

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN OHIO**

JOHN W. FERRON,	:	
	:	
Plaintiff,	:	Case No.: 2:07CV 01193
	:	
VS.	:	Judge Sargus
	:	
E360INSIGHT, LLC, et al.	:	Magistrate Judge King
	:	
Defendants.	:	

AFFIDAVIT OF DAVID LINHARDT

STATE OF ILLINOIS	:
	:
	: SS)
COUNTY OF COOK	:

David Linhardt, after being duly cautioned and sworn, deposes and states:

1. My name is Dave Linhardt, and I am the President of e360Insight, LLC. In that capacity, I am responsible for overseeing the day-to-day operations of the company. I am also an individual defendant in this litigation. As such, I have personal knowledge of the matters herein stated.

2. I have not created any of the message content contained in the email messages submitted by Plaintiff. What's more, e360Insight employs campaign managers who set up and execute permission email marketing campaigns for its clients. I am not personally involved in the process to set up, manage and monitor these email campaigns.

3. E360Insight does not send commercial email messages to promote or advertise its

products or services. E360Insight is simply an email list manager. All of the message content contained in our email messages come from e360Insight's clients. The sole purpose of these messages is to advertise and promote our clients' products and services. As such, E360Insight deploys the message content provided our marketing clients and mails it to members who have opted-in to the email lists provided by our list management clients. The links contained in the commercial email messages send consumers back to our clients' websites, not websites owned or operated by E360Insight. The sole exception to this are unsubscribe links, which we manage for our clients to make sure consumers can quickly and easily remove their email addresses from our clients' mailing lists. I, personally, do not engage in the sending of commercial email messages on my own behalf, and do not personally participate in the transmission of commercial email messages.

4. Bargaindepot.net is not owned by e360Insight or Linhardt but, in fact, is owned and operated by a company called Bargain Depot Enterprises, LLC which is a client of e360Insight LLC. I realize that Mr. Ferron has submitted an Affidavit signed by me in August, 2006, in another case. I am not a lawyer and did not correctly state the legal relationship between certain entities for which I provide services. When I signed that affidavit, I believed my statements to set forth the correct legal relationship between E360Insight, LLC and Bargaindepot.net, however, I have never owned Bargaindepot.net or Bargain Depot Enterprises, LLC.

5. E360data.com is no longer active and is not a defendant in this case. E360data.com was not a email marketing company, but instead sold targeted list rental products for direct mail. Approximately 95% of the business for e360data.com was direct mail; not email, and none of the emails at issue in this case originated from e360data.com lists. The direct mail lists formerly

managed by e360data.com are separate and distinct products from the email lists managed by e360insight.com. All of the emails at issue in this case originated from email-only lists managed by e360insight.com. e360Insight does not utilize its software to target email messages or gather information pursuant to demographics.

7. Attached as Exhibit A is a screenshot from e360Insight's email deployment system reflecting that the only fields in the email system are a unique identifier for the email address, email address, and first name (*see* Exhibit 1). It is impossible for us to target residents of a specific state when we maintain only the information contained in Exhibit A in our email deployment system.

8. In response to Plaintiff's allegations, I specifically deny that either I or e360Insight.com

do any of the following:

- (1) target Ohio residents through commercial email messages; or
- (2) e360's email deployment system maintains a field code for state of residence.

9. Doc. 19-2 contains field data that was obtained from a client of e360Insight after Ferron sent a letter threatening a lawsuit; E360Insight's clients gather the information when an email recipient like Plaintiff actually registers to receive email messages from that client. The only way one of our clients would have the information contained in Exhibit 19-2 is an actual registration to receive commercial email by Plaintiff or someone else who has his name, email address, IP address, and home address.

10. Certain e360data.com data relied on by Plaintiff is from a dead website for a Targeted List rental division for direct mail; not email. The Targeted List Rental business is not operational and e360data.com is not operational.

11. E360Insight's email deployment system is incapable of sending anywhere near the amount of emails sworn to by Plaintiff. E360Insight does not own the lists or the content of any emails it sends on behalf of its clients. E360Insight is simply a conduit for information similar to an Internet Service Provider ("ISP"), an on-line source such as Craig's List, or a newspaper like *The Columbus Dispatch*.

12. I have personally reviewed the emails submitted by Plaintiff and E360Insight is not referenced anywhere in any email. None of the email messages promote or advertise any of e360Insight's products or services. With the exception of unsubscribe links, each hyperlink contained in the emails submitted by Plaintiff redirects the user to E360's client websites. The only interaction an email recipient has with e360Insight, LLC is through the unsubscribe link contained in the email. These unsubscribe links are setup specifically for e360's clients and are created for the sole purpose of making it easy for an email recipient to remove his or her email address from our client's mailing list.

13. Emails deployed by Defendant E360Insight are pursuant to the client's instructions and are meant to be "national advertisements." E360Insight's clients are not able to target any of their campaigns by geography or by any other demographic information since this capability does not exist in E360Insight's email deployment system. The content of the emails is provided by and approved by our clients. The email addresses are provided by our clients and simply organized through our deployment system. E360 is simply an email list manager who mails

information for its marketing clients by using email lists provided by its email list management clients.

14. To the best of my knowledge, none of our clients reside or have offices in Ohio. Nor do we sell goods or services in Ohio. Here, all defendant has done is issue promotional mailings in electronic form. No orders can be made through Defendant's website. In fact, the only services e360Insight provides are to clients not located in Ohio.

15. After Mr. Ferron registered with one or more of my clients to receive email, he was able to trace such email to E360Insight. We are not sure how he was able to do this since the vast majority of the email messages contain no hyperlink or other information within the body of the emails that traces back to E360Insight. Upon request to be removed, Linhardt contacted the client to obtain the registration information for Mr. Ferron's email addresses. The information contained in Exhibit 19-2 was not information maintained or even known by me prior to obtaining the information from the client.

16. During discussions I had with Mr. Ferron prior to his filing suit, he mentioned our lawsuit against The Spamhaus Project where e360Insight was awarded a default judgment of \$11.7 million and a permanent injunction against The Spamhaus Project and

. In my opinion, I believe it is highly likely Mr. Ferron is collaborating with Spamhaus to continue to harass e360Insight, its list management clients and its marketing clients who are providing lawful permission email marketing services.


AFFLIANT FURTHER SAYETH NAUGHT.



David Linhardt

Sworn to and subscribed before me, a notary public, this 19th day of May, 2008.





Notary Public