

Maralyn M. English (8468)
Jill L. Dunyon (5948)
SNOW CHRISTENSEN & MARTINEAU
10 Exchange Place, 11th Floor
P.O. Box 45000
Salt Lake City, UT 84145
Telephone: 801-521-9000
Facsimile: 801-363-0400
mme@scmlaw.com
jld@scmlaw.com

Evan A. Schmutz (3860)
Jordan K. Cameron (12051)
DURHAM JONES & PINEGAR, P.C.
3301 N. Thanksgiving Way, Suite 400
Lehi, Utah 84043
Telephone: 801-375-6600
Facsimile: 801-375-3865
eschmutz@djplaw.com
jcameron@djplaw.com

DEREK A. NEWMAN (*pro hac vice*)
NEWMAN DU WORS
100 Wilshire Boulevard, Suite 940
Santa Monica, CA 90401
(310) 359-8200
dn@newmanlaw.com

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

XMISSION, L.C., a Utah company,

Plaintiff,

vs.

ADKNOWLEDGE, INC. a Missouri
Corporation; DOES 1-40,

Defendants.

STIPULATED ORDER

Case No. 2:15-cv-00277 TC

Judge Tena Campbell

This matter came before the Court on a status conference on May 5, 2015. Plaintiff XMission, L.C. and Defendant Adknowledge, Inc. have stipulated to the following recitals:

- A. XMission filed this action against Adknowledge on April 21, 2015 alleging violations of the CAN-SPAM Act, 15 U.S.C. §§ 7702, et seq.
- B. Adknowledge denies all allegations in XMission's complaint.
- C. XMission alleges it is an Internet service provider and that its customers have received commercial emails from Internet publishers.
- D. Adknowledge maintains a "suppression list" of email addresses and domain names that it deploys to publishers.
- E. Adknowledge has a policy in place providing that it will add email addresses and domain names to its suppression list when a domain-name registrant, or an agent for either of them, requests that email address or domain name be added to the suppression list.
- F. XMission represents that by contract it is authorized by its customers to add their domain names to Adknowledge's suppression list.
- G. XMission would like to add domain names that are registered to XMission or its customers to Adknowledge's suppression list, and Adknowledge is pleased to add them to the extent XMission has the right to request they be added on behalf of the domain-name registrant.

Therefore, XMission and Adknowledge stipulate and agree, and the Court orders, as follows:

1. Within 48 hours after the parties execute this stipulation, XMission will provide a list of domain names registered to customers of XMission's email-hosting service, or to XMission itself (each a "Domain" and collectively the "Add List"), to Adknowledge. XMission's counsel may send the Add List directly to Adknowledge's Chief Legal Officer, with a copy to Adknowledge's outside counsel.
2. XMission represents and warrants that (a) each domain-name registrant on the Add List is an existing XMission customer, and (b) XMission is authorized by each domain-name registrant on the Add List to request that it be removed from email advertisements that contain Adknowledge-placed advertisements.

3. Within 48 hours after Adknowledge receives the Add List, Adknowledge will (a) add each Domain to its suppression list, and (b) notify each publisher (the “Scrub Notice”) that Adknowledge has updated the suppression list and that they are required to scrub against the updated suppression list per their contractual obligations with Adknowledge, and (b) certify by email from its Chief Legal Officer to XMission’s counsel that Adknowledge has added the Add List to Adknowledge’s suppression list, and provide a copy of the Scrub Notice.
4. Adknowledge will maintain each Domain on its suppression list unless a Domain registrant (a) requests to be placed on a list that will receive Adknowledge-placed advertisements, or (b) requests to be removed from the suppression list, or (c) Adknowledge learns that the Domain registrant is no longer an XMission customer.
5. Adknowledge shall only use the Add List for the purpose of adding each Domain to its suppression list and for no other purpose, and shall maintain the Add List as confidential. XMission will mark the Add List as “Confidential.”
6. If XMission believes that an Adknowledge-placed advertisement has been placed in an email sent to any Domain on the Add List that XMission (or its customer) receives after two weeks from the date Adknowledge adds the Add List to its suppression list, XMission may provide written notice to Adknowledge’s legal department of that event (a “Violation Notice”).
7. Within one week after receiving a Violation Notice, Adknowledge will investigate whether the Adknowledge-placed advertisement appeared in an email sent to a Domain on the Add List, and if it confirms that the advertisement was placed it will investigate the cause and identify the publisher and publisher’s contact information to XMission.
8. The Court will not rule on XMission’s motion for TRO and preliminary injunction, and will not conduct any additional hearing on the motion.
9. Nothing in this stipulation is intended to be a release or waiver of any right that either party may have.

10. This stipulation and order will expire after final resolution of this case, or written agreement of the parties.

DATED: May 5, 2015

BY THE COURT



The Honorable Tena Campbell
United States District Court Judge

SO STIPULATED:

DURHAM, JONES & PINEGAR, P.C.

/s/ Jordan K. Cameron
Jordan K. Cameron
Attorneys for Plaintiff

NEWMAN DU WORS, LLP

/s/ Derek A. Newman
Derek A. Newman
Attorneys for Defendant