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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON, SEATTLE

**OMNI INNOVATIONS, LLC, a
Washington Limited Liability
company; EMILY ABBEY, an
individual,**

NO. 06-01284

FIRST AMENDED COMPLAINT

Plaintiffs,

v.

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

Defendants,

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. Plaintiff EMILY ABBEY, (hereinafter "ABBEY") is an individual residing in King County, Washington.
3. 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.

COMPLAINT FOR DAMAGES, PENALTIES, ETC. -1

MERKLE SIEGEL & FRIEDRICHSEN
1325 Fourth Ave., Suite 940
Seattle, WA 98101
Phone: 206-624-9392
Fax: 206-624-0717

1 4. On information and belief, ADAM SCHRAN, (“Schran”) is an officer, director,
2 and/or majority shareholder of Ascentive, and as such controls its policies, activities,
3 and practices, including those alleged herein on behalf of those defendants. All acts
4 and practices undertaken by Schran on behalf of Ascentive are and were for the
5 benefit of his marital community. SCHRAN resides in the State of Pennsylvania and
6 transacts or has transacted business in the State of Washington and in the Western
District of Washington.

7 5. Jurisdiction is proper pursuant to 28 U.S.C. §1331 (federal question) and 28 U.S.C.
8 §1332 (diversity).

9 6. This Court has supplemental jurisdiction of state law claims pursuant to U.S.C. §
10 1367.

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

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

14 9. The domain names served by Plaintiff OMNI include: anthonycentral.com,
15 chiefmusician.net, ehahome.com, itdidnotendright.com, jammtomm.com,
16 jaycelia.com, celiajay.com, jaykaysplace.com, rcw19190020.com, and
gordonworks.com (collectively the “Domains” and individually and generically a
“Domain”).

17 10. At all times material hereto, for the Domains and each of them, the information that
18 all e-mail addresses at each Domain (the “Recipient Addresses”) belong to
19 Washington residents was and is available upon request from the registrant of each
20 Domain, each registrant being a Washington resident and each Domain being
registered with a Washington address.

21 11. During the time period of approximately August 2003 through May 2006, Plaintiff
22 received at the Domains electronic-mail messages (collectively the “E-mails” or
23 individually and generically as an “Email”).
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- 1 12. The E-mails, and each of them, were received by Plaintiff OMNI's servers serving
2 the Domains, or at the Domains themselves, and/or on individual Plaintiffs' email
3 accounts, and on their computers.
- 4 13. Each of the E-mails misrepresents or obscures information in identifying the point of
5 origin or the transmission path thereof, and contains header information that is
6 materially false or materially misleading. The misrepresentations include without
7 limitation: IP address and host name information do not match, or are missing or
8 false, in the "from" and "by" tokens in the Received header field; and dates and times
9 of transmission are deleted or obscured.
- 10 14. On information and belief, Plaintiff alleges that some of the E-mails used the Internet
11 domain name of a third party or third parties without permission of that third party or
12 those third parties, and/or used false, or misleading information in registering the
13 domains used to send the subject E-mails.
- 14 15. Defendant initiated the transmission of the E-mails, and each of them. In the
15 alternative, Defendant conspired or otherwise acted in collusion with another or
16 others or assisted another or others to transmit the E-mails, and each of them.
- 17 16. At all times material hereto, Defendants knew or had reason to know that the
18 Recipient Addresses, and each of them, were and are held by a Washington resident.

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FIRST CAUSE OF ACTION – CAN-SPAM ACT

15 U.S.C. §7701 et seq.

17. On the basis of the facts set forth hereinabove, Defendants initiated the transmission
of the E-mails, and each of them, to a protected computer in violation of 15 U.S.C.
§7704(a), causing damage to Plaintiff as the provider of the Internet access service
receiving each such E-mail in the amount of \$100 for each such E-mail, as provided
in 15 U.S.C. §7706 (g) (3).

1 18. Defendants did willfully and knowingly so act in violation of the provisions of 15
2 U.S.C. §7701 et seq., and Defendant's acts did cause Plaintiffs to suffer injury and
3 damages.

4 SECOND CAUSE OF ACTION – CEMA

5 **RCW 19.190.010 - .070**

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

11 THIRD CAUSE OF ACTION – CONSUMER PROTECTION ACT

12 **Ch. 19.86 RCW**

13 20. On the basis of the facts set forth hereinabove, Defendants initiated the E-mails, and
14 each of them, in violation of RCW 19.190.030 and Chapter 19.86 RCW, causing
15 damage to Plaintiff as the interactive computer service receiving each such E-mail.
16 Defendant's acts constitute unfair and deceptive practices in the course of trade and
17 commerce, which acts caused injury to Plaintiffs, and which acts therefore violate
18 RCW 19.86.

19 REQUEST FOR RELIEF

20 Plaintiff respectfully requests the following relief:

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- 22 1. Entry of a Judgment in favor of Plaintiff against the Defendants in the amount of \$1,100
23 per unlawful E-mail, plus such other and further damages as may be proved at trial, plus
24 treble damages to the extent permitted by Chapter 19.86 RCW and to the extent permitted

1 by 15 U.S.C. §7706 (g) (3) (C), plus prejudgment and post-judgment interest at the
2 highest rate permitted by law, plus cost of suit and reasonable attorney fees pursuant to
3 Chapter 19.86 RCW and 15 U.S.C. §7706 (g) (4);

4 2. Entry of a permanent injunction against the Defendants prohibiting the Defendants from
5 sending or causing to be sent electronic mail messages of any kind or nature to e-mail
6 addresses at the Domains, hereinabove.

7 3. Such other and further relief as the Court deems just and equitable in the premises.
8

9 RESPECTFULLY SUBMITTED this 19th day of September, 2006.
10

11 MERKLE SIEGEL & FRIEDRICHSEN, P.C.

DOUGLAS E. MCKINLEY, JR
Attorney at Law

12
13 /S/ Robert J. Siegel
Robert J. Siegel, WSBA #17312
14 Attorney for Plaintiffs

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