

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  
SHOPMAKER IN SUPPORT OF  
DEFENDANTS' MOTION FOR AN  
UNDERTAKING**

NOTE ON MOTION CALENDAR:  
November 17, 2006

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

1. I am President & CEO of Defendant Virtumundo, Inc. ("Virtumundo"), am over age 18, and competent to be a witness. I am making this Declaration based on facts within my own personal knowledge.

**VIRTUMUNDO EMAILS**

2. The Scooters Unlimited Email. I have reviewed the email from “Scooters Unlimited”, attached as Exhibit A to the Declaration of Roger Townsend filed in support of Defendants’ Motion for an Undertaking in the above-referenced lawsuit. (the “Scooters Unlimited Email”). The Scooters Unlimited Email provides that it originated from an email address at the domain name, <vmadmin.com>.

3. Virtumundo is the registrant of the domain name, <vmadmin.com>. Thus, Virtumundo has permission to use that domain name to send messages from the <vmadmin.com> domain.

4. Attached hereto as Exhibit A is a true and accurate WHOIS record reflecting that Virtumundo is the registrant of <vmadmin.com>. The WHOIS record includes the true and correct mailing address of Virtumundo at 8400 W 110th St., Suite 330, Overland Park, KS 66210 and accurately identifies the Registrant as Virtumundo.

5. The Scooters Unlimited Email also contains two unsubscribe mechanisms in the body of the message, one directed at the advertiser, Scooters Unlimited, and one directed at Virtumundo.

6. I have reviewed Exhibit B to the Declaration of Roger Townsend and recognize this as the Virtumundo unsubscribe webpage. When the user types an email address into the Virtumundo webpage and then clicks on the “Unsubscribe” link, that email address is blocked from receiving future emails from Virtumundo.

7. The Scooters Unlimited Email includes the correct physical postal addresses for Virtumundo in Overland Park, Kansas.

8. The Scooters Unlimited Email was created and transmitted as part of a promotion with one of our customers, Scooters Unlimited. Thus, the “from” line which identifies “Scooters Unlimited” as the sender is not misleading.

9. The First Premier Bank Email. I have reviewed the email from “First Premier Bank”, attached as Exhibit C to the Declaration of Roger Townsend filed in

1 support of Defendants' Motion for an Undertaking in the above-referenced lawsuit. (the  
2 "First Premier Bank Email"). Like the Scooters Unlimited Email, the First Premier Bank  
3 Email provides that it originated from an email address at the domain name,  
4 <vmadmin.com>. Thus, Virtumundo has permission to use that domain name to send  
5 messages from the <vmadmin.com> domain.

6 10. The Premier Bank Email also contains two unsubscribe mechanisms in the  
7 body of the message, one directed at the advertiser, Premier Bank, and one directed at  
8 Virtumundo.

9 11. I have reviewed Exhibit D to the Declaration of Roger Townsend and  
10 recognize this as the Virtumundo unsubscribe webpage. When the user types an email  
11 address into the Virtumundo webpage and then clicks on the "Unsubscribe" link, that  
12 email address is blocked from receiving future emails from Virtumundo.

13 12. The Premier Bank Email includes the correct physical postal addresses for  
14 Virtumundo in Overland Park, Kansas.

15 13. The Premier Bank Email was created and transmitted as part of a promotion  
16 with one of our customers, First Premier Bank. Thus the "from" line which identifies  
17 "First Premier Bank" as the sender is not misleading.

18 14. The University of Phoenix Email. I have reviewed the email from  
19 "University of Phoenix", attached as Exhibit E to the Declaration of Roger Townsend  
20 filed in support of Defendants' Motion for an Undertaking in the above-referenced  
21 lawsuit. (the "University of Phoenix Email"). Like the Scooters Unlimited Email and the  
22 First Premier Bank Email, the University of Phoenix Email provides that it originated  
23 from an email address at the domain name, <vmadmin.com>. Thus, Virtumundo has  
24 permission to use the domain name as the sender of the message.

25 15. The University of Phoenix Email also contains two unsubscribe  
26 mechanisms in the body of the message, one directed at the advertiser, University of  
27 Phoenix, and one directed at Virtumundo.

1 16. I have reviewed Exhibit F to the Declaration of Roger Townsend and  
2 recognize this as the Virtumundo unsubscribe webpage. When the user types an email  
3 address into the Virtumundo webpage and then clicks on the "Unsubscribe" link, that  
4 email address is blocked from receiving future emails from Virtumundo.

5 17. The University of Phoenix Email includes the correct physical postal  
6 addresses for Virtumundo in Overland Park, Kansas.

7 18. The University of Phoenix Email was created and transmitted as part of a  
8 promotion with one of our customers, The University of Phoenix. Thus the "from" line  
9 which identifies "University of Phoenix Online" as the sender is not misleading.

10  
11 **PLAINTIFFS' IP ADDRESS AND OPT-IN INFORMATION**

12 20. Attached hereto as Exhibit B is a true and accurate copy of computer print  
13 out created in the normal course of business which reflects information in the Virtumundo  
14 central database. Exhibit B was created by filtering all information related to users with  
15 email addresses at the domain name, <gordonworks.com>.

16 21. Exhibit B is significant for two reasons. First, the Exhibit indicates that the  
17 users of the email addresses at james@gordonworks.com, faye@gordonworks.com,  
18 jamila@gordonworks.com, jonathan@gordonworks.com, jay@gordonworks.com,  
19 emily@gordonworks.com, msm@gordonworks.com, and jim@gordonworks.com all  
20 affirmatively consented to receive emails from Virtumundo or one of Virtumundo's co-  
21 registration partners. Exhibit B demonstrates the date that the consent occurred, the  
22 users's name, the co-registration partner (if applicable) from which consent was received,  
23 the cite and state of the user, and the IP address of the computer from which they  
24 consented. All of this information would have been provided by the users in the normal  
25 course of signing up to receive Virtumundo emails.

26 22. Exhibit B is further significant because it provides the dates and Internet  
27 protocol ("IP") addresses recorded when the email account holders at  
28

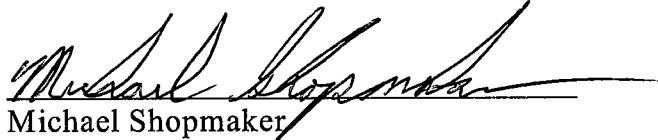
1 <gordonworks.com> consented to receive emails from Virtumundo. The IP addresses for  
2 the listed account holders at <gordonworks.com> are all either <4.5.74.214> and  
3 <4.5.88.163>.

4  
5 **UNRELATED EMAILS**

6 23. To my knowledge, Virtumundo has never sent emails from the domain  
7 names <msdsa.com>, <prefersend.com>, or <ew01.com>. Virtumundo is not the  
8 registrant of those domain names and has no control over emails sent from email accounts  
9 located at those domain names.

10 24. To my knowledge, Virtumundo has no relationship with Linkz Internet  
11 Services, WKI Data, or NOLDC, Inc.

12 DATED this 1<sup>st</sup> day of November, 2006, at Overland Park, Kansas

13  
14   
15 Michael Shopmaker