

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' OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR:
January 12, 2007

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

1. I am president and CEO of Defendant Virtumundo, Inc. I am over eighteen (18) years of age, competent to testify to the matters stated in this declaration, and make this declaration from personal knowledge of those matters, except where otherwise stated.

2. Virtumundo is the registrant (i.e., owner) of each of the domain names: <vm-mail.com>, <vmadmin.com>, and <virtumundo.com>.

1 3. Virtumundo is identified in the WHOIS database as the registrant of each of
2 the names.

3 4. The WHOIS database is a publically available source to learn who is the
4 registrant of any .com domain name. The registrant provides its own contact information
5 in the WHOIS database.

6 5. A WHOIS query on any of the domain names at issue here will return
7 information including Virtumundo's name, correct physical address, and telephone
8 number.

9 6. Email senders who wish to obscure their identity may provide inaccurate
10 contact information when registering domain names, or use "domain proxy" services to
11 prevent their contact information from appearing in the WHOIS database.

12 7. Virtumundo does not engage in such practices, and indeed endeavors to
13 make itself easy to identify and locate from the information in the "from" lines of the
14 emails it sends.

15 8. Every "from" line from Virtumundo contains an accurate and truthful
16 domain name that is registered to Virtumundo listed in WHOIS. In addition, the body of
17 each email Virtumundo sends always includes accurate contact information for
18 Virtumundo and working "unsubscribe" links.

19 9. In the course of its business, Virtumundo creates and transmits emails as
20 part of promotional campaigns for its customers. In those situations, Virtumundo
21 typically uses the "from name" field to identify the customer.

22 10. In other circumstances, Virtumundo uses the "from name" field to identify
23 the line of business to which the email pertains. Thus, an email advertising police
24 training might have the "from name" of "CriminalJustice."

25 11. This performs three functions. First, it informs the recipient that the
26 message is a commercial email, rather than an email from a particular individual.
27 Second, it informs the recipient of the general subject of the message. Third, it accurately
28 identifies Virtumundo's business line that initiated the message. It is not "advertising

1 copy" as Plaintiffs contend.

2 12. Virtumundo identifies itself in the "from" line by using its domain name,
3 and expressly in the content of the emails it sends, for informational rather than
4 "branding" purposes.

5 13. Virtumundo does not advertise its own services to consumers, and most
6 consumers would not recognize the Virtumundo name.

7 14. Including in the "from name" field the name of Virtumundo or its employee
8 who initiates the transmission would not provide meaningful information. To the
9 contrary, to do so would tend to obscure the fact that the email contained a commercial
10 solicitation. A "from name" of "William A. Worker" (a hypothetical Virtumundo
11 employee, for example) would lead a consumer to believe the message is from an
12 individual and likely personal, rather than from a company. The "from name" of
13 CriminalJustice, on the other hand, clearly implies a commercial solicitation.
14 "Virtumundo" or "William A. Worker" would be ambiguous.

15 15. 13,000 emails received over the course of more than three years is not
16 enough to place a burden on any computer server manufactured within the last two
17 decades, at least.

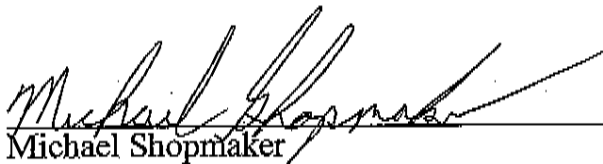
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19 DATED this 8th day of January, 2007 at Overland Park, Kansas.

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Michael Shopmaker

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