

Seth Shiloh Schermerhorn

August 10, 2006

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1 Q. Do you recognize the image in this exhibit?
 2 A. Yes.
 3 Q. Is this image the property of IMG?
 4 A. Yes.
 5 MR. APGOOD: I'm going to object to use of
 6 this exhibit because the exhibit is incomplete and
 7 plaintiff violates the Federal Rules of Evidence in
 8 that it does not contain the source code which
 9 underlies the graphic representation of the exhibit.
 10 The government knows well the distinction between the
 11 underlying source code and the graphic representation
 12 of an exhibit, particularly in email, because it has
 13 previously provided sworn testimony making the
 14 distinction between the two in other cases regarding
 15 CAN-SPAM compliance.
 16 Q. Based on the exhibit in front of you, if you
 17 were the recipient of this email and you wanted to opt
 18 out from receiving further email messages from the
 19 sender, what would you do?
 20 MR. APGOOD: Objection, calls for
 21 speculation.
 22 A. It says "Click here to be removed" below the
 23 image, and I guess I would try and click there.
 24 Q. Is the text "Click here to be removed"
 25 located below the image in this email?

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1 A. Yes.
 2 Q. And in your opinion does this email comply
 3 with what you understand the CAN-SPAM Act and adult
 4 labeling rule to require?
 5 MR. APGOOD: Objection, calls for
 6 speculation. Objection, calls for legal conclusion.
 7 The witness has not been qualified as an expert, and
 8 therefore, to provide expert testimony such as
 9 solicited by the government's question is improper.
 10 A. I forgot what the question was.
 11 MR. APGOOD: Madam reporter, please read
 12 back the question.
 13 (Reporter read back as requested.)
 14 A. No.
 15 Q. Handing you what's been previously marked
 16 government Exhibit-23, is Bootycakes.com a website
 17 owned by IMG?
 18 A. Yes.
 19 Q. Do you recognize the image in this exhibit?
 20 A. Yes.
 21 Q. Is this image the property of IMG?
 22 A. Yes.
 23 Q. Looking at the exhibit in front of you,
 24 Exhibit-23, if you were the recipient of this email,
 25 and you wanted to opt out from receiving further email

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1 messages from the sender, what would you do?
 2 MR. APGOOD: Objection, calls for
 3 speculation. Objection to the use of this exhibit as
 4 it is incomplete in that it does not provide with it
 5 the underlying source code for the email and instead
 6 all it shows is a graphic representation of the
 7 email. Therefore, any use of this is in violation of
 8 the Federal Rules of Evidence.
 9 MS. HASH: Would Counsel like to make a
 10 standing objection to the emails used by the
 11 government?
 12 MR. APGOOD: Yes.
 13 A. It says, "If you don't want to be a part of
 14 our program: Click Here," so I'd probably try and
 15 click the text that says "Click Here."
 16 Q. And the text you just referred to, "If you
 17 don't want to be a part of our program: Click Here,"
 18 is that text located below the image in this email?
 19 A. Yes.
 20 Q. In your opinion, based on the exhibit in
 21 front of you, does this email comply with what you
 22 understand the CAN-SPAM Act and the adult labeling
 23 rule to require?
 24 MR. APGOOD: I would like to set forth a
 25 standing objection regarding any questions related to

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1 emails that deal with complying with the CAN-SPAM Act
 2 as seeking a legal conclusion by the witness.
 3 A. No, it doesn't.
 4 Q. Handing you what's been previously marked
 5 government Exhibit-24, is JizzLickers.com a website
 6 owned by IMG?
 7 A. Yes.
 8 Q. Do you recognize the content in this
 9 exhibit?
 10 A. Yes.
 11 Q. Specifically what do you recognize?
 12 A. It looks like a screen shot of
 13 JizzLickers.com.
 14 Q. To your knowledge is this email promoting an
 15 IMG website?
 16 MR. APGOOD: Objection, calls for
 17 speculation.
 18 A. Yeah, I mean, I would assume so.
 19 Q. Looking at Exhibit-24, if you were the
 20 recipient of this email and you wanted to opt out from
 21 receiving further email messages from the sender, what
 22 would you do?
 23 MR. APGOOD: Objection, calls for
 24 speculation.
 25 A. It says, "Click Here to remove your email

16 (Pages 58 to 61)

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1 address." I'd probably try and click that red text
 2 that's below the image that says "Click Here."
 3 Q. In the text it says, "Click Here to remove
 4 your email address." Is it located below the image in
 5 this email?
 6 A. Yes.
 7 Q. In your opinion does this email comply with
 8 what you understand the CAN-SPAM Act and adult
 9 labeling rule to require?
 10 A. No.
 11 Q. Handing you what's been previously marked
 12 government Exhibit-29, is MelodyHart.com a website
 13 owned by IMG?
 14 A. Yes.
 15 Q. And do you recognize the content in this
 16 exhibit?
 17 A. I recognize the image.
 18 Q. Is this email promoting an IMG website?
 19 A. I can't really tell without seeing the
 20 source code of the email, but most likely it is.
 21 Q. Looking at government Exhibit-29, if you
 22 were the recipient of this email and you wanted to opt
 23 out from receiving further email messages from the
 24 sender, what would you do?
 25 MR. APGOOD: Objection, calls for

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1 speculation.
 2 A. There are no instructions for opting out
 3 that I can see.
 4 Q. In your opinion does this email comply with
 5 what you understand the CAN-SPAM Act and adult
 6 labeling rule to require?
 7 A. No.
 8 Q. What does IMG do to recruit new affiliates?
 9 A. Nothing currently.
 10 Q. Who at IMG has terminated an affiliate since
 11 January 1st, 2004?
 12 A. It would be me, if there were any terminated
 13 since then.
 14 Q. And does IMG monitor new affiliate sign-ups
 15 to make sure a terminated affiliate does not sign up
 16 to the program again?
 17 A. No.
 18 MR. APGOOD: Objection to the extent that
 19 the question implies that such a duty exists.
 20 MS. HASH: I don't have any further
 21 questions at this time.
 22 E X A M I N A T I O N
 23 BY MR. APGOOD:
 24 Q. Previously you provided testimony that IMG
 25 reviews the stats on a regular basis or somewhat

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1 regular basis to look for fraud and abuse. Do you
 2 recall that testimony?
 3 A. Yes.
 4 Q. You also gave some explanations and examples
 5 of that; is that correct?
 6 A. Yes.
 7 Q. How does review of the stats show how the
 8 terms of service are being violated? Let me be more
 9 specific.
 10 A. I got the question.
 11 Q. Okay.
 12 A. I mean in reviewing like the referring
 13 information where it's actually good referring
 14 information and you could see a website, you could
 15 see, like, you know, violations of marketing -- the
 16 usage of our marketing material.
 17 Q. Can you give me an example of how those
 18 usage rates would indicate that the terms of service
 19 are being violated.
 20 A. It would have to be something else that
 21 popped -- that made us -- drew attention to it, and
 22 then if we started researching affiliates referring
 23 traffic and their referring web pages, we could see
 24 like any misuse of -- like misleading the referred
 25 traffic by making false promises, which would fall

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1 under the part of the terms of service that talks
 2 about the marketing material that they're authorized
 3 to use or not use.
 4 Q. Are these conclusions, then, inferences you
 5 draw based upon a number of different sources of
 6 information?
 7 A. Yes.
 8 Q. Is there anything in the statistics
 9 reporting that shows definitively that terms of
 10 service are being violated?
 11 A. No.
 12 Q. Previously you gave testimony that it's
 13 possible for an affiliate who had been terminated to
 14 resubscribe as a new affiliate; is that an accurate
 15 assessment of your testimony?
 16 A. Yes.
 17 Q. In doing so would they have to be providing
 18 totally different information than they previously
 19 provided to the account that was terminated?
 20 A. Yes, to an extent.
 21 Q. Would you consider that a fraudulent attempt
 22 to become an affiliate?
 23 A. Yes.
 24 Q. Previously you gave testimony that the
 25 affiliate database is searchable, but it's not

From: "kassia karlie" <godson@dynaco.de>
To: <joe_c2k2@hotmail.com>
Sent: Thursday, July 15, 2004 8:58 AM
Subject: Witness Interracial Fuckfests of Virgin Black Pussies and Monstrous White Cocks!

short story "Young Goodman Brown"
an excerpt of Nathaniel Hawthorne's
texts or other writers you admire. In your work, do you



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in your own documents, and compare that to some other
with "semantically-poor" words, such as pronouns or prepositions?
Mail this page to a friend
RcptName: joe_c2k2@hotmail.com



From: "Crystal" <listmanager@redesdeleco.com>
To: <ray1300@hotmail.com>
Sent: Saturday, August 07, 2004 8:52 AM
Subject: Girls Love Man Goo!

The Ultimate Blowjob Website!

izzlickers.com

YOU WISH YOUR GIRL DID THIS!!

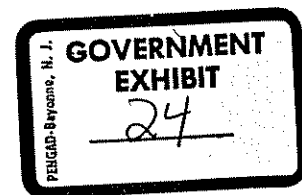
Crystal
Skinny Dick Sucker...
VIEW FREE HIGH RES TRAILER!
VIEW FREE LOW RES TRAILER!
VIEW FULL MOVIE!

Taylor
Double Deep Throat...
VIEW FREE HIGH RES TRAILER!
VIEW FREE LOW RES TRAILER!
VIEW FULL MOVIE!

Beautiful Girls Drinking Hot Man Goo!

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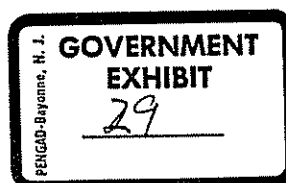
From: "Laure Aley" <Valine6qhf@portalen.no>
To: "Herbert" <herbert65@hotmail.com>
Sent: Monday, July 19, 2004 11:29 AM
Subject: This girl from next door is such a hotty

Dude,



percent annual return on investments. In fact, the return will no doubt be

If a person is applying for a job, an employer cannot ask if that person is disabled or ask about the nature or severity of the disability. An employer can ask, however, if the duties of the job can be performed with or without reasonable accommodation. An employer can also ask to describe or to demonstrate how, with or without reasonable accommodation, you will perform the duties of the job. An employer cannot require a recruit to take a medical examination before you are offered a job. Following the job offer, an employer can condition the offer on the recruits passing a required medical examination, but only if all entering employees for that job



category have to take the examination. However, the employer cannot reject the applicant because of information about your disability revealed by the medical examination, unless the reasons for rejection are job-related and necessary for the conduct of the employer's business.

force. CCP members and leaders wish economic reform not to be judged on

Baibai,