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WESTERN DISTRICT OF WASHINGTON
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06-CV-01284-CMP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON, SEATTLE

OMNI INNOVATIONS, LLC, a
Washington Limited Liability
company,

Plaintiffs,

v.

ASCENTIVE, LLC, a Delaware
limited liability company; ADAM
SCHRAN, individually and as part of
his marital community; JOHN DOES,
I-X,

Defendants,

NO. **C 06-1284** T5Z

COMPLAINT

PARTIES, JURISDICTION, VENUE

1. Plaintiff OMNI INNOVATIONS, LLC, (hereinafter "OMNI") is a Washington limited liability company duly licensed and registered with the State of Washington, with its principal place of business in Franklin County, Washington.
2. On information and belief, plaintiff alleges that Defendant ASCENTIVE, LLC, ("ASCENTIVE") is a limited liability company registered in Delaware, with its principal place of business located in Philadelphia, Pennsylvania.
3. On information and belief, ADAM SCHRAN, ("Schran") is an officer, director, and/or majority shareholder of Ascentive, and as such controls its policies, activities, and practices, including those alleged herein on behalf of those defendants. All acts

COMPLAINT FOR DAMAGES, PENALTIES, ETC. -1

MERKLE SIEGEL & FRIEDRICHSEN
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Seattle, WA 98101
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1 and practices undertaken by Schran on behalf of Ascentive arc and were for the
2 benefit of his marital community. SCHRAN resides in the State of Pennsylvania and
3 transacts or has transacted business in the State of Washington and in the Western
4 District of Washington.

4. Jurisdiction is proper pursuant to 28 U.S.C. §1331 (federal question) and 28 U.S.C.
5 §1332 (diversity).

5. This Court has supplemental jurisdiction of state law claims pursuant to U.S.C. §
6 1367.

6. Venue is proper pursuant to 28 U.S.C. §1391.

7. From and after May 2005, Plaintiff OMNI provided and enabled computer access for
8 multiple users to a computer server that provides access to the Internet.

8. The domain names served by Plaintiff include: anthonycentral.com,
9 chiefmusician.net, ehahome.com, itdidnotendright.com, jammtomm.com,
10 jaycelia.com, celiajay.com, jaykaysplace.com, rcw19190020.com, and
11 gordonworks.com (collectively the "Domains" and individually and generically a
12 "Domain").

9. At all times material hereto, for the Domains and each of them, the information that
13 all e-mail addresses at each Domain (the "Recipient Addresses") belong to
14 Washington residents was and is available upon request from the registrant of each
15 Domain, each registrant being a Washington resident and each Domain being
16 registered with a Washington address.

10. During the time period of approximately August 2003 through May 2006, Plaintiff
17 received at the Domains electronic-mail messages (collectively the "E-mails" or
18 individually and generically as an "Email").

11. The E-mails, and each of them, were received by Plaintiff's servers serving the
19 Domains, or at the Domains themselves, and/or on individual Plaintiffs' email
20 accounts, and on their computers.

- 1 12. Each of the E-mails misrepresents or obscures information in identifying the point of
2 origin or the transmission path thereof, and contains header information that is
3 materially false or materially misleading. The misrepresentations include without
4 limitation: IP address and host name information do not match, or are missing or
5 false, in the "from" and "by" tokens in the Received header field; and dates and times
6 of transmission are deleted or obscured.
- 7 13. On information and belief, Plaintiff alleges that some of the E-mails used the Internet
8 domain name of a third party or third parties without permission of that third party or
9 those third parties, and/or used false, or misleading information in registering the
10 domains used to send the subject E-mails.
- 11 14. Defendant initiated the transmission of the E-mails, and each of them. In the
12 alternative, Defendant conspired or otherwise acted in collusion with another or
13 others or assisted another or others to transmit the E-mails, and each of them.
- 14 15. At all times material hereto, Defendants knew or had reason to know that the
15 Recipient Addresses, and each of them, were and are held by a Washington resident.

16 FIRST CAUSE OF ACTION – CAN-SPAM ACT

17 15 U.S.C. §7701 et seq.

- 18 16. On the basis of the facts set forth hereinabove, Defendants initiated the transmission
19 of the E-mails, and each of them, to a protected computer in violation of 15 U.S.C.
20 §7704(a), causing damage to Plaintiff as the provider of the Internet access service
21 receiving each such E-mail in the amount of \$100 for each such E-mail, as provided
22 in 15 U.S.C. §7706 (g) (3).
- 23 17. Defendants did willfully and knowingly so act in violation of the provisions of 15
24 U.S.C. §7701 et seq.

SECOND CAUSE OF ACTION – CEMA

RCW 19.190.010 - .070

18. On the basis of the facts set forth hereinabove, Defendants initiated, conspired with another to initiate, or assisted the transmission of the E-mails, and each of them, in violation of RCW 19.190.020, causing damage to Plaintiff as the interactive computer service receiving each such E-mail in the amount of \$1,000 for each such E-mail, as provided in RCW 19.190.040 (2).

THIRD CAUSE OF ACTION – CONSUMER PROTECTION ACT

Ch. 19.86 RCW

19. On the basis of the facts set forth hereinabove, Defendants initiated the E-mails, and each of them, in violation of RCW 19.190.030 and Chapter 19.86 RCW, causing damage to Plaintiff as the interactive computer service receiving each such E-mail in the amount of \$1,000 for each such E-mail, as provided in RCW 19.190.040 (2).

REQUEST FOR RELIEF

Plaintiff respectfully requests the following relief:

1. Entry of a Judgment in favor of Plaintiff against the Defendants in the amount of \$1,100 per unlawful E-mail, plus such other and further damages as may be proved at trial, plus treble damages to the extent permitted by Chapter 19.86 RCW and to the extent permitted by 15 U.S.C. §7706 (g) (3) (C), plus prejudgment and post-judgment interest at the highest rate permitted by law, plus cost of suit and reasonable attorney fees pursuant to Chapter 19.86 RCW and 15 U.S.C. §7706 (g) (4);

- 1 2. Entry of a permanent injunction against the Defendants prohibiting the Defendants from
- 2 sending or causing to be sent electronic mail messages of any kind or nature to e-mail
- 3 addresses at the Domains, hercinabove.
- 4 3. Such other and further relief as the Court deems just and equitable in the premises.

5
6 RESPECTFULLY SUBMITTED this 6th day of September, 2006.

7
8 MERKLE SIEGEL & FRIEDRICHSEN, P.C.

DOUGLAS E. MCKINLEY, JR
Attorney at Law

9 /S/ Robert J. Siegel
10 Robert J. Siegel, WSBA #17312
11 Attorney for Plaintiffs

/S/ Douglas E. McKinley, Jr.
12 Douglas E. McKinley, Jr., WSBA #20806
13 Attorney for Plaintiffs