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9 Attorneys for Plaintiff OptInRealBig.com, LLC

10  
11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14  
15 OPTINREALBIG.COM, LLC, a Nevada  
Limited Liability Company,

16 Plaintiff,

17 v.

18 IRONPORT SYSTEMS, INC. dba  
19 SPAMCOP.NET, INC., a Delaware Corporation  
registered to do and doing business in California  
20 and DOES 1 through 100, inclusive,

21 Defendants.

CASE NO. C 04 1687 SBA

**DECLARATION OF  
RAY EVERETT-CHURCH**

22  
23 I, Ray Everett-Church, declare:

24 1. I have personal knowledge of the facts set forth in this declaration and can testify  
25 competently to those facts.

26 2. I am a member of the Board of Directors of WHITEHAT, INC., (“Whitehat”) an  
27 email marketing service provider. In addition to my position at Whitehat, I am a board member  
28 of the Coalition Against Unsolicited Commercial Email. I am also a co-author of the book

1 *Fighting Spam for Dummies*, published by Wiley Publishing, Inc. I am widely-known as an  
2 “anti-spam” advocate.

3 3. Attached hereto as Exhibit A is a true and correct copy of a posting I made to an  
4 email discussion list on Monday, November 4, 2002 concerning my experiences with SpamCop.

5 4. Whitehat was founded by several of the world’s best known anti-spam advocates,  
6 including myself, to provide list management and high volume commercial email services in a  
7 manner embodying the highest standards in permission-based email practices. Our policies  
8 require clients to demonstrate that their mailing lists are collected on an opt-in basis, and we take  
9 extensive measures to ensure that all email lists operated by Whitehat on behalf of clients are  
10 maintained in strict accordance with our opt-in policy. This includes prompt removal of those  
11 who wish to rescind previously granted permission through the use of an opt-out link.

12 5. In my capacity as board member of Whitehat, I have dealt frequently with issues  
13 relating to SpamCop. In my experience, SpamCop has taken a handful of complaints, and  
14 without verifying whether they were accurate, used them as the basis to put Whitehat on its  
15 “blocklist.” On several occasions, this action resulted in a significant amount of legitimate opt-in  
16 email being blocked.

17 6. Despite our best efforts to ensure that Whitehat’s practices exemplify the highest  
18 standards of permission-based email practices, we have found ourselves on SpamCop’s  
19 “blocklist” on several occasions. In investigating the causes of these incidents, we were unable to  
20 determine any objective criteria regarding SpamCop’s decision on when to place Whitehat on its  
21 “blocklist.” In my experience, receiving as few as a handful of complaints out of a mass-mailing  
22 of as many as 1,000,000 messages could cause Whitehat to be “blocklisted” by SpamCop.

23 7. Furthermore, based on my personal knowledge from dealing with SpamCop, the  
24 lack of objective criteria and the apparently low threshold of complaints needed to be placed on  
25 their “blocklist,” combined with the fact that anyone can submit a complaint about emails they  
26 receive whether or not the email was actually “spam,” can result in a high false-positive rate for  
27 declaring a particular email service provider to be a source of “spam.” I know this to be the case  
28 because in several instances, despite the best efforts of SpamCop to prevent us from knowing the

1 identity of the complainants, we were able to discover their identities and determine that the  
2 messages reported as “spam” were indeed permission-based, opt-in messages.

3 8. From my personal review of SpamCop complaints, SpamCop continues to take  
4 steps to make it difficult to determine who submitted a particular complaint because all  
5 identifying information is removed from the complaint. Without this identifying information, it  
6 becomes difficult or impossible to verify the accuracy of a claim that a particular message is  
7 “spam” or to take steps to prevent that individual from receiving future emails from that source.

8 9. For the most part, we have been unsuccessful in our attempts to resolve these  
9 issues with SpamCop.

10  
11 I declare under penalty of perjury under the laws of the United States that the foregoing is  
12 true and correct. Executed this 25th day of May 2004 in Fremont, California.

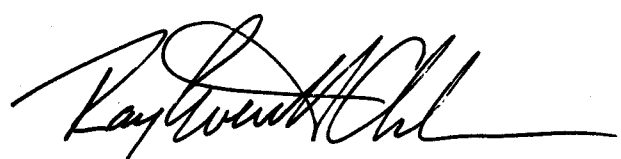
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