

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

MAY 08 2006

JAMES R. LARSEN, CLERK
DEPUTY
RICHLAND, WASHINGTON

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

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.,
Jeffrey P. Goldstein, Gregory
Greenstein, Kenneth Adamson, Phillip
Huston, and John Doe spammers 1-50,
Third-Party Plaintiffs,
v.
Bonnie Gordon, Third-Party Defendant

Case No.: CV-04-5125-FVS
THIRD-PARTY DEFENDANT'S
FIRST AMENDED ANSWER AND
AMENDED COUNTERCLAIMS
AGAINST THIRD-PARTY
PLAINTIFF
JURY TRIAL DEMANDED

TO: Clerk of the Court
AND TO: Floyd E. Ivey, Attorney for Third-Party Plaintiff
AND TO: Peter J. Glantz and Sean A. Moynihan

Introduction

1
2 The undersigned's amended complaint is necessitated by continued research into
3 Impulse's business operations, online relationships, and the various violations of
4 law that are being uncovered. For example, I have added "Cyberstalking" as a
5 cause of action along with the "intentional infliction of emotional distress".
6

7 As Impulse has not answered my counterclaims, I understand that I will be allowed
8 to amend these counterclaims without obtaining leave of the Court to do so.

9 Exhibits in documents filed by me with this Court, e.g. my Declaration and
10 Response to Impulse..., my Response to Impulse's Motion to Dismiss, my Answer
11 Affidavit Counterclaims, and my Motion for Injunction demonstrate that Impulse
12 knew of plaintiff and third party defendants' desire to stop receiving emails from
13 Impulse and its partner, Commonwealth Marketing Group, Inc. (CMG) as of
14 October 21, 2003. Added to these documents is the internal "opt-out" form, which
15 states that the email address at "gordonworks.com" that bears my name opted out
16 of all email offers on January 6, 2004. **Exhibit 1** However, I received email from
17 Impulse through March of 2006 – over 100 additional emails. All emails that were
18 sent subsequently were sent in contravention to the internal policy of Impulse as
19 well as the written demands of CMG. These Impulse emails violated state and
20 federal laws designed to curb the assault of junk email or spam.

21 Impulse's attorney, David Klein sent a letter to John Fonzo (counsel for CMG) on
22 behalf of Impulse, dated February 3, 2004, assuring CMG of Impulse's compliance
23 with all laws. This acknowledgement by Klein puts these parties in an untenable
24 position in terms of any re-assertion of Impulse's counterclaims. If Impulse
25 continues to assert the validity of its counterclaims, its owners and managers will

1 perjure themselves by claiming that one or all of its claims is/are true, because they
2 now know that I/we know that Impulse was well aware of plaintiff's desire to stop
3 receiving emails from CMG and Impulse by October 2003. Any statement to the
4 contrary regarding Impulse's false claims puts Impulse in the position of lying to
5 this Court and would also put the attorneys for Impulse in the position of suborning
6 perjury - if they allow Impulse to continue to proffer the discredited claims.

7 Therefore, I am requesting that this Court reconsider my motion to dismiss all
8 Impulse's claims against me under FRCP 12(b)(6)(c) and/or Rule 56 as Impulse's
9 claims are **futile**. There is no possibility that a jury would sustain the fiction that I
10 participated in a scheme to defraud Impulse when Impulse committed to (in
11 writing) suppressing all emails to "gordonworks.com" domain and all email
12 campaigns were (then and now) entirely within its power to control or to stop.

13 Although Impulse's claims fail to state a claim for which relief can be granted, I
14 am providing the following amended counterclaims as I believe that I have
15 legitimate causes of action against Impulse.

16 17 **Answer to Complaint**

18 My answer and affirmative defenses to Impulse's counterclaims remain
19 unchanged. However, I have amended/appended some of my claims.

20 **FIRST CAUSE OF ACTION**

21 After additional research into the intimidation tactics used by Impulse, I am
22 amending this claim to reflect the Washington State statute which prohibits the
23 intimidation of witnesses – RCW 9A 72.110 (1)(a).
24
25

1 Impulse requested additional months of time for discovery to depose and otherwise
2 obtain discovery from third parties. This disingenuous request has been squandered
3 by Impulse as it has allowed six months to pass without doing what it informed the
4 Court that it would do. Its lawsuit can now be seen to have no other conceivable
5 result except to intimidate, to harass, and to inflict emotional distress on me.

6 7 **SECOND CAUSE OF ACTION**

8 I have submitted two emails from Impulse which show the material falsity of the
9 headers. This delineation of violations in these emails should meet the heightened
10 pleading requirement for an allegation of fraud. Further, I have obtained more
11 evidence of fraud as Impulse uses a number of falsely registered domain names to
12 stay one step ahead of regulators. I will produce evidence for a jury that the 500+
13 domains (each one of these domains is similar to a real estate sub-division which
14 can contain tens, hundreds or thousands of housing units) that Impulse has used in
15 the last 15 months to send spam are owned and or controlled by Impulse, illegally
16 registered entities, pornographers, and/or counterfeit drug operations.

17 **THIRD CAUSE OF ACTION**

18 **RCW 4.24.510** – unchanged

19 20 **FOURTH CAUSE OF ACTION**

21 Impulse has admitted to buying and selling “personally identifying information”
22 for profit. RCW 9.35 expressly prohibits the misuse of personally identifying
23 information – including electronic mail addresses. I can show that Impulse has
24 caused addresses of third parties to be exchanged among the 500+ domains

1 referenced above – without my permission and in violation of this state’s statute
2 against identity theft.

3 **FIFTH CAUSE OF ACTION**

4 I have provided evidence to this Court that Impulse knew of the anti-harassment
5 action of plaintiff – thus it was apprised of the annoyance its emails were causing –
6 these emails have continued for over two years after its initial notification.

7 **SIXTH CAUSE OF ACTION**

8
9 **Chapter 19.170 RCW - Unchanged**

10 **SEVENTH CAUSE OF ACTION**

11 **RCW 9A.08. et seq** outline general requirements for culpability. Under RCW
12 9A.08.010(1)(b)(c)(d)., Mssrs. Goldstein, Greenstein, Huston, and Adamson, at a
13 minimum, are culpable for the civil and criminal activities specified in this
14 amended counterclaims document. As evidenced in documents submitted to this
15 Court, these four men (with full knowledge of the lawsuit and demands of plaintiff
16 and third parties) acted willfully, recklessly, and in a criminally negligent manner
17 in terms of the prosecution of this lawsuit and the continued harassment and
18 Cyberstalking of the undersigned in this action.

19
20 Impulse Marketing Group, Inc., a Nevada corporation bears corporate liability
21 under RCW9A.08.030(2)(a)(b)(c)(3)(4). The totality of the acts in these amended
22 counterclaims represent a criminal conspiracy by the named individuals and the
23 corporation under RCW9A.28.040(1). As a result of this criminal conspiracy,
24 Impulse should be barred from conducting business in Washington State under the
25 referenced statute as a matter of law.

EIGHTH CAUSE OF ACTION**RCW 9A.60.040 - Unchanged****NINTH CAUSE OF ACTION**

Cyberstalking – RCW 9.61.260(1)(a)(b)(4)(5). If one is to believe what Impulse has written since 10/21/03, no email should have been sent to “gordonworks.com” after that date and certainly not later than attorney David Klein’s assurance to CMG on 2/3/04 that its client, Impulse was CAN-SPAM complaint. But hundreds of emails ensued, and Impulse’s owners and managers are responsible for these illegal and harassing emails – this is Cyberstalking. An example of the pornography sent by an Impulse marketing partner is attached as **Exhibit 2** – a violation of (1)(a) of this statute.

TENTH CAUSE OF ACTION**RCW 9.58.010 - Unchanged****ELEVENTH CAUSE OF ACTION**

Withdrawn

TWELTH CAUSE OF ACTION**Can-Spam Act of 2003 [15 U.S.C. §7705] – Unchanged****THIRTEENTH CAUSE OF ACTION****RCW 19.190 - Unchanged****FOURTEENTH CAUSE OF ACTION****RCW 19.86 - Unchanged****FIFTEENTH CAUSE OF ACTION****Permanent injunction - Unchanged**


1 **PRAYER**

2 **WHEREFORE**, Third-Party Defendant prays that this Court:

- 3 1. Dismiss all claims against me by third-party plaintiff under Rule 12(b)(6)(c)
4 and/or Rule 56 as Impulse's claims are futile.
- 5 2. Sanction Impulse Marketing Group, its principals named in the caption
6 above, and its attorneys for the waste of judicial resources under Rule 11.
- 7 3. Award an amount equal to the sanction(s) referenced in No. 2 above to the
8 undersigned third-party defendant for the time and the intentionally inflicted
9 emotional distress caused by this lawsuit.
- 10 4. Award statutory damages of \$500 for each email that was sent to my
11 personal domain, "itdidnotendright.com"; damages are ongoing.
- 12 5. Enjoin Impulse and its marketing partners from sending email to any email
13 address wherein the recipient has not made an affirmative direct request for
14 Impulse's email offers at an Impulse owned and registered web site.
- 15 6. Grant third-party defendant such other and further relief as the Court deems
16 just and proper.

17 Bonnie F. Gordon
18 9804 Buckingham Drive
19 Pasco, WA 99301
20 509-210-1069

21 Dated this 8th day of May, 2006



22 _____
Certificate of Service

23 I, hereby, certify that on May 8, 2006, I filed this motion with this Court. I have
24 served Bob Siegel, Peter J. Glantz, Sean A. Moynihan, Floyd E. Ivey, Jamila
25 Gordon, James Gordon III, Jonathan Gordon, Emily Abbey, and Robert Pritchett
by other means.



Exhibit 1

CMG Opt Out and Offers Maintenance Page

Email:

Telephone

Email

Query

Opt Out Level to Add:

Add Opt Out

Opt Outs for and Offers Sent to Email: faye@gordonworks.com

Initial Opt Out	Last Opt Out	Opt Out Item Type	Opt Out Item Description
01/06/2004 11:45:44		Opt Out of Everything	Everything

X-Persona: <Virtual Server - spam>
Return-Path: <111772935975499-6060500008-gordonworks.com?FAYE@bounce.coordinate.com>
Delivered-To: 7-FAYE@GORDONWORKS.COM
Received: from localhost by omniinnovations.com
with SpamAssassin (2.63 2004-01-11);
Mon, 06 Jun 2005 21:55:41 -0600
From: SS Search <dating_channel@lists.goldmeans.com>
To: FAYE@GORDONWORKS.COM
Subject: *****SPAM***** NEW DATING SITE FOLLOW UP
Date: Mon, 6 Jun 2005 23:55:40 EST
Message-Id: <6060500008\$111772935975499\$1612220548\$0@s7.coordinate.com>
X-Spam-Flag: YES
X-Spam-Checker-Version: SpamAssassin 2.63 (2004-01-11) on omniinnovations.com
X-Spam-Level: ****
X-Spam-Status: Yes, hits=4.2 required=3.0 tests=HTML_20_30,HTML_MESSAGE,
HTML_WEB_BUGS,LINES_OF_YELLING,PORN_4,RCVD_IN_SBL,SUBJ_ALL_CAPS
autolearn=no version=2.63
MIME-Version: 1.0
Content-Type: multipart/mixed; boundary="-----=_42A51ABD.D8092B53"

Spam detection software, running on the system "omniinnovations.com", has identified this incoming email as possible spam. The original message has been attached to this so you can view it (if it isn't spam) or block similar future email. If you have any questions, see the administrator of that system for details.

Content preview: Hello, Within the past couple of days you visited our hot new summer dating site. We hope that you liked what you saw, and our singles would love to meet you and begin dating you. We will help you find many attractive singles right in your city. Please visit our site again and sign up for your -FREE- account. Yes, the membership is 100% -FREE-! [...]

Content analysis details: (4.2 points, 3.0 required)

pts	rule name	description
0.6	HTML_WEB_BUGS	BODY: Image tag intended to identify you
0.0	HTML_MESSAGE	BODY: HTML included in message
0.5	HTML_20_30	BODY: Message is 20% to 30% HTML
0.0	LINES_OF_YELLING	BODY: A WHOLE LINE OF YELLING DETECTED
1.3	PORN_4	URI: URL uses words/phrases which indicate porn
0.6	SUBJ_ALL_CAPS	Subject is all capitals
1.3	RCVD_IN_SBL	RBL: Received via a relay in Spamhaus Block List [< http://www.spamhaus.org/SBL/sbl.lasso?query=SBL18897 >]

The original message was not completely plain text, and may be unsafe to open with some email clients; in particular, it may contain a virus, or confirm that your address can receive spam. If you wish to view it, it may be safer to save it to a file and open it with an editor.

Received: (qmail 21218 invoked from network); 6 Jun 2005 21:55:40 -0600
Received: from s7.coordinate.com (66.151.44.173)
by chiefmusician.net with SMTP; 6 Jun 2005 21:55:40 -0600
From: SS Search <dating_channel@lists.goldmeans.com>
Subject: NEW DATING SITE FOLLOW UP
To: FAYE@GORDONWORKS.COM
X-Priority: 3
X-Owner: dating_channel;IDBH*JRUGRQZRUNV!FRP;1;
MIME-Version: 1.0
Content-Type: multipart/alternative;

SEXSEARCH.com

100% FREE ADULT PERSONALS 100% FREE ADULT PER

I AM / WE ARE
Man

LOOKING FOR A
Woman

BETWEEN AGES
18 and 29

FOR



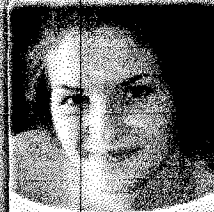





- 1 on 1
- Other Activity
- 3-some/Orgies
- BDSM
- Cybersex
- Fetishes

IN THE STATE/ PROVINCE OF
Select a state/prov

IN THE CITY OF
Select a city

SEARCH

HOOK UP WITH A DIFFERENT GIRL EVERY

 ID. SWEET JB	 ID. JANDINE	 ID. SHERYL 21	 ID. FI
 ID. VERONICAXXX	 ID. CUTIE ANNE	 ID. X AMBER X	 ID. CA

HOOK UP WITH SOMEONE IN RICHLAND AND GET LUCKY TONIC


100% FREE ADULT PERSONALS

BROWSE PHOTOS AND PROFILES OF MILLIONS OF MEMBERS

SIGN UP TODAY AND GET SOME TONIC

FEATURED MEMBER

FEATURED


ID. ISABELLE

If you would like to not be contacted from us in the future please send us an email at this address: traffic@sexsearch.com and inform us that you would like to be removed.