

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

DEFENDANTS' MOTION TO FILE AN OVER-LENGTH BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR:
January 22, 2007

Pursuant to Local Rule 7(f), Defendants Scott Lynn, Virtumundo, Inc. ("Virtumundo") and Adknowledge, Inc. ("Adknowledge") (collectively, "Defendants"), hereby request that the Court grant leave to file a brief in excess of the twenty-four (24) page limit imposed by LR 7(e)(3), in support of the Defendants' Motion for Summary Judgment (the "Motion").

Plaintiffs James S. Gordon ("Gordon") and Omni Innovations, LLC ("Omni") (collectively, "Plaintiffs") brought the instant lawsuit alleging that Virtumundo and

1 Adknowledge transmitted thousands of commercial email messages in violation of the
2 federal CAN-SPAM Act of 2003, 15 U.S.C. § 7701 et seq. ("CAN-SPAM") and the
3 Washington Commercial Electronic Mail Act (RCW 19.190) ("CEMA"). Plaintiffs'
4 allege that Defendants violated nearly each technical statutory provision of CAN-SPAM
5 and CEMA. (*See* Plaintiffs' First Amended Complaint (Dkt. # 15) at ¶¶ 4.1 & 4.2).
6 Defendants have, through motion practice and discovery, sought to cause Plaintiffs to
7 narrow their claims to the colorable alleged violations of CAN-SPAM and CEMA. (*See*
8 *e.g.*, Dkt. # 30 (Defendants' Motion to Dismiss for failure to plead with particularity);
9 Dkt. # 69 (Defendants Motion to Compel Interrogatory responses regarding alleged
10 violations). Those motions are either pending or were granted by the Court.
11 Nonetheless, Plaintiffs theories still encompass the majority of possible violations of the
12 state and federal email statutes and, therefore, must be addressed in the Motion.
13 Accordingly, the Motion cannot reasonably be filed within the constraints of the twenty-
14 four (24) page limit.

15 For comparison purposes, Plaintiffs' Motion for Partial Summary Judgment
16 regarding a single theory regarding a single alleged violation of CAN-SPAM used all of
17 the twenty-four (24) page limit imposed by LR 7(e)(3). (Dkt. # 53) Plaintiffs' motion
18 practice reflects the complicated nature of the Motion and the necessity for extended
19 briefing. In contrast to Plaintiffs' single theory of relief, the Motion seeks dismissal of
20 more than a dozen alleged violations of CAN-SPAM and CEMA.

21 Defendants could have, consistent with LR 7(e)(3) filed separate motions on
22 behalf of different Defendants and relating to different causes of action. However, for the
23 convenience of the Court and the parties, Defendants request a modest leave from the 24
24 page limit to file an over-length brief.

25 This case involves complex and technical subject matter, and preparation of the
26 Motion consumed a great deal of attorney time; accordingly, Defendants' counsel was
27 unable to file this motion three days before the dispositive motion cutoff, and request a
28 waiver of the requirement in LR 7(f)(1) that motions for over-length briefs be filed three

1 days in advance.

2 In light of these factors, Defendants respectfully request the Court's leave to file a
3 brief in support of their Motion with six (6) additional pages, for a total of thirty (30)
4 pages.

5 DATED this 22nd day of January, 2007.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP**



By: _____

Derek A. Newman, WSBA No. 26967
Roger M. Townsend, WSBA No. 25525

Attorneys for Defendants