

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

FILED

MAR X 7 2007

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

E360INSIGHT, LLC, an Illinois Limited
Liability Company, and DAVID LINHARDT,
an individual,

Plaintiffs,

v.

MARK JAMES FERGUSON, an individual,
SUSAN WILSON A.K.A. SUSAN GUNN, an
individual, KELLY CHIEN, an individual,
UNKNOWN PERSON A.K.A. FUDO, an
individual, UNKNOWN PERSON A.K.A.
MORELY DOTES, an individual and TIM
SKIRVIN, an individual

Defendants.

07cv1305
JUDGE ST. EVE
MAG. JUDGE COLE

JURY DEMAND

COMPLAINT FOR INJUNCTIVE RELIEF AND FOR DAMAGES

Plaintiffs, e360Insight, LLC (e360) and David Linhardt (Linhardt) (collectively "Plaintiffs"), by and through their attorneys, Synergy Law Group, LLC, for their Complaint against Defendants, Mark James Ferguson, Susan Wilson a.k.a. Susan Gunn, Kelly Chien, Unknown Person a.k.a. Fudo, Unknown Person a.k.a. Morely Dotes and Tim Skirvin, (collectively "Defendants"), state as follows:

NATURE OF THE ACTION

1. This is an action by e360, an internet marketing company, and Linhardt, its President, for a preliminary and permanent injunction, as well as damages, against Defendants who have repeatedly made defamatory statements by referring to Plaintiffs as "spammers" and causing Plaintiffs to be listed as "spammers" resulting in their e-mail being blocked from the intended recipients and therefore costing Plaintiffs lost profits. The statements made by the Defendants constitute defamation per se and the resulting

blocking of Plaintiffs' e-mails constitutes tortious interference with a prospective economic advantage. Further, certain Defendants have actively and without justification interfered with existing contracts between Plaintiffs and third parties. This lawsuit seeks to enjoin that behavior and compensate Plaintiffs for the damage that Defendants have caused them.

PARTIES

2. e360 is an Illinois Limited Liability Company located in Wheeling, Illinois, with its principal offices located at 600 Northgate Parkway, Suite A.

3. David Linhardt is an individual who resides at 500 Sumac Road, Highland Park, IL 60035 and is a citizen of Illinois.

4. Mark James Ferguson ("Ferguson") is an individual who resides at 3831 Fawcett Avenue, Tacoma, WA 98418 and is a citizen of Washington.

5. Susan Wilson a.k.a. Susan Gunn ("Susan") is an individual who resides at 10682 Bell Street, CA 90680 and is a citizen of California.

6. Kelly Chien ("Chien") is an individual who resides at 60 Church Street, P.O. Box 164, Hobart, NY 13788 and is a citizen of New York.

7. Unknown Person a.k.a. Fudo ("Fudo") is believed to be a citizen of the United States and residing or working in the State of Washington making him a citizen of Washington.

8. Unknown Person a.k.a. Morely Dotes ("Dotes") is believed to be a citizen of the United States and residing or working in the State of Oregon making him a citizen of Oregon.

9. Tim Skirvin ("Skirvin") is an individual who is a citizen of Plano, TX.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to 28 USCS § 1332. The Plaintiffs are citizens of Illinois and on information and belief, the Defendants are citizens of States other than Illinois and thus diversity of the parties is satisfied.

11. Jurisdiction is proper pursuant to 28 USCS § 1391(a) because a substantial part of the events giving rise to the claim occurred in this judicial district.

12. Plaintiffs seek in excess of \$75,000 in damages.

FACTS COMMON TO ALL COUNTS

13. e360 is an e-mail based marketing company whose business practices have, at all times relevant to the allegations in this complaint, complied with, and continue to comply with all federal and state requirements and standards pertaining to the sending of commercial e-mail, including the *Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003*, 15 U.S.C. § 7701 (CAN-SPAM).

14. e360 uses ISPs to facilitate its marketing efforts on behalf of its business partners, and at all times relevant to the claims asserted in this complaint, e360 has complied, and continues to comply, with all Accepted Use Policies and Terms Of Service agreements stated by the ISPs.

15. e360 is hired by and partners with companies that wish to market their products or services using the internet. This marketing is targeted to persons "opting in" to a list whereby they agree to accept e-mail announcements. These persons sign up at lists owned by e360 or its business partners, some of which are then verified through a "double opt-in" process.

16. e360 does not engage in "spamming", which is essentially the digital equivalent of sending junk mail that is neither asked for nor wanted. Unlike anyone engaged in spamming, the internet marketing in which e360 engages employs a variety of permission processes that e360 controls, and that its marketing partners use, to obtain permission and consent from, and provide notice to, the consumers that receive the e-mail messages.

17. Plaintiffs have valid contracts with various third-parties to send e-mail on behalf of the third-parties.

18. Defendants are aware that Plaintiffs are in the business of sending e-mail and that Plaintiffs contract with third-parties to send e-mail on their behalf.

19. Defendants' repeated postings on internet websites that Plaintiffs are spammers has caused Plaintiffs to be blacklisted and have their e-mails blocked as spam.

20. Defendants intentionally post that Plaintiffs are spammers with the intent that Plaintiffs' e-mails will be blocked as spam, causing Plaintiffs' clients to cease business with Plaintiffs.

21. Plaintiffs have lost clients and business opportunities as a result of Defendants' postings that Plaintiffs are spammers which resulted in Plaintiffs being blacklisted and prevented Plaintiffs from sending e-mails.

22. Plaintiffs have suffered damages as a result of Defendants' tortious interference with their prospective business opportunities.

Count I
Defamation Per Se Against Ferguson, Susan, Fudo, Skirvin and Chien

23-45. Plaintiffs restate and reallege paragraphs 1 through 22 above as paragraphs 23-45 of Count I.

46. Ferguson, Susan, Fudo, Skirvin and Chien have repeatedly referred to Plaintiffs as spammers through various online postings that can be accessed in the state of Illinois via the internet.

47. Ferguson, Susan, Fudo, Skirvin and Chien's references to Plaintiffs as spammers constitute defamation per se because it is a violation of Federal law to send spam e-mail messages.

48. Ferguson, Susan, Fudo, Skirvin and Chien should be enjoined from making any further defamatory postings concerning the Plaintiffs.

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment on their behalf and against Ferguson, Susan, Fudo, Skirvin and Chien and to award Plaintiffs an amount in excess of \$75,000 to compensate Plaintiffs for Ferguson, Susan, Fudo, Skirvin and Chien's defamatory statements concerning Plaintiffs, an award of punitive damages for the defamatory statements and for injunctive relief barring Ferguson, Susan, Fudo, Skirvin and Chien from posting or otherwise putting on the internet that Plaintiffs are spammers and for any other relief that this Court deems just.

Count II
Tortious Interference With A Prospective Business Advantage
Against All Defendants

49-71. Plaintiffs restate and reallege paragraphs 1 through 22 above as paragraphs 49-71 of Count II.

72. Defendants have forwarded e-mails received from Plaintiffs or Plaintiffs affiliates to e-mail blocking entities with the intent to have Plaintiffs' e-mail blocked as spam.

73. Defendants are aware that Plaintiffs are in the business of marketing through the use of e-mail and that Plaintiffs contract with third parties to send e-mail.

74. Defendants sent e-mails received from Plaintiffs to e-mail blocking entities with the intention of having e-mail sent by Plaintiffs blocked and thus interfered with Plaintiffs business and prospective business opportunities.

75. Plaintiffs have lost business and business opportunities as a result of Defendants sending of e-mails received from Plaintiffs to e-mail blocking entities and the resulting blocking of Plaintiffs e-mails.

76. Plaintiffs lost business has resulted in lost income to Plaintiffs.

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment on their behalf and against all Defendants and to award Plaintiffs an amount in excess of \$75,000 to compensate Plaintiffs for Defendants' intentional interference with Plaintiffs' prospective economic advantage, punitive damages for Defendants' willful conduct and for any other relief that this Court deems just.

Count III
Tortious Interference With A Contract Against Ferguson and Susan

77-99. Plaintiffs restate and reallege paragraphs 1 through 22 above as paragraphs 77-99 of Count III.

100. Plaintiffs have contracts with third parties to provide the necessary bandwidth to send their e-mails.

101. Ferguson and Susan know that Plaintiffs have contracts with third parties to provide bandwidth to Plaintiffs.

102. Ferguson and Susan have directly contacted the service providers providing bandwidth to Plaintiffs alleging that Plaintiffs are spammers with the intention that those service providers would cease to provide bandwidth to Plaintiffs.

103. Certain third party service providers have terminated their contracts to provide bandwidth to Plaintiffs as a result of Ferguson and Susan's intentional interference with Plaintiffs' contracts.

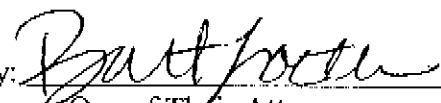
104. Plaintiffs have suffered damages as a result of their third party service providers terminating their contracts with Plaintiffs.

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment on their behalf and against Ferguson and Susan and to award Plaintiffs an amount in excess of \$75,000 to compensate Plaintiffs for Ferguson and Susan's intentional interference with Plaintiffs' contracts, punitive damages for the willful conduct of Ferguson and Susan and for any other relief that this Court deems just.

105. Plaintiffs request a jury trial.

Respectfully submitted,

E360Insight, LLC and David Linhardt

By: 
One of Their Attorneys

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