

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NOV 21 2005

JAMES R. LARSEN, CLERK
DEPUTY
RICHLAND, WASHINGTON

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF WASHINGTON AT RICHLAND

James S. Gordon, Jr., Plaintiff,

vs.

Impulse Marketing Group, Inc.,
Defendant

Impulse Marketing Group, Inc.,
Third-Party Plaintiff,

v.

Bonnie Gordon,
Third-Party Defendant

) Case No.: CV-04-5125-FVS

) RESPONSE TO THIRD PARTY
) PLAINTIFF'S MEMORANDUM
) IN SUPPORT OF DEFENDANT
) AND THIRD PARTY
) PLAINTIFF'S MOTION TO
) AMEND THIRD PARTY
) COMPLAINT

TO: Clerk of the Court

AND TO: Floyd E. Ivey, Attorney for Third-Party Plaintiff

INTRODUCTION

1
2 Impulse has made some minor changes to the language of its
3 amended complaint and re-submitted it for the third or fourth time to
4 this Court. Even with these changes, Impulse fails to state a claim for
5 which relief can be granted as no new cause of action or no new fact
6 which would entitle Impulse to relief was proffered.

7 In fact, without admitting the fraud and deceit attendant to
8 making fraudulent claims of prizes and money won, and then alleging
9 my alleged involvement in this fraud (Impulse's fraudulent activities
10 pre-existed any opt-in allegations made by Impulse), there can be no
11 claim for which relief can be granted as their claims to date are mere
12 sophistry – having no basis in fact or Truth.

13 Further, the marketing partners (or maybe Impulse itself) –
14 discovery is needed to identify culpable party(ies), which Impulse has so
15 closely aligned itself in its complaint are apparently responsible (liable)
16 for sending third party defendant(s) email which advertises 1) hardcore
17 pornography – without proper labeling 2) counterfeit drugs 3) illegal
18 stock purchase ads 4) pirated software 5) mortgage lead generating
19 schemes – which seek personally identifying information, which violates
20 RCW 9.35 – the Identity Theft statute of Washington State. The so-
21 called subscriber profiles, which Impulse admits is a source of
22 “substantial revenue” (Second Amended Complaint, Background No. 4),
23 are being obtained fraudulently and advertise fraudulent “devices” and
24 are bought and sold for profit.

25

1 The international email authority, Spamhaus, refers to Impulse
2 Marketing Group, Inc. and its owners as a “criminal spam gang” –
3 perhaps this allegation is due to the foregoing RICO-like behaviors,
4 which appear to be done by Impulse directly or indirectly by “unnamed”
5 businesses which Impulse claims are marketing partners.

6
7 The changes made to the complaint by Impulse include:

- 8 1. I no longer represented myself as myself, but rather my husband
9 misrepresented himself as me (and others). No facts were
10 proffered in support of that claim – a simple sign-up page with the
11 allegedly actual sign-up data would be helpful, but if such a
12 document existed it would evidence the fraud of not fulfilling the
13 alleged – but non-existent contract Impulse insists exists.
- 14 2. No facts are asserted by Impulse to support the claim of a
15 conspiracy, which Impulse alleges. The alleged conspiracy
16 concerns an alleged scheme to sue Impulse for sending commercial
17 email that allegedly violates RCW 19.190. The specious notion of
18 re-subscribing repeatedly to these fraudulent offers once
19 unsubscribed is not supported by any facts.
- 20 3. Impulse did not claim or allege that they had sent any free gift or
21 money won to me or any third party defendant. And if Impulse
22 claims fraud and deceit were the reasons for not sending same,
23 they must, necessarily, supply facts which support such alleged
24 fraud and deceit, e.g. the sign-up page(s) which demonstrate same.

Lack of Standing

1
2 Impulse does not have standing to assert claims on behalf of their
3 unnamed marketing partners. None of the sites referenced in Impulse's
4 amended complaints belonged to Impulse at the time of the alleged opt-
5 ins and Impulse fails to provide facts concerning its ownership of same.

6 Lacking standing to assert claims concerning the 1) alleged
7 misrepresentations by Plaintiff to unnamed marketing partners as
8 Impulse did not allege or claim ownership of the named web sites 2)
9 alleged conspiracy to defraud unnamed marketing partners as the
10 named web sites belonged to other unnamed parties 3) purported
11 exchange of consideration as Impulse has not claimed or alleged that it
12 or its unnamed marketing partners sent any free gift or money won to
13 me or any third party defendant from web sites belonging to other
14 unnamed parties.

15 Therefore, Impulse's current claims and amended claims and any
16 progeny should be dismissed under FRCP 12(b)6.

Causes of Action by Impulse vs Third Party Defendants

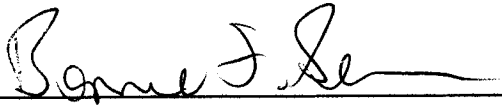
17
18
19 Third party defendant re-asserts facts, claims, and information
20 made in her motion to dismiss. Based on information and belief,
21 Impulse lacks standing to assert rights and claims and causes of
22 actions, which are the prerogative of the unnamed allegedly injured
23 party, i.e. the unnamed party owning the web site that Plaintiff
24 allegedly opt-in at. Any injury allegedly sustained by Impulse was the
25 result of direct or indirect action or lack of action by its own unnamed

1 marketing partners. The unnamed rightful owners' silence on these
2 claims speaks to the temerity of Impulse in business as well as law.

3 Lacking standing to assert a claim or cause of action on the behalf
4 of unnamed third party marketers for "indemnification and
5 contribution", "fraud and deceit," "tortious interference with business
6 relationships," "breach of contract," and "injunctive relief", Impulse fails
7 to state a claim for which it can be granted relief. As a result, Impulse's
8 lawsuit against me should be dismissed under FRCP 12(b)6 with
9 prejudice.

10
11
12 Bonnie F. Gordon
13 9804 Buckingham Drive
14 Pasco, WA 99301
15 509-210-1069

16 Dated this 21st day of November, 2005

17 
18 _____

19 Certificate of Service

20 I, hereby, certify that on November 21, 2005, I filed with this Court a
21 Notice of Appearance. The Clerk of the Court will provide electronic
22 notification using the CM/ECF, which will send an electronic copy of
23 this Notice to Douglas E. McKinley, Jr., Peter J. Glantz, Sean A.
24 Moynihan, and Floyd E. Ivey. I have served all non-CM/ECF
25 participants, Jamila Gordon, James Gordon III, Jonathan Gordon,
Emily Abbey, and Robert Pritchett by other means.