

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

E360INSIGHT, LLC, an Illinois Limited Liability Company, and DAVID LINHARDT, an individual,

Plaintiffs,

v.

MARK JAMES FERGUSON, an individual, SUSAN WILSON A.K.A. SUSAN GUNN, an individual, ROB SAECKER A.K.A. FUDO, an individual, RICH TIETJENS A.K.A. MORELY DOTES, an individual, WILLIAM SILVERSTEIN, an individual, and TIM SKIRVIN A.K.A. SCREWTAPE III, an individual

Defendants.

No.:

2007L0004980
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MAY 11 2007
CIRCUIT COURT OF COOK COUNTY ILLINOIS
LAW DIVISION
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JURY DEMAND

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND FOR DAMAGES

Plaintiffs, e360Insight, LLC (e360) and David Linhardt (Linhardt) (collectively “Plaintiffs”), by and through their attorneys, Synergy Law Group, LLC, for their Complaint against Defendants, Mark James Ferguson, Susan Wilson a.k.a. Susan Gunn, Rob Saecker a.k.a. Fudo, Rich Tietjens a.k.a. Morely Dotes, William Silverstein and Tim Skirvin a.k.a. Screwtape III, (collectively “Defendants”), state as follows:

NATURE OF THE ACTION

1. This is an action by e360, an internet marketing company, and Linhardt, its President, for a preliminary and permanent injunction, as well as damages, against Defendants who have repeatedly made defamatory statements by referring to Plaintiffs as “spammers” and causing Plaintiffs to be listed as “spammers” resulting in their e-mail being blocked from the intended recipients and therefore costing Plaintiffs lost profits.

The statements made by the Defendants constitute defamation per se and the resulting blocking of Plaintiffs' e-mails constitutes tortious interference with a prospective economic advantage. Further, certain Defendants have actively and without justification interfered with existing contracts between Plaintiffs and third parties. This lawsuit seeks to enjoin that behavior and compensate Plaintiffs for the damage that Defendants have caused them.

PARTIES

2. e360 is an Illinois Limited Liability Company located in Wheeling, Illinois, with its principal offices located at 600 Northgate Parkway, Suite A.

3. David Linhardt is an individual who resides at 500 Sumac Road, Highland Park, IL 60035 and is a citizen of Illinois.

4. Mark James Ferguson ("Ferguson") is an individual who resides at 3831 Fawcett Avenue, Tacoma, WA 98418.

5. Susan Wilson a.k.a. Susan Gunn ("Susan") is an individual who resides at 10682 Bell Street, CA 90680.

6. Rob Saecker, a.k.a. Fudo ("Fudo") is believed to be a citizen of the United States and residing or working in the State of Washington.

7. Rich Tietjens, aka, Morley Dotes ("Dotes") is believed to be a citizen of the United States and residing at 712 E. 5th Street, Newberg, Oregon 97132 making him a citizen of Oregon.

8. William Silverstein is an individual residing in Los Angeles, CA.

9. Tim Skirvin a.k.a. Screwtape III ("Skirvin") is an individual who is a citizen of Champaign, IL.

JURISDICTION AND VENUE

10. This Court has jurisdiction over Defendants pursuant to Section 2-209 et seq. of the Illinois Code of Civil Procedure, 735 ILCS 5/2-209(2001), because the Defendants have committed the torts alleged herein in Illinois.

11. Venue is proper in Cook County, Illinois regarding all Defendants pursuant to Section 2-101 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-101 (2001), because all or a substantial part of all the actions and violations committed by the Defendants occurred in Cook County, Illinois, and each defendant transacts business in Cook County, Illinois by posting material to the internet that is available in Cook County, Illinois.

FACTS COMMON TO ALL COUNTS

12. e360 is an e-mail based marketing company whose business practices have, at all times relevant to the allegations in this complaint, complied with, and continue to comply with all federal and state requirements and standards pertaining to the sending of commercial e-mail, including the *Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003*, 15 U.S.C. § 7701 (CAN-SPAM).

13. e360 is hired by and partners with companies that wish to market their products or services using the internet. This marketing is targeted to persons “opting in” to a list whereby they agree to accept e-mail announcements. These persons sign up at lists owned by e360 or its business partners, some of which are then verified through a “double opt-in” process.

14. e360 does not engage in “spamming”, which is essentially the digital equivalent of sending junk mail that is neither asked for nor wanted. Unlike anyone

engaged in spamming, the internet marketing in which e360 engages employs a variety of permission processes that e360 controls, and that its marketing partners use, to obtain permission and consent from, and provide notice to, the consumers that receive the e-mail messages.

15. Plaintiffs have valid contracts with various third-parties to send e-mail on behalf of the third-parties.

16. Defendants are aware that Plaintiffs are in the business of sending e-mail and that Plaintiffs contract with third-parties to send e-mail on their behalf.

17. Defendants' repeated postings on internet websites that Plaintiffs are spammers has caused Plaintiffs to be blacklisted and have their e-mails blocked as spam.

18. Defendants intentionally post that Plaintiffs are spammers with the intent that Plaintiffs' e-mails will be blocked as spam, causing Plaintiffs' clients to cease business with Plaintiffs.

19. Plaintiffs have lost clients and business opportunities as a result of Defendants' postings that Plaintiffs are spammers which resulted in Plaintiffs being blacklisted and prevented Plaintiffs from sending e-mails.

20. Plaintiffs have suffered damages as a result of Defendants' tortious interference with their prospective business opportunities.

21. Defendants have submitted Plaintiffs email message(s) to third-party blacklist and reputation monitoring services, like www.spamhaus.org, and have represented that Plaintiffs' email messages are spam with the intent that Plaintiffs' e-mails will be blocked as spam, causing Plaintiffs' clients to cease business with Plaintiffs and causing Plaintiffs' suppliers to cease business with Plaintiff.

Count I
Defamation Per Se Against All Defendants

1-21. Plaintiffs restates and realleges paragraphs 1 through 21 above as paragraphs 1-21 of Count I.

22. Defendants have repeatedly referred to Plaintiffs as spammers through various online postings that can be accessed in the state of Illinois via the internet.

23. Defendants' references to Plaintiffs as spammers constitute defamation per se because it is a violation of Federal law to send spam e-mail messages.

24. Defendants should be enjoined from making any further defamatory postings concerning the Plaintiffs.

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment on their behalf and against Ferguson, Susan, Fudo, Skirvin and Chien and to award Plaintiffs an amount in excess of \$50,000 to compensate Plaintiffs for Defendants' defamatory statements concerning Plaintiffs, an award of punitive damages for the defamatory statements and for injunctive relief barring Defendants from posting or otherwise putting on the internet that Plaintiffs are spammers and for any other relief that this Court deems just.

Count II
Tortious Interference With A Prospective Business Advantage
Against All Defendants

1-21. Plaintiffs restates and realleges paragraphs 1 through 21 above as paragraphs 1-21 of Count II.

22. Defendants have forwarded e-mails received from Plaintiffs or Plaintiffs affiliates to e-mail blocking entities with the intent to have Plaintiffs' e-mail blocked as spam.

23. Defendants are aware that Plaintiffs are in the business of marketing through the use of e-mail and that Plaintiffs contract with third parties to send e-mail.

24. Defendants sent e-mails received from Plaintiffs to e-mail blocking entities with the intention of having e-mail sent by Plaintiffs blocked and thus interfered with Plaintiffs business and prospective business opportunities.

25. Plaintiffs have lost business and business opportunities as a result of Defendants sending of e-mails received from Plaintiffs to e-mail blocking entities and the resulting blocking of Plaintiffs e-mails.

26. Plaintiffs lost business has resulted in lost income to Plaintiffs.

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment on their behalf and against all Defendants and to award Plaintiffs an amount in excess of \$50,000 to compensate Plaintiffs for Defendants' intentional interference with Plaintiffs' prospective economic advantage, punitive damages for Defendants' willful conduct and for any other relief that this Court deems just.

Count III
Tortious Interference With A Contract Against All Defendants

1-21. Plaintiffs restates and realleges paragraphs 1 through 21 above as paragraphs 1-21 of Count III.

22. Plaintiffs have contracts with third parties to provide the necessary bandwidth to send their e-mails.

23. Defendants know that Plaintiffs have contracts with third parties to provide bandwidth to Plaintiffs.

24. Defendants have sent e-mail received from Plaintiffs to e-mail blocking entities alleging that Plaintiffs are spammers with the intention the Plaintiffs' e-mail would be blocked as spam and that Plaintiffs' service providers would cease to provide bandwidth to Plaintiffs.

25. Certain third party service providers have terminated their contracts to provide bandwidth to Plaintiffs as a result of Defendants' intentional interference with Plaintiffs' contracts.


26. Plaintiffs have suffered damages as a result of their third party service providers terminating their contracts with Plaintiffs.

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment on their behalf and against Ferguson and Susan and to award Plaintiffs an amount in excess of \$50,000 to compensate Plaintiffs for Defendants' intentional interference with Plaintiffs' contracts, punitive damages for the willful conduct of Defendants and for any other relief that this Court deems just.

27. Plaintiffs request a jury trial.

Respectfully submitted,

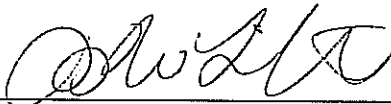
E360Insight, LLC. and David Linhardt

By: 
One of Their Attorneys

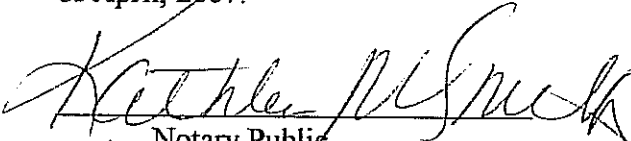
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VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Sworn to and subscribed before me
A Notary Public, this 30th day
of April, 2007.


Notary Public

