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6 **Attorneys for Plaintiff, ASIS Internet Services**

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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 **ASIS INTERNET SERVICES, a California**)
corporation,)

11 **Plaintiff,**)
12 **vs.**)

13 **OPTIN GLOBAL, INC., a Delaware**)
14 **Corporation, also dba Vision Media**)
15 **Limited Corp., USA Lenders Network,**)
16 **USA Lenders, and USA Debt**)
Consolidation Service; et al.,)

17 **Defendants.**)

Case No. C-05-5124 JCS

DECLARATION OF RICHARD E. GRABOWSKI IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANT AZOOGLE'S MOTION FOR SUMMARY ADJUDICATION

DATE: JUNE 1, 2007

TIME: 9:30 AM

CTRM: A, 15TH FLOOR, SAN FRANCISCO

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19 I, RICHARD E. GRABOWSKI , declare as follows:

20 1. I am an attorney duly licensed to practice in the United States District Court,
21 Northern District of California, and I am one of the attorneys of record for Plaintiff. I have
22 personal and firsthand knowledge of each fact hereinafter set forth and if called to testify could
23 and would competently testify to the matters set forth herein.

24 2. Attached hereto as Exhibit "A" is a true and correct copy of a SPAMHAUS
25 ROKSO list referring to Azoogle.

26 3. Attached hereto as Exhibit "B" is a true and correct copy of an Order made by the
27 Honorable Magistrate Judge Elizabeth D. Laporte in the action of ***Ritchie Phillips v. Netblue,***
28 ***Inc., et al.***, No. C-05-4401 SC (EDL) being document No. 40 filed 8/30/06.



Spamhaus

SBL

XBL

PBL

ROKSO

DROP

[Home](#) | [About ROKSO](#) | [ROKSO FAQs](#) | [Advanced Search](#)

Register Of Known Spam Operations



Dzenis Softic

[SBL Listings](#) | [Index](#)Country: **Bosnia** State:

main info

ROK3648

Long-term spammer associated with many other spammers such as Josh Baer/Skylist (Baer, reformed and removed from ROKSO, July 2005), Mo Hage's BlueRock Dove, **Alex Zhardanovsky's Azoogole (reformed, removed from ROKSO May 2006)**, Tom King / Blue Pinstripes, Arlin Bleclie / SCITX, and other notorious spammers. Has used cgi scripts to spam from unwitting hosts, and is best known for his "VoloMP/CyberXhost" mailing system which has been employed by many other lesser spammers (e.g. Rev Media revolution-media.com, restorationmedia.com (a morph of Rev Media?), Pier Media, and others). Some of those have since improved their mailing practices.

September 2004:

Lloyd Lapidus is a customer of Dzenis Softic, and this ROKSO listing may be adjusted to reflect that different viewpoint (e.g. renamed to Softic, or separated into separate ROKSOs). Lapidus is still associated with Rev Media, Softic with Cyberxhost and Volomp. The two have done spamming deals for years. Softic's promiscuous business relationships lead to a sprawling spamgang with many "partners-in-spam." Seems to have ties back to "the old country" (Yugoslavia, Bulgaria) at least in a few partners and domain registrations.

October 2004:

Dzenis Softic has separated from Lapidus due to this ROKSO listing, according to Softic.

February 2006:

There is on-going confusion regarding this ROKSO file. It would more appropriately be named after Softic himself. Lapidus was the hapless "fall guy" for Softic's ongoing string of spammers, simply the first of many who happened to get identified. (Note that ROKSO routinely lists such "Partners In Spam," anyway.) Softic has had numerous abuse violations himself, in fact it is he who is responsible for the more than 40 live and expired SBL listings linked to this ROKSO. From his IP ranges and from services under his control, spam continues to be the norm. "VoloMP" is his own software which he uses for his spam engines, and "CyberXHosting" is his DNS service.

May 2006 - Lapidus has apparently left the bulk mailing business entirely. As a result, his ROKSO will soon be retired. Some ROKSO records associated with Softic are now transferred to this file.

Some SBL listings associated with "Rev Media":

66.234.10.62/32 Live dialtone.com

SBL16390 Rev Media webdesignprofessional.com revolution-media.com

69.10.140.176/28 Removed rackforce.com

SBL16388 BlueRock Dove

midnightsmagic.com everlastingquest.com [rev media]

140.99.35.2/32 Live deru.net

SBL15257 amazingdogtreats.com

140.99.28.104/29 Live deru.net
SBL15255 emailrewardz.com

64.88.159.0/24 Live webhostplus.com
SBL15227 Web Host Plus spam support service (corporate relays)

140.99.28.122/31 Live deru.net
SBL14970 www.amazingdogtreats.com

206.131.244.0/27 Live minerva.net
SBL14018 trailblazernews.com et al.

69.36.192.0/20 Live integratix.com
SBL13495 integratix spam hosting

63.110.173.20/32 Live mci.com
SBL13339 brightideaoverload.com / revolution media

66.111.234.0/24 Live webhostplus.com
SBL13257 everyday-solution.com / revolution-media.com

208.184.58.48/28 Live above.net
SBL12851 Revolution Media / lttroc.com

66.111.233.0/25 Live webhostplus.com
SBL11688 starlightgazer.com / sr982.com

66.111.231.0/24 live webhostplus.com
SBL11505 azoogle/compulsivebuys.com/regaladvantage.com/watchtowernews

66.111.233.0/24 live webhostplus.com
SBL11327 lt983.com/directeducation.net

216.98.153.142/32 Removed cari.net
SBL8288 volomp.com

216.108.236.0/24 live he.net
SBL7383 SCITX / VOLOMP

206.131.243.128/25 live minerva.net
SBL7239 practicaloffers.com / cozyoffers.com / incrediblemailoffers.

And for "cyberxhost":

140.99.35.2/32 Live deru.net
SBL15257 amazingdogtreats.com

140.99.28.104/29 Live deru.net
SBL15255 emailrewardz.com

64.88.159.0/24 Live webhostplus.com
SBL15227 Web Host Plus spam support service (corporate relays)

140.99.28.122/31 Live deru.net
SBL14970 www.amazingdogtreats.com

66.165.112.0/24 Live cybercon.com
SBL14487 TTK, Inc.

206.131.244.0/27 Live minerva.net
SBL14018 trailblazernews.com et al.

206.131.243.128/26 Removed minerva.net
SBL14017 cyberxhost.net / Rev Media
NAME1.CYBERXHOST.NET et al.

69.36.192.0/20 Live integratix.com
SBL13495 integratix spam hosting

63.110.173.20/32 Live mci.com
SBL13339 brightideaoverload.com / revolution media

66.111.234.0/24 Live webhostplus.com
SBL13257 everyday-solution.com / revolution-media.com

208.184.58.48/28 Live above.net
SBL12851 Revolution Media / lttroc.com

66.111.233.0/25 Live webhostplus.com
SBL11688 starlightgazer.com / sr982.com

66.111.231.0/24 live webhostplus.com
SBL11505 azoogle/compulsivebuys.com/regaladvantage.com/watchtowernews

66.111.233.0/24 live webhostplus.com
SBL11327 lt983.com/directeducation.net

216.98.153.142/32 Removed cari.net
SBL8288 volomp.com

216.108.236.0/24 live he.net
SBL7383 SCITX / VOLOMP

206.131.243.128/25 live minerva.net
SBL7239 practicaloffers.com / cozyoffers.com / incrediblemailoffers.

The address of this ROKSO record is: http://www.spamhaus.org/rokso/evidence.lasso?rokso_id=ROK3648

The above consists of information in the public domain. The Spamhaus Project makes every effort to avoid errors in submissions to the database, and will correct any errors, but accepts no responsibility or liability for any errors, or liability for any loss or damage, consequential or otherwise, incurred in reliance on the material in these pages. The information on this site is for information purposes only and is not intended as legal advice of any kind.



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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RITCHIE PHILLIPS,

No. C-05-04401 SC (EDL)

Plaintiff,

**ORDER ON PLAINTIFF’S MOTION TO
COMPEL, DEFENDANT’S MOTION TO
COMPEL, MOTION FOR A
PROTECTIVE ORDER, AND MOTION
FOR SANCTIONS**

v.

NETBLUE, INC et al,

Defendants.

On August 1, 2006, Plaintiff Ritchie Phillips’ Motion for Order Compelling Defendant to Answer Interrogatories and to Produce Documents Requested, and Defendant Netblue, Inc.’s Motion to Compel Discovery Responses, for a Protective Order, and for Sanctions came on for hearing. Based on the briefs submitted and the argument of counsel, the Court grants in part and denies in part each motion.

I. Plaintiff’s Motion to Compel

1. Evidentiary objections.

The Court overrules Defendants’ objections. This is a discovery motion, not a motion for summary judgment with strict evidentiary requirements.

2. Interrogatories.

The Court overrules Defendant’s objections to Interrogatories Nos. 1, 2, 3, 4, 5, 6, 9, 10, 11, and 12. However, Defendant need only provide the information requested for August 27, 2005 to the present (the “Relevant Period”). Ongoing emails that may constitute SPAM sent after the period directly at issue in the Complaint may lead to relevant evidence of pattern and practice under 15 U.S.C. section 7706(g)(1),(2). Defendant need only produce the information in its custody,

1 control or possession. However, to the extent it has control over information held by Affiliates (as
2 that term is defined in Plaintiff’s discovery requests), it must produce that information. To the
3 extent that Defendant contends that it already has produced all responsive information or has no
4 responsive information to produce, Defendant shall provide a declaration from a person most
5 knowledgeable describing the diligent steps that Defendant took to ascertain its full compliance with
6 the request or to determine that no responsive information existed.

7 2. Requests for Production of Documents.

8 The Court overrules Defendant’s objections to Requests Nos. 1, 2, 3, 4, 5, and 6, and orders
9 production as follows:

10 As to Requests Nos. 1-6, Defendant must produce documents created, received, transmitted,
11 or in effect during the Relevant Period;

12 Further, as to Requests Nos. 1 and 2, Defendant must produce documents showing any
13 agreements with Affiliates who send commercial electronic mail messages regarding Defendant, or
14 send commercial electronic mail messages on behalf of Defendant, either directly or indirectly, and
15 documents sufficient to show the opt-in lists used by Defendant or its Affiliates;

16 Finally, as to Requests Nos. 5 and 6, Defendant must produce all non-privileged documents
17 that are not equally available to Plaintiff (e.g., it need not produce treatises, of course).

18 **II. Defendant’s Motion to Compel**

19 1. Interrogatories.

20 The Court overrules Plaintiff’s objections to Interrogatories Nos. 6, 7, 14, and 15, but
21 narrows the Interrogatories as follows:

22 As to Interrogatories Nos. 6 and 7, Plaintiff must select ten representative emails and explain
23 specifically how each email violates the CAN-SPAM Act and California Business & Professions
24 Code section 17529.5.

25 As to Interrogatories Nos. 14 and 15, Plaintiff must respond based on his understanding of
26 the term “adversely affected,” which he must set forth.

27 The Court sustains Plaintiff’s objection to Interrogatory No. 13.

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2. Requests for Production of Documents.

The Court overrules Plaintiff’s objections to Requests for Production Nos. 19–25. Plaintiff, of course, need not produce any documents that are privileged or protected as attorney work product. However, documents created prior to litigation do not become privileged merely by virtue of providing them to an attorney, nor are discussions between Plaintiff and his vendors or clients necessarily privileged. Further, discussions or documents pertaining to commercial electronic mail messages that may be SPAM generally are responsive to these Requests even if the discussion or documents do not relate to one of the specific emails at issue in this lawsuit.

To the extent that Plaintiff has no responsive documents to produce, he must submit a declaration describing the diligent efforts he took to locate responsive documents and certifying that all responsive documents have been produced, or that no responsive documents exist.

III. Defendant’s Motion for a Protective Order

Many of the lines of questioning Plaintiff included in his notices of deposition are overbroad. Generally, Plaintiff may seek deposition testimony and documents relating to the use or creation of commercial electronic mail messages during the Relevant Period, including evidence relating to pattern and practice. See 15 U.S.C. § 7702(2) (defining “commercial electronic mail message” as “any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service. . .”). Accordingly, Plaintiff may ask questions and obtain documents regarding Netblue’s operations, reports, strategic and marketing plans but only during the Relevant Period and only insofar as they pertain to commercial electronic mail messages. Plaintiff also may obtain the identity and locations, if known, of technicians involved in marketing programs during the Relevant Period but only of technicians involved in implementing marketing programs that used commercial electronic mail messages. Plaintiff may obtain unprivileged deposition testimony and documents relating to Affiliates of Netblue for the Relevant Period. Plaintiff may inquire as to Mr. Harman’s due diligence prior to his firm’s investment in NetBlue and his risk-assessment, but only regarding Netblue’s direct or indirect use of commercial electronic mail messages.

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1 **IV. Privilege Log**

2 The parties need not produce a privilege log for documents created after the filing of this
3 lawsuit. For documents created before the filing of the lawsuit and withheld on grounds of attorney-
4 client privilege or attorney work product protection, the parties shall provide a privilege log that
5 complies with the Court’s Standing Order, which was served on the parties on June 13, 2006. See
6 Docket No. 20.

7 **V. Defendant’s Request for Sanctions**

8 The Court denies Defendant’s Request for Sanctions.

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10 **IT IS SO ORDERED.**

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12 Dated: August 3, 2006

Elijah D. Laporte

ELIZABETH D. LAPORTE
United States Magistrate Judge

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PHILLIPS,
Plaintiff,
v.
NETBLUE, INC ET AL,
Defendant.

No. C 05-04401 SC (EDL)

**ORDER GRANTING IN PART
DEFENDANTS’ MOTION TO
COMPEL DISCOVERY;
GRANTING IN PART
PLAINTIFF’S MOTION TO
COMPEL; AND DENYING
MOTION FOR SANCTIONS**

On October 24, 2006, Plaintiff Ritchie Phillips’ Motion to Compel various discovery responses and for Evidentiary and Monetary Sanctions, and Defendant Netblue, Inc.’s Motion to Compel Production of Documents came on shortened time for hearing. Having considered the written submissions and arguments of counsel for Netblue, Inc., Kenneth Chan, Scott Rewick, and Derek Pilch (“Defendants”) and counsel for Ritchie Phillips, dba R&D Computers (“Plaintiff”), and good cause having been shown, the Court grants in part and denies in part each motion.

I. Plaintiff’s Motion to Compel

A. Deposition of Monica Gerber.

The Court orders that Plaintiff may reopen the deposition of Monica Gerber for up to one additional hour.

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B. Deposition of Peter Adams.

The Court does not need to rule with respect to the issue of the deposition of Peter Adams because Plaintiff withdrew this issue from his motion at the hearing.

C. Production of Documents.

Defendants are ordered to supplement, if necessary, their production of documents in response to the document request set forth in Plaintiff’s deposition notice of Defendants’ officer most knowledgeable to include responsive documents identified in Eric Denton’s deposition transcript at or about pages 63 through 67 regarding complaints from individuals about receiving unsolicited commercial e-mail from Netblue’s affiliates during the time period from the inception of Netblue, Inc. until the date of the last e-mail set forth in the Complaint.

The parties are ordered to meet and confer regarding Defendants’ production of the e-mails received by or sent from Monica Gerber’s Netblue, Inc. company e-mail address regarding complaints from individuals about receiving unsolicited commercial e-mail from Netblue’s affiliates. Plaintiff’s request for all e-mails between Monica Gerber and Netblue’s affiliates is overbroad and the parties must meet and confer about some reasonable way to search Ms. Gerber’s e-mail inbox for the relevant information regarding unsolicited commercial e-mail complaints.

D. Discovery Pursuant to the Court’s August 3, 2006 Order.

i. Evidentiary and Monetary Sanctions

The Court denies Plaintiff’s request for monetary and evidentiary sanctions.

ii. Affiliate Contact Data

The Court orders Defendants to produce Frontline Direct’s telephone number and any missing contact information for the affiliates identified and produced by Defendants.

iii. Affiliate Contracts

Defendants are ordered to produce the reports from DirectTrack, the third party software used by Defendants, referred to in the deposition testimony of Monica Gerber at or about page 94, in whatever form of report DirectTrack provides to show information about

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affiliate contracts.

iv. Box 4

The Court does not need to rule with respect to the issue of production of “Box 4” because Plaintiff withdrew this issue from his motion at the hearing.

v. Defendants’ “Opt-In” List

The parties are ordered to meet and confer regarding Plaintiff’s request for Defendants’ “opt-in” list. Specifically, the parties are to meet and confer regarding the appointment of an independent third party to locate any opt-in data for the intended recipients of the e-mails at issue. Netblue shall pay the reasonable costs incurred by the appointed third party to locate the opt-in data described in this section.

II. Defendants’ Motion to Compel

A. Production of Documents.

The Court denies Defendants’ motion to compel production of documents responsive to Request for Production Nos. 33, 34, 35, 37, and 38.

As to Request Nos. 33 and 34, the Requests are overbroad. Plaintiff has provided documents sufficient to address Defendants’ standing challenges, including information regarding whether Plaintiff is a bona fide internet service provider, and whether Plaintiff suffered “adverse effect” as a result of Defendants’ alleged actions.

As to Request Nos. 35, 37, and 38 the Requests are overbroad. However, Plaintiff is ordered to provide Defendants with a list of the e-mail addresses used by Plaintiff personally.

As to Request No. 36, Plaintiff is ordered to produce additional responsive documents; otherwise, Plaintiff must submit a declaration stating that Plaintiff does not possess any additional responsive documents other than what he has already produced to date.

B. Supplemental Production of Documents.

The parties are ordered to meet and confer to identify a format for the production of header information, as defined by the CAN-SPAM Act, 15 U.S.C. §7706, et seq. Plaintiff is ordered to produce the header information for the e-mails at issue. Plaintiff may designate the

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information “Highly Confidential – Attorneys’ Eyes Only,” pursuant to the Stipulated Protective Order entered in this matter.

C. Designation of Highly Confidential Documents.

The Court denies Defendants’ motion for an order requiring Plaintiff to replace the “Highly Confidential – Attorney’s Eyes Only” designation of the e-mails produced by Plaintiff with a “Confidential” designation due to the nature of the alleged violations of the CAN-SPAM Act set forth in Plaintiff’s Complaint.

IT IS SO ORDERED.

Dated: November 21, 2006

Elizabeth D. Laporte

ELIZABETH D. LAPORTE
United States Magistrate Judge

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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 **ASIS INTERNET SERVICES, a California**)
corporation,)

Case No. C-05-5124 JCS

11 **Plaintiff,**)
12 **vs.**)

EXHIBIT D TO DECLARATION OF
RICHARD E. GRABOWSKI IN SUPPORT OF
OPPOSITION TO DEFENDANT AZOOGLE'S
MOTION FOR SUMMARY ADJUDICATION
SUBMITTED UNDER SEAL

13 **OPTIN GLOBAL, INC., a Delaware**)
14 **Corporation, also dba Vision Media**)
15 **Limited Corp., USA Lenders Network,**)
16 **USA Lenders, and USA Debt**)
Consolidation Service; et al.,)

17 **Defendants.**)

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19 **DOCUMENTS SUBMITTED**
20 **UNDER SEAL**
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