

LAW OFFICES OF JOHN L. FALLAT
JOHN L. FALLAT (State Bar No. 114842)
EDWIN B. McLEAN (State Bar No. 144261)
523 Fourth Street, Suite 210
San Rafael, CA 94901-3349
Telephone: (415) 457-3773
Facsimile: (415) 457-2667

Attorneys for Plaintiff Hypertouch, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HYPERTOUCHE, INC., a California corporation,

Plaintiff,

vs.

KENNEDY-WESTERN UNIVERSITY,

Defendant.

Case No. C 045203 SI

**DECLARATION OF JOHN L. FALLAT
IN SUPPORT OF RESPONSE AND
OPPOSITION TO MOTION FOR
ORDERS OVERRULING
OBJECTIONS TO PRODUCTION OF
DOCUMENTS**

**Date: August 12, 2005
Time: 9:00 a.m.
Dept. 10**

I, John L. Fallat, declare:

1. I am an attorney at law, licensed to practice before all courts of the State of California, and am counsel of record for Plaintiff. I make this Declaration from my own personal knowledge, except as to matters stated on information and belief and as to those matters I believe to be true. If called upon as a witness, I would competently testify as to the truth of the matters herein stated.

2. Together with my associate, Brian J. Triplett, Esq., I have been actively involved in the prosecution of this case.

3. I am familiar with the document request made by defendant in this litigation.

**DECLARATION OF JOHN L. FALLAT
IN SUPPORT OF RESPONSE AND OPPOSITION
TO MOTION FOR ORDER OVERRULING OBJECTIONS
TO PRODUCTION OF DOCUMENTS**

1 4. Category number twenty-one of the document request asks for all complaints filed by plaintiff
2 against spammers.

3 5. Category number twenty-two of the document request asks for all correspondence by plaintiff
4 to spammers.

5 6. Category number twenty-three of the document request asks for all responses to complaints or
6 demands by plaintiff against spammers.

7 7. Category number twenty-four of the document request asks for documents reflecting income
8 from spammers “per year.” It is unknown to Mr. Triplett or me what years are intended.

9 8. Category number twenty-five of the document request asks for all settlement agreements with
10 spammers.

11 9. Category number twenty-six of the document request asks for all responses to complaints or
12 demands by plaintiff against spammers.

13 10. Category number twenty-seven of the document request asks for all responses to complaints or
14 demands by plaintiff against spammers.

15 11. Mr. Triplett and I are unclear as to what years are intended in requests nos. 24 and 27.

16 12. Mr. Triplett and I are unclear as to what are “documents sufficient” and that term was used in
17 requests nos. 24, 25 and 27.

18 13. As an experienced litigator, I am aware that indiscriminate disclosure of case documents such
19 as generic complaints, correspondence and demand letters, responses thereto, documents that identify
20 parties or their addresses, settlement agreements, particularly settlement agreements with confidentiality
21 provisions, and documents that show income and sources, can be detrimental to such cases, and in the case
22 at bar.

23 14. Further, I am aware that blanket discovery of case documents such as generic complaints,
24 correspondence and demand letters, responses thereto, documents that identify parties or their addresses,
25 settlement agreements, particularly settlement agreements with confidentiality provisions, and particularly
26 documents that show income and sources, invade the privacy of the plaintiff.

27 **DECLARATION OF JOHN L. FALLAT**
28 **IN SUPPORT OF RESPONSE AND OPPOSITION**
TO MOTION FOR ORDER OVERRULING OBJECTIONS
TO PRODUCTION OF DOCUMENTS

1 15. Plaintiff is a closely held corporation.

2 16. Plaintiff's shareholders can therefore be direct victims of this invasion of privacy when
3 discovery calls for disclosure of case documents such as generic complaints, correspondence and demand
4 letters, responses thereto, documents that identify parties or their addresses, settlement agreements,
5 particularly settlement agreements with confidentiality provisions, and most particularly documents that
6 show income and sources.

7 17. In response to defendant's production requests (first and second) plaintiff has already provided
8 documents sufficient to show that Hypertouch is an Internet access service (please see attached Exhibit A).

9 18. In communication with defense counsel, she has never been able to explain how the discovery
10 sought in the request for production would potentially disconfirm plaintiff's status as an Internet access
11 service. Issues such as litigation and income sources all would go to an Internet access service as the Act
12 contemplates that they would be the entity that would be bringing the action. In the absence of a valid,
13 logical explanation, Mr. Triplett and I are convinced that discovery for such purpose is pretextual.

14 19. Mr. Triplett and I believe that given the pretextual nature of the production requests, the
15 requests going to litigation and the income sources of the principal of Hypertouch are, at best, an attempt to
16 harass and intimidate the plaintiff, and, at worst, an attempt to use discovery in this action to identify and
17 obtain additional spammer's lists.

18 Executed July____, 2005, at San Rafael, California. I declare under penalty of perjury under the
19 laws of the State of California that the foregoing is true and correct.
20

21
22 _____
JOHN L. FALLAT
23
24
25
26

27 **DECLARATION OF JOHN L. FALLAT**
28 **IN SUPPORT OF RESPONSE AND OPPOSITION**
TO MOTION FOR ORDER OVERRULING OBJECTIONS
TO PRODUCTION OF DOCUMENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28