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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAR 07 2006

JAMES R. LARSEN, CLERK
DEPUTY
RICHLAND, WASHINGTON

**IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF WASHINGTON AT RICHLAND**

James S. Gordon, Jr., Plaintiff,
vs.
Impulse Marketing Group, Inc.,
Defendant

Impulse Marketing Group, Inc.,
Third-Party Plaintiff,

v.
Robert L. Pritchett, Third-Party
Defendant

Case No.: CV-04-5125-FVS
} **THIRD-PARTY DEFENDANT,**
} **ROBERT L. PRITCHETT'S**
} **MOTION TO COMPEL AND FOR**
} **SANCTIONS AND AFFIDAVIT**
} **RE: DISCOVERY**

TO: Clerk of the Court
AND TO: Floyd E. Ivey, Attorney for Third-Party Plaintiff

1 Third Party Defendant moves the Court for Sanctions and to Compel
2 Third party Plaintiff's Responses to Third Party Defendant's
3 Interrogatories and Request for Production of Documents. These
4 documents were placed in US Mail on or about January 17, 2006. I
5 contacted Mr. Ivey to ensure the 30 day deadline was going to be met,
6 he accepted a two-week extension. With that additional time, Impulse
7 still failed to meet its discovery obligations per FRCP 37 (a) (2) (3) (4).

8 At the status conference in the Fall of 2005, Impulse asked this Court
9 for 3+ additional months for discovery. It has squandered this time by
10 not seeking any discovery of this (or other) third party defendants and
11 will likely petition this Court for still more time.

12
13 Third Party Defendant's Motion to Compel is pursuant to FRCP 37(a)(2)
14 (3)(4). Impulse has failed to make the required Rule 26 disclosures to
15 the undersigned. Further, Impulse has provided evasive, incomplete
16 disclosure, answer, or response to discovery propounded by the
17 undersigned.

18
19 Third party Defendant asks the Court to award Sanctions per FRCP
20 37(a)(4) in an amount equal to or greater than the Sanctions demanded
21 by Impulse of Plaintiff. Or, in the alternative, simply require/order
22 compliance with the rules.

23
24 Three examples of non-responsiveness in answers to interrogatories
25 follows:

1 Interrogatory No 1:

2
3 Please identify full contact information for the sender of each email that
4 plaintiff has provided IMG.

5
6 Response:

7
8 Impulse asserts the Ambiguity, Irrelevancy and Overbreadth
9 Objections. The inquiry does not address any issue relative to the Third
10 Party Plaintiff's Causes of Action against this Third Party Defendant.
11 Further, Robert Pritchett lacks understanding to request interrogatory
12 responses based upon each email that plaintiff James Gordon may or
13 may not have provided IMG. As such, this interrogatory will not lead to
14 discovery of admissible evidence relative to the Third Party Complaint
15 *Bushman v. New Holland*, 83 Wn. 2d 429, 433-34 (1974); *Felix A.*
16 *Thillet, Inc. v. Kelly-Springfield Tire Co.*, 41 F.R.D.55 (D.P.R.1966).

17
18 Interrogatory No 16:

19
20 What evidence exists which proves that plaintiff instructed others to
21 use gordonworks.com to actively and affirmatively solicit commercial
22 emails?

23
24 Response:

25

1 Impulse asserts the Ambiguity and Overbreadth Objections. Assuming
2 that the inquiry refers to Plaintiff Mr. Gordon, this Third Party
3 Defendant has no standing to inquire about claims against plaintiff Mr.
4 Gordon or on behalf of "others". Notwithstanding the foregoing
5 objections, Impulse is in possession of evidence, in the form of Mr.
6 Gordon's Initial Disclosures in a related action against Commonwealth
7 Marketing Group brought by Mr. Gordon, which evidence may
8 ultimately prove that Mr. Gordon instructed Robert Pritchett to use the
9 gordonworks.com domain to actively and affirmatively solicit
10 commercial emails.

11 Interrogatory No 18:

12
13 What documentary evidence exists of an alleged scheme to solicit
14 emails?

15
16 Response:

17
18 Impulse asserts the Ambiguity, Irrelevancy and Overbreadth
19 Objections. Interrogatory No. 18 is ambiguous as to what scheme Mr.
20 Pritchett refers. The information sought will not lead to the discovery of
21 admissible evidence. *Felix A. Thillett, Inc. v. Kelly Springfield Tire Co.*,
22 41 F.R.D. (D.P.R. 1966).

23
24 Two examples of non-responsiveness in request for production follows:
25

1 Request for Production #8:

2
3 Provide documents which represent false representations by plaintiff
4 and/or third party defendants.

5
6 Response:

7
8 Impulse asserts the Ambiguity , Irrelevancy and Overbreadth
9 Objections. The topic of this request is Irrelevant to Impulse's Third
10 Party Causes of Action. A response to this request for Production #8 will
11 not lead to discovery of admissible evidence. Felix A. Thillett, Inc. v.
12 Kelly Springfield Tire Co., 41 F.R.D. (D.P.R. 1966). Further, Robert
13 Pritchett lacks understanding to request documents on behalf of
14 plaintiff and/or other third party defendants. Notwithstanding the
15 foregoing objections, Third Party Plaintiff continues to evaluate the
16 documentary evidence supporting it allegations that Robert Pritchett
17 made false representations to Impulse and will supplement this
18 response.

19
20 Request for Production #11:

21
22 Produce documents on which IMG relied on that led to excessive costs
23 and expenses as a result of plaintiff's and third party defendants'
24 alleged actions.

25

1 Response:

2
3 Robert Pritchett lacks standing to request documents on behalf of
4 plaintiff and/or other third party defendants. Notwithstanding the
5 foregoing objection, Third Party Plaintiff continues to evaluate the
6 documentary evidence supporting its allegations that Robert Pritchett
7 made false representations to Impulse and will supplement this
8 response accordingly.

9
10 I declare under penalty of perjury under the laws of the United States
11 that the foregoing is true and correct.

12
13 Robert L. Pritchett
14 1952 Thayer Drive
15 Richland, WA 99354
16 509-210-0217

17
18 EXECUTED this 7th day of March, 2006.

19 *Robert L. Pritchett*

20
21 Certificate of Service

22 I, hereby, certify that on March 7, 2006, I filed this motion with this
23 Court. I have served Bob Siegel, Peter J. Glantz, Sean A. Moynihan,
24 Floyd E. Ivey, Bonnie Gordon, James Gordon III, Jonathan Gordon,
25 Emily Abbey, and Jamila E. Gordon by other means.

Robert L. Pritchett