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Hon. Judge T. S. Zilly

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**IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF WASHINGTON**

OMNI INNOVATIONS LLC et al

NO. CV-06-01284-TSZ

Plaintiffs

ASCENTIVE, LLC
 a Delaware Limited Liability Company,

Defendant

DEFENDANT'S
 MEMORANDUM IN
 RESPONSE TO PLAINTIFFS'
 MOTION TO DISQUALIFY
 COUNSEL FLOYD E. IVEY

**PLAINTIFFS' FILING IN THE WESTERN DISTRICT IS FORUM
 SHOPPING.**

**PLAINTIFFS' MOTION TO DISQUALIFY IS A "MOTION TO
 RECONSIDER" JUDGE VAN SICKLE'S DENIAL OF THE SAME MOTION
 TO DISQUALIFY IN GORDON V. IMPULSE MARKETING GROUP, IN
 THE EASTERN DISTRICT OF WASHINGTON**

The Principal of Omni Innovations LLC is Mr. James Gordon. Mr. Gordon
 has brought multiple cases alleging violation of RCW 19.190, the Can-Spam Act

Defendant's Memorandum in Response to Motion to Disqualify -
 1.
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 Innovations\Motions\MotionDisqualify\Motion
 ToDisqualDEF.Response.061020.wpd

LIEBLER, IVEY, CONNOR, BERRY & ST. HILAIRE
 Attorneys at Law
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1 of 2003, RCW 19.86, all relating to transmission of electronic mail messages in
2 violation of said statutes. Plaintiffs' present Motion to Disqualify has been
3 considered and denied by Eastern District Judge Van Sickle in Gordon v. Impulse
4 Marketing Group, Inc., CV-04-5125-FVS. Judge Van Sickle's Order of May 15,
5 2006, is attached as Exhibit 1. The Court's Order re: Disqualification commences
6 at page 2 of the Order and Page 8 of this filing.

7 There is identity between Omni Innovations LLC and Mr. James Gordon as
8 seen in Mr. Gordon's Declaration Supporting this Motion to Disqualify. The
9 documents supporting the Motion to Disqualify in Gordon v. Impulse are the
10 same as the document appended to Mr. Gordon's present Declaration. Mr. Gordon
11 has not provided the present court with new facts or legal authority.

12 Reconsideration is subject to Western District Local Rule CR7(h) which
13 requires either manifest error in the prior ruling or a showing of new facts or legal
14 authority which could not have been brought to its attention earlier with
15 reasonable diligence. Mr. Gordon contends that Ivey represented Mr. Gordon re:
16 Omni Innovations LLC but produces no evidence. Attorney Ivey denies that legal
17 assistance was provided to Mr. Gordon re: Omni Innovations LLC.

18 Plaintiffs' Motion to Amend to a First Amended Complaint to add Omni
19 Innovations LLC, in the Eastern District, was denied. Thereafter,
20 contemporaneous with the referral of Gordon v. Ascentive to the Discovery
21 Master, Judge Van Sickle vacated the Scheduling of the case. The Eastern District
22 case of Gordon v. Ascentive remains unscheduled at this time.

23 Plaintiff's proper action, re: Omni Innovations LLC would have been to ask
24 the Eastern District Court, in light of the schedule being vacated, to again consider
25 adding the additional plaintiff of Omni. Rather than petition Judge Van Sickle,
26 Plaintiff has sought a new court within which to bring the same motions which
27 have been brought and decided in the Eastern District. Federal Courts have held
28

1 that prevention of forum shopping promote wise judicial administration. *American*
 2 *Intern. Underwriters (Philippines), Inc. v. Continental Ins. Co.* 843 F.2d 1253,
 3 1259-60 (9th Cir. Cal. 1988). Subjecting the Western District to the identical
 4 issues addressed over the past months by the Eastern District is an obvious assault
 5 on Judicial Economy.

6 **ATTORNEY FLOYD E. IVEY'S HISTORY OF DEFENDING CASES**
 7 **BROUGHT BY PLAINTIFF MR. JAMES GORDON**

8 Plaintiffs' Motion to Disqualify counsel Floyd E. Ivey (Ivey) is supported
 9 by the Declaration of James S. Gordon. Mr. Gordon represents that he is the
 10 principal member of Omni Innovations, LLC. Mr. Gordon, his wife and children
 11 and others are Plaintiff or Third Party Defendants in other cases defended by Ivey
 12 and involving the identical causes of action as alleged in the present matter of
 13 Omni v. Ascentive.

14 Ivey is co-counsel in the Federal District Court for the Eastern District of
 15 Washington, Gordon v. Impulse Marketing Group Inc., CV-04-5125-FVS where
 16 attorney Ivey represents Impulse Marketing Group Inc and Third Party Plaintiffs
 17 in their Cross-Complaint against Mr. Gordon's Wife Bonnie Gordon, Mr.
 18 Gordon's children James S. Gordon III, Jonathan Gordon, Jamila Gordon and Mr.
 19 Gordon's associates Robert Pritchett and Emily Abbey. Attorney Ivey's
 20 appearance in Impulse was entered January 2005. At the time of Mrs. Gordon's
 21 raising issues of disqualification in Impulse, attorney Ivey had filed approximately
 22 200 separate pleadings with the Eastern District.

23 Attorney Ivey is counsel defending, in Federal District Court for the Eastern
 24 District of Washington in Gordon v. Ascentive LLC and Adam Schran, CV-05-
 25 5079-FVS, where Ivey represents Ascentive LLC and Adam Schran.

26 Attorney Ivey was counsel in the Benton County State of Washington
 27 matter of Gordon v. Efinancial LLC and Rowell, Benton County Superior 05-2-
 28 01489-7, until the case was moved to King County on my Motion for Change of

1 Venue.

2 Each of these cases are brought by Plaintiff Gordon relative to RCW
3 19.190, the Can-Spam Act of 2003 and RCW 19.86.

4
5 **HISTORY OF GORDON V. ASCENTIVE IN THE EASTERN DISTRICT**

6 The issues and parties are virtually identical in the present Western District
7 case as is presently found in Gordon v. Ascentive, Eastern District. The Plaintiffs,
8 with Mr. Gordon as the principal for Omni Innovations LLC, and with Ms. Abbey
9 as a Plaintiff, are have significant commonality with the Eastern District case of
10 Gordon v. Impulse. The exhibits appended to Mr. Gordon's Declaration in
11 Support of Disqualification are identical to the Exhibits submitted by Mrs. Gordon
12 in Gordon v. Impulse.

13 The Honorable Judge Fred Van Sickle has presided over both Gordon v.
14 Impulse and Gordon v. Ascentive. The issues of Omni Innovation LLC v.
15 Ascentive will be very similar if not identical to those of Gordon v. Ascentive in
16 the Eastern District. The Federal Court in the Eastern District has heard and
17 decided the following regarding Ascentive:

18 1. Motion to Dismiss for Lack of Jurisdiction. The Court denied with
19 leave to reconsider.

20 2. Motions by Defendant to Compel Plaintiff's Response to Discovery
21 resulting in the Court's Order referring the matter to Discovery Master the
22 Honorable Judge Clarke. Defendant's Motion to Compel is presently pending
23 before the Discovery Master.

24 3. Motion to Dismiss First Amended Complaint which is presently pending
25 before Judge Van Sickle.

26 The foregoing Motions and Decisions by Judge Van Sickle will be
27 presented with Defendants' Motion for Change of Venue

28

1 Additionally, and of immediate importance for the Western District, is the
 2 fact that Judge Van Sickle has decided the identical Motion to Disqualify attorney
 3 Ivey in the Impulse case.

4
 5 **PLAINTIFF'S MOTION TO DISQUALIFY**

6 In Gordon v. Impulse, Mr. Gordon's wife, Bonnie Gordon, and Mr.
 7 Gordon's daughter Jamila Gordon included accusations against attorney Ivey in
 8 Declarations. The accusations suggested that Ivey had represented Plaintiff Mr.
 9 Gordon and that his representation of Impulse was improper thus raising the issue
 10 of disqualification. Ivey brought the issue to the immediate attention of the Court.

11 The entirety of the Eastern District pleadings re: Motion to Disqualify Floyd
 12 E. Ivey by Mrs. Bonnie Gordon in Gordon v. Impulse are appended hereto as
 13 follows:

14 1. Exhibit 2 is the "Declaration [of Bonnie Gordon] and Response to
 15 Impulse and Ivey Initial Memorandum...Re: Disqualification". Exhibit 2 is
 16 appended hereto. Exhibits 3 and 4 are files as attachments separate from this
 17 Memorandum.

18 The Exhibits affixed to Mr. Gordon's present Declaration are coorelated
 19 with Exhibit 2 as follows:

20 Mr. Gordon Ex 1 is Mrs. Gordon's Ex. 4 at Mrs. Gordon's Dec. P. 31.

21 Mr. Gordon Ex. 2 is Mrs. Gordon's Ex. 5 at Mrs. Gordon's Dec. P. 32.

22 Mr. Gordon Ex. 3 is Mrs. Gordon's Ex. 6 at Mrs. Gordon's Dec. P. 33.

23 Mr. Gordon Ex. 4 is Mrs. Gordon's Ex. 7 at Mrs. Gordon's Dec. P. 34.

24 Mr. Gordon Ex. 5 is Mrs. Gordon's Ex 8 at Mrs. Gordon's Dec. 35.

25 Mr. Gordon Ex. 6 is Mrs. Gordon's Ex. 9 at Mrs. Gordon's Dec. P. 36.

26 2. Exhibit 3 is Defendant and Third Party..."AND" Initial Memorandum
 27 Response to third Party Defendant's Motion to Disqualify Counsel"

3. Exhibit 4 is Memorandum: Defendant and Third Party Plaintiff's
Response to Third Party Defendant's Assertions Re: Disqualification.

CONCLUSION

Defendants will move for a change of Venue to the Eastern District.
Defendants request the Court to deny Plaintiff's Motion to Disqualify.

Dated this 20th day of October, 2006.

S/FLOYD E. IVEY
FLOYD E. IVEY, WSBA 6888
Attorneys for Defendants

I hereby certify that on October 20, 2006, I electronically filed **Defendant's Memorandum in Response to Plaintiff's Motion to Disqualify** with the Clerk of the Court using the CM/ECF System which will send notification of such filing to Plaintiffs' counsel Robert J. Siegel and Douglas McKinley.

S/ FLOYD E. IVEY

FLOYD E. IVEY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMES S. GORDON, JR., an individual
residing in Benton County, Washington,

Plaintiff,

v.

IMPULSE MARKETING GROUP, INC., a Nevada
Corporation,

Defendant.

IMPULSE MARKETING GROUP, INC.,

Third-Party Plaintiff,

v.

BONNIE GORDON, JAMES S. GORDON, III,
JONATHAN GORDON, JAMILA GORDON, ROBERT
PRITCHETT and EMILY ABBEY,

Third-Party Defendants.

No. CV-04-5125-FVS

ORDER

BEFORE THE COURT is Impulse Marketing's Motion to Compel and Motion for Sanctions (Ct. Rec. 235); Motion to Compel and Request for Sanctions brought by Third-Party Defendants James Gordon, III, (Ct. Rec. 298), Jonathan Gordon (Ct. Rec. 300), Bonnie Gordon (Ct. Rec. 256), Robert Pritchett (Ct. Rec. 259); Amended Motion to Compel and Request for Sanctions brought by Bonnie Gordon (Ct. Rec. 274), and Jamila Gordon (Ct. Rec. 270); Defendant's Motion to Strike portions

ORDER - 1

Exhibit 1

1 of the declarations the Third-Party Defendants submitted in support
2 of their motions. (Ct. Rec. 325).

3 Third-Party Plaintiff Impulse Marketing ("Impulse Marketing") is
4 represented by Floyd Ivey, Sean Moynihan, and Peter Glantz. Third-
5 Party Defendants are proceeding *pro se*.

6 ***Motions to Disqualify Counsel***

7 Although the motions brought by Third-Party Defendants Bonnie
8 and Jamila Gordon are captioned as motions to compel, these motions
9 also request the Court disqualify Impulse Marketing's attorney Floyd
10 Ivey. Bonnie and Jamila Gordon are the wife and daughter,
11 respectively, of the Plaintiff, James Gordon, Jr. Both Bonnie and
12 Jamila Gordon allege Mr. Ivey previously represented the Plaintiff in
13 legal matters and that this previous representation amounts to a
14 conflict of interest. Thus, they contend Mr. Ivey should be
15 disqualified from representing Impulse Marketing because such
16 representation places Mr. Ivey in conflict with the interests of
17 Plaintiff.

18 **1. Standing**

19 Before the Court addresses whether Mr. Ivey's representation of
20 Impulse Marketing presents a conflict of interest, the Court must
21 address the threshold question of standing. Standing is a
22 jurisdictional matter that goes to the power of a federal court to
23 decide an issue placed before it. The standing doctrine "embraces
24 several judicially self-imposed limits on the exercise of federal
25 jurisdiction, such as the general prohibition on a litigant's raising
26 another person's legal rights...." *Allen v. Wright*, 468 U.S. 737,

1 750-51, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984). Neither the United
2 States Supreme Court nor the Ninth Circuit has addressed the
3 particular issue of whether the standing doctrine bars a nonclient
4 party from moving to disqualify the opposing party's counsel on the
5 grounds of a conflict of interest. See *FMC Techs., Inc. v. Edwards*,
6 -- F. Supp. 2d --, 2006 WL 624454, *2 (W.D. Wash. 2006). There is a
7 split of authority on this issue. *Id.* (citing *Colyer v. Smith*, 50
8 F.Supp.2d 966, 969 (C.D. Cal. 1999)).

9 In *Colyer*, the district court noted that under the majority view
10 on this issue "only a current or former client of an attorney has
11 standing to complain of that attorney's representation of interests
12 adverse to that current or former client." *Colyer*, 50 F.Supp.2d at
13 969 (citing *In re Yarn Processing Patent Validity Litig.*, 530 F.2d
14 83, 88 (5th Cir. 1976) (stating that "courts do not disqualify an
15 attorney on the grounds of conflict of interest unless the former
16 client moves for disqualification.")). However, the *Colyer* court
17 acknowledged the possibility of nonclient standing where an
18 "unethical change of sides was manifest and glaring" or an ethical
19 violation was "open and obvious," confronting the court with a "plain
20 duty to act." *Colyer*, 50 F.Supp.2d at 969 (citing *Yarn Processing*,
21 530 F.3d at 89). Similarly, the minority view is that a nonclient
22 litigant may bring a motion to disqualify. See *Colyer*, 50 F.Supp.2d
23 at 970-71 (citing *Kevlik v. Goldstein*, 724 F.2d 844 (1st Cir. 1984)).
24 "Like the exception to the majority view, the minority view relies in
25 part on the 'court's well recognized power to control the conduct of
26 the attorneys practicing before it.'" *FMC Techs., Inc.*, 2006 WL

1 624454,*2 (citing *Colyer*, 50 F.Supp.2d at 970).

2 In addressing the standing question, the *Colyer* court held that
3 a nonclient litigant "must establish a personal stake in the motion
4 to disqualify sufficient to satisfy the irreducible constitutional
5 minimum of Article III." *FMC Techs., Inc.*, 2006 WL 624454, *3
6 (citing *Colyer*, 50 F.Supp.2d at 971). Further, the *Colyer* court
7 noted that "where an ethical breach so infects the litigation in
8 which disqualification is sought that it impacts the moving party's
9 interest in a just and lawful determination of her claims, she may
10 have the constitutional standing needed to bring a motion to
11 disqualify based on a third-party conflict of interest or other
12 ethical violation." *FMC Techs., Inc.*, 2006 WL 624454, *3. Like the
13 court in *Colyer*, the district court in *FMC Technologies, Inc.* adopted
14 the rule that "nonclient litigants may, under proper circumstances,
15 bring motions to disqualify counsel based on conflicts of interest."
16 2006 WL 624454, *3.

17 Although the Ninth Circuit has not decided the issue before the
18 Court, the question was presented in *Kasza v. Browner*, 133 F.3d 1159
19 (9th Cir. 1998). In *Kasza*, the court noted that as "a general rule,
20 courts do not disqualify an attorney on the grounds of conflict of
21 interest unless the former client moves for disqualification."
22 *Kasza*, 133 F.3d at 1171 (quoting *United States v. Rogers*, 9 F.3d
23 1025, 1031 (2d Cir. 1983) (quoting in turn *In re Yarn Processing*
24 *Patent Validity Litig.*, 530 F.2d 83, 88 (5th Cir. 1976))). However,
25 the *Kasza* court did not decide the issue because it held there was no
26 basis for disqualification even if the court assumed the plaintiff

1 had standing. 133 F.3d at 1171.

2 In the present case, without making a final determination on
3 whether it should adopt the majority or minority view, the Court is
4 mindful of the outcome under each view. If the Court adopts the
5 majority view, Third-Party Defendants Bonnie and Jamila Gordon do not
6 have standing to move to disqualify Mr. Ivey. If the Court adopts
7 the minority view, Bonnie and Jamila Gordon, under the proper
8 circumstances, have standing to bring a motion to disqualify Mr. Ivey
9 based on an alleged conflict of interest between Plaintiff and Mr.
10 Ivey. Under the minority view, Bonnie and Jamila Gordon must show
11 "the ethical conflict at issue here sufficiently impacts the 'just
12 and lawful determination' of their claims and that the conflict
13 involved is so intertwined with the current litigation that this
14 Court must consider [the] motion to disqualify[.]" *FMC Techs., Inc.*,
15 2006 WL 624454, *3. Assuming, without deciding, that Bonnie and
16 Jamila have standing to bring this motion to disqualify, the Court
17 proceeds to review the merits of the motion.

18 **2. Disqualification of Floyd Ivey**

19 When faced with an allegation that an attorney's representation
20 presents a conflict of interest, it is "the duty of the district
21 court to examine the charge, since it is that court which is
22 authorized to supervise the conduct of the members of its bar." *Gas-*
23 *A-Tron of Ariz. v. Union Oil Co. of Calif.*, 534 F.2d 1322, 1324 (9th
24 Cir. 1976). The Local Rules for the Eastern District of Washington
25 do not specifically adopt the provisions of the Washington Rules of
26 Professional Conduct as ethical rules governing the practice of

1 lawyers before the courts in this district. However, the Local Rules
2 grant the Court authority to discipline any attorney who violates the
3 Washington Rules of Professional Conduct.¹ Thus, the Washington
4 Rules of Professional Conduct shall govern the Court's
5 disqualification analysis.

6 Here, Bonnie Gordon alleges Mr. Ivey participated in numerous
7 conversations with the Plaintiff regarding spamming, including
8 conversation related to Impulse Marketing. Further, she points to
9 several emails in which Mr. Ivey and the Plaintiff communicated about
10 the possibility of Mr. Ivey assisting the Plaintiff in filing
11 lawsuits for violations of Washington's anti-spam statute. Mr. Ivey
12 acknowledges he provided legal services to the Plaintiff in the past,
13 but contends those services were unrelated to the pending litigation.
14 With respect to the current litigation, Mr. Ivey contends his
15 communication with the Plaintiff included an exchange of general
16 statements, but there was never any formal representation.

17 These allegations implicate Rule 1.9 of the Rules of
18 Professional Conduct, which states:

19 A lawyer who has formerly represented a client in a
20 matter shall not thereafter:

21 (a) Represent another person in the same or a
22 substantially related matter in which that person's
23 interests are materially adverse to the interests of the
24 former client unless the former client consents in writing
after consultation and a full disclosure of the material
facts; or

25 ¹ See LR 83.3 ("This Court may impose discipline on any
26 attorney practicing before this Court, ... who engages in conduct
violating applicable Rules of Professional Conduct of the
Washington State Bar, or who fails to comply with the rules or
orders of this Court.").

1 (b) Use confidences or secrets relating to the
2 representation to the disadvantage of the former client,
except as rule 1.6 would permit.

3 Wash. Rules of Prof'l Conduct R. 1.9 (2005). Under Rule 1.9(a), the
4 significant elements include (1) whether the conflict involves a
5 former client; (2) whether the subsequent representation is
6 materially adverse to the former client; and (3) whether the matters
7 are substantially related. *Id*; see also *Trone v. Smith*, 621 F.2d
8 994, 998 (9th Cir. 1980).

9 Here, it is clear Plaintiff has not consented to Mr. Ivey's
10 representation of Impulse Marketing, but it is not clear whether
11 Plaintiff was ever a "former client" of Mr. Ivey. Assuming, without
12 deciding, that Plaintiff was a former client of Mr. Ivey, Bonnie and
13 Jamila Gordon must also show the matters currently at issue are
14 substantially related to the subject matter of the former
15 representation. *Sanders v. Woods*, 121 Wash.App. 593, 597-98, 89 P.3d
16 312 (Div. 3, 2004); *Trone*, 621 F.2d at 996 ("The relevant test for
17 disqualification is whether the former representation is
18 "substantially related" to the current representation.") The
19 determination of whether the two representations are substantially
20 related turns on whether the lawyer was so involved in the former
21 representation that he can be said to have switched sides. *Sanders*,
22 121 Wash.App. at 598, 89 P.3d 312.

23 Here, the facts of the case reveal that on September 22, 2003,
24 Plaintiff sent Mr. Ivey an unsolicited email in which Plaintiff
25 outlined the procedural steps he had taken to reduce the spam he had
26 been receiving. Plaintiff also explained in this email that he had

1 drafted a complaint and was "seeking an attorney to 'perfect' [his]
2 complaint so that [he could] file it in District Court." (Ct. Rec.
3 283-2, at 52.). In the alternative, Plaintiff stated he "may want to
4 hire an attorney to represent [him] in court." *Id.* (emphasis added).
5 In response, Mr. Ivey said he was interested but encouraged Plaintiff
6 to contact the Attorney General. *Id.* In response, Plaintiff
7 forwarded Mr. Ivey a copy of an email Plaintiff previously sent to
8 the Attorney General. In the email to the Attorney General,
9 Plaintiff explained he had received over 12,000 unsolicited
10 commercial email (spam) in the past month, that he had successfully
11 identified the origin of some of those emails, and that he had sent
12 demand letters to the senders, citing the Washington anti-spam
13 statute. Plaintiff suggested to the Attorney General that the State
14 of Washington "turn this proverbial lemon into lemonade--making spam
15 a "profit center" for the State of Washington as well as other
16 organizations within the State." (Ct. Rec. 283-2, at 56).

17 On September 25, 2003, Plaintiff sent another email to Mr. Ivey.
18 (Ct. Rec. 283-2, at 57). Plaintiff explained that the amount of spam
19 he was receiving was becoming an imposition on his business and on
20 his personal use of the internet and that he believed Washington's
21 anti-spam statute was designed to prevent the "abuse" he was
22 experiencing. *Id.* Plaintiff closed his email by thanking Mr. Ivey
23 for considering the issues. *Id.* at 58. Mr. Ivey responded by
24 stating that his attorney services would cost \$225 per hour and that
25 he could not guarantee a solution. Mr. Ivey closed his email by
26 stating there would be a "real budget needed ... to commence the

1 effort. Please advise if you want to examine the prospect of going
2 forward." *Id.* at 57.

3 On September 30, 2003, Plaintiff sent another email to Mr. Ivey,
4 in which Plaintiff explained that he had email documentation showing
5 the violations he alleged and had drafted two complaints. (Ct. Rec.
6 295-1, at 15). Plaintiff asked Mr. Ivey how he would like to proceed
7 and requested Mr. Ivey identify the proposed costs. *Id.* Plaintiff's
8 next email is dated December 30, 2003. (Ct. Rec. 295-1, at 17).
9 From the context of that email, it appears Plaintiff chose to proceed
10 *pro se* and filed the complaints in superior court against two
11 companies. In the email, Plaintiff told Mr. Ivey that a superior
12 court had granted Plaintiff's request for temporary restraining
13 orders against these two companies. *Id.* Plaintiff asked Mr. Ivey if
14 he was still interested and in what way he envisioned assisting the
15 Plaintiff. *Id.* Beyond these emails, the record does not reveal any
16 other contact between Mr. Ivey and Plaintiff.

17 After reviewing these emails, the Court concludes Mr. Ivey's
18 representation of Impulse Marketing is not substantially related to
19 any previous representation of Plaintiff. The emails reveal Mr. Ivey
20 never offered any formal legal advice and never reviewed any legal
21 pleadings for Plaintiff. Further, it appears Plaintiff declined to
22 examine the prospect of hiring Mr. Ivey and chose instead to proceed
23 *pro se* with his anti-spam case. In determining whether a conflict of
24 interest exists, the "underlying concern is the possibility, or the
25 appearance of the possibility, that the attorney may have received
26 confidential information during the prior representation that would

15

1 be relevant to the subsequent matter in which disqualification is
2 sought." *Sanders*, 121 Wash.App. at 599, 89 P.3d 312. Here, the
3 emails produced by Mr. Ivey show no confidential information was
4 disclosed. Further, Bonnie and Jamila Gordon have not presented any
5 evidence providing even the appearance of the possibility that
6 confidential information was disclosed. For these reasons, the Court
7 determines Mr. Ivey's representation of Impulse Marketing does not
8 present a conflict of interest. Therefore, Bonnie and Jamila
9 Gordon's motions to disqualify Floyd Ivey are denied.

10 ***Impulse Marketing's "Second" Motion to Compel***

11 On April 18, 2006, Impulse Marketing re-noted for hearing its
12 "First Motion to Compel." The Court previously denied this motion to
13 compel, directing the parties to meet and confer in an attempt to
14 resolve their discovery problems. It is not clear from the record
15 whether the parties did in fact "meet and confer" but Impulse
16 Marketing continues to argue Plaintiff is not providing adequate
17 responses to Defendant's discovery requests. Plaintiff objects to
18 the motion to compel, arguing the alleged "deficiencies" in
19 Plaintiff's responses are actually Impulse Marketing's "improper
20 demands." The Court determines it is appropriate and necessary to
21 refer the parties' discovery dispute to a discovery master.
22 Therefore, Impulse Marketing's motion to compel is denied and an
23 Order referring this matter to a discovery master will be
24 forthcoming.

25 ***Third-Party Defendants' Motions to Compel and for Sanctions***

26 Third-Party Defendants each allege Impulse Marketing failed to

1 make the "required Rule 26 disclosures" and "provided evasive,
2 incomplete disclosure, answer, or response to discovery propounded
3 by" [sic] Third-Party Defendants. In support of their motions to
4 compel, Third-Party Defendants provided copies of some of their
5 interrogatories and Impulse Marketing's answers. In response to many
6 of Third-Party Defendants' interrogatories, Impulse Marketing
7 asserted the standard ambiguous, irrelevant and overbreadth
8 objections. Because Third-Party Defendants failed to cite any legal
9 authority or provide any legal analysis in response to Impulse
10 Marketing's objections to the propounded discovery requests, it is
11 difficult for the Court to analyze and resolve the discovery dispute.
12 Thus, the Court determines it is necessary to refer the parties'
13 discovery dispute to a discovery master. Therefore, Third-Party
14 Defendants' motions to compel are denied and an order referring this
15 matter to a discovery master will be forthcoming. Accordingly,

16 **IT IS HEREBY ORDERED:**

17 1. Impulse Marketing's Motion to Compel and Motion for
18 Sanctions (Ct. Rec. 235) is **DENIED**.

19 2. Motions to Compel and Request for Sanctions brought by
20 Third-Party Defendants James Gordon, III, (Ct. Rec. 298), Jonathan
21 Gordon (Ct. Rec. 300), Bonnie Gordon (Ct. Rec. 256), Robert Pritchett
22 (Ct. Rec. 259) are **DENIED**.

23 3. Amended Motions to Compel and Request for Sanctions brought
24 by Bonnie Gordon (Ct. Rec. 274) and Jamila Gordon (Ct. Rec. 270) are
25 **DENIED**; Bonnie and Jamila Gordon's request to disqualify Floyd Ivey
26 are denied.

1 4. Defendant's Motion to Strike (Ct. Rec. 325) is MOOT.

2 5. Bonnie Gordon's Motion to Expedite (Ct. Rec. 337) is MOOT.

3 6. Bonnie Gordon's Motion to Strike (Ct. Rec. 339) is MOOT.

4 7. Jamila Gordon's Motion to Expedite (Ct. Rec. 342) is MOOT.

5 8. Jamila Gordon's Motion to Strike (Ct. Rec. 344) is MOOT.

6 IT IS SO ORDERED. The District Court Executive is hereby
7 directed to enter this Order and furnish copies to counsel AND to the
8 Third-Party Defendants who are proceeding *pro se*.

9 DATED this 15th day of May, 2006.

10 s/ Fred Van Sickle
11 Fred Van Sickle
United States District Judge

MAR 20 2006

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAR 17 2006

JAMES R. LARSEN, CLERK
DEPUTY
RICHLAND, WASHINGTON

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF WASHINGTON AT RICHLAND

James S. Gordon, Jr., Plaintiff,

vs.

Impulse Marketing Group, Inc.,
Defendant

Impulse Marketing Group, Inc.,
Third-Party Plaintiff,

v.

Bonnie F. Gordon, Third-Party
Defendant

TO: Clerk of the Court

AND TO: Floyd E. Ivey, Attorney for Third-Party Plaintiff

AND TO: Peter J. Glantz and Sean A. Moynihan

Case No.: CV-04-5125-FVS

DECLARATION AND
RESPONSE TO IMPULSE AND
IVEY INITIAL MEMORANDUM
RESPONSE RE: THIRD PARTY
DEFENDANT'S MOTION TO
COMPEL AND MOTION TO
DISQUALIFY

Exhibit 2

1 Bonnie F. Gordon declares as follows:

- 2 1) I, Bonnie F. Gordon, am a named third party defendant in the
3 above captioned lawsuit. I am over the age of 18 and am
4 otherwise competent to testify.
- 5 2) Commonwealth Marketing Group (CMG) – whose contract has
6 already been introduced into evidence by Impulse sent a “cease
7 and desist” letter to Impulse on February 9, 2004 to stop it from
8 sending emails to “gordonworks.com” Impulse is withholding
9 documents like this one from me (us), documents which will
10 substantiate the contentions made by me (us). **Exhibit 1**
- 11 3) Prior to this letter (Ex 1) by CMG, Impulse assured CMG that
12 it was Can-Spam compliant. **Exhibit 2** However, Impulse
13 continued to send spam or unwanted email to gordonworks.com
14 through December 2005 – a per se violation of Can-Spam,
15 despite its “assurances” of using suppression/scrub lists and the
16 like. And it is sending spam to my new domain - well into
17 March 2006.
- 18 4) Impulse’s reliance on accusations of a scheme and the concepts
19 of indemnification and contribution “fail” in light of the fact
20 that internal documents from Impulse and external documents
21 from CMG, indicate that Impulse’s Ken Adamson, Jeffrey
22 Goldstein, and John Huston – at a minimum, knew that no
23 email was to be sent to the email address which bears my name
24 at “gordonworks.com”. Despite this knowledge, each man,
25 individually and as a collective, failed to reign in the torrent of

1 email being sent to "gordonworks.com. My causes of action
2 versus Impulse will bring out more of its scheme or conspiracy
3 to defraud the general public along with its promotion or
4 support of pornography, counterfeit drugs and the like.

5 5) Impulse's reliance on the assertions of fraud and deceit,
6 tortious interference, malicious prosecution and breach of
7 contract (even if there was a contract [which I deny] it was
8 rescinded via unsubscribe requests in October 2003 starting
9 with Exhibit 3) fail because of the evidence of accurate
10 subscriber profiles and opt-out requests as early as October 1,
11 2003. Accurate subscriber profiles and opt-out requests along
12 with the communication between CMG and Impulse indicate a
13 good faith effort on the part of the undersigned to extricate
14 myself from the failed attempt to obtain a prize, which
15 ultimately proved to be part of a fraudulent free prize scheme
16 to steal the identity of the undersigned and anyone else who
17 responded to Impulse's offers. **Exhibit 3**

18 6) The "prayer" for an injunction by Impulse appears to be
19 fraudulent as the documents above indicate that Impulse has
20 refused to honor unsubscribe requests by "gordonworks.com"
21 email addressee(s). Further, it has used its refusal to fabricate
22 its story of its own victimization. In addition to ignoring opt-out
23 requests, Impulse ignore edicts from CMG and internal
24 suppression guidelines – making it answerable to no one. It is
25 Impulse and its marketing partners' behavior that led to any
and all damages incurred by Plaintiff and the undersigned.

1 Damages proffered by Impulse, allegedly as a result of a
2 scheme, are illusory or self-inflicted.

- 3 7) Impulse's counterclaims are based on a lie (or series of lies), for
4 example, a) I participated in a scheme to defraud it b) I opted
5 into one or more of its websites c) I opted out of one or more of
6 its websites d) I opted in and opted out, repeatedly e) Impulse
7 believed that 3rd party defendants' subscriber profiles were
8 inaccurate and untruthful f) I solicited emails in order to file
9 multiple lawsuits (strictly speaking I have filed no lawsuits
10 against anyone – my counterclaims and causes of action against
11 Impulse were prompted by the pre-existing specious lawsuit by
12 Impulse – I have sued no one else) g) Impulse has sustained
13 financial loss and continues to accrue losses due to action(s) by
14 Plaintiff and 3rd party defendants. Had Impulse done as it was
15 instructed to do by its principal, CMG, this lawsuit may have
16 been averted altogether. Impulse's Adamson letter of 10/21/03
17 acknowledges Impulse's placement of "gordonworks.com" "in a
18 file of blocked and/or suppressed recipients – ALL email after
19 this time VIOLATED Impulse's and CMG's corporate policies
20 as well as state and federal civil and criminal laws as outlined
21 in my causes of action versus Impulse.
- 22 8) Mr. Ivey et al have criticized my (our) interrogatories, it
23 appears, as something I (we) are parroting for/from Plaintiff.
24 He fails to mention that I (we) now have legitimate claims of
25 my (our) own. These new claims are for statutory damages
under RCW 19.190 et seq as Impulse has insinuated itself into

1 web sites which do not disclose a link to Impulse – claiming
2 that it is a marketing partner simply because it purchased an
3 email list from another spammer. Impulse has failed to disclose
4 via interrogatories and requests for production its list of so-
5 called marketers ostensibly to avoid being painted with the
6 same brush as these “fly-by-night” criminal spam gangs.

7 Discovery now appears to be a one-way street whereby Impulse
8 hounds Plaintiff for discovery while maintaining a closed fist on
9 its requirement for disclosure. For pro se defendants, the
10 distinction between our collective claims, if there is one, is not
11 discernible to us.

- 12 9) As a result of 30 years of marriage, my husband and I discuss
13 and collaborate on most things including litigation and
14 strategies for same. This collaboration has revealed the
15 following, we both understood Mr. Ivey was “his” attorney and
16 that all that was discussed between the two of them was
17 privileged. I was shocked to hear that Mr. Ivey had switched
18 sides. The documents in my possession appear to reveal a
19 betrayal of my husband and a skirting of the truth by Mr. Ivey.
20 **Exhibit 4** – email dated 9/22/03; **Exhibit 5** – email dated
21 9/25/03; **Exhibit 6** – dated 9/30/03; **Exhibit 7** – dated 9/30/03
22 to Jamila Gordon; **Exhibit 8** – dated 12/30/03; **Exhibit 9** –
23 dated 4/4/05.
- 24 10) I find it peculiar that Mr. Ivey would retain my husband’s
25 email from 2002, but not the 2003 emails that would indicate a
conflict.

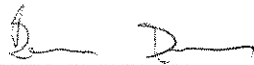
- 11) **Exhibit 5** lists the case of Gordon v. Commonwealth Marketing Group, Inc. It was a hyperlink to a web site created by my husband which contained detailed information about the lawsuit and emails and the analysis of the email – the web site has been taken down. On the surface, it appears that Mr. Ivey has direct intimate knowledge of both sides in the instant conflict. And Impulse's argument that "the relevant test for disqualification is whether the former representation is 'substantially related' to the current representation" – Gas-A-Thon citation. The substantially related argument is buttressed by Impulse's assertion/claim in its Motion to Dismiss based on "res judicata" (circa January 2005) that the corpus of email was **identical**.
- 12) Impulse knows that it is suing pro se defendants. Pro Se defendants by definition are typically not attorneys. As a result, pro se defendants will make mistakes. Impulse has seized every opportunity to threaten and intimidate 3rd party defendants in terms of filings made and the errors which ensue. The primary threat has been for sanctions for making mistakes. If allowed, these sanctions would render 3rd party defendants "paralyzed" in terms of mounting their legal self-defense. It is highly likely that 3rd parties will make more mistakes in their self-defense. As a matter of equity, this Court, I (we) trust will adjudge each filing made by a 3rd party defendant on a good faith proffer of facts – not my (our) legal education or lack thereof.
- 13) I do not want to have to interact with Mr. Ivey et al because of

1 his tendency to intimidate/threaten and I do not believe he is a
2 man of his word. That is the reason for my husband forming a
3 "buffer" for our family and my family's consent for same. It
4 appears that Impulse could correspond via email or suggest
5 another way to overcome the impasse regarding the needed
6 communications in this case. We have been pulled into this
7 scam/scheme of Impulse, but we will defend ourselves to the
8 best of our collective abilities.

9 I declare under penalty of perjury under the laws of the United States
10 that the foregoing is true and correct.
11

12 Bonnie F. Gordon
13 9804 Buckingham Drive
14 Pasco, WA 99301
15 509-210-1069
16

17 EXECUTED this 17th day of March, 2006
18

19 

20 Certificate of Service

21 I, hereby, certify that on March 17, 2006, I filed this affidavit with this
22 Court. I have served Bob Siegel, Peter J. Glantz, Sean A. Moynihan,
23 Floyd E. Ivey, Jamila Gordon, James Gordon III, Jonathan Gordon,
24 Emily Abbey, and Robert Pritchett by other means.
25





One Millennium Drive
Uniontown, PA 15401
Phone: (724) 437-3707

February 9, 2004

Jeff Goldstein
Impulse Marketing Group, Inc.
Five Concourse Parkway, Suite 950
Atlanta, GA 30328

Facsimile: (678) 805-2101

Re: James S. Gordon, Jr. v. Commonwealth Marketing Group, Inc.

Dear Jeff:

Commonwealth Marketing Group, Inc. (CMG) hereby gives notice to Impulse Marketing Group, Inc. (IMG) to immediately cause IMG affiliated marketers, offerclicks and freebiegazette, to cease representing, in any and all manner whatsoever, IMG on behalf of CMG, unless and until IMG provides CMG with assurance that it has caused all of its affiliated marketers, including the two mentioned above, to cease and desist from sending messages, to the gordonworks.com e-mail domain.

CMG finds it necessary to take this drastic action as, despite repeated telephone conversations with IMG officers and staff of the need to act immediately on this extremely urgent matter, we learned today that the gordonworks.com domain continues to receive messages from IMG affiliated marketers. Specifically, on January 7, I wrote to you, attached a copy of an Order of Court of Benton County, Washington, against me, personally, CMG and IMG, enjoining the sending of e-mail messages to James Gordon. On January 9, John Fonzo, CMG Vice President and General Counsel, wrote to IMG's Phil Huston, requesting assurances concerning IMG CAN SPAM Act and state anti-Spam law compliance. (Gordon's lawsuits against CMG was filed pursuant to the Washington anti-Spam law). On February 2, Mr. Fonzo again wrote to Phil Huston, informing IMG in writing of our previous oral notification of the Gordon vs. CMG litigation, and raising indemnification issues under the CMG-IMG Website Development and Marketing Services Agreement.

It is my understanding that IMG's lawyers have responded in writing to the January 9 letter concerning SPAM law compliance, providing assurances of IMG compliance. Further, on multiple occasions, CMG has forwarded to IMG several e-mail messages as provided by James Gordon to me, for research and evaluation as to, among other things, origin of the messages, any evidence of Gordon opt-ins, as well as evidence of cessation of messages, to the extent they originated from an IMG affiliated marketer. My staff

CMG 000052

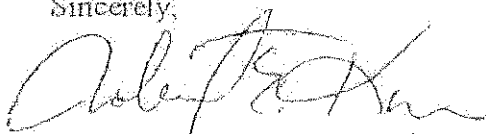
advises that they have had continuous dialogue with IMG technical staff as to these messages, together with certain assurances that proper safeguards were put in place to make certain that additional messages are not sent to Mr. Gordon.

What is equally troubling to me is that IMG was first notified of Gordon's alleged receipt of SPAM in September of 2003, immediately upon CMG's receipt of notice from Gordon of the allegations. Certainly, IMG has had sufficient time to address this serious situation. Thus, you can imagine my confusion, anger and embarrassment when I received from James Gordon on February 7, yet two additional e-mail messages that appeared to have originated from IMG affiliated marketers.

Jeff, it is absolutely imperative that this situation be addressed immediately. Given the long and productive business relationship that CMG and IMG has enjoyed, you must see this demand for IMG affiliated marketers who send messages to gordonworks.com, including the two mentioned above, to cease and desist representing IMG on CMG products as a final effort to get IMG's attention to do what is legally required and commercially responsible.

Please call me immediately upon receipt. At that time, we can direct to the person at IMG who will give this their undivided and immediate attention, the most recent e-mail messages received from James Gordon.

Sincerely,



Robert E. Kane
President & CEO

CMG 000053

KLEIN, ZELMAN, ROTHERMEL & DICHTER, L.L.P.

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STEPHEN B. HANSBURG
OF COUNSEL

JOHN T. UM
JOSHUA D. ROSE
DEENA B. BURGESS

February 3, 2004

VIA FIRST CLASS MAIL

John P. Fonzo, Esq.
Vice President & General Counsel
Commonwealth Marketing Group
One Millennium Drive
Uniontown, PA 15401

Re: CAN-SPAM compliance

Dear Mr. Fonzo:

Please be advised that this firm represents Impulse Marketing Group, Inc. ("Impulse"). We write in response to your January 9, 2004 correspondence addressed to Mr. Phil Huston, in which you request that Impulse detail the steps that it has taken to comply with the provisions of the CAN-SPAM Act of 2003 ("CAN-SPAM" or the "Act"), specifically as they relate to the services that Impulse provides to Commonwealth Marketing Group ("Commonwealth") under contract dated December 10, 2001 (the "Agreement"). Impulse has assured us that during the life of its relationship with Commonwealth, it will at all times provide services to Commonwealth in strict conformance with the requirements of CAN-SPAM and any subsequent amendments. In furtherance of this commitment, Impulse is amenable to crafting a mutually acceptable rider to the existing Agreement that will address the parties' respective CAN-SPAM obligations, while providing reciprocal indemnification provisions that will be triggered should either party at any time fail to comply with the Act.

As of January 1, 2004, Impulse has implemented the following internal procedures so that its business is conducted in accordance with CAN-SPAM regulations. In particular, and without limitation, Impulse ensures that each and every commercial e-mail that it sends, or has sent through a third party, contains: accurate header information; correct domain name and/or IP address; "subject" and "from" lines that are not fraudulent, deceptive or misleading; a functioning return/reply e-mail address for unsubscribe purposes and an unsubscribe hyperlink

{00062027.2}

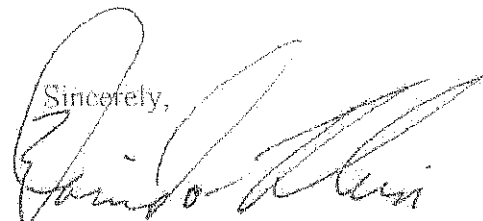
CMG 000050

28

John P. Forzo, Esq.
February 3, 2004
Page 2

that is functional for thirty (30) days after the applicable e-mail transmission date; language identifying such commercial e-mail as an advertisement or solicitation; and valid, physical mailing addresses (not P.O. boxes) for both Impulse and its advertiser-clients, such as Commonwealth. As required by the Act, Impulse processes all unsubscribe requests within ten (10) days of receiving such requests, if not sooner. Each unsubscribed e-mail address is then transferred to the Impulse suppression list. This list is updated on a daily basis, divided up into separate advertiser-specific suppression lists and made available to the applicable advertiser-clients for their own internal scrubbing and suppression purposes.

Should you have any further questions on the CAN-SPAM compliance measures taken by Impulse, please contact me at your convenience. We will begin drafting the CAN-SPAM rider next week and will have same for your review promptly thereafter. I look forward to working with you.

Sincerely,

David O. Klein

cc: Phil Huston

CMG 000051

.00062027,28

Exhibit 3

X-Persona: <ValueWeb>
 Received: from cust_req_fwding (james@gordonworks.com --> jim@gordonworks.com) by ams.ftl.affinity.com id <216611-20680>; Wed, 1 Oct 2003 10:08:34 -0400
 Received: from relay02.mindsharedesign.com ([216.39.113.10]) by ams.ftl.affinity.com with ESMTP id <216875-20663>; Wed, 1 Oct 2003 10:07:39 -0400
 Received: from i.pm0.net (i.pm0.net [216.39.113.141])
 by relay02.mindsharedesign.com (Postfix) with ESMTP id A6E31643B
 for <james@gordonworks.com>; Wed, 1 Oct 2003 07:05:16 -0700 (PDT)
 Received: (from pmguser@localhost)
 by i.pm0.net (8.12.8/8.12.2/Submit) id h91E7bxU007989;
 Wed, 1 Oct 2003 07:07:37 -0700 (PDT)
 Date: Wed, 1 Oct 2003 07:07:37 -0700 (PDT)
 Message-Id: <200310011407.h91E7bxU007989@i.pm0.net>
 From: "EmailPrize.com" <pmgsender@returns.mb00.net>
 To: <james@gordonworks.com>
 X-PMG-Userid: emailprize
 X-PMG-Msgid: unsubscribe
 X-PMG-Recipient: james@gordonworks.com
 Subject: Unsubscribed Successful!
 MIME-Version: 1.0
 Content-Type: text/plain; charset="iso-8859-1"

You have been unsubscribed to the EmailPrize Newsletter. We are sorry to see you leave.

EmailPrize.com

30

From: "floyd ively" <feivey@3-cities.com>
To: "Jim Gordon" <res08nqc@verizon.net>
Subject: Re: Help With District Courts Complaints
Date: Mon, 22 Sep 2003 10:29:23 -0700
X-Mailer: Microsoft Outlook Express 6.00.2800.1158

Jim,

Thanks for the interesting note. I certainly have an interest but will first point you to direct contact with the Attorney General's office. They may be able to indicate the extent of their efforts and may have an interest in your work.

Moving a positive result in District Court to a meaningful prospect of gaining dollars will likely be difficult. The Attorney General may have a clear perspective of the possibility of having success via litigation.

Please let me know the nature of any contact you might have with the AG.

Floyd E. Ivey

----- Original Message -----

From: "Jim Gordon" <res08nqc@verizon.net>
To: <feivey@3-cities.com>
Sent: Monday, September 22, 2003 8:15 AM
Subject: Help With District Courts Complaints

> Floyd:

>

> I would like you to consider the following information as I will need help
> completing the work that I have outlined, below...

>

> I have taken the following affirmative steps to reduce the 600+ emails
that

> I have been receiving every day since 1998:

>

> 1. I purchased forensic software to allow me to trace the origin of
emails.

> 2. Mailed demand letters to individuals and entities that have spammed me.

> Each letter contained the following info:

> a. A two page copy of RCW 19.190 - WA anti-spam statute

> b. Copies of the unlawful headers from the email that the
spammers

> sent to me.

> c. Demand for damages of \$500 per violation - the threshold for

> sending a letter was 10 violations or more

> 3. Mailed a total of 30 demand letters to the most egregious violators of
> this law.

>

> Currently, I have drafted a complaint - the draft was based on a template

> from a successful defense of RCW 19.190 in Western WA. I am seeking an

> attorney to "perfect" my complaint so that I may file it in District
Court.

> In the alternative, I may want to hire an attorney to represent me in
court.

>

> An interesting side note is since the demand letters were delivered to

> these spammers, a few have continued to send their spam "flaunting" our

> law. I believe that there is a second cause of action (perhaps harassment)

Exhibit 5

From: "floyd ively" <feivey@3-cities.com>
To: "Jim Gordon" <res08nqc@verizon.net>
Subject: Re: Article from Wired World
Date: Thu, 25 Sep 2003 09:38:24 -0700
X-Mailer: Microsoft Outlook Express 6.00.2800.1158

Jim,

The problem with present resistance to spam is the cost. That is, it will cost \$225/hour for me to explore with no clear ability to find a solution. Further, should you actually locate a spammer there would be doubt regarding the ability to collect on any judgment.

In the mean time someone has commenced such a lawsuit. I haven't heard re: the status for months. And the Attorney Generals of many states are likely looking at the issue.

Thus others are doing the work at no expense to you. There will be a real budget needed for you to commence the effort. Please advise if you want to examine the prospect of going forward.

Floyd

----- Original Message -----

From: "Jim Gordon" <res08nqc@verizon.net>
To: <feivey@3-cities.com>
Sent: Thursday, September 25, 2003 9:09 AM
Subject: Article from Wired World

> Floyd:

>

> My domain name - gordonworks.com is under siege. Whether we consider my
> domain name intellectual PROPERTY or personal PROPERTY, this property is
> being encroached upon - to the tune of 4MB+ every day. This encroachment
> displaces my computer's memory with unsolicited - even unlawful commercial
> email.

>

> I have kept records of this spam since 8/6/03. In that time (51 days), I
> have received 122MB of spam. In the past 24 hours, I have received 4.6MB
of

> spam. I am feeling a since of urgency...

>

> One might ask why I don't simply filter and delete these email. I have
been

> filtering and deleting email since 1998. During that time, my daily volume
> of email approached 1500 messages per day. I found that filters can be
> defeated/circumvented - so I spent time revising and updating my filters.
> My collection of spam (over 20,000 messages) now serves one purpose - that
> of being evidence against those who spam me and millions of others.

>

> My spam problem was an imposition on my business and it is an imposition
on

> my personal use of the Internet. Therefore, I have chosen to stop running
> and hiding from spam. I believe that Washington's anti-spam statute was
> designed to prevent much of the abuse that I am experiencing.

>

> The article below discusses the concept of "trespass" as it pertains to
> spam...I experience this sense of being trespassed upon each time that I
> check my email - 6+ times per day.

32

feivey@3-cities.com, 11:15 AM 9/30/2003 -0700, First spam Complaints

To: feivey@3-cities.com
From: Jim Gordon <res08nqc@verizon.net>
Subject: First spam Complaints
Cc:
Bcc:
Attached: C:\Temp\Spam Complaint Form_files\Complaints\pleadingdraftTheodorehansson.doc; C:\Temp\Spam Complaint Form_files\Complaints\pleadingdraftAmericanHomeownersASSN.doc;

Floyd:

I have the email documentation, which shows the violations that I allege. I have also "drafted" two complaints. How would you like to proceed? And what costs can we identify at this point?

I believe that we will prevail in these matters. However, I would like to be as frugal as possible on this first lawsuit [I have been unemployed since 7/31/03]. There are 30+ complaints to go.

I'd like to have the first complaint [AHA] filed and sent to the Defendant with a final offer to settle out-of-court.

Regards,
Jim Gordon

1. American Homeowners Assn. [144 emails] \$72,000 claim

1100 Summer St.
Stamford, CT 06905

<https://www.ahamembership.com/index.cfm>

This company sent me a written "rejection" of my "demand for damages" letter that I sent to them. However, they continue to send me ads that offer free products, which actually would cost me a tiny fee, that is to be charged to my credit card and I would also be obligated to receive their one month trial membership - not so free after all. Their email explicitly proclaims, "[Click now](#) and complete the form to get your Gift Now! This offer is with **no obligation** and the gift is yours to keep."

2. Theodore Hansson [94 emails] \$47,000 claim

4137 248th Ct. SE
Issaquah, WA 98029

<http://www.esioffers.com/campaigns/thansson/?link=2464>

<http://www.megawavez.com/hansson/index.html>

He sells books...states that people can use his money to buy discounted paper. Some of the subject lines for his email follow:

Subject: Wanna Use My Money?
Subject: Use my money... all of it!
Subject: You can use MY money
Subject: Split the profits 50-50 using MY money

Jamila & Tommy, 01:26 PM 9/30/2003 -0700, Update

To: "Jamila & Tommy" <jamila@charter.net>

From: Jim Gordon <res08nqc@verizon.net>

Subject: Update

Cc:

Bcc: bonnie.gordon@verizon.net

Attached: C:\Temp\Spam Complaint Form_files\Complaints\pleadingdraftAmericanHomeownersASSN.doc; C:\Temp\Spam Complaint Form_files\Complaints\pleadingdraftTheodorehansson.doc;

Jamila:

Please hold on to the attachments - they are templates for future litigation. The email accounts for the family have the following totals:

<u>Name</u>	<u>Total Emails (unresearched)</u>	<u>Unlawful spam (researched)</u>
Bonnie	1505	153
James	3409	343
Jamila	1132	94
Jay	1552	124
Jon	1138	95

The complaints that I drafted for my attorney, Floyd Ivey, are attached. Each unlawful spam could be worth \$500 - if we prevail in court

feivey@3-cities.com, 11:13 AM 12/30/2003 -0800, Status

To: feivey@3-cities.com
From: Jim Gordon <res08nqc@verizon.net>
Subject: Status
Cc:
Bcc:
Attached:

Floyd:

On Wednesday, the 24th a Superior Court judge gave me an early Christmas present in the form of two temporary restraining orders against two of the companies that have been spamming me. On January 8th, 2004, I will appear in Superior Court to request a permanent injunction against these companies and their agents.

Below are links to the steps that I have taken to stop the spamming.

Here's a link to the online Herald-Standard.

http://www.heraldstandard.com/site/news.cfm?newsid=10686398&BRD=2280&PA G=461&dept_id=480247&rft=8

<http://www.gordonworks.com/spam>

<http://www.gordonworks.com/spam/TedHansson.htm>

<http://www.gordonworks.com/spam/CommonwealthMarketingGroup.htm>

If I prevail in these initial lawsuits, there are over 70 more anti-spam lawsuits that I wish to file in Superior and District Courts. If you are still interested, in what way do you envision assisting me?

Seasons Greetings,
Jim Gordon

35

Akers, Doug E, 08:47 AM 4/4/2005 -0700, RE: FW: Battelle Contract for Review

To: "Akers, Doug E" <doug.akers@pnl.gov>
From: Jim <Kamau@charter.net>
Subject: RE: FW: Battelle Contract for Review
Cc:
Bcc:
Attached:

Actually it is Doug McKinley v Floyd Ivey

At 07:48 AM 4/4/2005 -0700, you wrote:

By chance are you working with Dave Broussard? Good Guy

Look forward to hear from one of them.

Take Care

Doug

-----Original Message-----

From: Jim [mailto:Kamau@charter.net]
Sent: Saturday, April 02, 2005 8:30 AM
To: Akers, Doug E
Cc: Shoemaker, Steven V
Subject: Re: FW: Battelle Contract for Review

Doug:

I have not had an opportunity to take this contract to an attorney yet - because the two attorneys that I typically use are facing one another - one for me and the other against (yes, it technical is a conflict of interest, but...). The attorney that is for me, does work for the Lab, which makes advising me a possible conflict of interest - so, I may go to a third attorney...

I appreciate you diligence on the preparation of this document and will get legal advice as soon as possible.

Best Regards,
Jim

At 07:29 AM 3/7/2005 -0800, you wrote:

Jim,

Here it is. Hopefully it will make it through this time.

Doug

-----Original Message-----

From: Akers, Doug E
Sent: Tuesday, February 22, 2005 12:07 PM
To: 'jim@gordonworks.com'
Cc: Shoemaker, Steven V; Strycker, Forest E Jr
Subject: Battelle Contract for Review

Jim,