

The Honorable Thomas S. Zilly

**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

ANSWER TO FIRST AMENDED
COMPLAINT

Defendants Ascentive, LLC (“Ascentive”) and Adam Schran (“Schran”) (together,
“Defendants”) answer and assert affirmative defenses to Plaintiffs’ First Amended
Complaint (the “FAC”), as follows:

I. ANSWER

1. Defendants are without knowledge and information sufficient to form a
belief with respect to the veracity of the allegations in Paragraph 1 of Plaintiffs’ FAC, and
therefore DENY the same.

2. Defendants are without knowledge and information sufficient to form a
belief with respect to the veracity of the allegations in Paragraph 2 of Plaintiffs’ FAC, and
therefore DENY the same.

3. Defendants ADMIT that Ascentive is a Delaware limited liability company

ANSWER TO FIRST AMENDED COMPLAINT
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1 and has its principal place of business in Philadelphia, Pennsylvania. Defendants DENY
2 all other allegations contained in Paragraph 3 of Plaintiffs' FAC.

3 4. Defendants ADMIT that Schran is an officer of Ascentive and resides in the
4 state of Pennsylvania. Defendants DENY all other allegations contained in Paragraph 4
5 of Plaintiffs' FAC.

6 5. Defendants provide the statutes cited in Paragraph 5 of Plaintiffs' FAC
7 speak for themselves, and Plaintiffs' interpretation of those statutes is not a factual
8 allegation which must be admitted or denied. Defendants DENY all allegations contained
9 in Paragraph 5 of Plaintiffs' FAC.

10 6. Defendants provide the statute cited in Paragraph 6 of Plaintiffs' FAC
11 speaks for itself, and Plaintiffs' interpretation of that statute is not a factual allegation
12 which must be admitted or denied. Defendants DENY all allegations contained in
13 Paragraph 6 of Plaintiffs' FAC.

14 7. Defendants provide the statute cited in Paragraph 7 of Plaintiffs' FAC
15 speaks for itself, and Plaintiffs' interpretation of that statute is not a factual allegation
16 which must be admitted or denied. Defendants DENY all allegations contained in
17 Paragraph 7 of Plaintiffs' FAC.

18 8. Defendants DENY Plaintiff Omni Innovations, LLC ("Omni") is an
19 interactive computer service pursuant to the statutes cited in Plaintiffs' FAC or any other
20 definition of "interactive computer service". Defendants are without knowledge and
21 information sufficient to form a belief with respect to the veracity of the remaining
22 allegations in Paragraph 8 of Plaintiffs' FAC, and therefore DENY the same.

23 9. Defendants are without knowledge and information sufficient to form a
24 belief with respect to the veracity of the allegations in Paragraph 9 of Plaintiffs' FAC, and
25 therefore DENY the same.

26 10. Defendants DENY all allegations contained in Paragraph 10 of Plaintiffs'
27 FAC.

28 11. Defendants are without knowledge and information sufficient to form a

1 belief with respect to the veracity of the allegations in Paragraph 11 of Plaintiffs' FAC,
2 and therefore DENY the same.

3 12. Defendants are without knowledge and information sufficient to form a
4 belief with respect to the veracity of the allegations in Paragraph 12 of Plaintiffs' FAC,
5 and therefore DENY the same.

6 13. Defendants DENY all allegations contained in Paragraph 13 of Plaintiffs'
7 FAC.

8 14. Defendants DENY all allegations contained in Paragraph 14 of Plaintiffs'
9 FAC.

10 15. Defendants DENY all allegations contained in Paragraph 15 of Plaintiffs'
11 FAC.

12 16. Defendants DENY all allegations contained in Paragraph 16 of Plaintiffs'
13 FAC.

14 17. Defendants DENY all allegations contained in Paragraph 17 of Plaintiffs'
15 FAC.

16 18. Defendants DENY all allegations contained in Paragraph 18 of Plaintiffs'
17 FAC.

18 19. Defendants DENY all allegations contained in Paragraph 19 of Plaintiffs'
19 FAC.

20 20. Defendants DENY all allegations contained in Paragraph 20 of Plaintiffs'
21 FAC.

22 21. Defendants provide the section of Plaintiffs' FAC titled "Request for
23 Relief" does not contain factual allegations which must be admitted or denied.

24 Defendants DENY all allegations contained in the section of Plaintiffs' FAC titled
25 "Request for Relief", and further DENY Plaintiffs are entitled to any of their requested
26 relief.

27 II. AFFIRMATIVE DEFENSES

28 Without admitting any of the allegations described in Plaintiffs' FAC, Defendants

1 raise the following affirmative defenses:

2 1.1. Plaintiffs are barred from obtaining any relief sought in the FAC because
3 the FAC fails to state any claim upon which relief may be granted.

4 1.2. Plaintiffs are barred from obtaining any relief because Plaintiffs failed to
5 mitigate their alleged damages, if any.

6 1.3. Plaintiffs are barred from obtaining any relief because Plaintiffs subscribed
7 to receive commercial emails on which Plaintiffs base their FAC.

8 1.4. Plaintiffs are barred from obtaining any relief sought in the FAC by reason
9 of their own unclean hands.

10 1.5. Plaintiffs are barred from obtaining any relief sought in the FAC because
11 Plaintiffs failed to unsubscribe utilizing unsubscribe links in the emails or other means
12 reasonably calculated to communicate to Defendants an intent to unsubscribe.

13 1.6. Plaintiffs waived their claims.

14 1.7. Plaintiffs are not entitled to damages from Defendants where Plaintiffs have
15 already been compensated by another entity for alleged damages allegedly caused by
16 Defendants.

17 1.8. Plaintiffs consented to all actions they complain about in their FAC, and
18 therefore Plaintiffs are not entitled to any relief.

19 1.9. Plaintiffs ratified and approved all actions they complain about in their
20 FAC, and therefore Plaintiffs are not entitled to any relief.

21 1.10. Plaintiffs' claims, and each of them, are barred by the doctrine of estoppel.

22 1.11. Plaintiffs' claims, and each of them, are barred by the doctrine of laches.

23 1.12. The damages alleged in Plaintiffs' FAC, if any, were not caused by
24 Defendants, or any of them; rather, any damages suffered by Plaintiffs were caused by
25 one or more third parties whose activities were not approved, ratified, or controlled by
26 any Defendant.

27 1.13. Plaintiffs have failed to join one or more necessary and indispensable
28 parties.

1 1.14. Defendants established and implemented, with due care, commercially
2 reasonable practices and procedures designed to effectively prevent the violations alleged
3 in the FAC.

4 1.15. Defendants made commercially reasonable efforts to maintain compliance
5 with their practices and procedures designed to effectively prevent the violations alleged
6 in the FAC.

7 1.16. To the extent any action by Defendants violate CAN-SPAM, Defendants,
8 each of them, acted without actual knowledge, or knowledge fairly implied on the basis of
9 objective circumstances, of the act or omission that constitutes the violation.

10
11 **III. PRAYER FOR RELIEF**

12 WHEREFORE, Defendants request that this Court:


- 13 1. DISMISS Plaintiffs' FAC against Defendants alleged herein;
14 2. DENY Plaintiffs the relief they seek;
15 3. GRANT Defendants their reasonable costs and attorneys' fees incurred in
16 defending against Plaintiff's FAC; and
17 4. GRANT such other and further relief to Defendants as the Court shall deem
18 just and equitable.

19
20 DATED this 22nd day of February, 2007.

21 Respectfully Submitted,

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

24
25 By:


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