

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**JOHN W. FERRON,**

**Plaintiff,**

**v.**

**VC E-COMMERCE SOLUTIONS, INC., et al.,**

**Defendants.**

**Case No. 2:06-cv-322**

**JUDGE GREGORY L. FROST**

**Magistrate Judge Mark R. Abel**

**ORDER**

This matter came before the Court on April 26, 2007 for a telephone conference requested by Plaintiff. Previously, the Court ordered that the parties must contact Chambers in a joint telephone call before any party can file any motion related to a discovery dispute.

Plaintiff asserted during the conference that Defendant Optinrealbig.com has failed to respond adequately to interrogatories seeking the identities of the companies on whose behalf Optinrealbig.com sent Plaintiff emails. Optinrealbig.com asserted that Plaintiff can discover this information through following hyperlinks in the emails in his possession and that it would be difficult for Optinrealbig.com to ascertain who caused the emails to be sent or on whose behalf it sent the emails. Optinrealbig.com curiously represented to the Court that such records may not exist, although Plaintiff suggested that “insertion orders” would potentially include the information sought.

Defendant in turn argued that Plaintiff has failed to respond to its efforts to resolve another interrogatory discovery dispute informally. Plaintiff’s lead counsel represented that she

has essentially neglected the informal resolution contact by Defendant and offered to address the issue promptly.

After entertaining the foregoing arguments, the Court issued the following orders:

(1) The Court orders Optinrealbig.com to disclose the customer information Plaintiff seeks. Counsel for Optinrealbig.com will discuss the matter with their client and provide Plaintiff a prompt answer as to when they will be able to provide the information sought. The parties are encouraged to consider a protective order if necessary in light of the information sought.

(2) Plaintiff's counsel will contact Optinrealbig.com's counsel on April 30, 2007 with an answer regarding the informal resolution of the interrogatory discovery dispute.

(3) The parties will contact the Court on May 1, 2007 at 2:00 p.m. for an additional telephone conference unless they have resolved their disputes. In the event they have resolved the disputes, at least one party shall notify the Court by telephone that the conference is not needed.

(4) If, in light of the discovery issues, Plaintiff cannot file a new Second Amended Complaint incorporating all new claims and new parties within the established deadline, Plaintiff shall so notify the Court and provide argument warranting an extension.

The Court reminds the parties that it has already imposed sanctions in this action. Failure to comply with this Order shall result in the imposition of any and all additional sanctions available under the Federal Rules of Civil Procedure and the contempt power of this Court,

including but not limited to the possible sanctions of **striking defenses, entering judgment by default, or holding a party in contempt.**

**IT IS SO ORDERED.**

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s/ Gregory L. Frost  
GREGORY L. FROST  
UNITED STATES DISTRICT JUDGE