

1 LAW OFFICES OF JOHN L. FALLAT  
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3 BRIAN J. TRIPLETT (State Bar No. 233442)  
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5 San Rafael, CA 94901  
6 Telephone: (415) 457-3773  
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8 Attorney for Plaintiff  
9 Hypertouch, Inc.

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 HYPERTOUCHE, INC., a California  
13 corporation,  
14 Plaintiff,  
15 vs.  
16 KENNEDY-WESTERN UNIVERSITY, a  
17 Wyoming corporation, and DOES 1 through  
18 100, inclusive,  
19 Defendants.

Case No. C 04 5203 SI

**PLAINTIFF HYPERTOUCHE, INC.'S  
RESPONSE TO REQUEST FOR  
PRODUCTION OF DOCUMENTS  
FROM KENNEDY-WESTERN  
UNIVERSITY**

PROPOUNDING PARTY: Defendant, KENNEDY-WESTERN UNIVERSITY

RESPONDING PARTY: Plaintiff, HYPERTOUCHE, INC.

SET: One

It should be noted that this responding party has not fully completed its investigation of the facts relating to this case, has not fully completed its discovery in this action, and has not completed its preparation for trial. All the responses contained herein are based only upon such information which is presently available to and specifically known to this responding party and disclose only those contentions which presently occur to such responding party and relate only to those documents and things which presently occur to such responding party. It is anticipated that further discovery, independent investigation, legal research and analysis will supply additional facts, add meaning to known facts, as well

1 as establish entirely new factual conclusions and legal contentions, all of which may lead to substantial  
2 additions to, changes in, and variations from the responses herein set forth. The following responses are  
3 given without prejudice to responding party's right to produce evidence of any subsequently discovered  
4 document, writing, thing, fact or facts which this responding party may later recall or become aware of.  
5 Responding party accordingly reserves the right to change any and all responses herein as additional facts  
6 are ascertained, analyses are made, legal research is completed, additional documents, writings and things  
7 are found, and contentions are made. The responses contained herein are made in a good faith effort to  
8 supply as much factual information pertaining to the documents and things requested as is presently  
9 known, but should in no way prejudice the defendant with respect to any subsequently discovered  
10 documentation, writing, or thing.

11 **GENERAL OBJECTIONS**

12 Plaintiff's objections are made subject to, and without waiver of, any questions or objections as to  
13 the competency, relevancy, materiality, privileged, admissibility as evidence or for any other purpose, of  
14 any of the information referred to herein.

15 Plaintiff objects to each request that seeks information which is protected by the attorney-client  
16 privilege, the work product doctrine and/or the right to privacy under the California Constitution, Article I,  
17 Section I.

18 Without waiving said objections, plaintiff responds as follows:

19 **REQUEST NO. 1:** All documents supporting your contention that you suffered any injury in fact as a  
20 result of false advertising.

21 **RESPONSE TO REQUEST NO. 1:** Objection: Plaintiff has never contended it suffered any injury in fact  
22 as a result of false advertising. No documents will be produced.

23 **REQUEST NO. 2:** All documents supporting your contention that you lost money or property as a result of  
24 false advertising.

25 **RESPONSE TO REQUEST NO. 2:** None at this time. Plaintiff is pursuing damages that are liquidated  
26 and/or statutory under both Federal and California law.

27 **REQUEST NO. 3:** All documents supporting your contention that Kennedy-Western University initiated  
28 any message per 7702(9).

1 **RESPONSE TO REQUEST NO. 3:** Objection: Kennedy-Western University is already in possession of  
2 documents memorializing the agreements between Kennedy-Western University and Peak Advertising  
3 and/or BocaNetworks.com for the advertisement of Kennedy-Western University's services via a mass  
4 commercial electronic mail message marketing campaign, as well the documents memorializing the  
5 contracts which Peak Advertising made with third parties to transmit the commercial electronic mail  
6 messages in question. Please see enclosed Declaration of Steve Berns of Peak Advertising, with exhibits (9  
7 pages).

8 **REQUEST NO. 4:** All documents supporting your contention that you are a provider of internet access  
9 services per 7702(11).

10 **RESPONSE TO REQUEST NO. 4:** Objection: Overbroad, burdensome, and constitutes harassment.  
11 Without waiving said objections, please see enclosed domain name registration information for  
12 prontolabels.com and endonav.com (3 pages), demonstrating that the plaintiff is a provider of internet access  
13 services per 15 U.S.C. § 7702(11).

14 **REQUEST NO. 5:** All documents supporting your contention that Kennedy-Western University procured  
15 any message per 7702(12), as specifically defined in 7706(g).

16 **RESPONSE TO REQUEST NO. 5:** Objection: Compound, vague, and ambiguous. Without waiving  
17 said objections, please see Response to Request No. 3, above.

18 **REQUEST NO. 6:** All documents supporting your contention that that [sic] Kennedy-Western University  
19 was a sender of any message per 7702(16)(A).

20 **RESPONSE TO REQUEST NO. 6:** Please Response to Request No. 3, above. In addition, please see  
21 CD-ROM sent under separate cover containing all commercial electronic mail messages received by  
22 plaintiff that advertise the services of Kennedy-Western University.

23 **REQUEST NO. 7:** All documents supporting your contention that Kennedy-Western University initiated  
24 any "false or misleading" message per 7704(a).

25 **RESPONSE TO REQUEST NO. 7:** See Response to Request No. 3, above. In addition, please see CD-  
26 ROM sent under separate cover containing all commercial electronic mail messages received by plaintiff  
27 that advertise the services of Kennedy-Western University.

1 **REQUEST NO. 8:** All documents supporting your contention that Kennedy-Western University initiated  
2 or assisted with any "aggravated violation" message per 7704(b).

3 **RESPONSE TO REQUEST NO. 8:** See Response to Request No. 6, above.

4 **REQUEST NO. 9:** All documents supporting your contention that Kennedy Western University took no  
5 reasonable action to prevent transmission of violative messages when it knew of them per 7705(a).

6 **RESPONSE TO REQUEST NO. 9:** Objection: Plaintiff never contended in its complaint that Kennedy-  
7 Western University took no reasonable action to prevent transmission of violative messages when it knew of  
8 them per 15 U.S.C. § 7705(a). No documents will be produced.

9 **REQUEST NO. 10:** All documents supporting your contention that Kennedy Western University is not  
10 entitled to the avoidance of liability per 7705(b)(1).

11 **RESPONSE TO REQUEST NO. 10:** Objection: Plaintiff never contended in its complaint that Kennedy-  
12 Western University is not entitled to the avoidance of liability per 15 U.S.C. § 7705(b)(1). No documents  
13 will be produced.

14 **REQUEST NO. 11:** All documents supporting your contention that you are a provider of Internet access  
15 services per 7706(g).

16 **RESPONSE TO REQUEST NO. 11:** See Response to Request No. 4, above.

17 **REQUEST NO. 12:** All documents supporting your contention that you suffered any damages per  
18 7706(g)(3).

19 **RESPONSE TO REQUEST NO. 12:** Please see CD-ROM sent under separate cover containing all  
20 commercial electronic mail messages received by plaintiff that advertise the services of Kennedy-Western  
21 University.

22 **REQUEST NO. 13:** All documents supporting your contention that you are entitled to aggravated damages  
23 per 7706(g)(3)(c).

24 **RESPONSE TO REQUEST NO. 13:** See response to Request No. 12, above.

25 **REQUEST NO. 14:** All documents supporting your contention that Kennedy Western University is not  
26 entitled to a reduction of damages per 7706(g)(3)(D).

1 **RESPONSE TO REQUEST NO. 14:** Objection: Plaintiff never contended in its complaint that Kennedy-  
2 Western University is not entitled to a reduction of damages per 15 U.S.C. § 7706(g)(3)(D). No documents  
3 will be produced.

4 **REQUEST NO. 15:** All documents supporting your contention that Kennedy Western University was a  
5 sender of any message per B&P section 17529.5.

6 **RESPONSE TO REQUEST NO. 15:** Objection: Vague and ambiguous as to the meaning of "sender."  
7 Without waiving said objection, please see Response to Request No. 3, above.

8 **REQUEST NO. 16:** All documents supporting your contention that you suffered any damages per B&P  
9 section 17529.5(b)(1).

10 **RESPONSE TO REQUEST NO. 16:** Please see Response to Request No. 12, above.

11 **REQUEST NO. 17:** All documents supporting your contention that Kennedy Western University is not  
12 entitled to a reduction of damages per B&P section 17529.5(b)(2).

13 **RESPONSE TO REQUEST NO. 17:** Objection: Plaintiff never contended in its complaint that Kennedy-  
14 Western University is not entitled to a reduction of damages per Business & Professions Code §  
15 17529.5(b)(2). No documents will be produced.

16 **REQUEST NO. 18:** All documents supporting your contention in paragraph 10 of the complaint that you  
17 received electronic mail from Kennedy-Western University.

18 **RESPONSE TO REQUEST NO. 18:** Please see CD-ROM sent under separate cover containing all  
19 commercial electronic mail messages received by plaintiff that advertise the services of Kennedy-Western  
20 University.

21 **REQUEST NO. 19:** All documents supporting your contention in paragraph 11 of the complaint that  
22 Kennedy-Western University sent electronic mail in willful and knowing violation of the CAN-SPAM Act.

23 **RESPONSE TO REQUEST NO. 19:** See Response to Request No. 6, above.

24 **REQUEST NO. 20:** All documents supporting your contention in paragraphs 12 through 16 and 24 of the  
25 complaint that Kennedy-Western University sent any of the electronic mails alleged in those paragraphs.

26 **RESPONSE TO REQUEST NO. 20:** Objection: Compound, vague, and ambiguous. Without waiving  
27 said objections, please see Response to Request No. 6, above.

28 **REQUEST NO. 21:** Each complaint filed by you against alleged spammers (other than this complaint).

1 **RESPONSE TO REQUEST NO. 21:** Objection: Vague, ambiguous, overbroad, burdensome, constitutes  
2 harassment and an invasion of privacy, irrelevant, and not likely to lead to the discovery of admissible  
3 evidence. No documents will be produced.

4 **REQUEST NO. 22:** Each demand letter sent by you to alleged spammers.

5 **RESPONSE TO REQUEST NO. 22:** Objection: Vague, ambiguous, overbroad, burdensome, constitutes  
6 harassment and an invasion of privacy, irrelevant, and not likely to lead to the discovery of admissible  
7 evidence. No documents will be produced.

8 **REQUEST NO. 23:** Each response to your complaint or demand letter from alleged spammers.

9 **RESPONSE TO REQUEST NO. 23:** Objection: Vague, ambiguous, overbroad, burdensome, constitutes  
10 harassment and an invasion of privacy, irrelevant, and not likely to lead to the discovery of admissible  
11 evidence. No documents will be produced.

12 **REQUEST NO. 24:** Documents sufficient to show your income per year from persons who you believed to  
13 be spammers.

14 **RESPONSE TO REQUEST NO. 24:** Objection: Vague, ambiguous, overbroad, burdensome, constitutes  
15 harassment and an invasion of privacy, irrelevant, and not likely to lead to the discovery of admissible  
16 evidence. No documents will be produced.

17 **REQUEST NO. 25:** Documents sufficient to show the names and addresses of alleged spammers who have  
18 paid you any consideration.

19 **RESPONSE TO REQUEST NO. 25:** Objection: Vague, ambiguous, overbroad, burdensome, constitutes  
20 harassment and an invasion of privacy, irrelevant, and not likely to lead to the discovery of admissible  
21 evidence. No documents will be produced.

22 **REQUEST NO. 26:** Settlement agreements between you and any alleged spammer.

23 **RESPONSE TO REQUEST NO. 26:** Objection: Vague, ambiguous, overbroad, burdensome, constitutes  
24 harassment and an invasion of privacy, irrelevant, and not likely to lead to the discovery of admissible  
25 evidence. No documents will be produced.

26 **REQUEST NO. 27:** Documents sufficient to show your income per year from sources other than payments  
27 from alleged spammers.

1 **RESPONSE TO REQUEST NO. 27:** Objection: Vague, ambiguous, overbroad, burdensome, constitutes  
2 harassment and an invasion of privacy, irrelevant, and not likely to lead to the discovery of admissible  
3 evidence. No documents will be produced.

4 **REQUEST NO. 28:** Each electronic mail that you contend is the responsibility of Kennedy-Western  
5 University.

6 **RESPONSE TO REQUEST NO. 28:** Please see CD-ROM sent under separate cover containing all  
7 commercial electronic mail messages received by plaintiff that advertise the services of Kennedy-Western  
8 University.

9 **REQUEST NO. 29:** The "information" described in your Rule 26 response at page 3, subsection (B)(a).

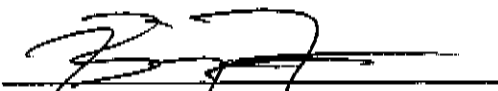
10 **RESPONSE TO REQUEST NO. 29:** Please see CD-ROM sent under separate cover containing all  
11 commercial electronic mail messages received by plaintiff that advertise the services of Kennedy-Western  
12 University.

13 **REQUEST NO. 30:** The "server logs and/or off-site backups" described in your Rule 26 response at page  
14 3, subsection (B)(b).

15 **RESPONSE TO REQUEST NO. 30:** Objection: Vague, ambiguous, overbroad, burdensome, and  
16 constitutes an invasion of privacy. No documents will be produced.

17  
18 DATED: 4/6/05

LAW OFFICES OF JOHN L. FALLAT

19  
20   
21 BRIAN J. TRIPLETT  
22 Attorney for Plaintiff,  
23 HYPERTOUCHE, INC.  
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JEFFER, MANGELS, BUTLER & MARMARO LLP  
JEFFREY K. RIFFER (Bar No. 87016)  
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Seventh Floor  
Los Angeles, CA 90067-4308  
Telephone: (310) 203-8080  
Facsimile: (310) 203-0567

Attorneys for Defendant  
PEAK ADVERTISING, LLC

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

HYPERTOUCH, INC., a California )  
corporation, )

Plaintiff, )

v. )

KENNEDY-WESTERN UNIVERSITY, a )  
Wyoming corporation, and DOES )  
1 through 100, inclusive, )

Defendants. )

CASE NO. C 04- 5203 SI  
DECLARATION OF STEVE BERNS

1 DECLARATION OF STEVE BERNS

2  
3 I, Steve Berns, declare as follows:

4  
5 1. I know the following facts of my own personal  
6 knowledge and if called to testify, could and would so testify.

7  
8 2. Peak Advertising, LLC has been in business since  
9 March of 2004. I founded the company along with Mr. Phil  
10 Rosenthal. Mr. Rosenthal and I have collectively 8 years  
11 experience in the online advertising industry.

12  
13 3. Our philosophy is, and has always been, to provide  
14 the best possible service to our advertiser clients while  
15 complying with the law. It is not in our best interest -- or our  
16 clients' -- to continue to use a provider that is receiving  
17 complaints.

18  
19 4. In particular, we do business only with legitimate  
20 vendors that are compliant with CAN-SPAM and, before dealing with  
21 a vendor, take reasonable steps to determine that the vendor is  
22 compliant with such law.

23  
24 5. Over the years, we have contracted for CAN-SPAM  
25 compliant emails with many different email providers. In the  
26 rare event of a complaint, as is evident in the email chains  
27 provided, we take immediate action to suspend the email provider  
28 (which we did here) and request the opt-in information for the

1 complainant.

2

3 6. Peak Advertising's work for Kennedy-Western  
4 University ("KWU") consisted solely as a media buyer for KWU's  
5 lead generation campaigns; Peak Advertising did not send any  
6 emails to potential customers of KWU. A true and correct copy of  
7 Peak Advertising's contract with KWU is attached hereto as  
8 Exhibit A. Peak Advertising provided services to KWU for six  
9 months; Mr. Rosenthal and I provided services to KWU for almost 4  
10 years at our prior company.

11

12 7. Peak Advertising contracted Contour Media Group  
13 ("CMG") as an email vendor for the KWU campaign based on the  
14 following several reasons:

15

16 It had used CMG on several occasions for other  
17 campaigns in the past (initially over a year ago) and did not  
18 have any issues with their email lists and all of those prior  
19 campaigns were CAN-SPAM compliant.

20

21 It talked with CMG prior to contracting them for  
22 the KWU campaign and CMG confirmed that all of its email lists  
23 were CAN-SPAM compliant.

24

25 Its investigation of CMG did not uncover any  
26 negative information.

27

28 CMG was listed as an opt-in email provider on such

1 directories as EmailResults.com, a known industry resource for  
2 finding opt-in email lists and is advertised to the entire  
3 internet advertising community.

4  
5 CMG's websites stated that their email lists are  
6 opt-in, compliant with CAN-SPAM and they would never spam.

7  
8 8. The Peak Advertising-CMG contract (called  
9 Insertion Order) stated "If conducting email campaigns,  
10 publisher [CMG] must be 100% compliant with all state and Federal  
11 spam laws including, but not limited to, the CAN- SPAM Act of  
12 2003." A true and correct of that contract is attached hereto as  
13 Exhibit B.

14  
15 9. The email message that Peak Advertising approved  
16 for delivery from CMG for KWU was compliant with CAN-SPAM. The  
17 email had a legitimate subject line (not misleading), legitimate  
18 advertiser message, working opt-out links for both advertiser and  
19 email list provider, physical addresses for advertiser and email  
20 list provider.

21  
22 10. Unfortunately, CMG sent a different email message.

23  
24 11. Peak Advertising received Hypertouch's email  
25 complaint from KWU. It then researched the email to determine  
26 which vendor may have sent it. At first Peak Advertising did not  
27 think the email was from its vendors because Peak Advertising had  
28 not approved that email. It was also difficult to determine the

1 email's origin because Hypertouch did not send active links or an  
2 email address that Peak Advertising could use to track down the  
3 vendor.

4  
5 12. Peak Advertising noticed that in the Bargain  
6 Warrior email there was an identifier in the URL, the number,  
7 10190. It then went back to all email vendors that it used in  
8 the month in question. It discovered an approved CAN-SPAM  
9 compliant email that had the same identifier in the URL. That  
10 email was from CMG.

11  
12 13. Upon further research into the Bargain Warrior  
13 domain, Peak Advertising found that the domain (true-values.com)  
14 in the URL used by CMG was owned by the same people that own  
15 Bargain Warrior.

16  
17 14. Peak Advertising immediately suspended the email  
18 campaign with CMG. It emailed CMG, requested that the user be  
19 removed from the list and we also requested the opt-in time,  
20 date, and the IP address of the user in question.

21  
22 15. CMG never responded.

23  
24 16. Peak Advertising has never used CMG again.

25  
26 17. Peak Advertising never had an ownership or  
27 economic interest in KWU or CMG.

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18. Peak Advertising never: (a) had "actual knowledge" that goods, products, property or services are promoted in a commercial electronic mail message that violates section 5(a)(1); and (b) received, or expected to receive, an economic benefit from such promotion. (Peak Advertising was a vendor for KWU; KWU received an economic benefit from the promotion.)

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on the \_\_\_ day of March, 2005, at Los Angeles, California.

  
STEVE BERNS









**?SEARCH WHOIS**

- ? Home
- ? Register Domains
- ? Transfer Domains
- ? Renew Domains
- ? Servicezone
- ? Price list
- ? Terms & Conditions
- ? Reseller
- Support/Contact
- FAQ/Help
- .EU Pre-Booking

**?REGISTER YOURSELF**

**?LOGIN EMAIL**

**?LOGIN PASSWORD**

[forgot password? click here](#)

DOMAIN  
Registrar:  
Status:  
Handle:

**Whols-output**

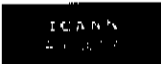
prontolabels.com  
JOKER.COM  
lock  
301503

Owner

Name:  
Organization:  
Email:  
Address:  
Postalcode/City:  
State:  
Country:  
Administrative contact:  
Technical contact:  
Billing contact:  
Nameserver:

Jullenne Correa  
Pronto Labels  
cortro@mindspring.com  
302 Rock Creek Drive  
29605 Greenville  
SC  
US  
cortro@mindspring.com#0  
cortro@mindspring.com#0  
cortro@mindspring.com#0  
dns1.hypertouch.com  
dns2.hypertouch.com  
dns3.hypertouch.com  
dns4.hypertouch.com

created by JORE-1: 2001-10-05 23:31:19  
modified by JORE-1: 2005-03-01 17:30:21  
db-updated: 2005-04-01 09:51:52  
expires: 2007-10-05 17:31:10



Home

- Register a Domain
- Renew a Domain
- Multiple Registrations
- Multilingual Registrations
- Whois Search
- FAQ

Registrar Transfer  
FAQ

Member Login  
Ownership Change  
Disputed Domains - UDRP  
FAQ

Affiliate Login  
Affiliate Sign-Up  
Why Join?  
FAQ

Dispute Policy  
Privacy Statement  
Terms of Service

About Us  
Press Releasees  
Advertising  
Employment  
Contact Us

### ItsYourDomain Whois Lookup

Password:

Password:

Domain:

The Data in our WHOIS database is provided by us for information purposes, and to assist persons in obtaining information about or related to a domain name registration record. We do not guarantee its accuracy. By submitting a WHOIS query, you agree that you will use this Data only for lawful purposes and that, under no circumstances will you use this Data to:

- (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via e-mail (spam); or
- (2) enable high volume, automated, electronic processes that apply to us, our systems, or our customers.

We reserve the right to modify these terms at any time. By submitting this query, you agree to abide by this policy.

Domain: endonav.com

**Registrant**  
 Alfred Chin  
 Aprisa Development  
 alfred\_chin@hotmail.com  
 5901 Broadway #16  
 Oakland, CA 94618 US  
 +1.5106531032

**Administrative**  
 Alfred Chin  
 Aprisa Development  
 alfred\_chin@hotmail.com  
 5901 Broadway #16  
 Oakland, CA 94618 US  
 +1.5106531032

**Billing**  
 Alfred Chin  
 Aprisa Development  
 alfred\_chin@hotmail.com  
 5901 Broadway #16  
 Oakland, CA 94618 US  
 +1.5106531032

**Technical**  
 Alfred Chin  
 Aprisa Development  
 alfred\_chin@hotmail.com  
 5901 Broadway #16  
 Oakland, CA 94618 US  
 +1.5106531032

Record created on April 30, 2003  
 Record last updated on February 24, 2005  
 Record expires on April 30, 2005

**Domain Name Servers:**  
DNS1.HYPERTOUCHE.COM  
DNS4.HYPERTOUCHE.COM  
DNS3.HYPERTOUCHE.COM

If you have any questions, please check the [FAQ](#) file first.

If you require further assistance, please email [Contact ItsYourDomain](#)

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[Privacy](#) - [Terms of Service](#)  
All rights reserved.

VERIFICATION

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( ) I am a party to this action. I have read the attached documents, i.e. \_\_\_\_\_  
and the same is true of my own knowledge, except as to the matters that are stated therein upon my information and belief, and as to those matters I believe them to be true.


(X) I am an officer, director or managing agent of the party corporation and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the attached documents, i.e. Plaintiff Hypertouch, Inc.'s Responses to Request for Production of Documents from Kennedy-Western University, Set No. One and know the contents thereof; I am informed and believe and on that ground allege that the matters therein stated are true.

( ) I am one of the attorneys for the party(ies) named in the attached document(s); said party(ies) is absent from the County of Marin, California, where I have my office, and I make this verification for and on behalf of party(ies) for that reason; I have read the attached document(s), i.e. \_\_\_\_\_  
and know the contents thereof; I am informed and believe and on that ground allege that the matters stated therein are true.

( ) I am one of the attorneys for the party(ies) named in the attached document(s), i.e. \_\_\_\_\_  
The facts alleged in said document(s) are within my own knowledge, and I make this verification for that reason; the facts therein stated are true of my own knowledge, except as to those matters that are stated therein upon my information and belief, and as to those matters I believe them to be true.

( ) I am one of the attorneys for the party corporation(s) named in the attached document(s), i.e. \_\_\_\_\_  
said corporation has designated me as its agent for the purpose of serving and verifying answers to interrogatories on its behalf, by authority granted in writing, and I make this verification for that reason; I have read the attached document(s), and know the contents thereof; I am informed and believe and on that ground allege that the matters therein stated are true.

Executed this 6 day of April, 2005 at Pal. Alto. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

By:   
JOE WAGNER

**PROOF OF SERVICE BY MAIL**

I, JENNIFER M. BEARD, declare that I am not a party to this action, am over the age of 18 years, maintain a business address at 523 Fourth Street, Suite 210, San Rafael, California 94901, and that on the date shown below, I served the documents listed herein on the persons listed herein by placing true copies of said documents in sealed envelopes and depositing said envelopes in the United States mail at San Rafael, California, with First-Class postage prepaid, directed to said persons at the addresses below.

**DOCUMENTS SERVED:**


- **PLAINTIFF HYPERTOUCHE, INC.'S RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS FROM KENNEDY-WESTERN UNIVERSITY, SET ONE**

**SERVED UPON:**

Cynthia Woollacott, Esq.  
Woollacott Jannol LLP  
10350 Santa Monica Blvd., Suite 350  
Los Angeles, CA 90025-5075

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this proof of service was executed on the date stated below, at San Rafael, California.

DATED: *4/6/05*

  
JENNIFER M. BEARD