



06-CV-01350-JSR

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WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON, SEATTLE

OMNI INNOVATIONS, LLC, a
Washington Limited Liability
company; and JAMES S. GORDON,
JR., a married individual,

NO. **C 06-1350 JCC**

COMPLAINT

Plaintiffs,

v.

BMG MUSIC PUBLISHING NA,
INC., a New York corporation;
NICHOLAS FIRTH and JANE DOE
FIRTH, individually and as part of
their marital community; and 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 JAMES S. GORDON, JR., (hereinafter "GORDON") is a married individual residing in Franklin County, Washington.

COMPLAINT FOR DAMAGES, PENALTIES, ETC. -1

MERKLE SIEGEL & FRIEDRICHSEN
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- 1 3. On information and belief, plaintiffs allege that Defendant **BMG MUSIC**
2 **PUBLISHING NA, INC.**, (“**BMG**”) is a New York corporation, with its principal
3 places of business in the states of New York and California.
- 4 4. On information and belief, **NICHOLAS FIRTH** and **JANE DOE FIRTH**, (“**Firth**”) is
5 an officer, director, and/or majority shareholder of **BMG**, and as such controls its
6 policies, activities, and practices, including those alleged herein on behalf of those
7 defendants. All acts and practices undertaken by **Firth** on behalf of corporate
8 defendants are and were for the benefit of their marital community. **Firth** resides in
9 the State of New York and transacts or has transacted business in the State of
10 Washington and in the Western District of Washington.
- 11 5. Jurisdiction is proper pursuant to 28 U.S.C. §1331 (federal question) and 28 U.S.C.
12 §1332 (diversity).
- 13 6. This Court has supplemental jurisdiction of state law claims pursuant to U.S.C. §
14 1367.
- 15 7. Venue is proper pursuant to 28 U.S.C. §1391.
- 16 8. From at least August 2003 through May 2005, Plaintiff **GORDON** provided and
17 enabled computer access for multiple users to a computer server that provides access
18 to the Internet.
- 19 9. From and after May 2005, Plaintiff **OMNI** provided and enabled computer access for
20 multiple users to a computer server that provides access to the Internet.
- 21 10. The domain names served by Plaintiffs or one of Plaintiffs include:
22 anthonycentral.com, chiefmusician.net, ehahome.com, itdidnotendright.com,
23 jammtomm.com, jaycelia.com, celiajay.com, jaykaysplace.com, rcw19190020.com,
24 and gordonworks.com (collectively the “**Domains**” and individually and generically a
25 “**Domain**”).
11. 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
Washington residents was and is available upon request from the registrant of each

1 Domain, each registrant being a Washington resident and each Domain being
2 registered with a Washington address.

3 12. During the time period of approximately August 2003 through May 2006, Plaintiffs
4 received at the Domains electronic-mail messages (collectively the "E-mails" or
5 individually and generically as an "Email").

6 13. The E-mails, and each of them, were received by Plaintiffs' servers serving the
7 Domains.

8 14. Each of the E-mails misrepresents or obscures information in identifying the point of
9 origin or the transmission path thereof, and contains header information that is
10 materially false or materially misleading. The misrepresentations include without
11 limitation: IP address and host name information do not match, or are missing or
12 false, in the "from" and "by" tokens in the Received header field; and dates and times
13 of transmission are deleted or obscured.

14 15. On information and belief, Plaintiffs allege that some of the E-mails used the Internet
15 domain name of a third party or third parties without permission of that third party or
16 those third parties.

17 16. Defendant initiated the transmission of the E-mails, and each of them. In the
18 alternative, Defendant conspired or otherwise acted in collusion with another or
19 others or assisted another or others to transmit the E-mails, and each of them.

20 17. At all times material hereto, Defendants knew or had reason to know that the
21 Recipient Addresses, and each of them, were and are held by a Washington resident.

22 FIRST CAUSE OF ACTION – CAN-SPAM ACT

23 15 U.S.C. §7701 et seq.

24 18. On the basis of the facts set forth hereinabove, Defendants initiated the transmission
25 of the E-mails, and each of them, to a protected computer in violation of 15 U.S.C.
§7704(a), causing damage to Plaintiffs GORDON and OMNI as the providers 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 19. Defendants did willfully and knowingly so act in violation of the provisions of 15
2 U.S.C. §7701 et seq.

3 SECOND CAUSE OF ACTION – CEMA

4 **RCW 19.190.010 - .070**

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

10 THIRD CAUSE OF ACTION – CONSUMER PROTECTION ACT

11 **Ch. 19.86 RCW**

12 21. On the basis of the facts set forth hereinabove, Defendants initiated the E-mails, and
13 each of them, in violation of RCW 19.190.030 and Chapter 19.86 RCW, causing
14 damage to Plaintiffs GORDON and OMNI as the interactive computer service
15 receiving each such E-mail in the amount of \$1,000 for each such E-mail, as provided
16 in RCW 19.190.040 (2).

17 REQUEST FOR RELIEF

18 Plaintiff respectfully requests the following relief:

- 19 1. Entry of a Judgment against the Defendant in the amount of \$1,100 per E-mail (a total of
20 \$1,470,700), plus such other and further damages as may be proved at trial, plus treble
21 damages to the extent permitted by Chapter 19.86 RCW and to the extent permitted by 15
22 U.S.C. §7706 (g) (3) (C), plus prejudgment and post-judgment interest at the highest rate
23 permitted by law, plus cost of suit and reasonable attorney fees pursuant to Chapter 19.86
24 RCW and 15 U.S.C. §7706 (g) (4);

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

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

6
7 RESPECTFULLY SUBMITTED this 13th day of September, 2006.

8 MERKLE SIEGEL & FRIEDRICHSEN, P.C.

DOUGLAS E. MCKINLEY, JR
Attorney at Law

9
10 /S/ Robert J. Siegel
Robert J. Siegel, WSBA #17312
11 Attorney for Plaintiffs

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