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THE HON. JOHN C. COUGHENOUR

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',**

13 **Plaintiff,**

14 v.

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

20 **Defendants.**

**NO. CV06-0204JCC**

**DECLARATION OF JAMES S.  
GORDON, JR. IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

21 James S. Gordon, Jr. declares as follows:

- 22 1) I, James S. Gordon, Jr., am the Plaintiff in the above captioned lawsuit. I am  
over the age of 18, of sound mind, and am otherwise competent to testify.  
23 2) I am and have been the owner of the domain name Gordonworks.com, which I  
24 registered on or about May 1998.  
25

DECLARATION OF JAMES S. GORDON, JR. IN SUPPORT  
OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY  
JUDGMENT  
GORDON v. VIRTUMUNDO GROUP, INC. - 1

**MERKLE SIEGEL & FRIEDRICHSEN**  
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- 1 3) At the time I registered the 'Gordonworks.com' domain, I listed my home address  
2 in Washington State and home telephone number as both the administrative  
3 contact and registrant with One World Telecommunications (OWT) in Kennewick,  
4 WA, who handled the domain registration for me.
- 5 4) From that time forward, the domain registration has always reflected my home  
6 address in Washington State and my home telephone number as both the  
7 administrator and registrant, which information has always been available to  
8 anyone who would inquire.
- 9 5) Beginning on or about May 1998, I placed content on a server connected to the  
10 Internet accessible to the general public at the Gordonworks.com domain. This  
11 content included job-search information and resources for small business.  
12 Included within this information were reciprocal links from institutions such as  
13 colleges and universities, employment related agencies in five different states,  
14 and the Federal Small Business Administration. By "reciprocal" links, I mean that  
15 not only did I have links to these institutions and agencies, but also that these  
16 institutions and agencies had links on their websites to my website at  
17 Gordonworks.com. As a result of these interactive reciprocal links,  
18 Gordonworks.com served as a clearinghouse for job-search information and  
19 small business resources on the World Wide Web.
- 20 6) At all times relevant to this action, I leased the server space that hosted the  
21 Gordonworks.com domain and content placed thereon, and have maintained  
22 control of this content and leased space continuously through to the present.  
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- 1 7) By September 2003, I had provided numerous e-mail accounts using the  
2 Gordonworks.com domain name to various individuals. All of these e-mail  
3 accounts could be accessed by these individuals using the World Wide Web.
- 4 8) As a consequence of providing these email addresses, building web sites for  
5 others, and maintaining a website that acts as a clearinghouse for job-search  
6 information and small business resources on the World Wide Web, I believe that  
7 I qualify as an "internet access service" and "interactive computer service".
- 8 9) Unfortunately, many of these e-mail accounts were inundated with commercial  
9 electronic mail messages, rendering them unusable. As a result, I took over the  
10 administration of those e-mail accounts and began directly receiving the e-mail  
11 sent thereto.
- 12 10) The first email from the Defendants was received on or about September 4,  
13 2003. This email was sent to the email address "james@gordonworks.com."
- 14 11) Subsequently, in September of 2003 while researching online offers, I entered  
15 the email addresses james@gordonworks.com and jay@gordonworks.com at a  
16 website found at "emailprize.com" which promised to provide free merchandise.  
17 And in September of 2003 I also entered the email addresses  
18 faye@gordonworks.com, jamila@gordonworks.com,  
19 jonathan@gordonworks.com, and emily@gordonworks.com at a similar website,  
20 also offering free merchandise.
- 21 12) With the exception of these six email addresses in September of 2003, I never  
22 agreed to receive email, or "opted-in," to any email lists using any other email  
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1 addresses at the gordonworks.com domain, which are the subject of the instant  
2 action.

3 13) None of the promised free merchandise was ever received.

4 14) Within a few weeks of entering the email addresses mentioned at the website  
5 found at "emailprize.com," and the similar website, also offering free  
6 merchandise, I contacted these websites and requested that they remove these  
7 email addresses from their lists, also known as "opting out" or "unsubscribing",  
8 although I never intended to "opt-in", or "subscribe" to begin with.

9 15) **Exhibit "A"** is printed version of the emails at issue in this Motion, including the  
10 header information from those emails. In some cases, the email headers  
11 presented are not in the exact form they were sent by the Defendant because my  
12 computer runs a spam filter program SpamAssassin, which automatically adds a  
13 notation in the subject line of the *printed* header indicating that the email is  
14 identified as spam, which appears as follows: (\*\*\*\*SPAM\*\*\*\*). However, the  
15 "From" line in these emails is not altered by the SpamAssassin program.

16 16) Attached as **Exhibit "B"** are true and correct copies of some of Virtumundo's  
17 own internal corporate emails, produced in their discovery responses, which  
18 indicate the proper use of "From" names in the "From" line, and showing that they  
19 are well aware of and capable of properly using the "From" name information by  
20 accurately identifying the actual sender of their emails.  
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1 17) Attached as **Exhibit "C"** are true and correct copies of screenshots taken from  
2 my computer showing the emails from Exhibit A as they actually appear in my  
3 Eudora email inbox.

4 18) I am personally familiar with the following email programs, and can testify based  
5 on my personal knowledge that all of these email clients display only the "From"  
6 name in the inbox of the user in the standard or default configuration: Eudora;  
7 Microsoft Outlook; Microsoft Hotmail; Yahoo Mail; Google G-mail. Attached  
8 hereto as **Exhibit "D"** is an article from EmailLabs, which confirms this.

9 19) Attached as **Exhibit "E"** is a true and correct copy of an article from Constant  
10 Contact, a leading email marketing industry publication, I obtained on the internet  
11 as part of my research, indicating the importance of the information placed in the  
12 "From" line in an email user's determination of whether or not to delete, or open  
13 an email.

14 20) Attached as **Exhibit "F"** is a true and correct copy of a technical advisory from  
15 Microsoft Corp. published on the Web regarding the vulnerability of email users  
16 to malware (virus, worms, trojans, adware) caused by merely opening certain  
17 emails.

18 21) In my research on the internet I came to know of a well known email virus by the  
19 name of "VirtuMundo". Attached hereto as **Exhibit "G"** is a true and correct  
20 copy of an article published on the internet titled Top 100 parasites of 2005  
21 referring to that virus.  
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1 22) **Exhibit "H"** attached hereto is a true and correct copy of the response I received  
2 to the request I sent to "emailprize.com" asking them to remove the email  
3 address james@gordonworks.com from their lists, indicating that I had  
4 successfully "unsubscribed" or "opted-out".

5 23) Similar responses to that shown in Exhibit G were received in response to my  
6 request to remove the other email addresses mentioned above. Unfortunately,  
7 however, I did not retain records of those responses.

8 24) Despite my "opting out" and requesting that no further emails be sent, I have  
9 continued to receive emails at the noted addresses sent by the Defendants.

10 25) Beginning on or about February 15, 2004, I configured the email server hosting  
11 my 'gordonworks.com' domain to provide an automated response a/k/a  
12 "Autoresponder" to any and all commercial electronic mail. A copy of that  
13 automated response is attached hereto as **Exhibit "I"**. By this means, I have  
14 personally on behalf of 'gordonworks.com sent approximately 11 direct email  
15 requests to Virtumundo to cease and desist and to stop transmission of all email  
16 to me. I sent those requests to: abuse@virtumundo.com, legal@virtumundo.com,  
17 postmaster@virtumundo.com, webmaster@virtumundo.com. However, the  
18 majority of the hundreds of cease and desist emails were sent to email  
19 addresses at the following domains which are owned by defendants, vm-  
20 mail.com, vmadmin.com, adknowledgmail.com, vmlocal.com (shut down),  
21 adknow-net.com, and vtarget.com.

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24 26) Due to the voluminous number of spams received from Defendants, a precise  
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1 number has been difficult to ascertain, and I apologize to the Court for having  
2 stated differing numbers at different times in this litigation. Defendants continued  
3 to send spam emails to me up until November 30, 2006 even during the  
4 pendency of this litigation. The most recent count, after making my best effort to  
5 further sort and delete any duplicates appears to be 13,800 emails. Due to the  
6 limited technological resources available to me as a small business, the sheer  
7 volume of the spam sent by Defendants has made it extremely difficult to  
8 manage, and has cost me untold hours of manpower, and substantial resources.

9 **27)** Attached as **Exhibit "J"** is a true and correct copy of an article published on the  
10 Web regarding defendant Virtumundo's annual revenues.

11 **28)** Attached as **Exhibit "K"** is a document from defendant Virtumundo received in  
12 discovery responses purporting to be their Policy on Can-Spam, again showing  
13 their knowledge about the issues raised in this Motion.

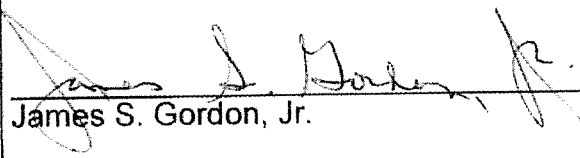
14 **29)** Attached as **Exhibit "L"** is a true and correct copy of another internal  
15 Virtumundo document produced in their discovery responses entitled "Email  
16 Creatives", which also shows that they are well aware of the proper use of the  
17 "From" field.

18 **30)** Attached as **Exhibit "M"** is a true and correct copy of a document published by  
19 Email Sender & Provider Coalition (ESPC) entitled "ESPC Best Practices Guide".  
20 ESPC is an organization that Defendants claim to be members of, which (under  
21 the section entitled Maximize Recognition) again indicates Defendants'  
22 knowledge of such best practices, i.e., "Consistently use standard and  
23 recognizable From addresses, From names, and clear subject lines."  
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Pasco, WA 99301  
509-210-1069

EXECUTED this 18th day of December, 2006

  
James S. Gordon, Jr.

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: Newman & Newman, Derek Newman

  
Adana Lloyd