

HON. ROBERT S. LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

IMPULSE MEDIA GROUP, INC., a  
Washington corporation,

Defendant.

**No. CV 05-1285L**DECLARATION OF SETH SCHERMERHORN IN  
SUPPORT OF DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

I, Seth Schermerhorn, upon my oath do declare and say as follows:

1. I am at least eighteen years of age and could and would be able to testify to the herein stated matters;

2. I am the President of the Defendant in this matter, Impulse Media Group, Inc;

3. Impulse Media Group, Inc. ("Impulse Media") and its directors, officers, employees and agents did not originate, transmit, or otherwise initiate any of the e-mail message complained of by the Plaintiff in the above-captioned case;

4. The e-mail messages complained of in Plaintiff's Complaint and supplied to the Defendant were sent by third parties not under the control of Impulse Media;

5. As part of its marketing efforts, Impulse Media operates a sales program (the "Soulcash" program) whereby independent third parties may refer potential sales to Impulse Media;

DECLARATION OF SETH SCHERMERHORN IN  
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SUMMARY JUDGMENT - 1**CARPELAW** PLLC2400 NW 80<sup>th</sup> Street #130

Seattle, Washington 98117

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6. When an independent third party (“Web Master”) wishes to participate in the Soulcash program, it must apply for permission to join the program. In order to make this application, the Web Master visits a Web site devoted solely to the promotion of the Soulcash program, located at <http://www.soulcash.com>. A copy of the initial, or “home” page is attached hereto as Exhibit “A”;

7. The Web Master desiring to join the Soulcash program must then access the sign up page by clicking on the hypertext link “Sign Up Now!” found on the “home” page, whereupon he is presented the “sign up” page. A copy of the “sign up” page is attached hereto as Exhibit “B”;

8. After completing the information form found on the “sign up” page, the Web Master must then affirmatively select the checkbox whereby he agrees to the terms and conditions referenced on the “sign up” page in order to be considered for the Soulcash program. A complete copy of the Soulcash Program Agreement (the terms and conditions) for Web Masters is attached hereto as Exhibit “C”;

9. Paragraph 2.3 of the Soulcash Program Agreement unambiguously prohibits violations of the CAN-SPAM Act and the Federal Trade Commission’s Adult Labeling Rule (the “Adult Labeling Rule”) regulating the sending of unsolicited electronic mail wherein it states:

2.3 That you will not use any form of mass unsolicited electronic mail solicitations, news group postings, IRC posting or any other form of “spamming” as a means of promoting Your Website or for the purpose of directing or referring users to any SoulCash Websites. You further acknowledge and agree that We have the right to immediately, and without notice, terminate your participation in the Program if we, in our sole and exclusive judgement, conclude that you have engaged in the use of any form of mass unsolicited electronic mail solicitations, news group postings, password selling or trading, warez, IRC posting or any other form of “spamming”. NOTE: WE HAVE ZERO TOLERANCE FOR SPAMMING. IF YOU SPAM, YOUR PARTICIPATION IN THE PROGRAM WILL BE TERMINATED, YOU WILL BE BARRED FROM FUTURE PARTICIPATION IN THE PROGRAM AND ALL FUNDS OTHERWISE DUE TO YOU WILL BE FORFEITED TO THE COMPANY.

10. Impulse Media aggressively enforces paragraph 2.3 of the Soulcash Program Agreement and has terminated from the Soulcash program those Web Masters who have violated Impulse Media’s terms, including its terms related to the CAN-SPAM Act and the Adult Labeling Rule, when promoting Impulse Media’s offerings;

1 12. The relationship between Impulse Media and the Web Master is not a joint venture,  
2 partnership, or any relationship other than an arms-length agreement between independent business  
3 entities;

4 13. Rather, Impulse Media pays a sales commission to a Web Master who refers potential  
5 customers to Impulse Media if, and only if, that referral results in the potential customer subscribing to  
6 a Impulse Media Web site by entering into a contractual relationship directly with Impulse Media;

7 14. Impulse Media has never knowingly or intentionally violated the CAN-SPAM Act, the  
8 Adult Labeling Rule, or any other statute or regulation;


9 15. Impulse Media never encouraged or paid Web Masters to market, advertise, or otherwise  
10 promote Impulse Media's offerings with the intent that the end result would be a violation of the  
11 CAN-SPAM Act, the Adult Labeling Rule, or any other statute or regulation;

12 16. When Impulse Media discovered that Web Masters had violated its Soulcash Program  
13 Agreement, including those provisions related to the CAN-SPAM Act and the Adult Labeling Rule,  
14 Impulse Media's policy and practice was to terminate its relationship the Web Master.

15 FURTHER YOUR DECLARANT SAYETH NAUGHT.

16 I declare under penalty of perjury under the laws of the United States of America that the  
17 foregoing is true and correct to the best of my knowledge. Executed at Seattle, Washington.

18 DATED this 5th day of September 2006.

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22 Seth Schermerhorn  
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