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3 (206) 624-9392

THE HON. JOHN C. COUGHENOUR

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9 UNITED STATES DISTRICT COURT  
10 WESTERN DISTRICT OF WASHINGTON, SEATTLE

11 **JAMES S. GORDON, Jr., a married**  
**individual, d/b/a**  
12 **'GORDONWORKS.COM'; OMNI**  
**INNOVATIONS, LLC., a Washington**  
13 **limited liability company,**

14 **Plaintiffs,**

15 v.

16 **VIRTUMUNDO, INC, a Delaware**  
**corporation, d/b/a**  
17 **ADNOWLEDGEMAIL.COM;**  
**ADKNOWLEDGE, INC., a Delaware**  
18 **corporation, d/b/a**  
**ADKNOWLEDGEMAIL.COM;**  
19 **SCOTT LYNN, an individual; and**  
20 **JOHN DOES, I-X,**

21 **Defendants.**

NO. CV06-0204JCC

**[PROPOSED]**  
**ORDER GRANTING PLAINTIFFS'**  
**MOTION FOR PARTIAL**  
**SUMMARY JUDGMENT**

22 **THIS MATTER** having come before the Court by Plaintiffs' Motion For Partial  
23 Summary Judgment, and the Court, having considered all moving and responsive pleadings, and  
24 being otherwise fully apprised, makes the following findings:

25  
ORDER GRANTING PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
GORDON v. VIRTUMUNDO GROUP, INC.

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1. That no genuine issue of material fact exists with regard to the issues raised by Plaintiffs in their Motion, and that Plaintiffs are entitled to summary judgment;
2. That Defendant Virtumundo sent, and/or initiated the commercial emails which are the subject of the Motion;
3. That Plaintiffs were the recipients of the subject emails sent and/or initiated by Defendant Virtumundo;
4. That Plaintiffs qualify as an “internet access service” under the Can-Spam Act, and as an “interactive computer service” under the Washington CEMA;
5. That the individual email users who were the recipients of the commercial emails sent and/or initiated by Defendant, and who accessed their email accounts through Plaintiffs’ domains, or through their own domains accessed through Plaintiff Omni’s internet server were, at all times relevant hereto, Washington residents whose residency information was publicly available through their domain registrars, and/or from each as the domain registrant;
6. That the subject emails sent and/or initiated by Defendant violated the Can-Spam Act of 2003 (15 U.S.C. 7701, et seq), as the information Defendant used in the “From” line did not accurately identify the sender of the email, and therefore contained materially misleading information in the email header;
7. That Defendant’s conduct in using materially misleading information in the headers of the subject emails exhibits a pattern of conduct that was purposeful, willful and intentional;

1 8. That the subject emails sent and/or initiated by Defendant violated the  
2 Washington CEMA (RCW 19.190.020) as Defendant's placing materially  
3 misleading information in the header unlawfully obscured the point of origin  
4 and/or transmission path of the subject emails;  
5

6 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff's Motion is  
7 granted, and Plaintiffs are granted judgment against Defendant Virtumundo, Inc. as follows:

8 1. For judgment under 15 USC 7706(g)(3)(A)(ii) and 15 USC 7706(g)(3)(C)(i) for  
9 \$300 for each of the 7,890 violating emails in the amount of \$2,367,000  
10

11 **AND IT IS FURTHER ORDERED**, that Plaintiffs are granted judgment for violations  
12 of the Washington CEMA (RCW 19.190.040(2)) for \$1,000 for each of the 7,890 violating  
13 emails in the amount of \$7,890,000;  
14

15 **AND IT IS FURTHER ORDERED**, that Plaintiffs are awarded their reasonable costs  
16 and attorney fees under both statutes. Plaintiffs to submit a cost bill and statement of their  
17 attorney fees by \_\_\_\_\_, 2007.  
18

19 DONE IN OPEN COURT this \_\_\_\_\_ day of \_\_\_\_\_, 2007.  
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21 \_\_\_\_\_  
22 The Hon. Judge John C. Coughenour  
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**RESPECTFULLY SUBMITTED,**

DOUGLAS E. MCKINLEY, JR.  
Attorney at Law

MERKLE SIEGEL & FRIEDRICHSEN, P.C.

/S/ Douglas E. McKinley, Jr.  
Douglas E. McKinley, Jr., WSBA #20806

/S/ Robert J. Siegel  
Robert J. Siegel, WSBA #17312

Certificate of Service

I, hereby, certify that on December 18, 2006, I filed this affidavit with this Court via approved electronic filing, and served the following:  
Attorneys for Defendants: Derek A. Newman, Newman & Newman.

\_\_\_\_\_  
Adana Lloyd