

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

ROBERT H. BRAVER, an individual,)
Plaintiff,)

vs.) Case No. CIV-04-1013-W

AMERIQUEST MORTGAGE COMPANY, a)
Delaware corporation, INNOVATIVE MARKETING,)
INC., d/b/a LEAD EXTREME, a Washington corporation,)
THE LOAN PAGE, INC., a Delaware corporation,)
STECROFT HOLDINGS, INC., as successor in interest to)
GO APPLY, INC., d/b/a ELEADZ, a Nevada corporation,)
JOHN DOES 1-50, MI SOLUTIONS, INC., a California)
corporation, LEAD ASSOCIATION CORP, a California)
corporation, THE LEAD SOURCE, INC., a California)
corporation, COMMISSION JUNCTION, INC., a)
Delaware corporation, AVALON TRADING COMPANY,)
LLC, a California corporation, IMPACT WEB)
ENTERPRISES, INC., a California corporation,)
LEAD2.NET, INC., a Florida corporation, SUNBURN)
MARKETING GROUP, LLC, a California limited liability)
company, MONEYNEST HOLDINGS, INC., a California)
Corporation, INTERNATIONAL WEBWORKS.COM,)
LLC, a Colorado limited liability company, NICK)
HETCHER, an individual, LIBERTY LEAD SOURCE,)
INC, a Nevada corporation, TIM FAUST, an individual,)
DOTCOM MARKETING GROUP, INC., a Florida)
corporation, INETMEDIA, a California corporation,)
LEADCORP, a California corporation, LEAD)
TRANSFER, LLC, a Nevada limited liability company,)
ABACUS ENTERPRISES, INC., a California corporation,)
TANDAX, INC., a Washington corporation)
Defendants.)

AMERIQUEST MORTGAGE)
COMPANY, a Delaware corporation,)
Cross-Complainant,)

vs.)

INNOVATIVE MARKETING, INC. d/b/a)
LEAD EXTREME, a Washington Corporation;)
VISIUM SOLUTIONS CORPORATION, a)
Florida corporation; and PROFESSIONAL)
EQUITY MARKETING, a California)
Corporation, and ROES I-50, inclusive,)
Cross-Defendant.)



**DEFENDANT LEAD TRANSFER, LLC'S RESPONSES TO
PLAINTIFF'S DISCOVERY. DATED DECEMBER 22, 2005**

TO: Lead Transfer, LLC
c/o Darren R. Cook
Helms & Underwood
2500 First National Center
120 N. Robinson Avenue
Oklahoma City, Oklahoma 73102

Derek A. Newman
Venkat Balasubramani
505 Fifth Ave South, Suite 610
Seattle, Washington 98104

COMES NOW the Plaintiff Robert H. Braver, and in accordance with Rules 33 and 34 of the Federal Rules of Civil Procedure, hereby request that Defendant Lead Transfer, LLC answer fully and separately, under oath, the following discovery requests within thirty (30) days from the date of service. These discovery requests are deemed continuing to the full extent authorized by the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

A. Discovery requests that cannot be answered in full shall be answered as completely as possible, and incomplete answers shall be accompanied by a specification of the reason or reasons for the incompleteness of the answers as well as by a statement of whatever knowledge, information or belief you possess with respect to each unanswered or incompletely answered discovery requests.

B. If objection is made to any of the following discovery requests or if any discovery request is otherwise not answered, state the specific grounds for each objection or failure to answer. If a privilege is alleged as to any information or documents requested, fully identify such information or documents to which such privilege applies, stating the grounds for such privilege.

C. The term "document" is used in the broadest sense and shall mean any medium upon which data, intelligence, or information can be ascertained that is within the possession, custody or control of you, as defined, or of any agent, employee, or representative including, but not limited to, contracts, agreements, communications, correspondence, letters, telegrams, memoranda, desk calendars, records, reports, books, notebooks, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, investigation results, statistical records, diaries, forecasts, work papers, graphs, charts, accounts, financial records, ledgers, vouchers, invoices, analytical records, minutes or records of meetings or conferences, consultants' reports, manuals, catalogs, appraisals, records, reports or summaries of negotiations, bulletins, brochures, handbooks, notes, marginal notations, bills, invoices, checks, drafts, lists, magnetic tapes, computer tapes, disks, cards, printouts, and all other written, printed, stenographic, recorded, or sound reproductions, however produced or reproduced, and all drafts and copies of all of the foregoing, including addenda, supplements, amendments, revision, exhibits, and appendixes thereto.

D. "Person" shall refer to any natural person, any firm, association, partnership, governmental or quasi-governmental entity, corporation of any form or other form of entity.

E. "Identity", "identify", or "identification", when used with reference to an individual person, means to state that individual's full name, business address, and present or last known residential address, residence telephone number and business telephone number.

F. "Identity", "identify," or "identification" when used with reference to a corporation, firm or other entity, means its full name, its form or organization, its present or last known address, and the names of its officers and directors.

G. "Identity", "identify", or "identification", when used in reference to a writing, means to state the date, author, and addressee, the form of the writing (e.g. letter, memorandum, statement, telegram, chart, prospectus, report, or the like), the nature of the writing (e.g. correspondence, statement from witness, etc.) and its present location and/or custodian. If any such writing was, but no longer is, in your possession or control, state what disposition was made of it, the date thereof, the person(s) responsible for making the decision as to such disposition, and the person(s) responsible for carrying out such disposition.

H. "Identity", "identify", or "identification", when used in reference to a photograph means to state the exact nature of the scene depicted therein, identification, as defined, of the photographer, the date the photograph was taken and an identification, as defined, of the current custodian of each photograph.

I. "Identity", "identify", or "identification", when used in reference to an oral conversation, including a telephone conversation, means to state when such conversation took place, where such conversation took place and the full name, present or last known position and business affiliation and business address at the time of the conversation of each party to such conversation.

J. The term "you" or "your" shall mean the entity to which these discovery requests are propounded and its employees, officers, agents, representatives, contractors, insurance

carriers, investigators, independent adjusters, detectives or anyone acting or purporting to act on your behalf.

K. The term "this Defendant" shall mean the entity to which these discovery requests are propounded and its employees, officers, agents, representatives, contractors, insurance carriers, investigators, independent adjusters, detectives or anyone acting or purporting to act on your behalf.

L. "Relating to" or "related to" in addition to its plain and ordinary meaning, shall mean any relationship, association, connection, affiliation, or interrelation, of any kind or sort or of any relevance whatsoever.

M. Unless specified otherwise, the time period referred to herein is the time period specified in Plaintiff's Petition.

N. Whenever used herein, the singular shall be deemed to include the plural and the plural shall be deemed to include singular; the masculine shall be deemed to include the feminine and the feminine shall be deemed to include the masculine; the disjunctive ("or") shall be deemed to include the conjunctive ("and") and the conjunctive ("and") shall be deemed to include the disjunctive ("or"); and each of the functional words "each", "every", "any" and "all" shall be deemed to include each of the other functional words.

O. The term "factual basis" means all statements, actions, documents, oral communications, conduct, or other factual matters which may either directly or inferentially support (i.e., make the existence thereof more probable than would otherwise be the case) the belief, contention, opinion, or conclusion with regard to which the factual basis is requested to be given. Any interrogatory requesting you to identify the "factual basis" for a given subject means to give a detailed statement separately itemizing each evidentiary fact

of which you are aware and intend to prove at trial in support of the contention, belief, or response for which the factual basis is requested and to identify its source (i.e., document, oral communication, etc.). "Factual basis" does not refer to the ultimate and conclusory fact that a contention is based upon examination, observation, and inspection by you, your expert, or any other person, but refers to the evidentiary facts noted in such examination, observation, or inspection giving rise to your or your attorney's or expert's belief and contention.

P. The term "fraudulent electronic mail" and "spam" means an electronic mail message declared to be unlawful under 15 O.S. § 776.1 (A) and (D) or 15 U.S.C. § 7701 et seq.

Q. The term "commercial electronic mail message" means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).

R. **THE TIME PERIOD FOR THIS DISCOVERY IS JANUARY 1, 2002 TO THE PRESENT.**

INTERROGATORIES

GENERAL OBJECTIONS

1. Lead Transfer objects to these interrogatories and requests for production (the "Discovery Requests") to the extent they seek information protected by the attorney-client privilege, work product doctrine, investigative privilege, expert privilege, or any other applicable privilege.

2. Lead Transfer objects to these Discovery Requests to the extent they seek obligations on Lead Transfer greater than those imposed under the Federal Rules of Civil Procedure.
3. Lead Transfer objects to the Discovery Requests to the extent they seek an opinion or contention that relates to a question of law or fact of the application of law to fact.
4. Lead Transfer objects to the Discovery Requests as vague and ambiguous, overly broad, unduly burdensome, lacking foundation and not reasonably calculated to lead to relevant information.
5. Lead Transfer objects to the Discovery Requests as vague and ambiguous, overly broad, unduly burdensome to the extent that the Discovery Requests seek information that can readily and more easily obtained from some source other than the Lead Transfer which is more convenient, less burdensome, or less expensive.
6. Lead Transfer objects to the Discovery Requests to the extent they seek information that constitutes trade secret, or other confidential research, development, or commercial information.
7. Lead Transfer objects to the Discovery Requests as premature to the extent they seek information Lead Transfer does not currently possess but expects to obtain during discovery. Lead Transfer reserves the right to revise or supplement these interrogatory responses as Lead Transfer becomes aware of additional facts during discovery.
8. Lead Transfer objects that the definition of the term “you or your,” as defined in the Instructions and Definitions section; the term is overly broad, burdensome, calls for

speculation on the part of Lead Transfer because it calls for information beyond its knowledge and control.

9. Lead Transfer objects to the Discovery Requests to the extent they seek information beyond the scope of the Court's October 26, 2005 order (the "Order") regarding discovery in the above captioned matter. Without limitation of the foregoing, Lead Transfer objects that Plaintiff has identified the "decoy" (see Interrogatory No. 1 below) as a resident of Dallas, Texas; accordingly, information relating to that "decoy" is not related to Oklahoma residents, and is not relevant to the issue of this Court's jurisdiction over Lead Transfer.

Subject to, and without waiving these general objections (i.e. the foregoing General Objections are incorporated into each response below), Lead Transfer responds as follows:

INTERROGATORY NO. 1 Who did you purchase the lead from that relates to the decoy submitted by the Plaintiff?

ANSWER:

Lead Transfer objects that the definition of the term "you or your," as defined in the Instructions and Definitions section; the term is overly broad, burdensome, lacks foundation, and calls for speculation on the part of Lead Transfer because it calls for information beyond its knowledge and control. Lead Transfer further objects this interrogatory is overly broad and burdensome, ambiguous, calls for speculation and is not reasonably calculated to lead to relevant information. Subject to and without

waiving the foregoing objections, Lead Transfer answers that it purchased the lead in question, i.e., "Taylor Askew, Dallas, TX 75215, 214-699-0104" from Mark Beaumont, 248 25th Street, Del Mar, California 92014.

INTERROGATORY NO. 2 Identify, in detail, each complaint, allegation, inquiry or criticism you have received which related to a lead that you purchased from the person or entity identified in your Response to Interrogatory No. 1 and was alleged to have been generated by spam email.

ANSWER:

See response to Interrogatory No. 1. Moreover, Lead Transfer answers that the only complaint, allegation, inquiry or criticism it has received which related to the alleged delivery of spam email, is the complaint in this case.

INTERROGATORY NO. 3 Describe in detail your knowledge of how the person or entity identified in your response to Interrogatory No. 1 was generating the leads you purchased.

ANSWER:

See response to Interrogatory No. 1. Moreover, Lead Transfer takes best efforts to ensure that any third party it deals with complies with all laws, including the CAN-SPAM Act. It is in Lead Transfer's interest to sell only valid leads, as any invalid leads jeopardize client relationships and result in a loss of repeat customers. Subject to and without waiving the foregoing objections, Lead Transfer answers that, to the best of its knowledge, Mark Beaumont resells but does not generate leads.

INTERROGATORY NO. 4 How much revenue have you generated by selling leads since January 1, 2002 that related to an Oklahoma resident or Oklahoma real property?

ANSWER:

Lead Transfer objects that the interrogatory lacks foundation, is vague and burdensome, and is not reasonably calculated to lead to the discovery of admissible information. Notwithstanding and without waiving the foregoing objections, Lead Transfer does not generate revenues from customers in the state of Oklahoma, nor does it generate revenues “related to... Oklahoma real property.” Moreover, the revenue Lead Transfer generates from the sale of leads is not specific to the geographical location of any particular lead; in other words, Lead Transfer does not generate revenue from leads “related to an Oklahoma resident or Oklahoma real property.”

INTERROGATORY NO. 5 Who sent the email which generated the lead that relates to the decoy submitted by Plaintiff?

ANSWER:

Lead Transfer objects that the term “lead that relates to the decoy” is vague and undefined. Moreover, this interrogatory lacks foundation, and calls for speculation on the part of Lead Transfer because it calls for information beyond its knowledge and control. Without waiving the foregoing objections, Lead Transfer states that it does not know whether the referenced lead was generated by email, nor does it have any

information concerning the identity of the party who allegedly sent the email in question.

INTERROGATORY NO. 6 (Plaintiff did not provide an Interrogatory No. 6.)

ANSWER:

No response is necessary.

INTERROGATORY NO. 7 Identify the domain name, registrant, administrative contact and billing contact for every website you have used to generate mortgage leads since January 1, 2002.

ANSWER:

Lead Transfer objects that this interrogatory lacks foundation and is beyond the scope of discovery permitted by this Court's October 26, 2002 Order. Without waiving the foregoing objections, Lead Transfer responds that since January 1, 2002, it has not used any website to generate mortgage leads.

INTERROGATORY NO. 8 State the number of leads you have generated through the use of websites that related to an Oklahoma resident or Oklahoma real property since January 1, 2002.

ANSWER:

Lead Transfer objects that this interrogatory is vague and ambiguous, lacks foundation, and calls for speculation on the part of Lead Transfer because it calls for information beyond its knowledge and control. Subject to and without waiving the

foregoing objections, Lead Transfer responds that it has not generated any such leads through the use of websites since January 1, 2002.

INTERROGATORY NO. 9 State whether the websites and search engine optimization techniques you have used since January 1, 2002 to generate mortgage leads were designed to exclude Oklahoma residents and/or Oklahoma real property.

ANSWER:

Lead Transfer objects that this interrogatory is vague and ambiguous, lacks foundation, and calls for speculation on the part of Lead Transfer because it calls for information beyond its knowledge and control. Subject to and without waiving the foregoing objections, Lead Transfer responds that it has not used any websites or search engine optimization techniques to generate mortgage leads.

INTERROGATORY NO. 10 (Plaintiff did not provide an Interrogatory No. 10.)

ANSWER:

No response is necessary.

INTERROGATORY NO. 11 (Plaintiff did not provide an Interrogatory No. 11.)

ANSWER:

No response is necessary.

INTERROGATORY NO. 12 (Plaintiff did not provide an Interrogatory No. 12.)

ANSWER:

No response is necessary.

INTERROGATORY NO. 13 State whether the websites, search engine optimization techniques and/or marketing you used to generate mortgage leads since January 1, 2002 were intended to attract Oklahoma residents seeking a mortgage loan.

ANSWER:

Lead Transfer objects that this interrogatory lacks foundation, and calls for speculation on the part of Lead Transfer because it calls for information beyond its knowledge and control. Subject to and without waiving the foregoing objections, Lead Transfer responds that it has not used any websites, search engine optimization techniques and/or marketing to generate mortgage leads since January 1, 2002.

INTERROGATORY NO. 14 Describe everything you have done since January 1, 2002 to avoid, limit and/or restrict your marketing, websites you use and/or search engine optimization techniques you have used from targeting, attracting and/or soliciting Oklahoma residents or loans concerning Oklahoma real property.

ANSWER:

Lead Transfer objects that this interrogatory lacks foundation, and calls for speculation on the part of Lead Transfer because it calls for information beyond its knowledge and control. Subject to and without waiving the foregoing objections, Lead Transfer responds that its marketing is restricted to the sale of leads; moreover,

it has never sold leads to any Oklahoma resident, nor has it made any reference to Oklahoma in its marketing materials. Further, Lead Transfer does not use websites or search engine optimization techniques to offer any goods or services to Oklahoma residents, nor does it use websites or search engine optimization techniques in connection with “loans concerning Oklahoma real property.”

INTERROGATORY NO. 15 Identify, indicate or describe your ability to deliver leads or custom information for any and all states or regions.

ANSWER:

Lead Transfer objects that this interrogatory lacks foundation and is beyond the scope of discovery permitted by this Court’s October 26, 2002 Order. Further, Lead Transfer objects that the interrogatory is vague, ambiguous, irrelevant, and calls for speculation on the part of Lead Transfer because it calls for information beyond its knowledge and control. Without waiving the foregoing objections, Lead Transfer responds that it has no first hand knowledge concerning this matter, because it has never been asked to “deliver leads or custom information for... states or regions.” Lead Transfer has never sold geography-specific “leads or custom information”. It has never sold leads comprised of “Oklahoma residents” or “people interested in Oklahoma real property.” Further, no Oklahoma resident has ever sold, or wished to sell leads to Lead Transfer. Lead Transfer has never sold, or wished to sell, leads to Oklahoma residents.

REQUEST FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1 Please produce all contracts with the person or entity you identified in Interrogatory No. 1 relating to leads since January 1, 2002.

ANSWER:

Lead Transfer is unaware of the existence of any such documents, but is currently searching for written contracts with Mark Beaumont. If any responsive documents exist, they will be produced after the Court has approved the protective order, which was requested in Plaintiff's unopposed motion filed on December 23, 2005.

REQUEST NO. 2 Produce all documents requested to be identified in your Response to Plaintiff's Interrogatories.

ANSWER:

Lead Transfer does not have any such documents.

REQUEST NO. 3 Produce all documents you referred to or reviewed in preparing your responses to Plaintiff's interrogatories.

ANSWER:

Responsive documents will be produced after the Court has approved the protective order, which was requested in Plaintiff's unopposed motion filed on December 23, 2005.

DATED this 4th day of January, 2006.

NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP



By:

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CERTIFICATE OF SERVICE

I hereby certify that on January 4th, 2006, I caused the foregoing **DEFENDANT LEAD TRANSFER, LLC'S RESPONSES TO PLAINTIFF'S DISCOVERY, DATED DECEMBER 22, 2005; AND CERTIFICATE OF SERVICE** to be served via the methods listed below on the following party:

Via Email and U.S. Mail to:

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