

The Honorable Thomas S. Zilly

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

OMNI INNOVATIONS, LLC, a
Washington limited liability
company; Emily Abbey, an
individual,

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. 06-CV-01284 TSZ

**[PROPOSED] ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS AND TO STAY**

THIS MATTER comes before the Court on the Motion of Defendants Ascentive, LLC ("Ascentive") and Adam Schran ("Schran") (together, "Defendants") to dismiss pursuant to Fed. R. Civ. P 12(b)(6). Defendants also move to stay proceedings in the above-captioned matter until this Court enters judgment in Omni Innovations, LLC v. Virtumundo et al., No. CV06-0204JCC, W.D.Wash. (Coughenour, J.) ("Omni"). Having reviewed the First Amended Complaint in the above-captioned matter, as well as the

[PROPOSED] ORDER GRANTING DEFS.'
MOT. TO DISMISS AND TO STAY
CASE NO. 06-CV-01284 TSZ- 1

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1 instant motion, Plaintiffs' response, and Defendants' reply, and also having
2 reviewed the docket in Omni and the pleadings related thereto, the Court
3 finds and rules as follows:

- 4 1. Abbey fails to allege facts sufficient to state a claim upon which
5 relief may be granted under FED. R. CIV. P. 12(b)(6).
- 6 2. Abbey's claim under the under the CAN-SPAM Act of 2003, 15
7 U.S.C. § 7701 et seq. ("CAN-SPAM") is dismissed because she
8 does not claim to be an Internet access service provider.
- 9 3. Abbey's claims under the Washington Commercial Electronic
10 Mail Act (RCW 19.190) ("CEMA") and Washington Consumer
11 Protection Act ("WCPA"), RCW 19.86.010 et seq., are dismissed
12 because the only damage she alleges regarding those claims is
13 "damage to Plaintiff as the interactive computer service", yet she
14 does not claim to provide any interactive computer service.
- 15 4. Plaintiffs' CEMA and WCPA claims are preempted by CAN-
16 SPAM to the extent their claims based upon immaterial violations of
17 email header protocol.
- 18 5. All of Abbey's claims in the above-captioned matter are
19 dismissed, and the parties and the clerk of the court are
20 instructed to strike her name from the caption in future
21 pleadings.
- 22 6. The Court finds that substantially similar and material facts are
23 being adjudicated in another proceeding which is closely related
24 to this case. Accordingly, the Court orders this entire lawsuit be
25 stayed pending resolution of Omni.

26 DATED this ____ day of _____, 2007.

27
28 **HONORABLE THOMAS S. ZILLY**
UNITED STATES DISTRICT JUDGE