

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

E360INSIGHT, LLC,)	
)	
Plaintiff,)	Case No. 08 C 0340
)	
v.)	
)	
COMCAST CORPORATION,)	Judge Zagel
)	Magistrate Judge Mason
Defendant.)	
)	

COMCAST CORPORATION’S MOTION FOR JUDGMENT ON THE PLEADINGS

Pursuant to Fed. R. Civ. P. 12(c), Comcast Corporation (“Comcast”) respectfully moves the Court for entry of judgment in Comcast’s favor on each of Plaintiff’s causes of action. Judgment is appropriate here since Comcast is immune from each of Plaintiff’s claims under the Communications Decency Act of 1996 (“CDA”), 47 U.S.C. § 230, and various state law statutes immunizing actions of e-mail service providers taken to filter or block spam and other objectionable e-mails.

In addition, Plaintiff has failed to state any claim on which relief can be granted. Plaintiff’s first cause of action, for tortious interference with prospective economic advantage, fails as a matter of law because Plaintiff’s pleadings do not establish any cognizable relationship with which Comcast improperly interfered.

Plaintiff’s second cause of action, for violation of the Computer Fraud and Abuse Act (“CFAA”), 18 U.S.C. § 1030(a)(5)(A)(i) and (iii) fails because Plaintiff has failed to allege that Comcast improperly accessed any of its computers with respect to the allegedly damaging activities of which Plaintiff complains.

Plaintiff's third cause of action, for violation of Plaintiff's First Amendment rights, fails because Plaintiff has not and cannot allege that Comcast is a state actor, that its action constitute state action, or that it is acting under color of state law.

Plaintiff's fourth and final cause of action, for unfair competition and business practices under the Illinois Consumer Fraud Act, 815 ILCS 505/2, fails because Plaintiff has not identified any deceptive trade practice or practice that can be deemed unfair as defined under the law, which requires an action that offends public policy, that is immoral, unethical, oppressive, or unscrupulous, or that causes substantial injury to consumers. Moreover, Plaintiff is not a consumer and thus, to maintain a claim under the ICFA, must demonstrate a nexus between Comcast's complained-of behavior and harm to consumers. Plaintiff does not identify any consumer harm, and clearly seeks to recover for alleged harm to itself, which is not proper under the ICFA.

For the foregoing reasons and those set forth in Comcast's Memorandum in Support of its Motion for Judgment on the Pleadings, Comcast respectfully requests that the Court enter judgment in its favor.

Dated: March 4, 2008

Respectfully submitted,

LOEB & LOEB LLP

/s/ Douglas N. Masters
Douglas N. Masters (6199010)
Nathan J. Hole (6283099)
321 N Clark Street, Suite 2300
Chicago, IL 60610
Phone: (312) 464-3144
Fax: (312) 464-3111
dmasters@loeb.com

*Attorneys for Defendant
Comcast Corporation*

CERTIFICATE OF SERVICE

I, Douglas N. Masters, hereby certify that I electronically filed the foregoing **COMCAST CORPORATION'S MOTION FOR JUDGMENT ON THE PLEADINGS** with the Clerk of the Court for the Northern District of Illinois using the ECF System which will send notification to the registered participants of the ECF System as listed on the Court's Notice of Electronic Filing this 4th day of March, 2008.

/s/ Douglas N. Masters