IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN W. FERRON	:	
Plaintiff,	:	
vs.	:	**Case No.**
E360Insight, LLC, *et al*.,	:	**Judge Sargus**
Defendants.	:	**Magistrate King**

ANSWER OF DEFENDANTS TO PLAINTIFF'S COMPLAINT

NOW COME DEFENDANTS, E360INSIGHT, LLC, AND DAVID LINHARDT, by and through counsel, and answer Plaintiff's complaint, as follows:

1. Defendants admit that John W. Ferron is a person with his principal place of business in Columbus, Ohio, but denies that Plaintiff is a "consumer" for purposes of this litigation.

2. Defendants admit that E360Insight, LLC is an Illinois limited liability company but deny the remaining allegations in paragraph 2 of Plaintiff's complaint.

3. Defendants admit the allegations set forth in paragraph 3 of Plaintiff's complaint.

4. Defendants deny the allegations set forth in paragraph 4 of Plaintiff's complaint.

5. Defendants admit the allegations set forth in paragraph 5 of Plaintiff's complaint.

6. Defendants deny the allegations set forth in paragraph 6 of Plaintiff's complaint.

7. Defendants are without information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 7 of Plaintiff's complaint, and therefore, deny same.

8. Defendants admit the allegations set forth in paragraph 8 of Plaintiff's complaint.

9. Defendants deny the allegations set forth in paragraph 9 of Plaintiff's complaint.

10. Defendants admit the allegations set forth in paragraph 10 of Plaintiff's complaint.

11. Defendants deny the allegations set forth in paragraph 11 of Plaintiff's complaint.

12. Defendants deny the allegations set forth in paragraph 12 of Plaintiff's complaint.

13. Defendants deny the allegations set forth in paragraph 13 of Plaintiff's complaint.

14. Defendants deny the allegations set forth in paragraph 14 of Plaintiff's complaint.

15. Defendants deny the allegations set forth in paragraph 15 of Plaintiff's complaint.

16. Defendants deny the allegations set forth in paragraph 16 of Plaintiff's complaint.

17. Defendants deny the allegations set forth in paragraph 17 of Plaintiff's complaint.

18. Defendants deny the allegations set forth in paragraph 18 of Plaintiff's complaint.

19. Defendants incorporate the preceding paragraphs as if fully restated herein.

20. Defendants deny the allegations set forth in paragraph 20 of Plaintiff's complaint.

21. Defendants deny the allegations set forth in paragraph 21 of Plaintiff's complaint.

22. Defendants deny the allegations set forth in paragraph 22 of Plaintiff's complaint.

23. Defendants deny the allegations set forth in paragraph 23 of Plaintiff's complaint.

24. Defendants incorporate the preceding paragraphs as if fully restated herein.

25. Defendants deny the allegations set forth in paragraph 25 of Plaintiff's complaint.

26. Defendants deny the allegations set forth in paragraph 26 of Plaintiff's complaint.

AFFIRMATIVE DEFENSES

27. Defendants incorporate the preceding paragraphs as if fully restated herein.

28. Plaintiff is not a consumer for purposes of the CSPA.

29. Defendants are exempt from application of the CSPA as a publisher or disseminator of electronic mail.

30. The Emails at issue were not made for purposes that are primarily personal, family or household.

31. There was no consumer transaction.

32. There was no consumer transaction with an individual.

33. The Electronic Mail Advertising Act, R.C. 2307.64(B) is preempted by the Controlling the Assault of Non-Solicited and Pornography Marketing Act (2003).

34. The emails at issue constitute mass marketing and are therefore, not solicitations.

35. :Neither Defendant is a supplier.

36. Defendants did not commit any alleged or deceptive act or practice.

37. Defendants are not “senders” as that term is defined by CAN-SPAM.

38. Plaintiff has failed to mitigate his damages.

39. Plaintiff has solicited the emails alleged to be received.

40. There is a pre-existing relationship between Plaintiff and the email advertisers.

41. Public policy bars multiple recoveries for the same act or practice.

42. Plaintiff cannot stack damages.

43. Plaintiff’s complaint fails to state a claim upon which relief may be granted.

44. Plaintiff’s claims are barred by the equitable doctrines of estoppel and unclean hands.

45. In any event, Plaintiff is not entitled to attorney’s fees as his is a pro se Plaintiff.

46. Defendants did not act knowingly.

47. Plaintiff’s claims are pre-empted by the dormant Commerce Cause.

48. Plaintiff's claims are barred by the Due Process Clause.

49. Plaintiff's claims are frivolous and in violation of Fed. R. Civ. Proc. 11 and Revised Code 2323.51.

50. Defendants reserve the right to add or supplement these affirmative defenses.

WHEREFORE, having fully answered Plaintiff's complaint, Defendants pray that this Court will dismiss Plaintiff's complaint, and award them costs and fees associated with defending this action.

Respectfully submitted,

SHUMAKER, LOOP & KENDRICK, LLP

/s/Karen S. Hockstad
Karen S. Hockstad (0061308)
41 South High Street, Suite 2400
Columbus, OH 43215
Telephone (614) 628-4427
Fax: (614) 463-1108
khockstad@slk-law.com
Lead Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing was served upon Lisa Wafer and Jessica Fallon, Esq., FERRON & ASSOCIATES, 580 North Fourth Street, Suite 450, Columbus, Ohio 43215 and Kevin Humphreys, 545 E. Town Street, Columbus, Ohio 43215 via the Court's electronic messaging system on October 14, 2008.

/s/Karen S. Hockstad
Karen S. Hockstad (0061308)