

1325 Fourth Ave., Suite 940
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(206) 304-5400

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON, SEATTLE

JAMES S. GORDON, Jr., a married individual; OMNI INNOVATIONS, LLC., a Washington limited liability company,

Plaintiffs,

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. CV06-0204JCC

DECLARATION OF JAMES S. GORDON, JR. IN RESPONSE AND OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

James S. Gordon, Jr. declares as follows:

- 1) I, James S. Gordon, Jr., am the Plaintiff in the above captioned lawsuit. I am over the age of 18 and am otherwise competent to testify.

DECLARATION OF JAMES S. GORDON, JR. IN RESPONSE AND OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
GORDON v. VIRTUMUNDO GROUP, INC.

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- 2) Thousands of the spam emails sent by the Defendants contained HTML code that was designed to download images from remote servers. These images included contact information and the advertising content of the spam emails. As a general rule, I keep the graphics feature of my email client turned off. As a result, I did not see any contact information or advertising content in the body of many of the spam emails sent by the Defendants.
- 3) Exhibit A attached herewith is a true and correct copy of the signature page to my January 9, 2007 deposition and associated “flyleaf” pages showing the corrections to my deposition testimony.
- 4) Exhibit B attached herewith is a true and correct copy of the User’s Manual for my dedicated server leased from GoDaddy.
- 5) Exhibit C attached herewith is a true and correct copy of the Dedicated Server Service Agreement for my dedicated server leased from GoDaddy. Note that I have, for the time being, opted to use the “Assisted Server” option described at paragraph 3, which I may cancel at any time.
- 6) Exhibit D attached herewith is a true and correct copy of an email exchange with GoDaddy’s technical service personnel confirming that I have access to the “root account” on the server I lease, that I am responsible for setting up the DNS server, and that I can register domains on my leased server with any registrar.
- 7) Exhibit E is “Whois” records of the registrations of both the “vmlocal.com” and “vtarget.com” domain names. As shown in the records, the e-mail address of the administrative contact listed for both of these domain names is “slynn@virtumundo.com.” According to the internal emails produced by the defendant’s

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- 2 8) I deny and refute in the strongest terms possible Defendants' allegations and insinuations
- 3 that I have somehow intentionally solicited commercial emails from Defendants or
- 4 anyone else. I solicited no spam. In fact, all of my efforts have been directed towards
- 5 stopping spam.
- 6 9) I am compelled here to correct the Defendants' misstatements and mischaracterizations
- 7 concerning my testimony indicating that I am in the "spam" business, and that before
- 8 entering the "spam" business, my sole source of income was state unemployment
- 9 benefits."
- 10 10) In fact, unemployment benefits were received by me only from Sept 03 to Mar 04
- 11 following a lay-off from City University, where I was employed from May 2000 to July
- 12 31, 2003.
- 13 11) As in amply demonstrated in my deposition testimony, prior to working for City
- 14 University, I had a long career working for employers such as the California Institute of
- 15 Technology's Jet Propulsion Laboratory in Pasadena California, the Washington Public
- 16 Power Supply System, the New York Life Insurance Company, and the Private Industry
- 17 Council.
- 18 12) I also have fourteen years of experience as a self employed entrepreneur.
- 19 13) I am currently the owner of Omni Innovations, LLC, which was licensed to do business
- 20 in the State of Washington on or about July 25, 2000.
- 21 14) The purpose of Omni Innovations, LLC is to serve as a vehicle for the development and
- 22 marketing of intellectual property by me.
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25 DECLARATION OF JAMES S. GORDON, JR. IN
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- 15) The products under development are primarily designed for the K-20 education marketplace, but each has applications for business and government use.
- 16) Product concepts include electronic versions of my “Personal Strategic Planning” and “Goal Discovery and Distillation Process”.
- 17) Development of an electronic version of my proprietary “Vision Mapping” system is on-going. Briefly, this system uses our unique “Idea Realization Continuum” to assist users in accomplishing and aligning their vision(s) – whether an organization, team, or an individual.
- 18) The “Goal Gauge” is a hand-held mechanical device, which will be converted to an electronic format. This device incorporates the critical success factors for goal accomplishment. Coupled with the proprietary “Failure Analysis” system for human endeavors (as opposed to mechanical failure analysis and physics/engineering design analysis techniques and processes) our system can aid an individual in diagnosing why a goal was not accomplished using the “critical failure factors” model.
- 19) Prior to establishing Omni for the development and marketing of the foregoing products, I had a business, The Gordon Group, that over an approximate ten year span, created training events for local organizations – among the training were Job Search, Life Skills, Self-Esteem, Motivation, Communications, and Diversity modules.
- 20) I produced three one-hour, primetime ABC-TV specials for KAPP & KVEW TV on employment and training issues in 1994-5.
- 21) I worked as a facilitator for the Entrepreneur Success Training workshops sponsored by Washington State University- Tri-Cities for over three years.

22) For five years, I operated my own online health and nutrition business, which sold products, worldwide.

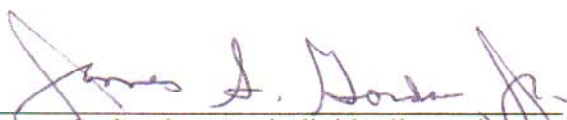
23) I volunteer as a mentor for minority males in middle and high schools in Pasco, WA – since 2001. The program is entitled Alpha Men of Tomorrow (AMOT) sponsored by the Pasco School District and Alpha Phi Alpha Fraternity, Inc.

24) I have volunteered as a facilitator for the women in transition workshop series entitled “Don’t Quit” – since 1990.

25) I have volunteered and served as the co-founder (one of four) and board member of Women Helping Women Fund (a 501c3) – Tri-Cities. For the last six years this organization has held an annual fundraiser – raising money (\$50k to \$80k at each luncheon) for women and children’s programs in the Tri-Cities.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

EXECUTED this 12th day of February , 2007


James S. Gordon, Jr., individually, and on behalf of Omni Innovations, LLC.

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February, 2007, I electronically filed DECLARATION OF JAMES S. GORDON, JR. IN RESPONSE AND OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Attorneys for Defendants: Derek A. Newman, Newman & Newman .

Robert J. Siegel, WSBA
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