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9 Enterprises, LLC, a.k.a. Bargaindepot.net  
10 and Moniker Online Services, LLC

09 JAN 29 AM 11:21  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES  
CMB

11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
13 WESTERN DIVISION, LOS ANGELES

14 WILLIAM SILVERSTEIN, an ) Case No.: cv07-2835 CAS (VBKx)  
15 individual, )  
16 Plaintiff, )  
17 vs. )  
18 E360INSIGHT, LLC, BARGAIN )  
19 DEPOT ENTERPRISES, LLC, )  
20 AKA BARGAINDEPOT.NET, )  
21 DAVID LINHARDT, an individual, )  
22 MONIKER ONLINE SERVICES, )  
23 LLC, And DOES 1-50; inclusive, )  
24 Defendants )

25 1. This is a counterclaim by Defendants, e360Insight, LLC  
26 (“e360”) and Bargain Depot Enterprises, LLC, (“BDE”) (collectively  
27 “Defendants/Counter-Plaintiffs”), both legitimate internet marketing  
28 companies, for damages stemming from Silverstein’s repeated defamatory  
postings on the internet referring to Counter-Plaintiffs as “spammers”, and

1 for Silverstein's abuse of the judicial process based on the improper ulterior  
2 motive to utilize this lawsuit to obtain information to which Silverstein is not  
3 entitled.  
4

5 **Jurisdiction and Venue**

6  
7 2. This Court has pendent jurisdiction over the counterclaims  
8 pursuant to 28 USCS § 1367. This Court also has jurisdiction over the  
9 counterclaims pursuant to 28 USCS § 1332 based on diversity jurisdiction  
10 and amount in controversy.  
11

12  
13 3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)  
14 because substantial amounts of the events giving rise to the counterclaims  
15 pled herein occurred in the Central District of California.  
16

17 **Facts Common To All Counts**

18 4. Counter-Plaintiffs are e-mail based marketing companies whose  
19 business practices have at all times relevant to the allegations in this  
20 complaint complied and continue to comply with all federal and state  
21 requirements and standards pertaining to the sending of commercial e-mail,  
22 including the *Controlling the Assault of Non-Solicited Pornography and*  
23 *Marketing Act of 2003*, 15 U.S.C. § 7701 (CAN-SPAM) and *Cal. Bus. &*  
24 *Prof. Code § 17529.5*.  
25  
26  
27  
28

1           5. Counter-Plaintiffs are hired by and partners with companies  
2 that wish to market their products or services using the internet. This  
3 marketing is targeted to persons "opting in" to a list whereby they agree to  
4 accept e-mail announcements. These persons sign up at lists owned by  
5 Counter-Plaintiffs or their business partners, some of which are then verified  
6 through a "double opt-in" process.  
7  
8

9           6. Counter-Plaintiffs do not engage in "spamming", which is  
10 essentially the digital equivalent of sending junk mail that is neither asked  
11 for nor wanted. Unlike anyone engaged in spamming, the internet marketing  
12 in which Counter-Plaintiffs engage employs a variety of permission  
13 processes that Counter-Plaintiffs controls, and that their marketing partners  
14 use, to obtain permission and consent from, and provide notice to, the  
15 consumers that receive the e-mail messages.  
16  
17  
18

19           7. "USENET is an abbreviation of "user network." This term  
20 refers to an international collection of organizations and individuals (known  
21 as "peers") whose computers connect to one another and exchange messages  
22 posted by USENET users.  
23  
24  
25  
26  
27  
28



1           14. The statements contained in Exhibit B are defamatory on their  
2 face because they convey a factual imputation of specific illegal conduct.

3  
4           15. On June 29, 2007 Silverstein posted online on USENET that  
5 e360 was being sued for "sending illegal spam". A copy of Silverstein's  
6 June 29, 2007 internet posting is attached as Exhibit C.

7  
8           16. The statements contained in Exhibit C by Silverstein are false  
9 because e360 is not an "illegal spammer" and does not send "illegal spam".

10  
11           17. The statements contained in Exhibit C are defamatory on their  
12 face because they convey a factual imputation of specific illegal conduct.

13  
14           18. On July 11, 2007 Silverstein posted online that e360 is being  
15 sued for being an "illegal spammer". A copy of Silverstein's July 11, 2007  
16 internet posting is attached as Exhibit D.

17  
18           19. The statements contained in Exhibit D by Silverstein are false  
19 because e360 is not an "illegal spammer" and does not send "illegal spam".

20  
21           20. The statements contained in Exhibit D are defamatory on their  
22 face because they convey a factual imputation of specific illegal conduct.

23  
24           21. The statements contained in Exhibit D by Silverstein, is false  
25 because e360 is not a "spammer".



1           23. Silverstein's ulterior motives are evidenced, in part, by his  
2 counsel's website, www.calspam.com, which states:

3  
4           "[w]e filed, on behalf of William Silverstein, a new lawsuit against  
5 E360Insight ("E360") and David Linhardt for illegal sending illegal  
6 unsolicited commercial e-mail ("spam"), asking for \$11.7 million in  
7 punitive damages. Silverstein's complaint alleged that E360Insight  
8 and David Linhardt sent relayed illegal spam through Mr. Silverstein's  
9 server, without authorization, and sent illegal spam to Mr. Silverstein.  
10 For those not aware, E360Insight and David Linhardt obtained a  
11 default judgment in the amount of \$11.7 million default against  
12 Spamhaus for defamation -- for Spamhaus labeling E360Insight and  
13 Linhardt as spammers. E360's lawsuit is brought E360's alleged illegal  
14 spamming activities to Silverstein's attention. Silverstein decided to  
15 [sic] this lawsuit when E360 filed suit against individuals calling E360  
16 and Linhardt spammers. *"I don't like bullies or liars,"* said Mr.  
17 Silverstein when he said that E360 and Linhardt needs [sic] to be  
18 sued.  
19  
20  
21  
22  
23  
24

25 See Exhibit A.

26           24. On information and belief, based on Silverstein's counsel's  
27 website posting, Silverstein's lawsuit was filed in retaliation against e360, its  
28

1 President, David Linhardt (who has been dismissed from this lawsuit), and  
2 BDE, for which Linhardt also acts as president, because e360 and Linhardt  
3  
4 obtained an \$11.7 million default judgment against The Spamhaus Project,  
5 Silverstein is a sympathizer of The Spamhaus Project, and may have other  
6  
7 affiliations or relationships with The Spamhaus Project, its founder, Steve  
8 Linford or one or more of The Spamhaus Projects volunteers.

9  
10 25. Not coincidentally, Silverstein sought punitive damages in this  
11 lawsuit for \$11.7 million, the very amount obtained by David Linhardt and  
12 e360 against Spamhaus.

13  
14 26. Since the filing of Silverstein's original lawsuit through the  
15 filing of Silverstein's Amended Complaint, and even beyond, e360 and BDE  
16  
17 have repeatedly sought the full identification of the purportedly offending  
18 emails Silverstein alleged formed the entire basis for his claims that e360  
19  
20 and BDE engaged in illegal spamming, in violation of CAN SPAM,  
21 California's Business & Professions Code § 17529.5, and various California  
22 torts.

23  
24 27. Silverstein has repeatedly refused to provide the full  
25  
26 information identification of the purportedly offending emails that  
27  
28 Silverstein alleged formed the entire basis for his claims that e360 and BDE  
engaged in illegal spamming, in violation of CAN SPAM, California's

1 Business & Professions Code § 17529.5, California Penal Code § 502 and  
2 various California torts including trespass to chattels and negligence per se.

3  
4 28. On information and belief, Silverstein did not, and does not,  
5 have the requisite information pertaining to the allegedly offending emails  
6 alleged in Silverstein's Amended Complaint. Silverstein, therefore, did not  
7 have the requisite information to determine whether there were violations of  
8 CAN SPAM, California's Business & Professions Code § 17529.5,  
9 California Penal Code § 502 or state causes of action based on trespass to  
10 chattels and negligence per se.  
11  
12

13  
14 29. On information and belief, Silverstein did not have probable  
15 cause to bring claims against e360 or BDE based on CAN SPAM,  
16 California's Business & Professions Code § 17529.5, California Penal Code  
17 § 502, trespass to chattels and negligence per se.  
18

19  
20 30. Silverstein's lack of any legitimate basis for his lawsuit and his  
21 ulterior motive for filing it is further evidenced by Silverstein's Rule 26  
22 Initial Disclosure, which states that Silverstein will not produce the  
23 allegedly offending e-mails that purportedly form the basis for his lawsuit  
24 unless and until e360 and BDE provide a list of all their domains. e360 and  
25 BDE's domains are not relevant to any of the claims asserted in Silverstein's  
26 original Complaint or Amended Complaint, all of which are premised on  
27  
28

1 two lists of from lines, subject lines and dates that Silverstein claims violate  
2 the law and allegedly render e360 and BDE “spammers”. The second list of  
3 from lines has been verified by Moniker, e360’s domain registrar, to have  
4 never been owned by e360 at any time.  
5

6  
7 31. Discovery, including Rule 26 Initial Disclosures, is a form of  
8 “process” recognized by California law giving rise to a claim for abuse of  
9 process.  
10

11 32. Silverstein has no legitimate reason to withhold from disclosure  
12 or discovery the allegedly offending emails that form the basis of his lawsuit  
13 against e360 and BDE.  
14

15 33. Silverstein’s use of the discovery process in this lawsuit is  
16 improper because he has no legitimate right to a list of Counter-Plaintiffs’  
17 domains.  
18

19 34. Silverstein’s misuse of the discovery process constitutes an  
20 abuse of process.  
21

22 WHEREFORE, Counter-Plaintiffs respectfully request that this Court  
23 enter a judgment on their behalf and against Silverstein and to award  
24 Counter-Plaintiffs an amount in excess of \$75,000 to compensate Counter-  
25 Plaintiffs for Silverstein’s abuse of process, for punitive damages for  
26  
27  
28

1 Silverstein's willful conduct and for any other relief that this Court deems  
2 just.  
3

4 Dated: January 29, 2008

5 Respectfully submitted

6  
7 By:   
8 Joseph L. Kish  
9 Attorney for Defendants e360  
10 Insight and Bargain Depot,  
11 LLC.  
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EXA

**Nejadpour  
& Associates  
a Professional Law Firm**

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**October 1, 2007:** e360Insight, Bargain Depot, and Moniker's motion to dismiss Silverstein's first amended complaint was denied by the Court. This is the first case, that we are aware of, that a domain name registrar is being held liable for providing anonymous domain name registration services to a spammer. Using false whois information for domain names is a crime under 18 U.S.C. 1037(4).

**August 21, 2007:** We now represent Sindeelou Thomson against Congressman John Doolittle. Mrs. Thomson was unable to get Congressman John Doolittle to stop spamming her, until she filed suit. Congressman Doolittle removed to federal court, solely to intimidate, and then claimed he is not subject to the law. More information here. Take a survey on John Doolittle and CAN-SPAM.

**March 2007:** We filed, on behalf of William Silverstein, a new lawsuit against E360Insight ("E360") and David Linhardt for illegal sending illegal unsolicited commercial e-mail ("spam"), asking for \$11.7 million in punitive damages. Silverstein's complaint alleged that E360Insight and David Linhardt sent relayed illegal spam through Mr. Silverstein's server, without authorization, and sent illegal spam to Mr. Silverstein. For those not aware, E360Insight and David Lindhardt obtained a default judgment in the amount of \$11.7 million default against Spamhaus for defamation -- for Spamhaus labeling E360Insight and Linhardt as spammers. E360's lawsuit is brought E360's alleged illegal spamming activities to Silverstein's attention. Silverstein decided to this lawsuit when E360 filed suit against individuals calling E360 and Linhardt spammers. *"I don't like bullies or liars,"* said Mr. Silverstein when he said that E360 and Linhardt needs to be sued. Mr. Silverstein is detailing the progress on his web site.

**We are a collection of Professional and Aggressive attorneys in Beverly Hills, Los Angeles and Switzerland.**

**Our extensive divorce experience gives us the needed skill to track spammers and locate assets that they try to hide.**

F. Bari Nejadpour & Associates, a Professional Law Corporation

ExB

Path:  
g2news1.google.com!news1.google.com!border1.nntp.dca.giganews.com!nntp.giganews.com!  
local01.nntp.dca.giganews.com!nntp.speakeasy.net!news.speakeasy.net.POSTED!not-for-m  
ail

NNTP-Posting-Date: Thu, 28 Jun 2007 23:31:42 -0500  
From: Bill Silverstein <scrapedfromn...@sorehands.com>  
Subject: Re: E360 Wipes The Courtroom Floor With Silverstein  
Date: Thu, 28 Jun 2007 21:31:39 -0600  
References: <1183058849.810634.131340@n2g2000hse.googlegroups.com>  
Newsgroups: news.admin.net-abuse.email  
MIME-Version: 1.0

Content-Type: text/plain; charset="US-ASCII"  
Content-Transfer-Encoding: 8bit  
X-Newsreader: Internet Adventurer v1.50 for OS/2 - Unregistered  
Message-ID: <YMqdnX\_eLyzFhbnz2dnUVZ\_ternZ2d@speakeasy.net>  
Lines: 67

X-Usenet-Provider: http://www.giganews.com  
NNTP-Posting-Host: 69.17.103.74

X-Trace:  
sv3-vVD3ri/z2Sk4Gvaigz6IOr8Llrgt1CHJLzF/65wtWbTYlWmhFmsJZwdIMECYb9wIQsbpsrcu30kXGY2!  
mTuaMPAZw5IFzyOxmJtQ5DpMk60oAA/AFWHakcfyQhnyS/17iURK1lotSmR2w99yyQeNSJsER7zt!e46pliy  
ZKmcGpcc484NNjh85X+mkvCHEmfolcsx54QnXOQ==

X-Complaints-To: abuse@speakeasy.net  
X-DMCA-Complaints-To: ab...@speakeasy.net  
X-Abuse-and-DMCA-Info: Please be sure to forward a copy of ALL headers  
X-Abuse-and-DMCA-Info: Otherwise we will be unable to process your complaint  
properly  
X-Postfilter: 1.3.35

On Thu, 28 Jun 2007 19:27:29 -0000, e360Insight wrote:

>Bill I-want-To-Be-Mark-Mumma Silverstein had a tough day in court  
>yesterday.  
>  
>"The Court continues for 45 days defendants Moniker and Linhardt's  
>motion to dismiss for lack of personal jurisdiction to enable parties  
>to conduct limited jurisdictional discovery. The Court GRANTS  
>defendants' motion to dismiss the Complaint for failure to plead with  
>sufficient particularity, but GRANTS plaintiff leave to amend the  
>Complaint. The Court GRANTS with leave to amend the defendants'  
>motion to dismiss the Complaint against Moniker and Linhardt.  
>Additionally, the Court GRANTS defendants' motion to strike  
>plaintiff's request for punitive damages. Finally, the Court DENIES  
>plaintiff's motion to strike defendants' Notice of Interested Parties  
>and plaintiff's motion to remand the action to state court. IT IS SO  
>ORDERED."  
>  
>Score In This Case:  
>Legitimate Marketer = 4  
>Criminal Vigilante = 1  
>

I am not a criminal vigilante!

What laws have I broken? what criminal statutes did I violate???????

>Judge's Tentative Ruling

>[http://www.e360insight.com/Judges\\_Tentative\\_Ruling\\_for\\_6\\_25\\_07\\_hearing.pdf](http://www.e360insight.com/Judges_Tentative_Ruling_for_6_25_07_hearing.pdf)

>Although the case is not over, we are looking to forward to opening up  
>another can of whoop ass in 45 days should Mumma-Silverstein decide to  
>amend his complaint.

>Once the case is over, we will be filing to recover our legal fees and  
>we will be seeking punitive damages against the parties responsible.

>In response to the ruling, Mumma-Silverstein's attorney advised him to  
>settle his divorce by offering 90% of everything he owns to his ex-  
>wife.

>To all legitimate system administrators who are trying to stop  
>unwanted email - e360's stated policy is to not send any email  
>messages to any one who does not want to receive them. If you have  
>any concerns about email messages coming from our network, please feel  
>free to contact me directly at [dlinha...@gmail.com](mailto:dlinha...@gmail.com). All reasonably  
>requests will be handled fairly and amicably.

Then how come I got spam from you? I never signed up with you! I never  
signed up with a partner of yours! Unless you define a partner that  
someone who you pay money to buy a list!

>To all criminal vigilantes who choose to make ridiculous claims in  
>court - we will send you packing with a lien on your assets and your  
>financial future, however dismal it may be. If you are interested in  
>spam-fighting, you would be better served by directing your attention  
>to someone who is actually doing something wrong.  
You are doing things wrong. I received spam from you, therefore you  
must be a spammer. You file SLAPP suits!

ExC

Path:  
g2news1.google.com!news2.google.com!border1.nntp.dca.giganews.com!nntp.giganews.com!  
local01.nntp.dca.giganews.com!nntp.speakeasy.net!news.speakeasy.net.POSTED!not-for-m  
ail  
NNTP-Posting-Date: Fri, 29 Jun 2007 16:23:58 -0500  
From: Bill Silverstein <scrapedfromn...@sorehands.com>  
Subject: Re: E360 Wipes The Courtroom Floor with Silverstein  
Date: Fri, 29 Jun 2007 14:23:55 -0600  
References: <1183058849.810634.131340@n2g2000hse.googlegroups.com>  
Newsgroups: news.admin.net-abuse.email  
MIME-Version: 1.0  
Content-Type: text/plain; charset="US-ASCII"  
Content-Transfer-Encoding: 8bit  
X-Newsreader: Internet Adventurer v1.50 for OS/2 - Unregistered  
Message-ID: <D60dnSct87Pz5RjbnZ2dnUVZ\_uejnz2d@speakeasy.net>  
Lines: 21  
X-Usenet-Provider: <http://www.giganews.com>  
NNTP-Posting-Host: 69.17.103.74  
X-Trace:  
sv3-fwsJxNVKZXUECAs1kv4P3LgmadAgtGfus9ZLaUWLqAWJ3OsGsScUBhI29fpk+e0qPfoLsi3nJBzivzV!  
x6jB7NJCd1hckKH3y/RzC7fqWP+wyjA0upHiwZTEdEGj801izH+pnXFtSwk015i6QR2WR56BvzRkIQPb1CIh  
RTQZAfdwdaMBbB/MF/NKbnqqU/+F/pw2UM5N/Eg==  
X-Complaints-To: [abuse@speakeasy.net](mailto:abuse@speakeasy.net)  
X-DMCA-Complaints-To: [ab...@speakeasy.net](mailto:ab...@speakeasy.net)  
X-Abuse-and-DMCA-Info: Please be sure to forward a copy of ALL headers  
X-Abuse-and-DMCA-Info: Otherwise we will be unable to process your complaint  
properly  
X-Postfilter: 1.3.35

On Thu, 28 Jun 2007 19:27:29 -0000, e360Insight wrote:

>Bill I-Want-To-Be-Mark-Mumma Silverstein had a tough day in court  
>yesterday.  
>  
>Score In This Case:  
>Legitimate Marketer = 4  
>Criminal Vigilante = 1  
>  
>  
>Dave Linhardt  
>President  
>e360Insight, LLC

I want an appology from you for your false statements. Not only posted here, put posted on every page of your web sit in the same font size as the text of your logo. Additionally, I want it to link to <http://www.calspam.com> so that your customers can see that you are being sued for sending illegal spam.

EXD

Path:  
g2news1.google.com!news2.google.com!border1.nntp.dca.giganews.com!nntp.giganews.com!  
local01.nntp.dca.giganews.com!nntp.speakeasy.net!news.speakeasy.net.POSTED!not-for-mail  
NNTP-Posting-Date: Wed, 11 Jul 2007 23:01:57 -0500  
From: Bill Silverstein <scrapedfromn...@sorehands.com>  
Subject: Re: E360 Wipes The Courtroom Floor With Silverstein  
Date: Wed, 11 Jul 2007 21:01:56 -0600  
References: <1183058849.810634.131340@n2g2000hse.googlegroups.com>  
<D60dnSct87Pz5RjbnZ2dnUVZ\_uejnz2d@speakeasy.net>  
<1184113692.862082.202070@p39g2000hse.googlegroups.com>  
Newsgroups: news.admin.net-abuse.email  
MIME-Version: 1.0  
Content-Type: text/plain; charset="US-ASCII"  
Content-Transfer-Encoding: 8bit  
X-Newsreader: Internet Adventurer v1.50 for OS/2 - Unregistered  
Message-ID: <goqdnVfo44AoOgjbZ2dnUVZ\_sytnZ2d@speakeasy.net>  
Lines: 44  
X-Usenet-Provider: http://www.giganews.com  
NNTP-Posting-Host: 69.17.103.74  
X-Trace:  
sv3-rw70rhup5m4AimggQGUn4Rkrrioc/nKneUei0jwy0zhi9pQc2FvdGvQXm6ogwcmx9Euz1bv/1gFswwwwH!  
UzfnIhes5Ltx80p91uoy8bbyy1mPHrTe0oZeNsk47VCao0dyHfCPkGAWGmnCPW2PH5JP1NRu9I6IyIa83xiyj  
rLwSrmFeG5uJYkQfkw9r43qPX1v4YnVHqzfIzg==  
X-Complaints-To: abuse@speakeasy.net  
X-DMCA-Complaints-To: ab...@speakeasy.net  
X-Abuse-and-DMCA-Info: Please be sure to forward a copy of ALL headers  
X-Abuse-and-DMCA-Info: Otherwise we will be unable to process your complaint  
properly  
X-Postfilter: 1.3.35

On Wed, 11 Jul 2007 00:28:12 -0000, e360Insight wrote:

>On Jun 29, 3:23 pm, Bill Silverstein <scrapedfromn...@sorehands.com>  
>wrote:  
>> On Thu, 28 Jun 2007 19:27:29 -0000, e360Insight wrote:  
>> >Bill I-Want-To-Be-Mark-Mumma Silverstein had a tough day in court  
>> >yesterday.  
>>  
>> >Score In This Case:  
>> >Legitimate Marketer = 4  
>> >Criminal Vigilante = 1  
>>  
>> >Dave Linhardt  
>> >President  
>> >e360Insight, LLC  
>>  
>> I want an appology from you for your false statements. Not only posted  
>> here, put posted on every page of your web sit in the same  
>> font size as the text of your logo. Additionally, I want it to link  
tohttp://www.calspam.comso that your customers can see that you are being  
>> sued for sending illegal spam.  
>  
>No thanks. I'd prefer to counter sue you and take your pick up truck  
>and your double wide.  
>

Based on what? Because I have received spam? Because I sued you for illegal spamming?

You still have not stated ANY crime that I have committed. That is because I have not.

You full of shit. You falsely state that I committed a crime, but when asked what crime you are silent. It is because I HAVE NOT COMMITTED A CRIME!

-----  
E360Insight gets sued for spamming.  
Ain't irony wonderful?  
<http://www.calspam.com>