

1 WOOLLACOTT JANNOL LLP  
2 CYNTHIA WOOLLACOTT (#110119)  
3 10350 SANTA MONICA BOULEVARD  
4 SUITE 350  
5 LOS ANGELES, CALIFORNIA 90025-5075  
6 310.277.5504 tel.  
7 310.552.7552 facs.  
8 cw@wjllp.com  
9 Attorneys for defendant Kennedy-Western University

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 HYPERTOUCHE, INC.,  
13 PLAINTEIFF,  
14 VS.  
15 KENNEDY-WESTERN UNIVERSITY,  
16 DEFENDANT.

CASE NO. C 04 5203 SI  
OBJECTIONS TO OPPOSITION  
DECLARATIONS  
HEARING: 24 FEBRUARY 2006, 9 A.M.  
COURTROOM OF THE HON. SUSAN ILLSTON

17 Kennedy-Western University objects to the declarations filed in opposition to  
18 summary judgment as follows:

19 **Joe Wagner**

20 Paragraph 4. Lacks foundation, the service marks referenced both are owned by  
21 Joe Wagner personally, see excerpts from the United States Patent and Trademark Office  
22 file wrappers, Exhs. 1007 and 1008.

23 Paragraphs 5 and 6. Lack foundation and personal knowledge, every server  
24 identified by Hypertouch is shown to be owned and paid for by persons other than  
25 Hypertouch, and every connection to the Internet identified by plaintiff was purchased and  
26 paid by persons other than Hypertouch. See citations in moving memorandum at pages  
27  
28

1 6-7. Also, lack of relevance in that Mr. Wagner cannot trace any email on his purported  
2 goods or services to defendant.

3 Paragraphs 7 and 8. Lack foundation, lack of personal knowledge, witness testifying  
4 to technical or specialized knowledge for which he demonstrates no qualifications  
5 (*Evidence Code* 602, 701, 702). Lack of relevance and personal knowledge that emails  
6 “ordinarily accessed” from California. Lack of foundation that Hypertouch paid for any DSL  
7 line, as the evidence shows all DSL lines paid for by Beyond Systems or Mr. Wagner  
8 personally. Lack of foundation for the reasonabledoubt.com domain, as it is owned by  
9 Joe’s wife and contains her attorney resume and has as its servers the same servers  
10 demonstrated in the moving papers to be owned and paid for by others (including the  
11 server owned by Joe’s supervisor which accesses the Internet through Speakeasy and is  
12 not paid for by Hypertouch); see *The whois* and web site printouts for reasonablecoubt.com  
13 attached to the Woollacott Decl. and the Speakeasy business records, Exh. 1034 p. 17.  
14 Lack of foundation for the hasit.com domain, as all servers are shown to be owned and  
15 paid for by other persons than Hypertouch, see Exhs. 1035 p. 13 and 1034 p. 17. See also  
16 Joe Wagner Depo. 26:4-20, 93:25-94:1, 94:7-8, 94:22-95:1.

17 Paragraph 9. Lacks foundation, lack of personal knowledge, lack of expertise as to  
18 “industry standard practice” since he demonstrates no expertise in any area, improper  
19 expert or layperson opinions.

20 Paragraph 10. Lacks foundation, lack of personal knowledge, hearsay.

21 Paragraph 11. Hearsay, lack of foundation, lack of expertise in any area, improper  
22 expert or layperson opinion.

23 Paragraph 12. Lack of foundation, lack of personal knowledge or proper opinion as  
24 to what constitutes a “client.”

25 Paragraph 13 and 19. Irrelevant.

26 Paragraph 14. Lack of foundation.

27 Paragraphs 15, 16, 21 and 25. Hearsay, lack of foundation.

1 Paragraph 17. Hearsay, lack of foundation, lack of personal knowledge, lack of  
2 expertise in any area, improper expert or layperson opinion.

3 Paragraph 18. Lacks foundation, contradicts Mr. Wagner's waiver of actual  
4 damages in court and his deposition testimony (he cannot create a dispute by contradicting  
5 himself), and contradicts the evidence that Hypertouch owns no equipment or services and  
6 all such equipment and services are paid for by others. See also Joe Wagner Depo.  
7 132:23-133:24, 134:4-25.

8 Paragraph 20. Irrelevant, improper expert or layperson opinion, lacks foundation.

9 Paragraph 24. Hearsay, no foundation, improper expert or layperson opinions, lack  
10 of personal knowledge.

11  
12 **William Cole**

13 The declaration was not timely filed per the Court's Scheduling Order, and defendant  
14 objects to any consideration of it on that ground.

15 Paragraph 3. Lacks foundation and personal knowledge, no specification of what  
16 he looked at as compared to the disks verified in discovery to contain the emails at issue.

17 Paragraph 4. Irrelevant.

18 Paragraphs 5, 6, 7, 8, 9, 10 and 11. Lack foundation, outside of his expertise  
19 (system administrator and network consultant), improper layperson and expert opinion, lack  
20 of relevance as he does not name any sender or link any sender to KWU or Hypertouch,  
21 lack of personal knowledge as to what KWU knew or did.

22 Paragraphs 12, 13 and 14. Lack foundation, improper layperson and expert opinion,  
23 outside of his area of expertise (no expertise in the ISP or email marketing fields), lack of  
24 personal knowledge.

25 DATED: January 27, 2006

WOOLLACOTT JANNOL LLP

26 By *Cynthia Woollacott*  
27 CYNTHIA WOOLLACOTT  
28 Attorneys for defendant Kennedy-Western  
University (signature on original)