

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

e360 INSIGHT, LLC, an Illinois Limited Liability Company, and DAVID LINHARDT, an individual,	)	
	)	
	)	06 CV 3958
	)	
Plaintiffs,	)	Judge Kocoras
	)	Magistrate Judge Brown
v.	)	
	)	
THE SPAMHAUS PROJECT, a company limited by guarantee and organized under the laws of England, a/k/a THE SPAMHAUS PROJECT, LTD.,	)	
	)	
Defendant.	)	

**STATUS REPORT**

Defendant The Spamhaus Project (“Spamhaus”)<sup>1</sup> files this status report to advise Your Honor about a dispute that has arisen between the parties regarding the scope of the Court’s injunction order.

In short, plaintiff e360 Insight, LLC (“e360”) has taken the position that entities who become customers of e360 are covered by the language in the injunction order covering e360’s “affiliates, subsidiaries or related companies owned or controlled by Plaintiffs” – even though the companies have no relationship to e360 other than as its customer, and even though the companies were *not* an affiliate at the time the injunction order was entered. Plaintiffs appear to be trading on the Court’s injunction order by actually *advertising and marketing* their asserted ability to bring a new customer within the scope of the injunction order in an effort to obtain

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<sup>1</sup> Defendant expressly objects to this Court’s jurisdiction over The Spamhaus Project because Defendant is based solely in the United Kingdom and does not conduct or transact business in Illinois. Moreover, Defendant reserves its arguments based on Plaintiffs’ failure to properly effect service of process.

more customers.<sup>2</sup> Because Spamhaus believes in good faith that customers who form nothing more than a contractual relationship with e360 after the Court's injunction order was entered are not within the scope of that order, Spamhaus has declined e360's request to remove addresses owned by those customers from the SBL. While Spamhaus does not seek any affirmative relief from the Court, Spamhaus desires to ensure that the Court is fully advised about the dispute.

Here is some additional detail on the current dispute:

On June 15, 2007, counsel for e360 wrote counsel for Spamhaus and demanded that Spamhaus remove from its list of known spammers certain IP addresses owned by a company named Virtumundo. (Ex. C, letters relating to Virtumundo discussion.) e360's June 15 letter asserts that Virtumundo is a customer of and doing business with e360, and that e360 has contracted with Virtumundo for network management and eMessaging services. (*Id.*) e360 attached to its letter the June 6, 2007 Service Agreement between e360 and Virtumundo, which provides for "customer network management" and "email management services." (Ex. D.) However, those terms are not defined in the Service Agreement, and Exhibit A to the Service Agreement (which is identified as containing the specific services included and the prices), was not provided. (*Id.*)

While the Service Agreement is silent on the exact nature of the services to be provided, it is clear on one thing: there is no relationship between e360 and Virtumundo other than

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<sup>2</sup> Spamhaus recently became aware that e360 is advertising various services to assist other marketers with protection from Spamhaus. (Ex. A.) These "solutions" include: (1) TargetMX Permission Email Solution; (2) Multichannel Lead Generation; (3) List Management and List Rental; and (4) Date Enhancement. (*Id.*) Thus, e360 is actively marketing (by purchasing a sponsored link on Google) a way for marketers to be protected from Spamhaus. In fact, an internet search on Google of the term "Spamhaus" leads to a sponsored link for e360. (Ex. B.) This advertisement states: "Problems With Spamhaus? Read how e360 helps clients verify permission & remove SBL listings. [www.e360insight.com](http://www.e360insight.com)." (*Id.*)

“Service Provider” / “Customer.” Paragraph 17(k) of the Service Agreement specifically provides:

Service Provider [e360] is an independent contractor and nothing in this Agreement shall be deemed to make Service Provider an agent, employee, partner or joint venturer of Customer [Virtumundo]. Neither party shall have no [sic] authority to bind, commit, or otherwise obligate the other party in any manner whatsoever.

(*Id.* ¶ 17(k).) (e360 did not provide any information suggesting that, notwithstanding this provision, e360 has any ownership interest in Virtumundo.)

In light of the service provider/customer relationship, on June 22, 2007, Spamhaus informed e360 that Spamhaus declined to remove Virtumundo (specifically SBL 41635) from the SBL list.<sup>3</sup> Three separate rationales support Spamhaus’ good faith position. First, Virtumundo does not come within the language of the injunction order because it is not an affiliate, subsidiary or related company owned or controlled by e360. Second, even if (contrary to fact) Virtumundo were *now* within the literal language of the Court’s injunction order, Spamhaus does not believe that the order covers entities that form a relationship with Virtumundo after the entry of the order but who had none with e360 when the order was entered. Third, Spamhaus respectfully believes that a variety of equitable doctrines will bar application of the injunction order to any new relationships that e360 may form as a result of marketing its supposed ability to use the Court’s injunction order “as a sword.”

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<sup>3</sup> Virtumundo is on the list in the first place because it is a notorious purveyor of spam, adware and spyware: a Google search of Virtumundo displays alerts from McAfee, Sophos and CastleCops all indicating that Virtumundo uses spyware and adware. (Ex. E.)

Spamhaus will elaborate on the support for its position if and when e360 seeks relief from the Court on this issue. At this time, Spamhaus simply desires to keep the Court informed regarding the nature of the dispute and answer any questions Your Honor may have.

Respectfully submitted,

THE SPAMHAUS PROJECT

Dated: June 25, 2007

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