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

DEC 02 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.

**Emily Abbey, Third-Party
Defendant**

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 subscriber profile. The continued emails that are being sent by
3 Impulse foils or frustrates its specious claims for indemnification
4 and contribution, fraud and deceit, breach of contract, tortious
5 interference and the disingenuous claim for injunctive relief.

6 Impulse has admitted that third party defendant had opted-out of
7 its email or spam lists by January 2004. However, Impulse has
8 only recently created the fiction of re-subscribing after the 12(b)6
9 motion – it has presented no facts in support of the re-subscription
10 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. If there were contractual
15 duties, and third party defendants deny that there were, the
16 rights and responsibilities accrue to the unnamed third party
17 marketers and third party defendants. No duty is owed to Impulse
18 by third party defendants.

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

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

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

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

11 AFFIDAVIT

- 12
- 13 1) I, Emily Abbey, am the named third party defendant in the
14 above captioned lawsuit. I am over the age of 18 and am
15 otherwise competent to testify.
 - 16 2) The attached email was sent to an email address which bears
17 my name at the "gordonworks.com" domain. Exhibit 1
 - 18 3) It is my belief that the email was sent by Impulse Marketing
19 Group, Inc. or its unnamed marketing partners to whom
20 Impulse has bought/sold my personally identifying information
21 for profit as a subscriber profile.
 - 22 4) Impulse or its unnamed marketing partners continue to send
23 hundreds of emails each week to my email address.
 - 24 5) Some of these emails are for counterfeit drugs, pornography,
25 stock scams, mortgage scams, and the like.

1 I declare under penalty of perjury under the laws of the United States
2 that the foregoing is true and correct.

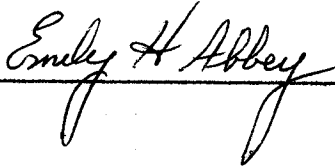
3
4 Emily Abbey

5 1407 2nd Ave West Apt 608

6 Seattle, WA 98119

7 206-217-0466

8
9 EXECUTED this 29th day of November, 2005.

10 
11 _____
12

13 **Certificate of Service**

14 I, hereby, certify that on December , 2005, I filed this response to
15 motion with this Court. I have served Douglas E. McKinley, Jr., Peter J.
16 Glantz, Sean A. Moynihan, Floyd E. Ivey, Jamila Gordon, James
Gordon III, Jonathan Gordon, Bonnie Gordon, and Robert Pritchett by
mail and/or other means.

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Case No. CV-04-5125-FVS

Exhibit 1, page 1

Emily Abbey, Third-Party Defendant

Delivered-To: 7-emily@gordonworks.com
X-Original-To: emily@gordonworks.com
Delivered-To: emily@gordonworks.com
From: "Admissions Office" <Barber_cascara2@rocketmail.com >
Reply-To: "Admissions Office" <Barber_cascara2@rocketmail.com >
To: emily@gordonworks.com
Subject: RE: your education
Date: Tue, 29 Nov 2005 15:48:55 -0800
User-Agent: SquirrelMail/1.4.2
X-Sender: Barber_cascara2@rocketmail.com
Organization: auto.cauldron

You've been nominated,

Thanks to a private nomination, you are now eligible to obtain an official University Degree.

Obtain a prosperous future, increase money-earning power, and the enjoy the prestige that comes with having the career position you've always dreamed of. The degree will be awarded to you based on your present knowledge and life experience, bachelors, masters, phd and more are available.

If you are interested, please call us back Anytime at:

1-206-338-3579

Leave us a message and a member of our staff will call you back, have a good day.

Sincerely,

Andrea Glenn - MBA, PhD
-Admissions Officer

Case No. CV-04-5125-FVS

Exhibit 1, page 2

Emily Abbey, Third-Party Defendant

Pharmacy 24/7, 08:59 PM 11/27/2005 +0000, Refill Phentermine

Delivered-To: 7-emily@gordonworks.com
From: "Pharmacy 24/7" <csjgtdb@247medsavings.net>
To: "Cu stomer" <emily@gordonworks.com>
Subject: Refill Phentermine
Date: Sun, 27 Nov 2005 20:59:27 +0000
X-Mailer: Microsoft Outlook Express 6.00.2800.1123

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](#)
[Flu](#)
[Herpes](#)
[Men's Health](#)
[Migraine Headache](#)
[Muscle Relaxers](#)
[Pain Relief](#)
[Sexual Health](#)
[Sleep Aids](#)
[Weight Loss](#)
[Women's Health](#)