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11 SPAMCOP.NET, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION

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

17 Plaintiff,

18 v.

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

24 Defendants.

Case No. C-04-1687 (SBA)

**DEFENDANT IRONPORT SYSTEMS, INC.
AND SPAMCOP.NET, INC.'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
MOTION TO DISMISS PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE
12(B)(6)**

Date: July 13, 2004

Time: 1:00 p.m.

Judge: Sandra B. Armstrong

25 Defendant IronPort Systems, Inc and SpamCop.net, Inc. ("SpamCop"), in support of their
26 Motion to Dismiss, hereby respectfully requests that the Court take judicial notice of the
27 following documents and the facts contained therein pursuant to Federal Rule of Evidence 201.
28 The Court may properly take judicial notice of these documents and facts because they are "not
subject to reasonable dispute in that [they are] either (1) generally known within the territorial
jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to
sources whose accuracy cannot reasonably be questioned." F.R.E. 201(b). In addition, this Court
has permitted judicial notice of documents crucial to the plaintiff's claims that are either explicitly
or implicitly incorporated in a complaint. *See e.g. Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th

1 Cir. 1998); *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994); *Wietschner v. Monterey Pasta*
2 *Co.*, 294 F. Supp. 2d 1102, 1109 (N.D. Cal. 2003).

3 **Printed Pages From SpamCop's Internet Web Site**

4 SpamCop respectfully requests that the Court take judicial notice of the following
5 document and facts contained therein:

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7 1. Exhibit A: A page printed from SpamCop's Internet web site, printed on
8 May 24, 2004, as the site existed on April 29, 2004 (the date of Plaintiff's complaint), entitled
9 SpamCop FAQ "Rules – Everybody Read" located at [http://news.spamcop.net/cgi-](http://news.spamcop.net/cgi-bin/fom?file=14)
10 [bin/fom?file=14](http://news.spamcop.net/cgi-bin/fom?file=14).

11 2. Exhibit B: A page printed from SpamCop's Internet web site, printed on
12 May 24, 2004, as the site existed on April 29, 2004 (the date of Plaintiff's complaint), entitled
13 SpamCop FAQ "What do I need to know to get started reporting Spam?" located at
14 <http://news.spamcop.net/cgi-bin/fom?file=125>.

15 3. Exhibit C: A page printed from SpamCop's Internet web site, printed on
16 May 24, 2004, as the site existed on April 29, 2004 (the date of Plaintiff's complaint), entitled
17 SpamCop FAQ "Introduction - What is this thing? How does it work?" located at
18 <http://news.spamcop.net/cgi-bin/fom?file=89>.

19 4. Exhibit D: A page printed from SpamCop's Internet web site, printed on
20 May 24, 2004, as the site existed on April 29, 2004 (the date of Plaintiff's complaint), entitled
21 SpamCop FAQ "What is this? How does it work? How do I use it?" located at
22 <http://news.spamcop.net/cgi-bin/fom?file=3>.

23 5. Exhibit E: A page printed from SpamCop's Internet web site, printed on May 24,
24 2004, as the site existed on April 29, 2004 (the date of Plaintiff's complaint), entitled SpamCop
25 FAQ "Parsing and reporting spam" located at <http://news.spamcop.net/cgi-bin/fom?file=16>.
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1 Pursuant to Federal Rule of Evidence 201(b), SpamCop respectfully requests that the
2 Court take judicial notice of these documents in ruling on SpamCop’s Motion to Dismiss.
3 Plaintiff has referred to its site in its Complaint. *See* Complaint ¶ 17. Because Plaintiff has
4 incorporated portions of SpamCop’s web site into its Complaint, this Court may take judicial
5 notice of and consider these portions in ruling on SpamCop’s Motion to Dismiss — *without*
6 converting this Motion into a motion for summary judgment under Federal Rule of Civil
7 Procedure 56. *Branch v. Tunnell*, 14 F.3d 449, 453-454 (9th Cir. 1994)(holding that “documents
8 whose contents are alleged in a complaint and whose authenticity no party questions, but which
9 are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion
10 to dismiss”). SpamCop seeks judicial notice of these web site pages and “posted policies”
11 because they directly contradict certain allegations contained in Plaintiff’s Complaint, including
12 Plaintiff’s allegation that SpamCop’s Reports “wrongfully advise, counsel, persuade, or otherwise
13 induce” independent Internet Service Providers to take action against Plaintiff. Complaint, ¶¶ 25,
14 29, 33.

17 Pursuant to Rule 201(b) of the Federal Rules of Evidence, SpamCop respectfully requests
18 that the Court take judicial notice of these documents in ruling on SpamCop’s Motion to Dismiss.
19 The Court’s consideration of this pleading against the Plaintiff will assist the Court in
20 understanding the Plaintiff’s business and the arguments made in and judicial treatment of a
21 similar case.
22

23
24 /s/ Darryl M. Woo
25 Darryl M. Woo

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