

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

JOHN W. FERRON,

Plaintiff,

v.

Case No. 2:06-cv-322

JUDGE GREGORY L. FROST

Magistrate Judge Mark R. Abel

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

Defendants.

JOHN W. FERRON,

Plaintiff,

v.

Case No. 2:06-cv-327

JUDGE GREGORY L. FROST

Magistrate Judge Mark R. Abel

SEARCH CACTUS, L.L.C., et al.,

Defendants.

ORDER

The captioned cases came on for a joint status conference on August 29, 2007. The Court memorializes the results of the discussions held with counsel at that conference as follows:

(1) The Court **VACATES** all remaining deadlines. Once Plaintiff decides whether to pursue amendment of his complaints, the Court shall issue new scheduling orders.

(2) Except as noted below, the Court **OVERRULED** Plaintiff's objections on grounds of relevance to the following discovery requests. Although not all of this material may be admissible at trial, the material was relevant and/or likely to lead to the discovery of relevant information. In almost every instance, the material informs the potential defense that Plaintiff is

not a consumer as that term is defined within the applicable state law at issue in this litigation.

(3) In response to the discovery request of Defendant VC E-Commerce Solutions, Inc., Plaintiff shall provide copies of billing/time records associated with this case. Some of these records will by necessity be provided by Plaintiff's firm. Counsel for Plaintiff represented that Plaintiff does not track his time spent in association with this case.

(4) In response to the discovery request of Defendant VC E-Commerce Solutions, Inc., Plaintiff shall provide his documents related to the decision to file this action, including investigation documents related to the investigation of domain names. If Plaintiff asserts that no such documents exist, Plaintiff must submit a verified statement to that effect.

(5) In response to the discovery request of Defendant VC E-Commerce Solutions, Inc., Plaintiff shall provide transcripts of any testimony that Plaintiff gave in any case involving OCSPA claims in which Plaintiff was a party or witness. If Plaintiff was also counsel in any such case, Plaintiff shall advise the Court of this fact via letter and seek in camera review of the applicable transcripts(s) so that the Court can decide whether discovery of the material is permitted. If Plaintiff asserts that no such transcripts exist, Plaintiff must submit a verified statement to that effect.

(6) In response to the discovery request of Defendant VC E-Commerce Solutions, Inc., Plaintiff shall provide documents related to all email names or addresses that he has used or registered for use since January 1, 2005 to present. To the extent that Plaintiff has previously answered any discovery request from any party that fails to include the full number of said email names or addresses, Plaintiff shall supplement his responses.

(7) In response to the discovery request of Defendant VC E-Commerce Solutions, Inc.,

Plaintiff shall provide documents related to Plaintiff's registering or providing addresses to any website since January 1, 2005 to present, excluding the registration or provision of addresses that were in connection with an actual consummated transaction. This order covers all registrations to receive information, services, or products.

(8) In response to the discovery request of Defendant VC E-Commerce Solutions, Inc., Plaintiff shall provide documents related to his analysis since January 1, 2005 to present of potential claims of the sort involved in this litigation.

(9) In response to the discovery request of Defendant VC E-Commerce Solutions, Inc., Plaintiff agreed to provide documents related to his communications with internet providers regarding the volume of email he receives or receives via his email accounts. Lead counsel for Plaintiff stated that she was not aware of any such material.

(10) Defendant VC E-Commerce Solutions, Inc. represented that its discovery request for documents related to Plaintiff's analysis of email marketing practices is subsumed in the request set forth in number seven, above. The Court accepts this representation, and Plaintiff shall disclose such material appropriately.

(11) In response to the discovery request of Defendant VC E-Commerce Solutions, Inc., Plaintiff shall provide documents related to his/his firm's efforts to use spam filters. This request is limited to communications concerning whether to use or how to operate such filters and includes at what level of "protection" Plaintiff employed filters.

(12) In response to the discovery request of Defendant VC E-Commerce Solutions, Inc., Plaintiff shall provide documents related to his efforts since January 1, 2005 to present to unsubscribe to any email.

(13) Withdrawing a request to compel, Defendant VC E-Commerce Solutions, Inc. represented that it has received a sufficient response to its request for documents related to the volume of email Plaintiff has received.

(14) The Court **DENIED** the discovery request of Defendant VC E-Commerce Solutions, Inc. for documents related to Plaintiff's efforts to solicit other plaintiffs in similar litigation.

(15) Defendant VC E-Commerce Solutions, Inc. represented that its discovery request for documents related to Plaintiff's use of aliases used when registering at or providing information to websites is subsumed in above requests. The Court accepts this representation, and Plaintiff shall disclose such material appropriately.

(16) Plaintiff shall promptly notify Defendant VC E-Commerce Solutions, Inc. whether he possesses any Ohio Attorney General decisions relevant to his claims that he personally obtained.

(17) In response to the discovery request of Defendant VC E-Commerce Solutions, Inc., Plaintiff shall provide documents related to any consumer-claim-related postings he has made on listservs since January 1, 2005 to present. The Court previously ordered Plaintiff to disclose similar postings on blogs, which is subsumed in the above orders. In connection with the listserv request, the Court **OVERRULED** Plaintiff's objection on privacy grounds.

(18) In response to the discovery request of Defendant VC E-Commerce Solutions, Inc., Plaintiff shall provide documents related to his assertion that he incurred a computer virus. This includes documents showing that Plaintiff incurred a virus as well as the costs to remedy any such virus.

(19) In response to the discovery request of Defendant VC E-Commerce Solutions, Inc.,

Plaintiff shall provide documents related to his relationship to his firm, aside from the retainer agreement already disclosed.

(20) To the extent that the subpoena served by Defendant VC E-Commerce Solutions, Inc. on Plaintiff's firm duplicates the material involved above, the firm need only note by specific reference Plaintiff's production of this material. The firm shall provide its email and internet policies, as well as litigation files in other similar email cases litigated by the firm. The firm need not provide copies of demand letters. Lead counsel for Plaintiff stated that neither Plaintiff nor the firm were in possession of any non-public orders issued in OCSPA cases in which Plaintiff or the firm were involved.

(21) Defendant VC E-Commerce Solutions, Inc. has served a subpoena on and noticed the deposition of Plaintiff's spouse, who is also a paralegal and office manager at Plaintiff's firm. Plaintiff's counsel represented to the Court that they are also representing Mrs. Ferron. Counsel agreed that documents relating to the alleged computer virus and spam filters are not privileged and will be produced. Also to be produced are documents related to any actions Mrs. Ferron took in regard to emails from Defendant VC E-Commerce Solutions, Inc. in her capacity as office manager. If any documents purportedly fall under a privilege, a privilege log must be produced. Defendant VC E-Commerce Solutions, Inc. shall work with opposing counsel to set a new deposition date. The new deposition shall take place in Columbus, Ohio after November 13, 2007. Defendant VC E-Commerce Solutions, Inc. will file a brief on the spousal privilege issue by September 21, 2007, with a response to be filed by October 12, 2007. The Court will endeavor to issue a decision on the issue by November 13, 2007.

(22) Defendant VC E-Commerce Solutions, Inc. withdrew its subpoena's to clients

previously represented by Plaintiff and/or his firm.

(23) All responses and supplemental responses must be in a form verified by Plaintiff.

(24) The parties shall work to coordinate, if at all possible, the deposition of witnesses in these cases. No party seeks consolidation of the cases at this time, and the Court finds no reason to consolidate the cases.

(25) Counsel for Defendant Optinrealbig.com, LLC (apparently now known as Media Breakaway, LLC) represented that the results of Plaintiff's request regarding the analysis of emails should be completed and sent to Plaintiff by September 4, 2007. Plaintiff will promptly analyze the information in order to decide whether to amend his complaint(s).

(26) The Court schedules a **telephone status conference** for September 20, 2007 at 4:00 p.m. Counsel for Defendant VC E-Commerce Solutions, Inc. will arrange and initiate the call. Plaintiff will have made a decision as to whether he intends to seek amendment of his complaint(s) by that time.

(27) The various movants have indicated that they will withdraw the motions *in limine* pending in case No. 2:06-cv-327. (Doc. # 214, 223, 225, 227.) Said withdrawal is without prejudice to the later filing of motions for sanctions or motions *in limine*. The Court therefore **VACATES** the non-oral hearing dates on the withdrawn motions.

(28) To repeat the oral warning issued at the conference:

The Court once again reminds the parties that it has already imposed sanctions in this action and that any failure to comply with this or any prior applicable 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. Said sanctions could include but are not limited to the possible striking of defenses, entering judgment by default, or holding a party in contempt.

