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

MAY 15 2006

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,

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.

Jamila E. Gordon, 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.

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

Additionally, the 7/11/05 order stated:

...the Court determines that a comparison of the elements of RCW §
19.190.020 with the elements of fraud, illustrates that Plaintiff's
Complaint does not sound in fraud. There is no requirement under
RCW § 19.190.020 that the sender "know" that the information in the
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 As a member of Omni Innovations, LLC board of directors, I am aware of
14 the lawsuit which we are filing against Impulse. Omni has 8,000 to 10,000
15 additional emails which were sent by Impulse and its unnamed marketing partners.
16 It appears that Impulse fears naming these agents, because of its enmeshment in
17 online pornography with Nationalnet. Additionally, the spectacle of Impulse's
18 president, Steve Wadley, forming a new company and buying my email address
19 from Impulse to spam me is disconcerting. In part, the Omni lawsuit is intended to
20 prevent the ongoing identity appropriation of Impulse in terms of Omni's email
21 addresses. The appropriation of my personally identifying information by Mr.
22 Wadley is the express behavior that an injunction would protect me from as
23 complaints, a lawsuit, and a counter suit have all failed to curtail Impulse's
24 reckless spamming activities.

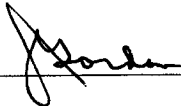
25 Impulse's recklessness is but a harbinger of transgressions to come in terms
of possibly exposing our youth and other unsuspecting individuals to objectionable
adult content.

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

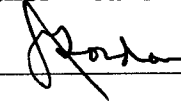
Jamila E. Gordon, Pro Se
9804 Buckingham Drive
Pasco, WA 99301
509-210-1069

EXECUTED this 15th day of May, 2006.

 POA _____

Certificate of Service

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

 POA _____

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.

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,