

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  
ADNOWLEDGEMAIL.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 DEREK A.  
NEWMAN IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT**

**NOTE ON MOTION CALENDAR:**  
January 12, 2007

I, Derek A. Newman, swear under penalty of perjury under the laws of the United States to the following:

1. I am counsel of record for defendants Virtumundo, Inc. ("Virtumundo") and Adknowledge, Inc. ("Adknowledge"), am over age 18, and competent to be a witness. I am making this Declaration based on facts within my own personal knowledge.

2. Plaintiffs in this matter have at least seven (7) active CAN-SPAM lawsuits in this district alone. (*Omni Innovations LLC v. Inviva Inc. d/b/a American Life Direct*

1 *and American Life Insurance Co. of New York, C06-1537 C; Omni Innovations LLC v.*  
 2 *BMG Music Publishing NA Inc., C06-1350 C; Omni Innovations LLC v. Publishers*  
 3 *Clearing House Inc. C06-1348 T; Omni Innovations LLC v. Efinancial LLC et al.*  
 4 *C06-01118-MJP; Omni Innovations LLC v. Insurance Only Inc. et al. C06-01210-TSZ;*  
 5 *Omni Innovations LLC v. Ascentive LLC et al. C06-01284-TSZ; Omni Innovations LLC*  
 6 *et al v. Inviva Inc et al. C06-01537-JCC).*

7 3. The depositions of plaintiffs James S. Gordon and Omni Innovations, LLC  
 8 are scheduled for January 10 and 11, 2006.

9 4. On or about December 28, 2006, I contacted Plaintiffs' counsel and asked  
 10 that he stipulate to move the motion for summary judgment back one week to permit  
 11 Plaintiffs' depositions to be taken before Defendants' opposition to the Motion was due,  
 12 and due to the holidays. Plaintiffs' counsel refused. Attached as Exhibit A is a true and  
 13 correct copy of an email exchange between Plaintiffs' counsel and me on the subject.

14 5. Attached hereto as Exhibit B is a true and correct copy of the requests for  
 15 admissions that Defendant Virtumundo propounded on Plaintiffs.

16 6. Attached hereto as Exhibit C is a true and correct copy of Plaintiff Omni's  
 17 Answers and Responses to Defendant Virtumundo's First Requests for Admission to  
 18 Omni. Plaintiffs admit in their response to Request No. 7 that they "were not 'adversely  
 19 affected' (as that term is used in 15 USC 7706(g)(1)) by the [emails they allege  
 20 Defendants sent]."

21 DATED this 8th day of January, 2007 at Seattle, Washington.

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 26 Derek A. Newman  
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