

Exhibit N

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3
4 ASIS INTERNET SERVICES,)
5 PLAINTIFF,)
6 VERSUS) CASE NO. CO5-5124 JCS
7) JUNE 1, 2007
8 OPTIN GLOBAL, INC.) SAN FRANCISCO, CALIFORNIA
9 DEFENDANT.)
10 _____)

11 BEFORE THE HONORABLE JOSEPH C. SPERO
12 UNITED STATES DISTRICT COURT MAGISTRATE

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14 APPEARANCES:
15 FOR PLAINTIFF: JASON SINGLETON, ESQ.

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20 FOR DEFENDANT: HANK BURGOYNE, ESQ.

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22 ***APPROPRIATE APPEARANCES WILL APPEAR
23 ON HARD COPY TO BE FORWARDED SHORTLY.

24 REPORTED BY: JUANITA GONZALEZ
25 CSR NO. 3003

1 THE CLERK: CALLING CASE CO5 -5124, ASIS INTERNET
2 SERVICES VERSUS OPTIN GLOBAL, INC.

3 YOUR APPEARANCES, PLEASE, COUNSEL.

4 MR. SINGLETON: GOOD MORNING. JASON SINGLETON FOR
5 PLAINTIFF.

6 MR. BURGOYNE: HANK BURGOYNE, KRONENBERGER AND
7 BURGOYNE, ALONG WITH JEFF ROSENFELD, FOR DEFENDANT.

8 THE COURT: SO BOTH MOTIONS ARE DENIED WITHOUT
9 PREJUDICE. THIS IS SINGULARLY INAPPROPRIATE FOR SUMMARY
10 ADJUDICATION, AND I'M NOT ABOUT TO MAKE RULINGS ON ULTIMATE
11 ADMISSIBILITY ON SUMMARY JUDGMENT WITHOUT ACTUALLY HAVING THE
12 CASE TEE'D UP. I CERTAINLY THINK THAT THE WAY THAT, MR.
13 SINGLETON, YOU COUCHED YOUR MOTIONS, IS COMPLETELY INAPPROPRIATE
14 FOR SUMMARY JUDGMENT. IT'S NOT A SUMMARY JUDGMENT MOTION.

15 I'LL ALSO TAKE YOU TO TASK, BUT I'LL LEAVE IT AT THAT,
16 FOR DEFYING THE STIPULATION YOU ENTERED INTO -- COMPLETELY
17 INPROPER. NOW, GETTING BEYOND THAT, THIS IS A DISCOVERY
18 QUESTION, AND I AM GOING TO MAKE YOU SIT IN MY JURY ROOM 'TILL
19 YOU'RE ALL DONE, BUT I'LL GIVE YOU SOME GUIDANCE. HERE IS THE
20 GUIDANCE. THIS IS NOT YOUR ORDINARY GUIDANCE. THIS IS SORT OF
21 THE GUIDANCE IN THE "BETTER FOLLOW THIS GUIDANCE" OR HAVE TO
22 MAKE A RULING.

23 BUT I DON'T UNDERSTAND EXACTLY WHAT JUDGE LAPORTE DID.

24 MR. BURGOYNE: I DON'T EITHER, YOUR HONOR.

25 THE COURT: HAVE YOU LOOKED AT IT? YOU DIDN'T SAY

1 E-MAILS TO BE SENT. RIGHT? THAT'S WHAT WE'VE GOT HERE, THAT'S
2 THE ALLEGATION, SO I DON'T SO HOW IT'S ANY DIFFERENT. I WAS
3 HOPING THAT IN YOUR WISDOM, YOU WOULD HAVE ACTUALLY LOOKED AT
4 THAT SINCE MR. SINGLETON DIDN'T GIVE ME ANY OF THE BRIEFS IN THE
5 CASE, NO IDEA WHAT SHE WAS TALKING ABOUT. IF YOU DIDN'T, YOU
6 DIDN'T. THAT'S FINE.

7 SECOND, I DON'T SEE, MR. SINGLETON, HOW YOU CAN PROVE
8 YOUR CASE UNLESS YOU CAN CAN FIND WHO SENT THE E-MAILS. I DON'T
9 BELIEVE THAT -- I DON'T BELIEVE YOU CAN, UNDER THE STATUTE. I
10 THINK IN ORDER FOR THERE TO BE A PROCUREMENT OF AN UNLAWFUL
11 E-MAIL, THERE MUST BE AN IDENTITY OF THE SPECIFIC SENDER OF THE
12 E-MAIL; THAT YOU CAN PROVE THAT THIS DEFENDANT PROCURED THE
13 SPECIFIC ACTIVITY AND KNOWINGLY OR IN CONSCIOUS DISREGARD OF THE
14 FACT THAT THAT THIRD PARTY WAS GOING TO, HAD, OR DID, ACT IN
15 VIOLATION OF THE CAN-SPAM ACT. I DON'T SEE HOW YOU CAN POSSIBLY
16 PROVE THIS CASE WITHOUT THAT.

17 MR. SINGLETON: DEFENDANT ENTERED INTO A CONTRACT FOR
18 THE CONTRACTOR TO SEND OUT E-MAILS TO GENERATE LEADS WHICH
19 AZOOGLE CONTRACTED TO PURCHASE. THEY HAVE, I THINK, 20,000
20 AFFILIATES, IS WHAT CAME OUT IN THE DEPOSITION OF DON MATHIS.
21 THERE CAN NEVER BE SPECIFIC SCIENTER AS TO A PARTICULAR
22 AFFILIATE OR A SPECIFIC SET OF E-MAILS THAT WOULD EVISERATE THE
23 CAN-SPAM ACT. THEY HAVE A PATTERN IN PRACTICE OF HIRING --

24 THE COURT: THAT'S JUST -- THIS IS NOT AT PATTERN OF
25 PRACTICE ISSUE. YOU HAVE TO SHOW THAT, AND YOU MAY BE ABLE TO