

Timothy J. Walton (State Bar No. 184292)
LAW OFFICES OF TIMOTHY WALTON
801 Woodside Road, Suite 11
Redwood City, CA 94061
Phone (650) 216-9800
Fax: (650) 618-8687

Daniel L. Balsam (State Bar No. 260423)
THE LAW OFFICES OF DANIEL BALSAM
3145 Geary Blvd. #225
San Francisco, CA 94118
Phone: (415) 276-3067
Fax: (415) 373-3783

Attorneys for Appellant/Plaintiff
Daniel L. Balsam



COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION 3

DANIEL L. BALSAM,	)	Case No.:	A126680
)		
Appellant and Plaintiff,	)	APPELLANT'S SECOND	
	)	MOTION/REQUEST FOR	
v.	)	JUDICIAL NOTICE TO	
	)	SUPPLEMENT RECORD	
DSG DIRECT INC. <i>et al</i> ,)		
)		
Defendants,)		
)		
TROPICINKS LLC <i>et al</i> ,)		
)		
Respondents and Real)		
Parties in Interest.	)	Appeal Filed:	Oct. 9, 2009

I. INTRODUCTION

Appellant/Plaintiff Daniel L. Balsam (“Balsam”) brings this Second Motion/Request for Judicial Notice pursuant to Evidence Code §§ 459(a) and 452(h) because the documents to be noticed – corporate filings by Judgment Debtors and reputation/habit evidence that one of their purported officers was one of the top spammers in the world in 2003-2005 – demonstrate that Respondents TropicInks LLC (“TropicInks”), Datastream Group (“Datastream”), and Leigh-Ann Colquhoun (“Colquhoun”) made false claims to California courts and undermine Respondents’ arguments that the underlying judgment is invalid. The documents are relevant to Balsam’s claims and Respondents’ defenses.

This Court should take judicial notice of the attached documents.

II. STATEMENT OF FACTS

Appellant’s [First] Motion/Request for Judicial Notice to Supplement Record, filed January 27, 2010, summarizes the facts of this case.

III. SECOND MOTION/REQUEST FOR JUDICIAL NOTICE TO SUPPLEMENT RECORD

A. Legal Standard

Appellant’s [First] Motion/Request for Judicial Notice to Supplement Record, filed January 27, 2010, explains that a “reviewing court may take judicial notice of any matter specified in Section 452, including evidence not included in the record of the trial court below, and that it should do so, in any way, to find the truth. Ev. Code § 459(a).

Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate

determination by resort to sources of reasonably indisputable accuracy” may be judicially noticed.

Ev. Code § 452(h).

Except as otherwise provided by statute, the court or jury may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following:

- (e) His character for honesty or veracity or their opposites.
- (h) A statement made by him that is inconsistent with any part of his testimony at the hearing.
- (i) The existence or nonexistence of any fact testified to by him.

Ev. Code § 780.

The credibility of a witness may be attacked or supported by any party, including the party calling him.

Ev. Code § 785.

Evidence of reputation, and evidence of specific instances of such person’s conduct is admissible to prove a person’s character of a trait of his character.

Ev. Code § 1100.

Evidence of habit or custom is admissible to prove conduct on a specified occasion in conformity with the habit or custom.

Ev. Code § 1105.

Evidence of a statement by a declarant having sufficient knowledge of the subject is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and the statement, when made, was so far contrary to the declarant's pecuniary or proprietary interest, or so far subjected him to the risk of civil or criminal liability, or so far tended to render invalid a claim by him against another, or created such a risk of making him an object of hatred, ridicule, or social disgrace in the community, that a

reasonable man in his position would not have made the statement unless he believed it to be true.

Ev. Code § 1230.

Evidence of a statement made by a witness is not made inadmissible by the hearsay rule if the statement is inconsistent with his testimony at the hearing and is offered in compliance with Section 770.

Ev. Code § 1235.

Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if:

- (a) The writing was made in the regular course of a business;
- (b) The writing was made at or near the time of the act, condition, or event;
- (c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and
- (d) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

Ev. Code § 1271.

B. Request for Judicial Notice

1. DSG Direct Inc.'s Annual Reports

Balsam requests that this Court take judicial notice pursuant to Evidence Code §§ 459(a), 452(h) of Judgment Debtor DSG Direct Inc.'s ("DSG Direct") Annual Report as filed with the Florida Department of State, Division of Corporations – a source of reasonably indisputable accuracy – on May 3, 2006. This Court can immediately verify the document by typing <http://www.sunbiz.org/pdf/70940037.pdf> into any Internet browser. (*Sunbiz.org* is the website of the Florida Department of State, Division of Corporations.)

Attachment 1A to the Declaration of Daniel L. Balsam (“Balsam Decl.”) is a true and correct copy of DSG Direct’s Annual Report, filed May 3, 2006.

Balsam requests that this Court take judicial notice pursuant to Evidence Code §§ 459(a), 452(h) of DSG Direct’s Annual Report as filed with the Florida Department of State, Division of Corporations on April 30, 2007. This Court can immediately verify the document by typing <http://www.sunbiz.org/pdf/70159347.pdf> into any Internet browser.

Attachment 1B to the Balsam Decl. is a true and correct copy of DSG Direct’s Annual Report, filed April 30, 2007.

2. Your-Info Inc.’s Annual Reports

Balsam requests that this Court take judicial notice pursuant to Evidence Code §§ 459(a), 452(h) of Judgment Debtor Your-Info Inc.’s (“Your-Info”) Annual Report as filed with the Florida Department of State, Division of Corporations on May 3, 2006. This Court can immediately verify the document by typing <http://www.sunbiz.org/pdf/40924714.pdf> into any Internet browser.

Attachment 2A to the Balsam Decl. is a true and correct copy of Your-Info’s Annual Report, filed May 3, 2006.

Balsam requests that this Court take judicial notice pursuant to Evidence Code §§ 459(a), 452(h) of Your-Info’s Annual Report as filed with the Florida Department of State, Division of Corporations on April 20, 2007. This Court can immediately verify the document by typing <http://www.sunbiz.org/pdf/60726606.pdf> into any Internet browser.

Attachment 2B to the Balsam Decl. is a true and correct copy of Your-Info’s Annual Report, filed April 20, 2007.

3. *Eric Reinertsen has a Reputation of a Spammer and Has a Habit of Sending Spam*

In Respondents' Opening Brief ("ROB"), Respondents introduce Colquhoun's husband, Eric Reinertsen, as a supposed officer of DSG Direct. (ROB at *17.) This Court should note that Eric Reinertsen has a reputation of being a spammer and has a habit of sending spam.

Eric Reinertsen was named as one of the Top 10 Spammers in the world by MSNBC – a joint venture between Microsoft and the NBC television network, a source of reasonably indisputable accuracy – in 2003. This Court can immediately verify the document by typing <http://www.msnbc.com/news/941040.asp?0cb=-115171549> into any Internet browser.

Attachment 3A is a true and correct copy of the MSNBC list of the Top 10 Spammers.

Eric Reinertsen was identified as the #10 Top Spammer of the Month" by *Business Week* Magazine – a source of reasonably indisputable accuracy – in September 2004. This Court can immediately verify the document by typing http://www.businessweek.com/print/bwdaily/dnflash/sep2004/nf20040915_0180_db035.htm?chan=db into any Internet browser.

Attachment 3B is a true and correct copy of the Business Week article identifying Eric Reinertsen as the #10 Top Spammer of the month.

Eric Reinertsen was listed on the ROKSO ("Register of Known Spam Operations") List in June 2005 – a source of reasonably indisputable accuracy. Balsam believes that this list is ever-changing and is no longer available as it existed in June 2005.

Attachment 3C is a true and correct copy of the ROKSO list of top spammers as of June 2005.

C. Timeliness and Relevance of the Documents

The documents at issue do not relate to proceedings after the order that is the subject of this appeal.

The DSG Direct and Your-Info Annual Reports from 2006 and 2007 were not presented to the trial court below, and were not included in the record, because Balsam did not know that Respondents would make demonstrably false claims to this Court. Respondents falsely claimed that Balsam “conveniently ignored that . . . the judgment debtors were in default almost *two years before entry of judgment*, as their last filing with the Secretary of State was April 2005” (ROB at *14, emphasis in original). In truth, both Judgment Debtors filed Annual Reports with the Florida Department of State in 2006 and 2007.

The 2006 and 2007 DSG Direct and Your-Info Annual Reports are relevant because they demonstrate that Respondents were *not* in default in 2005, notwithstanding Respondents’ false claims to the contrary. Respondents’ obvious false claims should give this Court pause when it considers the credibility of anything Respondents say. Ev. Code §§ 780, 785. Respondents have amply demonstrated their character and habit of dishonesty. Ev. Code §§ 1100, 1105.

The articles about Eric Reinertsen’s reputation of being a spammer and his habit of sending spam were not presented to the trial court below, and were not included in the record, because Balsam did not know that Respondents would attempt to exculpate Colquhoun from liability based on the unsupported claim on appeal that her husband Eric Reinertsen was also an officer of DSG Direct. (ROB at *17.) This Court should note that Respondents do *not* claim that Eric Reinertsen was an officer of the other Judgment Debtor, Your-Info. Respondents submit no independent evidence that Eric Reinertsen was ever an officer of DSG Direct, and all

evidence from corporate filings demonstrate that Colquhoun was always the only officer. (Clerk's Transcript 317-18, 457-62, 320-21.)

But, assuming Eric Reinertsen were an officer of DSG Direct, these new documents are relevant because Eric Reinertsen's reputation of being a spammer and his habits of sending spam, Ev. Code §§ 1100, 1105, undermine Respondents' claim that the underlying judgment is somehow invalid. (ROB at *2, 22-24.)

Pursuant to Evidence Code §§ 785, 1230, 1235, and 1271, Balsam submits that Respondents' prior business records and inconsistent statements were contrary to their now-stated interests and undermine their credibility before this Court. Pursuant to Evidence Code § 780(e),(h), (i), Balsam asks that this Court take into account Respondents' statements with regard to these facts when determining Respondents' credibility as to any of their claims.

III. CONCLUSION

This Court has the authority to take judicial notice of documents not included in the record of the trial court below, and should do so, in order to find the truth.

Respondents' own corporate filings unequivocally show that Respondents make false claims to this Court in order to avoid liability.

Articles from sources of reasonably indisputable accuracy – such as MSNBC and *Business Week* – refer to Eric Reinertsen as one of the top spammers in the world. Eric Reinertsen was never named as a corporate officer of either Judgment Debtor in any of their corporate filings, but associating him with Judgment Debtors does not help Respondents' claim that the underlying judgment is invalid.

This Court should take judicial notice of these documents because they demonstrate the falsity of Respondents' claims and their character of dishonesty, and the reputation/character of dishonesty of one of the Judgment Debtor's purported officers.

THE LAW OFFICES OF DANIEL BALSAM

Dated: March 17, 2010

By 

Daniel L. Balsam

Attorneys for Appellant

Timothy J. Walton (State Bar No. 184292)
LAW OFFICES OF TIMOTHY WALTON
801 Woodside Road, Suite 11
Redwood City, CA 94061
Phone (650) 216-9800
Fax: (650) 618-8687

Daniel L. Balsam (State Bar No. 260423)
THE LAW OFFICES OF DANIEL BALSAM
3145 Geary Blvd. #225
San Francisco, CA 94118
Phone: (415) 276-3067
Fax: (415) 373-3783

Attorneys for Appellant/Plaintiff
Daniel L. Balsam

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION 3

DANIEL L. BALSAM,	)	Case No.:	A126680
)		
Appellant and Plaintiff,	)	DECLARATION OF DANIEL L.	
	)	BALSAM IN SUPPORT OF	
v.	)	APPELLANT'S SECOND	
	)	REQUEST FOR JUDICIAL	
DSG DIRECT INC. <i>et al</i>,	)	NOTICE TO SUPPLEMENT	
	)	RECORD	
Defendants,)		
)		
TROPICINKS LLC <i>et al</i> ,)		
)		
Respondents and Real)		
Parties in Interest.	)	Appeal Filed:	Oct. 9, 2009

I, Daniel L. Balsam declare:

1. I am the Appellant in the above-captioned matter. The following facts are based on my own personal knowledge, except as to those facts stated on information and belief, and as to those matters, I believe them to be true. If called as a witness, I could and would testify competently to the declared facts under oath.
2. I am a licensed California attorney and co-counsel for Appellant in the above-captioned matter.
3. I personally viewed and downloaded Judgment Debtor DSG Direct Inc.'s Annual Report, filed with the Florida Department of State on May 3, 2006. Attachment 1A is a true and correct copy, which is also viewable on the Internet at <http://www.sunbiz.org/pdf/70940037.pdf>.
4. I personally viewed and downloaded Judgment Debtor DSG Direct Inc.'s Annual Report, filed with the Florida Department of State on April 30, 2007. Attachment 1B is a true and correct copy, which is also viewable on the Internet at <http://www.sunbiz.org/pdf/70159347.pdf>.
5. I personally viewed and downloaded Judgment Debtor Your-Info Inc.'s Annual Report, filed with the Florida Department of State on May 3, 2006. Attachment 2A is a true and correct copy, which is also viewable on the Internet at <http://www.sunbiz.org/pdf/40924714.pdf>.
6. I personally viewed and downloaded Judgment Debtor Your-Info Inc.'s Annual Report, filed with the Florida Department of State on April 20, 2007. Attachment 2B is a true and correct copy, which is also viewable on the Internet at <http://www.sunbiz.org/pdf/60726606.pdf>.
7. I personally viewed and downloaded a 2003 article from <http://www.msnbc.com/news/941040.asp?0cb=-115171549> identifying Eric Reinertsen as one of the top 10 spammers in the world. I believe

this article indicates that Eric Reinertsen has a reputation of being a spammer and a habit of sending spam. Attachment 3A is a true and correct copy.

8. I personally viewed and downloaded a 2004 article from http://www.businessweek.com/print/bwdaily/dnflash/sep2004/nf20040915_0180_db035.htm?chan=db identifying Eric Reinertsen as the #10 Top Spammer of the Month. I believe this article indicates that Eric Reinertsen has a reputation of being a spammer and a habit of sending spam. Attachment 3B is a true and correct copy.
9. I personally viewed and downloaded the 2005 ROKSO (“Registry of Known Spam Operations” from <http://www.spamhaus.org/rokso/index.lasso> identifying Eric Reinertsen as the one of the top 200 spammers in the world. I believe this list indicates that Eric Reinertsen has a reputation of being a spammer and a habit of sending spam. Attachment 3C is a true and correct copy.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct, and that this Declaration was executed in San Francisco, California, on March 17, 2010.



DANIEL L. BALSAM

ATTACHMENT 1A

DSG Direct Inc.'s Annual Report Filed May 3, 2006

2006 FOR PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# P03000089357

**FILED
May 03, 2006
Secretary of State**

Entity Name: DSG DIRECT, INC.

Current Principal Place of Business:

9140 BONITA BCH RD STE 144
BONITA SPRINGS, FL 34135

New Principal Place of Business:

Current Mailing Address:

9140 BONITA BCH RD STE 144
BONITA SPRINGS, FL 34135

New Mailing Address:

FEI Number: 20-0156698 **FEI Number Applied For ()** **FEI Number Not Applicable ()** **Certificate of Status Desired ()**

Name and Address of Current Registered Agent:

AST, LARRY
9420 BONITA BCH RD STE 200
BONITA SPRINGS, FL 34135 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent

_____ Date

In accordance with s. 607.193(2)(b), F.S., the corporation did not receive the prior notice.
Election Campaign Financing Trust Fund Contribution ().

OFFICERS AND DIRECTORS:

Title: PT () Delete
Name: COLQUHOUN, LEIGH-ANN
Address: 27265 HIGH SEAS LN
City-St-Zip: BONITA SPRINGS, FL 34135

ADDITIONS/CHANGES TO OFFICERS AND DIRECTORS:

Title: () Change () Addition
Name:
Address:
City-St-Zip:

I hereby certify that the information supplied with this filing does not qualify for the for the exemption stated in Chapter 119, Florida Statutes. I further certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with an address, with all other like empowered.

SIGNATURE: LEIGH-ANN COLQUHOUN

PT

05/03/2006

Electronic Signature of Signing Officer or Director

_____ Date

ATTACHMENT 1B

DSG Direct Inc.'s Annual Report Filed April 30, 2007

2007 FOR PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# P03000089357

**FILED
Apr 30, 2007
Secretary of State**

Entity Name: DSG DIRECT, INC.

Current Principal Place of Business:

9140 BONITA BCH RD STE 144
BONITA SPRINGS, FL 34135

New Principal Place of Business:

Current Mailing Address:

9140 BONITA BCH RD STE 144
BONITA SPRINGS, FL 34135

New Mailing Address:

FEI Number: 20-0156698 **FEI Number Applied For ()** **FEI Number Not Applicable ()** **Certificate of Status Desired ()**

Name and Address of Current Registered Agent:

AST, LARRY
9420 BONITA BCH RD STE 200
BONITA SPRINGS, FL 34135 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent

_____ Date

Election Campaign Financing Trust Fund Contribution ().

OFFICERS AND DIRECTORS:

Title: PT () Delete
Name: COLQUHOUN, LEIGH-ANN
Address: 27265 HIGH SEAS LN
City-St-Zip: BONITA SPRINGS, FL 34135

ADDITIONS/CHANGES TO OFFICERS AND DIRECTORS:

Title: () Change () Addition
Name:
Address:
City-St-Zip:

I hereby certify that the information supplied with this filing does not qualify for the exemption stated in Chapter 119, Florida Statutes. I further certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with an address, with all other like empowered.

SIGNATURE: LEIGH-ANN COLQUHOUN

PT

04/30/2007

Electronic Signature of Signing Officer or Director

_____ Date

ATTACHMENT 2A

Your-Info Inc.'s Annual Report Filed May 3, 2006

2006 FOR PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# P01000059314

FILED
May 03, 2006
Secretary of State

Entity Name: YOUR-INFO, INC

Current Principal Place of Business:

27265 HIGH SEAS LN
BONITA SPRINGS, FL 34135 US

New Principal Place of Business:

Current Mailing Address:

27265 HIGH SEAS LN
BONITA SPRINGS, FL 34135 US

New Mailing Address:

FEI Number: 59-3726812 **FEI Number Applied For ()** **FEI Number Not Applicable ()** **Certificate of Status Desired ()**

Name and Address of Current Registered Agent:

COLQUHOUN, LEIGH-ANN
27241 HIGH SEAS LN
BONITA SPRINGS, FL 34135 US

Name and Address of New Registered Agent:

COLQUHOUN, LEIGH-ANN
27265 HIGH SEAS LN
BONITA SPRINGS, FL 34135 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: LEIGH-ANN COLQUHOUN 05/03/2006
Electronic Signature of Registered Agent Date

In accordance with s. 607.193(2)(b), F.S., the corporation did not receive the prior notice.
Election Campaign Financing Trust Fund Contribution ().

OFFICERS AND DIRECTORS:

Title: MS. () Delete
Name: COLQUHOUN, LEIGH-ANN
Address: 27241 HIGH SEAS LN
City-St-Zip: BONITA SPRINGS, FL 34135 US

ADDITIONS/CHANGES TO OFFICERS AND DIRECTORS:

Title: MS. (X) Change () Addition
Name: COLQUHOUN, LEIGH-ANN
Address: 27265 HIGH SEAS LN
City-St-Zip: BONITA SPRINGS, FL 34135 US

I hereby certify that the information supplied with this filing does not qualify for the for the exemption stated in Chapter 119, Florida Statutes. I further certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with an address, with all other like empowered.

SIGNATURE: LEIGH-ANN COLQUHOUN MS. 05/03/2006
Electronic Signature of Signing Officer or Director Date

ATTACHMENT 2B

Your-Info Inc.'s Annual Report Filed April 20, 2007

2007 FOR PROFIT CORPORATION ANNUAL REPORT

DOCUMENT# P01000059314

**FILED
Apr 20, 2007
Secretary of State**

Entity Name: YOUR-INFO, INC

Current Principal Place of Business:

27265 HIGH SEAS LN
BONITA SPRINGS, FL 34135 US

New Principal Place of Business:

Current Mailing Address:

27265 HIGH SEAS LN
BONITA SPRINGS, FL 34135 US

New Mailing Address:

FEI Number: 59-3726812 **FEI Number Applied For ()** **FEI Number Not Applicable ()** **Certificate of Status Desired ()**

Name and Address of Current Registered Agent:

COLQUHOUN, LEIGH-ANN
27265 HIGH SEAS LN
BONITA SPRINGS, FL 34135 US

Name and Address of New Registered Agent:

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: _____

Electronic Signature of Registered Agent

_____ Date

Election Campaign Financing Trust Fund Contribution ()

OFFICERS AND DIRECTORS:

Title: MS. () Delete
Name: COLQUHOUN, LEIGH-ANN
Address: 27265 HIGH SEAS LN
City-St-Zip: BONITA SPRINGS, FL 34135 US

ADDITIONS/CHANGES TO OFFICERS AND DIRECTORS:

Title: () Change () Addition
Name:
Address:
City-St-Zip:

I hereby certify that the information supplied with this filing does not qualify for the for the exemption stated in Chapter 119, Florida Statutes. I further certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am an officer or director of the corporation or the receiver or trustee empowered to execute this report as required by Chapter 607, Florida Statutes; and that my name appears above, or on an attachment with an address, with all other like empowered.

SIGNATURE: LEIGH-ANN COLQUHOUN

MS.

04/20/2007

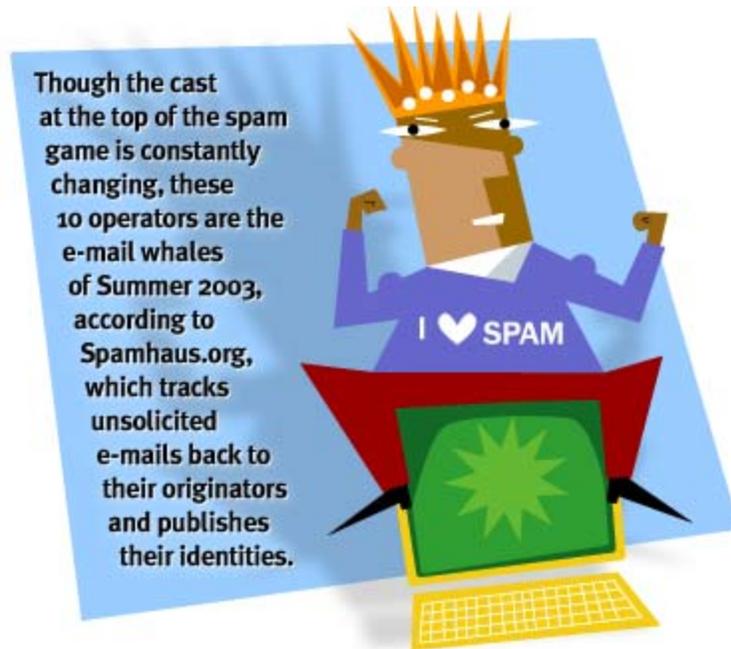
Electronic Signature of Signing Officer or Director

_____ Date

ATTACHMENT 3A

MSNBC Article Identifying Eric Reinertsen as a Spammer

M NBC **World's Top 10 Spammers**
Your inbox is their oyster



Eddy Marin

This Boca Raton, Fla.-based e-mailer recently earned the title of "World's No. 1 spammer" from Spamhaus, which says he is capable of cranking out 50 million e-mails a day by himself and 250 million a day if he farms work out to other members of his "spam gang" in south Florida. A Colombia born former Pompano Beach nightclub owner and online porn entrepreneur with cocaine dealing and money laundering convictions on his record, Marin, 41, goes to considerable lengths to avoid unwanted intrusions on his privacy. He is only known to have given one interview – to the Miami Herald in 2000, during his days as a would-be porn kingpin – when he told the newspaper that he had downsized what was a struggling live Web cam site and was instead focusing on developing, hosting and doing marketing for other Web sites. Doing business as "Opt-In Services," he told the newspaper at the time that he had generated revenue of \$750,000 during the first quarter of the year -- "over 80 percent profit" -- and indicated he was beginning to focus on marketing data bases and "opt-in mailings." Marin was formerly partnered with another notorious spammer, Thomas Cowles, but the two apparently had a falling out.



Cooper City Police Dept.

George Rand

An exceptionally low-profile fellow, even by spammer standards, Rand has registered two businesses in New York but may reside or also do business in Miami. He has been known to spam a wide variety of products and services, including bogus penis-enlargement pills, anti-terrorism T-shirts, bad-credit repair and even inspirational golf balls for Christian golfers, according to posts to anti-spam Usenet groups.

[no photo available]

<p>Alan Ralsky</p> <p>Ralsky, who is in his late 50s, has been among the nation’s biggest spammers since entering the business in 1997 while recovering from bankruptcy – one of nine filings dating back to 1993 -- and the loss of his insurance license. Previously, while living in Illinois, he was convicted of felony fraud and “failing to deliver a contract” involving unregistered securities. Ralsky has boasted in various media interviews that he has the capability of sending tens of thousands of e-mails an hour pitching such products and services as mortgages, vacations, online pharmacies and casinos for clients, relayed through servers in the United States and abroad. He was sued in 2001 by Verizon in a landmark lawsuit seeking \$37 million in damages for allegedly twice paralyzing the company’s network by sending bulk e-mail. In an October 2002 settlement, Ralsky agreed to pay an undisclosed amount to the company and refrain from sending spam on any of Verizon’s networks. After his address and photos of his new \$740,000 home in West Bloomfield, Mich., were published on the Web late last year, Ralsky was subjected to probably the biggest revenge mailing of the spam wars when anti-spam crusaders signed him up for every magazine, brochure, catalog and junk-mail offer available. "These people are out of their minds. They're harassing me," he told the Detroit News in December.</p>	 <p>Paul Sancya / AP</p>
<p>John Ritzer</p> <p>John Ritzer Little is known about this Anaheim, Calif.-based spammer, who also uses the nom de spam “Jack Ross,” except that he has been very busy for the past several years. Ritzer, who does business through at least three entities – JR Marketing, M&J Marketing and National Mortgage Funding Inc. -- is believed to be in his mid-30s. He is an associate of No. 3 spammer Alan Ralsky (he has at times used his servers to host Web sites and domains for Ralsky) and specializes in mortgage and loan pitches.</p>	<p>[no photo available]</p>
<p>Juan Garavaglia</p> <p>Garavaglia, who also goes by the name Al Vaglia, is an apparent newcomer to spamdom’s top tier, first appearing on the Spamhaus radar about six months ago under the sobriquet “Super-Zonda.” He also is believed to be the lone South American representative on the list, working out of Buenos Aires. The reason for the uncertainty about Garavaglia’s whereabouts is that he is a master at hiding his tracks and quickly shifting locations as he uses insecure computers to send e-mails and host Web sites. The British Broadcasting Corp. reported recently that “Super-Zonda” was able to use an insecure British Airways Web site to send out spam for a Russian mail order bride site.</p>	<p>[no photo available]</p>
<p>Eric Reinertsen</p> <p>A longtime spammer from Florida, which has emerged as the world capital for unsolicited commercial e-mail, Reinertsen has a host of domains set up on servers far and wide to aid in his high-volume operation. Like many of the others on the Top 10 list, he also uses such illegal ploys as hijacking of mail-servers to further his ability to get out the junk mail. Best known now for sending out investment “tip” e-mail, he recently caused a stir by allegedly sending spam on behalf of Fox Sports. In May 2001, he proclaimed in a news group posting that he had been wrongly accused of spamming, saying that the company name he was identified with at the time, datastreamgroup.com, had been victimized by a hacker who sent out e-mail “forged with our email address ... (and) sent out from a prserv.net dialup relayed through a Korean server. We have this matter under investigation with the authorities and various ISPs.”</p>	<p>[no photo available]</p>
<p>Mike Cunningham</p> <p>Working with associate Andrew Amend under the U.S. Health Laboratories aegis, Cunningham is a major source of e-mail offering cut-rate Viagra and offers covering “all kinds of medical quackery,” according to Spamhaus’ Steve Linford. Operating out of Hayes, Kan., Cunningham</p>	<p>[no photo available]</p>

<p>and others created an ISP – Katelecom.com – in 2001 in order to hide from their provider, Sprint. The ruse worked for a while, as tens of thousands of spam complaints were sent to postmaster@katelecom.com rather than Sprint. Cunningham describes himself as a devout Christian and claims to have attended a Baptist college in Iowa, where he engaged in extensive studies of the New Testament. He also is or was a member of an obscure spiritual music-comedy act, “Hugh Myrr and John Donut.” Cunningham also vowed in a posting to a message board used by spammers to defend his “God-given right to spam.”</p>	
<p>Gaven Stubberfield</p> <p>Stubberfield is the leader of a group of spammers based in the Raleigh, N.C., that specializes in e-mailings promoting porn sites, including a particularly notorious piece offering a free video involving bestiality between a teenage farm girl and her horse. Until January 2003, when they apparently were sent packing by their ISP, Stubberfield and friends had a high bandwidth T-1 line and multiple computers that pumped out spam around the clock. Stubberfield also has dabbled in illegal pyramid e-mail scams and a purported “business opportunity” making money off unclaimed Federal Housing Administration homeowners’ insurance policies, both of which were vigorously promoted by spam.</p>	<p>[no photo available]</p>
<p>Carl Henderson</p> <p>Under the Ultimate Health banner, Henderson spams a variety of fraudulent health products, including human growth hormone (HGH) and miracle weight-loss and breast-enlargement pills and creams. Henderson survives by being quick on his feet, changing domains quickly and using Chinese ISPs to advertise Web sites on pirated Chinese servers, including some belonging to elementary schools in China. Bogus contact information in “whois” records points to many states, but some of his Web sites gave an address in Madison, N.J., that may have been his base of operations at one time. Henderson either uses the alias “Harry A. Creaghan” at times or has a business associate by that name.</p>	<p>[no photo available]</p>
<p>DocDrugs/Pinnacle Meds</p> <p>This apparently Florida-based “spam gang,” which has so far managed to remain anonymous, controls an array of domains on which it hosts numerous mirrored online drugstores specializing in sexual-performance, weight-loss and other health-related products. The “mother ship” of the drugstore suite is ultrameds.com, which has been hosted for long stretches by the Internet access company Ifxcorp, which does most of its business in South America. Although the spammers have been able to avoid detection, they haven’t been so diligent in protecting the identities of their customers and affiliates, according to a Usenet posting last year. The poster said that due to sloppy ASP coding, the group was exposing “customers’ credit and medical details to the world,” as well as the names and locations of some affiliates. The “whois” records for DocDrugs and related sites contain false contact information, but many of the records list addresses in Aventura, Fla., suggesting this outfit may be based there.</p>	<p>[no photo available]</p>

ATTACHMENT 3B

Business Week Article Identifying Eric Reinertsen as a Spammer

Untangle now.

Unify your business communications with a better IP Phone System. [Click to untangle](#)**BusinessWeek**[Close Window](#)

SEPTEMBER 15, 2004

NEWS ANALYSIS
By Burt Helm

Are Hurricanes Swamping Spammers?

Lots of folks think the hits that the Sunshine State (aka Spam State) have taken slowed the volume. Probably isn't so, though

Steve Delgado, the marketing manager of Arial Software, got a pleasant surprise when he checked his e-mail Monday morning, Sept. 13. His in-box had only 70 spam messages. "My e-mail [address] is all over the Internet, so I usually get about 200 over the weekend." And he has a theory to explain it: "I believe that the slowdown of spam e-mails in my in-box is directly related to the adverse weather in Florida," he says, "and that the hurricanes are disrupting spammers in Boca Raton and other cities with spammy reputations."

Delgado isn't alone. Anti-spammers have been battling the idea back and forth on Internet newsgroups and in chat rooms since last week. One contributor went so far as to compare the hurricanes to Noah's flood: "And God saw that the wickedness of spam was great in Florida," he writes, "[and God said] 'I will cause it to rain upon Florida forty days and forty nights; and every living spammer that I have made will I destroy from off the face of Florida.'"

LEFT REELING. The Sunshine State certainly has developed a "spammy reputation." In 2003 an audacious group of the state's e-marketers made news by suing anti-spam advocates for trying to block them from conducting business (the case was later dropped). Plenty of perfectly legitimate e-marketers exist, but industry observers like to joke that the unofficial capital of the Spam State is Boca Raton. Recent lawsuits have alleged large spam gangs in the city, and spammer Scott Hirsch, -- who sold his e-marketing business in 2002 for \$135 million -- told *Time* magazine that he likes to think he helped make Boca "the spam capital of the world."

Wrath of God or not, e-marketers and spammers in the area say they've been left reeling by all the bad weather. And with Hurricane Ivan's winds in excess of 130 miles per hour bearing down on Florida's Gulf Coast, the notion of a direct correlation between flooding, loss of power, and a drop-off in spam has taken on a cachet among the Web cognoscenti.

"Anybody in this business would have been affected" by the weather, says Chris Rosetti, who runs E-list Marketers, an e-mail direct-marketing firm. "It's horrible. We have no power [to run our computers]" E-list's Boca servers went down for two days during Hurricane Frances, but it was able to continue operations by switching over to servers it owns in other states.

HEROIC EFFORT. Denny and Eddy Marin, who run Omnipoint Media, also in Boca, had to close their offices on both Friday and Monday of the weekend Frances hit, though they were able to keep their servers up and running. Spamhaus, an online database that tracks spammers and "spam-gangs," lists Eddy Marin as the #8 "Top Spammer" in the world during August, 2004.

West of Boca on the Gulf Coast, Eric Reinertsen of Data Stream Group in Bonita Springs had his own troubles a few weeks earlier. Reinertsen, whose company has sent messages with subject lines like "Make Unlimited Calls for \$69.95!" had to cease operations for 18 hours after Hurricane Charley hit in mid-August. Heroically, Reinertsen still pulled the #10 "Top Spammer" spot for the month.

Are several major natural disasters all it takes to quell a couple weeks worth of spam? Experts at anti-spam advocacy groups doubt it. "[Spammers] tend to exist all over the place. Florida represents such a small quantity of the total worldwide, I can't imagine it would have a major impact." says Michael Osterman of Osterman Research Group, which looks at spam trends.

"I wouldn't say Florida has more than their fair share of spammers, [but] it's kind of an industry joke," says Anne Mitchell, who runs the Institute for Spam & Internet Public Policy. "It's like poking fun at people from Buffalo for having a lot of snow."

LITTLE CORRELATION. Groups that monitor spam traffic also aren't so sure that hurricanes have wreaked havoc on overall spam traffic. The week of Sept. 6 (which included the aftermath of Frances and the oncoming threat of Ivan) showed a low for the month, at 600 million spam messages worldwide, down from a steady weekly tally of 700 million, according to e-mail protection company Postini. But daily results posted by MessageLabs, Earthlink ([ELNK](#)), and Symantec ([SYMC](#)) showed little correlation. And despite the state's reputation, neither Postini or MessageLabs have found that Florida really does have an abnormal concentration of spammers.

Hurricanes or not, e-marketers in Florida press on. As Ivan gained strength last week, Discount Home Shopping Club in Englewood, Fla., decided to play it safe. The company uses a network-affiliate marketing model, in which thousands of "independent contractors" earn money by e-mailing ads on commission, though DHS Club says it prohibits independents from sending unsolicited ads. Last week it closed up shop, shut down its servers, and headed for the hills -- specifically its corporate retreat in the mountains of Tennessee -- until CEO Richard Burke felt it was safe to open for business again on Sept. 13.

Burke says the storm has left his thousands of independent marketers idly waiting, with nary a send-button to push. But never fear, he assures, his marketers will survive. "If Ivan [had actually] hit, we were prepared to co-locate our servers in Atlanta," he says. "We're in this for the long haul."

The bottom line: Nature's wrath on spammers makes for an eye-grabbing fable. But more likely, neither rain, nor snow, nor slashing winds will keep unsolicited e-mail from its appointed rounds.

[Helm](#) is a reporter for BusinessWeek Online in New York

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ATTACHMENT 3C

ROKSO List Identifying Eric Reinertsen as a Spammer

SPAMHAUS
 THE SPAMHAUS PROJECT

Spamhaus

SBL

XBL

ROKSO

[Home](#) | [About ROKSO](#) | [ROKSO FAQs](#) | [Advanced Search](#)
Register Of Known Spam Operations



The Register of Known Spam Operations (ROKSO) database collates information and evidence on known professional spam operations that have been terminated by a minimum of 3 Internet Service Providers for spam offenses.

200 Known Spam Operations responsible for 80% of your spam.

80% of spam received by Internet users in North America and Europe can be traced via aliases and addresses, redirects, hosting locations of sites and domains, to a hard-core group of around 200 known spam operations ("spam gangs"), almost all of whom are listed in the ROKSO database. These spam operations consist of an estimated 500-600 professional spammers with ever-changing aliases and domains. The vast majority of those listed here operate illegally and move from network to network (and country to country) seeking out "spam-friendly" Internet Service Providers ("ISPs") known for lax enforcing of anti-spam policies.

These are the spammers you definitely do NOT want on your network.

Many of these spam operations pretend to operate 'offshore' using servers in Asia and South America. Those who don't pretend to be 'offshore' pretend to be small ISPs themselves, claiming to their providers the spam is being sent not by them but by non-existent 'customers'. When caught, almost all use the age old tactic of lying to each ISP long enough to buy a few weeks more of spamming and when terminated simply move on to the next ISP already set up and waiting.

The ROKSO List

Known Spam Operation

[Alan Ralsky](#)[Albert Ahdoot and Alyx Sachs - Net Global Marketing](#)[Alex Zhardanovsky / Azoogole](#)[Alexey Panov - ckync.com](#)[Amadeo Belmonte / Data One Marketing / I Net Values Inc.](#)[Ameritech Advertising / Scott Ramaglia](#)[Amir Gans](#)[Andrew Amend / US Health Laboratories](#)[Andrew Westmoreland](#)[Andria Petito / Tranzact Media](#)[Angelo Tirico](#)[Anthony "Tony" M. Banks](#)[Australian Porn Mafia](#)[Batch1 / Adam Vitale / g00dfellas.com](#)[Bill Waggoner](#)[BlueRock Dove / Mohamed Hage](#)[Bonnie Dukarossa - Bullet9 Communications](#)[Boris Mizhen](#)[Brendan Battles / IMG Online / World-Services](#)[Brian David Westby / Married But Lonely](#)[Brian Fabian / Gregory Parsons](#)[Brian Haberstroh / Atriks](#)[Brian Kos / BK Ventures / Internet Promos](#)[Brian Kramer / Expedite Media Group](#)[Briceco, Inc. / Dubeau / Brice](#)[Bubba Catts](#)[Calvin Ho / Optin Global Inc.](#)[Charles Earle IV - World Mail Direct](#)[Charles F. Childs / Ultra Trim / MegaTrim / Grant Gold](#)[Chris Brown](#)[Chris Smith / rizler.com](#)[Creaghan A. Harry / Ultimate Health](#)[Current Mail / Merchant Central](#)[Cyberland Services / Previa Marketing / Daica](#)[Cyrunner / Ernesto Haberli aka Eduardo Warren](#)[Damon DeCrescenzo - Docdrugs](#)[Dan and Rosalee Young / JDR MEDIA](#)[Dana Jones - The Ballman](#)[Daniel Ivans / isolate.net](#)

Country

United States

United States

Canada

Russia

United States

United States

Israel

United States

United States

United States

United States

United States

Australia

United States

United States

Canada

United States

United States

United States

United States

Canada

United States

Canada

United States

ROKSO is a "3 Strikes" register. To be listed in ROKSO a spammer must first be terminated by a minimum of 3 ISPs for AUP violations. IP addresses under the control of ROKSO-listed spammers are automatically and preemptively listed in the Spamhaus Block List (SBL).

For qualified Law Enforcement Agencies Spamhaus provides a special version of this ROKSO database which gives access to records with evidence, logs and information on illegal activities of many of these gangs, too sensitive to publish here.

Daniel Khoshnood	United States
Daniel Lin	United States
Daniel Mankani	India
Danny Luna	United States
Dave Patton / lightspeedmarketing	United States
David Lambert - Aztec Internet	United States
Davis Wolfgang Hawke	United States
Dean Westbury	Philippines
DM GROUP / Robert Hicks	United States
Drew Auman / thebulkclub.com	United States
Eddie Davidson	United States
Eddy Marin - Oneroute	United States
Eduardo de Souza / hostsolutions.us / hostingsmart.biz	United States
Elegance Network	United States
Elmar Bruneniaks	Latvia
Elmed / Nikola Anastasov	United States
Email Experts / Email Solutions	United States
emailspidereasy.com	China
Erb Avore / IC Marketing	United States
Erhard Englhofer	Australia
Eric Reinertsen	United States
EvoClix / Larry Tasman / Greg Numark	United States
eXcuria - inkjet cartridge spammers	United States
Franpro / gtwinc.com / azmalink.net	United States
Fred Lusky and Scott Maslowe / Netbenders and Lakeshore Development	United States
FutureVision Communication / sncsi.net	United States
G-Force Marketing / MegaHits Promoter	United States
Gaven Stubberfield	United States
George Kokinos / Miles Marketing	United States
George Rand - Randbad	United States
Glen and Stacey McCausland	United States
Glen Hannifin	United States
Global Internic / NewTLDRRegistration.com	Canada
Gordon Lantz & Gretchen Aitken / emailoffer.net	United States
Greg Nowakowski + Chris Tivaldo / Racksource + Zacson	United States
Henry Perez	United States
hispeedmedia.com / adprosolutions.com	United States
Hong Chen / YonHen Internet Marketing Center	China
Howard Minsky / TheAdStop.com / ad360.com	United States
Husein Gandhi	India
IMG Direct / Steve Hardigree / Frank Bernal	United States
Ion Entertainment	United States
Ivo Ottavio Reali Camargo	Brazil
Jace Groves / Kevin Gaston	United States
James Borzilleri - Torpedomail	United States
Jared Dingwerth / X-press Marketing	United States
Jeffrey P Goldstein / Gregory Greenstein - emailhello.com / impulse marketing	United States
Jeffrey Peters - JTel / CPU Solutions	United States
JingJing Wang	China
Jody Smith - Power Web Enterprises	United States
John Cota / Great Impressions / Best Software Products	United States
John Grandinetti / Broadvision Group	United States

John Hites - "Steve Sorenson" / Advertising International	United States
John Molino / Atlas Data Systems	United States
Jon Atherton / Supabill	Australia
Jon Thau / Cyberworks	United States
Jonathan Beyer / Glamour Media / glamourservers.com	United States
Jonathan Cosie / MH Partners	United States
Joshua Baer	United States
Juan Garavaglia aka Super-Zonda	Argentina
Jumpstart Technology LLC	United States
Kan So / hkemailexpress	Hong Kong
Karam Jabri / Rapid Advertising	Canada
Kazz Asher / yz3.com / ashernet.net	United States
Kelly Joe Ellis / WebMark inc / Marketforce inc	United States
knllc	United States
Laura A. Betterly	United States
Leo Kuvayev / BadCow	Russia
Levon Gillespie / spamforum.biz	United States
Lin Hsien Ming / himailer.com, callin.net, yuya.com.tw	Taiwan
Lloyd Lapidus - revolution media	United States
Imihosting.com	United States
Magnum Enterprises / mediatrec.com	United States
MailTrain	United States
mailutilities/massmail / Alexander Gorlach	Russia
Matt Wilner	United States
Max Sutter / Petadoptions.com	United States
Melle Brothers	United States
Michael Levesque	United States
Michael Lindsay / iMedia Networks	United States
Michael Tiezzi / Elite Data Direct / elitedatadirect.net	United States
Mike Blaine	United States
Mike Van Essen / Global Web Promotions	Australia
Million Marketing/Money Matters - Kevin Devincenzi	United States
Mostafa Mansour	Canada
Neomill / Nick Ceriello	United States
NetSetGo/Everblur/Netrica	United States
OC3 Networks - Ilan Mishan	United States
omegalead.com	United States
Oromar Mollica Jr.	Brazil
Patrick English / Electronic List Company	United States
Paul Boes / boesconsulting.net	United States
Paul Mentis / Palmnet.com / RxMedical	United States
Pavka / Artofit	Russia
Penn Media / Shagmail	United States
Peter Decaro - bulkingpro.com	United States
Peter Francis-Macrae	United Kingdom
Phil Doroff / Five Elements, Inc	United States
Philip Adelberg / Interweb Hosting	United States
Quang Dangtran - Whoa Medical	United States
radisp.net / IQ Enterprises	United States
Robert Martino	United States
Robert Soloway - Newport Internet Marketing	United States
Robert Todino / RT Marketing	United States
Roberto Gonzalez	Costa Rica
Romania spam gang	Romania

Ron Millette / Rons Marketing / ronsonline.com	United States
Ronnie Scelson	United States
Rossman & Cole / Next Holdings Group	United States
Ruslan "Inkey" Hakimov / iNkus LTD	Russia
Ruslan Ibragimov / send-safe.com	Russia
Rusty Campbell - DesktopServer	United States
Ryan Champion / AMR Ventures	United States
Ryan Friesner - E-ListDirect / Ride Marketing	United States
Ryan Pitylak / Steve Goudreault / Mart Trotter	United States
Sajemarketing.com / project-x.com.ua / Edward Shcherbakov	United States
Sam AI - Bulk ISP Corp	United States
Sam Roland / Innovasion / FT International	United States
Scott Hirsch - edirect / naviant	United States
Scott Phillips / GSD Pinkbits Pbits	Australia
Scott Richter - OptInRealBig	United States
Scott Richter - Wholesalebandwidth	United States
Shay Tyler / MLeads.com	United States
Simon Wong - thedotnetwork.com	Canada
Stargate2000 / RW Management / Robert Wagner / Hector Sectzer	United States
Steven Worrell / Cybernerd	Costa Rica
SubscriberBASE	United States
Target Internet Services	United States
Thomas Cowles - Empire Towers	United States
Thomas Gallman - telysis.net / invisimail.net	United States
Tim Goyetche / Bulkerns.net / Bulkbarn.com	Canada
Tom King / Blue Pinstripes	United States
Tom Tsilionis / Perfect Telecom	United States
Topsites / Somnath Bharti / Madgen Solutions	India
Trafficmagnet	China
Traffix	United States
Tripac International Limited	Australia
Tristram Snyder / Yasmin Fortuny / Print Doctor, Inc.	United States
Tubul / Marcin Dworak	Poland
Vincent Chan / yoric.net	Hong Kong
VP-RX / herbal viagra / penis patch	United States
Wayne Mansfield	Australia
Webfinity/Dynamic Pipe	Canada
Whitcon / uswives	Canada
William Fuller AKA "Mr Bill"	United States
World Reach / Randy Jacobs / EMF / Scott Abadjian	United States
Xavier Ratelle - Lifesmile	Canada
Yambo Financials	Ukraine



Timothy J. Walton (State Bar No. 184292)
LAW OFFICES OF TIMOTHY WALTON
801 Woodside Road, Suite 11
Redwood City, CA 94061
Phone (650) 216-9800
Fax: (650) 618-8687

Daniel L. Balsam (State Bar No. 260423)
THE LAW OFFICES OF DANIEL BALSAM
3145 Geary Blvd. #225
San Francisco, CA 94118
Phone: (415) 276-3067
Fax: (415) 373-3783

Attorneys for Appellant/Plaintiff
Daniel L. Balsam

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION 3

DANIEL L. BALSAM,	)	Case No.:	A126680
)		
Appellant and Plaintiff,	)	[PROPOSED] ORDER	
	)	GRANTING APPELLANT'S	
v.	)	REQUEST FOR JUDICIAL	
	)	NOTICE TO SUPPLEMENT	
DSG DIRECT INC. <i>et al</i>,	)	RECORD	
)		
Defendants,)		
)		
TROPICINKS LLC <i>et al</i> ,)		
)		
Respondents and Real)		
Parties in Interest.	)	Appeal Filed:	Oct. 9, 2009

Having duly considered Appellant's Request for Judicial Notice,
IT IS HEREBY ORDERED:

1. That the Motion/Request for Judicial Notice as to DSG Direct Inc.'s Annual Report filed with the Florida Department of State on May 3, 2006:

[GRANTED] [DENIED]

2. That the Motion/Request for Judicial Notice as to DSG Direct Inc.'s Annual Report filed with the Florida Department of State on April 30, 2007:

[GRANTED] [DENIED]

3. That the Motion/Request for Judicial Notice as to Your-Info Inc.'s Annual Report filed with the Florida Department of State on May 3, 2006:

[GRANTED] [DENIED]

4. That the Motion/Request for Judicial Notice as to Your-Info Inc.'s Annual Report filed with the Florida Department of State on April 20, 2007:

[GRANTED] [DENIED]

5. That the Motion/Request for Judicial Notice as to the MSNBC article describing Eric Reinertsen's reputation and habit of spamming is:

[GRANTED] [DENIED]

6. That the Motion/Request for Judicial Notice as to the *Business Week* article describing Eric Reinertsen's reputation and habit of spamming is:

[GRANTED] [DENIED]

7. That the Motion/Request for Judicial Notice as to the ROKSO list describing Eric Reinertsen's reputation and habit of spamming is:
[GRANTED] [DENIED]

IT IS SO ORDERED.

Dated: _____

By: _____

Judge of the Court of Appeal

PROOF OF SERVICE AND DELIVERY

I, Timothy J. Walton, declare that:

I am at least 18 years of age and not a party to the above-entitled action. My business address is Law Offices of Timothy Walton, 801 Woodside Road, Suite 11, Redwood City, CA 94061.

I served the foregoing APPELLANT’S SECOND MOTION/ REQUEST FOR JUDICIAL NOTICE TO SUPPLEMENT RECORD, on March 24, 2010 by depositing a copy thereof in the United States mail in Redwood City, California, enclosed in a sealed envelope, with postage fully prepaid, addressed to the persons listed below:

Bennet Kelley
Internet Law Center
100 Wilshire Blvd., Suite 950
Santa Monica, CA 90401

I served a copy of the brief on the clerk of the Superior Court of California, County of San Francisco by U.S. mail on March 24, 2010.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 24th day of March, 2010 at Redwood City, California.

Timothy J. Walton