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THE HON. JOHN C. COUGHENOUR

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

11 **JAMES S. GORDON, Jr., a married**
12 **individual, , Omni Innovations, LLC**

NO. CV06-0204JCC

13 **Plaintiff,**

DECLARATION OF JAMES S.
GORDON, JR. IN RESPONSE AND
OPPOSITION TO MOTION FOR
ATTORNEY FEES

14 v.

15 **VIRTUMUNDO, INC, a Delaware**
corporation, d/b/a
ADKNOWLEDGEMAIL.COM;
16 **ADKNOWLEDGE, INC., a Delaware**
corporation, d/b/a
17 **ADKNOWLEDGEMAIL.COM;**
18 **SCOTT LYNN, an individual; and**
JOHN DOES, I-X,

19
20 **Defendants.**

21 James S. Gordon, Jr. declares as follows:

- 22 1. I, James S. Gordon, Jr., am the Plaintiff in the above captioned lawsuit. I am over the age
23 of 18, of sound mind, and am otherwise competent to testify.
24 2. I am owner of the domain name Gordonworks.com, which I registered on or about May
25 1998.

DECLARATION OF JAMES S. GORDON, JR. IN RESPONSE
AND OPPOSITION TO MOTION FOR ATTORNEY FEES
GORDON v. VIRTUMUNDO GROUP, INC. - 1

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

10
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 at least up until
13 June 26, 2007, and throughout the pendency of this litigation. (See copy of a recent spam
14 from Defendant Virtumundo, 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 1,054 direct email requests to defendant and/or
20 defendant's agents to stop the transmission of all email to me. Additionally, I have sent or
21 caused to be sent on my behalf close to one million auto-responder cease and desist
22 messages to spammers during the period of February 2004 to May 2006, many of which
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1 bounced back indicating non-functioning return addresses. **Exhibit “D”** is a true and
2 correct copy of one of defendant’s bounced messages.

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

6 6.1 In January and February 2005, I purchased a new business computer along with a
7 second business computer to help with the increased load of spam. In May 2005, my
8 monthly service fee increased from approximately \$40/month to about \$65/month. In
9 November 2006, this fee increased to about \$180/month – in Feb 2007 to
10 \$220/month. All to handle the increased burden of managing spam.

11 6.2 I was forced to add “staff” by way of engaging the Assisted Server Support team
12 at Godaddy for a monthly fee of \$99. The alternative is to pay \$75/hour for
13 independent IT services.

14 6.3 It has been necessary to purchase numerous forensic tools, anti-virus tools, anti-
15 spyware tools, and spam filtering tools over the last four years. I have spent
16 approximately \$2000.00 on these tools and services.

17 6.4 The large volume of spam received caused a displacement of over 25 Gigabytes
18 of hard disk storage space on two computers.

19 6.5 I lost the use of my laptop as its hard drive was “overrun” with spam necessitating
20 the purchases of the two computers in 6.1, above.

21 6.6 On a personal level, time dealing with spam is time away from my family.
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1 6.7 My wife, three adult children, and two friends were sued by a spammer to
2 retaliate against me.

3 6.8 I have suffered a significant loss of time spent on more productive pursuits, such
4 as my Ph.D. program which was initially a three year program. After years of
5 dealing with the spam problem, I will finish in a little more than five years.

6 Product development efforts in my business have also been hampered, and slowed
7 significantly.

8 6.9 I have suffered a loss of control of my intellectual/personal property, (domains) to
9 spammers, and a loss of privacy and loss of peace of mind to enjoy my domain
10 and the unfettered use of the internet.

11 6.10 I have been “joe-jobbed” by spammers whereby spammers subvert my
12 domains by “stealing” my identity, which makes it appear that my domains are
13 sending spam. As a result of this subterfuge, my domains are being blocked from
14 sending legitimate email communications (non-commercial).

15 6.11 I have been subjected to dictionary attacks wherein a spammer uses
16 automated means to guess at possible names and sends spam to these newly
17 created names at gordonworks.com, thereby again increasing the volume of spam
18 received and resulting consequences.

19 6.12 Spammers have sold my personal profile for profit to other spammers.
20 Apparently, the buying and selling of personal profiles is a prime means of
21 remuneration for online marketers. Each email address one owns must be de-
22 listed from the hundreds or thousands of “host names” owned and controlled by
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1 each spammer. And once this is accomplished, spammers and their affiliates
2 create new host names to spam from – making successful de-listing virtually
3 impossible. Global de-listing is not available from the majority of spammers and
4 from spammer domains not yet created.

5 6.13 I receive 20-100 viruses/malware emails each week. This number has
6 been as high as 500-600 per week. This has resulted in four server crashes that
7 necessitated the purchases of new hard drives or computers since January 2005.
8 These crashes resulted from malware infections of my computers. These
9 infections have also caused the loss of business data including tax and banking
10 files.

11
12 6.14 I have also been forced to expend considerable time and labor dealing with
13 client spam problems presented to me by my customers, including malware
14 removal, recovered/replaced hard drives, installed virus and adware programs,
15 etc.

16 6.15 I have been forced to change Internet Service Providers four times since
17 2000 as none were able to help me to effectively curb the spam.

18 6.16 I have sent approximately 14,000 separate and distinct complaints to my
19 ISPs, spammers' network service providers, Richland and Kennewick Police
20 Depts., Federal Trade Commission, Securities and Exchange Commission,
21 Washington State Attorney General's Office, and four state and federal
22 legislators.
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1 6.17 I have spent time and labor writing, locating, and mailing dozens of
2 certified cease and desist letters to spammers.

3 6.18 I have used the automated un-subscription program, SpamFire with
4 SpamCrime Reporter, created by Matterform Media to unsubscribe from over one
5 hundred thousand spammers' offers. This tool uses the methods available in the
6 email and web site it points to to automatically opt-out of each email received.
7 This includes any email received from defendants during the approximate time
8 period of 2004-6.

9 6.19 My server has been burdened by spam which features images in the place
10 of text - text is easier to filter. Image spam is necessarily 30-50 times larger than
11 text messages, which are the norm of email communications, which significantly
12 increases the use of bandwidth and usurps hard-drive capacity.

13 6.20 The time I am forced to spend is 90-120 minutes per day – 365 days per
14 year downloading and filtering spam.

15 6.21 I have postponed adding 110 new interested customers to my server,
16 because spamming is out-of-control. The fee paid to me would cover the base
17 cost of Omni's server, but the added work due to spam makes this endeavor too
18 costly.

19 6.22 I have had to increase my bandwidth capacity from less than 10GB/month
20 to 500GB/month in the past 2 years.

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