

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JAMES S. GORDON, Jr., a married individual, d/b/a 'GORDONWORKS.COM',

Plaintiff,

v.

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

Defendants.

NO. CV06-0204

DECLARATION OF MICHAEL GEROE IN SUPPORT OF MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

NOTE ON MOTION CALENDAR:  
April 7, 2006

I, Michael Geroe, do declare and testify as follows:

1. I am over the age of eighteen (18) years, competent to testify to the matters stated herein, and make this declaration from personal knowledge of those matters.

2. I am currently a resident of the State of Kansas.

3. Adknowledge, Inc. ("Adknowledge") is organized under the laws of the State of Delaware and has its principal place of business in the State of Missouri.

1 4. I am currently General Counsel for Adknowledge. As such, I am  
2 knowledgeable about the business practices, and methods and manner of  
3 operation at issue in this lawsuit.

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5 **A. ADKNOWLEDGE'S WASHINGTON CONTACTS**

6 5. Adknowledge does not have any offices in the State of  
7 Washington. Nor does Adknowledge own or rent real property in the State of  
8 Washington.

9 6. All of Adknowledge's employees are located in the States of  
10 Missouri, California, New York, and Texas. Adknowledge has no employees  
11 in the State of Washington.

12 7. Adknowledge has not sought to provide any goods or services to  
13 the State of Washington.

14 8. Adknowledge does not have any offices, statutory agents,  
15 telephone listings or mailing addresses in Washington. Nor does  
16 Adknowledge have bank accounts, licenses or other operations in  
17 Washington.

18 9. Adknowledge is not subject to any taxation in Washington.

19 10. Adknowledge does not advertise in any Washington newspapers  
20 or magazines or other Washington print, radio or television media.

21 11. Adknowledge does not generate any substantial percentage of its  
22 revenues from consumers clicking on its email advertisements in the State of  
23 Washington.

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1 **B. ADKNOWLEDGE AVOIDS COMMUNICATING AND TRANSACTING**  
2 **BUSINESS WITH WASHINGTON RESIDENTS**

3 12. Adknowledge provides permission-based marketing services to  
4 various third party clients.

5 13. Consumers who indicate they are interested in receiving  
6 marketing offers regarding certain subject matter voluntarily provide their  
7 contact information to Adknowledge, or its marketing partners. Customers  
8 can choose to provide varying amounts of contact information, and  
9 accordingly can choose to provide a city and state of residence if they wish.

10 14. Either Adknowledge or its marketing partners notify these  
11 consumers prior to registration that the information the consumers provide  
12 would be used by these marketing partners and those affiliated with them  
13 (e.g., Adknowledge) to market to them via email and/or the Internet.

14 15. Because of a desire to avoid litigation in Washington,  
15 Adknowledge has taken steps to avoid activities that might subject it to  
16 jurisdiction in that forum. To that end, Adknowledge adopted a practice  
17 which I believe it began in early 2004, and possibly earlier, of suppressing the  
18 transmission of commercial email to all consumers from its database who  
19 provide city or state contact information indicating residence in Washington.  
20 Consumer email addresses which are suppressed from Adknowledge's  
21 database receive no further communication or contact from Adknowledge.

22 16. I believe Adknowledge has suppressed approximately 1.3 million  
23 email addresses from individuals who self-reported that they are from  
24 Washington State over a period of several years.

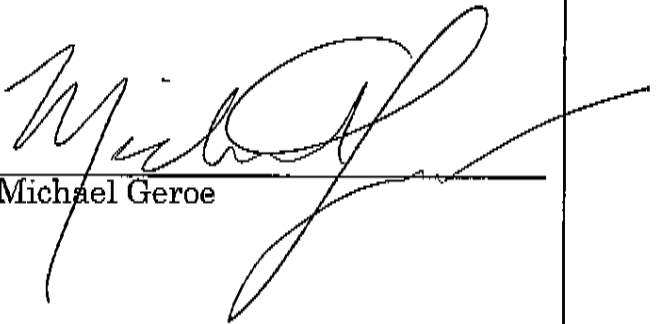
25 17. Additionally, I believe Adknowledge stopped adding email  
26 addresses to its database from people who self-reported a Washington  
27 residence in December 2004.

28 18. Absent the provision of contact information by consumers to

1 Adknowledge, Adknowledge does not have a reliable and consistent way to  
2 identify the geographic location of the recipients of its emails. Moreover,  
3 because email can be accessed anywhere in the world via the Internet it is not  
4 possible to ensure that email will be sent to or received in a particular  
5 geographic location.

6 I certify and declare under penalty of perjury under the laws of the  
7 United States that to my knowledge the foregoing is true and correct.

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9 EXECUTED this 16th day of March, 2006.

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13 Michael Geroe  
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