

1 Joseph L. Kish (SBN 136429)
2 Synergy Law Group
3 730 West Randolph, 6th Floor
4 Chicago, IL 60661
5 Telephone: 312.454.0015
6 Facsimile: 312.454.0261
7 E-Mail: jkish@synergylawgroup.com

8 Attorney for e360Insight, Bargain Depot
9 Enterprises, LLC, a.k.a. Bargaindepot.net, and
10 Moniker Online Services, LLC

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION, LOS ANGELES

14 WILLIAM SILVERSTEIN, an) Case No.: cv07-2835 CAS (VBKx)
15 individual,)
16 Plaintiff,) **NOTICE OF MOTION AND**
17 vs.) **MOTION TO FILE A**
18) **COUNTERCLAIM**
19 E360INSIGHT, LLC, BARGAIN)
20 DEPOT ENTERPRISES, LLC, AKA)
21 BARGAINDEPOT.NET, DAVID)
22 LINHARDT, an individual, MONIKER)
23 ONLINE SERVICES, LLC, And DOES)
24 1-50; inclusive,) Date: January 28, 2008
25 Defendants) Time: 10:00 a.m.
26) Courtroom: 5 on 2nd Floor

27 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

28 PLEASE TAKE NOTICE that e360Insight, LLC (“e360”) and Bargain Depot
Enterprises, LLC, a.k.a. Bargaindepot.net (“BDE”) move for leave to file a
Counterclaim. The motion will be heard on January 21, 2008 at 10:00 a.m. in
Courtroom 5 on the 2nd floor, located at 312 N. Spring St., Los Angeles, CA

1 90012. The motion will be based on this Notice of Motion and Motion, oral
2 argument, the pleadings in this action, and all other matters as may be properly
3 considered.
4
5
6

7 Dated: December 26, 2007

8 
9

10 _____
11 Joseph L. Kish
12 Attorney for Defendants e360 Insight,
13 and Bargain Depot Enterprises, LLC,
14 a.k.a. Bargaindepot.net
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

MOTION

I. Introduction.

e360 and BDE seek leave of Court to file counterclaims alleging Defamation and Abuse of Process. The counterclaims are comprised of one compulsory¹ counterclaim (Defamation) and one permissive counterclaim (Abuse of Process) that arose after the filing of the amended complaint².

On November 19, 2007 this Court entered an Order setting December 31, 2007 as date by which the parties could request leave to file amended pleadings. This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on December 11 and 12, 2007. Counsel for 360 and BDE met and conferred with Plaintiff's counsel regarding this Motion. Counsel for Plaintiff would not agree to allow e360 and BDE to file a Counterclaim. Thus, e360 and

21
22
23
24

¹ Pursuant to Fed. R. Civ. P 13(a), compulsory counterclaims are those that arise "out of the transaction or occurrence that is the subject matter of the opposing party's claim ..." In this case, the defamation claim arose after the filing of the lawsuit but before the filing of the amended complaint.

25
26
27
28

² Pursuant to Fed. R. Civ. P. 13(e) "[a] claim which either matured or was acquired by the pleader after serving a pleading may, with permission of the court, be presented as a counterclaim by supplemental pleading." In this case, the abuse of process claim arose after the filing of an answer.

1 BDE bring this Motion for leave to file a Counterclaim which is attached hereto as
2 Exhibit A.
3

4 II. Argument.

5 A. Legal Standard.

6 Fed. R. Civ. P. 13(f) governs the procedure for amending omitted
7 counterclaims and provides that a court may grant leave to amend when the
8 moving party "fails to set up a counterclaim through (1) oversight, (2)
9 inadvertence, or (3) excusable neglect, or (4) when justice requires." The
10 amendment of pleadings and the addition of counterclaims are both permitted
11 "when justice so requires." Therefore, when "presented with motions for leave to
12 amend a pleading to add an omitted counterclaim generally [courts] 'adhere to the
13 liberal amendment policy of Rule 15' in deciding whether to grant the requested
14 leave." *Hip Hop Beverage Corp. et. al. v. RIC et. al.*, 220 F.R.D. 614, 620; 2003
15 U.S. Dist. LEXIS 25429 *21 (C.D. CAL 2003). Here, the Court should be guided
16 by Fed. R. Civ. P. 15(a), which provides that "leave [to amend] shall be freely
17 given when justice so requires." *Id.*

18 In this District, "the general rule is that amendment of pleadings is to be
19 permitted unless the opposing party makes a showing of undue delay, bad faith,
20 undue prejudice, or futility of amendment on the part of the moving party." *Hip
21 Hop Beverage Corp. et. al. v. RIC*, at 620, *21 (C.D. CAL 2003). The Supreme
22
23
24
25
26
27
28

1 Court has noted that lower courts have looked at such factors as “good faith of the
2 claimant, the extent of the delay and the danger of prejudice to the opposing
3 party.” *Pioneer Inv. Services Co. v. Brunswick Assoc. LTD Partnership*, 507 U.S.
4 380, 392; 113 S. Ct. 1489, 1497 (1993). As demonstrated below, Plaintiff cannot
5 make this showing.
6

7
8 Finally, the court in *Hip Hop Beverage Corp.* acknowledged that in order to
9 prevent a plea of waiver or *res judicata*, leave to add a compulsory counterclaim is
10 normally freely granted. *Hip Hop Beverage Corp. et. al. v. RIC*, at 620, *22.
11

12
13 **B. This Court Should Grant The Motion Because There Is No**
14 **Undue Delay, Bad Faith, Undue Prejudice Or Futility Of**
15 **Amendment.**

16
17 **(1) There is no undue delay in the bringing of the motion for**
18 **leave to file a Counterclaim.**

19 This District recognizes that where a party opposes a motion for leave to file
20 a counterclaim based on undue delay, the opposing party must, at a minimum,
21 show delay “past the point of initiation of discovery ...” *Hip Hop Beverage Corp.*
22 *et. al. v. RIC et. al.*, at 620, *26. Here, Plaintiff has propounded no discovery. His
23 initial disclosure was filed twenty-four (24) days late and only provided after his
24 failure to make his initial disclosure was brought to the Court’s attention at the
25 November 19, 2007 scheduling conference and a Local Rule 37-1 communication
26 from counsel for the Defendants on November 28, 2007. Thus, Plaintiff cannot
27 claim that undue delay is present. Moreover, even if discovery is deemed to have
28

1 begun, “courts will permit amendment provided the moving party has a reasonable
2 explanation for the delay.” *Id.* Here, the delay in not initially asserting the
3 counterclaims earlier is excusable because the Abuse of Process claim did not
4 ripen until Plaintiff made his Fed. R. Civ. P. 26 disclosure and the Defamation
5 claim was not brought because the parties were in settlement discussions.
6

7
8 Moreover, the Ninth Circuit has found that “delay alone is not sufficient to justify
9 the denial of a motion requesting leave to amend.” *Hurn v. Retirement Fund Trust*
10 *of Plumbing*, 648 F.2d 1252, 1254 (9th Cir. 1981). Thus, even if the Court finds
11 that discovery has started and that e360 and BDE lack a reasonable explanation for
12 the delay, it should still grant the Motion.
13
14

15 **(2) There is no bad faith in the bringing of the motion for leave**
16 **to file a Counterclaim.**

17 Here, Plaintiff cannot assert that the pending Motion is brought in bad faith.
18 Courts consider bad faith to include “such tactics as, for example, seeking to add a
19 defendant merely to destroy diversity jurisdiction.” *Hip Hop Beverage Corp. et. al.*
20 *v. RIC et. al.*, at 621, *27-28. The counterclaims in this case were brought only
21 after settlement became seemingly hopeless and upon the conclusion that
22 Plaintiff’s lawsuit was an abuse of process as confirmed by his initial disclosure.
23 There is no basis to find that they are brought in bad faith.
24
25
26
27
28

1 **(3) Plaintiff will not suffer any undue prejudice as a result of**
2 **the Court granting the Motion.**

3 In *Hip Hop Beverage Corp.*, the Court held that a counterclaim filed two (2)
4 months in advance of the discovery cut-off date did not constitute undue prejudice.
5
6 *Hip Hop Beverage Corp. et. al. v. RIC et. al.*, at 622, *30. Moreover, the court
7 noted that the parties, if necessary, could extend discovery. *Id.* That is not
8 necessary in this case. In objecting to this Motion and the Counterclaim, Plaintiff's
9 counsel stated his objection was based on the grounds that it will disturb the
10 Scheduling Order entered on November 19, 2007. That is not the case. The
11 Scheduling Order calls for the cutoff of fact discovery on May 31, 2008. If this
12 Motion is granted, Plaintiff's counsel will have nearly five (5) months to conduct
13 fact discovery. The additional claims do not warrant extensive additional
14 discovery and might not warrant additional discovery at all. Counsel for Plaintiff
15 has issued no discovery and has not sought to take any depositions. Nothing needs
16 to be redone. Given Plaintiff's failure to issue any discovery or seek to depose any
17 witnesses in the three weeks since the entry of the Scheduling Order, Plaintiff is
18 clearly not prejudiced by the filing of counterclaims.
19
20
21
22
23

24 **(4) The Counterclaim is not futile.**

25 This District has held that "[a]n amendment is 'futile' only if it would
26 clearly be subject to dismissal." *Hip Hop Beverage Corp. et. al. v. RIC et. al.*, at
27
28

1 622, *31. Here, as demonstrated by Exhibit A, the counterclaims are clearly not
2 subject to dismissal. The counterclaim based on Abuse of Process is well pled and
3 is based on Plaintiff's misuse of the discovery process. Specifically, Plaintiff is
4 using this lawsuit and the discovery process to obtain information he is not entitled
5 to, namely, a list of all domains owned or controlled by e360 and BDE. Plaintiff is
6 not entitled to that information because it is not relevant to Plaintiff's claims that
7 e360 and BDE sent e-mails in violation of state and federal laws. Likewise, the
8 Defamation claim is based on public statements, by Plaintiff, calling the e360 an
9 "illegal spammer". There is no basis to believe that the counterclaims are futile
10 and the Court should grant the Motion.
11
12
13
14

15 **III. Conclusion.**

16
17 The Court should grant the e360's and BDE's Motion for Leave to file
18 Counterclaims because motions to file amendments are to be freely given.
19 Moreover, there was no undue delay, bad faith by e360 and BDE, undue prejudice
20 to Plaintiff and the Motion is not futile.
21

22 Dated December 26, 2007

23
24 

25
26 _____
27 Joseph L. Kish
28 Attorney for Defendants e360 Insight and
Bargain Depot Enterprises, LLC, a.k.a.
Bargaindepot.net

EXHIBIT

A

1 Joseph L. Kish (SBN 136429)
2 Synergy Law Group
3 730 West Randolph, 6th Floor
4 Chicago, IL 60661
5 Telephone: 312.454.0015
6 Facsimile: 312.454.0261
7 E-Mail: jkish@synergylawgroup.com

8 Attorney for e360Insight, Bargain Depot
9 Enterprises, LLC, a.k.a. Bargaindepot.net
10 and Moniker Online Services, LLC

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION, LOS ANGELES

14 WILLIAM SILVERSTEIN, an
15 individual,

16 Plaintiff,

17 vs.

18 E360INSIGHT, LLC, BARGAIN
19 DEPOT ENTERPRISES, LLC,
20 AKA BARGAINDEPOT.NET,
21 DAVID LINHARDT, an individual,
22 MONIKER ONLINE SERVICES,
23 LLC, And DOES 1-50; inclusive,
24 Defendants

Case No.: cv07-2835 CAS (VBKx)

**COUNTERCLAIM OF
E360INSIGHT, LLC, AND
BARGAIN DEPOT
ENTERPRISES, LLC**

25 1. This is a counterclaim by Defendants, e360Insight, LLC
26 (“e360”) and Bargain Depot Enterprises, LLC, (“BDE”) (collectively
27 “Defendants/Counter-Plaintiffs”), both legitimate internet marketing
28 companies, for damages stemming from Silverstein’s repeated defamatory
postings on the internet referring to Counter-Plaintiffs as “spammers”, and

1 for Silverstein's abuse of the judicial process based on the improper ulterior
2 motive to utilize this lawsuit to obtain information to which Silverstein is not
3 entitled.
4

5 **Jurisdiction and Venue**

6
7 2. This Court has pendent jurisdiction over the counterclaims
8 pursuant to 28 USCS § 1367. This Court also has jurisdiction over the
9 counterclaims pursuant to 28 USCS § 1332 based on diversity jurisdiction
10 and amount in controversy.
11

12
13 3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)
14 because substantial amounts of the events giving rise to the counterclaims
15 plied herein occurred in the Central District of California.
16

17 **Facts Common To All Counts**

18 4. Counter-Plaintiffs are e-mail based marketing companies whose
19 business practices have at all times relevant to the allegations in this
20 complaint complied and continue to comply with all federal and state
21 requirements and standards pertaining to the sending of commercial e-mail,
22 including the *Controlling the Assault of Non-Solicited Pornography and*
23 *Marketing Act of 2003*, 15 U.S.C. § 7701 (CAN-SPAM) and *Cal. Bus. &*
24 *Prof. Code § 17529.5*.
25
26
27
28

1 5. Counter-Plaintiffs are hired by and partners with companies
2 that wish to market their products or services using the internet. This
3 marketing is targeted to persons "opting in" to a list whereby they agree to
4 accept e-mail announcements. These persons sign up at lists owned by
5 Counter-Plaintiffs or their business partners, some of which are then verified
6 through a "double opt-in" process.
7

9 6. Counter-Plaintiffs do not engage in "spamming", which is
10 essentially the digital equivalent of sending junk mail that is neither asked
11 for nor wanted. Unlike anyone engaged in spamming, the internet marketing
12 in which Counter-Plaintiffs engage employs a variety of permission
13 processes that Counter-Plaintiffs controls, and that their marketing partners
14 use, to obtain permission and consent from, and provide notice to, the
15 consumers that receive the e-mail messages.
16
17
18

19 7. "USENET is an abbreviation of "user network." This term
20 refers to an international collection of organizations and individuals (known
21 as "peers") whose computers connect to one another and exchange messages
22 posted by USENET users.
23
24
25
26
27
28

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
26
27
28

Count I
Defamation
(by e360 against Silverstein)

8. e360 restates and re-alleges paragraphs 1-7 as though fully set forth in this paragraph 8.

9. Silverstein's counsel's website states "Silverstein decided to [sic] this lawsuit when E360 filed suit against individuals calling E360 and Linhardt spammers. *'I don't like bullies or liars,'* said Mr. Silverstein when he said that E360 and Linhardt needs [sic] to be sued." A copy of Silverstein's counsel's webpage is attached as Exhibit A.

10. The quote attributable to Silverstein is false because e360 did not lie in the litigation referred to by Silverstein.

11. The quote attributable to Silverstein in Exhibit A is defamatory on its face because it conveys a factual imputation of specific dishonest conduct.

12. On June 28, 2007 Silverstein published statements onto Usenet that Silverstein received spam from e360 and "therefore [e360] must be a "spammer." A copy of Silverstein's Usenet posting is attached as Exhibit B.

13. The statements contained in Exhibit B by Silverstein are false because e360 is not an "illegal spammer" and does not send "illegal spam".

1 14. The statements contained in Exhibit B are defamatory on their
2 face because they convey a factual imputation of specific illegal conduct.
3

4 15. On June 29, 2007 Silverstein posted online on USENET that
5 e360 was being sued for "sending illegal spam". A copy of Silverstein's
6 June 29, 2007 internet posting is attached as Exhibit C.
7

8 16. The statements contained in Exhibit C by Silverstein are false
9 because e360 is not an "illegal spammer" and does not send "illegal spam".
10

11 17. The statements contained in Exhibit C are defamatory on their
12 face because they convey a factual imputation of specific illegal conduct.
13

14 18. On July 11, 2007 Silverstein posted online that e360 is being
15 sued for being an "illegal spammer". A copy of Silverstein's July 11, 2007
16 internet posting is attached as Exhibit D.
17

18 19. The statements contained in Exhibit D by Silverstein are false
19 because e360 is not an "illegal spammer" and does not send "illegal spam".
20

21 20. The statements contained in Exhibit D are defamatory on their
22 face because they convey a factual imputation of specific illegal conduct.
23

24 21. The statements contained in Exhibit D by Silverstein, is false
25 because e360 is not a "spammer".
26
27
28

1 23. Silverstein's ulterior motives are evidenced, in part, by his
2 counsel's website, www.calspam.com, which states:

3
4 "[w]e filed, on behalf of William Silverstein, a new lawsuit against
5 E360Insight ("E360") and David Linhardt for illegal sending illegal
6 unsolicited commercial e-mail ("spam"), asking for \$11.7 million in
7 punitive damages. Silverstein's complaint alleged that E360Insight
8 and David Linhardt sent relayed illegal spam through Mr. Silverstein's
9 server, without authorization, and sent illegal spam to Mr. Silverstein.
10 For those not aware, E360Insight and David Linhardt obtained a
11 default judgment in the amount of \$11.7 million default against
12 Spamhaus for defamation -- for Spamhaus labeling E360Insight and
13 Linhardt as spammers. E360's lawsuit is brought E360's alleged illegal
14 spamming activities to Silverstein's attention. Silverstein decided to
15 [sic] this lawsuit when E360 filed suit against individuals calling E360
16 and Linhardt spammers. *"I don't like bullies or liars,"* said Mr.
17 Silverstein when he said that E360 and Linhardt needs [sic] to be
18 sued.
19
20
21
22
23
24

25 *See Exhibit A.*

26 24. On information and belief, based on Silverstein's counsel's
27 website posting, Silverstein's lawsuit was filed in retaliation against e360, its
28

1 President, David Linhardt (who has been dismissed from this lawsuit), and
2 BDE, for which Linhardt also acts as president, because e360 and Linhardt
3 obtained an \$11.7 million default judgment against The Spamhaus Project,
4 Silverstein is a sympathizer of The Spamhaus Project, and may have other
5 affiliations or relationships with The Spamhaus Project, its founder, Steve
6 Linford or one or more of The Spamhaus Projects volunteers.
7

8
9 25. Not coincidentally, Silverstein sought punitive damages in this
10 lawsuit for \$11.7 million, the very amount obtained by David Linhardt and
11 e360 against Spamhaus.
12

13
14 26. Since the filing of Silverstein's original lawsuit through the
15 filing of Silverstein's Amended Complaint, and even beyond, e360 and BDE
16 have repeatedly sought the full identification of the purportedly offending
17 emails Silverstein alleged formed the entire basis for his claims that e360
18 and BDE engaged in illegal spamming, in violation of CAN SPAM,
19 California's Business & Professions Code § 17529.5, and various California
20 torts.
21

22
23 27. Silverstein has repeatedly refused to provide the full
24 information identification of the purportedly offending emails that
25 Silverstein alleged formed the entire basis for his claims that e360 and BDE
26 engaged in illegal spamming, in violation of CAN SPAM, California's
27
28

1 Business & Professions Code § 17529.5, California Penal Code § 502 and
2 various California torts including trespass to chattels and negligence per se.
3

4 28. On information and belief, Silverstein did not, and does not,
5 have the requisite information pertaining to the allegedly offending emails
6 alleged in Silverstein's Amended Complaint. Silverstein, therefore, did not
7 have the requisite information to determine whether there were violations of
8 CAN SPAM, California's Business & Professions Code § 17529.5,
9 California Penal Code § 502 or state causes of action based on trespass to
10 chattels and negligence per se.
11
12

13 29. On information and belief, Silverstein did not have probable
14 cause to bring claims against e360 or BDE based on CAN SPAM,
15 California's Business & Professions Code § 17529.5, California Penal Code
16 § 502, trespass to chattels and negligence per se.
17
18

19 30. Silverstein's lack of any legitimate basis for his lawsuit and his
20 ulterior motive for filing it is further evidenced by Silverstein's Rule 26
21 Initial Disclosure, which states that Silverstein will not produce the
22 allegedly offending e-mails that purportedly form the basis for his lawsuit
23 unless and until e360 and BDE provide a list of all their domains. e360 and
24 BDE's domains are not relevant to any of the claims asserted in Silverstein's
25 original Complaint or Amended Complaint, all of which are premised on
26
27
28

1 two lists of from lines, subject lines and dates that Silverstein claims violate
2 the law and allegedly render e360 and BDE “spammers”. The second list of
3
4 from lines has been verified by Moniker, e360’s domain registrar, to have
5 never been owned by e360 at any time.

6
7 31. Discovery, including Rule 26 Initial Disclosures, is a form of
8 “process” recognized by California law giving rise to a claim for abuse of
9 process.

10
11 32. Silverstein has no legitimate reason to withhold from disclosure
12 or discovery the allegedly offending emails that form the basis of his lawsuit
13 against e360 and BDE.

14
15 33. Silverstein’s use of the discovery process in this lawsuit is
16 improper because he has no legitimate right to a list of Counter-Plaintiffs’
17 domains.

18
19 34. Silverstein’s misuse of the discovery process constitutes an
20 abuse of process.

21
22 WHEREFORE, Counter-Plaintiffs respectfully request that this Court
23 enter a judgment on their behalf and against Silverstein and to award
24 Counter-Plaintiffs an amount in excess of \$75,000 to compensate Counter-
25 Plaintiffs for Silverstein’s abuse of process, for punitive damages for
26
27
28

1 Silverstein's willful conduct and for any other relief that this Court deems
2 just.
3

4 Dated: December 26, 2007

5 Respectfully submitted

6 

7 By: _____

8 Joseph L. Kish
9 Attorney for Defendants e360
10 Insight and Bargain Depot,
11 LLC.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT

A

***Nejadpour
& Associates***
a Professional Law Firm

[Home](#) [Services](#) [Practice Areas](#) [Publications](#) [People](#) [About Us](#) [Offices](#) [Contact Us](#)

October 1, 2007: e360Insight, Bargain Depot, and Moniker's motion to dismiss Silverstein's first amended complaint was denied by the Court. This is the first case, that we are aware of, that a domain name registrar is being held liable for providing anonymous domain name registration services to a spammer. Using false whois information for domain names is a crime under 18 U.S.C. 1037(4).

August 21, 2007: We now represent Sindeelou Thomson against Congressman John Doolittle. Mrs. Thomson was unable to get Congressman John Doolittle to stop spamming her, until she filed suit. Congressman Doolittle removed to federal court, solely to intimidate, and then claimed he is not subject to the law. More information here. Take a survey on John Doolittle and CAN-SPAM.

March 2007: We filed, on behalf of William Silverstein, a new lawsuit against E360Insight ("E360") and David Linhardt for illegal sending illegal unsolicited commercial e-mail ("spam"), asking for \$11.7 million in punitive damages. Silverstein's complaint alleged that E360Insight and David Linhardt sent relayed illegal spam through Mr. Silverstein's server, without authorization, and sent illegal spam to Mr. Silverstein. For those not aware, E360Insight and David Lindhardt obtained a default judgment in the amount of \$11.7 million default against Spamhaus for defamation – for Spamhaus labeling E360Insight and Linhardt as spammers. E360's lawsuit is brought E360's alleged illegal spamming activities to Silverstein's attention. Silverstein decided to this lawsuit when E360 filed suit against individuals calling E360 and Linhardt spammers. *"I don't like bullies or liars,"* said Mr. Silverstein when he said that E360 and Linhardt needs to be sued. Mr. Silverstein is detailing the progress on his web site.

We are a collection of Professional and Aggressive attorneys in Beverly Hills, Los Angeles and Switzerland.

Our extensive divorce experience gives us the needed skill to track spammers and locate assets that they try to hide.

F. Bari Nejadpour & Associates, a Professional Law Corporation

EXHIBIT

B

Path:
g2news1.google.com!news1.google.com!border1.nntp.dca.giganews.com!nntp.giganews.com!
local01.nntp.dca.giganews.com!nntp.speakeasy.net!news.speakeasy.net.POSTED!not-for-mail
NNTP-Posting-Date: Thu, 28 Jun 2007 23:31:42 -0500
From: Bill Silverstein <scrapedfromn...@sorehands.com>
Subject: Re: E360 Wipes The Courtroom Floor With Silverstein
Date: Thu, 28 Jun 2007 21:31:39 -0600
References: <1183058849.810634.131340@n2g2000hse.googlegroups.com>
Newsgroups: news.admin.net-abuse.email
MIME-Version: 1.0
Content-Type: text/plain; charset="US-ASCII"
Content-Transfer-Encoding: 8bit
X-Newsreader: Internet Adventurer v1.50 for OS/2 - Unregistered
Message-ID: <YMqdnX__eLyzFhnbz22dnUVZ_ternZ2d@speakeasy.net>
Lines: 67
X-Usenet-Provider: http://www.giganews.com
NNTP-Posting-Host: 69.17.103.74
X-Trace:
sv3-vVD3ri/zZ5k4GvaigZ6IOr8L1rgt1CHJLzF/65wtWBtYlwmhfmsJZwdIMECYb9wIQsbpsrcu3OKXGY2!
mTuampAZwSIFzyOxmJtQ60pmk600AA/AFWHAkCfyQhnyS/17IurK11otSmR2w99yyQeNsJser7zt!e46pliy
ZKmcGpcc484NNJhB5X+MkvCHEmfolcsx54QnxOQ==
X-Complaints-To: abuse@speakeasy.net
X-DMCA-Complaints-To: ab...@speakeasy.net
X-Abuse-and-DMCA-Info: Please be sure to forward a copy of ALL headers
X-Abuse-and-DMCA-Info: Otherwise we will be unable to process your complaint properly
X-Postfilter: 1.3.35

On Thu, 28 Jun 2007 19:27:29 -0000, e360insight wrote:

>Bill I-want-To-Be-Mark-Mumma Silverstein had a tough day in court
>yesterday.
>
>"The Court continues for 45 days defendants Moniker and Linhardt's
>motion to dismiss for lack of personal jurisdiction to enable parties
>to conduct limited jurisdictional discovery. The Court GRANTS
>defendants' motion to dismiss the Complaint for failure to plead with
>sufficient particularity, but GRANTS plaintiff leave to amend the
>Complaint. The Court GRANTS with leave to amend the defendants'
>motion to dismiss the Complaint against Moniker and Linhardt.
>Additionally, the Court GRANTS defendants' motion to strike
>plaintiff's request for punitive damages. Finally, the Court DENIES
>plaintiff's motion to strike defendants' Notice of Interested Parties
>and plaintiff's motion to remand the action to state court. IT IS SO
>ORDERED."
>
>Score In This Case:
>Legitimate Marketer = 4
>Criminal Vigilante = 1
>

I am not a criminal vigilante!

What laws have I broken? what criminal statutes did I violate??????

>Judge's Tentative Ruling
>http://www.e360insight.com/Judges_Tentative_Ruling_for_6_25_07_hearing.pdf
>
>Although the case is not over, we are looking to forward to opening up
>another can of whoop ass in 45 days should Mumma-Silverstein decide to
>amend his complaint.
>
>Once the case is over, we will be filing to recover our legal fees and
>we will be seeking punitive damages against the parties responsible.
>
>In response to the ruling, Mumma-Silverstein's attorney advised him to
>settle his divorce by offering 90% of everything he owns to his ex-
>wife.
>
>To all legitimate system administrators who are trying to stop
>unwanted email - e360's stated policy is to not send any email
>messages to any one who does not want to receive them. If you have
>any concerns about email messages coming from our network, please feel
>free to contact me directly at dlinha...@gmail.com. All reasonably
>requests will be handled fairly and amicably.

Then how come I got spam from you? I never signed up with you! I never signed up with a partner of yours! Unless you define a partner that somepne who you pay money to buy a list!

>To all criminal vigilantes who choose to make ridiculous claims in
>court - we will send you packing with a lien on your assets and your
>financial future, however dismal it may be. If you are interested in
>spam-fighting, you would be better served by directing your attention
>to someone who is actually doing something wrong.
You are doing things wrong. I received spam from you, therefore you must be a spammer. You file SLAPP suits!

EXHIBIT

C

Path:
g2news1.google.com!news2.google.com!border1.nntp.dca.giganews.com!nntp.giganews.com!
local01.nntp.dca.giganews.com!nntp.speakeasy.net!news.speakeasy.net.POSTED!not-for-m
ail
NNTP-Posting-Date: Fri, 29 Jun 2007 16:23:58 -0500
From: Bill Silverstein <scrapedfromn...@sorehands.com>
Subject: Re: E360 Wipes The Courtroom Floor with Silverstein
Date: Fri, 29 Jun 2007 14:23:55 -0600
References: <1183058849.810634.131340@n2g2000hse.googlegroups.com>
Newsgroups: news.admin.net-abuse.email
MIME-Version: 1.0
Content-Type: text/plain; charset="US-ASCII"
Content-Transfer-Encoding: 8bit
X-Newsreader: Internet Adventurer v1.50 for OS/2 - Unregistered
Message-ID: <D60dnSct87Pz5RjbnZ2dnUVZ_uejnZ2d@speakeasy.net>
Lines: 21
X-Usenet-Provider: http://www.giganews.com
NNTP-Posting-Host: 69.17.103.74
X-Trace:
sv3-fwsJxNVKZXUEcAs1kv4P3LgmadAgtGfus9ZLaUWLqAwJ30sGsSCUBhI29fpk+e0qPfo1si3nJBzivzV!
x6jB7NJCDlhckKH3y/RzC7fqwp+wyjA0upHiwZTEdEGj801izH+pnXFtSwk01Si6OQR2WR56BvzRk!QPb1CIh
RTQZAfdwdaMBbB/MF/NKBngqU/+F/pw2UM5N/Eg==
X-Complaints-To: abuse@speakeasy.net
X-DMCA-Complaints-To: ab...@speakeasy.net
X-Abuse-and-DMCA-Info: Please be sure to forward a copy of ALL headers
X-Abuse-and-DMCA-Info: Otherwise we will be unable to process your complaint
properly
X-Postfilter: 1.3.35

On Thu, 28 Jun 2007 19:27:29 -0000, e360Insight wrote:

>Bill I-want-to-be-mark-mumma silverstein had a tough day in court
>yesterday.
>
>Score In This Case:
>Legitimate Marketer = 4
>Criminal vigilante = 1
>
>
>Dave Linhardt
>President
>e360Insight, LLC

I want an appology from you for your false statements. Not only posted
here, put posted on every page of your web sit in the same
font size as the text of your logo. Additionally, I want it to link to
<http://www.calspam.com> so that your customers can see that you are being
sued for sending illegal spam.

EXHIBIT

D

Path:
g2news1.google.com!news2.google.com!border1.nntp.dca.giganews.com!nntp.giganews.com!
local101.nntp.dca.giganews.com!nntp.speakeasy.net!news.speakeasy.net.POSTED!not-for-mail
NNTP-Posting-Date: wed, 11 Jul 2007 23:01:57 -0500
From: Bill Silverstein <scrapedfromn...@sorehands.com>
Subject: Re: E360 Wipes The Courtroom Floor with Silverstein
Date: wed, 11 Jul 2007 21:01:56 -0600
References: <1183058849.810634.131340@n2g2000hse.googlegroups.com>
<D60dnSct87Pz5RjbnZ2dnUVZ_uejnZ2d@speakeasy.net>
<1184113692.862082.202070@p39g2000hse.googlegroups.com>
Newsgroups: news.admin.net-abuse.email
MIME-Version: 1.0
Content-Type: text/plain; charset="US-ASCII"
Content-Transfer-Encoding: 8bit
X-Newsreader: Internet Adventurer v1.50 for OS/2 - Unregistered
Message-ID: <goqdnVFo44AoOgjbNz2dnUVZ_sytnZ2d@speakeasy.net>
Lines: 44
X-Usenet-Provider: http://www.giganews.com
NNTP-Posting-Host: 69.17.103.74
X-Trace:
sv3-rw70rhup5m4AimggQGUn4RkRrioc/nKnEUi0jwy0Zhi9pQc2fvdGvQXm6ogWcmx9EuZ1bV/lgFswwwwH!
UzfnIhes5Ltx80p91uoy8byy1mPHrTe0oZeNsk47VCao0dyHfCPkGAWGmnCPW2PH5JP1NRu9I6Iy!a83xijy
rLwSrmFeG5uJYkQfkw9r43qPX1v4YnVHqzfIzg==
X-Complaints-To: abuse@speakeasy.net
X-DMCA-Complaints-To: ab...@speakeasy.net
X-Abuse-and-DMCA-Info: Please be sure to forward a copy of ALL headers
X-Abuse-and-DMCA-Info: Otherwise we will be unable to process your complaint
properly
X-Postfilter: 1.3.35

On wed, 11 Jul 2007 00:28:12 -0000, e360Insight wrote:

>On Jun 29, 3:23 pm, Bill Silverstein <scrapedfromn...@sorehands.com>
>wrote:
>> On Thu, 28 Jun 2007 19:27:29 -0000, e360Insight wrote:
>> >Bill I-want-To-Be-Mark-Mumma Silverstein had a tough day in court
>> >yesterday.
>>
>> >Score In This Case:
>> >Legitimate Marketer = 4
>> >Criminal Vigilante = 1
>>
>> >Dave Linhardt
>> >President
>> >e360Insight, LLC
>>
>> I want an appology from you for your false statements. Not only posted
>> here, put posted on every page of your web sit in the same
>> font size as the text of your logo. Additionally, I want it to link
>> tohttp://www.calspam.comso that your customers can see that you are being
>> sued for sending illegal spam.
>
>>No thanks. I'd prefer to counter sue you and take your pick up truck
>>and your double wide.
>

Based on what? Because I have received spam? Because I sued you for
illegal spamming?

You still have not stated ANY crime that I have committed. That is because I have not.

You full of shit. You falsely state that I committed a crime, but when asked what crime you are silent. It is because I HAVE NOT COMMITTED A CRIME!

E360Insight gets sued for spamming.
Ain't irony wonderful?
<http://www.calspam.com>