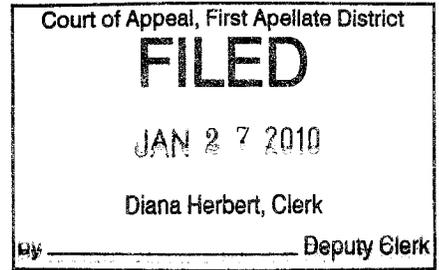


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Daniel L. Balsam



**COURT OF APPEAL OF THE STATE OF CALIFORNIA**  
**FIRST APPELLATE DISTRICT, DIVISION 3**

DANIEL L. BALSAM,	)	Case No.:	A126680
	)		
Appellant and Plaintiff,	)	<b>APPELLANT'S MOTION/</b>	
	)	<b>REQUEST FOR JUDICIAL</b>	
v.	)	<b>NOTICE TO SUPPLEMENT</b>	
	)	<b>RECORD</b>	
DSG DIRECT INC. <i>et al</i> ,	)		
	)		
Defendants,	)		
	)		
TROPICINKS LLC <i>et al</i> ,	)		
	)		
Respondents and Real	)		
Parties in Interest.	)	Appeal Filed:	Oct. 9, 2009

## **I. INTRODUCTION**

Appellant/Plaintiff Daniel L. Balsam (“Balsam”) brings this Motion/Request for Judicial Notice pursuant to Evidence Code §§ 459(a) and 452(d), (h) because the matter to be noticed – a Complaint filed against Respondent Datastream Group Inc. (“Datastream”) by the Michigan Attorney General and the subsequent Consent Judgment, and Datastream’s own Articles of Incorporation – is highly relevant to the appeal in that these documents show that that Respondents made demonstrably false and misleading claims to the trial court below in order to deceive the trial court into believing that Datastream should not have alter ego liability for the underlying judgment entered against DSG Direct Inc. (“DSG Direct”) and Your-Info Inc. (“Your-Info”).

These documents were not presented to the trial court below, and are not included in the record, because Balsam did not realize that Respondents’ claims were false until he learned of the Michigan lawsuit, *after* the hearing on Balsam’s Motion to Amend Judgment.

These documents do not relate to proceedings after the Order that is the subject of the appeal. Rather, these documents relate to the underlying facts of Datastream’s involvement in unlawful marketing practices that predate the Order.

This Court should take judicial notice of the Michigan Complaint, the Michigan Consent Judgment, and Datastream’s Articles of Incorporation.

## **II. STATEMENT OF FACTS**

Balsam filed a Verified Complaint against DSG Direct and Your-Info and other entities on May 26, 2005 for advertising in and sending

unlawful spam<sup>1</sup> to Balsam, continuing to do so even after Balsam unsubscribed from defendants' spam lists multiple times (including via certified return-receipt mail) and received confirmation of the unsubscribe requests. The spams violated Business & Professions Code § 17529.5 and Civil Code § 1750 *et seq.* (Consumers Legal Remedies Act). (Excerpts of Record "ER" 19-31, 282-83, Reporter's Transcript from February 25, 2008 prove-up hearing on Balsam's First Amended Complaint ("RT1") 2-4, 6-7.)

On February 25, 2008, Balsam appeared for trial. (RT1 1.) DSG Direct and Your-Info were properly noticed but failed to appear. (RT1 1.) DSG Direct and Your-Info never notified Balsam or the court that they would not appear, nor did they ever request a continuance. (ER 427.) On February 28, 2008, the trial court below entered judgment against DSG Direct and Your-Info in the amount of \$199,167. (ER 282-83.) DSG Direct and Your-Info never filed a motion to vacate the judgment or for reconsideration or challenged the judgment in any way. (ER 1-18.)

On June 26, 2008, Balsam sought and received a Writ of Execution, which he used to levy on American Express payments to DSG Direct on July 16, 2008. Balsam received \$2,083.72, which represents just over 1% of the judgment. (ER 291-93, 305.)

Two months later – on September 26, 2008 – Respondent Leigh-Ann Colquhoun ("Colquhoun"), the sole officer of DSG Direct and Your-Info, caused both companies to dissolve by failing to file annual reports with the Florida Department of State. Less than two weeks later, on October 8, 2008, instead of reviving DSG Direct and Your-Info, Colquhoun created a

---

<sup>1</sup> "Spam" is the commonly accepted term to describe "unsolicited commercial email." The California Legislature and courts have used the term. *See* B&P § 17529(a), *Ferguson v. Friendfinders Inc.*, 94 Cal. App. 4th 1255, 1267 and n.5 (1st Dist. 2002). (ER 422.)

new company, TropicInks LLC (“TropicInks”). (ER 323-24.) TropicInks operated the same websites from the same physical location under substantially the same management as DSG Direct and Your-Info. (ER 317, 320, 323, 330, 332, 341,345, 423-25.)

Datastream Group Inc. (“Datastream”) – the Respondent at issue in this Motion/Request for Judicial Notice – is the registrant and legal owner of the *DSGDirect.com* website. (ER 347-48.) Datastream is located at the same physical address as TropicInks and Your-Info, and Colquhoun is the sole corporate officer. (ER 320-27.)

On July 27, 2009, Balsam filed a Motion to Amend Judgment pursuant to Code of Civil Procedure § 187 to add Respondents TropicInks, Datastream, and Colquhoun to the judgment on successor, alter ego, and corporate officer theories of liability. (ER 294-353.) On August 20, 2009, Respondents filed and served – in an untimely manner – an Opposition to Balsam’s Motion to Amend Judgment. (ER 354-59.) Colquhoun’s Declaration in Support of Respondents’ Opposition stated that “Datastream is not an e-commerce company such as DSG Direct or Tropic[Inks] but rather is an internet service company. Datastream has provided services to DSG Direct, such as domain management...” (ER 361.)

*Balsam subsequently learned that this statement was false and misleading, as shown by the documents which are the basis of this Motion/Request for Judicial Notice.*

On September 1, 2009, Balsam and Respondents appeared before Commissioner Gargano on Balsam’s Motion to Amend Judgment. (Reporter’s Transcript from September 1, 2009 hearing on Balsam’s Motion to Amend Judgment “RT2” 16). Without making any findings of fact, without ruling on Balsam’s Objections, or providing any basis or explanation for its reasoning – and thereby quite possibly relying upon the

false Colquhoun Declaration – the trial court below incorrectly denied Balsam’s Motion to Amend Judgment to add Respondents Florida Parties to the judgment. (ER 476, RT2 15-20.)

Balsam timely filed an appeal pursuant to Code of Civil Procedure § 904.1(a)(2). (ER 477-78.)

### **III. MOTION/REQUEST FOR JUDICIAL NOTICE TO SUPPLEMENT RECORD**

#### **A. Legal Standard**

Pursuant to Evidence Code § 452(d), records of any court of record of any state of the United States may be judicially noticed.

Pursuant to Evidence Code § 452(h), “facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy” may be judicially noticed.

Pursuant to Evidence Code § 459(a), a “reviewing court may take judicial notice of any matter specified in Section 452.” Therefore, this Court may take judicial notice of, and supplement the record with, evidence that was not included in the record of the trial court below. And it should do so, *in any way*, to find the truth.

*Unreported Matters.* The augmentation procedure is not confined to bringing up matters reported; it may be used *in any way* that will make the record conform to the truth.

9 WITKIN CALIFORNIA PROCEDURE: APPEALS § 683(2) (Thomson West 5th ed. 2009) (emphasis added). Accordingly, in *South Shore Land Company v. Peterson*,

Respondent assert[ed] that in determining the question before us we are not restricted to the four corners of the pleadings, but that we must read into them matters of which we may take judicial notice . . . . [A] reviewing court “can properly

take judicial notice of any matter of which the court of original jurisdiction may properly take notice.” Accordingly, we have heretofore granted respondent’s motion to augment the record before us to include documents which, it asserts, we should judicially notice.

226 Cal. App. 2d 725, 742 (1st Dist. 1964) (citation omitted).

**B. Request for Judicial Notice**

**1. The Michigan Attorney General’s Complaint Against Datastream for Sending Unlawful Email Advertisements, and the Consent Judgment That Followed**

Balsam requests that this Court take judicial notice pursuant to Evidence Code §§ 459(a), 452(d) of the “Michigan Complaint” – the civil complaint filed by the Michigan Attorney General against Datastream for unlawful spamming. *Cox v. Data Stream Group Inc.*, No. 06-1007-CP (Mich. Circ. Ct. Cty. of Ingham Aug. 10, 2006) (complaint filed).

Attachment 1 to the Declaration of Daniel L. Balsam in Support of Appellant’s Motion/Request for Judicial Notice (“Balsam Decl.”) is a true and correct copy of the Michigan Complaint, which also includes as an exhibit a companion misdemeanor criminal complaint filed by the Michigan Attorney General against Datastream.

Balsam also requests that this Court take judicial notice pursuant to Evidence Code §§ 459(a), 452(d) of the subsequent “Michigan Consent Judgment” voluntarily entered into by Datastream in the matter of *Cox v. Data Stream Group Inc.*, No. 06-1007-CP (Mich. Circ. Ct. Cty. of Ingham Feb. 6, 2008) (consent judgment).

Attachment 2 to the Balsam Decl. is a true and correct copy of the Michigan Consent Judgment.

Balsam refers to the Michigan Complaint and the Michigan Consent Judgment collectively as the “Michigan Documents.”

**2. Datastream's Articles of Incorporation**

Balsam requests that this Court take judicial notice pursuant to Evidence Code §§ 459(a), 452(h) of Datastream's Articles of Incorporation as filed with the Florida Department of State, Division of Corporations – a source of reasonably indisputable accuracy. This Court can immediately determine the content of Datastream's Articles of Incorporation by typing <http://www.sunbiz.org/pdf/80435328.pdf> into any Internet browser. (*Sunbiz.org* is the website of the Florida Department of State, Division of Corporations.)

Attachment 3 to the Balsam Decl. is a true and correct copy of Datastream's Articles of Incorporation.

**C. Balsam Only Became Aware of the Michigan Lawsuit After the Hearing on the Motion to Amend Judgment**

These documents are not included in the trial court record because Balsam only became aware of the Michigan lawsuit, and Datastream's admissions that undermine the claims in Colquhoun's Declaration, *after* the hearing on Balsam's Motion to Amend Judgment on September 1, 2009. Balsam Decl. at ¶ 6.

If Balsam had known of the Michigan Documents prior to filing the Motion to Amend Judgment, Balsam would have requested that the trial court below take judicial notice of the Michigan Documents. *Id.*

**D. Relevance of the Michigan Documents and Datastream's Articles of Incorporation**

The Michigan Documents and Datastream's own Articles of Incorporation are highly relevant to this Appeal, because they demonstrate the falsity of Colquhoun's claim to the trial court below that Datastream is *not* an "e-commerce company" but rather an "internet services company" (ER 361), a term so broad and vague as to be essentially meaningless.

More specifically, Respondents claimed in their Opposition to the Motion to Amend Judgment that “Datastream is not an e-commerce company such as DSG Direct or Tropic[Inks] but rather is an internet services company. Datastream has provided services to DSG Direct, such as domain name management...” (ER 361.) Datastream, controlled by Colquhoun, thus *suggests* its innocence as to the underlying unlawful spams, as if it were not actively involved in advertising and selling goods and services, and as if it had nothing to do with the unlawful marketing conducted by DSG Direct and Your-Info, which were also controlled by Colquhoun. (ER 317-21, 326-27.)

*Respondents’ statement was false and misleading.*

In the Michigan Complaint at ¶¶ 12-13, the Michigan Attorney General alleged that Datastream – *not* DSG Direct or Your-Info – sent, or caused to be sent, certain e-mail advertisements, the primary purpose of which was to sell alcohol. Balsam Decl. at ¶ 3 and Attach. 1.

The Michigan Consent Judgment at ¶ 3 reiterates the Attorney General’s allegations in the complaint that Datastream caused e-mail messages to be sent. In ¶ 4, Datastream “admit[ted] to such transmission but state[d] that, upon learning of the violation, it undertook immediate, affirmative steps to come into compliance with the [Michigan Children’s Protection Registry] Act.” Datastream did *not* deny the Attorney General’s allegations, and the Consent Judgment does *not* include any “no admission of liability” language or any language limiting Datastream’s admissions to that particular Michigan action. Balsam Decl. at ¶ 4 and Attach. 2.

Whether or not the email advertisements at issue in the Michigan Complaint actually violated Michigan law is not relevant to the question of whether Colquhoun made a truthful statement in her Declaration to the trial court below. But what *is* highly relevant in the Michigan Documents is the

fact that *Datastream* – not DSG Direct or Your-Info – admitted that *it* sent or caused e-mail advertisements to be sent, and admitted that *it* had the ability to control the email advertisements in order to come into compliance with Michigan law. Thus, Datastream admitted that *it is* involved in e-commerce.

Similarly, paragraph 3 of Datastream’s own Articles of Incorporation states that “The purpose for which the corporation is organized is to offer services in Internet *Marketing*” (emphasis added). Respondents’ false and misleading claims to the trial court below contradict Datastream’s own admission in its Articles of Incorporation that the company was created for “Internet Marketing” – a broad term, and *not* limited merely to domain name management.

Ultimately, the Michigan Documents and Datastream’s Articles of Incorporation undermine and discredit Respondents’ false and misleading claims to the trial court below in their Opposition to Balsam’s Motion to Amend Judgment that Datastream is *just* an “internet service company” but *not* an e-commerce company. Datastream’s own statements show otherwise. Thus, the Michigan Documents and Datastream’s Articles of Incorporation support Balsam’s argument that Datastream has alter ego liability for the judgment. By Datastream own admissions, it is an Internet marketing company, it sent or caused email advertisements to be sent, and it had control over email advertisements.

### **III. CONCLUSION**

This Court has the authority to take judicial notice of the Michigan Documents and of Datastream’s Articles of Incorporation, which were not included in the record of the trial court below because Balsam only learned of the Michigan Attorney General’s lawsuit against Datastream for

unlawful email advertising *after* the hearing on Balsam's Motion to Amend Judgment.

The Michigan Consent Judgment includes admissions by Datastream that it was involved with and had control over sending email advertisements. The Michigan Consent Judgment also proves that Respondents made false and misleading statements to the trial court below as to the nature of its business. Datastream's own Articles of Incorporation defines its purpose to be Internet Marketing, discrediting Respondents' claim that Datastream is not an e-commerce company but only provided services such as domain name management.

The Michigan Documents and Datastream's Articles of Incorporation support Balsam's argument that Datastream should be added to the judgment against DSG Direct and Your-Info on an alter ego theory of liability.

This Court should take judicial notice of the Michigan Complaint, the Michigan Consent Judgment, and Datastream's Articles of Incorporation in order to, ultimately, make the decision on appeal speak the truth.

THE LAW OFFICES OF DANIEL BALSAM

Dated: January 23, 2010 By   
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Attorneys for Appellant

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Attorneys for Appellant/Plaintiff  
Daniel L. Balsam

**COURT OF APPEAL OF THE STATE OF CALIFORNIA**  
**FIRST APPELLATE DISTRICT, DIVISION 3**

DANIEL L. BALSAM,	)	Case No.:	A126680
	)		
Appellant and Plaintiff,	)	<b>DECLARATION OF DANIEL L.</b>	
	)	<b>BALSAM IN SUPPORT OF</b>	
v.	)	<b>APPELLANT'S REQUEST FOR</b>	
	)	<b>JUDICIAL NOTICE TO</b>	
DSG DIRECT INC. <i>et al</i> ,	)	<b>SUPPLEMENT RECORD</b>	
	)		
Defendants,	)		
	)		
TROPICINKS LLC <i>et al</i> ,	)		
	)		
Respondents and Real	)		
Parties in Interest.	)	Appeal Filed:	Oct. 9, 2009

I, Daniel L. Balsam declare:

1. I am the Appellant in the above-captioned matter. The following facts are based on my own personal knowledge, except as to those facts stated on information and belief, and as to those matters, I believe them to be true. If called as a witness, I could and would testify competently to the declared facts under oath.
2. I am a licensed California attorney and co-counsel for Appellant in the above-captioned matter.
3. I requested and purchased from the Circuit Court of Ingham County, Michigan a certified copy of the civil complaint *Cox v. Datastream Group Inc.*, No. 06-1007-CP (Mich. Circ. Ct. Cty. of Ingham Aug. 10, 2006) (complaint filed). Paragraphs 12-13 of the Michigan Complaint allege that Datastream Group Inc. (“Datastream”) sent, or caused to be sent, an email advertisement selling alcohol to an email address on the Michigan Children’s Protection Registry. Attachment 1 is a true and correct copy of the Michigan Complaint, which includes as an exhibit a companion misdemeanor criminal complaint filed by the Michigan Attorney General against Datastream.
4. I requested and received from Tracy Sonneborn, Michigan Assistant Attorney General, a filestamped copy of the stipulated Consent Judgment in the matter of *Cox v. Datastream Group Inc.*, No. 06-1007-CP (Mich. Circ. Ct. Cty. of Ingham Feb. 6, 2008) (consent judgment). Paragraph 3 of the Consent Judgment reiterates the allegations that Datastream caused an email selling alcohol to be sent to an email address on the Michigan Children’s Protection Registry, and in paragraph 4, Datastream “admit[ted] to such transmission but states that, upon learning of the violation, it undertook immediate, affirmative steps to come into compliance with the [Michigan Children’s Protection

Registry] Act.” Attachment 2 is a true and correct copy of the Michigan Consent Judgment.

5. I downloaded a copy of Datastream’s Articles of Incorporation from the Florida Department of State, Division of Corporations website <http://www.sunbiz.org>. Paragraph 3 states that “The purpose for which the corporation is organized is to offer services in Internet Marketing.” Attachment 3 is a true and correct copy of Datastream’s Articles of Incorporation. This Court could immediately download the document by visiting <http://www.sunbiz.org>, clicking the first “Search our Records” link on the left side of the web page, clicking the first “Inquire by Name” link, entering “Datastream Group” in the text field and clicking the “Search Now” button, clicking “DATASTREAM GROUP INC.” in the search results (Document Number P00000099876), and then scrolling down to the bottom of the page and clicking the “View image in PDF format” button next to the link “10/23/2000 – Domestic Profit.” Alternately, entering <http://www.sunbiz.org/pdf/80435328.pdf> in an Internet browser will bring up the Articles of Incorporation directly.
6. I first became aware of the Michigan litigation against Datastream Group Inc. in late September 2009. If I had known of the Michigan litigation prior to the September 1, 2009 hearing on the Motion to Amend Judgment, I would have brought it to the trial court’s attention in the pleadings and oral argument.

//  
//  
//

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct, and that this Declaration was executed in San Francisco, California, on January 23, 2010.

*Daniel L. Balsam*

---

DANIEL L. BALSAM

**ATTACHMENT 1**

**Michigan Attorney General Complaint Against Datastream Group Inc.**

STATE OF MICHIGAN  
IN THE CIRCUIT COURT OF  
INGHAM COUNTY

---

MICHAEL A. COX, Attorney General  
of the State of Michigan

Plaintiff,

v

DATA STREAM GROUP, INC.,

Defendant,

---

Case No. 06 1007 CP

Hon. **WILLIAM E. COLLETTE**

Tracy A. Sonneborn (P41416)  
Suzanne Hassan (P67620)  
Assistant Attorneys General  
Attorneys for Plaintiff  
Consumer Protection Division  
P.O. Box 30213  
Lansing, MI 48909  
(517) 335-0855

FILED  
CLERK OF THE CIRCUIT COURT  
INGHAM COUNTY

2006 AUG 10 P 3:05

FILED

**COMPLAINT FOR INJUNCTION, CIVIL PENALTIES, AND FEES**

MICHAEL A. COX, Attorney General for the State of Michigan, on behalf of the People of the State of Michigan, brings this action against the above-named Defendant seeking an injunction, civil penalties, and fees. In support of the complaint, the Attorney General alleges:

161658

## Parties

1. The Plaintiff is the Attorney General of the State of Michigan, appearing on behalf of the People of the State of Michigan, pursuant to his statutory and common law authority, to bring this complaint to seek injunctive relief, civil penalties, and fees.

2. Defendant Data Stream Group, Inc., is a Florida corporation doing business in the State of Michigan. According to the Florida Department of State, its corporate offices are located at 27265 High Seas Lane, Bonita Springs, Florida, 34135, and lists Eric Reinersten as its registered agent.

## Jurisdiction, Standing and Venue

3. The Attorney General brings this action under to Michigan's Children's Protection Registry Act, MCL 752.1061 *et seq.*, and MCR 3.306. Section 8 of the Act, MCL 752.1068, provides in part:

(3) A civil action based on the computer crime established under this act may be brought by the attorney general against a person who has violated this act.

\*\*\*

(5) A person bringing an action under this section may recover 1 of the following:

(a) Actual damages, including reasonable attorney fees.

(b) In lieu of actual damages, recover the lesser of the following:

(i) \$5,000.00 per each message received by a recipient or transmitted.

(ii) \$250,000.00 for each day that the violation occurs.

(6) If the attorney general has reason to believe that a person has violated this act, the attorney general may investigate the business transactions of that person. The attorney general may require that person to appear, at a reasonable time and place, to give information under oath and to produce such documents and evidence necessary to determine whether the person is in compliance with the requirements of this act.

4. Jurisdiction and venue is proper in Ingham County Circuit Court pursuant to MCL 14.102, which reads:

Any action at law brought by the Attorney General in the name of the State or of the people of the State, for the use and benefit thereof, may be begun in the circuit court in and for the county of Ingham, and may be prosecuted to final judgment

and satisfaction thereof, with like effect as though the cause of action arose in such county. In any such case process issued out of and under the seal of said court may be served anywhere within the State of Michigan.

5. Jurisdiction also proper as the Attorney General brings this action for injunction and other remedies in circuit court, pursuant to MCL 600.2940(1); 14.102.

### **Facts**

6. Ms. Kelly Cool, of Oakland County, Michigan, reported an e-mail from "4 Seasons Wine" at 8:38 am, on January 6, 2006. A copy of the Incident Report is attached as Exhibit A.

7. Ms. Cool received the e-mail in question through an e-mail account whose address was registered on the Michigan Children's Protection Registry.

8. The e-mail solicitation advertised the sale of bottles of wine.

9. The sender's Internet Protocol Address (IP Address), 63.116.198.16, was contained in the header of the e-mail sent to the contact point registered by Ms. Cool.

10. Upon information and belief, the block of IP Addresses containing this address is assigned to Verizon Business, of 22001 Loudon County Parkway, Ashburn, Virginia, 20147, and sub-assigned and registered to Galaxy Visions, Inc., 600 Sylvan Avenue, Third Floor, Englewood Cliffs, New Jersey, 07632.<sup>1</sup>

11. Upon information and belief, Galaxy Visions, Inc., assigned the IP Address in question to Defendant Data Stream Group, Inc., of Bonita Springs, Florida.

12. Upon information and belief, Defendant Data Stream Group, Inc., sent, or caused to be sent, e-mail advertisements promoting sales of alcohol to an e-mail account registered on the Michigan Children's Protection Registry.

13. The primary purpose of the email solicitation sent by Defendant Data Stream Group, Inc., was to sell alcohol.

---

<sup>1</sup> See <http://samspace.org/t/ipwhois?a=63.116.198.16> (accessed August 10, 2006).

14. Defendant continues to solicit customers for its Internet marketing business, including e-mail at <http://www.datastreamgrp.com> (accessed August 10, 2006).

15. Minors are prohibited by law from purchasing alcohol, according to Section 701 of the Michigan Liquor Control Code of 1998, MCL 436.1701.

16. Data Stream Group, Inc. violated MCL 752.1065 because Defendant sent, or caused to be sent, e-mail solicitations selling alcohol to a contact point registered on the Michigan Children's Protection Registry.

17. This action is a companion action to a misdemeanor criminal complaint filed by the Attorney General against Defendant Data Stream Group, Inc. in 52-2nd District Court, Clarkston, Michigan, Case No. 06-003750. (The Summons and Complaint are attached as Exhibit B.)

## COUNT I

### **VIOLATION OF MICHIGAN'S CHILDREN'S PROTECTION REGISTRY ACT**

18. Section 5(1) of the Michigan Children's Protection Registry Act, MCL 752.1065, prohibits a person from sending, or causing to be sent, a message to a contact point that has been registered on the Michigan Children's Protection Registry if the primary purpose of the message is to advertise a product or service that a minor is prohibited by law from "purchasing, viewing, possession, participating in, or otherwise receiving."

19. MCL 752.1062 defines a "contact point:"

(a) "Contact point" means any electronic identification to which messages can be sent, including any of the following:

- (i) An instant message identity.
- (ii) A wireless telephone, a personal digital assistant, a pager number, or any other similar wireless communication device.
- (iii) A facsimile number.
- (iv) An electronic mail address

- (v) Other electronic addresses subject to rules promulgated under this act by the department.

## COUNT II

### **ABATEMENT OF PUBLIC NUISANCE: ONGOING VIOLATION OF MICHIGAN'S CHILDREN'S PROTECTION REGISTRY ACT**

20. A public nuisance is an unreasonable interference with a common right enjoyed by the general public. "Unreasonable interference" includes conduct that:

- significantly interferes with the public's health, safety, peace, comfort, or convenience;
- is proscribed by law; or
- is known or should have been known by the actor to be of a continuing nature that produces a permanent or long-lasting, significant effect on these rights.

See, e.g., *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 190 (1995).

21. Harm to the public is presumed to flow from the violation of a valid statute enacted to preserve public health, safety, and welfare. *Attorney General v Peterson*, 381 Mich 445, 465 (1969).

20. Defendant's continued violation of the Act, described above, by sending messages promoting goods or services minors cannot legally purchase in Michigan is harmful to minors and violates the Act, a valid statute enacted to protect the welfare of minors.

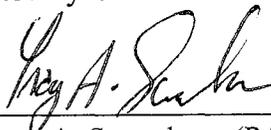
**RELIEF REQUESTED**

Plaintiff requests this Court to grant the following relief:

- A. Declare Defendant's conduct to be in violation of the Michigan Children's Protection Registry Act, specifically section 5, MCL 752.1065.
- B. Preliminarily and permanently enjoin Defendant from continuing to send e-mail solicitations promoting or selling alcohol to contact points registered on the Michigan Children's Protection Registry.
- C. Order the Defendant to pay an appropriate civil fine of \$5,000 as provided under the Act.
- D. Award Plaintiff further relief as the Court finds just and appropriate.

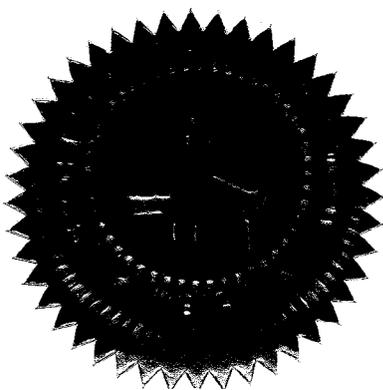
Respectfully submitted,

Michael A. Cox  
Attorney General



Tracy A. Sonneborn (P41416)  
Suzanne Hassan (P67620)  
Assistant Attorneys General  
Consumer Protection Division  
P.O. Box 30213  
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(517) 335-0855

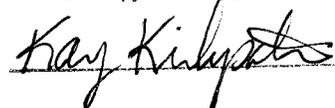
Date: August 10, 2006



**CERTIFIED COPY**  
**30TH CIRCUIT COURT**

JAN 12 2010

I hereby certify that this document is a true and correct copy of the original on file with this court.

 Deputy Clerk

Michigan Attorney General's - High Tech  
Crime Unit  
ORIGINAL INCIDENT  
REPORT

ORIGINAL DATE Fri. Jan 27, 2006	IDENT NO. GCD-00282006
TIME RECEIVED 0916	FILE CLASS 7300

WORK UNIT Child and Consumer Protection - Detroit	COUNTY Wayne
--	-----------------

INVESTIGATOR S/A Michael Ondejko	TELEPHONE NO. (313) 456-0076		
ADDRESS: STREET AND NO. 3030 W. Grand Blvd - Suite 10-200	CITY Detroit	STATE MI	ZIP CODE 48202
INCIDENT STATUS Open			

## VIOLATION OF THE MICHIGAN CHILDREN'S PROTECTION REGISTRY ACT (MCL 752.1065)

### SUMMARY:

On January 27, 2006 I was assigned to investigate the unsolicited email sent to complainant KELLY COOL and which was received on her registered email address [REDACTED]. The content of the email is more fully described below and is advertisement for the sale of wine over the internet. Investigation has lead to the origination of this advertisement being DATA STREAM GROUP, INC and Eric Reinersten of Bonita Springs, Florida.

### VENUE:

Oakland County - Holly Township, Michigan  
[REDACTED]

### DATE & TIME:

On Friday January 6, 2006 - 08:38:12 (GMT-0800)

### COMPLAINANT:

Name: Kelly Cool

Add: [REDACTED]  
[REDACTED]

### SUSPECT INFORMATION:

Eric Reinersten  
Data Stream Group, Inc.  
27265 High Seas Lane  
Bonita Springs, Fl 34135  
(239) 593-1045  
(239) 593-1732 fax

PAGE 1 of 10	INVESTIGATED BY S/A MICHAEL ONDEJKO #420	REPORTED BY	REVIEWED BY
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ORIGINAL DATE Fri. Jan 27, 2006	INCIDENT NO. AGCD-00282006
TIME RECEIVED 0916	FILE CLASS 7300

SUSPECT EMAIL:

Segment Header

Mime Segment (Plain Text or Unknown)

Four Seasons <Info@totalcheapo.com> wrote: X-Apparently-To: [REDACTED] via  
206.190.39.73; Fri, 06 Jan 2006 08:38:12 -0800  
X-YahooFilteredBulk: 63.116.198.16  
X-Originating-IP: [63.116.198.16]  
Return-Path: <5-5676143-yahoo.com [REDACTED].totalcheapo.com>  
Authentication-Results: mta243.mail.re2.yahoo.com  
from=totalcheapo.com; domainkeys=neutral (no sig)  
Received: from 63.116.198.16 (HELO:ssl.totalcheapo.com) (63.116.198.16)  
by mta243.mail.re2.yahoo.com with SMTP; Fri, 06 Jan 2006 08:38:12 -0800  
MIME-Version: 1.0  
X-Accept-Language: en  
X-Priority: Normal  
From: Four Seasons <Info@totalcheapo.com>  
To: kticool@yahoo.com  
Subject: 12 Bottles of Fine Wine and exclusive gift only \$59.88  
Date: Fri, 6 Jan 2006 11:41:13 EST  
Message-ID: <5-5676143-8YsO8ttO9.Lwtt78tS0ssl.totalcheapo.com>  
X-Mailer: 3.2.8-19 [Dec 28 2005, 20:44:31]  
Content-Type: text/html; charset="ISO-8859-1"  
Content-Transfer-Encoding: 7bit  
Content-Length: 1884

Every wine in our "4 Seasons" selection has been carefully chosen for its quality and value by our team of experienced buyers. Your introductory case will include delicious wines from around the world, chosen for their unique character and depth of flavor. The full retail value of this case and the Vintner's Reserve Wine Opener is over \$250.00 ... yours for just \$59.88\*.

Plus with your order you will receive our Vintner's Reserve Opener with  
Table Stand... \$139.95 value  
... Absolutely Free!

The preferred opener for professionals and beginners alike

Unique design and antique look - makes a great conversation piece

No more mangled or broken corks

No more straining and tugging on unopened bottles

Works on all sizes and types of wine bottles

PAGE 2 of 10	INVESTIGATED BY S/A MICHAEL ONDEIKO #420	REPORTED BY	REVIEWED BY
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ORIGINAL DATE Fri. Jan 27, 2006	CIDENT NO. AGCD-00282006
TIME RECEIVED 0916	FILE CLASS 7300

To cease emails from the advertiser only, proceed here.

totalcheapo.com | 1085 Business Ln Suite 3 | Naples, FL 34110

<5;6YrF700FNJfL00P70h;5676143>

Do You Yahoo!?  
Tired of spam? Yahoo! Mail has the best spam protection around  
<http://mail.yahoo.com>

**Segment Header**  
**Mime Segment HTML**

Four Seasons <Info@totalcheapo.com> wrote:  
X-Apparently-To: [REDACTED]; Fri, 06 Jan 2006 08:38:12 -0800  
X-YahooFilteredBulk: 63.116.198.16  
X-Originating-IP: [63.116.198.16]  
Return-Path: <[REDACTED]>  
Authentication-Results: mta243.mail.re2.yahoo.com  
from=totalcheapo.com; domainkeys=neutral (no sig)  
Received: from 63.116.198.16 (HELO ssl.totalcheapo.com) (63.116.198.16)  
by mta243.mail.re2.yahoo.com with SMTP; Fri, 06 Jan 2006 08:38:12 -0800  
MIME-Version: 1.0  
X-Accept-Language: en  
X-Priority: Normal  
From: Four Seasons <Info@totalcheapo.com>  
To: ktlcool@yahoo.com  
Subject: 12 Bottles of Fine Wine and exclusive gift only \$59.88  
Date: Fri, 6 Jan 2006 11:41:13 EST  
Message-ID: <5-5676143-8YsO8ttO9.Lwt78tS@ssl.totalcheapo.com>  
X-Mailer: 3.2.8-19 [Dec 28 2005, 20:44:31]  
Content-Type: text/html; charset="ISO-8859-1"  
Content-Transfer-Encoding: 7bit

PAGE 3 of 10	INVESTIGATED BY S/A MICHAEL ONDRJKO #420	REPORTED BY	REVIEWED BY
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ORIGINAL DATE Fri. Jan 27, 2006	CIDENT NO. AGCD-00282006
TIME RECEIVED 0916	FILE CLASS 7300

Content Length: 1884



Special Introductory Offer

Get 6 Bottles **FREE**  
with the purchase of 6 bottles

That's 12 bottles for ONLY \$4.99 per bottle



*Free!*  
**GIFT!**

The Vintner's  
Reserve Wine  
Opener!

A \$139.95 Value

Every wine in our "4 Seasons"  
selection has been carefully  
chosen for its quality and value  
by our team of experienced  
buyers. Your introductory case  
will include delicious wines from  
around the world, chosen for  
their unique character and depth  
of flavor. The full retail value of  
this case and the Vintner's  
Reserve Wine Opener is over  
\$250.00 ... yours for just  
\$59.88\*.

Plus with your order you will receive our  
Vintner's Reserve Opener with Table  
Stand... a \$139.95 value  
... Absolutely Free!

- The preferred opener for professionals and  
beginners alike
- Unique design and antique look - makes a great

PAGE 4 of 10	INVESTIGATED BY S/A MICHAEL ONDEIKO #420	REPORTED BY	REVIEWED BY
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Michigan Attorney General's - High Te.  
Crime Unit  
ORIGINAL INCIDENT  
REPORT

ORIGINAL DATE  
Fri. Jan 27, 2006  
TIME RECEIVED  
0916

INCIDENT NO.  
AGCD-00282006  
FILE CLASS  
7300



Special Introductory Offer

**Get 6 Bottles FREE**  
with the purchase of 6 bottles  
That's 12 bottles for ONLY \$4.99 per bottle

PAGE 6 of 10	INVESTIGATED BY S/A MICHAEL ONDEJKO #420	REPORTED BY	REVIEWED BY
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ORIGINAL DATE  
Fri. Jan 27, 2006  
TIME RECEIVED  
0916

INCIDENT NO.  
AGCD-00282006  
FILE CLASS  
7300



*Free!*  
**GIFT!**

**The Vintner's  
Reserve Wine  
Opener!**

**A \$139.95 Value**

Every wine in our "4 Seasons" selection has been carefully chosen for its quality and value by our team of experienced buyers. Your introductory case will include delicious wines from around the world, chosen for their unique character and depth of flavor. The full retail value of this case and the Vintner's Reserve Wine Opener is over \$250.00 ... yours for just \$59.88\*.

**Plus with your order you will receive our Vintner's Reserve Opener with Table Stand... a \$139.95 value ... Absolutely Free!**

- The preferred opener for professionals and beginners alike
- Unique design and antique look - makes a great conversation piece
- No more mangled or broken corks
- No more straining and tugging on unopened bottles
- Works on all sizes and types of wine bottles



**4seasons**  
a world of wine discovery

PAGE 7 of 10	INVESTIGATED BY S/A MICHAEL ONDEJKO #420	REPORTED BY	REVIEWED BY
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ORIGINAL DATE  
Fri. Jan 27, 2006  
TIME RECEIVED  
0916

INCIDENT NO.  
AGCD-00282006  
FILE CLASS  
7300

**100% Money Back  
GUARANTEE**

*We are so confident of the quality of  
our wines that we guarantee every  
single bottle. If you are not delighted  
with any wine, for any reason, we'll  
refund you...simply as that!*

To cease emails from the advertiser only, proceed here.

totalcheapo.com | 1085 Business In Suite 3 | Naples, FL 34110

Do You Yahoo!?

Tired of spam? Yahoo! Mail has the best spam protection around

<http://mail.yahoo.com> --0-1584123524-1139684663=:15328-- -->

**INVESTIGATION:**

The investigation began with the sender's IP address listed above as "63.116.198.16". By way of explanation an IP address (Internet Protocol Address) is roughly analogous to a postal address, and allows for the traffic on the Internet to be directed to its proper destination. By analogy, the Internet could be compared to a large office complex of interconnected buildings, each containing numerous office suites. Just as each office suite has its own postal address, so each website on the Internet has a unique IP address. Under normal circumstances when an email is sent from a computer and received by another computer, the receiving computer captures the IP address of the sending computer. This is analogous to "caller ID" capturing the phone number of a caller.

These IP addresses can then be traced through several services which track the ownership of such addresses much the same as a phone book. In this case I utilized the public source registry of domain names "WHOIS". Using WHOIS registry information I learned that the owner of IP address "63.116.198.16" is Verizon Business of 22001 Loudon County Parkway Ashburn, VA.

PAGE 8 of 10	INVESTIGATED BY S/A MICHAEL ONDEJKO #420	REPORTED BY	REVIEWED BY
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Michigan Attorney General's - High  
Crime Unit  
ORIGINAL INCIDENT  
REPORT

ORIGINAL DATE Fri. Jan 27, 2006	INCIDENT NO. AGCD-00282006
TIME RECEIVED 0916	FILE CLASS 7300

On March 1, 2006, I served a search warrant on Verizon Business to determine who they had assigned the above described IP address to during the period in question. On March 2, 2006, I received a response that they assigned this IP address to Galaxy Visions of 600 Sylvan Ave - Englewood Cliffs, NJ.

On March 4, 2006, I contacted Ruben Magurdurov of Galaxy Visions and asked him if he could provide any information on the entity assigned the IP address in question. He stated he would look into it and get back to me. On March 9, 2006, Magurdurov replied by email stating they had done an investigation into the IP address assignment and that it was assigned to one of their clients and that it was terminated in late January for spamming violations.

On March 10 and 16 I again contacted Magurdurov to supply the name and address of his client who he stated he had assigned that IP to and he advised he would have to get that from his billing department but would get back to me. On May 22, 2006 I received a letter from Magurdurov indicating Galaxy Visions provided the IP address in question to DATA STREAM GROUP, INC. and Eric Reinersten at the given address.

**DATA STREAM GROUP, INC - ERIC REINERSTEN:**

Utilizing internet searches and sites I located the home page for "datastream.com" and read their company bio pages. This company shows a business address of 1085 Business Lane in Naples, Florida 34110, but the same telephone and fax numbers listed above.

Additional online investigation revealed Eric Reinersten is a documented "spammer" as reported by "Spamhaus.com" a spam watchdog group. Their records revealed Reinersten having a long history of spamming complaints. A portion of their records are included below for reference.

PAGE 9 of 10	INVESTIGATED BY S/A MICHAEL ONDEJKO #420	REPORTED BY	REVIEWED BY
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ORIGINAL DATE Fri. Jan 27, 2006	INCIDENT NO. AGCD-00282006
TIME RECEIVED 0916	FILE CLASS 7300

# SPAMHAUS



Home About ROKSO ROKSO FAQ Advanced Search Register Of Known Spam Operations

Search

## ROKSO

Eric Reinertsen SBL Listings Index

Country: United States State: Florida

ROK1173 - Main Info

Main Info ROK1173

Eric Reinertsen, aka Eric Reinertson, aka Eric Richards, aka Eric Colquhoun, also signs up as Steve Reinersten, Stephen Reinersten, Norman Reinersten, and probably more. Non-stop professional spammer since 1997. Scams, investment fraud, illegal mailserver hijacking, Reinertsen is into it all. Also goes by Dan Reinertsen. Or is it Dan Reinertson? Or is that a brother or cousin? (Latest word is that Dan is Eric's son).

A former host mentioned, "When we called his contact number to notify him of the suspension, we discovered in the voice listing that there were Eric, Steve, and Dan Reinersten."

A newspaper wrote, "Court records show Reinertsen has a long criminal history that includes a stint in federal prison on drug charges and a 1998 conviction in Collier County for scheming to defraud."

**STATUS:**

Open

PAGE 10 of 10	INVESTIGATED BY S/A MICHAEL ONDEJKO #420	REPORTED BY	REVIEWED BY
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STATE OF MICHIGAN 52-2 JUDICIAL DISTRICT 6th JUDICIAL CIRCUIT		SUMMONS CRIMINAL		CASE NO.: 2006900651 DISTRICT: CIRCUIT: 05 003750SM	
District Court ORI: MI- MI630095J 5850 Lorac, Clarkston, MI 248-625-4888			Circuit Court ORI: MI-630015J		
THE PEOPLE OF THE STATE OF MICHIGAN		v		Defendant's name and address DATA STREAM GROUP, Inc. 27265 High Seas Lane Bonita Springs, FL 34135	
Co-defendant(s)		Date: On or about 01/06/2006		Victim or complainant Kelly Cool	
City/Twp./Village Holly Township		County in Michigan Oakland		Defendant CTN 96-06900651-01	
Police agency report no. AGCD00282006		Charge See below		Defendant SID	
				Defendant DOB	
				Defendant DLN	

STATE OF MICHIGAN, COUNTY OF OAKLAND  
The complaining witness says,

**COUNT 1: COMPUTERS - CHILDREN'S PROTECTION REGISTRY ACT - VIOLATIONS**

On or about 1/6/2006, in Holly Township, in the County of Oakland, Michigan, the Defendant, Data Stream Group, Inc., did violate MCL 752.1065, a provision contained in the Michigan Children's Protection Registry Act, being MCL 752.1061 et seq, by sending, causing to be sent, or conspiring with another to send a message in violation of the act; contrary to MCL 752.796a(1)(a). [752.796A1A]

MISDEMEANOR: 1 Year and/or \$10,000.00

WHEREAS, the foregoing complaint having been made before me on oath and in writing and it appearing to me that the offense(s) stated herein have been committed and there is just cause to believe that the defendant is guilty thereof.

THEREFORE, IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN, \_\_\_\_\_ is hereby commanded to appear on behalf of the corporate defendant before the Honorable \_\_\_\_\_ at \_\_\_\_\_ in the \_\_\_\_\_ noon on the \_\_\_\_\_ day of \_\_\_\_\_, 2006, to be dealt with according to law.

8-10-06  
Date

  
Judge/Magistrate/Court Clerk  
THOMAS RAGUSO  
Bar no. 19197

Prosecution to be handled by:  
David E. Tanay (P55654)  
Assistant Attorney General  
Criminal Division  
PO Box 30218  
Lansing, MI 48909  
(517) 241-6565

STATE OF MICHIGAN 52-2 JUDICIAL DISTRICT 6TH JUDICIAL CIRCUIT	<b>COMPLAINT MISDEMEANOR</b>	DISTRICT: 86003750 <i>SM</i> CIRCUIT: CTN: 96-06900651-01 AGCD# 0028-2006
District Court ORI: MI630095J	Circuit Court ORI: MI- MI630015J	AG ORI: MI330025A

THE PEOPLE OF THE STATE OF MICHIGAN		Victim or complainant: Kelly Coqj
v		
DATA STREAM GROUP, INC. 27265 High Seas Lane Bonita Springs, FL 34135		Complaining Witness S/A MIKE ONDEJKO
Co-defendant(s)		Date: On or about 01/06/2006
City/Twp/Village HOLLY TOWNSHIP	County in Michigan OAKLAND	Defendant SID
Charge(s) See Below		Defendant DOB
		Maximum Penalty See Below

STATE OF MICHIGAN, COUNTY OF OAKLAND  
The complaining witness says:

**COUNT 1: COMPUTERS - CHILDREN'S PROTECTION REGISTRY ACT - VIOLATIONS**  
On or about 1/6/2006, in Holly Township, in the County of Oakland, Michigan, the Defendant, Data Stream Group, Inc., did violate MCL 752.1065, a provision contained in the Michigan Children's Protection Registry Act, being MCL 752.1061 et seq, by sending, causing to be sent, or conspiring with another to send a message in violation of the act; contrary to MCL 752.796a(1)(a). [752.796A1A]

MISDEMEANOR: 1 Year and/or \$10,000.00

The complaining witness asks that defendant be apprehended and dealt with according to law.

Warrant authorized on <u>8/7/06</u> by:
<i>[Signature]</i>
David E. Tanay P55654 Assistant Attorney General Criminal Division PO Box 30218 Lansing, MI 48909 (517) 241-6565
<input type="checkbox"/> Security for costs posted

<i>[Signature]</i>
Complaining witness signature
Subscribed and sworn to before me on <u>8-10-06</u>
<i>[Signature]</i>
Judge/Magistrate/Clerk
<u>P19192</u>
Bar no.

**ATTACHMENT 2**

**Datastream Group Inc.'s Consent Judgment in the Michigan Litigation**

STATE OF MICHIGAN  
IN THE CIRCUIT COURT OF  
INGHAM COUNTY

---

MICHAEL A. COX, Attorney General  
of the State of Michigan

Plaintiff,

v

DATASTREAM GROUP, INC.,

Defendant,

---

Tracy A. Sonneborn (P41416)  
Suzanne Hassan (P67620)  
Assistant Attorneys General  
Attorneys for Plaintiff  
Consumer Protection Division  
P.O. Box 30213  
Lansing, MI 48909  
(517) 335-0855

Case No. 06-1007-CP

Hon. William E. Collette

Brian P. Morley (P58346)  
Fraser Trebilcock  
Davis & Dunlap, P.C.  
124 W Allegan St Ste 1000  
Lansing, MI 48933  
(517) 482-5800

MIKE DRYANTON  
CLERK OF THE 30TH  
JUDICIAL CIRCUIT COURT  
INGHAM COUNTY CLERK

2008 FEB -6 A 10:36 AM '08

FILED

**CONSENT JUDGMENT**

The parties to this action desire to avoid further litigation and, having reached a mutually-acceptable agreement to resolve this dispute, request this Court to enter this Consent Judgment and dismiss this case upon the terms set forth below. In support of this request, the parties state as follows:

1. Plaintiff Michael A. Cox, Attorney General of the State of Michigan, commenced this action pursuant to Michigan's Children's Protection Registry Act, MCL 752.1061 *et seq.*

2. Defendant DataStream Group, Inc. is a Florida corporation doing business in the State of Michigan. Its corporate offices are located at 27265 High Seas Lane, Bonita Springs, Florida, 34135, and Eric Reinersten is its registered agent. Defendant is represented by Brian P. Morley, Esq.

3. The Attorney General alleged in his complaint that Defendant had violated the Act by causing an e-mail message soliciting the purchase of alcoholic beverages to an e-mail address registered with the state's children's protection registry as a contact point used by a minor.

4. Defendant admits to such transmission but states that, upon learning of the violation, it undertook immediate, affirmative steps to come into compliance with the Act.

5. Defendant further states that it agrees to comply with the Act's requirements at all times in the future.

**Agreement Of Defendant**

6. Defendant agrees that:
- A. jurisdiction and venue are proper in this Court;
  - B. by entering into this Consent Judgment, it waives all rights to trial or other adjudication of any issue of law or fact and rights it may have to appeal from this Consent Judgment;
  - C. the terms of this Consent Judgment shall apply to Defendant and all its officers, employees, contractors, and other agents;
  - D. it will take all reasonable steps to contractually require any contractor or other agent involved in the transmission of communications subject to the Act to observe the Act's requirements;
  - E. it will take all reasonable steps to monitor such transmissions to ensure compliance with the Act;
  - F. it will make a payment of \$25,000 to the State of Michigan, delivered or sent by registered mail to undersigned counsel for the Attorney General, PROVIDED, however, that this payment shall be suspended for a period of 12 months from the entry of this Consent Judgment and excused permanently if, within 15 months of the entry of this Consent Judgment, no violations of the Michigan Child Protection Act by Defendant during this 12-month period are established by the Attorney General;

- G. this case should be dismissed with prejudice, but this Court should retain jurisdiction and authority to enforce the terms of this Consent Judgment, if necessary;
- H. persons with authority to act on its behalf in this matter have had the opportunity to review this matter with counsel of record, and that its agreement to the terms of this Consent Judgment is made knowingly and voluntarily.

**Agreement by Plaintiff**

- 7. Plaintiff agrees that:
  - A. jurisdiction and venue are proper in this Court;
  - B. the agreements of Defendant stated above are reasonable in light of all relevant facts and circumstances;
  - C. this case should be dismissed with prejudice, but this Court should retain jurisdiction and authority to enforce the terms of this Consent Judgment, if necessary.

**Terms of Consent Judgment**

Upon the agreement of the parties, the following terms should be ordered to take effect upon entry of this Consent Judgment:

- 1. Defendant shall comply with all requirements of Michigan's Children's Protection Registry Act, MCL 752.1061 *et seq.*
- 2. Defendant will take all reasonable steps to contractually require any contractor or other agent involved in the transmission of any communication subject to the Act to observe the Act's requirements;
- 3. Defendant will take all reasonable steps to monitor such transmissions to ensure compliance with the Act;
- 4. Defendant will make a payment of \$25,000 to the State of Michigan one year from the entry of this Consent Judgment, which shall be delivered or sent by registered mail to undersigned counsel for the Attorney General, PROVIDED, however, that this payment shall be suspended for a period of 12 months and excused permanently if, within 15 months of the entry of this Consent Judgment, no violations of the Michigan Child Protection Act by Defendant during this 12-month period are established by the Attorney General;
- 5. By entering into this Consent Judgment, Defendant waives all rights to trial or other adjudication of any issue of law or fact and rights it may have to appeal from this Consent Judgment;
- 6. The terms of this Consent Judgment shall apply to Defendant and all its officers, employees, contractors, and other agents.

7. This case is dismissed with prejudice, but this Court retains jurisdiction and authority to enforce the terms of this Consent Judgment, if necessary.
8. This Consent Judgment does not constitute an approval by the Attorney General of any of Defendants' business practices and Defendants shall make no representation to the contrary.
9. Private rights of action are not affected by this Consent Judgment.
10. Enforcement authority of any other state, county, or governmental department or agency is not affected by this Consent Judgment.
11. Nothing in this Consent Judgment precludes the Attorney General from pursuing any action with respect to acts or practices not specifically alleged in the Complaint or any acts or practices after the filing of the Judgment.
12. **This order disposes of the last pending claim and closes this case.**

**IT IS SO ORDERED**



Hon. William E. Collette

Date:

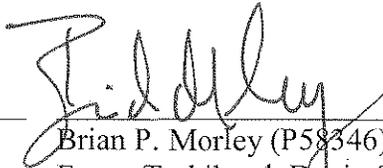
2-6-08

The parties stipulate and consent to the entry of this Consent Judgment.



Tracy A. Sonneborn (P41416)  
 Suzanne Hassan (P67620)  
 Assistant Attorneys General  
 Attorneys for Plaintiff  
 Attorney General Michael A. Cox

DATE: 2-6-08



Brian P. Morley (P58346)  
 Fraser Trebilcock Davis & Dunlap PC  
 Attorney for Defendant Datastream Group, Inc.

DATE: 2-6-08

SEE ATTACHES

Datastream Group, Inc., Defendant  
 Eric Reinersten, President

DATE: 2-6-08

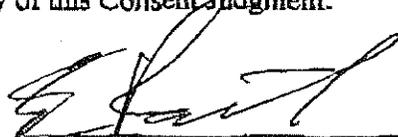
7. This case is dismissed with prejudice, but this Court retains jurisdiction and authority to enforce the terms of this Consent Judgment, if necessary.
8. This Consent Judgment does not constitute an approval by the Attorney General of any of Defendants' business practices and Defendants shall make no representation to the contrary.
9. Private rights of action are not affected by this Consent Judgment.
10. Enforcement authority of any other state, county, or governmental department or agency is not affected by this Consent Judgment.
11. Nothing in this Consent Judgment precludes the Attorney General from pursuing any action with respect to acts or practices not specifically alleged in the Complaint or any acts or practices after the filing of the Judgment.
12. This order disposes of the last pending claim and closes this case.

**IT IS SO ORDERED**

\_\_\_\_\_  
Hon. William E. Collette  
Date:

The parties stipulate and consent to the entry of this Consent Judgment.

\_\_\_\_\_  
Tracy A. Sonneborn (P41416)  
Suzanne Hassan (P67620)  
Assistant Attorneys General  
Attorneys for Plaintiff  
Attorney General Michael A. Cox

  
\_\_\_\_\_  
Datastream Group, Inc., Defendant  
Eric Reitersten, President

\_\_\_\_\_  
Brian P. Morley (P58346)  
Attorney for Defendant Datastream Group, Inc.

**ATTACHMENT 3**

**Datastream Group Inc.'s Articles of Incorporation**

POST 99876

TRANSMITTAL LETTER

Department of State  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

SUBJECT: DataStream Group, Inc

(Proposed corporate name - must include suffix)

8000034353  
-10/23/00-101185-1185

Enclosed is an original and one (1) copy of the articles of incorporation and a check for:

\$70.00  
Filing Fee

\$78.75  
Filing Fee  
& Certificate

\$122.50  
Filing Fee  
& Certified Copy

\$131.25  
Filing Fee,  
Certified Copy  
& Certificate

ADDITIONAL COPY REQUIRED

FROM: Debi-Ann Colquhan  
Name (Printed or typed)

27241 High Seas Lane  
Address

Bonita Springs, FL 34135  
City, State & Zip

941-949-4056  
Daytime Telephone number

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA  
00001-23-1110-56 X

NOTE: Please provide the original and one copy of the articles.

## Articles of Incorporation

In compliance with Chapter 607 and/or Chapter 621, F.S. (Profit)

FILED  
00 OCT 23 AM 10:56  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

1. The name of the corporation shall be: DataStreamGroup Inc
2. The principle place of business and mailing address of the corporation is:  
27241 High Seas Lane  
Bonita Springs, FL 34135
3. The purpose for which the corporation is organized is to offer services in Internet Marketing.
4. The corporation shall have the authority to issue 50,000 shares of stock.
5. The registered agent of the corporation is Leigh-Ann Colquhoun and the registered street address is 27241 High Seas Lane, Bonita Springs, FL 34135
6. The initial Board of Directors shall have one member whose name and address is as follows:

Leigh-Ann Colquhoun  
27241 High Seas Lane  
Bonita Springs, FL 34135

The number of directors may be raised or lowered by amendment of the bylaws of the corporation but shall in no case be less than one.

7. The incorporator of this corporation is Betty Borsukoff whose street address is 1288 Venetian Way, Naples, Florida 34110.

Dated: October 18, 2000

  
Incorporator

Having been named as registered agent and to accept service of process for the above stated corporation at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and am familiar with and accept the obligations of my position as registered agent.

Dated: October 18, 2000

  
Registered Agent

Timothy J. Walton (State Bar No. 184292)  
LAW OFFICES OF TIMOTHY WALTON  
801 Woodside Road, Suite 11  
Redwood City, CA 94061  
Phone (650) 216-9800  
Fax: (650) 618-8687

Daniel L. Balsam (State Bar No. 260423)  
THE LAW OFFICES OF DANIEL BALSAM  
3145 Geary Blvd. #225  
San Francisco, CA 94118  
Phone: (415) 276-3067  
Fax: (415) 373-3783

Attorneys for Appellant/Plaintiff  
Daniel L. Balsam

**COURT OF APPEAL OF THE STATE OF CALIFORNIA**  
**FIRST APPELLATE DISTRICT, DIVISION 3**

DANIEL L. BALSAM,	)	Case No.:	A126680
	)		
Appellant and Plaintiff,	)	<b>[PROPOSED] ORDER</b>	
	)	<b>GRANTING APPELLANT'S</b>	
v.	)	<b>REQUEST FOR JUDICIAL</b>	
	)	<b>NOTICE TO SUPPLEMENT</b>	
DSG DIRECT INC. <i>et al</i> ,	)	<b>RECORD</b>	
	)		
Defendants,	)		
	)		
TROPICINKS LLC <i>et al</i> ,	)		
	)		
Respondents and Real	)		
Parties in Interest.	)	Appeal Filed:	Oct. 9, 2009

Having duly considered Appellant's Request for Judicial Notice,  
IT IS HEREBY ORDERED:

1. That the Motion/Request for Judicial Notice as to the Complaint in the matter of *Cox v. Data Stream Group Inc.*, No. 06-1007-CP (Mich. Circ. Ct. Cty. of Ingham Aug. 10, 2006) is:  
[GRANTED] [DENIED]
2. That the Motion/Request for Judicial Notice as to the Consent Judgment in the matter of *Cox v. Data Stream Group Inc.*, No. 06-1007-CP (Mich. Circ. Ct. Cty. of Ingham Feb. 6, 2008) is:  
[GRANTED] [DENIED]
3. That the Motion/Request for Judicial Notice as to DSG Direct Inc.'s Articles of Incorporation is:  
[GRANTED] [DENIED]

IT IS SO ORDERED.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Judge of the Court of Appeal

**PROOF OF SERVICE AND DELIVERY**

I, Timothy J. Walton, declare that:

I am at least 18 years of age and not a party to the above-entitled action. My business address is Law Offices of Timothy Walton, 801 Woodside Road, Suite 11, Redwood City, CA 94061.

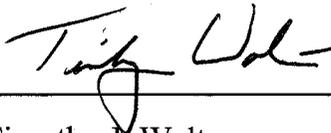
I served the foregoing APPELLANT'S MOTION/REQUEST FOR JUDICIAL NOTICE TO SUPPLEMENT RECORD, on January 27, 2010 by depositing a copy thereof in the United States mail in Redwood City, California, enclosed in a sealed envelope, with postage fully prepaid, addressed to the persons listed below:

Bennet Kelley  
Internet Law Center  
100 Wilshire Blvd., Suite 950  
Santa Monica, CA 90401

I served a copy of the brief on the clerk of the Superior Court of California, County of San Francisco by U.S. mail on January 27, 2010.

~~I served a text-searchable PDF copy of such brief on the California Supreme Court by uploading the brief to the Supreme Court's website on January 27, 2010.~~

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 27th day of January, 2010 at Redwood City, California.

  
\_\_\_\_\_  
Timothy J. Walton