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May 30, 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  
Joint Letter Summarizing Status of Discovery

Dear Judge Spero:

Counsel for Plaintiff, ASIS Internet Services ("ASIS"), and Counsel for Defendant, Azoogles.com, Inc. ("Azoogles") submit this joint letter, as directed by the Court's Order (Docket #218) of April 30, 2007. This letter summarizes the current state of discovery between the parties, and specifically, addresses: 1) discovery issues that have been resolved through the meet and confer process, 2) discovery issues that need not be resolved until the disposition of the Cross Motions for Summary Adjudication ("Cross Motions"), and 3) discovery issues that the propounding party believes must be resolved immediately.

**I. RESOLVED DISCOVERY ISSUES:**

During and following the parties' March 20, 2007 *in camera* meet and confer, the parties resolved several discovery issues, as stated below.

**1) Azoogles's Responses to Plaintiff's Discovery Requests**

- Plaintiff's Interrogatories Nos. 6, 13, 14, 15, 16, 18, 19.
- Plaintiff's Document Requests Nos. 5, 10, 15, 16, 18, 19, 24, 29, 30, 31, 24 (mis-numbered), 25 (mis-numbered), 26 (mis-numbered), 27 (mis-numbered), 28 (mis-numbered), 29 (mis-numbered), 30, (mis-numbered), and 31 (mis-numbered).
- Plaintiff's Withdrawn Document Requests Nos. 6, 7, 11, 12, 14, 17, 20, 25, 26, 27, 28.
- Deposition of Azoogles organizational representative Don Mathis (conducted on May 23).

April 17, 2007  
Page 2

## **2) Plaintiff's Responses to Azoogles Discovery Requests**

Azoogles is generally unsatisfied with Plaintiffs post-meet-and-confer amendments to its discovery responses. However, and as further discussed below, in the interest of economy, Azoogles has postponed seeking a resolution of those issues until after the Courts decision on the parties' Cross Motions.

## **II. ISSUES WHICH NEED NOT BE RESOLVED UNTIL SUMMARY ADJUDICATION**

At the March 20, 2007 *in camera* meet and confer, the parties agreed that many of their outstanding discovery disagreements could be resolved by the disposition of a pair of discrete legal issues. The Court memorialized the parties' agreement in its April 6 Order setting a briefing schedule for Cross Motions for summary adjudication.

In the interim, Azoogles has produced documents and other discovery concerning to issues unrelated to, or expected to be unaffected by, the Courts ruling on the Cross Motions, including:

- Azoogles agreements and communications with the entity that provided Azoogles with the "Bruce Wolf Lead."
- Azoogles agreements and communications with the entities to whom Azoogles provided the Bruce Wolf Lead.
- Azoogles payments to and from the entities encompassed by the first two bullet points and relating to the Bruce Wolf Lead.
- Azoogles information and documents (or lack thereof, as the case were) relating to the other named-defendants.
- Azoogles websites in operation during the incident period for its Mortgage Vertical program.
- Azoogles CAN-SPAM compliance policies and procedures.
- Azoogles form agreements with providers of marketing leads.
- Azoogles organizational charts for its Mortgage Vertical program.
- Azoogles employees with oversight over functions relating to the Bruce Wolf Lead.

### **1) Plaintiff's Interrogatories to Azoogles.**

Plaintiff maintains that Azoogles responses to the following Interrogatories are deficient, but that these discovery issues need not be examined by the court until the disposition of the motions for summary adjudication: Plaintiffs interrogatory Nos. 9, 10, 11, 12, 17 and 20.

April 17, 2007

Page 3

## **2) Plaintiff Document Requests to Azoogle.**

Plaintiff maintains that Azoogle's responses to the following document requests are deficient, but that these discovery issues need not be examined by the court until after the disposition of the motions for summary adjudication:

- Request No. 1, which seeks all of Azoogle's URLs and domain names owned or operated by Azoogle since August 2005.
- Request No. 2, which seeks all of Azoogle's IP address ranges since August 2005.
- Request No. 3, which seeks all of Azoogle's outside email addresses since August 2005.
- Request No. 4, which seeks all of Azoogle's "email affiliate" contracts since August 2005.
- Request No. 8, which seeks all of Azoogle's email communications since August 2005 that include terms such as "spam," "Spamhaus," "ROKSO," etc.
- Request No. 9, which seeks all of Azoogle's correspondence since August 2005 concerning "SPAM abuse management."
- Request No. 13, which seeks all correspondence between Azoogle and the defendant Mortgage Brokers since August 2005.
- Request Nos. 21 and 22, which seeks Azoogle's business and strategic marketing plans since January 2004.
- Request No. 23, which seeks Azoogle's marketing reports concerning email marketing since January 2004.

## **3) Plaintiff's Requests for Admission to Azoogle.**

There is a pending discovery dispute regarding Defendant's responses to Plaintiff's First Set of Request for Admissions, numbers 12, 13, 14, 27, 28, 29, 30, 31, 36, 37, 38, 39, 40, 41, 42 and 43.

## **4) Azoogle's Document Requests, Interrogatories & Requests for Admission to Plaintiff.**

Azoogle maintains that numerous of Plaintiff's responses to Azoogle's discovery requests are deficient. While Azoogle does not believe that these deficiencies turn on the disposition of the motions for summary adjudication, Azoogle is willing to wait until after the resolution of the motions for summary adjudication to address these issues with the Court, in order to preserve judicial efficiency. Specifically, Azoogle believes that Plaintiff's responses to the following discovery requests are deficient:

April 17, 2007  
Page 4

- Document Requests Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17.
- Interrogatory Nos. 1, 2, 6, 7, 8, 9, 10, 14, 15, 17, 20, 21, 22, 23, 24, 26, 27, 28, 29, 33, 36, 37, 38.
- Requests for Admission Nos. 6, 17, 19, 20, 21, 22, 23, 24, 25, 27, 29, 30.

#### **5) Plaintiff's Third Party Subpoenas.**

Plaintiff has served 17 third-party subpoenas. In each case, Plaintiff has issued the subpoena without first providing Azoogole notice, as required by FRCP 45. For the most part, Azoogole has learned of Plaintiff's subpoenas when contacted by the subpoenaed third parties, and in one case when Plaintiff requested that Azoogole provide additional contact information for a third party. Azoogole has repeatedly requested advance notice; Plaintiff has refused to provide it, and in at least one case affirmatively misled Azoogole, in writing, regarding the number of subpoenas then issued by Plaintiff.

Plaintiff responds by saying that every subpoena was served upon Azoogole at or very near the time it was sent out for service. There is no substance whatsoever in Defendant's contention. Plaintiff is unaware of any subpoena that was served on Azoogole's counsel after it was served on the responding third party. As to the first two subpoena's served on third parties months ago, Plaintiff sent them out in the mail to Mr. Burgoyne the same day they were sent out to the process server. Nonetheless, Plaintiff's counsel received multiple emails from Mr. Burgoyne stating we had sent subpoena's out and not provided them to Mr. Burgoyne.

#### **6) Plaintiff's Deposition of Azoogole Employees: Ryan McVey & Jen Evans**

On May 23, 2007, Plaintiff took the deposition of Don Mathis, Azoogole's Chief Operating Office and designated organizational representative, including as to Azoogole's legal compliance policies and procedures. Defendant has agreed to produce Azoogole employee Ryan McVey, although Azoogole has not provided a date, stating that Azoogole wishes to wait until a ruling on the pending motions before providing additional deposition dates. Plaintiff requests a date for this deposition at Azoogole's first reasonable opportunity. Plaintiff also has requested that Azoogole provide a date for the deposition of Azoogole's affiliate manager, Jen Evans. Plaintiff has not heard back from Azoogole's on this request.

### **III. ISSUES THAT NEED RESOLUTION PRIOR TO SUMMARY ADJUDICATION:**

#### **1) Plaintiff's Deposition of Azoogole's CEO, Alex Zhardanovsky**

Plaintiff seeks to take the deposition of Alex Zhardanovsky, the Chief Executive Officer of Azoogole. Azoogole objects to the deposition of Mr. Zhardanovsky on the

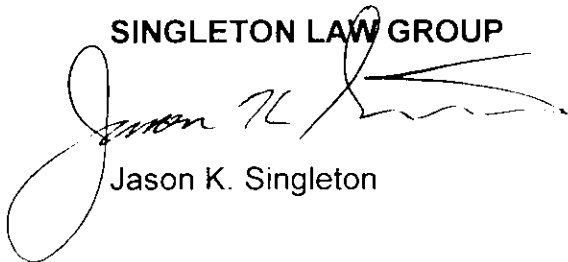
April 17, 2007  
Page 5

ground that Azoogle's CEO and has no relevant information about the alleged wrongdoing and that the deposition of senior officers of a company is subject to protective order, on the basis that such depositions often are used (as here) to harass and inconvenience a party. Rutter Civ. Pro Before Trial, § 11:1421. Azoogle adds that Plaintiff's repeated references to Spamhaus reports supposedly naming Mr. Zhardanovsky are highly misleading since, as Plaintiff knows, any such reports concern events preceding the founding of Azoogle and occurring years before the alleged wrongdoing.

Plaintiff believes that the deposition of Alex Zhardanovsky is both relevant and necessary to its case. Plaintiff argues that Alex Zhardanovsky has discussed Azoogle's position regarding controlling and managing "affiliates" on the Internet, is designated in email correspondence as the "Ads Contact" for the Bruce Wolf lead, and is named personally in three SPAMHAUS ROKSO reports. Plaintiff requests the opportunity to present evidence of the relevance of Mr. Zhardanovsky's testimony prior to the Court providing instruction to counsel on this issue.

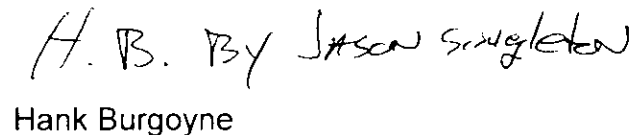
Respectfully submitted,

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