

The Honorable James L. Robart

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

BENNETT HASELTON, an individual;
PEACEFIRE, INC., a Washington
Corporation,

Plaintiffs,

v.

VALUECLICK, INC., a California
corporation; JOHN DOES, I-XX,

Defendants.

NO. 2:07-cv-00387-JLR

VALUECLICK, INC.'S ANSWER AND
AFFIRMATIVE DEFENSES

Defendant VALUECLICK, INC. ("ValueClick"), for its answer to plaintiffs' Complaint for Damages (the "Complaint") [dkt. no. 1], alleges as follows:

I. ANSWER

ANSWER TO SECTION I: PARTIES

1.1 In answer to the averments contained in ¶ 1.1 of the Complaint, ValueClick states that it is without knowledge or information sufficient to form a belief as to Bennett Haselton's residence, his ownership of personal e-mail accounts, or the state of registration of e-mail accounts Mr. Haselton purportedly owns. Notwithstanding the foregoing, and in further answer to the averments in ¶ 1.1 of the Complaint, ValueClick denies that Mr. Haselton is himself an interactive computer service or an internet access services, as those

1 terms are defined by the pertinent statutes in this matter. To the extent not already answered
2 by the foregoing, ValueClick denies all remaining averments in ¶ 1.1 of the Complaint.

3 1.2 In answer to the averments contained in ¶ 1.2 of the Complaint, ValueClick
4 states that it is without knowledge or information sufficient to form a belief as to the truth or
5 falsity of the averments contained therein. Accordingly, ValueClick denies the averments in
6 ¶ 1.2 of the Complaint.

7 1.3 Paragraph 1.3 of the Complaint does not contain any averments to which an
8 answer is required.

9 1.4 The averments contained in ¶ 1.4 are hopelessly vague and overbroad.
10 ValueClick denies the averments in ¶ 1.4, except to the extent otherwise admitted below.

11 1.5 In further answer to Section I of the Complaint, ValueClick notes there are no
12 averments whatsoever regarding ValueClick or its business.

13 ANSWER TO SECTION II: JURISDICTION

14 2.1 In answer to the averments contained in ¶ 2.1 of the Complaint, ValueClick is
15 without knowledge or information sufficient to form a belief as to the truth or falsity of
16 plaintiffs' claims that "Plaintiff [sic] and Defendants are residents of different states." For
17 starters, by use of the plural Defendants, plaintiffs appear to be including the various John
18 Does. Without information concerning those unidentified parties, neither ValueClick nor
19 anyone can verify the accuracy of plaintiffs' averment. With respect to all other averments
20 contained in ¶ 2.1 of the Complaint, ValueClick denies those averments and expressly
21 disputes that it committed "unlawful actions" in any state.

22 2.2 ValueClick denies the averments contained in ¶ 2.2 of the Complaint.

23 2.3 In answer to the averments contained in ¶ 2.3 of the Complaint, ValueClick
24 admits this Court has original jurisdiction over causes of action brought under the CAN-
25 SPAM Act, but denies the purported basis for jurisdiction stated in ¶ 2.3 of the Complaint.

26 2.4 The statements contained in ¶ 2.4 of the Complaint are not averments to

1 which an answer is required. Plaintiffs' causes of action are what they are. ValueClick
2 denies having violated any state or federal statute that forms the basis of plaintiffs' claims.

3 2.5 The statements contained in ¶ 2.5 of the Complaint are conclusions of law to
4 which no answer is required. Notwithstanding that, ValueClick admits this Court has
5 original jurisdiction to hear this matter.

6 ANSWER TO SECTION III: GENERAL ALLEGATIONS

7 3.1 ValueClick is without knowledge or information sufficient to form a belief as
8 to the truth or falsity of the averments contained in ¶ 3.1 of the Complaint and therefore
9 denies the same.

10 3.2 ValueClick denies the averments contained in ¶ 3.2 of the Complaint.

11 3.3 ValueClick is without knowledge or information sufficient to form a belief as
12 to the truth or falsity of the averments contained in ¶ 3.3 of the Complaint and therefore
13 denies the same.

14 3.4 In answer to the averments contained in ¶ 3.4 of the Complaint, ValueClick is
15 without knowledge or information sufficient to form a belief as to the truth or falsity of
16 whether and to what extent plaintiff Haselton purportedly makes use of services provided by
17 peacefire.org, but ValueClick expressly denies that peacefire.org is an interactive computer
18 services.

19 3.5 The averments contained in ¶ 3.5 of the Complaint are unintelligible as
20 ValueClick cannot decipher what domains plaintiffs are referring to other than the single
21 domain: peacefire.org. In any event, ValueClick denies the averments that information
22 regarding a particular e-mail user's state of registration "was and is available upon request."

23 3.6 In answer to the averments contained in ¶ 3.6 of the Complaint, ValueClick
24 admits only that its subsidiaries and/or publishers send e-mails to persons who have
25 affirmatively indicated their desire to receive those e-mails. ValueClick is without
26 knowledge or information, at this point, as to whether e-mails were directed to any of the

1 identified recipient addresses after obtaining the consent of the user. ValueClick denies,
2 however, the existence of an interactive computer service or the sending of e-mails to any
3 account with having first obtained consent of the user.

4 3.7 The averments contained in ¶ 3.7 of the Complaint are unintelligible for
5 various reasons. First, ValueClick does not know what domains plaintiffs are referring to
6 beyond the single domain identified: peacefire.org. Second, ValueClick has no idea who
7 “Plaintiff Abbey’s” is in the context of this lawsuit and suspects it is a carryover from one of
8 the many form complaints filed in electronic mail strike suits. ValueClick denies all
9 averments in ¶ 3.7 of the Complaint that a particular e-mail user’s state of registration “was
10 and is available upon request.”

11 3.8 The averments contained in ¶ 3.8 of the Complaint are unintelligible with
12 respect to plaintiffs’ reference to “domains” beyond the single identified domain:
13 peacefire.org. Notwithstanding the foregoing, ValueClick is without knowledge or
14 information sufficient to form a belief as to the truth or falsity of whether plaintiffs received
15 e-mails at the single identified domain and therefore denies the same.

16 3.9 The averments contained in ¶ 3.9 of the Complaint are unintelligible with
17 respect to plaintiffs’ reference to “domains” beyond the single identified domain:
18 peacefire.org. Notwithstanding the foregoing, ValueClick is without knowledge or
19 information sufficient to form a belief as to the truth or falsity of whether plaintiffs received
20 e-mails at the single identified domain or on the single individual e-mail account identified:
21 bhas@speakeasy.net. Accordingly, ValueClick denies the averments in ¶ 3.9.

22 3.10 ValueClick denies the averments in ¶ 3.10 of the Complaint, to the extent
23 those averments are intended to relate to e-mails purportedly transmitted by ValueClick.

24 3.11 ValueClick denies the averments contained in ¶ 3.11 of the Complaint.

25 3.12 In answer to the averments contained in ¶ 3.12, ValueClick admits only that
26 its subsidiaries and/or publishers send e-mails to persons who have affirmatively indicated

1 their desire to receive those e-mails. ValueClick is without knowledge or information, at this
2 point, as to whether e-mails were directed to any of the identified recipient addresses after
3 obtaining the consent of the user. ValueClick denies having initiated the transmission of any
4 e-mail in violation of state or federal law or having conspired with others to send any e-mail
5 in violation of state or federal law.

6 3.13 ValueClick denies the averments contained in ¶ 3.13.

7 ANSWER TO SECTION IV: FIRST CAUSE OF ACTION (CAN-SPAM ACT)

8 ValueClick incorporates its answers from ¶ 1.1 through 3.13, above, as though fully
9 set forth herein.

10 4.1 ValueClick denies the averments contained in ¶ 4.1 of the Complaint.

11 4.1.1 ValueClick denies the averments contained in ¶ 4.1.1 of the Complaint.

12 ANSWER TO SECTION V: SECOND CAUSE OF ACTION (CEMA)

13 ValueClick incorporates its answers from ¶ 1.1 through 3.13, above, as though fully
14 set forth herein.

15 4.2 ValueClick denies the averments contained in ¶ 4.2 of the Complaint.

16 ANSWER TO SECTION VI: THIRD CAUSE OF ACTION (CPA)

17 4.3 ValueClick denies the averments contained in ¶ 4.3 of the Complaint.

18 5. In further answer to the averments in the Complaint, ValueClick states that
19 plaintiffs' jury demand requires no answer and ValueClick denies any averments of fact that
20 might be contained in the Complaint's "Prayer for Relief."

21 **AFFIRMATIVE DEFENSES**

22 Defendant ValueClick, for its affirmative defenses, alleges as follows:

23 5. Failure to State a Claim. Plaintiffs have failed to state a claim upon which
24 relief may be granted.

25 6. Subscription. Plaintiffs subscribed to receive the e-mails on which plaintiffs
26 base their Complaint.

1 RESPECTFULLY SUBMITTED this 19th day of June, 2007.
2

3 **PETERSON YOUNG PUTRA, P.S.**
4

5 s/ Anthony A. Todaro

6 Anthony A. Todaro, WSBA No. 30391
7 Of Attorneys for Defendant ValueClick

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CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2007, I attempted several times to file ValueClick, Inc.'s Answer and Affirmative Defenses but was unable to due to the Court's ECF website's failure to launch. Accordingly, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system when next available (June 20), and that system sent notification of such filing to the following:

**Attorney for
Plaintiffs:**

Robert J. Siegel
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Dated: June 20, 2007

s/ Cindy Lin
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