

sent by or on behalf of Defendants. I reviewed the from lines, subject lines and body text of each and every email contained on the diskette. I have not reviewed the technical email headers at this time.

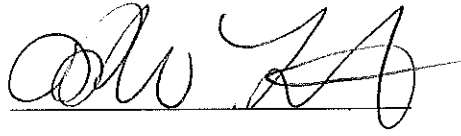
4. Every email produced was sent to the email address jferron@ferronlaw.com.
5. Of the 882 emails submitted during discovery, only 37 contained the word “free” and only 68 more contained the word “complimentary” in the subject lines. Plaintiff only opened 66 messages and clicked on the hyperlink only 16 times, which represents less than two percent (2%) of the emails produced. This is significant because without clicking on a hyperlink, Plaintiff cannot verify to where the hyperlink directed him. Where the hyperlink directs him reflects the real sender of the email. The hyperlink directs him to a website with additional information including the complete terms and conditions associated with the real senders advertisement and promotional offer. No hyperlinks related to the advertiser’s marketing message direct him to E360’s website. E360 provides only an unsubscribe link where a recipient can remove his or her email address from the mailing list.
6. Defendants have all contact information for Plaintiff in their database. Also, Defendants have the ip address Plaintiff used to connect to the Internet during his registration when he signed up to receive email messages. This is concrete evidence that Plaintiff made a request to be put on a “subscriber” list for at least one of the our clients.
7. The products or services promoted in the email messages are not products or services provided by either defendant. Neither defendant has ever sent email messages to any of Plaintiff’s email addresses promoting either defendants’ products or services. E360 is a publisher and list manager of third-party lists. It provides advertising services to its clients and is similar to a newspaper or magazine publisher. E360’s advertisers pay to send their

advertisement to e360's managed list to promote their products and services. E360 does not meet the CAN-SPAM definition of "sender."

8. Defendant e360Insight, LLC, is a publisher. Like a newspaper or magazine, e360Insight collects opt-in subscriptions from individuals who wish to receive promotional email messages. E360Insight then sells advertising services to companies who wish to promote their products and services. E360Insight is simply the middle-man or conduit between a defined audience of opt-in members and the advertisers who are lawfully promoting their products and services. E360Insight's publications consist of a series of free email newsletters sent to its subscribers upon their request. These messages are sent by our advertisers until the subscriber cancels the subscription through a simple one-click removal mechanism. E360Insight does not generate the message content contained in the advertising message. It obtains the advertising content from its advertisers similar to a newspaper or magazine.
9. The emails at issue in this case are part of a national "mass marketing" campaign. The email messages and advertising content were not targeted specifically to Mr. Ferron or to any individual recipient.
10. The emails at issue in this case were not created by me or any employee or agent of E360Insight, LLC. Neither I nor any of E360's agents or employees is or was aware that any email content violated any state laws in Ohio.
11. E360 does nothing more than maintain a database for its clients who direct E360 as to which ads to run to members of its opt-in mailing list.
12. Each email submitted contains a valid physical address, working unsubscribe links and an indication that the message is an advertisement.


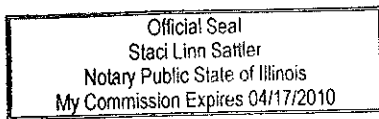
13. E360 maintains the correct email address, date of opt-in registration, place of opt-in registration and Internet Protocol address (IP address) for Plaintiff in its database. This registration information was obtained by Mr. Ferron when he registered to receive email messages. Mr. Ferron used this IP address to connect to the Internet during the time of his opt-in registration. An IP address is unique to every computer connected to the internet. To the best of my knowledge, this information cannot be fabricated. This is concrete evidence that Plaintiff made a request to be put on a "subscriber" list for at least one of the our clients.
14. E360 obtained the complete registration information provided by Mr. Ferron to e360's list management client. The registration information includes the correct email address, physical address, date of opt-in registration, place of opt-in registration and ip address used by Mr. Ferron during his opt-in registration. This information cannot be fabricated and was not fabricated by either Defendant. This evidences the fact that Ferron signed up to receive emails from Defendant e360's clients. This further evidences Mr. Ferron's consent to receive the emails at issue.
15. Referring to Exhibit D it is evident that Mr. Ferron registered with at least one of those clients. Upon receipt of Mr. Ferron's letter, I contacted the client to obtain the complete registration information for Mr. Ferron's email addresses. The information contained in Exhibit D was not information maintained on E360's email list or even known by me prior to obtaining the information from our client. The information in Exhibit D reflects an IP address belonging to Mr. Ferron's computer, a correct email address, and a correct home address for Mr. Ferron. I am not aware of any technology which would allow for Defendants or clients of E360 to obtain all of that information without Mr. Ferron providing it to the client while registering to receive promotional emails.

FURTHERMORE, AFFIANT SAYETH NAUGHT.



David Linhardt

Sworn to and subscribed before me, a notary public, this 20th day of October, 2008.



Notary Public