred that Defendants omit material information, but do not include certain defamatory statements. The depositions, as well as the outstanding discovery responses, will assist in determining of the truthfulness of these Affidavits.

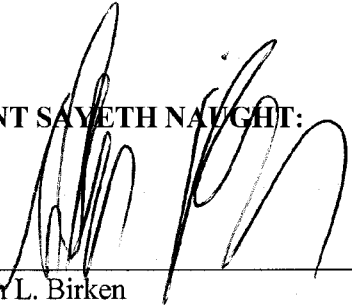
12. Further, it is undisputed that Defendants provide defamatory categories for anyone that posts defamatory information about Plaintiff to list their complaints. The defamatory categories, which include "Corrupt Companies" and "False TV Advertisements" are enough to defeat Defendants' Consumer Decency Act defense, but additional information must be obtained from Defendants to fully flesh out these issues.

13. Plaintiff can deny certain allegations relating to it in the affidavits produced by Defendant in support of its Motion for Summary Judgment, but is unable to rebut other allegations without the additional discovery.

14. I therefore now seek information necessary to establish that Defendants make material omissions to information posted on its website; provides defamatory categories; and edits or creates defamatory complaints on their website.


15. I am filing Plaintiff's Motion for Additional Discovery Time Pursuant to Rule 56(f), Federal Rules of Civil Procedure to Respond to Defendants' Motion for Summary Judgment and Incorporated Memorandum of Law in good faith and not for the purpose of causing any unnecessary delay.

FURTHER AFFIANT SAYETH NAUGHT:

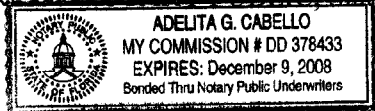


Shawn L. Birken

SWORN AND SUBSCRIBED before me this 26th day of June, 2007, by SHAWN L. BIRKEN, ✓, who is personally known to me, _____ who presented the following identification, and _____ who did take an oath.



SIGNATURE OF NOTARY PUBLIC, State of Florida at Large



STAMP