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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. CV6-1350 JCC

**DECLARATION OF JAMES S.  
GORDON, JR. IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
FOR INJUNCTIVE RELIEF**

**Plaintiffs,**

v.

**BMG COLUMBIA HOUSE, INC., a  
New York corporation; and JOHN  
DOES, I-X,**

**Defendants,**

1. I, James S. Gordon, Jr., am the Plaintiff in the above captioned lawsuit. I am over the age of 18, of sound mind, and am otherwise competent to testify.

2. I am owner of the domain name Gordonworks.com, which I registered on or about May

FIRST AMENDED COMPLAINT FOR DAMAGES,  
PENALTIES, ETC. -1  
OMNI v. BMG-COLUMBIA HOUSE

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1998.

1  
2 3. I have been plagued by spam for well over eight years. Over time, my spam problem has  
3 grown more and more severe, and has now spiraled out of control, consuming more and  
4 more of my time and resources. From late 1998 to late 2003, I fought spam by deleting,  
5 complaining, reporting, and filtering spam. My first lawsuit against a spammer was filed  
6 a full five years after the inception of this persistent spam problem, i.e. December 2003.  
7 And to this point all my efforts to curtail the onslaught of spam have all failed. I have  
8 been substantially adversely impacted by the continued onslaught of spam. **Exhibit "A"**  
9 is a true and correct copy of a letter to my congressman concerning my first major battle  
10 with a spammer in 1999.

11 4. Despite numerous requests and demands to cease and desist, Defendants continue to send  
12 unlawful spam to me! Defendants have continued to send spam to me up until June 13,  
13 2007, and throughout the pendency of this litigation. (See copies of most recent spam  
14 from Defendants, attached hereto as **Exhibit "B".**)

15 5. Beginning on or about February 15, 2004, I configured the email server hosting my  
16 'gordonworks.com' domain to provide an automated response a/k/a "Auto-responder" to  
17 any and all commercial electronic mail. Copies of the automated response messages are  
18 attached hereto as **Exhibit "C"**. By this means, I have personally, on behalf of  
19 'gordonworks.com', sent approximately 30 direct email requests to defendant and/or  
20 defendant's agents to stop the transmission of all email to me.

21  
22 6. Additionally, I have sent or caused to be sent on my behalf close to one million auto-  
23 responder cease and desist messages to spammers during the period of February 2004 to  
24

1 May 2006. Of that number, I have retained about 320,000 messages, which bounced back  
2 from spammers who supplied bogus return email addresses in their emails or who had  
3 their services terminated/disabled.  
4

5 **Facts Related to My Attempts to Stop Spam Generally and Adverse Impacts from Spam**

6 7. I have made the following efforts to stop spam generally, including spam received from  
7 Defendants, and have suffered the following adverse impacts and damages as a result of  
8 the spam received from Defendants and others.  
9

10 7.1 In January and February 2005, I purchased a new business computer along with a  
11 second business computer to help with the increased load of spam. In May 2005,  
12 my monthly service fee increased from approximately \$40/month to about  
13 \$65/month. In November 2006, this fee increased to about \$180/month – in Feb  
14 2007 to \$220/month. All to handle the increased burden of managing spam.

15 7.2 I was forced to add “staff” by way of engaging the Assisted Server Support team  
16 at Godaddy for a monthly fee of \$99. The alternative is to pay \$75/hour for  
17 independent IT services.

18 7.3 It has been necessary to purchase numerous forensic tools, anti-virus tools, anti-  
19 spyware tools, and spam filtering tools over the last four years. I have spent  
20 approximately \$2000.00 on these tools and services.  
21

22 7.4 The large volume of spam received caused a displacement of over 25 Gigabytes  
23 of hard disk storage space on two computers.  
24

1 7.5 I lost the use of my laptop as its hard drive was “overrun” with spam necessitating  
2 the purchases of the two computers in 6.1, above.

3 7.6 On a personal level, time dealing with spam is time away from my family.

4 7.7 I have suffered a significant loss of time spent on more productive pursuits, such  
5 as my Ph.D. program which was initially a three year program. After years of  
6 dealing with the spam problem, I will finish in a little more than five years.  
7 Product development efforts in my business have also been hampered, and slowed  
8 significantly.

9 7.8 I have suffered a loss of control of my intellectual/personal property, (domains) to  
10 spammers, and a loss of privacy and loss of peace of mind to enjoy my domain  
11 and the unfettered use of the internet.

12 7.9 I have been “joe-jobbed” by spammers whereby spammers subvert my domains  
13 by “stealing” my identity, which makes it appear that my domains are sending  
14 spam. As a result of this subterfuge, my domains are being blocked from sending  
15 legitimate email communications (non-commercial).

16 7.10 I have been subjected to dictionary attacks wherein a spammer uses automated  
17 means to guess at possible names and sends spam to these newly created names at  
18 gordonworks.com, thereby again increasing the volume of spam received and  
19 resulting consequences.

20 7.11 Spammers have sold my personal profile for profit to other spammers.

21  
22 Apparently, the buying and selling of personal profiles is a prime means of  
23  
24

1 remuneration for online marketers. Each email address one owns must be de-  
2 listed from the hundreds or thousands of “host names” owned and controlled by  
3 each spammer. And once this is accomplished, spammers and their affiliates  
4 create new host names to spam from – making successful de-listing virtually  
5 impossible. Global de-listing is not available from the majority of spammers and  
6 from spammer domains not yet created.

7 7.12I receive 20-100 viruses/malware emails each week. This number has been as  
8 high as 500-600 per week. This has resulted in four server crashes that  
9 necessitated the purchases of new hard drives or computers since January 2005.  
10 These crashes resulted from malware infections of my computers. These  
11 infections have also caused the loss of business data including tax and banking  
12 files.

13 7.13I have also been forced to expend considerable time and labor dealing with client  
14 spam problems presented to me by my customers, including malware removal,  
15 recovered/replaced hard drives, installed virus and adware programs, etc.

16 7.14I have been forced to change Internet Service Providers four times since 2000 as  
17 none were able to help me to effectively curb the spam.

18 7.15I have sent approximately 14,000 separate and distinct complaints to my ISPs,  
19 spammers’ network service providers, Richland and Kennewick Police Depts.,  
20 Federal Trade Commission, Securities and Exchange Commission, Washington  
21 State Attorney General’s Office, and four state and federal legislators.  
22  
23  
24

1 7.16I have spent time and labor writing, locating, and mailing dozens of certified  
2 cease and desist letters to spammers.

3 7.17I have used the automated un-subscription program, SpamFire with SpamCrime  
4 Reporter, created by Matterform Media to unsubscribe from over one hundred  
5 thousand spammers' offers. This tool uses the methods available in the email and  
6 web site it points to to automatically opt-out of each email received. This includes  
7 any email received from defendants during the approximate time period of 2004-  
8 6.

9 7.18My server has been burdened by spam which features images in the place of text  
10 - text is easier to filter. Image spam is necessarily 30-50 times larger than text  
11 messages, which are the norm of email communications, which significantly  
12 increases the use of bandwidth and usurps hard-drive capacity.

13 7.19The time I am forced to spend is 90-120 minutes per day – 365 days per year  
14 downloading and filtering spam.

15 7.20I have postponed adding 110 new interested customers to my server, because  
16 spamming is out-of-control. The fee paid to me would cover the base cost of  
17 Omni's server, but the added work due to spam makes this endeavor too costly.  
18

19 7.21I have had to increase my bandwidth capacity from less than 10GB/month to  
20 500GB/month in the past 2 years.  
21  
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1 7.22 All of the 200+ reciprocal links I hosted on my web sites between 1996-2003  
2 have been lost due to lack of maintenance of my web site resulting from the  
3 above-described burden of dealing with the spam problem.  
4

5 **Facts Specifically Related to Defendants.**

- 6 8. Attached hereto as **Exhibit "D"** is a copy of the first email received from BMG.  
7 9. **Exhibit "E"** is the return receipt from a letter that I sent to defendant in 2005, which  
8 requested that it stop sending me email to me.  
9 10. **Exhibit "F"** is a true and correct copy of the cease and desist letter that I sent to  
10 defendant via US Mail dated May 25, 2005.  
11 11. Attached hereto as **Exhibit "G"** are copies of a regulatory complaints that I filed against  
12 BMG/Columbia House.

13 I declare under penalty of perjury under the laws of the United States that the foregoing is  
14 true and correct.  
15

16 EXECUTED this 14th day of June, 2007  
17 /s/ James S. Gordon, Jr. \_\_\_\_\_  
James S. Gordon, Jr.

18  
19 **Certificate of Service**

20 I, hereby, certify that on June 14, 2007, I filed this affidavit with this Court via approved  
21 electronic filing, and served the following:  
Attorneys for Defendants: Newman & Newman, Roger Townsend, Derek Newman

22  
23 /s/ Robert J. Siegel \_\_\_\_\_  
24

25 FIRST AMENDED COMPLAINT FOR DAMAGES,  
PENALTIES, ETC. -7  
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Robert J. Siegel

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FIRST AMENDED COMPLAINT FOR DAMAGES,  
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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 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  
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FIRST AMENDED COMPLAINT FOR DAMAGES,  
PENALTIES, ETC. -9  
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