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

NOV 28 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 F. Gordon, Jamila Gordon,
James Gordon III, and Jonathan
Gordon, Third-Party Defendants

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

) RESPONSE TO MOTION TO
) OPPOSE THIRD PARTY
) MOTION TO DISMISS, MOTION
) TO STRIKE PETER J. GLANTZ'S
) DECLARATION, AND
) AFFIDAVIT

TO: Clerk of the Court

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

1 The new "talking points" by Impulse include four "triable" issues of fact
2 in its second or latest amendment to its third party complaint:

3 1. Impulse makes an issue of who, plaintiff or third party, received
4 email from Impulse and its unnamed marketing partners.

5 However, its causes of action are not predicated on the question of
6 who received emails. The alleged acts are independent of the issue
7 of who is receiving email.

8 2. Impulse focuses on allegedly untruthful and/or inaccurate
9 subscriber profiles. Impulse and/or its unnamed marketing
10 partners are still sending email to the email address bearing my
11 name [through November 27, 2005]. One explanation is that
12 Impulse is fraudulently selling profiles which it believes are bad
13 leads. Another more plausible explanation is that the leads were
14 never bad.

15 3. In the elaborate conspiracy theory spun by Impulse and allegedly
16 directed by Plaintiff, Impulse did not allege any duty third party
17 defendant allegedly had to unnamed marketing partner(s) – the
18 actual owners of the web sites wherein Plaintiff allegedly opted-in.
19 Impulse is attempting to "usurp" standing that is rightfully the
20 dominion of unnamed third party marketers. Further, Impulse did
21 not plead that it or its unnamed third party marketers had
22 fulfilled or performed on the alleged contract by sending Plaintiff
23 or third party defendant a free prize of any kind.

24 4. The alleged pecuniary benefit attributed to third party defendants
25 is not an element giving rise to a cause of action in the instant
case. And Impulse's pretext of third party defendant(s) generating

1 bad leads is trumped by the fact that Impulse is still selling my
2 (our) subscriber profile(s). The continued emails that are being
3 sent by Impulse foils or frustrates its specious claims for
4 indemnification and contribution, fraud and deceit, breach of
5 contract, tortious interference and the disingenuous claim for
6 injunctive relief. Impulse has admitted that third party defendant
7 had opted-out of its email or spam lists by January 2004.

8 However, Impulse has only recently created the fiction of re-
9 subscribing after the 12(b)6 motion – it has presented no facts in
10 support of the re-subscription myth.

11 5. Impulse has not pled specific contractual duties to be exercised by
12 unnamed third party marketers – the rightful owners of the
13 websites named by Impulse. Impulse did not plead ownership of
14 these unnamed third party web sites – trusting that standing
15 would attach via osmosis or oversight. If there were contractual
16 duties, and third party defendants deny that there were, the
17 rights and responsibilities accrue to the unnamed third party
18 marketers and third party defendants. No duty is owed to Impulse
19 by third party defendants.

20 6. Under Impulse's reciprocal consideration, it failed to plead that it
21 or unnamed third party marketers fulfilled any terms of the
22 alleged contract. The quid pro quo was not upheld – no actual
23 exchange was alleged.

24 7. As amended, Impulse's old and new causes, claims, counterclaims
25 still fail to state a cause upon which relief may be granted. And its
triable issues of fact are without substance. Even if the Court was

1 to find otherwise, any benefit of this or these arguments would
2 accrue to the unnamed rightful owners of the web sites who have
3 not joined this action. Impulse can not invoke rights that do not
4 belong to it as they lack legal standing to do so.

5
6 Peter Glantz's declaration is simply a partial, inferior reiteration of
7 pleadings in and around the latest amended complaint – it adds no
8 substance to the record – unless Mr. Glantz has personal knowledge
9 and would like to testify on his client's behalf. As such, third party
10 defendant moves the Court to strike Mr. Glantz's declaration.

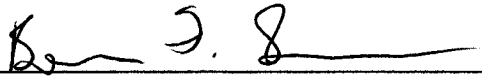
11
12 **AFFIDAVIT**

- 13
14 1) I/we, Bonnie Gordon, Jamila Gordon, James Gordon III, and
15 Jonathan K. Gordon, am/are the named third party
16 defendant(s) in the above captioned lawsuit. I/we am/are over
17 the age of 18 and am/are otherwise competent to testify.
- 18 2) The attached email and copies of email headers were sent to an
19 email address which bears my/our name at the
20 "gordonworks.com" domain. Exhibit 1
- 21 3) It is my/our belief that the email was sent by Impulse
22 Marketing Group, Inc. or its unnamed marketing partners to
23 whom Impulse has bought/sold my/our personally identifying
24 information for profit as a subscriber profile.
- 25 4) Impulse or its unnamed marketing partners continue to send
hundreds of emails each week to my/our email address(es).

1 5) Some of these emails are for counterfeit drugs, pornography,
2 stock scams, mortgage scams, and the like.

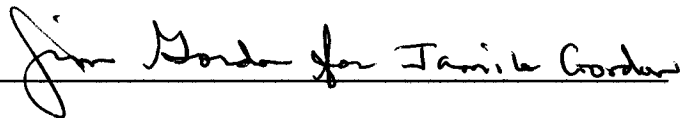
3
4 Bonnie F. Gordon
5 9804 Buckingham Drive
6 Pasco, WA 99301
7 509-210-1069

8
9 EXECUTED this 28th day of November, 2005.

10 
11

12 Jamila E. Gordon
13 9804 Buckingham Drive
14 Pasco, WA 99301
15 509-210-1069

16
17 EXECUTED this 28th day of November, 2005.

18 
19

20 James S. Gordon III
21 9804 Buckingham Drive
22 Pasco, WA 99301
23 509-210-1069

24
25 EXECUTED this 28th day of November, 2005.

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Jon Gordon for JS Gordon III

Jonathan K. Gordon
9804 Buckingham Drive
Pasco, WA 99301
509-210-1069

EXECUTED this 28th day of November, 2005.

[Signature]

Certificate of Service

We, hereby, certify that on November 28, 2005, we filed this response to motion with this Court. I have served Douglas E. McKinley, Jr., Peter J. Glantz, Sean A. Moynihan, Floyd E. Ivey, Emily Abbey, and Robert Pritchett by mail and/or other means.

[Signature]

Jon Gordon for Tamika Gordon

Jon Gordon for JS Gordon III

[Signature]

Exhibit 1

Delivered-To: 7-faye@gordonworks.com
Reply-To: "Pharmacy 24/7" <csskagpb@247medsavings.net>
From: "Pharmacy 24/7" <csskagpb@247medsavings.net>
To: "Cu stomer" <faye@gordonworks.com>
Subject: Cheap Phentermine Overnight
Date: Sun, 27 Nov 2005 21:54:25 +0100
X-Mailer: Microsoft Outlook Express 6.00.2800.1106

Dear Pharmacy Customer,

If you would like to order your Prescription Weight Loss medication without any hassles at a discount.

please click here: 247medsavings.net

If you have any other questions or would like to talk to a friendly customer service agent..

please contact us here.

Thank You,
Customer Service

[Anti-Depressants](#)
[Antibiotics](#)
[Anxiety](#)
[Birth Control](#)
[Diuretic](#)
[Etc](#)
[Hormes](#)
[Meds Health](#)
[Migraine Headache](#)
[Muscle Relaxers](#)
[Pain Relief](#)
[Sexual Health](#)
[Sleep Aids](#)
[Weight Loss](#)
[Women's Health](#)

Header for Jamila Gordon's email

Delivered-To: 7-jamila@gordonworks.com
Date: Mon, 28 Nov 2005 01:00:37 +0200
From: "Evan Oliver" <CarloHinsonclone@dsouza.fsbusiness.co.uk>
To: jamila@gordonworks.com
Subject: valium brig
X-Mailer: WebMail Check v2.3.21 (2000-7-19)

Header for Jay Gordon's email

Delivered-To: 7-jay@gordonworks.com
Date: Mon, 28 Nov 2005 03:39:51 -0900
From: "Weight Loss" <dietchputhbgjrr@247medsavings.net>
User-Agent: Mail System Express 6.00.2810.1106
To: "Doctor MD" <jay@gordonworks.com>
Subject: Prescription Diet Pills Overnight

Header for Jonathan Gordon's email

Delivered-To: 7-jonathan@gordonworks.com
Date: Mon, 28 Nov 2005 09:32:11 -0700
From: "Weight Loss" <dietchpyrxin@247medsavings.net>
User-Agent: Send EMail 7.0 for Windows US sub 118
To: "Doctor MD" <jonathan@gordonworks.com>
Subject: Easy Weight Loss