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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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SAN FRANCISCO DIVISION

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

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Plaintiff,

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v.

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

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Defendants.

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SECOND DECLARATION OF DOUG WOLFE

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I, Doug Wolfe, declare:

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1. I am a resident of Oakhurst, California. For the past two years, I have been the
Abuse Desk Manager for Optigate Networks, Inc. ("Optigate"), which is an Internet Service

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CASE NO. 04 c 1687 SBA

SECOND DECLARATION OF DOUG
WOLFE

1 Provider (“ISP”). My authority includes the decision to terminate customers for cause.
2 Optigate provides bandwidth to OptInRealBig.com, LLC and its subsidiaries, divisions,
3 and companies (collectively referred to as “OptIn”) so OptIn may send and receive emails
4 on behalf of OptIn’s customers. I have personal knowledge of the facts set forth in this
5 declaration and can testify competently to those facts.

6 2. During the past two years that I have been the Abuse Desk Manager at Optigate, I
7 have received thousands of complaints from SpamCop regarding OptIn. The complaints
8 are received from SpamCop by email at various email addresses owned by Optigate.
9 Because the name of the original recipient of the complaint email has been removed by
10 SpamCop, I am unable to determine the authenticity of the complaint. However, as
11 explained in more detail below, because our upstream provider relies solely on the number
12 of complaints received as the determining factor in terminating our customers, I must
13 accept the complaints as authentic.

14 3. I have personally examined the complaints received from SpamCop. Based on
15 these examinations, I have determined that on numerous occasions that SpamCop takes
16 one “unique” complaint and reports it to us and other ISP’s multiple times under different
17 report numbers. (a true and correct copy is attached as Exhibit “A”). The second page of
18 Exhibit “A”, which is labeled 2 of 2 (4/9/2004), illustrates that one “unique” email was
19 sent to Optigate three times (B1 to B3). The same unique email was simultaneously sent to
20 wcg.net [an unrelated ISP provider] three times (A1 to A3) and above.net (C1). Thus, one
21 unique email was sent seven times. Each time the unique email was sent, SpamCop
22 assigned it a different Report ID or Number. Because SamCop attaches a separate Report
23 ID number, it is received and counted as a separate complaint by the ISP and upstream
24 provider. In this case, this one unique email was received as seven separate complaints
25 against Optin from SpamCop.

26 4. Our upstream ISP providers forward their SpamCop reports to me and I have
27 examined these reports and discovered that our upstream ISP’s also receive the same
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“unique” email complaint several times. Again, SpamCop attaches a different Report ID number each time they send the one unique complaint. The result is that the upstream providers believe each email is a separate and unique complaint.

5. SpamCop also sends the same “unique” complaint to ISPs who have no direct or indirect relationship to OptIn. An example of this is displayed in Exhibit “B”: This Complaint has been forwarded to three ISPs (Above.net, wcg.net and Optigate.net). However, wcg.net, which is Wiltel Communications, had no involvement, directly or indirectly in the sending of the original email. As such, there is absolutely no reason in my opinion that would justify wcg being informed of this complaint.

6. Based on my experience, our ISP industry relies heavily and sometimes solely on the number of SpamCop complaints received as the determining factor with regard to terminating customers. ISPs rely so heavily on the number of reports rather than on their authenticity because most ISPs do not have the resources to investigate every SpamCop complaint. This problem is acknowledged by SpamCop as they state on their web site :

“SpamCop administrators do not, and cannot verify the claims made by its user. Not only are their simply far too many reports filed for anyone to manually review them, but even if we were to, there is no way for us to know whether a user actually did or did not solicit a message prior to reporting it as spam.”

A true and correct copy of this page of the SpamCop web site is attached as Exhibit “C”.

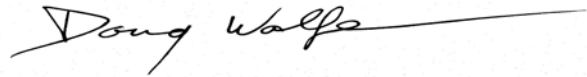
Unfortunately, this information is buried in the web site on their questions and answers page and is not set forth as a full disclaimer to those signing up for the service.

7. Because our industry standard is primarily to rely only on the number of complaints received when deciding whether to terminate an email marketer, and we are bound by the determinations made by our upstream ISP, legitimate commercial bulk emailers in compliance with all Federal and State law such as Optin are the victims of the industry standard, through no fault of their own.

8. Whether or not OptIn or Scott Richter is considered a Spammer by the press or others does not factor into our decision to terminate a customer. It is my experience that the anti-spam community identifies every bulk emailer as a “Spammer,” regardless of the emailer’s compliance with Federal and State statutes. But since, as explained above, all that matters is the number of Complaints received, that adjective is irrelevant to any determination made with respect to terminating a customer’s service.

9. With regard to the difficulty of determining who is the originating ISP of an email (a term of art described as “parsing the headers”) sent by Optin or its subsidiaries, I have parsed the headers of Optin emails on several occasions, and encountered no difficulty in determining from which ISP the email originated from. It has been my experience that Optin makes no attempt to disguise or hide the identity of the originating ISP from which emails are sent on their behalf.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this ___ day of May 2004 in Oakhurst, California.



Doug Wolfe