

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

MAY 15 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,

v.

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.

James S. Gordon III, Third-Party  
Defendant

TO: Clerk of the Court

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

AND TO: Peter J. Glantz and Sean A. Moynihan

Case No.: CV-04-5125-FVS

RESPONSE TO IMPULSE'S MEMO  
OF LAW IN SUPPORT OF MOTION  
TO DISMISS THIRD PARTY  
DEFENDANT'S AMENDED  
COUNTERCLAIMS

## Introduction

1  
2 Mr. Ivey has made it crystal clear that he will not contact Plaintiff although  
3 Mr. McKinley and Mr. Siegel have provided him with written permission to  
4 contact Plaintiff on my behalf. **Exhibit 1**

5 In the normal course of events when both sides are represented by counsel,  
6 disputes can be resolved wholly or in part via communication between the parties.  
7 Impulse's attorneys have refused to communicate with third parties. Its insistence  
8 on not communicating with Plaintiff does not explain its simultaneous refusal to  
9 communicate with Ms. Abbey and Mr. Pritchett who do not rely on a power of  
10 attorney from Plaintiff.

11 Thus there is no justification for expending scores of hours on "research",  
12 etc. when a simple phone call and email or a letter can reduce the need for the  
13 waste of its client's resources and the incessant demand for sanctions from third  
14 parties. Impulse's refusal to bargain in good faith negates any entitlement to  
15 sanctions as its assertion to same coupled with its refusal to dialog with us are  
16 designed only to harm third parties.

## Clarifications Regarding Amended Counterclaims

17  
18 The undersigned is withdrawing each counterclaim which is properly  
19 invoked by a governmental entity rather than a private citizen. However, I will re-  
20 assert my counterclaims regarding RCW 19.190, RCW 19.86, Permanent  
21 Injunction, and the intentional infliction of emotional distress. As to the criminal  
22 matters addressed in my counterclaims, I will meet with local police and the  
23 district attorney's office to discuss redress of these complaints.  
24  
25

### Response to Memorandum by Impulse

1 This Court's "Order Denying Defendant's Motion to Dismiss" dated July 11,  
2 2005 is instructive as to third party defendant's claims under RCW 19.190 and  
3 RCW 19.86.

4 In the section entitled "Standard of Review", this Court stated that:

5 A complaint should not be dismissed for failure to state a claim upon  
6 which relief may be granted under Federal Rule of Civil Procedure  
7 12(b)(6) unless it "appears beyond doubt that the plaintiff can prove  
8 no set of facts in support of his claim which would entitle him to  
9 relief." *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99,101-02, 2  
10 L.Ed.2d 80 (1957); *Johnson v. Knowles*, 113 F.3d 1114, 1117 (9th  
11 Cir. 1997).

12 The only differences between Plaintiff's complaint (which survived  
13 Impulse's motion to dismiss) and my complaint are that I actually included an  
14 offending email in my pleadings and my domain name is different. The referenced  
15 email was sent in violation of the referenced statutes and it contains highlights  
16 which provide detail as to the specific areas wherein the emails violate the statutes.

17 When the legal sufficiency of a complaint's allegations are tested with  
18 a motion under Rule 12(b)(6), "[r]eview is limited to the complaint." *Cervantes v. City of San Diego*, 5 F.3d 1273, 1274 (9th Cir. 1993). All  
19 factual allegations set forth in the complaint are taken as true and  
20 construed in the light most favorable to the plaintiff. *Epstein v. Wash.*  
21 *Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996). The Court must give  
22 the plaintiff the benefit of every inference that reasonably may be  
23 drawn from well-pleaded facts. *Tyler v. Cisneros*, 136 F.3d 603, 607  
24 (9th Cir. 1998). As a general rule, the Court "may not consider any  
25 material beyond the pleadings in ruling on a Rule 12(b)(6) motion."  
*Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001).

My complaint may or may not be well-pled, but as a matter of law and equity, it should be taken in the light most favorable... The email provided by me

1 is the best evidence of violations of RCW 19.190 and RCW 19.86. The highlighted  
2 errors and omissions are a matter for expert witnesses and testimony. In this case,  
3 the proverbial picture of the violations is worth more than the 1000s of words  
4 proffered by Impulse.

5 There is no question as to whether or not the email exhibit is an email. The  
6 only question, for a trier of fact, is whether or not it violates the referenced statutes.  
7 This fact is a point of controversy, which can not be adequately addressed in or by  
8 Impulse's motion to dismiss. Thus, my complaint when taken as true... favorable  
9 light survives this 12(b)(6) motion to dismiss.

#### 10 **Response to XIII...RCW 19.190 et seq**

11 Impulse claims that I have not alleged any factual allegations relating to  
12 violations of RCW 19.190 et seq. It goes on to say that "unsupported conclusions  
13 of law in a complaint are not sufficient to withstand a motion to dismiss".

14 In addition to incorporating the email dated March 22, 2006 by reference, I  
15 believe that that email violates Washington law in the following manner:

#### 16 **RCW 19.190.020 - Unpermitted or misleading electronic mail -- 17 Prohibition.**

18 (1) No person may initiate the transmission, conspire with another to  
19 initiate the transmission, or assist the transmission, of a commercial  
20 electronic mail message from a computer located in Washington or to  
21 an electronic mail address that the sender knows, or has reason to  
22 know, is held by a Washington resident that:

23 (a) Uses a third party's internet domain name without permission of  
24 the third party, or otherwise misrepresents or obscures any  
25 information in identifying the point of origin or the transmission path  
of a commercial electronic mail message; or

(b) Contains false or misleading information in the subject line.

(2) For purposes of this section, a person knows that the intended  
recipient of a commercial electronic mail message is a Washington  
resident if that information is available, upon request, from the

1 registrant of the internet domain name contained in the recipient's  
2 electronic mail address.

3 **RCW 19.190.030 Unpermitted or misleading electronic mail --**  
4 **Violation of consumer protection act.**

5 (1) It is a violation of the consumer protection act, chapter 19.86  
6 RCW, to conspire with another person to initiate the transmission or  
7 to initiate the transmission of a commercial electronic mail message  
8 that:

9 (a) Uses a third party's internet domain name without permission of  
10 the third party, or otherwise misrepresents or obscures any  
11 information in identifying the point of origin or the transmission path  
12 of a commercial electronic mail message; or

13 (b) Contains false or misleading information in the subject line.

14 (2) It is a violation of the consumer protection act, chapter 19.86  
15 RCW, to assist in the transmission of a commercial electronic mail  
16 message, when the person providing the assistance knows, or  
17 consciously avoids knowing, that the initiator of the commercial  
18 electronic mail message is engaged, or intends to engage, in any act or  
19 practice that violates the consumer protection act.

20 (3) The legislature finds that the practices covered by this chapter are  
21 matters vitally affecting the public interest for the purpose of applying  
22 the consumer protection act, chapter 19.86 RCW. A violation of this  
23 chapter is not reasonable in relation to the development and  
24 preservation of business and is an unfair or deceptive act in trade or  
25 commerce and an unfair method of competition for the purpose of  
applying the consumer protection act, chapter 19.86 RCW.

18 The referenced email sent by Impulse violates these prohibitions in RCW  
19 19.190 and RCW 19.86.

20 Additionally, the 7/11/05 order stated:

21 ...the Court determines that a comparison of the elements of RCW §  
22 19.190.020 with the elements of fraud, illustrates that Plaintiff's  
23 Complaint does not sound in fraud. There is no requirement under  
24 RCW § 19.190.020 that the sender "know" that the information in the  
25 subject line or transmission path of the email is "false or misleading".  
Also, RCW § 19.190.020 does not require the false or misleading  
information in the subject line or transmission path be "material".

1 Further, RCW § 19.190.020 does not require the recipient of an email  
2 that violates the statute take any action “in reliance upon the  
3 representation” in the email. Neither intent on the part of the sender,  
4 nor detrimental reliance on the part of the recipient, is required to  
5 prove a violation of RCW § 19.190.020, like it is required to prove  
6 fraud. Therefore, the Court concludes that Plaintiff's claims under  
7 Washington's Commercial Electronic Mail Act do not trigger the  
8 heightened pleading requirements of Rule 9(b).

9 Therefore, it is not incumbent on me to state with specificity as proposed by  
10 Impulse. Nonetheless, I have submitted an actual email detailing specific violations  
11 of the laws, above.

### 12 **Response to XV...Permanent Injunction**

13 Impulse has spammed an email address which bears my name in the  
14 “gordonworks.com” domain and now it is spamming my new domain. However,  
15 with the new domain it has not (yet) accused me of the discredited idea of opting in  
16 and opting out of its offers ad infinitum. Impulse does not procure email addresses  
17 legally and it conspires with others to create false registrations, aliases and an  
18 untold number of throwaway domains to fraudulently deprive me of control of my  
19 intellectual property. Because complaints, opt-outs, lawsuits or counter suits have  
20 failed to stop Impulse from spamming me, my only other option is to request an  
21 injunction against Impulse's reckless behaviors.

22 THEREFORE, third party defendant moves this Court to deny Impulse's  
23 request for dismissal of my four counterclaims listed above.

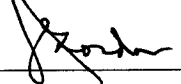
24 James S. Gordon III, Pro Se  
25 9804 Buckingham Drive  
Pasco, WA 99301  
509-210-1069

1 EXECUTED this 15<sup>th</sup> day of May, 2006.

2  B o A

3 Certificate of Service

4 I, hereby, certify that on May 15, 2006, I filed this motion with this Court. I have  
5 served Bob Siegel, Peter J. Glantz, Sean A. Moynihan, Floyd E. Ivey, Bonnie  
6 Gordon, Jonathan Gordon, Jamila Gordon, Emily Abbey, and Robert Pritchett by  
other means

7  B o A

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



Exhibit 1

Delivered-To: 7-jim@gordonworks.com  
Reply-To: <bob@msfseattle.com>  
From: "Bob Siegel" <bob@msfseattle.com>  
To: "Floyd E. Ivey" <feivey@3-cities.com>  
Cc: <bob@msfseattle.com>,  
"Jim Gordon" <jim@gordonworks.com>  
Subject: RE: Conferencing Requirements  
Date: Fri, 7 Apr 2006 14:27:01 -0700  
X-Mailer: Microsoft Office Outlook, Build 11.0.5510  
Thread-Index: AcZaUeD69J2zUi3sReic+BP5G1X1kgAFsBQwAAe1ilA=  
X-Spam-Checker-Version: SpamAssassin 2.63 (2004-01-11) on gordonworks.com  
X-Spam-Level:  
X-Spam-Status: No, hits=-4.9 required=7.0 tests=BAYES\_00 autolearn=ham  
version=2.63

Floyd,

First, I will reiterate here what Doug McKinley has already advised, that you are authorized to have direct contact with my client, Jim Gordon, Jr., for the limited and sole purpose of discussing third party defendant issues in his capacity as the third-parties' chosen representative. As you know, there is neither rule nor law which obligates or requires an individual litigant to retain or to be represented by counsel.

Next, I see nothing improper in Mr. Gordon's serving in the capacity of third-party defendants' chosen representative, while exercising caution, of course, not to practice law. In fact, Mr. Gordon's role in this regard should be welcomed by Defendant, in that communicating with one person, as opposed to all third party defendants should allow a more efficient process.

In any event, your concerns are not well taken on this end, as it is your client who has chosen to drag these parties into the action, through its wholly inappropriate, and unlawful filing of slap suits. Thus, it is now your client's responsibility to deal with each of these parties as the rules and the law requires.

As always, your cooperation is appreciated.

Sincerely,

Bob Siegel

-----Original Message-----

From: Floyd E. Ivey [mailto:feivey@3-cities.com]  
Sent: Friday, April 07, 2006 10:32 AM  
To: Robert Siegel  
Subject: FW: Conferencing Requirements

Bob,

Please see Mr. Gordon's communication directly to opposing counsel. I ask that you instruct Mr. Gordon to not continue any direct communication with counsel for any defendant counsel in any Gordon case where I provide representation.

Please let me know if you cannot or will not provide such direction to Mr. Gordon.

file://C:\DOCUME~1\JIMGOR~1\BUS\LOCALS~1\Temp\eud7.htm

5/13/2006



Floyd E. Ivey

-----Original Message-----

From: Jim Gordon [mailto:jim@gordonworks.com]

Sent: Friday, April 07, 2006 7:43 AM

To: feivey@3-cities.com

Cc: bob@msfseattle.com

Subject: Conferencing Requirements

Mr. Ivey:

Any required conference that must be convened prior to a motion or other court proceeding will feature me as an authorized representative for members of my family per their respective requests.

As you have stated on the record, that you will have no communications with me, I (we) assume that Impulse has waived all such "required" communications. If not, please advise me to the contrary and advise me as to the arrangement or device you propose to meet requirements to conference.

Thank you,  
Jim Gordon,