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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

**[SECOND] 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 who maintains a computer connected to the internet, which is also located in King County, Washington, on which she sends and receives E-mail, and whose residency information was and is available from and registered with a

[SECOND] AMENDED COMPLAINT FOR
DAMAGES, PENALTIES, ETC. -1

**i.Justice Law, P.C.
1325 Fourth Ave., Suite 940
Seattle, WA 98101
Phone: 206-304-5400
Fax: 206-624-0717**

1 Washington address, which E-mail address was at all relevant times herein, and is
2 registered with and available through her domain registration.

3 3. On information and belief, Plaintiffs allege that Defendant ASCENTIVE, LLC,
4 (“ASCENTIVE”) is a limited liability company registered in Delaware, with its
5 principal place of business located in Philadelphia, Pennsylvania.

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

13 5. Jurisdiction is proper pursuant to 28 U.S.C. §1331 (federal question) and 28 U.S.C.
14 §1332 (diversity).

15 6. This Court has supplemental jurisdiction of state law claims pursuant to U.S.C. §
16 1367.

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

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

20 **General Allegations**

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

10. At all times material hereto, for the Domains and each of them, the information that
all e-mail addresses at each Domain (the “Recipient Addresses”) belong to

1 Washington residents, including Plaintiff Abbey's, was and is available upon request
2 from the registrant of each Domain, each registrant being a Washington resident and
each Domain being registered with a Washington address.

- 3 11. During the time period of approximately August 2003 through February, 2007,
4 Plaintiffs received at the Domains electronic-mail messages (collectively the "E-
5 mails" or individually and generically as an "Email").
- 6 12. The E-mails, and each of them, were received by Plaintiff OMNI's servers serving
7 the Domains, or at the Domains themselves, and/or on individual Plaintiff's email
8 accounts, and on their computers, including, but not limited to the email account and
computer of Plaintiff Abbey.
- 9 13. Each of the E-mails misrepresents or obscures information in identifying the point of
10 origin or the transmission path thereof, and contains header information that is
11 materially false or materially misleading. The misrepresentations include without
12 limitation: IP address and host name information that do not match, or are missing, or
13 are false in the "From" and "By" tokens in the Received header fields; or fail to
14 include a valid physical address in the body of the E-mail; and/or used false, or
15 misleading information in registering the domains used to send the subject E-mails.
- 16 14. Defendant initiated the transmission of the E-mails, and each of them. In the
alternative, Defendant conspired or otherwise acted in collusion with another or
17 others or assisted another or others to transmit the E-mails, and each of them.
- 18 15. At all times material hereto, Defendants knew or had reason to know that the
Recipient Addresses, and each of them, were and are held by a Washington resident.

19 FIRST CAUSE OF ACTION – CAN-SPAM ACT

20 **15 U.S.C. §7701 et seq.**

- 21 16. On the basis of the facts set forth hereinabove, Defendants initiated the transmission
22 of the E-mails, and each of them, to a protected computer in violation of 15 U.S.C.
23 §7704(a), causing damage to Plaintiff Omni as the provider of the Internet access
24

1 service receiving each such E-mail in the amount of \$100 for each such E-mail, as
2 provided in 15 U.S.C. §7706 (g) (3).

- 3 17. Defendants did willfully and knowingly so act in violation of the provisions of 15
4 U.S.C. §7701 et seq.

5 SECOND CAUSE OF ACTION – CEMA

6 **RCW 19.190.010 - .070**

- 7 18. On the basis of the facts set forth hereinabove, Defendants initiated, conspired with
8 another to initiate, or assisted the transmission of the E-mails, and each of them, in
9 violation of RCW 19.190.020, causing damage to Plaintiff Omni as the interactive
10 computer service receiving each such E-mail in the amount of \$1,000 for each such
11 E-mail, and to Plaintiff Abbey in the amount of \$500 for each such E-mail directed to
12 and received at Abbey's E-mail address, as provided in RCW 19.190.040(1) and (2).

13 THIRD CAUSE OF ACTION – CONSUMER PROTECTION ACT

14 **Ch. 19.86 RCW**

- 15 19. On the basis of the facts set forth hereinabove, Defendants initiated the E-mails, and
16 each of them, in violation of RCW 19.190.030 and Chapter 19.86 RCW, causing
17 damage to Plaintiffs as the recipients of each such E-mail in an amount to be proven
18 at trial, including, but not limited to, treble damages. Defendants' acts as described
19 hereinabove constituted unfair and deceptive acts or practices in the conduct of trade
20 or commerce, which acts or practices caused injury to Plaintiffs, and as such
21 constitute independent violations of RCW 19.86 et seq.

REQUEST FOR RELIEF

Plaintiffs respectfully request the following relief:

1. Entry of a Judgment in favor of Plaintiff Omni 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);
2. Entry of a Judgment in favor of Plaintiff Abbey against the Defendants in the amount of \$500 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 plus prejudgment and post-judgment interest at the highest rate permitted by law, plus cost of suit and reasonable attorney fees pursuant to Chapters 19.190 et seq., and 19.86 RCW.;
3. Entry of a permanent injunction against the Defendants prohibiting the Defendants from sending or causing to be sent electronic mail messages of any kind or nature to e-mail addresses at Plaintiffs' Domains and/or email addresses.
4. Such other and further relief as the Court deems just and equitable in the premises.

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RESPECTFULLY SUBMITTED this 21st day of March, 2007.

i. Justice Law, P.C.

DOUGLAS E. MCKINLEY, JR
Attorney at Law

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

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