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April 17, 2007

Magistrate Judge Joseph C. Spero
United States District Court, Northern District
450 Golden Gate Avenue
San Francisco, CA 94102

RE: ASIS Internet Services v Optin Global, Inc., et al
USDC, Northern District of California, CV-05-5124 JCS

Results of Parties Meet and Confer of March 20, 2007

Dear Judge Spero:

The following is a summary outlining the results of the parties meet and confer to resolve discovery disputes.

The following is a summary of the parties' March 20, 2007, *in camera* meet and confer to resolve ongoing discovery disputes.

SUMMARY ADJUDICATION

The parties agreed that a number of ongoing discovery disputes arose from the parties' disagreement as to a single legal issue: Whether evidence concerning Azoogole's reputation as a "spammer," and associations with other parties supposed to be "spammers," was admissible to prove that Azoogole "procured" the alleged unlawful emails, as required under CAN-SPAM. The parties therefore agreed to submit a stipulation and order seeking leave to file cross-motions for summary adjudication on that discrete legal issue. (The Court has since signed the parties' proposed order setting a briefing schedule on such motions, and opening briefs have been filed.) The parties also agreed to a six-week postponement of the discovery cut-off date to compensate Plaintiff for discovery time lost to the parties' stipulated motions practice.

DEPOSITIONS

The Court stated that Azoogole should produce for deposition Ryan McVey and an organizational deponent on the subject of "spam" and related legal compliance, both as requested by Plaintiff. The Court stated that Lee Herrera, whom Plaintiff had sought to depose, did not appear to be a proper organizational deponent. The parties verbally agreed that depositions of Azoogole witnesses would be postponed until two weeks after the hearing on the parties' cross motions for summary adjudication. In response to Plaintiff's request that Azoogole produce an organizational deponent, Azoogole offered to

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produce Don Mathis. The parties further agreed that all depositions of Azoogole personnel would take place in person and in New York, New York, the jurisdiction of Azoogole's U.S. headquarters.

AMENDMENT OF AZOOGLE'S DISCOVERY RESPONSES

The parties brought to the Court's attention several disagreements arising from Azoogole's supposed late service of its responses to Plaintiff's initial round of written discovery requests. The Court stated that Azoogole "inevitably" would be permitted to amend its responses to Plaintiff's first set of RFA's. The Court also stated that Plaintiff should not "count on [the Court's] upholding a waiver" of other objections based on Azoogole's supposed late service of its responses to Plaintiff's first sets of interrogatories and document demands. (Plaintiff has since stipulated to permit Azoogole to amend its responses to Plaintiff's first set of RFA's; Plaintiff has continued to argue that Azoogole has waived its objections to Plaintiff's first sets of interrogatories and document demands.)

WRITTEN DISCOVERY

The parties engaged in lengthy negotiations regarding their written discovery responses and requests, with each party agreeing to withdraw or pare down, or to supplement, certain of their respective discovery requests and responses, as appropriate. (The only written discovery requests that the parties did not address, on account of a lack of time, were Plaintiff's interrogatories to Azoogole; those the parties agreed to discuss at a later time.) The parties agreed to postpone resolution of a large number of issues relating to the scope and relevance of Plaintiff's written discovery requests until after the Court ruled on the parties' cross-motions for summary judgment. Plaintiff also agreed to give Azoogole an additional 30 interrogatories, based on Azoogole's agreement to withdraw its interrogatories nos. 3 and 4.

Respectfully submitted,

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