

IN COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

D4448H08

JOHN W. FERRON,  
580 N. Fourth Street, Suite 450  
Columbus, Ohio 43215.

Plaintiff,

vs.

E360INSIGHT, LLC,  
c/o Darren Green, its registered agent,  
4852 N. Magnolia Avenue  
Chicago, Illinois 60640,

And

DAVID LINHARDT,  
600 Northgate Parkway, Suite A  
Wheeling, Illinois 60090.

Defendants.

Case No. **07 CVH 09 12774**

Judge \_\_\_\_\_

Case Designation: H

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2007 SEP 21 PM 3:15  
CLERK OF COURTS-CV

**COMPLAINT FOR MONEY DAMAGES, DECLARATORY  
JUDGMENT AND INJUNCTIVE RELIEF**

**JURY DEMAND ENDORSED HEREON**

NOW COMES PLAINTIFF JOHN W. FERRON, by and through his undersigned counsel, and makes the following allegations and claims against DEFENDANTS E360INSIGHT, LLC and DAVID LINHARDT.

**The Parties**

1. PLAINTIFF JOHN W. FERRON ("Plaintiff") is a person who has his principal place of business at 580 N. Fourth Street, Suite 450, Columbus, Franklin County, Ohio. At all times relevant hereto, Plaintiff has been a "consumer" as defined in R.C. §1345.01(D).

2. Upon information and belief, DEFENDANT E360INSIGHT, LLC ("Defendant e360"), is an Illinois limited liability company having its principal place of business at 600



D4448109

Northgate Parkway, Suite A, Wheeling, Illinois 60090. Defendant e360 is not properly registered with the Ohio Secretary of State to do business in Ohio, nor is its fictitious name properly registered with the Ohio Secretary of State.

3. Upon information and belief, DEFENDANT DAVID LINHARDT ("Defendant Linhardt"), is a living person and individual, resides in Illinois, has as his principal place of business 600 Northgate Parkway, Suite A, Wheeling, Illinois 60090, and, at times relevant hereto, has been the President of Defendant e360.

4. At all times relevant hereto, each Defendant has been a "supplier" as defined in R.C. §1345.01(C).

#### Jurisdiction and Venue

5. This Court has jurisdiction over the parties and the claims asserted herein because Defendants transmitted many email messages to Plaintiff in Ohio.

6. Venue is proper because all or a substantial part of the events giving rise to the claims herein occurred within Franklin County, Ohio, including Plaintiff's receipt of many of Defendants' email messages to Plaintiff. Also, Plaintiff has suffered injuries to his rights in Franklin County, Ohio.

#### The Claims

7. Prior to the date of the events giving rise to Plaintiff's claims, the following court determinations were available for public inspection and on file in the office of the Ohio Attorney General in its Public Inspection File (hereafter "PIF"):

- (a) *State ex rel. Fisher v. Cheeseman*, Franklin C.P. 91CVH10-8592, OAG PIF# 1288 (Oct. 25, 1991); and
- (b) *State ex rel Petro v Pristine Secure Services*, Stark C.P. 2005CV00602.



- OAG PIF# 2376 (July 5, 2005); and
- (c) *State ex rel. Brown v. Gem Collectors International, Ltd.*, Franklin C.P. No. 81CV-09-4788, OAG PIF# 499 (April 6, 1983); and
- (d) *State ex rel. Celebrezze v. Lloyd's Sports Car Body Shop*, Franklin C.P. 82CV063184, OAG PIF# 5 (May 26, 1983); and
- (e) *State ex rel. Brown v. Bud Fletcher Used Cars, Inc.*, Hamilton C.P. A 8201791, OAG PIF# 228 (April 27, 1982); and
- (f) *State ex rel. Celebrezze v. National Church Publications*, Richland County C.P. 85 548 C, OAG PIF# 698 (Dec. 30, 1987); and
- (g) *Smith v. Discount Auto Sales*, Lorain C.P. 97CV120022, OAG PIF# 1735 (March 19, 1998);
- (h) *Hourd v. A.D.Z., Inc.*, Stark C.P. 1998 CV 02039, OAG PIF# 1801 (Dec. 9, 1999);
- (i) *State ex rel. Celebrezze v. Firestone*, Franklin C.P. 84CV105745, OAG PIF# 270 (March 8, 1985);
- (j) *State ex rel. Celebrezze v. Mroue*, Montgomery C.P. 84-925, OAG PIF# 510 (April 27, 1984); and
- (k) any other PIF cases that are otherwise applicable to the claims and or issues at involved in this action.

8. Prior to the date of the events giving rise to Plaintiff's claims, Ohio Administrative Code Sections 109:4-3-03, 109:4-3-04 and 109:4-3-06 were adopted pursuant to R.C. §1345.05(B)(2).

9. Defendants' acts complained of herein, which constitute violations of the Ohio



Consumer Sales Practices Act, R.C. § 1345.01, *et seq.*; are subject to: (a) all court determinations that were on file in the Office of the Ohio Attorney General in its Public Inspection File as of the date of the acts of Defendant complained of herein, including, but not limited to, the PIF court determinations referenced above in Paragraph 7; and (b) all rules adopted under R.C. Section 1345.05(B)(2) prior to the date of the acts or practices of Defendant complained of herein, including Ohio Administrative Code Sections 109:4-3-03, 109:4-3-04 and §109:4-3-06.

10. Plaintiff has Internet email accounts that are maintained by Internet service providers located within Ohio. Plaintiff regularly accesses and reads the email messages that he receives at his email addresses in Ohio.

11. Upon information and belief, between May 1, 2006 and the present date, Defendants transmitted or caused to be transmitted many email messages that passed through the servers of Plaintiff's Internet service providers and were forwarded to Plaintiff's Internet email accounts, as Defendants had intended. Each of these email messages is a "consumer transaction" as defined in R.C. Section 1345.01(A). The quantity of email messages is voluminous and, for that reason, they are not attached hereto.

12. As to each email message described in Paragraph 11, above:

- (a) Plaintiff is the "recipient" as defined in R.C. §2307.64(A)(11);
- (b) Each email message is an "electronic mail advertisement" as defined in R.C. §2307.64(A)(4); and
- (c) Neither Defendant has had with the Plaintiff, at any time relevant hereto, a "pre-existing business relationship" as defined in R.C. §2307.64(A)(9).

13. As to each email message described in Paragraph 11, above:

- (a) Defendant has not, at any time relevant hereto, had a "pre-existing



business or personal relationship" with Plaintiff, as contemplated by R.C. §2307.64(B)(3)(a); and

01448H12

- (b) Plaintiff has not "consented or agreed as a condition of service", as contemplated by R.C. §2307.64(B)(3)(b), to receive Defendants' email messages.

14. Upon information and belief, in many of the email messages Defendants sent or caused to be sent to Plaintiff, Defendants offered for sale at deeply discounted prices various consumer goods manufactured by world renowned designers such as Dooney & Bourke Stars, Brighton, Gucci, Michael Kors, Prada, Louis Vuitton, Ray Ban, Maui Jim and Killer Loop, to name a few. However, upon information and belief, Defendants actually substitute, provide, sell, and/or deliver unlawfully manufactured, non-licensed imitations, or "knockoffs," of such world renowned designer consumer goods. Upon information and belief, Defendants did not intend to provide sell and/or deliver the offered world renowned designers goods in accordance with their email solicitations.

15. Upon information and belief, in regard to many of the email messages Defendants have sent or caused to be sent to Plaintiff, Defendants knowingly committed one or more unfair and/or deceptive acts or practices in violation of R.C. §1345.02(A) by:

- (a) using the word "free" in a consumer transaction and failing to set forth clearly and conspicuously at the outset of the offer all of the terms, conditions and obligations upon which receipt and retention of the "free" goods or services are contingent;
- (b) using the word "free" in a consumer transaction and failing to print all terms, conditions, and obligations of the offer in a type size half as large as



04448H13

the word "free;"

- (c) using the word "free" in a consumer transaction and failing to print all terms, conditions, and obligations of the offer in close proximity with the offer of "free" goods or services;
- (d) engaging in improper bait advertising by making representations in email advertisements that would create in the mind of a reasonable consumer, a false impression as to the grade, quality, quantity, make, model, year, price, value, size, color, utility, origin or any other material aspect of the offered goods or services in such a manner that, upon subsequent disclosure or discovery of the facts, the consumer may be induced to purchase goods or services other than those offered;
- (e) failing to register with the Ohio Secretary of State prior to doing business in Ohio; and/or
- (f) failing to register a fictitious business name with the Ohio Secretary of State prior to doing business in Ohio under such fictitious name.

16. Upon information and belief, between May 1, 2006 and the present date, Defendants knowingly, willfully and intentionally transmitted or caused to be transmitted to Plaintiff many email messages that materially falsify the header information in such email messages in a manner that is prohibited by Section 1037(a)(3) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM"), 15 U.S.C. 7701, *et seq.*

17. Upon information and belief, between May 1, 2006 and the present date, Defendants knowingly, willfully and intentionally transmitted or caused to be transmitted multiple email messages to Plaintiff from a combination of more than two different domains



names where, in registering such domain names, Defendants knowingly and intentionally used information that materially falsifies the identity of the actual registrant of the domain names in a manner that is prohibited by Section 1037(a)(4) of CAN-SPAM.

18. By this Complaint, Plaintiff also seeks this Court's declaration that:

- (a) it is an unfair and/or deceptive act or practice in violation of R.C. §1345.02(A) for a supplier to transmit or cause to be transmitted to a consumer an email message that does not comply with the requirements of the Ohio Electronic Mail Advertisement Act ("EMAA"), R.C. 2307.64. *et seq.*, specifically R.C. §2307.64(B)(1);
- (b) it is an unfair and/or deceptive act or practice in violation of R.C. §1345.02(A) for a supplier to transmit or cause to be transmitted to a consumer an email message that materially falsifies the header information in the email message in a manner that is prohibited by Section 1037(a)(3) of CAN-SPAM; and
- (c) it is an unfair and/or deceptive act or practice in violation of R.C. §1345.02(A) for a supplier to transmit or cause to be transmitted to a consumer multiple email messages from a combination of more than two different domains names where, in registering such domain names, the supplier uses information that materially falsifies the identity of the actual registrant of the domain names in a manner that is prohibited by Section 1037(a)(4) of CAN-SPAM.

**FIRST CAUSE OF ACTION**

**(VIOLATIONS OF THE OHIO CONSUMER SALES PRACTICES ACT, R.C. §1345.02(A))**



19. Plaintiff hereby incorporates, as if fully rewritten herein, all of the <sup>Dy 11/10/04</sup> paragraphs 1-5 paragraphs.

20. Each of the email messages that Defendants transmitted to Plaintiff constitutes one or more unfair and/or deceptive sales practices and/or acts in violation of R.C. §1345.02(A).

21. Defendants' violations were "knowingly" committed, as Defendants knew they were engaging in the acts and practices described in the preceding paragraphs.

22. The acts and practices of Defendants described in the preceding paragraphs are acts and practices that have previously been declared to be unfair and/or deceptive acts or practices in violation of the CSPA by Ohio courts in judgments that were filed in Public Information File of the Office of the Ohio Attorney General prior to the acts and practices of Defendant complained of herein.

23. Because Defendants knowingly committed the acts or practices which constitute violations of R.C. §1345.02(A), Plaintiff is entitled to: (a) an award of statutory damages against each Defendant in the amount of three times Plaintiff's actual damages or \$200, whichever is greater, for each violation of R.C. §1345.02(A); and (b) an award of Plaintiff's reasonable attorney's fees and costs against each Defendant pursuant to R.C. §1345.09(F).

#### **SECOND CAUSE OF ACTION**

#### **(DECLARATORY JUDGMENT PURSUANT TO THE OHIO CONSUMER SALES PRACTICES ACT, R.C. §1345.09(D), AND §R.C. 2721.03)**

24. Plaintiff hereby incorporates, as if fully rewritten herein, all of the foregoing paragraphs.

25. Plaintiff respectfully submits that, under the circumstances presented in this case, he is entitled to the Court's entry of declaratory judgment in his favor pursuant to R.C.



§1345.09(D) and R.C. §2721.03, including this Court's declaration that it is an unfair and deceptive act and practice, and a violation of R.C. §1345.02(A), for a "supplier" to transmit an email message to a "consumer" in Ohio that constitutes a "consumer transaction" where the email message:

- (a) uses the word "free" and fails to set forth clearly and conspicuously at the outset of the offer all of the terms, conditions and obligations upon which receipt and retention of the "free" goods or services are contingent;
- (b) uses the word "free" and fails to print all terms, conditions, and obligations of the offer in a type size not less than half as large as the word "free;"
- (c) uses the word "free" and fails to print all terms, conditions, and obligations of the offer in close proximity with the offer of "free" goods or services;
- (d) makes representations that would create in the mind of a reasonable consumer, a false impression as to the grade, quality, quantity, make, model, year, price, value, size, color, utility, origin or any other material aspect of the offered goods or services in such a manner that, upon subsequent disclosure or discovery of the facts, the consumer may be induced to purchase goods or services other than those offered;
- (e) is sent by a supplier that has failed to register with the Ohio Secretary of State prior to doing business in Ohio;
- (f) is sent by a supplier that has failed to register a fictitious business name with the Ohio Secretary of State prior to doing business in Ohio under



such fictitious name; and/or •

(g) fails to comply with the requirements of R.C. §2307.64(B)(1).

D4448H17

26. Plaintiff respectfully submits that, under the circumstances presented in this case, he also is entitled to the Court's entry of declaratory judgment in his favor pursuant to R.C. §1345.09(D) and R.C. §2721.03, including this Court's declaration that it is an unfair and deceptive act and practice, and a violation of R.C. §1345.02(A), for a "supplier" to transmit or cause to be transmitted to a "consumer" in Ohio:

- (a) an email message that materially falsifies the header information in the email message in a manner that is prohibited by Section 1037(a)(3) of CAN-SPAM; and/or
- (b) multiple email messages from a combination of more than two different domains names where, in registering such domain names, the supplier uses information that materially falsifies the identity of the actual registrant of the domain names in a manner that is prohibited by Section 1037(a)(4) of CAN-SPAM.

**PRAYER FOR RELIEF**

**WHEREFORE.** Plaintiff hereby prays for the following relief against Defendants, jointly and severally, as to his foregoing claims:

A. An award of statutory damages against Defendants in the amount of three times Plaintiff's actual damages or \$200, whichever is greater, for each of Defendants' acts that constitutes a violation of R.C. §1345.02(A);

B. An award of Plaintiff's reasonable attorneys' fees and costs, as allowed pursuant to R.C. §1345.09(F).



C. Declaratory judgment pursuant to R.C. §1345.09(D) and R.C. §2721.01, against  
Defendants in Plaintiff's favor, as requested hereinabove;

D. A permanent injunction prohibiting Defendants from transmitting any more email  
messages to any consumer in Ohio in violation of R.C. §1345.02(A), including Plaintiff;

E. Pre- and post-judgment interest on all damages awarded; and

F. All such other relief, legal and equitable, as permitted by law.

Respectfully submitted,

  
Kevin E. Humphreys (0069168)  
lawyer@columbus.rr.com  
545 E. Town Street  
Columbus, Ohio 43215  
(614) 241-5550, 241-5551 fax

Lisa A. Wafer (0074034)  
lwafer@ferronlaw.com  
Jessica G. Fallon (0079169)  
jfallon@ferronlaw.com  
FERRON & ASSOCIATES  
A Legal Professional Association  
580 North Fourth Street, Suite 450  
Columbus, Ohio 43215-2125  
(614) 228-5225, 228-3255 fax

Attorneys for Plaintiff,  
John W. Ferron

**JURY DEMAND**

Plaintiff demands a trial by jury on all claims so triable.

  
Kevin E. Humphreys (0069168)



In the Court of Common Pleas, Franklin County, Ohio, General Division

John W. Ferron  
Plaintiff/Appellant,

vs.

F360INSIGHT, LLC  
Defendant/Appellee.

D4448H19

Case No. 07 CVH 09 12774

Civil Case Filing Information Summary

Type of Action/Case Classification:

Professional Tort (Type A)  
(\$225.00 Security Deposit Required)

Other Torts (Type C)  
(\$225.00 Security Deposit Required)

Foreclosure (Type E)  
(\$300.00 Security Deposit Required)

All Other Civil Cases (Type H)  
(\$225.00 Security Deposit Required)

Product Liability (Type B)  
(\$225.00 Security Deposit Required)

Workers Compensation (Type G)  
(\$225.00 Security Deposit Required)

Administrative Appeal (Type F)  
(\$100.00 Security Deposit Required)

Cognovit Confession of Judgment (H)  
(\$100.00 Security Deposit Required)

JURY DEMAND?  YES  NO  
(\$300.00 Additional Security Deposit Required)

Total Security Deposit \$ \_\_\_\_\_

Is a TEMPORARY RESTRAINING ORDER being requested at this time?  YES  NO

Is this a case in which ALL the issues presented are a result of the defendant(s) having signed and defaulted on a COGNOVIT NOTE?  YES  NO

Is this a FORCIBLE ENTRY AND DETAINER case?  YES  NO

Does this case include allegations of CONSUMER SALES PRACTICES ACT violations under Chapter 1345 or 1322 of the Ohio Revised Code?  YES  NO

Refiling Information:

If this is a REFILING of a previously dismissed case, please complete the following:

Previous Case No. \_\_\_\_\_

Original Judge \_\_\_\_\_

Attorney Name: Kevin E. Humphreys

Attorney Ohio Sup. Ct. Registration No. \_\_\_\_\_

Attorney/Party Home & Business Phone: 614-241-5550

Telephone Number: \_\_\_\_\_

Attorney/Party Home & Business Phone: 614-241-5551

Telephone Number: \_\_\_\_\_

Attorney/Party Home & Business Phone: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Attorney/Party Home & Business Phone: Columbus, OH 43215

Telephone Number: \_\_\_\_\_

Attorney/Party Home & Business Phone: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2007 SEP 21 10:31 AM  
CLERK OF COURTS





JOHN O'GRADY  
 CLERK OF THE FRANKLIN COUNTY COMMON PLEAS COURT, COLUMBUS, OHIO 43215  
 CIVIL DIVISION

JUDGE B. PFEIFFER

JOHN W. FERRON,  
 PLAINTIFF,

D4448H20

VS.

07CVH-09-12774

E360INSIGHT LLC  
 ET. AL.,  
 DEFENDANT.

FILED  
 COMMON PLEAS COURT  
 FRANKLIN COUNTY, OHIO  
 101 SEP 21 PM 3:16  
 CLERK OF COURTS-CV

CLERK'S ORIGINAL CASE SCHEDULE

	LATEST TIME OF OCCURRENCE
CASE FILED	09/21/07
INITIAL STATUS CONFERENCE	*****
INITIAL JOINT DISCLOSURE OF ALL WITNESSES	02/08/08
SUPPLEMENTAL JOINT DISCLOSURE OF ALL WITNESSES	04/04/08
TRIAL CONFIRMATION DATE	04/18/08
DISPOSITIVE MOTIONS	06/27/08
DISCOVERY CUT-OFF	07/11/08
DECISIONS ON MOTIONS	08/22/08
FINAL PRE-TRIAL CONFERENCE/ORDER (OR BOTH)	*****
TRIAL ASSIGNMENT	10/29/08 0900AM

NOTICE TO ALL PARTIES

ALL ATTORNEYS AND PARTIES SHOULD MAKE THEMSELVES FAMILIAR WITH THE COURT'S LOCAL RULES, INCLUDING THOSE REFERRED TO IN THIS CASE SCHEDULE. IN ORDER TO COMPLY WITH THE CLERK'S CASE SCHEDULE, IT WILL BE NECESSARY FOR ATTORNEYS AND PARTIES TO PURSUE THEIR CASES VIGOROUSLY FROM THE DAY THE CASES / ? FILED. DISCOVERY MUST BE UNDERTAKEN PROMPTLY IN ORDER TO COMPLY WITH THE DATES LISTED IN THE RIGHT-HAND COLUMN

BY ORDER OF THE COURT OF COMMON PLEAS,  
 FRANKLIN COUNTY, OHIO

//  
 DATE

JOHN O'GRADY, CLERK

(1000) (100)

