

JAMES S. GORDON, JR. vs.
VIRTUMUNDO, INC., et al

12-15-2006
ROUGH DRAFT - BRETT BREWER

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1 with subscribe, would that be correct?

2 A. Basically, yes.

3 Q. Okay. So if one of these individuals who are
4 connected with one of these e-mail addresses in
5 Exhibit No. 4 opted out or attempted to opt out
6 at one of your advertiser's sites you wouldn't
7 necessarily have gotten that data?

8 MR. NEWMAN: Objection. The question
9 lacks foundation.

10 Q. (BY MR. SIEGEL) Mr. Brewer?

11 A. Not necessarily.

12 MR. SIEGEL: No further questions.

13 Mr. Brewer, I want to thank you for
14 your cooperation today and your time.

15 THE WITNESS: Thank you, Mr. Siegel.

16 MR. NEWMAN: Mr. Siegel, I want to
17 raise another issue with you -- a couple,
18 actually. The first is --

19 MR. SIEGEL: We're off the record
20 here?

21 MR. NEWMAN: No. We're still on the
22 record.

23 The first question is --

24 MR. SIEGEL: Well, are you --

25 MR. NEWMAN: Excuse me?

1 MR. SIEGEL: Are you paying for this
2 record?

3 MR. NEWMAN: I believe that whoever
4 orders the transcript pays for the record and we
5 intend to order a transcript so I suppose the
6 answer to your question is yes.

7 The two issues that I would like to
8 raise, the first one is with respect to the
9 supplemental production that you and I have
10 discussed at length, we spoke about it
11 yesterday, in fact we met and conferred, and we
12 may need to bring a motion with respect to it
13 and I'm wondering whether perhaps we could bring
14 a joint motion pursuant to the Court rule that
15 allows the party to together file a motion. And
16 what we would seek specifically is either for
17 the additional e-mails to not be a part of this
18 lawsuit or for your client to produce them
19 separate and apart from the e-mails that had
20 previously been produced.

21 Would you agree to that, the joint
22 motion?

23 MR. SIEGEL: No, I don't think so.

24 MR. NEWMAN: You would not agree to a
25 joint motion?

1 MR. SIEGEL: I think what I will do,
2 though, is I will respond to you in detail about
3 this issue when I have had a full time to
4 discuss it with my client and in fact I could
5 even commit to giving you a full and detailed
6 response on Monday.

7 MR. NEWMAN: Well, I look forward for
8 that response especially considering earlier
9 representations you made advising that you would
10 confer with your client and provide feedback to
11 me a week ago and a week and a half ago, which I
12 never received, so I really appreciate that you
13 are going to have information for me on Monday.
14 And then if you don't have information for me on
15 Monday, would you file the joint motion so that
16 you could state your position which to this day
17 I still don't understand?

18 MR. SIEGEL: Well, we'll talk on
19 Monday about that, counsel.

20 MR. NEWMAN: Okay. Then my next
21 question is I know we have discovery requests
22 which responses are due today. Can we expect
23 them today?

24 MR. SIEGEL: Again, I have to check
25 with my client on that.

1 MR. NEWMAN: Well, today is the
2 deadline for filing discovery motions, and
3 considering that you still have not received
4 responsive documents from your client the day
5 they are due would indicate that you are not
6 going to be transmitting them to me today, so
7 can this serve as our meet and confer such that
8 we can file a Motion to Compel those documents
9 today?

10 MR. SIEGEL: Well, I'm requesting an
11 extension, counsel, a reasonable extension say
12 until the end of next week and to get those
13 documents to you and those responses to you.

14 MR. NEWMAN: I would be happy to
15 grant that extension; however, there is a Court
16 Order that provides that the last day I can move
17 to compel is today, so would you agree to file a
18 stipulation that we can extend that deadline
19 with respect to the Defendants' right to move to
20 compel?

21 MR. SIEGEL: Yes, I would.

22 MR. NEWMAN: Great. So I'm going to
23 send you a stipulation and it's going to provide
24 that the Defendants' deadline to move to compel
25 is extended one week from today?

1 MR. SIEGEL: Fine.

2 MR. NEWMAN: And when would you
3 expect to have responses to those discovery
4 requests?

5 MR. SIEGEL: Prior to that.

6 MR. NEWMAN: Thank you, very much.
7 I'll forward that stipulation. I really
8 appreciate your courtesy and you can look for my
9 e-mail later today.

10 MR. SIEGEL: Okay. Thank you,
11 counsel.

12 (Witness excused.)

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