

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

Mark Ferguson, a married individual, d/b/a	)	
WHEW.COM,	)	
	)	No. 07-5378 RJB
Plaintiff,	)	
	)	DEFENDANT ACTIVE
v.	)	RESPONSE GROUP, INC.'S
	)	ANSWER TO THE COMPLAINT
ACTIVE RESPONSE GROUP, a New York	)	
company; THE BRADFORD EXCHANGE,	)	
LTD., an Illinois corporation; QUINSTREET,	)	
INC., a California corporation; VISION CARE	)	
HOLDINGS, LLC, a Florida limited liability	)	
company, NAUTILUS, INC., a Washington	)	
corporation; and JOHN DOES, 1-CC,	)	
	)	
Defendants.	)	

Active Response Group, Inc. ("ARG"), through counsel, for its Answer to the Complaint in this action, responds as follows:

1. ARG lacks sufficient information to form a belief as to the truth of the allegations stated in paragraph 1 and therefore denies the allegations.

2. ARG admits it is a corporation with its principal places of business in New York state, that it previously used Oridian, Inc. under a license agreement, and that it owns

1 rewardsparade.com and householdsavingsclub.com. ARG denies the remaining allegations  
2 stated in paragraph 2.

3 3. ARG lacks sufficient information to form a belief as to the truth of the  
4 allegations stated in paragraph 3 and therefore denies the allegations.

5 4. ARG lacks sufficient information to form a belief as to the truth of the  
6 allegations stated in paragraph 4 and therefore denies the allegations.

7 5. ARG lacks sufficient information to form a belief as to the truth of the g  
8 allegations stated in paragraph 5 and therefore denies the allegations.

9 6. ARG lacks sufficient information to form a belief as to the truth of the  
10 allegations stated in paragraph 6 and therefore denies the allegations.

11 7. Paragraph 7 states legal conclusions to which no response is required.  
12 Insofar as the allegations stated in paragraph 7 are factual, ARG denies the allegations.

13 8. Paragraph 8 states legal conclusions to which no response is required.  
14 Insofar as the allegations stated in paragraph 8 are factual, ARG denies the allegations.

15 9. Paragraph 9 states legal conclusions to which no response is required.  
16 Insofar as the allegations stated in paragraph 9 are factual, ARG denies the allegations.

17 10. ARG lacks sufficient information to form a belief as to the truth of the  
18 allegations stated in paragraph 10 and therefore denies the allegations.

19 11. Paragraph 11 states legal conclusions to which no response is required.  
20 Insofar as the allegations stated in paragraph 11 are factual, ARG lacks sufficient  
21 information to form a belief as to the truth of the allegations and therefore denies the  
22 allegations.

1           12.     ARG lacks sufficient information to form a belief as to the truth of the  
2 allegations stated in paragraph 12 and therefore denies the allegations.

3           13.     ARG admits that the WhoIs database lists the registrant of “whew.com” as  
4 an individual named Mark Ferguson, with an address listed in Washington State. ARG  
5 lacks sufficient information to form a belief as to the truth of the remaining allegations  
6 stated in paragraph 13 and therefore denies the allegations.

7           14.     ARG lacks sufficient information to form a belief as to the truth of the  
8 allegations stated in paragraph 14 and therefore denies the allegations.

9           15.     ARG lacks sufficient information to form a belief as to the truth of the  
10 allegations stated in paragraph 15 and therefore denies the allegations.

11          16.     ARG denies that it received notice to cease and desist sending allegedly  
12 unsolicited, unwanted, unlawful, and harassing email. ARG lacks sufficient information to  
13 form a belief as to the truth of the remaining allegations stated in paragraph 16 and  
14 therefore denies the allegations.

15          17.     ARG lacks sufficient information to form a belief as to the truth of the  
16 allegations stated in paragraph 17 and therefore denies the allegations.

17          18.     ARG lacks sufficient information to form a belief as to the truth of the  
18 allegations stated in paragraph 18 against defendants other than ARG and therefore denies  
19 the allegations. ARG denies the remaining allegations stated in paragraph 18.

20          19.     Paragraph 19 states legal conclusions to which no response is required.  
21 Insofar as the allegations stated in paragraph 19 are factual, ARG lacks sufficient  
22 information to form a belief as to the truth of the allegations as they relate to defendants  
23

1 other than ARG and therefore denies the allegations. ARG denies the remaining  
2 allegations stated in paragraph 19.

3 20. Paragraph 20 states legal conclusions to which no response is required.  
4 Insofar as the allegations stated in paragraph 20 are factual, ARG lacks sufficient  
5 information to form a belief as to the truth of the allegations as they relate to defendants  
6 other than ARG and therefore denies the allegations. ARG denies the remaining  
7 allegations stated in paragraph 20.

8 21. Paragraph 21 states legal conclusions to which no response is required.  
9 Insofar as the allegations stated in paragraph 21 are factual, ARG lacks sufficient  
10 information to form a belief as to the truth of the allegations and therefore denies the  
11 allegations.

12 22. Paragraph 22 states legal conclusions to which no response is required.  
13 Insofar as the allegations stated in paragraph 22 are factual, ARG lacks sufficient  
14 information to form a belief as to the truth of the allegations and therefore denies the  
15 allegations.

16 23. The remaining section of the Complaint, "Request for Relief," states  
17 requests for relief, not factual allegations, and therefore does not require a response.  
18 Insofar as this section makes factual allegations, ARG denies the allegations.  
19  
20  
21  
22  
23

1 **DEFENSES**

2 24. **Failure to state a claim.** Plaintiff has failed to state a claim upon which  
3 relief can be granted.

4 25. **Acts of third parties.** Plaintiff's damages, if any, were caused in whole or  
5 in part by the conduct of third parties, for which ARG bears no responsibility.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, ARG asks that the Court:

8 26. Dismiss all claims against ARG stated in the Complaint with prejudice;

9 27. Award ARG its reasonable costs, including attorneys' fees, incurred in  
10 defending against the allegations in the Complaint; and

11 28. Award such other and further relief as the Court may deem just and  
12 equitable under the circumstances.

13 DATED this 28th day of September, 2007.

14 Davis Wright Tremaine LLP  
15 Attorneys for Active Response Group, Inc.

16 By s/ Ambika K. Doran

17 Ambika K. Doran  
18 WSBA # 38237  
19 1201 Third Avenue, Suite 2200  
20 Seattle, Washington 98101-3045  
21 Telephone: (206) 757-8030  
22 Fax: (206) 757-7030  
23 E-mail: ambikadoran@dwt.com

Thomas R. Burke (admitted *pro hac vice*)  
Davis Wright Tremaine LLP  
505 Montgomery Street, Suite 800  
San Francisco, California 94111  
Telephone: (415) 276-6500  
Fax: (415) 276-6599  
Email: thomasburke@dwt.com

1 CERTIFICATE OF SERVICE

2 I hereby certify that on September 28, 2007, I electronically filed the foregoing  
3 with the Clerk of the Court using the CM/ECF system which will send notification of such  
4 filing to the following:

5 Robert J. Siegel  
6 i.Justice Law, PC  
7 PO Box 25817  
8 Seattle, WA 98165-1317

Todd R. Sorensen  
John A. Knox  
Williams Kastner & Gibbs, PLLC  
601 Union Street, Suite 4100  
Seattle, WA 98101-2380  
Douglas E. McKinley, Jr.  
PO Box 202  
Richland, WA 99352-0202

8 Justin E. Dolan  
9 Garvey Schubert Barer  
10 1191 Second Avenue, 18<sup>th</sup> floor  
11 Seattle, WA 98101-2939

10 Leslie J. Hagin  
11 Erin G. Howshar  
12 McNaul Ebel Nawrot & Helgren PLLC  
13 600 University Street, Suite 2700  
14 Seattle, WA 98101-3143

13 and I hereby certify that I have mailed by United States Postal Service the document to the  
14 following non CM/ECF participants:

15 Stephan A. Barber  
16 Ropers Majeski Kohn & Bentley  
17 80 N. First Street  
18 San Jose, CA 95113

18 DATED this 28th day of September, 2007

19 Davis Wright Tremaine LLP  
20 Attorneys for Active Response Group, Inc.

21 By s/ Ambika K. Doran  
22 Ambika K. Doran, WSBA # 38237  
23 1201 Third Avenue, Suite 2200  
Seattle, Washington 98101-3045  
Telephone: (206) 757-8030  
Fax: (206) 757-7030  
E-mail: ambikadoran@dwt.com

DEFENDANT ACTIVE RESPONSE GROUP'S ANSWER  
(07-5378 RJB) — 6

SEA 2083597v2 0080512-000004

Davis Wright Tremaine LLP  
LAW OFFICES  
Suite 2200 · 1201 Third Avenue  
Seattle, Washington 98101-3045  
(206) 622-3150 · Fax: (206) 757-7700