

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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. CV6-1350 JCC

**[SECOND]
AMENDED COMPLAINT**

Plaintiffs,

v.

**BMG COLUMBIA HOUSE, INC., a
New York corporation; 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.
3. On information and belief, plaintiffs allege that Defendant **BMG COLUMBIA HOUSE, INC., ("BMG") is a New York corporation,** with its principal places of business in the states of New York and California.

FIRST AMENDED COMPLAINT FOR DAMAGES,
PENALTIES, ETC. -1

**i.Justice Law, P.C.
1325 Fourth Ave., Suite 940
Seattle, WA 98101
Phone: 206-621-5804
Fax: 206-624-0717**

- 1 4. Jurisdiction is proper pursuant to 28 U.S.C. §1331 (federal question) and 28 U.S.C.
2 §1332 (diversity).
- 3 5. This Court has supplemental jurisdiction of state law claims pursuant to U.S.C. §
4 1367.
- 5 6. Venue is proper pursuant to 28 U.S.C. §1391.
- 6 7. From at least August 2003 through May 2005, Plaintiff GORDON provided and
7 enabled computer access for multiple users to a computer server that provides access
8 to the Internet.
- 9 8. From and after May 2005, Plaintiff OMNI provided and enabled computer access for
10 multiple users to a computer server that provides access to the Internet.
- 11 9. The domain names served by Plaintiffs or one of Plaintiffs include:
12 anthonycentral.com, chiefmusician.net, ehahome.com, itdidnotendright.com,
13 jammtomm.com, jaycelia.com, celiajay.com, jaykaysplace.com, rcw19190020.com,
14 and gordonworks.com (collectively the “Domains” and individually and generically a
15 “Domain”).
- 16 10. At all times material hereto, for the Domains and each of them, the information that
17 all e-mail addresses at each Domain (the “Recipient Addresses”) belong to
18 Washington residents was and is available upon request from the registrant of each
19 Domain, each registrant being a Washington resident and each Domain being
20 registered with a Washington address.
- 21 11. During the time period of approximately August 2003 through present, Plaintiffs
22 received at the Domains electronic-mail messages (collectively the “E-mails” or
23 individually and generically as an “Email”).
- 24 12. The E-mails, and each of them, were received by Plaintiffs’, and/or others receiving
25 email through Plaintiffs’ internet access services serving the Domains.
13. Each of the E-mails misrepresents or obscures information in identifying the point of
origin or the transmission path thereof, and thereby violate the Washington CEMA
(19.190 et seq.), and further each of these E-mails contains header information that is

1 materially false or materially misleading, and thereby violate Federal Can-Spam Act
2 of 2003 (). The foregoing violations include without limitation: “subject” lines;
3 “from” lines; and other header information such as: IP address and host name
4 information do not match, or are missing or false, in the “from” and “by” tokens in
5 the Received header field; and dates and times of transmission are deleted or
6 obscured.

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

10 15. Defendants initiated the transmission of the E-mails, and each of them. In the
11 alternative, Defendants each conspired or otherwise acted in collusion with another or
12 others or assisted another or others to transmit the E-mails, and each of them.

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

15 FIRST CAUSE OF ACTION – CAN-SPAM ACT

16 **15 U.S.C. §7701 et seq.**

17 17. On the basis of the facts set forth hereinabove, Defendants initiated the transmission
18 of the E-mails, and each of them, to a protected computer in violation of 15 U.S.C.
19 §7704(a), causing damage to Plaintiffs GORDON and OMNI as the providers of the
20 Internet access service receiving each such E-mail in the amount of \$100 for each
21 such E-mail, as provided in 15 U.S.C. §7706 (g) (3).

22 18. Defendants did willfully and knowingly so act in violation of the provisions of 15
23 U.S.C. §7701 et seq.

SECOND CAUSE OF ACTION – CEMA

RCW 19.190.010 - .070

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

THIRD CAUSE OF ACTION – CONSUMER PROTECTION ACT

Ch. 19.86 RCW

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

REQUEST FOR RELIEF

Plaintiff respectfully requests the following relief:

1. Entry of a Judgment against the Defendant in the amount of \$1,100 per E-mail (a total of \$3,580,500), 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);

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

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

5 RESPECTFULLY SUBMITTED this 21st day of March, 2007.

6 i.Justice Law, P.C.

DOUGLAS E. MCKINLEY, JR
Attorney at Law

7
8 /S/ Robert J. Siegel
9 Robert J. Siegel, WSBA #17312
Attorney for Plaintiffs

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

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following: Derek A. Newman; Roger M. Townsend

i.JUSTICE LAW, P.C.

BY: /s/ ROBERT J. SIEGEL

ROBERT J. SIEGEL

WASHINGTON BAR NO. 17312

1325 FOURTH AVENUE, SUITE 940

SEATTLE, WA 98101

TELEPHONE: 206.624.9392

FAX: 206.624.0717

BOB@IJUSTICELAW.COM

FIRST AMENDED COMPLAINT FOR DAMAGES,
PENALTIES, ETC. -6

i.Justice Law, P.C.
1325 Fourth Ave., Suite 940
Seattle, WA 98101
Phone: 206-621-5804
Fax: 206-624-0717