

THE HONORABLE JOHN C. COUGHENOUR

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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

PROTECTIVE ORDER [PROPOSED]

STIPULATION


The preparation and trial of this action may involve the discovery of documents, information, and other materials that contain confidential and trade secret information belonging to Plaintiff and other parties, which, if disclosed to the public, the parties'

1 competitors, and, in some cases, to the parties themselves, may unfairly and adversely affect
2 competition. To expedite the flow of discovery material, facilitate the prompt resolution of
3 disputes over confidentiality, protect material entitled to be kept confidential, the parties
4 hereby stipulate and agree there is a need for a Protective Order in this case, and they further
5 consent and agree to entry of the following protective order pursuant to the Court's authority
6 under Fed. R. Civ. P. 26(c).
7

8 DATED this 24th day of August, 2006.

9
10 NEWMAN & NEWMAN, LLP
11 Attorneys for Defendants

MERKLE SIEGEL & FRIEDRICHSEN,
P.C.
Attorneys for Plaintiffs

12
13 By 
14 _____
Derek A. Newman, WSBA # 26967
Roger M. Townsend, WSBA # 25525

/s/ Robert Siegel with authorization
By _____
Robert J. Siegel WSBA# 17312

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17 **PROTECTIVE ORDER**

18 Pursuant to stipulation of counsel, and Fed. R. Civ. P. 26(c); it is hereby ORDERED, as
19 follows:

20 1. Except as otherwise ordered by this Court, this Order shall apply to all
21 documents, interrogatories, testimony, information and pleadings produced, given or filed in
22 this action which are designated by a party, including any third party, as "CONFIDENTIAL
23 INFORMATION" in accordance with the terms hereof.

24 2. Any party, including third parties, may designate as "CONFIDENTIAL
25 INFORMATION" pursuant to the terms of this Order:
26

1 (a) Information contained in a document, answer to interrogatory,
2 answer to request for admission, response to request for
3 production of documents or other writing may be designated by
4 stamping or otherwise marking (in such a manner as will not
5 interfere with the legibility of the document) the first page of the
6 document containing confidential information with an
7 appropriate notation substantially in the form:

8 **“CONFIDENTIAL INFORMATION”**

9 Unless a party intends to designate all of the information
10 contained within the document as “CONFIDENTIAL
11 INFORMATION,” the party should indicate in a clear fashion
12 that portion of the document which the party intends to designate
13 as containing “CONFIDENTIAL INFORMATION.” In any
14 court filing or written discovery response, the supplying party
15 shall note on the cover page of the document that all or a portion
16 of the document contains “CONFIDENTIAL INFORMATION”
17 designated pursuant to this Order and shall furnish such
18 information to the Clerk under seal pursuant to Paragraph (6)
19 hereof.

20 (b) Information contained or revealed in a deposition whether in a
21 question, answer or exhibit, may be designated by noting a claim
22 of confidentiality pursuant to this Order on the record at the time
23 of the depositions, whenever reasonably possible. The
24 confidential portion shall be identified as such in the caption or
25 title of the transcript and on each page, as CONFIDENTIAL.
26 The claimant of confidentiality or the person obligated to
maintain and protect confidentiality under this Order shall, on the
record, advise all persons present at the deposition that the
information is confidential and is subject to a Protective Order
governing its use. Before the disclosure of previously designated
CONFIDENTIAL INFORMATION in a deposition, all persons
who have not theretofore been made subject to this Order shall
be given a copy of this Order and shall acknowledge on the
record of such deposition that he or she has read the Order and
agrees to be bound by its terms. When the claim of
confidentiality is not made in advance of disclosure or at the time
of the deposition, it may be made within a reasonable time
thereafter, at which point the designated material shall be
accorded confidential treatment pursuant to this Order and
counsel for the party making the claim of confidentiality shall
ensure that the preceding provisions of this subparagraph
concerning the transcription and identification of confidential
material are complied with.

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2 3. The following types of information, if discoverable because such information is
3 necessary or essential to any claims or defenses in the action, shall be regarded as

4 “CONFIDENTIAL INFORMATION”:

- 5 (a) Any personally identifying information, including but not limited
6 to telephone numbers and e-mail addresses.
- 7 (b) Any agreements between Defendants, their vendors, customers or
8 other third parties, any financial or other terms therein, or the fact
9 of their existence.
- 10 (c) Any passwords to any accounts, intranet sites, FTP sites, domain
11 names or the like.
- 12 (d) To the extent discoverable, any information about, concerning, or
13 pertaining to Defendants’s business plans, assessment of the
14 market, its competition, its plans or strategies for meeting
15 competition, its prospective clients or customers, its marketing or
16 advertising plans, or any budget or other information about its
17 current, or planned or expected revenue, pricing policies, or costs
18 of operation.
- 19 (e) To the extent discoverable, any document that a party, including
20 any third party, designates as “CONFIDENTIAL
21 INFORMATION” subject to the right of a party to challenge
22 such CONFIDENTIAL INFORMATION designation pursuant to
23 paragraph 10 of this Order.

24 4. “CONFIDENTIAL INFORMATION” subject to this Order shall be used solely
25 and exclusively for purposes of this case in accordance with the provisions of this Order. Such
26 information shall not be used in or for other cases, proceedings, or disputes, or for any
personal, commercial, business, competitive, or other purpose whatever.

5. It is the responsibility of counsel for each party to this action to maintain
materials containing CONFIDENTIAL INFORMATION obtained from a party in a secure and

1 appropriate manner so as to allow access to CONFIDENTIAL INFORMATION only to such
2 persons as permitted pursuant to Paragraphs 7, 8 and 9 of this Order.

3 6. To the extent that CONFIDENTIAL INFORMATION is contained in or
4 attached to materials filed with the Court, such materials shall be filed under seal and shall be
5 maintained in a secure, segregated facility. No one, other than the Court, its agent and
6 employees, and persons authorized by this Order or any subsequent order of the Court or
7 agreement of the parties, shall have access to such sealed materials.

9 7. Except with the prior written consent of the party asserting confidential
10 treatment or prior Order of Court, after notice as provided hereunder, any CONFIDENTIAL
11 INFORMATION, and any information contained in, or derived from, any such information,
12 may not be disclosed other than in accordance with this Order and may not be disclosed to any
13 person other than:
14

- 15 (a) No more than three (3) employees of each party, solely for the purpose
16 of the prosecution, defense, and/or appeal of this action, provided that
17 the requirements of paragraph 8 are met. The two identified employees
18 of each party cannot be changed during the pendency of the litigation
19 unless their employment terminates, in which case they may be replaced
20 by another employee of the relevant party.
- 21 (b) Counsel for the parties, including in-house counsel, counsel for
22 any insurer, indemnitor, indemnitee, or other counsel in which
23 the communication is privileged. Counsel, as used in this
24 Protective Order, shall include partners, associates, paralegals,
25 and secretarial and clerical employees of such counsel who have
26 a need to know CONFIDENTIAL INFORMATION for purposes
of this litigation only, and who shall be required to abide by the
terms of this Protective Order.
- (c) Bona fide independent experts who are not employed by a party
in this litigation and who have agreed to be bound by the terms of
this Protective Order.

1 (d) The Court and Court Personnel under such safeguards as the
2 Court may direct so as to preserve and protect the confidentiality
3 of information designated by any party and to prevent harm to
any party.

4 (e) Any deposition or trial witnesses and their counsel of record, but
5 only to the extent that such CONFIDENTIAL INFORMATION
6 was written by or to such witness, refers to such witness or his
7 employer, and where counsel believes in good faith that
disclosure is necessary in connection with the examination or
preparation of such witnesses.

8 ALL PERSONS TO WHOM CONFIDENTIAL INFORMATION AND/OR
9 DOCUMENTS ARE DISCLOSED ARE HEREBY ENJOINED from using same except in
10 the preparation for trial and trial of this action (under such safeguards as the Court may
11 require) and from disclosing same to any other person except as provided herein. No
person receiving or reviewing such CONFIDENTIAL INFORMATION shall disclose it or
its contents to any person other than those described in this paragraph and for the purposes
specified and in no event shall such person make any other use of such document or
transcript.

12 8. Any person who is given access to Confidential Information pursuant to
13 paragraph 7 shall, prior to being given any such material, be informed of the provisions of this
14 Order, read this Order, and execute a sworn declaration, in the form annexed hereto as Exhibit
15 A, indicating that he or she has read this Order and will abide by its terms. The original of
16 such sworn statements shall be retained by counsel for each party who intends to or does
17 provide such persons any such material, until the conclusion of this action, including any
18 appeals. At such time, counsel for each party shall serve a copy of such declarations upon
19 counsel for each other party. The parties agree not to use these declarations for any purpose
20 other than monitoring and enforcing compliance with this Order. The parties further agree to
21 treat the declarations as "Confidential" material within the meaning of this Order.
22

23 9. If a producing party desires to obtain confidentiality protections other than those
24 provided by this Order with respect to specific information or categories of information, it shall
25 advise the obtaining party of the protections desired and the information to which the same
26

1 shall be applicable. If the parties fail to agree concerning the confidential treatment sought,
2 after conferring in good faith with respect thereto, then the parties shall proceed in accordance
3 with Paragraphs 10 or 11 of this Order and the subject information shall be produced in
4 accordance with the Order of Court resulting from such procedures.

5 10. Any party shall be free to move to modify this Order.

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7 11. Any party who wishes to challenge another party's designation of information
8 as "CONFIDENTIAL INFORMATION" may proceed as follows:

- 9 (a) Counsel for such parties shall confer in a good faith effort to
10 resolve by agreement any differences as to the use or designation
11 of information as "CONFIDENTIAL INFORMATION";
- 12 (b) Failing agreement of the parties, the objecting party may file an
13 appropriate motion with the Court with respect to the information
14 in question and shall:
- 15 (i) Certify that he or she has sought in good faith to confer
16 with opposing counsel and has been unable to resolve the
17 dispute by agreement;
- 18 (ii) Identify by category or document number the information
19 as to which relief is sought; and
- 20 (iii) Identify the reasons why such information is not or
21 should not be treated as CONFIDENTIAL
22 INFORMATION pursuant to the terms of this Order.
- 23 (c) Within seven business days, the party designating such
24 information as CONFIDENTIAL shall respond to the motion by:
- 25 (i) Showing with particularity with respect to each
26 challenged item of confidential information the reasons
why such information has been properly designated as
"CONFIDENTIAL INFORMATION"; and
- (ii) Showing why the further disclosure or use of the
particular information might result in harm or injury to
the designating party.

1 (d) If a response is timely made as provided in Paragraph 9(c), until
2 the application for modification with respect to specific
3 "CONFIDENTIAL INFORMATION" is ruled upon by the
4 Court, the designation of confidentiality shall remain in full force
and effect and the information shall continue to be accorded the
treatment required by this Order.

5 12. A failure to challenge the propriety of a designation of confidentiality at the
6 time the designation is made shall not preclude or detract from a subsequent challenge thereto.

7 13. All materials containing CONFIDENTIAL INFORMATION that are submitted
8 to the Court or used in any pretrial proceeding before this Court shall remain confidential and
9 shall be accorded in camera treatment.
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11 14. Within ten (10) days after the conclusion of this case, including any appellate
12 proceedings, all confidential materials obtained (including copies thereof) shall be destroyed or
13 returned to the producing party, at the election of the opposing party. All notes, drafts,
14 memoranda, work papers and other materials that contain confidential information obtained
15 from a party (whether prepared by outside counsel, in-house attorneys, or other persons
16 specified in this Order), may be destroyed or retained by outside counsel for the obtaining
17 party, and, if so retained, shall be preserved as confidential in accordance with the terms of this
18 Order. Compliance with this paragraph shall be confirmed in an affidavit.
19

20 15. The inadvertent or unintentional disclosure of confidential information shall not
21 be construed to be a waiver, in whole or in part, of:

22 (a) The supplying party's claims of confidentiality either as to the specific
23 information disclosed or as to any other information relating thereto;

24 (b) The obtaining party claims of confidentiality for its information pursuant
25 to this Order.
26

1 16. A breach of the provisions of this Protective Order shall be subject to sanctions,
2 in the discretion of the Court, as authorized by any statute, rule or inherent power of the Court,
3 or as otherwise provided by law.

4 17. The provisions of this Order shall survive and remain in full force and effect
5 after the entry of final judgment (including any appellate proceedings) in this case, whether by
6 settlement or litigation.

7 18. The agreement of the parties embodied in this Order does not constitute an
8 admission or agreement that any document or information is subject to discovery, or is
9 admissible as evidence, in this case. Designation of any information as subject to this Order
10 shall have no meaning or effect whatsoever with respect to the substantive issues in this
11 proceeding or the claims or defenses of any party hereto.

12 19. This Court retains jurisdiction, both before and after the entry of final judgment
13 in this case (whether by settlement or litigation), to construe, enforce and amend the provisions
14 of this order. The treatment of confidential information to be introduced at trial shall be the
15 subject of a later order.

16 20. This Protective Order is entirely without prejudice to the rights of any nonparty
17 to apply to the Court for any further Protective Order relating to any CONFIDENTIAL
18 INFORMATION, or for an order permitting the disclosure of any CONFIDENTIAL
19 INFORMATION.
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DATED this ____ day of _____, 2006.


THE HONORABLE JOHN C. COUGHENOUR
UNITED STATES DISTRICT JUDGE

Presented by:

MERKLE SIEGEL & FRIEDRICHSEN, P.C.
Attorneys for Plaintiff

By: /s/ Robert Siegel with authorization
Robert J. Siegel WSBA# 17312

NEWMAN & NEWMAN, LLP
Attorneys for Defendants

By: 
Derek A. Newman, WSBA # 26967
Roger M. Townsend, WSBA # 25525