

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

JOE W. KUEFLER, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

WEBLOYALTY.COM, INC. and  
FANDANGO, INC. d/b/a  
FANDANGO.COM,

Defendants.

CIVIL ACTION NO. 06-cv-11620-JLT

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56, Webloyalty.com, Inc. ("Webloyalty") and Fandango, Inc. ("Fandango") (collectively "Defendants") respectfully move for summary judgment in their favor on all counts of the Complaint.

As set forth in the accompanying Memorandum of Law and Affidavits, there is no genuine issue as to any material fact and Defendants are entitled to judgment as a matter of law. It is undisputed that Plaintiff unambiguously and affirmatively took steps to join the Reservations Rewards program after an extensive and complete disclosure of the terms of membership. Defendants are entitled to summary judgment for the following reasons:

**Count I (Violation of Title I of the Electronic Communications Privacy Act (ECPA)).**

Summary judgment should be granted on Plaintiff's ECPA claim because the undisputed facts establish that he consented to the transmission of his credit card information to Webloyalty.

Further, summary judgment should be granted for the independent reason that Plaintiff's

information was not “intercepted” by Webloyalty, such as is necessary to constitute a claim under the ECPA.

Count II (Unjust Enrichment). Because Plaintiff entered into an express contract with Webloyalty governing his membership in the Reservations Rewards program, his unjust enrichment claim fails as a matter of law. Plaintiff cannot create a claim by alleging that he did not read, pay attention to, or understand the terms of the agreement. Summary judgment should also be granted because Plaintiff has suffered no harm.

Count III (Invasion of Privacy). Plaintiff cannot maintain a claim for invasion of privacy because the undisputed facts demonstrate that he unambiguously consented to the transmittal of his credit card information. Summary judgment should also be granted because there is no intrusion “highly offensive to a reasonable person.”

Count IV (Breach of Implied Covenant of Good Faith and Fair Dealing). Because Plaintiff cannot establish that Defendants interfered with any of the benefits for which he contracted, his claim for breach of the implied covenant of good faith and fair dealing fails as a matter of law. In addition, the claim fails because Plaintiff suffered no damages.

Count V (Money Had and Received). Because the relationships among the parties are governed by an express contract, Plaintiff’s claim for money had and received fails as a matter of law. Further, Plaintiff cannot establish that Defendants have done anything “unfair” because the undisputed facts demonstrate that, after full disclosure, Plaintiff affirmatively contracted to join the Reservations Reward program. In addition, Webloyalty has returned Plaintiff’s \$10, so it does not possess anything that would be unfair to retain.

Count VI (Civil Theft). Plaintiff's civil theft claim fails as a matter of law because it is undisputed that he consented to the terms and conditions of his membership in the Reservations Reward program.

**REQUEST FOR ORAL ARGUMENT**

Webloyalty.com, Inc. and Fandango, Inc. request oral argument pursuant to Local Rule 7.1(D).

Respectfully submitted,

WEBLOYALTY.COM, INC.  
FANDANGO, INC.

By Their Attorneys

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Dated: November 13, 2006

**LOCAL RULE 7.1 CERTIFICATION**

I, Gabrielle R. Wolohojian, hereby certify that on November 10, 2006, I conferred with counsel for the plaintiff in a good faith attempt to narrow or resolve the issues presented by this motion and that we were unable to do so.

/s/ Gabrielle R. Wolohojian

**Certificate of Service**

I, Gabrielle R. Wolohojian, hereby certify that a true and accurate copy of the above document has been filed and served through the Court's electronic filing system, this 13<sup>th</sup> day of November, 2006.

/s/ Gabrielle R. Wolohojian