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**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 DEPOSITION OF
DICKSON WOODARD**

Defendants request that this Court enter an order *in limine* precluding mention of prior testimony about Defendants provided by Dickson Woodard in a lawsuit to which neither of the instant parties were a party. Dickson Woodard, a non-party in this action, has provided unsubstantiated testimony about Defendants in at least one known case from Texas. Plaintiff has indicated in its draft of the Joint Pretrial Statement, and elsewhere, that Plaintiff intends to rely on the deposition testimony of Mr. Woodard. This reliance is misguided. Moreover, the jury should not hear any reference to any statements made by Mr. Woodard about Defendants as such information is hearsay and therefore not admissible. 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. Companies have also taken to filing lawsuits against persons who claim to be the true authors of the postings about their company.

One company – GW Equity – sued Dickson Woodard in a Texas state court. During that Texas lawsuit, the deposition of Mr. Woodard was taken by counsel for GW Equity. Neither Plaintiff nor Defendants were a party to this Texas action. Neither Plaintiff nor Defendants participated in any way in the Texas action. Neither Plaintiff nor Defendant was in attendance at the deposition of Mr. Woodard, nor were they invited to participate in, or even have knowledge of, the deposition of Mr. Woodard in any way.

The deposition of Mr. Woodard is inadmissible hearsay. Federal Rules of Civil Procedure Rule 32 governs the use of depositions at trial. No possible permissible use exists under Rule 32 to allow the use of the deposition of Mr. Woodard at trial. Counsel for Defendants was not present at the deposition of Mr. Woodard, and has not had the opportunity to examine Mr. Woodard's statements while Mr. Woodard is under oath. Further, Mr. Woodard's deposition was taken in the context of litigation that does not involve a single statement on Rip-off Report that is at issue in the present litigation. Even if a permissible use did exist (which it does not), the evidentiary balancing test necessarily weighs in favor of Defendants, as the deposition of Mr. Woodard is far more prejudicial to Defendants than probative to Plaintiff.

In summary, Dickson Woodard's deposition testimony should not be mentioned at trial. It is entirely irrelevant that Mr. Woodard made representations in a case premised not only on different facts here, but in a case where neither Plaintiff nor Defendants'

counsel was present to question Mr. Woodard. Plaintiff should not be permitted to cite or even make allusions to the statements made by Dickson Woodard in front of a jury that can be easily confused as to the significance of false statements made in a deposition from a completely different case.

DATED February 5, 2008.

JABURG & WILK, P.C.

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

CERTIFICATE OF CONFERENCE PURSUANT TO LOCAL RULE 3.01(g)

I hereby certify that on the 5th day of February 2008, I caused my associate to communicate with opposing counsel requesting that opposing counsel respond to the discovery stipulate to resolve the issues raised by this motion, but opposing counsel would not agree.

DATED February 5th, 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:

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s/Maria Crimi Speth_____