

**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, Plaintiffs,)	
v.)	06 CV 3958
THE SPAMHAUS PROJECT, a company limited by guarantee and organized under the laws of England, a/k/a THE SPAMHAUS PROJECT, LTD., Defendant.)	Judge Kocoras Magistrate Judge Brown

**SUPPLEMENTAL MEMORANDUM
IN OPPOSITION TO PLAINTIFFS’ MOTION TO COMPEL**

Plaintiffs’ assertions in their supplemental brief do not show that The Spamhaus Project (“Project”) can be compelled to produce documents from other entities over which it has no control.¹

First, Plaintiffs’ citation (¶ 6) to *General Environmental Science Corp. v. Horsfall*, 136 F.R.D. 130 (N.D. Ohio 1991) does not support their position because in that case, unlike the situation here, there was no dispute that the named defendants controlled the entities whose documents were sought. In *Horsfall*, defendants included three individual persons and a corporation. The court ordered production of the documents, reasoning that even if the corporation did not control the requested document, the *named defendant*, an individual person, who owned and controlled the non-party Swiss corporation had legal access and a “party to a lawsuit can be compelled to produce relevant information and documents relating to a non-party corporation of which it is an officer, director or shareholder.” *Id.* at 133 (emphasis added). Here, in contrast, Project is the sole defendant and it undisputedly does not serve as an “officer, director or shareholder” of Spamhaus Technology, Ltd. (“Technology”) or Ultradesign, Ltd. Steve Linford, who is not a defendant in this case and not subject to this court’s jurisdiction, has a relationship with those entities, but does not by himself control them. Plaintiffs’ incorrect assertion (¶ 4) that he controls the entities is simply irrelevant.

Second, Plaintiffs’ assertion (¶ 2) that the affidavits offered in support of the Response to Plaintiffs’ Motion to Compel are “conclusory” is demonstrably untrue; the affidavits state specific

¹ 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.

facts, relating to ownership, revenues, officers, control, maintenance of documents, and operations, that show that Project does not control Technology or Ultradesign.

Third, in response to paragraph 5(a), the small Project logo on the bottom-right corner of Technology's invoice does not show control by Project because the logo was used solely as a quality mark similar to placing "Microsoft Certified" on stationary, or a restaurant's using the Zagat seal. (Linford Aff. ¶ 12.)

Fourth, in response to paragraph 5(b), the only reason Technology for a time used an email address handled by the spamhaus.org mail server was because the Technology server could not withstand Distributed Denial of Service (DDoS) attacks, which knock out web and email servers; Technology no longer uses a spamhaus.org email address. (*Id.* ¶ 13.)

Fifth, in response to paragraph 5(c), the use of the same mail forwarding company, also used by thousands of other British companies (*id.* ¶ 6), does not show Project controls Technology.

Sixth, in response to paragraph 5(d), the fact is that "Spamhaus" is a not a unique name but a common internet jargon word defined as a "[p]eJORative term for an internet service provider that permits or even encourages spam mailings from its systems." (<http://dictionary.reference.com/browse/spamhaus>). (*Id.* ¶ 5.)

Seventh, in response to paragraphs 5(e)-(f), the fact is that all data published by Project is *free* to the internet public and Project has no agreements for "resale," arms-length or otherwise, with Technology or any other entity -- including the United States Courts, which use Project data for free. (Linford Aff. ¶¶ 8, 11.)

Eighth, in response to paragraph 5(g), while it is true that Ultradesign provides free hosting and servers to Project, that is no different than any other situation where an entity makes a donation in kind to a not-for-profit entity (which Project is) and certainly does not show control of the donor by the donee.

Respectfully submitted,

THE SPAMHAUS PROJECT

Dated: June 28, 2007

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CERTIFICATE OF SERVICE

I, Carrie A. Fino, an attorney, hereby certify that I served the foregoing **Supplemental**

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by e-mail and by depositing a copy of same in the United States Mail, postage prepaid, on this 28th day of June 2007.

s/ Carrie A. Fino