

The Honorable John C. Coughenour

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

JAMES S. GORDON, Jr., a married individual, d/b/a 'GORDONWORKS.COM'; 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, 1-X,

Defendants.

NO. CV06-0204JCC

**DECLARATION OF STEVEN M. HAYES IN SUPPORT OF DEFENDANTS' MOTION FOR ATTORNEYS' FEES AND COSTS**

I, Steven M. Hayes, declare and testify as follows:

1. I am over eighteen years of age, competent to testify to the matters stated in this declaration, and make this declaration based upon personal knowledge.
2. Since 1974, I have been an attorney licensed to practice in New York State. I am admitted the U.S. District Court, Southern District of New York; U.S. Court of Appeals, Fifth and Eleventh Circuits.
3. I am a principal at the law firm of Hanly Conroy Bierstein Sheridan Fisher & Hayes LLP located at 112 Madison Avenue, New York, NY 10016-7416.

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4. Amongst other things, I serve as counsel to BMG Music Publishing NA Inc. ("BMG"). Plaintiffs OMNI Innovations LLC recently brought suit against BMG for violations of 15 U.S.C. § 7701 *et seq.* ("CAN-SPAM") and RCW § 19.190, *et seq.* (the "Washington CEMA"). In my capacity as counsel to BMG, I engaged in a search for local counsel to represent BMG in that lawsuit.

5. In my search for local counsel, I interviewed Newman & Newman, LLP and other law firms. I recommended that BMG hire Newman & Newman because of their unique and exceptional knowledge, skill and experience in litigating actions under CAN-SPAM and the Washington CEMA.

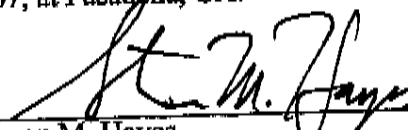
6. I have reviewed the rate sheet from Newman & Newman, LLP attached hereto as Exhibit A and find it to be reasonable and, to the best of my knowledge, consistent with the prevailing rates for attorneys in the Seattle legal community for matters of similar complexity, novelty and legal exposure.

7. I am generally familiar with the skill, expertise, and reputation of the attorneys at Newman & Newman, LLP and believe that they are particularly well-qualified to represent parties in complex technology litigation.

8. It is reasonable that they charge hourly rates of greater than \$350 for senior attorneys and \$200 per hour for junior attorneys.

I certify and declare under the penalty of perjury under the laws of the State of Washington and the United States that to my knowledge the foregoing is true and correct.

Executed on this 19<sup>th</sup> day of June, 2007, at Pasadena, CA.

  
Steven M. Hayes