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06-CV-00204-CMP

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON, SEATTLE

JAMES S. GORDON, Jr., a married individual, d/b/a 'GORDONWORKS.COM',

Plaintiff,

v.

VIRTUMUNDO, INC, a Delaware corporation, d/b/a ADKNOWLEDGEMAIL.COM; ADKNOWLEDGE, INC., a Delaware corporation, d/b/a ADKNOWLEDGEMAIL.COM; SCOTT LYNN, an individual; and JOHN DOES, I-X,

Defendants.

No. CV06-0204 JCC

COMPLAINT FOR DAMAGES UNDER THE CAN-SPAM ACT OF 2003 [15 U.S.C. §7701, et seq.] ; WASHINGTON CONSUMER PROTECTION ACT (RCW 19.86); THE WASHINGTON COMMERCIAL ELECTRONIC MAIL ACT (RCW 19.190); AND THE IDENTITY CRIMES ACT (RCW 9.35).

[JURY DEMAND]

COMES NOW, Plaintiff James S. Gordon, Jr. and brings this COMPLAINT against defendants named herein. Plaintiff alleges the following on information and belief:

COMPLAINT FOR DAMAGES, PENALTIES, ETC. -1
GORDON v. VIRTUMUNDO GROUP, INC., ET AL

MERKLE SIEGEL & FRIEDRICHSEN
1325 Fourth Ave., Suite 940
Seattle, WA 98101
Phone: 206-624-9392
Fax: 206-624-0717

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2 **1. PARTIES**

3 1.1 Plaintiff James S. Gordon, Jr. ("Gordon") is a married individual who is and was
4 a resident of Benton and/or Franklin County, Washington, and who was doing business
5 as an interactive computer service as 'gordonworks.com', during the time of all acts
6 complained of herein.

7 1.2 Defendants Virtumundo, Inc., and Adknowledge, Inc., collectively referred to herein as
8 "Virtumundo" upon information and belief, are Delaware corporations, with their
9 principle place of business located in Kansas City, Missouri, and/or Kansas.

10 1.3 Scott Lynn is an individual who is and officer, director and majority shareholder of
11 Virtumundo, Inc., and Adknowledge, Inc., whose primary residence is in Kansas City,
12 Missouri.

13 1.4 The actions alleged herein to have been undertaken by the defendants were
14 undertaken by each defendant individually, were actions of which each defendant had
15 knowledge and that each defendant authorized, controlled, directed, or had the ability to
16 authorize, control or direct, and/or were actions each defendant assisted and/or
17 participated in, and are actions for which each defendant is liable. Each defendant aided,
18 abetted, assisted, and conspired with the actions of each other defendant herein in that
19 each defendant had knowledge of those actions, provided assistance and benefited from
20 those actions, in whole or in part. Each of the defendants was the agent of each of the
21 other defendants, and in committing those acts herein alleged, was acting within the
22 course and scope of such agency and with the permission and consent of other
23 defendants.

24 **JURISDICTION**

25 1. This Court has original jurisdiction of the causes of action herein which are brought
under the CAN-SPAM Act of 2003 – 15 U.S.C. §7701, *et seq.*, 15 U.S.C. §7707(g)(1).

2. The unlawful actions of the defendants were committed in the States of
Washington, Missouri, Kansas and in the judicial district of this Court.

- 1 3. The Defendants regularly transact business within the State of Washington by virtue of
2 the fact that they regularly send commercial bulk emails into the State, which emails are
3 received on computers and other electronic devices owned and maintained by residents of
4 the State in the State.
- 5 4. As a result of the Defendants' acts and transactions within the State of Washington, this
6 Court has personal jurisdiction over the Defendants under RCW 4.28.185(1)(a).
- 7 5. The causes of action complained of herein include allegations that commercial electronic
8 messages sent by or on behalf of the Defendants to the Plaintiffs violate RCW 19.190 et
9 seq., the Washington Commercial Electronic Mail Act (CEMA) and RCW 19.86 et seq.,
10 the Washington State Consumer Protection Act (CPA), the Washington Identity Crimes
11 Act (RCW 9.35 et seq., and includes a prayer for relief in excess of \$75,000, exclusive of
12 interest and costs.
- 13 6. Jurisdiction to commence this action is conferred by 15 U.S.C. §7701, *et seq.*, 15 U.S.C.
14 §7707(g)(1); RCW 19.86.080, 19.86.090, 19.86.160, RCW 19.190.030 and RCW
15 4.12.020-.025.

16 **7. CAUSES OF ACTION**

- 17 a. Plaintiffs reallege and incorporate as though fully set forth herein, all prior
18 paragraphs herein.
- 19 b. Plaintiff Gordon is the registrant of the internet domain
20 "gordonworks.com".
- 21 c. Plaintiff Gordon d/b/a "gordonworks.com", is an interactive computer
22 service as that term is defined in 15 U.S.C. §7703(11), and RCW 19.190.010 (7)
- 23 d. Gordon provides or enables computer access by multiple users to a
24 computer server that hosts the "gordonworks.com" domain name and further
25 provides electronic mail accounts to individuals utilizing the "gordonworks.com"
domain name for electronic messaging, including individuals residing within the
Federal judicial district in which this case is brought.

1 e. Plaintiff Gordon is a user of the interactive computer service provided by
2 'gordonworks.com', and maintains an electronic mail message account with
3 'gordonworks.com under the address "jim@gordonworks.com".

4 f. At all times relevant to this action, each of the Plaintiffs' status as
5 Washington residents is and was public knowledge and available, upon request,
6 from the Plaintiffs and other public sources.

7 g. The Defendants have initiated the transmission of numerous commercial
8 email messages directed to and through Plaintiff Gordon's interactive computer
9 service, and/or to and through Plaintiff's domain 'gordonworks.com', and/or
10 further addressed to Plaintiff Gordon's email address jim@gordonworks.com, as
11 well as to other users of Gordon's interactive service.

11 7.1 First Cause of Action

12 Violations of the Can-Spam Act of 2003 [15 U.S.C. §7705]

13 7.1.1 Plaintiff has received approximately 6,000 commercial electronic mail messages
14 from defendants to its electronic mail server located in Benton and Franklin Counties,
15 Washington, and/or to his email addresses served by 'gordonworks.com' domain in violation of
16 the CAN-SPAM Act of 2003, 15 U.S.C. §7705.

17 7.1.2 Plaintiff further alleges that he received numerous items of electronic mail from
18 the defendants sent to his 'gordonworks.com' domain name and servers, and to his email
19 addresses served thereby, that were responded to with specific requests not to receive future
20 commercial electronic mail messages. Said conduct by the defendants violated 15 U.S.C.
21 §7705(a)(4).

22 7.1.3 Plaintiff further alleges that the defendants sent at least one (1) separate item of
23 electronic mail to the plaintiff to an address harvested from domain name registration and/or
24 by other means of anonymous internet information harvesting. Said conduct was in violation
25 of 15 U.S.C. §7705(b)(1)(A)(i), and (ii)

1 7.1.4 As a proximate result of said unlawful conduct by said defendants, plaintiff is
2 entitled to damages for the actual monetary loss incurred or statutory damages in the amount of
3 up to \$100.00 in the case of violation of Section 5(a)(1) or up to \$25.00 in the case of each
4 violation of the other subsections of Section 5 in the form of statutory damages as set forth in 15
5 U.S.C. §7707(g)(1) and (3)(A).

6 7.1.5 Plaintiff furthermore seeks a preliminary and permanent injunction against the
7 defendants for their current and future violations of the CAN-SPAM Act of 2003 as it and
8 members of the general public will continue to incur damages as a result of the unlawful conduct
9 of said defendants. The seeking of injunctive relief by the plaintiff is specifically authorized by
10 15 U.S.C. §7707(g)(1)(A).

11 7.1.6 Plaintiff furthermore seeks its attorney fees and costs against the defendants
12 pursuant to 15 U.S.C. §7707(g)(4).

13 **7.2 Second and Third Causes of Action**

14 **Violations of the Washington CEMA [RCW 19.190.020 et seq.]**
15 **and the Washington Consumer Protection Act [RCW 19.86]**

16 7.2.1 It is a violation of RCW 19.190.020(1)(a)(b) and 19.190.030(1)(a)(b) to
17 initiate the transmission, conspire with another to initiate the transmission, or assist
18 the transmission, of a commercial electronic mail message from a computer located in
19 Washington or to an electronic mail address that the sender knows, or has reason to
20 know, is held by a Washington resident that uses a third party's internet domain name
21 without permission of the third party, or otherwise misrepresents or obscures any
22 information in identifying the point of origin or the transmission path of a commercial
23 electronic mail message, or contains false or misleading information in the subject
24 line.

25 7.2.2 Pursuant to RCW 19.190.020(1)(a)(b), each email sent in this First Cause
of Action is a separate and distinct violation of RCW 19.190, and pursuant to RCW

1 19.190.030(1)(a)(b), (2), and (3) constitutes a separate and distinct violation of the
2 Consumer Protection Act, RCW 19.86. Plaintiffs have been damaged as a result of
3 Defendants' statutory violations as set forth herein, in an amount to be proven at trial.

4 **7.3 Fourth Cause of Action**

5 **Violations of the Washington Identity Crimes Act [RCW 9.35.005]**

6 Plaintiff realleges all preceding paragraphs and incorporates them herein as if set forth
7 in full:

8 7.3.1 Defendants improperly possessed plaintiff's personal means of identification
9 information (RCW 9.35.005(3), in their pursuit of unlawful activities (RCW
10 9.35.005)

11 7.3.2 Defendants further falsely used the plaintiff's means of identification to
12 conduct business, for the defendants' own financial gain in violation of RCW
13 9.35.020.

14 7.3.3 Defendants solicited undesired mail to promote their products, by falsely
15 claiming, without authorization from the plaintiff, that the plaintiff wanted to
16 receive theirs and their clients' electronic mail in violation of RCW 9.35.030.

17 7.3.4 Defendants' acts violated RCW 9.35 et seq., which the legislature has found
18 are matters vitally affecting the public interest (RCW 9.35.800) for the
19 purpose of applying the Consumer Protection Act, chapter 19.86 RCW. A
20 violation of RCW 9.35.020 is an unfair or deceptive act in trade or commerce
21 and an unfair method of competition for the purpose of applying the
22 Consumer Protection Act, chapter 19.86 RCW.

23 **Demand for jury.** Plaintiff demands that this cause be tried to a jury.
24
25

PRAAYER FOR RELIEF

1
2 Plaintiffs, Gordon and Gordon pray for relief as follows:

3 That the Court adjudge and decree that defendant has engaged in the conduct complained
4 of herein.

5 That the Court adjudge and decree that the conduct complained of herein constitutes
6 violations of the Federal Can-Spam Act of 2003, 15 U.S.C. §7705, and that Plaintiff is
7 entitled to all damages provided for thereunder, as may be proved at trial;

8 That the Court adjudge and decree that the conduct complained of herein constitutes
9 violations of the Washington Commercial Electronic Mail Act, RCW 19.190.020 et seq.,
10 and that Plaintiff is entitled to all damages provided for thereunder, as may be proved at
11 trial, including but not limited to aggravated damages under 15 U.S.C. §7707(g)(3)(C) of
12 up to three times the amount above for these violations committed by the defendants
13 willfully and knowingly, and for defendants' unlawful activity which includes aggravated
14 violations of section 7005(b);

15 That the Court adjudge and decree that the conduct complained of herein constitutes
16 violations of the Washington Consumer Protection Act, RCW 19.86 et seq., and that
17 Plaintiff is entitled to all damages provided for thereunder, as may be proved at trial;

18 That the Court adjudge and decree that the conduct complained of herein further
19 constitutes violations of RCW 9.35 et seq., and the Washington Consumer Protection Act,
20 RCW 19.86 et seq., and that Plaintiff is entitled to all damages provided for thereunder, as
21 may be proved at trial;

22 That the Court assess civil penalties, pursuant to 19.190.040(1) of five hundred dollars
23 (\$500) per violation against defendant for each and every one of the commercial electronic
24 mail messages sent to plaintiff Gordon in violation of RCW 19.190.020.

25 That the Court assess civil penalties, pursuant to 19.190.040(1) one thousand dollars
(\$1,000) per violation against defendant for each and every one of the commercial
electronic mail messages sent through plaintiff Gordon's interactive computer service in
violation of RCW 19.190.020.

1 That the Court assess civil penalties in the way of treble damages pursuant to RCW
2 19.86.140, of two thousand dollars (\$2,000) for each and every one of the violations of
3 RCW 19.86 caused by the conduct complained of herein.

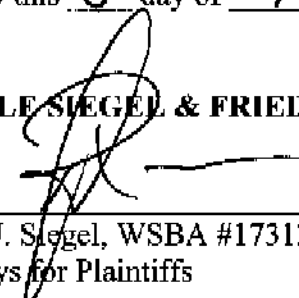
4 That the Court enter judgment pursuant to RCW 19.86.140 providing that Plaintiff has
5 been injured by the conduct complained of herein, and ordering that Plaintiff recover from
6 the defendant the costs of this action, including reasonable attorney's fees.

7 That the Court assess all allowable civil penalties, pursuant to RCW 9.35 against
8 defendants for each and every violation of that statute.

9 That the Court order such other relief as it may deem just and proper to fully and
10 effectively remedy the effects of, and prevent future instances of, the conduct complained
11 of herein, or which may otherwise seem proper to the Court.

12 DATED this 8 day of FEB, 2006.

13 **MERKLE SIEGEL & FRIEDRICHSEN, P.C.**

14 
15 _____
16 Robert J. Siegel, WSBA #17312
17 Attorneys for Plaintiffs