

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

**DEFENDANTS' MOTION IN LIMINE
REGARDING OTHER LAWSUITS**

Defendants request that this Court enter an order *in limine* precluding mention of any lawsuit other than this lawsuit or any published opinion of any Court regarding Defendants. Defendant and the previous owner of the Rip-off Report website have been parties to numerous other lawsuits, some of which have resulted in published opinions. Plaintiff has indicated in its draft of the Joint Pretrial Statement, and elsewhere, that Plaintiff intends to rely on one or more of those published opinions. Such reliance is misguided. Moreover, the jury should not hear any reference to any lawsuits against Defendants as such information is not relevant and is prejudicial. This Motion is supported by the following Memorandum of Law and by the Court's file in this case.

Memorandum of Points and Authorities

Rip-off Report is a website which is a public forum for consumers to post complaints about businesses. There are over 300,000 postings on Rip-off Report and forty-eight of those postings were filed about Whitney Information Network.

Other companies who have been the subject of postings on Rip-off Report have filed lawsuits similar to the instant lawsuit claiming that postings about their company were defamatory. Although Defendants have never lost a case and have never paid even one dollar in settlement of a case, Plaintiff seeks to point to those cases as somehow relevant to the facts of this case. For example, Plaintiff has stated in its draft Joint Pretrial Statement that “the MCW court found that defendants created ‘report titles and various headings’...” citing *MCW v. Badbusinessbureau.com, LLC*, 2004 WL 833595. This incredibly misleading statement, and others like it that Plaintiffs have inserted into the draft Joint Pretrial, should not be heard by the jury.

The *MCW* Court made no factual findings whatsoever. The published decision was the decision on a Rule 12(b)(6) motion, and, thus, the Court was bound to and did accept as true all of the allegations in the complaint.¹ The *MCW* did not find that Defendants created report titles and headings. Rather, the *MCW* Court noted with respect to the allegation by MCW that Defendants created report titles and headings, that Defendants did not dispute the allegation and that “[r]ather than disputing the substance of MCW's allegations, the defendants maintain that the allegations are insufficient to prevent them from receiving immunity under the CDA.” 2004 WL 833595 at *9 *10.

In summary, the fact that other lawsuits have been filed, the allegations in other lawsuits, and the published decisions in those lawsuits should not be mentioned at trial. It is entirely irrelevant that other companies have sued, what allegations they have made, and what interlocutory orders have issued in those matters. Plaintiff should not be

¹ It is worth noting that the *MCW* Court dismissed that Plaintiff's complaint holding that the federal claims failed to state a claim and declining to accept pendent jurisdiction over the State law claims. The lawsuit was never refiled by that Plaintiff.

permitted to cite, or worse yet mis-cite those rulings in front of a jury that can be easily confused as to the significance of allegations or decisions from other cases.

DATED: February 5, 2008.

JABURG & WILK, P.C.

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

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of February, 2008, 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