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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 MICHAEL R. GEROE IN SUPPORT OF DEFENDANTS' MOTION FOR AN UNDERTAKING

NOTE ON MOTION CALENDAR:
November 17, 2006

I, Michael R. Geroe, swear under penalty of perjury under the laws of the United States of America to the following:

1. I am General Counsel and an Officer of Defendant Adknowledge, Inc. ("Adknowledge"), am over age 18, and competent to be a witness. I am making this Declaration based on facts within my own personal knowledge.

1 **ADKNOWLEDGE EMAILS**

2 2. The Las Vegas Weddings Email. I reviewed the Adknowledge Rewards
3 email promoting Las Vegas weddings, attached as Exhibit G to the Declaration of Roger
4 Townsend filed in support of Defendants’ Motion for an Undertaking in the above-
5 referenced lawsuit (the “Las Vegas Weddings Email”). The Las Vegas Weddings Email
6 reflects that it originated from an email address at the domain name,
7 <adknowledgemail.com>.

8 3. Adknowledge is the registrant of the domain name,
9 <adknowledgemail.com>. Attached hereto as Exhibit A is a WHOIS record reflecting
10 that Adknowledge is the registrant of <adknowledgemail.com>. The WHOIS record
11 includes the name and correct mailing address of Adknowledge as “Adknowledge”
12 located at 4600 Madison, Kansas City, MO 64112. Adknowledge has permission to use
13 that domain name to identify itself as the sender of messages from the
14 <adknowledgemail.com> domain.

15 4. Additionally, Adknowledge is the registrant of two other domain names
16 contained in the Las Vegas Weddings Email’s transmission path, <ak-networks.com> and
17 <adknownet.com>. Attached hereto as Exhibits B and C are the WHOIS records
18 reflecting that Adknowledge is the registrant of <ak-networks.com> and
19 <adknownet.com>. As the registrant of those domain names Adknowledge has
20 permission to access those domain names for purposes of routing email and they do not
21 mislead as to transmission path.

22 5. The Las Vegas Weddings Email also contains a link for a recipient to
23 unsubscribe from future Adknowledge Rewards emails. I reviewed Exhibit H to the
24 Declaration of Roger Townsend and recognize this as the Adknowledge unsubscribe
25 webpage. When a user types an email address into the Adknowledge unsubscribe
26 webpage and then clicks on the “Unsubscribe” link, that email address is blocked from
27 receiving future emails from Adknowledge Rewards.

1 6. The Las Vegas Weddings Email contains Adknowledge’s physical postal
2 address in Kansas City, Missouri.

3 7. Finally, the Las Vegas Weddings Email was created and transmitted as part
4 of a specific campaign promoting Las Vegas tourism. The “from” line which identifies
5 Adknowledge and “Las Vegas Weddings” as the sender is not misleading as it accurately
6 identifies the campaign for which the message was sent.

7 8. Life Insurance Email. I reviewed the Adknowledge Rewards email
8 promoting life insurance, attached as Exhibit I to the Declaration of Roger Townsend
9 filed in support of Defendants’ Motion for an Undertaking in the above-referenced
10 lawsuit (the “Life Insurance Email”). Like the Las Vegas Weddings Email, the Life
11 Insurance Email reflects that it originated from an email address at the domain name,
12 <adknowledgemail.com>.

13 9. The Life Insurance Email also contains a link for a user to unsubscribe from
14 future Adknowledge Rewards emails. I reviewed Exhibit J to the Declaration of Roger
15 Townsend and recognize this as the Adknowledge unsubscribe webpage. When a user
16 types an email address into the Adknowledge unsubscribe webpage and then clicks on the
17 “Unsubscribe” link, that email address is blocked from receiving future Adknowledge
18 Rewards emails.

19 10. The Life Insurance Email contains Adknowledge’s physical postal address
20 located in Kansas City, Missouri.

21 11. Finally, the Life Insurance Email was created and transmitted as part of a
22 specific ad campaign promoting life insurance products. The “from” line accurately
23 identifies Adknowledge and “LifeInsuranceNow” as the campaign for which the message
24 was sent.

25 12. San Diego Tourism Email. I reviewed the Adknowledge Rewards email
26 promoting “San Diego Tourism,” attached as Exhibit K to the Declaration of Roger
27 Townsend filed in support of Defendants’ Motion for an Undertaking in the above-
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1 referenced lawsuit (the “San Diego Tourism Email”). Like the Las Vegas Weddings
2 Email and the Life Insurance Email, the San Diego Tourism Email reflects that it
3 originated from an email address at the domain name, <adknowledgemail.com>.
4 Adknowledge has permission to use that domain name to identify itself as the sender of
5 the message.

6 13. Additionally, all but one of the domain names in the transmission path are
7 also <adknowledgemail.com>. Adknowledge has permission to access those domain
8 names for purposes of routing email and they do not mislead as to origination.

9 14. The San Diego Tourism Email also contains a link for the user to
10 unsubscribe from future emails from Adknowledge Rewards. I reviewed Exhibit L to the
11 Declaration of Roger Townsend and recognize this as the Adknowledge unsubscribe
12 webpage. When a user types an email address into the Adknowledge unsubscribe
13 webpage and then clicks on the “Unsubscribe” link, that email address is blocked from
14 receiving future emails from Adknowledge Rewards.

15 15. The San Diego Tourism Email contains Adknowledge’s valid physical
16 postal address located in Kansas City, Missouri.

17 16. Finally, San Diego Tourism Email was created and transmitted as part of a
18 specific promotion for hotels in and travel arrangements to San Diego. The “from” line
19 accurately identifies Adknowledge and “San Diego Tourism” as the ad campaign for
20 which the message was sent.

21 **PLAINTIFFS’ IP ADDRESS AND OPT-IN INFORMATION**

22 17. Attached hereto as Exhibit D is a true and correct copy of an Excel
23 spreadsheet which accurately reflects information obtained, stored and maintained in the
24 normal course of business in the Adknowledge central database. Exhibit D was created
25 by filtering information related to users with email addresses at the domain name,
26 <gordonworks.com>.

27 18. Exhibit D is significant for two reasons. First, the Exhibit indicates that the
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1 users of the email addresses at james@gordonworks.com, faye@gordonworks.com,
2 jamila@gordonworks.com, jonathan@gordonworks.com, jay@gordonworks.com,
3 emily@gordonworks.com, msm@gordonworks.com, and jim@gordonworks.com all
4 affirmatively consented to receive emails from Adknowledge or one of Adknowledge's
5 co-registration partners. Exhibit D reports the time and date that the consent occurred
6 along with the users's email address and the IP address of the computer from which the
7 consent occurred. It further reports any data, such as name, birth date, and postal address
8 that was provided by the user in the course of signing up to receive emails.

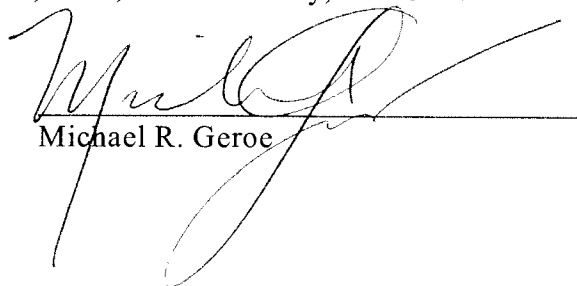
9 19. Second, and more specifically, Exhibit D provides the dates and Internet
10 protocol ("IP") addresses recorded when the users of the domain <gordonworks.com>
11 consented to receive emails from Adknowledge. The IP addresses for the listed account
12 holders at <gordonworks.com> are all either <4.5.74.214> or <4.5.88.163>.

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14 **UNRELATED EMAILS**

15 20. To my knowledge, Adknowledge has never sent emails from the domain
16 names <msdsa.com>, <prefersend.com>, or <ew01.com>. Adknowledge is not the
17 registrant of those domain names and has no control over emails sent from email accounts
18 located at those domain names.

19 21. To my knowledge, Adknowledge has no relationship with Linkz Internet
20 Services, WKI Data, or NOLDC, Inc.

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22 DATED this 2nd day of November, 2006, at Kansas City, Missouri.

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25 Michael R. Geroe
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