

## Hank Burgoyne

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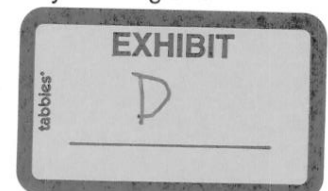
**From:** Hank Burgoyne [hank@kronenbergerlaw.com]  
**Sent:** Monday, March 19, 2007 2:33 PM  
**To:** 'Jason Singleton'  
**Cc:** jeff@kronenbergerlaw.com  
**Subject:** In Reply to Your Fax of Friday 3/16

Hi Jason,

Here's a response to a few of the arguments raised in your fax letter of Friday:

- Settlements with Other Defendants – Which defendants are you talking about? Don't all of Plaintiff's agreements with settled defendants (you've yet to provide the one with Quicken) require them to provide information? If that information was insufficient, why couldn't Plaintiff have waited until it had more information? Furthermore, based on Plaintiff's "SPAM Cartel" theory, isn't the particular source of a lead irrelevant, since all defendants "contracted with the other conspirators with knowledge that they would use SPAM to collect sales leads for Defendants"? You once (phone call of January 9) explained to me that Plaintiff sued certain defendants for purposes of extracting information and (in some cases) collecting nominal settlements, and that Plaintiff's plan was to collect the balance of its damages from those defendants who were spammers or "one step removed" from the spammers. It is surprising to hear Plaintiff complain that things have gone according to that plan.
- Addition of Other Parties – The deadline to add parties (February 15) passed before the deadline for Azoogles discovery responses (February 23). How can Plaintiff even suggest that timely response would have permitted Plaintiff to add parties before that deadline? And why couldn't Plaintiff file separate lawsuits? Or seek leave to amend?
- Azoogles "Affiliates" – You state that "Plaintiff intended to name those Affiliates that could be discovered and linked to the emails in this lawsuit." The only possible link is the "Bruce Wolf lead," since Plaintiff has stated under oath that it responded to only one email. Azoogles already has provided its agreements and correspondence with the third party provider of the Bruce Wolf lead – which information identifies the third party from which Azoogles third party received the Bruce Wolf lead. What other information regarding "Affiliates" might be relevant?
- Azoogles Affirmative Defenses – You state that Plaintiff must now undertake the burden of presenting proof as to these issues. Isn't that precisely the "prejudice" foreclosed by *Sonoda*?
- Lee Herrera – You state that Mr. Herrera "reportedly has control over Azoogles spam abuse program." That contradicts your letter brief to the Court, which in turn contradicted your prior representations regarding the manner in which you identified Mr. Herrera. Azoogles suspicion that you and Plaintiff's "expert" have engaged, and continue to engage, in improper unrepresented communications grows stronger, and will be the subject of deposition and written discovery (phone logs, etc.) if and when this litigation reaches the expert deposition stage.
- Azoogles Supposed "Gamesmanship" – As s I've said before, I strongly disagree with your oft-repeated charge that Azoogles has engaged in "gamesmanship." Azoogles has done what any party would do in the face of repeated, unreasonable discovery demands, misrepresentations re communications with counsel's client, and the apparent withholding of material information. Azoogles is confident that the discovery record demonstrates as much, certainly moreso than an accusatory, *ex post facto* letter by counsel.

Because your fax letter arrived after Azoogles draft motion and declarations were completed, it wasn't attached to those materials. I'll file a supplemental declaration Monday attaching it and my emails of Friday evening and today, so that the record of the parties' meet-and-confer is complete.



Please call or email to discuss the scheduling of Azoogole's motion, so that we can inform the Court during tomorrow's call.

Thanks, and best,

Hank Burgoyne

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