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10

FILED
2000 JUN -5 PM 2:47
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION
14

15 ANSWERTHINK CONSULTING
16 GROUP, INC., a Florida Corporation,

17 Plaintiff,

18 vs.

19 JOHN DOE #1, aka "ansr_sucks,"
20 JOHN DOE #2, aka "bobkaus_daddy,"
21 JOHN DOE #3, aka "aquacool_2000,"
22 JOHN DOES #4-12, individuals
23 whose names are presently
24 unknown,

25 Defendants.
26
27
28

DISCOVERY MATTER

CASE NO. CV 00-03407-NM (CTx)

SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF MOTION TO
QUASH SUBPOENA

DATE: June 12, 2000

TIME: 2:00 p.m.

CRTM: K

1 **I. INTRODUCTION AND SUMMARY OF PROCEEDINGS.**

2 This motion arises from two lawsuits pending in the Southern District of
3 Florida. Defendant responded to Plaintiff's initial lawsuit, *AnswerThink v. John Doe*
4 (Case No. 00-00709) with an Application Under Rule 12(d) or Alternatively Motion
5 for Judgment on the Pleadings that is still pending. Defendant has also filed a Motion
6 for Protective Order and Sanctions based, in part, on the subpoenas that Plaintiff
7 caused to be served in that first lawsuit. A copy of that motion is attached as Exhibit
8 H. One of those subpoenas, to Earthlink, was the subject of an earlier motion to quash
9 that was addressed by this Court in an April 6 minute order that stayed compliance
10 with the subpoena.

11 Plaintiff filed a second lawsuit, *AnswerThink v. Hackett* (Case No. 00-01223)
12 that has now been transferred to Judge Moore, the same judge who is handling the
13 first lawsuit. The instant motion addresses a subpoena to Earthlink that was issued in
14 the second lawsuit, a subpoena that is identical to the first Earthlink subpoena.

15 Plaintiff vociferously attacks the instant motion to quash the second Earthlink
16 subpoena, but fails to come to grips with a key factor – this Court's April 6 minute
17 order on the earlier motion to stay the first Earthlink subpoena.¹ Plaintiff would like
18 to pretend that this Order does not exist, or that it was unaware of it. The Court stayed
19 compliance with the first Earthlink subpoena pending a ruling on a motion to dismiss
20 that is still pending in the Southern District of Florida. Plaintiff claims that it was
21 unaware of the Order when the second subpoena was served. But this does not
22 explain a failure to abide by the Order once Plaintiff became aware of it.

23 In reality, Plaintiff has no justification for service of a second, identical
24 subpoena to Earthlink under the guise of the second lawsuit. There is no explanation
25

26 ¹ The order states that there was no compliance with Local Rule 7.15. But that rule applies to discovery motions
27 filed pursuant to Federal Rules of Civil Procedure 26-37. The first motion, and this one, are filed pursuant to
28 Fed.R.Civ.P. 45. Arguably, Local Rule 7.15 and the joint stipulation requirements are inapplicable to a motion to quash
a subpoena.

1 Plaintiff contends that "aquacool" has revealed his identity and/or conceded that
2 he is Greg Hackett. This is not accurate.² Plaintiff alleges that Mr. Hackett is
3 "aquacool" based on information that was improperly obtained from Yahoo! The
4 Motion for a Protective Order and Sanctions seeks to remedy this situation by limiting
5 Plaintiff's use of the information. Plaintiff should not be permitted to profit from its
6 misuse of the subpoenas to further erode aquacool's privacy interests.

7 **III. THE SECOND COMPLAINT IS MERITLESS.**

8 The lynchpin to the second complaint remains the comments that aquacool
9 allegedly posted on the Yahoo! message board for AnswerThink. See paragraphs 25,
10 29 and 32 of Exhibit D. Examples of the allegedly libelous comments were attached
11 to the first complaint and it was painfully obvious that they could not support a
12 defamation claim. Plaintiff now employs the artifice of refusing to identify the
13 comments that support its second complaint because of the tremendous harm that
14 identification of these comments would supposedly cause. This is a transparent ploy
15 and there is no indication that the comments which allegedly support the second
16 lawsuit are any different from the comments cited in the first complaint.

17 Plaintiff has now trumped-up the allegations that these comments are somehow
18 a violation of an employment agreement. Of course, Plaintiff is unwilling or unable to
19 identify which, if any, of the comments on the Yahoo! message boards contained
20 important and highly sensitive trade secrets. The lack of specificity reveals the
21 inherent weakness of Plaintiff's case.

22 Based on these disingenuous allegations, Plaintiff reaches the unremarkable
23 conclusion that the First Amendment does not preclude an action for breach of
24 contract. This truism presupposes, of course, that a breach has occurred. Plaintiff's
25 flimsy allegations are not dispositive on this issue.

27 ² If Plaintiff is convinced that Mr. Hackett is aquacool, the second earthlink is unnecessary.
28

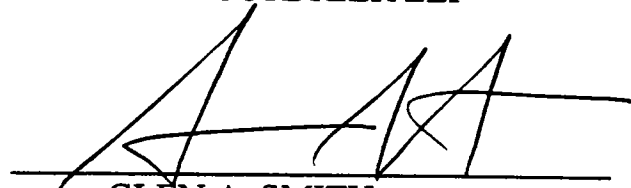
1 The cases that Aquacool has cited, including NLRB v. Midland Daily News,
2 infra, recognize that courts must be on guard to prevent threadbare complaints from
3 being used as a pretext to obtain private information. The plaintiff in these situations
4 must do something more than rely on the allegations of the complaint in order to
5 justify the discovery. Plaintiff fails miserably at this test.

6 **IV. CONCLUSION.**

7 Defendant has taken measures to defend his privacy interests through the filing
8 of a Motion for Protective Order in the first lawsuit. Any ruling on that motion will
9 affect discovery in both cases. Plaintiff should not be allowed to disregard this
10 Court's April 6 order, and the pending Motion for a Protective Order, via enforcement
11 of the second Earthlink subpoena. The motion to quash should, therefore, be granted.

12 Dated: June 3, 2000

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