

1 LAW OFFICES OF JOHN L. FALLAT
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3 BRIAN J. TRIPLETT (State Bar No. 233442)
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6 Telephone: (415) 457-3773
7 Facsimile: (415) 457-2667

8 Attorney for Plaintiff
9 Hypertouch, Inc.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 HYPERTOUCHE, INC., a California
13 corporation,
14 Plaintiff,
15 vs.
16 KENNEDY-WESTERN UNIVERSITY, a
17 Wyoming corporation, and DOES 1 through
18 100, inclusive,
19 Defendants.

Case No. C 04 5203 SI

**PLAINTIFF HYPERTOUCHE, INC.'S
RESPONSE TO REQUEST FOR
PRODUCTION OF DOCUMENTS
FROM KENNEDY-WESTERN
UNIVERSITY**

20 PROPOUNDING PARTY: Defendant, KENNEDY-WESTERN UNIVERSITY

21 RESPONDING PARTY: Plaintiff, HYPERTOUCHE, INC.

22 SET: One

23 It should be noted that this responding party has not fully completed its investigation of the facts
24 relating to this case, has not fully completed its discovery in this action, and has not completed its
25 preparation for trial. All the responses contained herein are based only upon such information which is
26 presently available to and specifically known to this responding party and disclose only those contentions
27 which presently occur to such responding party and relate only to those documents and things which
28 presently occur to such responding party. It is anticipated that further discovery, independent
investigation, legal research and analysis will supply additional facts, add meaning to known facts, as well

1 as establish entirely new factual conclusions and legal contentions, all of which may lead to substantial
2 additions to, changes in, and variations from the responses herein set forth. The following responses are
3 given without prejudice to responding party's right to produce evidence of any subsequently discovered
4 document, writing, thing, fact or facts which this responding party may later recall or become aware of.
5 Responding party accordingly reserves the right to change any and all responses herein as additional facts
6 are ascertained, analyses are made, legal research is completed, additional documents, writings and things
7 are found, and contentions are made. The responses contained herein are made in a good faith effort to
8 supply as much factual information pertaining to the documents and things requested as is presently
9 known, but should in no way prejudice the defendant with respect to any subsequently discovered
10 documentation, writing, or thing.

11 **GENERAL OBJECTIONS**

12 Plaintiff's objections are made subject to, and without waiver of, any questions or objections as to
13 the competency, relevancy, materiality, privileged, admissibility as evidence or for any other purpose, of
14 any of the information referred to herein.

15 Plaintiff objects to each request that seeks information which is protected by the attorney-client
16 privilege, the work product doctrine and/or the right to privacy under the California Constitution, Article I,
17 Section I.

18 Without waiving said objections, plaintiff responds as follows:

19 **REQUEST NO. 1:** All documents supporting your contention that you suffered any injury in fact as a
20 result of false advertising.

21 **RESPONSE TO REQUEST NO. 1:** Objection: Plaintiff has never contended it suffered any injury in fact
22 as a result of false advertising. No documents will be produced.

23 **REQUEST NO. 2:** All documents supporting your contention that you lost money or property as a result of
24 false advertising.

25 **RESPONSE TO REQUEST NO. 2:** None at this time. Plaintiff is pursuing damages that are liquidated
26 and/or statutory under both Federal and California law.

27 **REQUEST NO. 3:** All documents supporting your contention that Kennedy-Western University initiated
28 any message per 7702(9).

1 **RESPONSE TO REQUEST NO. 3:** Objection: Kennedy-Western University is already in possession of
2 documents memorializing the agreements between Kennedy-Western University and Peak Advertising
3 and/or BocaNetworks.com for the advertisement of Kennedy-Western University's services via a mass
4 commercial electronic mail message marketing campaign, as well the documents memorializing the
5 contracts which Peak Advertising made with third parties to transmit the commercial electronic mail
6 messages in question. Please see enclosed Declaration of Steve Berns of Peak Advertising, with exhibits (9
7 pages).

8 **REQUEST NO. 4:** All documents supporting your contention that you are a provider of internet access
9 services per 7702(11).

10 **RESPONSE TO REQUEST NO. 4:** Objection: Overbroad, burdensome, and constitutes harassment.
11 Without waiving said objections, please see enclosed domain name registration information for
12 prontolabels.com and endonav.com (3 pages), demonstrating that the plaintiff is a provider of internet access
13 services per 15 U.S.C. § 7702(11).

14 **REQUEST NO. 5:** All documents supporting your contention that Kennedy-Western University procured
15 any message per 7702(12), as specifically defined in 7706(g).

16 **RESPONSE TO REQUEST NO. 5:** Objection: Compound, vague, and ambiguous. Without waiving
17 said objections, please see Response to Request No. 3, above.

18 **REQUEST NO. 6:** All documents supporting your contention that that [sic] Kennedy-Western University
19 was a sender of any message per 7702(16)(A).

20 **RESPONSE TO REQUEST NO. 6:** Please Response to Request No. 3, above. In addition, please see
21 CD-ROM sent under separate cover containing all commercial electronic mail messages received by
22 plaintiff that advertise the services of Kennedy-Western University.

23 **REQUEST NO. 7:** All documents supporting your contention that Kennedy-Western University initiated
24 any "false or misleading" message per 7704(a).

25 **RESPONSE TO REQUEST NO. 7:** See Response to Request No. 3, above. In addition, please see CD-
26 ROM sent under separate cover containing all commercial electronic mail messages received by plaintiff
27 that advertise the services of Kennedy-Western University.

1 **REQUEST NO. 8:** All documents supporting your contention that Kennedy-Western University initiated
2 or assisted with any "aggravated violation" message per 7704(b).

3 **RESPONSE TO REQUEST NO. 8:** See Response to Request No. 6, above.

4 **REQUEST NO. 9:** All documents supporting your contention that Kennedy Western University took no
5 reasonable action to prevent transmission of violative messages when it knew of them per 7705(a).

6 **RESPONSE TO REQUEST NO. 9:** Objection: Plaintiff never contended in its complaint that Kennedy-
7 Western University took no reasonable action to prevent transmission of violative messages when it knew of
8 them per 15 U.S.C. § 7705(a). No documents will be produced.

9 **REQUEST NO. 10:** All documents supporting your contention that Kennedy Western University is not
10 entitled to the avoidance of liability per 7705(b)(1).

11 **RESPONSE TO REQUEST NO. 10:** Objection: Plaintiff never contended in its complaint that Kennedy-
12 Western University is not entitled to the avoidance of liability per 15 U.S.C. § 7705(b)(1). No documents
13 will be produced.

14 **REQUEST NO. 11:** All documents supporting your contention that you are a provider of Internet access
15 services per 7706(g).

16 **RESPONSE TO REQUEST NO. 11:** See Response to Request No. 4, above.

17 **REQUEST NO. 12:** All documents supporting your contention that you suffered any damages per
18 7706(g)(3).

19 **RESPONSE TO REQUEST NO. 12:** Please see CD-ROM sent under separate cover containing all
20 commercial electronic mail messages received by plaintiff that advertise the services of Kennedy-Western
21 University.

22 **REQUEST NO. 13:** All documents supporting your contention that you are entitled to aggravated damages
23 per 7706(g)(3)(c).

24 **RESPONSE TO REQUEST NO. 13:** See response to Request No. 12, above.

25 **REQUEST NO. 14:** All documents supporting your contention that Kennedy Western University is not
26 entitled to a reduction of damages per 7706(g)(3)(D).

1 **RESPONSE TO REQUEST NO. 14:** Objection: Plaintiff never contended in its complaint that Kennedy-
2 Western University is not entitled to a reduction of damages per 15 U.S.C. § 7706(g)(3)(D). No documents
3 will be produced.

4 **REQUEST NO. 15:** All documents supporting your contention that Kennedy Western University was a
5 sender of any message per B&P section 17529.5.

6 **RESPONSE TO REQUEST NO. 15:** Objection: Vague and ambiguous as to the meaning of "sender."
7 Without waiving said objection, please see Response to Request No. 3, above.

8 **REQUEST NO. 16:** All documents supporting your contention that you suffered any damages per B&P
9 section 17529.5(b)(1).

10 **RESPONSE TO REQUEST NO. 16:** Please see Response to Request No. 12, above.

11 **REQUEST NO. 17:** All documents supporting your contention that Kennedy Western University is not
12 entitled to a reduction of damages per B&P section 17529.5(b)(2).

13 **RESPONSE TO REQUEST NO. 17:** Objection: Plaintiff never contended in its complaint that Kennedy-
14 Western University is not entitled to a reduction of damages per Business & Professions Code §
15 17529.5(b)(2). No documents will be produced.

16 **REQUEST NO. 18:** All documents supporting your contention in paragraph 10 of the complaint that you
17 received electronic mail from Kennedy-Western University.

18 **RESPONSE TO REQUEST NO. 18:** Please see CD-ROM sent under separate cover containing all
19 commercial electronic mail messages received by plaintiff that advertise the services of Kennedy-Western
20 University.

21 **REQUEST NO. 19:** All documents supporting your contention in paragraph 11 of the complaint that
22 Kennedy-Western University sent electronic mail in willful and knowing violation of the CAN-SPAM Act.

23 **RESPONSE TO REQUEST NO. 19:** See Response to Request No. 6, above.

24 **REQUEST NO. 20:** All documents supporting your contention in paragraphs 12 through 16 and 24 of the
25 complaint that Kennedy-Western University sent any of the electronic mails alleged in those paragraphs.

26 **RESPONSE TO REQUEST NO. 20:** Objection: Compound, vague, and ambiguous. Without waiving
27 said objections, please see Response to Request No. 6, above.

28 **REQUEST NO. 21:** Each complaint filed by you against alleged spammers (other than this complaint).

1 **RESPONSE TO REQUEST NO. 21:** Objection: Vague, ambiguous, overbroad, burdensome, constitutes
2 harassment and an invasion of privacy, irrelevant, and not likely to lead to the discovery of admissible
3 evidence. No documents will be produced.

4 **REQUEST NO. 22:** Each demand letter sent by you to alleged spammers.

5 **RESPONSE TO REQUEST NO. 22:** Objection: Vague, ambiguous, overbroad, burdensome, constitutes
6 harassment and an invasion of privacy, irrelevant, and not likely to lead to the discovery of admissible
7 evidence. No documents will be produced.

8 **REQUEST NO. 23:** Each response to your complaint or demand letter from alleged spammers.

9 **RESPONSE TO REQUEST NO. 23:** Objection: Vague, ambiguous, overbroad, burdensome, constitutes
10 harassment and an invasion of privacy, irrelevant, and not likely to lead to the discovery of admissible
11 evidence. No documents will be produced.

12 **REQUEST NO. 24:** Documents sufficient to show your income per year from persons who you believed to
13 be spammers.

14 **RESPONSE TO REQUEST NO. 24:** Objection: Vague, ambiguous, overbroad, burdensome, constitutes
15 harassment and an invasion of privacy, irrelevant, and not likely to lead to the discovery of admissible
16 evidence. No documents will be produced.

17 **REQUEST NO. 25:** Documents sufficient to show the names and addresses of alleged spammers who have
18 paid you any consideration.

19 **RESPONSE TO REQUEST NO. 25:** Objection: Vague, ambiguous, overbroad, burdensome, constitutes
20 harassment and an invasion of privacy, irrelevant, and not likely to lead to the discovery of admissible
21 evidence. No documents will be produced.

22 **REQUEST NO. 26:** Settlement agreements between you and any alleged spammer.

23 **RESPONSE TO REQUEST NO. 26:** Objection: Vague, ambiguous, overbroad, burdensome, constitutes
24 harassment and an invasion of privacy, irrelevant, and not likely to lead to the discovery of admissible
25 evidence. No documents will be produced.

26 **REQUEST NO. 27:** Documents sufficient to show your income per year from sources other than payments
27 from alleged spammers.

1 **RESPONSE TO REQUEST NO. 27:** Objection: Vague, ambiguous, overbroad, burdensome, constitutes
2 harassment and an invasion of privacy, irrelevant, and not likely to lead to the discovery of admissible
3 evidence. No documents will be produced.

4 **REQUEST NO. 28:** Each electronic mail that you contend is the responsibility of Kennedy-Western
5 University.

6 **RESPONSE TO REQUEST NO. 28:** Please see CD-ROM sent under separate cover containing all
7 commercial electronic mail messages received by plaintiff that advertise the services of Kennedy-Western
8 University.

9 **REQUEST NO. 29:** The "information" described in your Rule 26 response at page 3, subsection (B)(a).

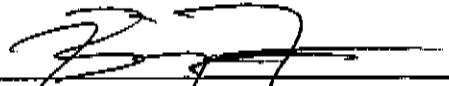
10 **RESPONSE TO REQUEST NO. 29:** Please see CD-ROM sent under separate cover containing all
11 commercial electronic mail messages received by plaintiff that advertise the services of Kennedy-Western
12 University.

13 **REQUEST NO. 30:** The "server logs and/or off-site backups" described in your Rule 26 response at page
14 3, subsection (B)(b).

15 **RESPONSE TO REQUEST NO. 30:** Objection: Vague, ambiguous, overbroad, burdensome, and
16 constitutes an invasion of privacy. No documents will be produced.

17
18 DATED: 4/6/05

LAW OFFICES OF JOHN L. FALLAT

19
20 
21 BRIAN J. TRIPLETT
22 Attorney for Plaintiff,
23 HYPERTOUCHE, INC.
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Los Angeles, CA 90067-4308
Telephone: (310) 203-8080
Facsimile: (310) 203-0567

Attorneys for Defendant
PEAK ADVERTISING, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HYPERTOUCH, INC., a California)
corporation,)

Plaintiff,)

v.)

KENNEDY-WESTERN UNIVERSITY, a)
Wyoming corporation, and DOES)
1 through 100, inclusive,)

Defendants.)

CASE NO. C 04- 5203 SI
DECLARATION OF STEVE BERNS

1 DECLARATION OF STEVE BERNS

2
3 I, Steve Berns, declare as follows:

4
5 1. I know the following facts of my own personal
6 knowledge and if called to testify, could and would so testify.

7
8 2. Peak Advertising, LLC has been in business since
9 March of 2004. I founded the company along with Mr. Phil
10 Rosenthal. Mr. Rosenthal and I have collectively 8 years
11 experience in the online advertising industry.

12
13 3. Our philosophy is, and has always been, to provide
14 the best possible service to our advertiser clients while
15 complying with the law. It is not in our best interest -- or our
16 clients' -- to continue to use a provider that is receiving
17 complaints.

18
19 4. In particular, we do business only with legitimate
20 vendors that are compliant with CAN-SPAM and, before dealing with
21 a vendor, take reasonable steps to determine that the vendor is
22 compliant with such law.

23
24 5. Over the years, we have contracted for CAN-SPAM
25 compliant emails with many different email providers. In the
26 rare event of a complaint, as is evident in the email chains
27 provided, we take immediate action to suspend the email provider
28 (which we did here) and request the opt-in information for the

1 complainant.

2

3 6. Peak Advertising's work for Kennedy-Western
4 University ("KWU") consisted solely as a media buyer for KWU's
5 lead generation campaigns; Peak Advertising did not send any
6 emails to potential customers of KWU. A true and correct copy of
7 Peak Advertising's contract with KWU is attached hereto as
8 Exhibit A. Peak Advertising provided services to KWU for six
9 months; Mr. Rosenthal and I provided services to KWU for almost 4
10 years at our prior company.

11

12 7. Peak Advertising contracted Contour Media Group
13 ("CMG") as an email vendor for the KWU campaign based on the
14 following several reasons:

15

16 It had used CMG on several occasions for other
17 campaigns in the past (initially over a year ago) and did not
18 have any issues with their email lists and all of those prior
19 campaigns were CAN-SPAM compliant.

20

21 It talked with CMG prior to contracting them for
22 the KWU campaign and CMG confirmed that all of its email lists
23 were CAN-SPAM compliant.

24

25 Its investigation of CMG did not uncover any
26 negative information.

27

28 CMG was listed as an opt-in email provider on such

1 directories as EmailResults.com, a known industry resource for
2 finding opt-in email lists and is advertised to the entire
3 internet advertising community.

4
5 CMG's websites stated that their email lists are
6 opt-in, compliant with CAN-SPAM and they would never spam.

7
8 8. The Peak Advertising-CMG contract (called
9 Insertion Order) stated "If conducting email campaigns,
10 publisher [CMG] must be 100% compliant with all state and Federal
11 spam laws including, but not limited to, the CAN- SPAM Act of
12 2003." A true and correct of that contract is attached hereto as
13 Exhibit B.

14
15 9. The email message that Peak Advertising approved
16 for delivery from CMG for KWU was compliant with CAN-SPAM. The
17 email had a legitimate subject line (not misleading), legitimate
18 advertiser message, working opt-out links for both advertiser and
19 email list provider, physical addresses for advertiser and email
20 list provider.

21
22 10. Unfortunately, CMG sent a different email message.

23
24 11. Peak Advertising received Hypertouch's email
25 complaint from KWU. It then researched the email to determine
26 which vendor may have sent it. At first Peak Advertising did not
27 think the email was from its vendors because Peak Advertising had
28 not approved that email. It was also difficult to determine the

1 email's origin because Hypertouch did not send active links or an
2 email address that Peak Advertising could use to track down the
3 vendor.

4
5 12. Peak Advertising noticed that in the Bargain
6 Warrior email there was an identifier in the URL, the number,
7 10190. It then went back to all email vendors that it used in
8 the month in question. It discovered an approved CAN-SPAM
9 compliant email that had the same identifier in the URL. That
10 email was from CMG.

11
12 13. Upon further research into the Bargain Warrior
13 domain, Peak Advertising found that the domain (true-values.com)
14 in the URL used by CMG was owned by the same people that own
15 Bargain Warrior.

16
17 14. Peak Advertising immediately suspended the email
18 campaign with CMG. It emailed CMG, requested that the user be
19 removed from the list and we also requested the opt-in time,
20 date, and the IP address of the user in question.

21
22 15. CMG never responded.

23
24 16. Peak Advertising has never used CMG again.

25
26 17. Peak Advertising never had an ownership or
27 economic interest in KWU or CMG.

28

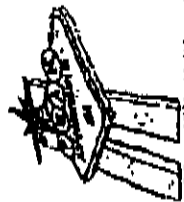
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18. Peak Advertising never: (a) had "actual knowledge" that goods, products, property or services are promoted in a commercial electronic mail message that violates section 5(a)(1); and (b) received, or expected to receive, an economic benefit from such promotion. (Peak Advertising was a vendor for KWU; KWU received an economic benefit from the promotion.)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on the ___ day of March, 2005, at Los Angeles, California.


STEVE BERNS

PRINTED ON RECYCLED PAPER



Terms & Conditions

CONFIDENTIAL INFORMATION: Information that is disclosed by one party to the other party, and that is marked "confidential," in which under the circumstances ought reasonably to be treated as confidential information (including this Agreement), will be treated as confidential by the receiving party. The receiving party will not disclose to a third party such information, or use such information other than for the purposes for which it was provided, without the written consent of the other party. This obligation will apply for a period of one year after disclosure of such confidential information. The foregoing limitations do not apply to the extent such information: (a) is independently discovered by a third party; (b) is already known to the receiving party at the time of disclosure; (c) is independently developed by the receiving party; or (d) is rightfully received from a third party without restrictions on disclosure or use.

RESPONSIBILITY FOR ADVERTISEMENTS: Advertiser represents and warrants to PEAK ADVERTISING, LLC that it is fully authorized to publish, and to authorize PEAK ADVERTISING, LLC to publish on its behalf, Content (including, without limitation, all text, graphics, URLs, and sites to which URLs are linked, and that all Content) compliant with all applicable laws and regulations. Advertiser will indemnify and hold PEAK Advertising harmless from and against any and all loss, liability and expense (including reasonable attorney's fees) suffered or incurred by reason of any claims, proceedings or suits based on or arising out of the Content, including without limitation claims for trademark, violation of rights of publicity, patent, intellectual property, or a breach by Advertiser of any representation, warranty, condition, or obligation to be performed or delivered by Advertiser to inventory availability.

COMMITMENT; PAYMENT TERMS: Advertiser will pay PEAK ADVERTISING, LLC the fee set forth in the IO based on the schedule set forth in the IO, over a period of 12 months, interest at the rate of 10% compounded on a monthly basis USD per annum, or the legal maximum, whichever is less.

DISCLAIMERS; LIMITATIONS: EXCEPT AS EXPRESSLY PROVIDED HEREIN, PEAK ADVERTISING, LLC ASSUMES NO LIABILITY FOR ANY MATERIALS OR OTHER SERVICES PROVIDED BY OR ON BEHALF OF PEAK ADVERTISING, LLC PURSUANT TO THIS AGREEMENT. "AS IS" AND WITH ALL DEFECTS, AND PEAK ADVERTISING, LLC HEREBY DISCLAIMS ALL WARRANTIES, WARRANTIES, AND CONDITIONS, EXPRESS OR IMPLIED. EXCEPT FOR AVOIDANCE OF DOUBLE REMEDY, PEAK ADVERTISING, LLC WILL NOT BE LIABLE TO THE OTHER PARTY FOR DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF OR UNAUTHORIZED ACCESS TO INFORMATION).

FORCE MAJEURE: Orders are binding on Advertiser and not subject to cancellation by Advertiser unless specified in the IO.

FORCE MAJEURE: If conducting a mail campaign, advertiser must be 100% compliant with all state and federal requirements including, but not limited to, the CAN SPAM Act of 2003.

FORCE MAJEURE: PEAK ADVERTISING, LLC or Advertiser's trading system will be used. Daily reporting available upon request.

FORCE MAJEURE: Each party hereby agrees to defend, indemnify, and hold the other party and its officers, directors, shareholders, agents, employees, successors, and assigns harmless from and against any and all claims, demands, suits, losses, damages, actions, judgments, and expenses, including reasonable attorney's fees and expenses of attorney, incurred by either party arising out of, or related to, any breach of either party's representations, warranties and other professional obligations (the "Claims"), arising out of, or related to, any breach of either party's representations, warranties and other professional obligations (the "Claims"), arising out of, or related to, any breach of either party's representations, warranties and other professional obligations (the "Claims").

FORCE MAJEURE: This Agreement shall be governed by, construed and interpreted according to the laws of the State of California. The parties agree that the appropriate venue and exclusive venue for any litigation arising out of this Agreement shall be the court of appropriate jurisdiction in Los Angeles County, California.

FORCE MAJEURE: PEAK ADVERTISING, LLC is acting solely as an agency with regard to this matter. There is no transaction between PEAK ADVERTISING, LLC and Advertiser for which PEAK ADVERTISING, LLC has been added as a party to this Agreement, and no liability or damages shall be incurred by Advertiser as a result of such damages as for reasonable, and whether or not PEAK ADVERTISING, LLC has been added as a party to this Agreement, arising from any aspect of the advertising relationship provided for herein.

Handwritten initials and marks, including a circled "SP" and a circled "SB".

Peak Advertising

Publisher Insertion Order

Order #:	20040429040001	Date:	4/29/2004
Svc/Company:	Peak Advertising	JOB version:	original
Representative:	Steve Berns	Reporting:	Daily
Client/Advertiser:	AT&T	Payment Terms:	Net 25
Address:	12410 Landale Street	Request:	ASAP
City, State, Zip:	Studio City, CA 91604		
Phone:	818-765-0171		
Fax:	818-765-0371		
Email:	Steve@peakadvertising.com		
Publisher:	KWUU	Advertiser:	Peak Advertising
Contact:	Jake Adams	Creative:	
Phone:	954-783-3665 x.306		
Fax:	954-783-3677		
Email:	jake@peakadvertising.com		
Address:			
City, State, Zip:			
Technical Contact:			
Phone:			
Email:			
Number of spots:	TBD	Cost per Unit:	\$11.00/valid hour
Total Cost:	TBD		

Special Terms:

1. **US ONLY TRAFFIC**
2. Not valid unless counterchecked by authorized local Advertising Representative.
3. All amounts must be paid by 100% Pre-Paid and be consistent with all Federal and State SPOT laws, including, but not limited to, the **COMM. STAT.**
4. An amount must be paid to www.peakadvertising.com prior to the payment for approval.
5. There will be no charge back or return to this advertiser.
6. Advertiser's tracking system will be used. Tracking will be available to publisher's tracking bank.
7. Intentional: Each party hereby agrees to deliver, broadcast, and hold for other party and its officers, directors, shareholders, agents, employees and independent contractors, and agrees to release them and agents and its officers, directors, shareholders, agents, employees and independent contractors, including reasonable fees and expenses of attorneys, plaintiffs and other professionals (the "Contract"), arising out of, or related to any breach of either party's representations, warranties and other obligations (the "Claims"), arising out of, or related to any breach of either party's representations or warranties hereunder.

Valid Leads are defined as:
 U.S. residents, not living in California or Oregon
 25 years or older with a minimum of 5 years work experience

Jake Adams
 04/30/04
 Def

Steve Berns
 Steve Berns
 Peak Advertising

EXHIBIT B



?SEARCH WHOIS

- ? Home
- ? Register Domains
- ? Transfer Domains
- ? Renew Domains
- ? Servicezone
- ? Price list
- ? Terms & Conditions
- ? Reseller
- Support/Contact
- FAQ/Help
- .EU Pre-Booking

?REGISTER YOURSELF

?LOGIN EMAIL

?LOGIN PASSWORD

[forgot password? click here](#)

DOMAIN
Registrar:
Status:
Handle:

Whols-output

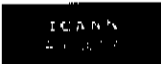
prontolabels.com
JOKER.COM
lock
301503

Owner

Name:
Organization:
Email:
Address:
Postalcode/City:
State:
Country:
Administrative contact:
Technical contact:
Billing contact:
Nameserver:

Jullenne Correa
Pronto Labels
cortro@mindspring.com
302 Rock Creek Drive
29605 Greenville
SC
US
cortro@mindspring.com#0
cortro@mindspring.com#0
cortro@mindspring.com#0
dns1.hypertouch.com
dns2.hypertouch.com
dns3.hypertouch.com
dns4.hypertouch.com

created by JORE-1: 2001-10-05 23:31:19
modified by JORE-1: 2005-03-01 17:30:21
db-updated: 2005-04-01 09:51:52
expires: 2007-10-05 17:31:10



Home

- Register a Domain
- Renew a Domain
- Multiple Registrations
- Multilingual Registrations
- Whois Search
- FAQ

Registrar Transfer
FAQ

Member Login
Ownership Change
Disputed Domains - UDRP
FAQ

Affiliate Login
Affiliate Sign-Up
Why Join?
FAQ

Dispute Policy
Privacy Statement
Terms of Service

About Us
Press Releasees
Advertising
Employment
Contact Us

ItsYourDomain Whois Lookup

Password:

Password:

Domain:

The Data in our WHOIS database is provided by us for information purposes, and to assist persons in obtaining information about or related to a domain name registration record. We do not guarantee its accuracy. By submitting a WHOIS query, you agree that you will use this Data only for lawful purposes and that, under no circumstances will you use this Data to:

- (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via e-mail (spam); or
- (2) enable high volume, automated, electronic processes that apply to us, our systems, or our customers.

We reserve the right to modify these terms at any time. By submitting this query, you agree to abide by this policy.

Domain: endonav.com

Registrant
Alfred Chin
Aprisa Development
alfred_chin@hotmail.com
5901 Broadway #16
Oakland, CA 94618 US
+1.5106531032

Administrative
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5901 Broadway #16
Oakland, CA 94618 US
+1.5106531032

Billing
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Record created on April 30, 2003
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VERIFICATION

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() I am a party to this action. I have read the attached documents, i.e. _____
and the same is true of my own knowledge, except as to the matters that are stated therein upon my information and belief, and as to those matters I believe them to be true.


(X) I am an officer, director or managing agent of the party corporation and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the attached documents, i.e. Plaintiff Hypertouch, Inc.'s Responses to Request for Production of Documents from Kennedy-Western University, Set No. One and know the contents thereof; I am informed and believe and on that ground allege that the matters therein stated are true.

() I am one of the attorneys for the party(ies) named in the attached document(s); said party(ies) is absent from the County of Marin, California, where I have my office, and I make this verification for and on behalf of party(ies) for that reason; I have read the attached document(s), i.e. _____
and know the contents thereof; I am informed and believe and on that ground allege that the matters stated therein are true.

() I am one of the attorneys for the party(ies) named in the attached document(s), i.e. _____
The facts alleged in said document(s) are within my own knowledge, and I make this verification for that reason; the facts therein stated are true of my own knowledge, except as to those matters that are stated therein upon my information and belief, and as to those matters I believe them to be true.

() I am one of the attorneys for the party corporation(s) named in the attached document(s), i.e. _____
said corporation has designated me as its agent for the purpose of serving and verifying answers to interrogatories on its behalf, by authority granted in writing, and I make this verification for that reason; I have read the attached document(s), and know the contents thereof; I am informed and believe and on that ground allege that the matters therein stated are true.

Executed this 6 day of April, 2005 at Pal. Alto. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

By: 
JOE WAGNER

PROOF OF SERVICE BY MAIL

I, JENNIFER M. BEARD, declare that I am not a party to this action, am over the age of 18 years, maintain a business address at 523 Fourth Street, Suite 210, San Rafael, California 94901, and that on the date shown below, I served the documents listed herein on the persons listed herein by placing true copies of said documents in sealed envelopes and depositing said envelopes in the United States mail at San Rafael, California, with First-Class postage prepaid, directed to said persons at the addresses below.

DOCUMENTS SERVED:

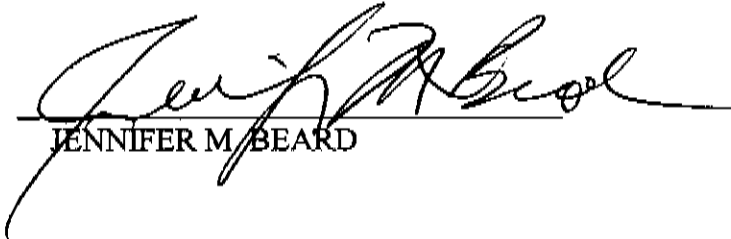
- **PLAINTIFF HYPERTOUCHE, INC.'S RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS FROM KENNEDY-WESTERN UNIVERSITY, SET ONE**

SERVED UPON:

Cynthia Woollacott, Esq.
Woollacott Jannol LLP
10350 Santa Monica Blvd., Suite 350
Los Angeles, CA 90025-5075

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this proof of service was executed on the date stated below, at San Rafael, California.

DATED: 4/6/05


JENNIFER M. BEARD