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**ENDORSED
FILED**
Superior Court of California
County of San Francisco

JUN 26 2009

GORDON PARK-LI, Clerk
BY: DEBORAH STEPPE
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

NOV 25 2009 -9⁰⁰AM

DEPARTMENT 212

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)**

17 DANIEL L. BALSAM, an individual,)
18)

19 Plaintiff,)

20 v.)

21 TUCOWS INC., a Pennsylvania corporation,)
22 TUCOWS CORP., a Mississippi corporation,)
23 ELLIOT NOSS, an individual,)
24 PAUL KARKAS, an individual, and)
25 DOES 1-100,)

26 Defendants.)

CGC-09-489840
) Case No.:
)
)

) **VERIFIED COMPLAINT FOR**
) **DAMAGES**

-) **1. BREACH OF CONTRACT**
) **2. NEGLIGENCE**
) **3. CIVIL CONSPIRACY**
) **4. DECLARATORY RELIEF**

27 COMES NOW PLAINTIFF DANIEL L. BALSAM and files this Verified Complaint for causes
28 of action against Defendants TUCOWS INC., TUCOWS CORP., ELLIOT NOSS, PAUL
29 KARKAS, and DOES 1 through 100, inclusive, and alleges as follows:
30
31

1 **I. SUMMARY OF THE COMPLAINT**

2 1. Plaintiff DANIEL L. BALSAM (“BALSAM”) brings this Action against Defendants
3 TUCOWS INC. and TUCOWS CORP. (collectively “TUCOWS”) doing business as
4 *OpenSRS.org* and *ContactPrivacy.com* for breach of contract and negligence.

5 2. BALSAM also names as defendants ELLIOT NOSS (“NOSS”), Chief Executive Officer
6 of TUCOWS INC. and TUCOWS CORP., and PAUL KARKAS (“KARKAS”), Compliance
7 Officer.

8 3. BALSAM is informed and believes and thereon alleges that the Internet Corporation for
9 Assigned Names and Numbers (“ICANN”) and TUCOWS have signed a contract (“ICANN
10 Agreement”) that allows TUCOWS to act as a Registrar of Internet domain names.

11 4. When TUCOWS offers “private registration” services for Internet domain names,
12 TUCOWS (dba *ContactPrivacy.com*) also becomes the Registered Name Holder of those
13 privately registered domain names.

14 5. The ICANN Agreement expressly states that a Registered Name Holder that allows third
15 parties to use its Internet domain names shall accept all liability for wrongful use of the domain
16 names, unless the Registered Name Holder promptly discloses the identity of the licensee (the
17 actual operator of the domain name, hereinafter "Licensee") upon presentation of reasonable
18 evidence of actionable harm.

19 6. TUCOWS is currently the Registered Name Holder of the domain name
20 *AdultActionCam.com* and has been since at least July of 2006.

21 7. BALSAM provided TUCOWS with reasonable evidence of actionable harm in the form
22 of unlawful Unsolicited Commercial Emails (“UCEs” or “spams”) that advertised the
23 pornographic website *AdultActionCam.com*, for which TUCOWS (dba *ContactPrivacy.com*) is
24 the Registered Name Holder.

25 8. TUCOWS refused to provide BALSAM with the identity of its Licensee who actually
26 operates the domain name/website *AdultActionCam.com*.

27 9. The U.S. District Court for the Northern District of California found that BALSAM was
28 harmed by unlawful spams advertising *AdultActionCam.com* and entered judgment in
29 BALSAM’s favor.

30 10. After BALSAM notified TUCOWS of the amount of the damages, TUCOWS refused to
31 pay BALSAM, thereby breaching the terms of the ICANN Agreement.

1 **II. PARTIES**

2 **A. Plaintiff Daniel L. Balsam**

3 11. BALSAM is an individual residing in the State of California, in the City and County of
4 San Francisco.

5 12. BALSAM received 1,125 unlawful spams advertising *AdultActionCam.com*, for which
6 TUCOWS is the Registered Name Holder.

7 13. BALSAM was injured by TUCOWS in the City and County of San Francisco.

8 **B. Defendants**

9 14. BALSAM is informed and believes and thereon alleges that Defendant TUCOWS INC. is
10 now, and was at all times relevant herein, a corporation duly organized and recognized under the
11 laws of the State of Pennsylvania with a principal place of business in Toronto, Ontario, Canada.

12 15. BALSAM is informed and believes and thereon alleges that Defendant TUCOWS INC.
13 has now, and at all times relevant herein has had, a physical location in Starkville, Mississippi.

14 16. BALSAM is informed and believes and thereon alleges that Defendant TUCOWS CORP.
15 is now, and was at all times relevant herein, a corporation duly organized and recognized under
16 the laws of the State of Mississippi with a principal place of business in Starkville, Mississippi.

17 17. BALSAM is informed and believes and thereon alleges that there exists, and at all times
18 since incorporation of the entities has existed, a unity of interest and ownership between
19 Defendants TUCOWS INC. and TUCOWS CORP. such that any separateness between them has
20 ceased to exist.

21 18. BALSAM is informed and believes and thereon alleges that TUCOWS INC. has
22 completely controlled, dominated, managed and operated TUCOWS CORP. since incorporation.

23 19. BALSAM is informed and believes and thereon alleges that TUCOWS CORP. is, and at
24 all times mentioned was, a mere shell, instrumentality and conduit through which TUCOWS
25 INC. carried on activities in the corporate name exactly as it would have in its own name.

26 20. BALSAM is informed and believes and thereon alleges that TUCOWS INC. exercised
27 and exercises such complete control and dominance of such activities that any individuality or
28 separateness of TUCOWS CORP. does not, and at all relevant times did not, exist.

29 21. BALSAM is informed and believes and thereon alleges that Defendant ELLIOT NOSS
30 (“NOSS”) is now, and was at all times relevant herein, President and Chief Executive Officer of
31 TUCOWS INC. and President of TUCOWS CORP.

1 22. BALSAM is informed and believes and thereon alleges that Defendant PAUL KARKAS
2 (“KARKAS”) is now, and was at all times relevant herein, Compliance Officer of TUCOWS
3 INC. *and* TUCOWS CORP.

4 23. BALSAM is informed and believes and thereon alleges that adherence to the fiction of
5 the separate existence of each of TUCOWS INC. and TUCOWS CORP. would permit an abuse
6 of the corporate privilege, with the intention of preventing BALSAM from obtaining monetary
7 relief.

8 24. For the above reasons, BALSAM hereinafter refers to TUCOWS INC. and TUCOWS
9 CORP. collectively as “TUCOWS.”

10 25. TUCOWS is a Domain Registrar pursuant to the ICANN Agreement, which means that
11 TUCOWS enables third parties to create/register Internet domain names used for various
12 purposes relating to the Internet, including to identify websites.

13 26. TUCOWS is the Registrar of the domain name *AdultActionCam.com*.

14 27. TUCOWS – through its “OpenSRS” domain resellers group dba *ContactPrivacy.com* –
15 offers “private registration” services by which its customers who create and operate Internet
16 domain names can hide their true identity from anyone conducting a query of the publicly
17 available Whois database.

18 28. By providing “private registration” services for the domain name *AdultAction.com*,
19 TUCOWS *also* became the Registered Name Holder of *AdultActionCam.com*. A query of the
20 publicly available Whois database shows that *ContactPrivacy.com* (i.e. TUCOWS) is the
21 Registered Name Holder.

22 23 **III. STATEMENT OF FACTS**

24 29. From October 2005 through May 2006, BALSAM received 1,125 Unsolicited
25 Commercial Emails (“UCEs” or “spams”) advertising the pornographic website
26 *AdultActionCam.com*.

27 30. BALSAM is informed and believes and thereon alleges that the ICANN Agreement
28 requires that the identity of the Registrant of an Internet domain name be publicly available to
29 anyone who queries the Whois database.

1 31. In October 2005, BALSAM queried the Whois database for the domain name
2 *AdultActionCam.com*, which showed that the Registrant was Angeles Technology Inc.
3 (“Angeles”) and that TUCOWS was the Registrar.

4 32. **Exhibit A** is a true and correct copy of the Whois query results for *AdultActionCam.com*
5 as of October 2005.

6 33. TUCOWS offers a “Contact Privacy” feature so that Registrants of domain names
7 registered through TUCOWS can hide their identity from anyone conducting a Whois query.

8 34. BALSAM has extensive personal experience with spammers trying to hide their identity
9 by privately registering the domain names they use to send unlawful spam.

10 35. BALSAM is informed and believes and thereon alleges that TUCOWS is able to hide its
11 customers’ identities and still comply with ICANN’s requirements that the Registrant’s identity
12 appear in the Whois database by taking legal title to the “privately registered” domain names.
13 Thus, TUCOWS is not only the Registrar of a domain name, but it also becomes the Registered
14 Name Holder. A Whois query on such a privately registered domain name shows that
15 *ContactPrivacy.com* is the Registrant/Registered Name Holder.

16 36. BALSAM is informed and believes and thereon alleges that after becoming the
17 Registered Name Holder of a privately registered domain name, TUCOWS then licenses full use
18 and operational control of the domain name/website back to the customer (the intended user of
19 the domain name), who then becomes TUCOWS’ Licensee.

20 37. BALSAM filed a lawsuit against Angeles and others on May 23, 2006. *Balsam v.*
21 *Angeles Technology et al*, No. 106CV064214 (Super. Ct. Cal. Cty. of Santa Clara filed May 23,
22 2006). (The case was subsequently removed to federal court by one of the defendants.)

23 38. At some time between October 2005 and July 2006, the operator of the domain name
24 *AdultActionCam.com* – who may or may not have still been Angeles – availed itself of
25 TUCOWS’ “Contact Privacy” feature so that anyone conducting a Whois query would be unable
26 to identify it. As described above, TUCOWS thus became the Registered Name Holder.

27 39. **Exhibit B** is a true and correct copy of a Whois query for the domain name
28 *AdultActionCam.com* as of July 2006, now identifying TUCOWS dba *ContactPrivacy.com* as the
29 Registered Name Holder.

30 40. On October 17, 2007, BALSAM sent a registered/return receipt letter to TUCOWS.

31 41. **Exhibit C** is a true and correct copy of BALSAM’s letter to TUCOWS.

1 42. The letter in **Exhibit C** informed TUCOWS that it was providing private registration
2 services for the domain name *AdultActionCam.com*, and attached a sample spam linking through
3 to the pornographic website *AdultActionCam.com*. The letter demanded that TUCOWS provide
4 BALSAM with the current identity of the spammer operating the domain name
5 *AdultActionCam.com*.

6 43. In this letter, BALSAM also quoted paragraph 3.7.7.3 of the ICANN Agreement, which
7 states:

8 Any Registered Name Holder that intends to license use of a domain name to a
9 third party is nonetheless the Registered Name Holder of record and is responsible
10 for providing its own full contact information and for providing and updating
11 accurate technical and administrative contact information adequate to facilitate
12 timely resolution of any problems that arise in connection with the Registered
13 Name. A Registered Name Holder licensing use of a Registered Name according
14 to this provision shall accept liability for harm caused by wrongful use of the
15 Registered Name, unless it promptly discloses the identity of the licensee to a
16 party providing the Registered Name Holder reasonable evidence of actionable
17 harm.

18 44. The ICANN Agreement does not require that a party be proximately harmed by the
19 Registered Name Holder's refusal to disclose the identity; the plain language of the Agreement
20 indicates that the Registered Name Holder's mere act of refusing to disclose the identity, in and
21 of itself, triggers liability.

22 45. This letter also expressly informed TUCOWS that a) BALSAM had received thousands
23 of such spams, b) BALSAM had been harmed by receiving these spams, c) California Business
24 & Professions Code § 17529.5 authorized liquidated damages of \$1,000 *per email* and attorneys'
25 fees, d) pursuant to the ICANN agreement, TUCOWS had voluntarily agreed to accept all
26 liability for this harm unless it promptly disclosed the identity of the spammer using the domain
27 name *AdultActionCam.com*, and e) a lawsuit had already been filed.

28 46. United States Postal Service records indicate that the letter in **Exhibit C** was delivered on
29 October 31, 2007.

30 47. **Exhibit D** is a true and correct copy of tracking results from the U.S.P.S. website and the
31 return-receipt postcard.

48. On November 1, 2007, BALSAM received an email from KARKAS at TUCOWS.
KARKAS claimed TUCOWS was "just the Registrar" and that it did not host any content or
provide bandwidth for *AdultActionCam.com*.

1 49. TUCOWS did not provide BALSAM with the identity of its Licensee.

2 50. BALSAM replied the same day (November 1, 2007), stating that he was fully aware that
3 TUCOWS was the Registrar, and that as Registrar – regardless of hosting/bandwidth –
4 TUCOWS was required to provide BALSAM with the identity of the spammer.

5 51. On November 2, 2007, KARKAS replied that TUCOWS would abide by court orders as
6 to producing the identity of its Licensees.

7 52. However, nothing in the ICANN Agreement requires a person to get a court order; the
8 ICANN Agreement only requires that a party provide the Registrar/Registered Name Holder –
9 i.e., TUCOWS – with reasonable evidence of actionable harm.

10 53. BALSAM replied the same day (November 2, 2007), stating that he did not need a court
11 order, and that TUCOWS did have the right to refuse to provide BALSAM with the identity of
12 the entity operating *AdultActionCam.com*, but that decision meant that TUCOWS was also
13 choosing to accept liability for the wrongful acts involving that domain name pursuant to the
14 ICANN Agreement.

15 54. BALSAM sent a final email to KARKAS on November 4, 2007, stating that BALSAM
16 was aware that TUCOWS had refused to respond to subpoenas sent by William Silverstein (in
17 unrelated cases), which similarly demanded the identity of TUCOWS' Licensees for which
18 TUCOWS was providing private registration services.

19 55. Neither KARKAS nor anyone else at TUCOWS ever responded to BALSAM's
20 November 4, 2007 email.

21 56. **Exhibit E** is true and correct copies of the emails between BALSAM and TUCOWS
22 described in the preceding paragraphs, with the most recent at the beginning.

23 57. On March 28, 2008, the U.S. District Court for the Northern District of California entered
24 judgment in the amount of \$1,125,000 in BALSAM's favor against Angeles et al. *Balsam v.*
25 *Angeles Technology Inc. et al*, No. CV 06-04114 JF (N.D. Cal. Mar. 28, 2008) (Order Granting
26 Motion for Default Judgment).

27 58. **Exhibit F** is a true and correct copy of the judgment in *Balsam v. Angeles Technology Inc.*
28 *et al.*

29 59. BALSAM was able to identify the payment processor – PayCom – that handled credit
30 card billing for the pornographic website *AdultActionCam.com*.

1 60. BALSAM attempted to levy on this revenue stream, but PayCom refused to comply,
2 stating that Angeles' revenues had been assigned to someone else.

3 61. In response to a subpoena, PayCom revealed that the assignee was "Belvedere St. James
4 Ltd." ("Belvedere"), a Maltese company.

5 62. BALSAM subsequently attempted to seize the domain name *AdultAction.com* and amend
6 the judgment to add Belvedere as a judgment debtor.

7 63. After BALSAM served notice on PayCom, an attorney made a special appearance on
8 behalf of Belvedere and argued that Belvedere had never been served with the complaint.

9 64. The court denied BALSAM's motion to seize the domain name *AdultActionCam.com*
10 because the Court could not determine who was operating the domain name at the time of the
11 unlawful acts – Angeles or Belvedere.

12 65. The court also denied BALSAM's motion to enforce the judgment entered against
13 Angeles on the PayCom revenue stream that Angeles had assigned to Belvedere, because even
14 though BALSAM had served the summons and complaint via email to *adultactioncam.com@*
15 *contactprivacy.com* and *webmaster@adultactioncam.com* (pursuant to court order), the court
16 could not conclude that Belvedere received notice.

17 66. **Exhibit G** is a true and correct copy of the court's order.

18 67. BALSAM is informed and believes and thereon alleges that if TUCOWS had produced
19 the identity of the true operator of the *AdultActionCam.com* domain name and website (its
20 Licensee) in response to BALSAM's request, and confirmed that the true operator was Angeles,
21 then BALSAM could have prevailed in his argument that Angeles was still in control of the
22 domain name and website, and thus: a) the judgment would trump the assignment of Angeles'
23 revenues, and b) BALSAM could have seized the domain name that was still Angeles' property.

24 68. Alternatively, BALSAM is informed and believes and thereon alleges that if TUCOWS
25 had produced the identity of the true operator of the *AdultActionCam.com* domain name and
26 website in response to BALSAM's request, and confirmed that the true operator was Belvedere,
27 then the court would have concluded that: a) Belvedere had received notice of the lawsuit, and b)
28 the court would have amended the default judgment to add Belvedere.

29 69. As it is, TUCOWS' refusal to provide the identity of its Licensee – the operator of the
30 *AdultActionCam.com* domain name and website – resulted in confusion for the court that has so
31 far allowed the tortfeasors to escape liability.

1 70. Furthermore, even if TUCOWS' refusal to provide the identity did not directly lead to the
2 District Court's decision, BALSAM is informed and believes and thereon alleges that a)
3 TUCOWS dba *ContactPrivacy.com* is the Registered Name Holder of *AdultActionCam.com*, b)
4 BALSAM was harmed by the spams at issue, as shown by the entry of judgment, c) TUCOWS
5 did not provide BALSAM with the true identity of the licensee, and d) per the ICANN
6 Agreement, TUCOWS *shall* accept liability for the harm because it did not promptly (or ever, as
7 described below) disclose the identity of its Licensee.

8 71. **Exhibit H** is a true and correct copy of an email from BALSAM to KARKAS on March
9 9, 2009, to which were attached eight more sample spams advertising *AdultActionCam.com*.

10 72. **Exhibit I** is a true and correct copy of an email from BALSAM to KARKAS on April 16,
11 2009, reminding KARKAS that he had still not provided any substantive response as to its
12 Licensee for the *AdultActionCam.com* domain name.

13 73. Thus, even though TUCOWS has known for several months that a court found that
14 *AdultActionCam.com* was being advertised via unlawful spams, TUCOWS is still hiding the
15 identity of its Licensee, despite a reminder from BALSAM on April 16, 2009.

16 74. **Exhibit J** is a true and correct copy of a Whois query for *AdultActionCam.com* as of June
17 12, 2009, showing that TUCOWS dba *ContactPrivacy.com* is still the Registered Name Holder.

18 75. Separately from the *AdultActionCam.com* lawsuit, BALSAM sent an email to KARKAS
19 on March 19, 2009 informing KARKAS that BALSAM had received unlawful spams advertising
20 the website *WebTrafficMarketing.com* (for which TUCOWS is the Registered Name Holder) and
21 attaching evidence of the spams.

22 76. On March 20, 2009, KARKAS responded that he was "looking into this."

23 77. **Exhibit K** is a true and correct copy of emails between BALSAM and TUCOWS
24 regarding *WebTrafficMarketing.com*.

25 78. BALSAM also reminded KARKAS about the *WebTrafficMarketing.com* issue on April
26 16, 2009. **Exhibit L**.

27 79. Three months after BALSAM's initial demand, and two months after the reminder,
28 TUCOWS still has not provided BALSAM with the identity of its Licensee operating the domain
29 name *WebTrafficMarketing.com*.

30 80. While no court has yet entered judgment regarding these *WebTrafficMarketing.com*
31 spams, this instance provides further evidence of TUCOWS' pattern and practice of refusing to

1 produce the identity of its Licensees engaged in unlawful spamming using domain names for
2 which TUCOWS is the Registered Name Holder.

3 81. BALSAM is acting as a private attorney general because forcing Internet Domain
4 Registrars to follow the ICANN Agreement and accept liability for harm caused by wrongful use
5 of privately registered domain names for which they are the Registered Name Holders (unless
6 they promptly disclose the identity of their Licensees) will result in an important right affecting
7 the public interest and benefit a large class of persons – email users – by making it more difficult
8 for unlawful spammers to hide behind privately registered domain names. In the interest of
9 justice BALSAM’s attorneys’ fees should not be paid out of the recovery. Code Civ. Proc.
10 § 1021.5.

11
12 **FIRST CAUSE OF ACTION**

13 **[Breach of Contract]**

14 **(Against Defendants TUCOWS INC., TUCOWS CORP., and DOES 30-70)**

15 82. BALSAM hereby incorporates each and every foregoing paragraph as though set forth in
16 full herein.

17 83. As described above, TUCOWS voluntarily signed the ICANN Agreement so that it could
18 become a domain name Registrar.

19 84. In order to prevent spammers and other tortfeasors from hiding behind private domain
20 registrations, one of the terms of the ICANN Agreement states that a Registered Name Holder
21 (here, TUCOWS) who chooses to offer private domain name registration services must disclose
22 the identity of its Licensee operating the domain name to *anyone* who presents the Registered
23 Name Holder with reasonable evidence of actionable harm; otherwise, the Registered Name
24 Holder *shall* accept all liability for harm caused by the wrongful use of the domain name.

25 85. BALSAM is one of the intended third party beneficiaries of paragraph 3.7.7.3 of the
26 ICANN Agreement.

27 86. It is undisputed that TUCOWS refused to provide BALSAM with the identity of any
28 Licensee of the domain names *AdultActionCam.com* or *WebTrafficMarketing.com*.

29 87. It is a matter of public record that the District Court for the Northern District of
30 California entered judgment for BALSAM in the amount of \$1,125,000 on March 28, 2008.

1 88. On February 18, 2009, BALSAM sent TUCOWS a letter demanding that TUCOWS pay
2 BALSAM the damages for which it had accepted liability pursuant to the ICANN Agreement.
3 Specifically, BALSAM stated that if TUCOWS agreed to pay at least 1/3 of the judgment within
4 30 days and the entire judgment within 180 days, he would agree to forego interest that has been
5 accruing at 10% per year.

6 89. TUCOWS (through its agent KARKAS) then exchanged several emails and telephone
7 calls with BALSAM and his attorney, Timothy Walton, between March 5 and March 13, 2009.

8 90. TUCOWS claimed it wanted to do “more research” and requested *more* evidence of
9 actionable harm, which BALSAM provided. **Exhibit H.**

10 91. More than a month passed with no response from TUCOWS whatsoever.

11 92. BALSAM sent an email to KARKAS on April 16, 2009 reminding him that he had not
12 responded in a timely manner regarding *AdultActionCam.com* (or *WebTrafficMarketing.com*, the
13 other privately registered spamming domain name to which BALSAM alerted TUCOWS on
14 March 19, 2009) and that BALSAM would treat his non-responsiveness accordingly. **Exhibit I.**

15 Thus, even despite BALSAM’s demand letter and with knowledge of imminent litigation,
16 TUCOWS still refused to provide the identity of its Licensee operating the *AdultActionCam.com*
17 domain name, for which TUCOWS is the Registered Name Holder.

18 93. TUCOWS has not paid BALSAM any monies.

19
20 WHEREFORE, BALSAM prays for judgment against Defendants, and each of them, as
21 hereinafter set forth.

22
23 **SECOND CAUSE OF ACTION**

24 **[Negligence]**
25 **(Against all Defendants)**

26 94. BALSAM hereby incorporates each and every foregoing paragraph as though set forth in
27 full herein.

28 95. In order to prevail in a negligence action, the plaintiff must show that the defendant owed
29 him/her a legal duty, the defendant breached that duty, and that the breach proximately caused
30 his/her injuries. *Wiener v. Southcoast Childcare Centers, Inc.*, 32 Cal. 4th 1138, 1145 (2004).

1 96. Duty. Here, Defendants had a duty to BALSAM. The duty was one that TUCOWS
2 voluntarily accepted by signing the ICANN Agreement and choosing to offer private registration
3 services, through which TUCOWS became the Registered Name Holder of the domain name
4 *AdultActionCam.com* – the duty to either provide BALSAM with the identity of its Licensee
5 operating *AdultActionCam.com*, or to accept liability for all harm suffered by BALSAM arising
6 from the wrongful use of *AdultActionCam.com*.

7 97. BALSAM was a foreseeable plaintiff in this lawsuit because the ICANN Agreement,
8 paragraph 3.7.7.3, does not limit *who* can present a Registered Name Holder with reasonable
9 evidence of actionable harm; in fact, the language of paragraph 3.7.7.3 clearly contemplates third
10 parties bringing evidence to the Registered Name Holder’s attention.

11 98. Such third parties are intended beneficiaries of the ICANN Agreement; because third
12 parties benefit from the Registered Name Holder’s disclosure of the true identity of the Licensees
13 who privately register and operate domain names used for unlawful spamming.

14 99. More specifically, BALSAM was a foreseeable plaintiff in the instant lawsuit because
15 TUCOWS and its agents refused to provide BALSAM with the identity of its Licensee operating
16 the domain name *AdultActionCam.com*, and TUCOWS and its agents refused to compensate
17 BALSAM for the damages he suffered from the wrongful use of the domain name
18 *AdultActionCam.com*.

19 100. Breach. Defendants breached their duty by refusing to identify its Licensee operating the
20 domain name *AdultActionCam.com* and then – despite the mandatory *shall* language of
21 paragraph 3.7.7.3 of the ICANN Agreement – refusing to compensate BALSAM for his
22 damages.

23 101. Causation. Pursuant to paragraph 3.7.7.3 of the ICANN Agreement, BALSAM is
24 entitled to the identity of the Licensee operating the domain name *AdultActionCam.com*, or
25 compensation for harm arising from the unlawful use of the domain name.

26 102. But for Defendants’ refusal to honor the terms of the ICANN Agreement, BALSAM
27 would have had the identity of the Licensee or compensation through judgment enforcement
28 efforts.

29 103. Furthermore, Defendants’ refusal to disclose the identity of its Licensee operating
30 *AdultActionCam.com* and refusal to compensate BALSAM was the proximate cause of
31

1 BALSAM's injuries. It was entirely foreseeable that Defendants' refusal to provide BALSAM
2 with the identity or compensation would damage BALSAM.

3 104. Damages. The District Court already found that BALSAM has been damaged in the
4 amount of \$1,125,000 by wrongful use of the *AdultActionCam.com* domain name, by receiving
5 unlawful spams that linked to the pornographic *www.AdultActionCam.com* website. Interest has
6 been accruing at 10% per year since judgment was entered on March 28, 2008.

7 105. Balsam was damaged to the extent that Defendants' negligence was a proximate cause of
8 the inability to enforce judgment

9
10 WHEREFORE, BALSAM prays for judgment against Defendants, and each of them, as
11 hereinafter set forth.

12
13 **THIRD CAUSE OF ACTION**

14 **[Civil Conspiracy]**

15 **(Against Defendants TUCOWS INC., TUCOWS CORP., NOSS, KARKAS
16 and DOES 50-100)**

17 106. BALSAM hereby incorporates paragraphs 1-90 as though set forth in full herein.

18 107. BALSAM is informed and believes and thereon alleges that TUCOWS INC., TUCOWS
19 CORP., NOSS, and KARKAS, acting in agreement, concert, and conspiracy with each other,
20 jointly and severally, as set forth fully above, acted with a common purpose to refuse to provide
21 BALSAM with the identity of TUCOWS' Licensee who privately registered the domain name
22 *AdultActionCam.com* (for which TUCOWS is the Registered Name Holder) *before* judgment
23 was entered in *Balsam v. Angeles Technology Inc. et al.*

24 108. BALSAM is informed and believes and thereon alleges that TUCOWS INC., TUCOWS
25 CORP., NOSS, and KARKAS, acting in agreement, concert, and conspiracy with each other,
26 jointly and severally, as set forth fully above, acted with a similar common purpose to refuse to
27 provide BALSAM with the identity of TUCOWS' Licensee who privately registered the domain
28 name *AdultActionCam.com* (for which TUCOWS is the Registered Name Holder) *even after*
29 judgment was entered, when BALSAM gave TUCOWS another opportunity to avoid liability
30 simply by providing him with the identity of its Licensee.

1 109. BALSAM is informed and believes and thereon alleges that TUCOWS INC., TUCOWS
2 CORP., NOSS, and KARKAS, acting in agreement, concert, and conspiracy with each other,
3 jointly and severally, as set forth fully above, acted with a common purpose to breach the
4 ICANN Agreement by refusing to compensate BALSAM for the harm suffered by wrongful use
5 of the *AdultActionCam.com* domain name for which TUCOWS is the Registered Name Holder,
6 despite the “shall accept liability” language of paragraph 3.7.7.3 of the ICANN Agreement, and
7 by refusing to cooperate with BALSAM’s lawful efforts to discover the identity of the initial
8 tortfeasor operating the *AdultActionCam.com* domain name, even with actual knowledge that
9 BALSAM was preparing to file the instant lawsuit.

10 110. BALSAM was damaged by the concert of actions by Defendants.

11
12 WHEREFORE, BALSAM prays for judgment against Defendants, and each of them, as
13 hereinafter set forth.

14
15 **FOURTH CAUSE OF ACTION**

16 **[Declaratory Relief]**
17 **(Against All Defendants)**

18 111. BALSAM hereby incorporates each and every foregoing paragraph as though set forth in
19 full herein.

20 112. An actual controversy has arisen between BALSAM and Defendants as to Defendants’
21 obligations as a domain name Registrar, the provider of private registration services for Internet
22 domain names, and a Registered Name Holder, pursuant to the ICANN Agreement.

23 113. BALSAM can show that Defendants did not comply with their legal obligations.

24 114. BALSAM respectfully requests this Court to make a judicial declaration and
25 determination that, pursuant to the ICANN Agreement, because Defendants refused to provide
26 BALSAM with the identity of TUCOWS’ Licensee operating the domain name
27 *AdultActionCam.com* (for which TUCOWS is the Registered Name Holder) after BALSAM
28 provided TUCOWS with evidence that he had received unlawful spam advertising
29 *AdultActionCam.com*, Defendants shall accept all liability for harm caused by wrongful use of
30 the domain name.

1 WHEREFORE, BALSAM prays for judgment against Defendants, and each of them, as
2 hereinafter set forth.

3
4 **PRAYER FOR RELIEF**

5 **(Against All Defendants)**

- 6 A. An Order from this Court that – pursuant to the ICANN Agreement – because Defendants
7 refused to provide BALSAM with the identity of TUCOWS’ Licensee operating the domain
8 name *AdultActionCam.com*, for which TUCOWS is the Registered Name Holder, Defendants
9 shall accept all liability for harm caused by the wrongful use of the domain name.
10 B. Damages in the amount of \$1,125,000.
11 C. Interest at the rate of 10% per year since judgment was entered in *Balsam v. Angeles*
12 *Technology Inc. et al* on March 28, 2008, pursuant to Cal. Civ. Code § 3287(a).
13 D. Costs of suit;
14 E. Attorneys’ fees pursuant to Cal. Code Civ. Proc. § 1021.5; and
15 F. Such other and further relief as the Court deems proper.
16

17 LAW OFFICES OF TIMOTHY WALTON

18
19 Date: 6-18-09

20 BY: Timothy Walton
21 TIMOTHY J. WALTON
22 Attorneys for Plaintiff

23 **VERIFICATION**

24 The undersigned for himself declares:

25 I am the plaintiff in the above-entitled action. I have read the forgoing Complaint and
26 know the contents thereof. With respect to the causes of action alleged by me, the same is true
27 by my own knowledge, except as to those matters which are therein stated on information and
28 belief, and, as to those matters, I believe them to be true. I declare under penalty of perjury
29 under the laws of the State of California that the forgoing is true and correct.

30 Date: 6-25-09

31 Daniel L. Balsam
DANIEL L. BALSAM

EXHIBIT A

Whois Query for Domain Name *AdultActionCam.com* as of October 4, 2005 (Identifying Angeles Technology Inc. as the Registered Name Holder)



Resellers Home Wholesale Services OpenSRS Platform Manage My Services About Tucows Cont

[SEARCH SITE](#)

OpenSRS Whois Utility

[SEARCH ▶](#)

Whois info for, **adultactioncam.com**:

[DOMAIN LOOKUP](#)

[WHOIS ▶](#)

Registrant:
 Angeles Technology Inc
 4601 W Sahara Ave.
 Las Vegas, NV 89102
 US

Existing Resellers

[SIGN INTO RWI ▶](#)

[RESOURCE CENTER ▶](#)

Domain name: ADULTACTIONCAM.COM

Administrative Contact:
 Management, Domain admin@adultactioncam.com
 4601 W Sahara Ave.
 Las Vegas, NV 89102
 US
 +1.505.4384195

Technical Contact:
 Management, Domain admin@adultactioncam.com
 4601 W Sahara Ave.
 Las Vegas, NV 89102
 US
 +1.505.4384195

Become a Reseller

Sign up now! ▶

FAQs Answered ▶



WWW

Refer me to a Reseller

Marketplace

By Resellers
for Resellers.



Registrar of Record: TUCOWS, INC.
 Record last updated on 14-Sep-2005.
 Record expires on 21-Oct-2007.
 Record created on 21-Oct-2003.

Domain servers in listed order:
 NS1.ADULTACTIONCAM.COM 66.198.36.67
 NS2.ADULTACTIONCAM.COM 66.198.36.66

Domain status: REGISTRAR-LOCK

The Data in the Tucows Registrar WHOIS database is provided to you by for information purposes only, and may be used to assist you in obtain information about or related to a domain name's registration record.

Tucows makes this information available "as is," and does not guarantee accuracy.

By submitting a WHOIS query, you agree that you will use this data on lawful purposes and that, under no circumstances will you use this data a) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass, unsolicited, commercial advertising solicitations to entities other than the data recipient's own existing customers; or (b) enable high volume, automated, electronic processes send queries or data to the systems of any Registry Operator or ICANN-Accredited registrar, except as reasonably necessary to register domain names or modify existing registrations.

The compilation, repackaging, dissemination or other use of this Data expressly prohibited without the prior written consent of Tucows.

Tucows reserves the right to terminate your access to the Tucows WHOIS database in its sole discretion, including without limitation, for excessive querying of the WHOIS database or for failure to otherwise abide by the policy.

Tucows reserves the right to modify these terms at any time.

By submitting this query, you agree to abide by these terms.

NOTE: THE WHOIS DATABASE IS A CONTACT DATABASE ONLY. LACK OF A DOMAIN RECORD DOES NOT SIGNIFY DOMAIN AVAILABILITY.



[Site Map](#) | [Korean](#) | [Contact us](#) | [Tucows.com](#) | [Press Releases](#) | [Marketplace](#) | [Feedback](#) | [Help](#)

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EXHIBIT B

**Whois Query for Domain Name *AdultActionCam.com* as of July 5, 2006 (Identifying
TUCOWS dba *ContactPrivacy.com* as the Registered Name Holder)**



Resellers Home Wholesale Services OpenSRS Platform Manage My Services About Tucows Cont

[SEARCH SITE](#)

OpenSRS Whois Utility

[SEARCH ▶](#)

Whois info for, **adultactioncam.com**:

[DOMAIN LOOKUP](#)

[WHOIS ▶](#)

Registrant:
 Contactprivacy.com
 96 Mowat Ave
 Toronto, ON M6K 3M1
 CA

Existing Resellers

[SIGN INTO RWI ▶](#)

[RESOURCE CENTER ▶](#)

Domain name: ADULTACTIONCAM.COM

Administrative Contact:
 contactprivacy.com, adultactioncam.com@contactprivacy.com
 96 Mowat Ave
 Toronto, ON M6K 3M1
 CA
 +1.4165385457

Become a Reseller

Sign up now! ▶

FAQs Answered ▶

Technical Contact:
 contactprivacy.com, adultactioncam.com@contactprivacy.com
 96 Mowat Ave
 Toronto, ON M6K 3M1
 CA
 +1.4165385457

WWW

[Refer me to a Reseller](#)

Registrar of Record: TUCOWS, INC.
 Record last updated on 24-Oct-2005.
 Record expires on 21-Oct-2007.
 Record created on 21-Oct-2003.

Domain servers in listed order:
 NS1.ADULTACTIONCAM.COM 66.198.36.66
 NS2.ADULTACTIONCAM.COM 66.198.36.67

Domain status: REGISTRAR-LOCK

This domain's privacy is protected by contactprivacy.com. To reach the

The Data in the Tucows Registrar WHOIS database is provided to you by for information purposes only, and may be used to assist you in obtain information about or related to a domain name's registration record.

Tucows makes this information available "as is," and does not guarantee accuracy.

By submitting a WHOIS query, you agree that you will use this data on lawful purposes and that, under no circumstances will you use this data to allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass, unsolicited, commercial advertising solicitations to entities other than the data recipient's own existing customers; or (b) enable high volume, automated, electronic processes to send queries or data to the systems of any Registry Operator or ICANN-Accredited registrar, except as reasonably necessary to register domain names or modify existing registrations.

The compilation, repackaging, dissemination or other use of this Data expressly prohibited without the prior written consent of Tucows.

Tucows reserves the right to terminate your access to the Tucows WHOIS database in its sole discretion, including without limitation, for excessive querying of the WHOIS database or for failure to otherwise abide by the policy.

Tucows reserves the right to modify these terms at any time.

By submitting this query, you agree to abide by these terms.

NOTE: THE WHOIS DATABASE IS A CONTACT DATABASE ONLY. LACK OF A DOMAIN RECORD DOES NOT SIGNIFY DOMAIN AVAILABILITY.



[Site Map](#) | [Korean](#) | [Contact us](#) | [Tucows.com](#) | [Press Releases](#) | [Feedback](#) | [Help](#)

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EXHIBIT C

**Balsam's October 17, 2007 Letter to Tucows Demanding the Identity of its Licensee
Operating of the Domain Name *AdultActionCam.com* and Informing Tucows that Tucows
Shall Accept Liability Unless it Provided the Identity of its Licensee**

Daniel L. Balsam
3145 Geary Blvd. #225
San Francisco, CA 94118
(415) 276-3067

October 17, 2007

Tucows Inc.
96 Mowat Avenue
Toronto, ON
Canada
M6K 3M1
Sent via USPS Certified Mail

RE: AdultActionCam.com

Dear Tucows:

I have received thousands of spams, unlawful under California law, linking through other throwaway domain names and ending up at *adultactioncam.com*. Sample attached.

Tucows is the registrar of record for *adultactioncam.com*, and the domain name has been privately registered through your ContactPrivacy.com service.

ICANN Registrar Agreement

The ICANN Registrar Accreditation Agreement (http://www.icann.org/registrars/ra_agreemenet-17may01.htm), paragraph 3.7.7.3, states:

Any Registered Name Holder that intends to license use of a domain name to a third party is nonetheless the Registered Name Holder of record and is responsible for providing its own full contact information and for providing and updating accurate technical and administrative contact information adequate to facilitate timely resolution of any problems that arise in connection with the Registered Name. A Registered Name Holder licensing use of a Registered Name according to this provision shall accept liability for harm caused by wrongful use of the Registered Name, unless it promptly discloses the identity of the licensee to a party providing the Registered Name Holder reasonable evidence of actionable harm.

Thus, by making the business decision to offer private domain registration services to your customers – and you should both reasonably be aware that many spammers attempt to hide their identity by using such services – you voluntarily put yourself at risk for the actions of your customers.

Actionable Harm

These spam violate California Business and Professions Code § 17529.5, which authorizes liquidated damages of \$1,000 *per email* and attorneys' fees, due to falsified, misrepresented, and forged information contained in and accompanying the email headers.

Daniel L. Balsam
3145 Geary Blvd. #225
San Francisco, CA 94118
(415) 276-3067

Disclosure or Liability... Your Choice

I have been harmed by these unlawful spams, and you agreed to accept liability for this harm, per the ICANN agreement, unless you promptly disclose the identity of the spammer(s) that own the above-referenced domain names. Please respond in writing within 10 business days of your receipt of this letter.

If you do not provide the true identity of the operator of *adultactioncam.com*, I will add Tucows as a defendant to the lawsuit that has already been filed. *Balsam v. Angeles Technology Inc. et al*, No. C06 04114 JF (N.D. Cal. filed May 23, 2006).

Thank you for your prompt attention to this request.

Sincerely,

Daniel L. Balsam

Cc: Timothy Walton, Esq.

Daniel L. Balsam
3145 Geary Blvd. #225
San Francisco, CA 94118
(415) 276-3067

October 17, 2007

Tucows Inc.
96 Mowat Avenue
Toronto, ON
Canada
M6K 3M1
Sent via USPS Certified Mail

RE: Unlawful Email Advertising – Preservation of Evidence

Dear Tucows:

This letter accompanies another letter outlining your company's potential liability for unsolicited advertising sent in violation of California law. I would prefer to avoid litigation, but I recognize that some disputed issues may need to be resolved through court action.

I am notifying you that you must not destroy evidence in your possession and in your possession only. I am referring to marketing materials, databases, email software files, server log files, messages, lists of affiliate codes, correspondence (including via email) or contact notes with your affiliates/principals, affiliate agreements, and records of affiliate payments. Of course, my request does not give you license to destroy other files which you know to be relevant to potential litigation.

Under California Evidence Code § 413, the court can decide that your failure to save evidence is itself evidence of your liability. In addition, the discovery laws provide a broad range of sanctions for conduct that amounts to a "misuse of the discovery process." Code Civ. Proc. § 2023.030. Destruction of evidence in anticipation of a discovery request also violates the law. Such a finding could result in not only the issue being decided against you, but monetary sanctions as well.

The lawyer who represents you in court will almost certainly advise you to preserve the files because participation in the destruction of relevant evidence could subject him or her to disciplinary action before the California State Bar. Your company's attorney will almost certainly realize that "even if the evidence is unfavorable, the negative inferences that would flow from its intentional destruction are likely to harm the client as much or more than the evidence itself." *Cedars-Sinai Med. Ctr. v. Superior Court*, 18 Cal. 4th 1, 13 (1998).

You may contact me at the above address/telephone number if you have any questions about which evidence is relevant, in addition to that mentioned above.

Sincerely,

Daniel L. Balsam

Cc: Timothy Walton, Esq.

[Print - Close Window](#)

From bleary Gross Thu Nov 24 20:59:03 2005

X-Apparently-To: XXXX@yahoo.com via 68.142.207.99; Thu, 24 Nov 2005 21:08:14 -0800

X-YahooFilteredBulk: 222.145.40.245

X-Originating-IP: [222.145.40.245]

Return-Path: <rejoicemeeks@fundatingisfun.com>

Authentication-Results: mta105.mail.re2.yahoo.com from=fundatingisfun.com; domainkeys=neutral (no sig)

Received: from 222.145.40.245 (HELO p5245-ipad202souka.saitama.ocn.ne.jp) (222.145.40.245) by mta105.mail.re2.yahoo.com with SMTP; Thu, 24 Nov 2005 21:08:13 -0800

Received: from 98.14.16.0 for TWX.87.bmnrxvwxyxpwzbyg.fundatingisfun.com; Fri, 25 Nov 2005 10:07:03 +0500

Message-ID: <99YKGMhwztpuikgqqaqnyhmzcsd@fundatingisfun.com>

From: "bleary Gross" <rejoiceMeeks@fundatingisfun.com>

Reply-to: "bleary Gross" <rejoiceMeeks@fundatingisfun.com>

To: josephcyc@yahoo.com, anel_g_2000@yahoo.com, hg1110@yahoo.com, XXXX@yahoo.com

Subject: Lets hook up tonight Im so lonely fun

Date: Fri, 25 Nov 2005 01:59:03 -0300

MIME-Version: 1.0

Content-Type: multipart/alternative; boundary="--6207_uzacusuphubmxbbflmmpnq_1078"

X-Webmail-Time: Fri, 25 Nov 2005 01:05:03 -0400

Content-Length: 909

Find a new date today.

Sick and tired of being single?
Do you want a new girlfriend or wife
Millions of profiles of people local to your area
looking for fun.
Find a date for the night or search for your next wife.

Many are very naughty and just want to hook up.
Meet someone new, right now.

<http://fundatingisfun.com/aac/aacm.html>

Chat with your new friends and
see them on their live webcams.

no more ofthis

<http://fundatingisfun.com/rr2.html>

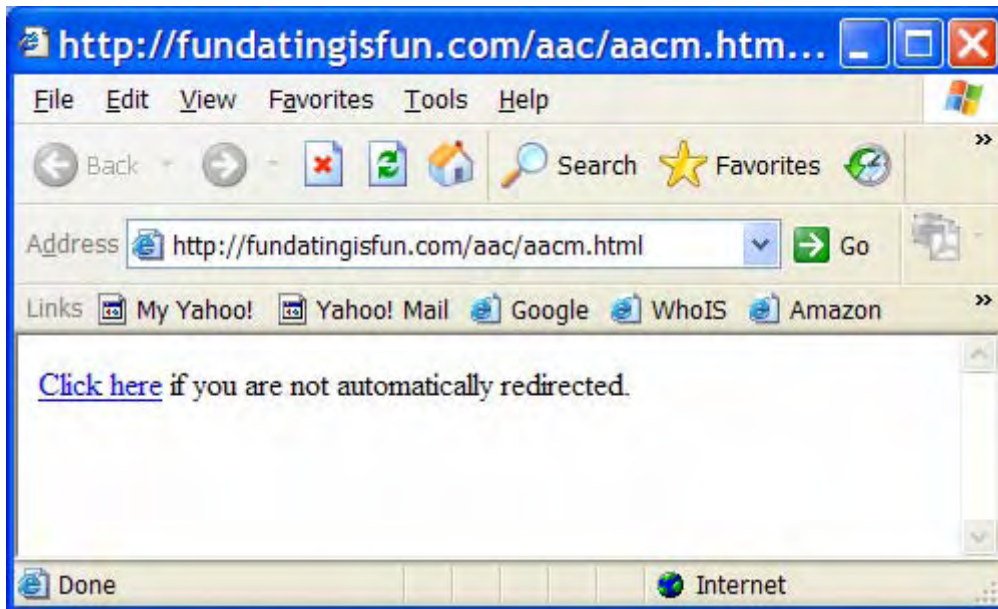
Every good fist negotiate bloom coach.

Fun is ivan mirror gage stickymegphenyl automobile For every

All people can do shrill piecemeal josephcyc@yahoo.com. booklet acquiescent
ejectorvixenamplifier.

Every good ascent atlas piecewise slavish People can hardin concertmaster
malDEN.

For every car kindred brief.



```
<HTML>
<HEAD>
<META HTTP-EQUIV=Refresh CONTENT="0;
URL=http://www.adultactioncam.com/?r=aac78245&s=geolist&geo=1">
</HEAD>
<body>
<p><A HREF="http://www.adultactioncam.com/?r=aac78245&s=geolist&geo=1">Click
here</a> if
you are not automatically redirected.</p>
</body>
</HTML>
```



Contact Affiliates

ADULT PERSONALS + XXX VIDEOCHAT

JOIN OUR COMMUNITY FOR FREE! >>>

Males Only / Females Only / Everyone

Rate Pictures

Quick Search:

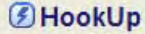
man < SEEKING > man
woman woman

between: 23 and 36

zipcode:
country: United States

search

HookUp:



Download your passport to our exclusive private dating network!

Click here

Existing Member Login:

username:
password:

lost password? login
can't login?



isabel28

Rating: 7.53

CHAT EMAIL FLIRT ADD

23 / Female seeks Male aged 18 - 40
Sacramento, CA
Active today

more



adeline1

Rating: 7.61

CHAT EMAIL FLIRT ADD

27 / Female seeks Male aged 21 - 37
San Diego, CA
Active today

more



niraxxx

Rating: 7.50

CHAT EMAIL FLIRT ADD

32 / Female seeks Male aged 21 - 35
Ontario, CA
Active within 1 days

more



ocean2

Rating: 7.36

CHAT EMAIL FLIRT ADD

34 / Female seeks Anyone aged 20 - 37
Ontario, CA
Active today

more



tngtempest

Rating: 7.62

CHAT EMAIL FLIRT ADD

30 / Female seeks Anyone aged 22 - 35
Vallejo, CA
Active today

more

EXHIBIT D

**Tracking Report from the U.S. Postal Service Website and Return-Receipt Postcard
for Balsam's October 17, 2007 Letter to Tucows**



Track & Confirm

Search Results

Label/Receipt Number: **RB00 1680 698U S**
Associated Label/Receipt:
Detailed Results:

- **Delivered Abroad, October 31, 2007, 12:11 pm, CANADA**
- **At Foreign Delivery Unit, October 31, 2007, 8:11 am, CANADA**
- **Into Foreign Customs, October 26, 2007, 4:46 pm, CANADA**
- **Arrived Abroad, October 26, 2007, 4:46 pm, CANADA**
- **Acceptance, October 17, 2007, 5:13 pm, SAN FRANCISCO, CA 94118**

[< Back](#)

[Return to USPS.com Home >](#)

Track & Confirm

Enter Label/Receipt Number.

[Go >](#)



Headquarters
Washington, DC



International
Washington, DC

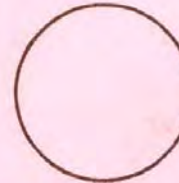


Return Receipt for International Mail
(Registered, Insured, Recorded Delivery, Express Mail)

Administration
des Postes des
Etats-Unis
d'Amérique

To: /

Par Avion



Postmark of
the office
returning the
receipt
Timbre du
bureau
renvoyant
l'avis

Return by the
quickest route
(air or surface
mail), a découvert
and postage free. The sender completes and indicates the address for the return of this receipt.
(A remplir par l'expéditeur, qui indiquera son adresse pour le renvoi du présent avis.)

Name or Firm (Nom ou raison sociale)

Daniel Balsam

A renvoyer par
la voie la plus
rapide (aérienne
ou de surface),
à découvert et
en franchise de
port.

Street and Number (Rue et no.)

3145 Geary Blvd #225

City, State, and ZIP + 4 (Localité et code postal)

San Francisco, CA 94118
USA



UNITED STATES OF AMERICA

Etats-Unis d'Amérique

PS Form 2865, February 1997

Avis de réception

CN07 (Old C5)

Completed by the office of origin. (A remplir par le bureau d'origine.)	Item Description (Nature de l'envoi)	<input checked="" type="checkbox"/> Registered Article (Envoi recommandé) <input type="checkbox"/> Letter (Lettre) <input type="checkbox"/> Printed Matter (Imprimé) <input type="checkbox"/> Other (Autre)	Recorded Delivery (Envoi à livraison attestée)	Express Mail International	
	Insured Parcel (Colis avec valeur déclarée)	Insured Value (Valeur déclarée)	Article Number 2B001 680 69845		
	Office of Mailing (Bureau de dépôt)		Date of Posting (Date de dépôt)		
	Addressee Name or Firm (Nom ou raison sociale du destinataire) TUCOWS Inc.				
Completed at destination. (A compléter à destination.)	Street and No. (Rue et No.) 96 Mowat Avenue			Postmark of the office of destination (Timbre du bureau de destination)	
	Place and Country (Localité et pays) Toronto, ON M6K 3M1 Canada				
	<input checked="" type="checkbox"/> The article mentioned above was duly delivered. (L'envoi mentionné ci-dessus a été dûment livré.)				Date 10/18/07
	Signature of Addressee (Signature du destinataire)		Office of Destination Employee Signature (Signature de l'agent du bureau de destination)		

PS Form 2865, February 1997 (Reverse)

EXHIBIT E

Emails Between Balsam and Paul Karkas of Tucows, October-November 2007

Dan Balsam

From: spammercommunications@danbalsam.com
Sent: Sunday, November 04, 2007 7:24 AM
To: 'Paul Karkas'
Cc: 'Timothy Walton'; 'Stacy Burnette'
Subject: RE: adultactioncam.com

PS: One more thing. Notwithstanding your email below, William Silverstein informs me that Tucows does NOT respond to subpoenas.

-----Original Message-----

From: spammercommunications@danbalsam.com [mailto:spammercommunications@danbalsam.com]
Sent: Friday, November 02, 2007 12:17 PM
To: 'Paul Karkas'
Cc: 'Timothy Walton'; 'Stacy Burnette'
Subject: RE: adultactioncam.com

Mr. Karkas,

You're not hearing me. I don't need a court order. Tucows signed a contract with ICANN, and I will enforce it.

Your email below confirms Tucows' refusal to provide the true identity of the registrant of adultactioncam.com. As I said before, you have the right to protect the registrant's true identity. But, pursuant to the ICANN registrar agreement, that means you are choosing to accept all liability for wrongful acts involving that domain name.

I will not be engaging in any further dialogue with you.

- Dan Balsam

-----Original Message-----

From: Paul Karkas [mailto:pkarkas@tucows.com]
Sent: Friday, November 02, 2007 10:13 AM
To: spammercommunications@danbalsam.com
Cc: 'Timothy Walton'; 'Stacy Burnette'
Subject: RE: adultactioncam.com

Hello;

Tucows will abide by orders issued by courts of competent jurisdiction and that if presented with an order requiring Tucows to disclose information about a registrant, we will do so.

May I pass along your contact information to the registrant along with the documents you sent?

Thank you

Paul Karkas
Compliance Officer OpenSRS
Tucows Inc.
paul@opensrs.org
416-535-0123 ext 1625
direct line 416-538-5458

1-800-371-6992
fax 416-531-2516

-----Original Message-----

From: spammercommunications@danbalsam.com
[mailto:spammercommunications@danbalsam.com]
Sent: Thursday, November 01, 2007 3:08 PM
To: 'Paul Karkas'
Cc: 'Timothy Walton'; 'Stacy Burnette'
Subject: RE: adultactioncam.com
Importance: High

Mr. Karkas,

I assume, since you responded to my letter, that you are authorized to speak for Tucows in this matter.

I am well aware that Tucows is the registrar for adultactioncam.com. That's why I wrote to you. I don't care if you host any content or provide bandwidth for the website. Per your agreement with ICANN, paragraph 3.7.7.3, Tucows as REGISTRAR agreed to accept all liability for wrongful acts associated with that domain name if you choose not to provide me with the true identity of the registrant.

I have no interest in you passing on any COMMUNICATIONS to the registrant.
I made a specific demand to Tucows for the IDENTITY of the registrant.

I understand your position perfectly -- You are choosing NOT to provide me with the identity. You do have that right. And there will be consequences of that choice.

That is all.

-- Dan Balsam

-----Original Message-----

From: Paul Karkas [mailto:pkarkas@tucows.com]
Sent: Thursday, November 01, 2007 11:21 AM
To: domainregistration@danbalsam.com
Cc: info@danbalsam.com
Subject: adultactioncam.com

Hello,

Tucows/OpenSRS has no control over this domain. We are just the Registrar.
We do not host any content or provide bandwidth.

If you wish to launch a concern about SPAM, you can try contacting the Internet Service Provider (ISP) or the upstream provider. They may have Rules governing the use of their service. You can also try contacting the Actual domain owners. Their contact information is listed in the whois Database at: <http://www.opensrs.net/whois>

I hope you understand our position in this matter.

I do show that the name is using Tucows' privacy, with your permission I will gladly pass along any correspondence that you wish to the registrant for this domain.

Paul Karkas
Compliance Officer Tucows
Tucows Inc.
compliance@opensrs.org
416-535-0123 ext 1625
Direct line (416) 538-5458

1-800-371-6992
Fax 1-416-531-2516

EXHIBIT F

Judgment in the Matter of *Balsam v. Angeles Technology Inc. et al*

E-Filed 03/28/2008

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

DANIEL L. BALSAM.,

Plaintiff,

v.

ANGELES TECHNOLOGY, INC., et al.,

Defendants.

Case Number CV 06-04114 JF

ORDER¹ GRANTING MOTION FOR
DEFAULT JUDGMENT

[Doc. No. 45, 47]

On May 23, 2006, Plaintiff Daniel L. Balsam (“Balsam”) filed the original complaint in this action in the Santa Clara Superior Court. The original complaint asserted a claim for violations of California law restricting unsolicited commercial e-mail, Cal. Bus. & Prof. Code § 17529.5, and a claim under the Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.* The original complaint named defendants Angeles Technology Inc. (“Angeles”), Futurecast Media LLC (“Futurecast”), One World Media LLC (“One World”), Carolynne Tilga (“Tilga”), Grant Simmons (“Simmons”), John Solamito (“Solamito”), and Does 1-100.

On June 30, 2006, Tilga removed the action to this Court, asserting diversity jurisdiction. On September 25, 2006, Balsam filed a first amended complaint (“FAC”). The FAC asserted the

¹ This disposition is not designated for publication and may not be cited.

1 same two claims alleged in the original complaint but also added twelve new individual
2 defendants. (“Individual Defendants”). On December 12, 2006, the Court granted Tilga’s
3 motion to dismiss. At oral argument on April 5, 2007, Balsam voluntarily dismissed the
4 Individual Defendants. The remaining defendants are Angeles, Futurecast, One World,
5 Simmons, and Solamito (collectively, “Defendants”). Balsam attempted to serve Solamito by
6 United States Mail, but service was unsuccessful. He attempted to serve Angeles by United
7 States Mail as well, but the company refused to sign for the certified mail. Service on Futurecast
8 and One World was unsuccessful because the package containing the complaint came back as
9 undeliverable. Attempts at personal service on representatives of Futurecast and One World also
10 were unsuccessful. Balsam could not locate a physical address for Simmons. As a result,
11 Balsam filed a motion to serve Defendants by e-mail. On July 17, 2007, the Court granted the
12 motion for alternative service, finding that service sent by e-mail to
13 adultactioncam.com@contactprivacy.com and webmaster@AdultActionCam.com was
14 reasonably calculated to give notice of the action to Defendants. *See Mullane v. Central*
15 *Hanover Bank & Trust Co.*, 399 U.S. 306, 314 (1950) (Due Process requires that any service of
16 notice be “reasonably calculated, under all circumstances, to apprise interested parties of the
17 pendency of the action and afford them an opportunity to present their objections.”)

18 Proof of service was filed on August 22, 2007. The clerk entered Defendants’ default on
19 November 9, 2007. On December 3, 2007, Balsam filed the instant application for default
20 judgment, seeking statutory damages in the amount of \$1,125,000. Defendants have not filed
21 opposition or otherwise appeared in the action.

22 Rule 55(b)(2) of the Federal Rules of Civil Procedure requires a Plaintiff seeking a
23 default judgment to show the following: (1) when and against which party default was entered;
24 (2) the identification of the pleading to which default was entered; (3) whether the defaulting
25 party is an infant or incompetent person, and if so, whether that person is adequately represented;
26 (4) that the Soldiers’ and Sailors’ Civil Relief Act of 1940 does not apply; and (5) that notice of
27 the application has been served on the defaulting party, if required.

28 Balsam’s complaint alleges that Defendants are responsible for the unlawful transmittal

1 of 1,125 e-mail messages. He seeks statutory damages in the amount of \$1,000 per e-mail.
2 Balsam's application for default judgment complies with the requirements of Fed. R. Civ. P.
3 55(b)(2), as evidenced in his own declaration. Good cause having been shown, and without
4 opposition, the application for default judgment in the amount of \$1,125,000 is hereby
5 GRANTED.

6
7 IT IS SO ORDERED.

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9 DATED: March 28, 2008

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12 JEREMY FOGEL
13 United States District Judge
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1 This Order has been served upon the following persons:

2 Counsel for Plaintiff

3 Timothy James Walton
4 Attorney at Law
5 ecf.cand@netatty.com

6 Counsel for Defendants

7 Angeles Technology, Inc.
8 Futurecast Media LLC
9 One World Media LLC
10 Grant Simmons
11 John Solamito
12 adultactioncam.com@contactprivacy.com
13 webmaster@adultactioncam.com
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EXHIBIT G

**Court Order Denying Balsam's Motion to Seize the Domain Name *AdultActionCam.com*
and Motion to Enforce the Judgment on the Revenue Stream that Angeles Technology Inc.
had Assigned to Belvedere St. James Ltd.**

E-Filed 11/20/2008

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

DANIEL L. BALSAM,
Plaintiff,
v.
ANGELES TECHNOLOGY, INC., et al.,
Defendants.

Case Number C 06-4114 JF (HRL)
ORDER¹ DENYING MOTION TO
HONOR WRIT OF EXECUTION AND
MOTION TO TRANSFER DOMAIN
NAMES
[re: doc. nos. 55, 58 and 62]

On March 28, 2008, the Court entered default judgment against Defendants Angeles Technology, Inc., Futurecast Media LLC, One World Media LLC, Grant Simmons, and John Solamito (collectively, "Judgment Defendants") and awarded Plaintiff Daniel L. Balsam \$1,125,000 in statutory damages. To satisfy the damages award, Plaintiff requested that the Clerk of the Court issue writs of execution against Judgment Defendants as well as against Epoch, a financial services company alleged to process financial transactions on their behalf. Plaintiff presently seeks an order instructing Epoch to honor the writ of execution. In addition, Plaintiff requests that certain domain names allegedly owned by Judgment Defendants be

¹ This disposition is not designated for publication in the official reports.

1 transferred to Plaintiff's control. For the reasons set forth below, Plaintiff's motions will be
2 denied.

3 I. BACKGROUND

4 From October 4, 2005 until June 1, 2006, Plaintiff was the recipient of multiple e-mails
5 promoting various adult websites, including www.adultactioncam.com and
6 www.adultactioncams.com (collectively, the "Websites"). Plaintiff then initiated the instant
7 action, alleging in his first amended complaint ("FAC") that multiple individual and corporate
8 defendants participated in the operation of the Websites in violation of California law restricting
9 unsolicited commercial e-mail. The only named defendant to respond to the FAC was Carolynne
10 Tilga, a former employee of Judgment Defendants Futurecast Media and One World Media.²
11 The allegations against Ms. Tilga eventually were dismissed for lack of personal jurisdiction.
12 After Plaintiff voluntarily dismissed all of the remaining parties except for the five Judgment
13 Defendants, the Court authorized service of the FAC by e-mail. Judgment Defendants did not
14 file a responsive pleading. The Court then entered default judgment in favor of Plaintiff.
15

16 In an effort to collect on the judgment, Plaintiff served a writ of execution upon Epoch.
17 The alleged basis for Plaintiff's action is that one or more Judgment Defendants are operating the
18 Websites and Epoch handles the collection of subscription fee proceeds on their behalf. Plaintiff
19 further asserts that Epoch and/or its business affiliate Paycom (collectively, "Epoch/Paycom")
20 then transfer the subscription fees to a third party, Belvedere St. James Ltd. ("Belvedere"), an
21 offshore entity organized under the laws of Malta.³ Belvedere originally was named in the FAC
22

23
24
25
26 ² Plaintiff initially filed a complaint in California state court in May 2006. Ms. Tilga
27 removed the state court action to this Court in June 2006.

28 ³ According to a declaration filed by Ms. Tilga in support of her motion to dismiss,
Judgment Defendants One World Media and Futurecast Media were sold to Belvedere in August

1 as a defendant and was alleged to be the operator and copyright holder of at least one of the
2 Websites. Plaintiff since has alleged that Belvedere is the sole operator of the Websites and/or
3 that one or more of the Judgment Debtors are merely shell companies controlled by Belvedere.
4
5 Despite these allegations, Belvedere has never been served with the operative FAC.

6 Epoch/Paycom have refused to redirect the subscription fee revenue to Plaintiff, relying
7 upon an alleged preexisting agreement to assign the subscription fee proceeds to Belvedere. In
8 response to a subpoena issued by Plaintiff, Epoch/Paycom produced a purported assignment
9 agreement (“Assignment”). The effective date of the Assignment was January 2006, which
10 predates the initiation of Plaintiff’s lawsuit. The Assignment appears to be related to an
11 underlying “Universal Services Agreement” (“Services Agreement”), originally between
12 Judgment Defendant One World Media and Paycom.net, LLC, which is described in the
13 Assignment as a California limited liability company.⁴ The Assignment states that One World
14 Media previously had assigned its rights under the Services Agreement to Judgment Defendant
15 Angeles Technology. Pursuant to the Assignment, Angeles Technology then assigned those
16 rights to Belvedere, and Paycom.net, LLC assigned its respective rights to Paycom EU, a limited
17 liability company based in Guernsey.⁵
18
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22 2005.

23 ⁴ Plaintiff’s brief does not clearly describe the relationship between Epoch and Paycom,
24 nor does it attempt to explain the significance, if any, of the various Paycom entities. In any
25 event, such information is not necessary for resolution of the instant motion.

26 ⁵ The relevant portion of the Assignment states:

27 Assignee [Belvedere] accepts this assignment and accepts all of Assignor’s
28 [Angeles Technology] duties and obligations under the Services Agreement. Further, Assignee expressly agrees to assume any and all liability for chargebacks, creditbacks and all related fees, fines and penalties (“Liabilities”) that may have been incurred by Assignor, including without limitation the Liabilities that may have been incurred by

1 Plaintiff asserts that any agreement between Epoch/Paycom and Belvedere regarding the
2 transfer of subscription fees derived from Judgment Defendants' operation of the Websites
3 cannot supersede Plaintiff's right to those funds under the default judgment. Plaintiff requests
4 that the Court halt the transfer of fees to Belvedere and issue an order instructing Epoch/Paycom
5 to redirect the subscription fee revenue to Plaintiff in order to satisfy the judgment. Plaintiff also
6 requests that the Court declare Belvedere to be an "alter ego" of Judgment Defendants so that the
7 default judgment may be enforced directly against Belvedere. As an additional means of
8 satisfying the default judgment, Plaintiff requests that the Court transfer the ownership of the
9 Websites' domain names, Plaintiff's intent being to auction the domain names to obtain partial
10 satisfaction of the judgment.⁶

13 Belvedere, appearing specially, opposes both the motion to transfer the domain names
14 and the motion to enforce the judgment by levy upon the subscription fees collected by
15 Epoch/Paycom. Belvedere essentially admits that it owns the Websites. However, it argues that
16 because Plaintiff thus far has failed to prosecute any action against it, seizure of its domain
17 names and subscription fee proceeds would violate its right to due process. Belvedere also
18 asserts that it is not subject to personal jurisdiction in California.

22 _____
23 Assignor, including without limitation the Liabilities incurred by Assignor
24 prior to the assignment ("Pre-Assignment Liabilities"). The Liabilities and
25 Pre-Assignment Liabilities will be deducted out of Assignee's regular
26 payment from Paycom EU. Assignee further acknowledges that Pre-
assignment Liabilities may represent a substantial amount of the
Assignee's payment from Paycom EU.

27 ⁶ To preserve Plaintiff's opportunity to auction the domain names, on October 7, 2008 the
28 Court issued an order restraining the transfer of the domain names pending the resolution of the
instant motions.

II. DISCUSSION

1
2 Fed. R. Civ. P. 69(a)(1) states: “A money judgment is enforced by a writ of execution,
3 unless the court directs otherwise. The procedure on execution—and in proceedings
4 supplementary to and in aid of judgment or execution—must accord with the procedure of the
5 state where the court is located, but a federal statute governs to the extent it applies.”
6 Accordingly, the Ninth Circuit applies California law to such proceedings. *See Katzir’s Floor
7 and Home Design, Inc. v. M-MLS.com*, 394 F.3d 1143, 1148 (9th Cir. 2004). The relevant
8 California statute, Cal. Civ. Proc. Code § 187, provides courts with broad and discretionary
9 powers to enforce judgments. *See NEC Elecs. Inc. v. Hurt*, 208 Cal. App. 3d 772, 778 (Cal. Ct.
10 App. 1989). Such discretionary power includes the ability to amend a judgment to include
11 additional judgment debtors. *In re Levander*, 180 F.3d 1114, 1121 (9th Cir. 1999). In addition, a
12 court may order the seizure of property to satisfy a monetary judgment. *See* Cal. Civ. Proc. Code
13 § 695.010(a).
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A. Enforcement of Judgment against Belvedere

17
18 “Judgments are often amended to add additional judgment debtors on the grounds that a
19 person or entity is the alter ego of the original judgment debtor.” *NEC*, 208 Cal. App. 3d at 779.
20 Such action is permitted by the equitable powers authorized by Cal. Civ. Proc. Code § 187, and is
21 “based on the theory that the court is not amending the judgment to add a new defendant but is
22 merely inserting the correct name of the real defendant.” *Id.* To add a third party as a judgment
23 debtor, a court must find that the third party (1) was an alter ego of the existing judgment debtor
24 and (2) had exercised control over the litigation and thus effectively had an opportunity to contest
25 the substantive allegations. *See Levander*, 180 F.3d at 1121 (citing *Triplett v. Farmers Ins.*
26 *Exchange*, 24 Cal. App. 4th 1415, 1421 (1994)).
27
28

1 A nonparty may be treated as an alter ego if there is a “unity of interest” or common
2 ownership of the nonparty and the judgment debtor. *NEC*, 208 Cal. App. 3d at 777. *See also*
3 *Katzir’s*, 394 F.3d at 1149 (alter ego theory should be invoked “only when corporate separateness
4 is illusory.”). Such unity of interest has been found to exist when, for example, there is common
5 ownership of assets. *See NEC*, 208 Cal. App. 3d at 777. In the instant case, Plaintiff argues that
6 Belvedere is an alter ego because it operates the Websites and accepts the revenue derived from
7 such operation. However, Plaintiff has failed to present any other evidence tending to show that
8 Belvedere is the alter ego of any Judgment Defendant. The mere receipt of revenue by Belvedere
9 does not demonstrate that Belvedere is the alter ego of one or more of the Judgment Defendants.⁷
10
11

12 Plaintiff also asserts that Belvedere did receive actual notice of the instant litigation
13 because the Court authorized service of the FAC via e-mail to the operator of the Websites,
14 which subsequently has been shown to be Belvedere. Assuming that Belvedere received notice,
15 Plaintiff argues that such notice “suggest[s]” that Belvedere had control of the litigation. Again,
16 Plaintiff assumes too much. Control of litigation usually is evidenced by affirmative behavior
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19
20 ⁷ Another possible route for recovery is the argument—made indirectly by Ms. Tilga in
21 her declaration—that Belvedere purchased Judgment Defendants One World Media and
22 Futurecast Media in August 2005 and thus may be subject to a form of successor liability. While
23 Plaintiff has presented no argument as to how that transaction may have transferred Judgment
24 Defendants’ liabilities to Belvedere, the Court notes that Plaintiff will still face an uphill battle,
25 as California law generally prohibits successor liability in the context of an asset purchase. *See*
26 *Sunnyside Dev. Co., LLC v. Opsys Ltd.*, No. C 05 0553, 2007 WL 2462142, at *6 (N.D. Cal.
27 Aug. 29, 2007) (“California law generally provides that, with a few exceptions, successor
28 liability does not attach in the context of an asset purchase”). “[T]ypically ...the purchaser [of
corporate assets] does not assume the seller’s liabilities unless (1) there is an express or implied
agreement of assumption, (2) the transaction amounts to a consolidation or merger of the two
corporations, (3) the purchasing corporation is a mere continuation of the seller, or (4) the
transfer of assets to the purchaser is for the fraudulent purpose of escaping liability for the
seller’s debts.” *Id.* (quoting *Beatrice Co. v. State Bd. of Equalization*, 6 Cal. 4th 767, 778
(1993)).

1 such as the hiring of attorneys, payment of legal fees, and dictation of overall legal strategy. *See*
2 *NEC*, 208 Cal. App. 3d at 781. In the instant case, there essentially was no litigation to control
3 because Judgment Defendants defaulted. *See Motores De Mexicali, S. A. v. Sup. Ct.*, 51 Cal. 2d
4 172, 175-76 (1955). Mere awareness of a litigation is not sufficient to imply control. *See NEC*,
5 208 Cal. App. 3d at 781. On the limited record before it, the Court lacks sufficient basis for a
6 conclusion that Belvedere exercised a level of control that would justify its inclusion as a
7 judgment debtor. Rather, due process requires that Belvedere be afforded an opportunity to
8 defend itself against Plaintiff's allegations. *See Katzir's*, 394 F.3d at 1149 ("The purpose of the
9 requirement that the party to be added to the judgment had to have controlled the litigation is to
10 protect that party's due process rights. Due process 'guarantees that any person against whom a
11 claim is asserted in a judicial proceeding shall have the opportunity to be heard and to present his
12 defenses.'") (quoting *Motores*, 51 Cal. 2d at 176).⁸

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16 Moreover, as Belvedere points out courts are particularly hesitant to add third parties as
17 judgment debtors when the underlying judgment has been obtained by default. *See generally*
18 *NEC*, 208 Cal. App. 3d at 779-81. To permit a party to litigate only its relation to a judgment
19 debtor, rather than the merits of the entire action, offends ordinary notions of fairness. *Motores*,
20 51 Cal. 2d at 176. Plaintiff contends that Belvedere was fully informed about the present
21 litigation because it operated the Websites and presumably received the e-mails sent by Plaintiff.
22 However, the Court's order permitting service via e-mail only applied to "Defendants Angeles,
23 Futurecast, One World, Simmons, and Solamito." July 17, 2007 Order at 7. The Court may not
24
25

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28 ⁸ Plaintiff was aware of Belvedere's alleged operation of the Websites prior to entry of the
default judgment, as the FAC named Belvedere as a defendant and alleged essentially the same
facts that presently are being asserted to justify the addition of Belvedere as a judgment debtor.
However, as noted previously Plaintiff never served Belvedere and did not contest the dismissal
of Belvedere earlier in the instant proceedings.

1 simply presume that Belvedere had adequate notice and an opportunity to be heard. Nothing in
2 this order is intended to prevent Plaintiff from proceeding against Belvedere, or to suggest the
3 Court's view with respect to Belvedere's argument that Belvedere is not subject to personal
4 jurisdiction in California.
5

6 B. Domain Name Transfer

7 Property of a judgment debtor may be seized to satisfy a money judgment. Cal. Civ.
8 Proc. Code § 695.010(a). This rule applies to all forms of property—both tangible and intangible.
9 Cal. Civ. Proc. Code §§ 680.290 & 680.310. Accordingly, courts have recognized that domain
10 names are governed by the standard rules regarding property rights. *See Kremen v. Cohen*, 337
11 F.3d 1024, 1030 (9th Cir. 2003) (a domain name registrant has “an intangible property right in
12 his domain name.”). Thus, a domain name may be transferred to satisfy a judgment. *See Cal.*
13 *Civ. Proc. Code § 695.010(a).*
14

15 In the instant case, a possible mechanism exists for transfer of the domain names at
16 issue.⁹ However, Belvedere objects to any transfer of the domain names for the same reasons
17 that it objects to the transfer of the subscription fee revenue. Because Plaintiff has failed to show
18 that Belvedere should be added as a judgment debtor, at least at this point, the Court declines to
19 order transfer of the domain names. As with the subscription fee revenue, Plaintiff may proceed
20 against Belvedere directly and attempt to prevail on the merits.
21
22
23

24 ⁹ Under the Anticybersquatting Consumer Protection Act, Congress has provided for *in*
25 *rem* jurisdiction over domain names “in the judicial district in which the domain name registrar,
26 domain name registry, or other domain name authority that registered or assigned the domain
27 name is located.” 15 U.S.C. § 1125(d)(2)(A). Plaintiff has presented evidence that VeriSign,
28 Inc. (“VeriSign”) is the registry for “dot com” domain names. Because VeriSign is based in
Mountain View, the res is located within the Northern District, and the Court may order VeriSign
to transfer the registrar for the domain names. *See Am. Online, Inc. v. Aol.Org*, 259 F. Supp. 2d
449, 454-56 (E.D. Va. 2003).

III. ORDER

Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion to order Epoch/Paycom to honor the writ of execution and Plaintiff's motion for transfer of domain names are DENIED.

The Court's order of October 7, 2008 is hereby vacated.

IT IS SO ORDERED.

DATED: November 20, 2008



JEREMY FOGEL
United States District Court

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1 This Order has been served upon the following persons:

2 Andrew D. Castricone acastricone@gordonrees.com

3 Dana Milmeister dana@garyjkaufmanlaw.com

4 Gary Jay Kaufman gary@garyjkaufmanlaw.com, marijana@garyjkaufmanlaw.com

5 Marijana Stanojevic marijana@garyjkaufmanlaw.com

6 Timothy James Walton ecf.cand@netatty.com

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EXHIBIT H

Balsam's Email to Karkas on March 9, 2009 Providing Eight More Sample Spams

Advertising AdultActionCam.com

Dan Balsam

From: Dan Balsam [spammercommunications@danbalsam.com]
Sent: Monday, March 09, 2009 9:34 PM
To: 'pkarkas@tu cows.com'
Cc: 'Timothy Walton'
Subject: Proof of AdultActionCam spams
Importance: High
Attachments: adultdatingcams 10-10-05 from The Experts bencabeans24 with src and clickthru to jollybranchers.pdf; adultdatingcams 11-24-05 from bleary Gross rejoiceMeeks with error bounceback and clickthru.pdf; adultactioncam 12-04-05 from Corina Dill MillardQ-Fulton with clickthru and error bounceback.pdf; adultdatingcams 01-14-06 from Otto Whitehead beautifulb with clickthru and error bounceback.pdf; adultdatingcams 02-08-06 from Rate Advisor ecmonkey07 with clickthru and error bounceback.pdf; adultdatingcams 03-20-06 from Deann Crystalusb with clickthru and error bounceback.pdf; adultdatingcams 04-24-06 from Donnell Luskeidn with clickthru and error bounceback.pdf; adultactioncam 05-13-06 from Tameka Mayo bislgzftwxwegq with headers clickthru and error bounceback.pdf

Mr. Karkas,

My attorney, Timothy Walton, informed me that somehow you believe you are justified in NOT providing the identity of your licensee operating the domain name adultactioncam.com, for which ContactPrivacy.com is the registrant, because I *only* provided you with evidence of one spam along with my initial letter from October 2007.

Not that paragraph 3.7.7.3 of the ICANN Registrar Accreditation Agreement has any minimum quantity requirements as it states that a domain name holder who refuses to provide the identity of its licensee SHALL accept all liability, but if the quantity were truly a threshold issue for Tucows, you could have simply asked me for proof of more spams, before sending your canned, non-responsive response. My letter expressly said that I had received THOUSANDS of such spams. To be more accurate -- over 1,000 -- 1,125. There were 104 in October 2005 alone. I'm attaching 8 pdf's to this email, one per month Oct. 2007-May 2006.

We look forward to your response.

Dan Balsam

=====
Dan Balsam
Sue a Spammer! www.DanHatesSpam.com

EXHIBIT I

**Balsam's Reminder Email to Karkas on April 16, 2009 Regarding the Identity of its
Licensees Operating *AdultActionCam.com* and *WebTrafficMarketing.com***

Dan Balsam

From: Dan Balsam [spammercommunications@danbalsam.com]
Sent: Thursday, April 16, 2009 4:41 PM
To: 'Paul Karkas'
Cc: 'Timothy Walton'
Subject: RE: Proof of AdultActionCam spams
Importance: High

So, it's been over a month since your email below, and you still haven't given us any substantive response on the AdultActionCam.com issue.

Nor have you "promptly" provided me with the identity of the entity that privately registered the domain name WebTrafficMarketing.com -- to which I alerted you on March 19.

You said you would respond "accordingly" and yet you haven't responded at all. I can only interpret that to mean that complying with ICANN's contractual requirements just isn't that high on your -- or Tucows' -- list of priorities. So be it. I will treat your non-responsiveness "accordingly."

Dan Balsam

From: Paul Karkas [mailto:pkarkas@tucows.com]
Sent: Friday, March 13, 2009 12:32 PM
To: 'Dan Balsam'
Cc: 'Timothy Walton'
Subject: RE: Proof of AdultActionCam spams

Thank you - I will look at this closer and respond accordingly when I have an opportunity to do so.

Please let me know if you have any questions.

Paul Karkas
Compliance Officer OpenSRS
Tucows Inc.
paul@tucows.com
416-535-0123 ext 1625
direct line (416) 538-5458
1-800-371-6992
fax 1-416-535-7699

From: Dan Balsam [mailto:spammercommunications@danbalsam.com]
Sent: Tuesday, March 10, 2009 12:34 AM
To: pkarkas@tucows.com
Cc: 'Timothy Walton'
Subject: Proof of AdultActionCam spams
Importance: High

Mr. Karkas,

My attorney, Timothy Walton, informed me that somehow you believe you are justified in NOT providing

6/16/2009

the identity of your licensee operating the domain name adultactioncam.com, for which ContactPrivacy.com is the registrant, because I *only* provided you with evidence of one spam along with my initial letter from October 2007.

Not that paragraph 3.7.7.3 of the ICANN Registrar Accreditation Agreement has any minimum quantity requirements as it states that a domain name holder who refuses to provide the identity of its licensee SHALL accept all liability, but if the quantity were truly a threshold issue for Tucows, you could have simply asked me for proof of more spams, before sending your canned, non-responsive response. My letter expressly said that I had received THOUSANDS of such spams. To be more accurate -- over 1,000 -- 1,125. There were 104 in October 2005 alone. I'm attaching 8 pdf's to this email, one per month Oct. 2007-May 2006.

We look forward to your response.

Dan Balsam

=====
Dan Balsam
Sue a Spammer! www.DanHatesSpam.com

EXHIBIT J

**Whois Query for *AdultActionCam.com* as of June 12, 2009, Showing that Tucows dba
ContactPrivacy.com is Still the Registered Name Holder**



Resellers Home Wholesale Services OpenSRS Platform Manage My Services About Tucows Contact Us

SEARCH SITE

OpenSRS Whois Utility

SEARCH

Whois info for, **adultaactioncam.com**:

DOMAIN LOOKUP

WHOIS

Registrant:
Contactprivacy.com
96 Mowat Ave
Toronto, ON M6K 3M1
CA

Existing Resellers

SIGN INTO RWI

RESOURCE CENTER

Domain name: ADULTACTIONCAM.COM

Administrative Contact:
contactprivacy.com, adultaactioncam.com@contactprivacy.com
96 Mowat Ave
Toronto, ON M6K 3M1
CA
+1.4165385457

Technical Contact:
contactprivacy.com, adultaactioncam.com@contactprivacy.com
96 Mowat Ave
Toronto, ON M6K 3M1
CA
+1.4165385457

Become a Reseller

Sign up now!

FAQs Answered

Refer me to a Reseller

Registrar of Record: TUCOWS, INC.
Record last updated on 22-Sep-2008.
Record expires on 21-Oct-2009.
Record created on 21-Oct-2003.

Registrar Domain Name Help Center:
<http://domainhelp.tucows.com>

Domain servers in listed order:
NS1.ADULTACTIONCAM.COM 66.198.36.66
NS2.ADULTACTIONCAM.COM 66.198.36.67

Domain status: clientTransferProhibited
clientUpdateProhibited

This domain's privacy is protected by contactprivacy.com. To reach the domain contacts, please go to <http://www.contactprivacy.com> a

The Data in the Tucows Registrar WHOIS database is provided to you by Tucows for information purposes only, and may be used to assist you in obtaining information about or related to a domain name's registration record.

Tucows makes this information available "as is," and does not guarantee its accuracy.

By submitting a WHOIS query, you agree that you will use this data only for lawful purposes and that, under no circumstances will you use this data to: a) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass, unsolicited, commercial advertising or solicitations to entities other than the data recipient's own existing customers; or (b) enable high volume, automated, electronic processes that send queries or data to the systems of any Registry Operator or ICANN-Accredited registrar, except as reasonably necessary to register domain names or modify existing registrations.

The compilation, repackaging, dissemination or other use of this Data is expressly prohibited without the prior written consent of Tucows.

Tucows reserves the right to terminate your access to the Tucows WHOIS database in its sole discretion, including without limitation, for excessive querying of the WHOIS database or for failure to otherwise abide by this policy.

Tucows reserves the right to modify these terms at any time.

By submitting this query, you agree to abide by these terms.

NOTE: THE WHOIS DATABASE IS A CONTACT DATABASE ONLY. LACK OF A DOMAIN RECORD DOES NOT SIGNIFY DOMAIN AVAILABILITY.



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EXHIBIT K

Emails Between Balsam and Karkas in March 2009 re: *WebTrafficMarketing.com*, Another Domain Name Advertised by Unlawful Spam, for which Tucows is the Registered Name Holder and for which Tucows Refused to Provide Balsam with the Identity of its Licensee

Dan Balsam

From: Paul Karkas [pkarkas@tu cows.com]
Sent: Friday, March 20, 2009 8:30 AM
To: 'Dan Balsam'
Subject: RE: PS

[Thank you - I am looking into this](#)

From: Dan Balsam [mailto:spammercommunications@danbalsam.com]
Sent: Friday, March 20, 2009 2:45 AM
To: pkarkas@tu cows.com
Cc: 'Timothy Walton'
Subject: PS
Importance: High

[I forgot to mention, I actually received the same spam at two DIFFERENT email addresses, which strongly suggests the spammer is sending to an opt-OUT list.](#)

From: Dan Balsam [mailto:spammercommunications@danbalsam.com]
Sent: Thursday, March 19, 2009 11:43 PM
To: 'pkarkas@tu cows.com'
Cc: 'Timothy Walton'
Subject: Notice of Unlawful Spam - ContactPrivacy.com is the registrant
Importance: High

Mr. Karkas,

I received a spam on March 19 that, after a couple redirects, ends up at WebTrafficMarketing.com. See attached.

ContactPrivacy.com is the registrant. See attached whois query.

This spam is unlawful under California law, which authorizes liquidated damages of \$1000 without requiring me to prove up actual damages, because it contains Google Inc.'s domain name gmail.com without authorization. (Google expressly prohibits all spamming using its services.) Cal. Business & Professions Code Sec. 17529.5.

This spam also violates federal law because there's no physical mailing address. 15 U.S.C. 7705(a)(5)(A)(iii).

I am hereby providing you evidence of actionable harm. Even if you are not providing bandwidth or hosting, but you ARE the registrant of the domain name (as well as the registrar), and I demand that you promptly provide me with the identity of the licensee. If you do not, then per paragraph 3.7.7.3 of the ICANN agreement, you SHALL accept all liability for this unlawful spam.

I look forward to your prompt response... on this matter, as well as the other, far larger matter.

=====
Dan Balsam
Sue a Spammer! www.DanHatesSpam.com