

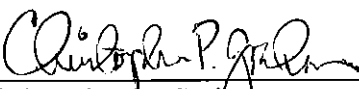


2. Attached hereto as Exhibit 1 is a true and correct copy of a July 18, 2007, letter from Charles L. Mudd, Jr., co-counsel for SI03, Inc. to Ryan DeLuca of Bodybuilding.com requesting that Mr. DeLuca preserve and retain evidence relating to the pseudonyms and/or usernames identified in the Complaint filed by SI03, Inc. in the United States District Court for the Northern District of Illinois including, but not limited to, the Internet Protocol ("IP") addresses associated with the usernames and/or pseudonyms.

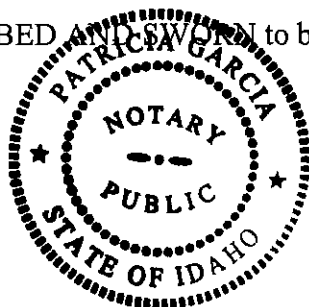
3. Attached hereto as Exhibit 2 is a true and correct copy of a July 23, 2007, letter from Charles L. Mudd, Jr., co-counsel for SI03, Inc. to Ryan DeLuca of Bodybuilding.com supplementing Mr. Mudd's initial Notice of Duty to Preserve evidence.


4. Attached as Exhibit 3 is a true and correct copy of an August 8, 2007, letter from M. Kelly Tillery, counsel for Bodybuilding.com, to Charles L. Mudd, Jr.

FURTHER your affiant sayeth naught.

  
\_\_\_\_\_  
Christopher P. Graham

SUBSCRIBED AND SWORN to before me this 21<sup>st</sup> day of November, 2007.



  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at Meridian, ID  
Commission expires 10/7/2010

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21<sup>st</sup> day of November, 2007, I submitted the foregoing to the Clerk of the Court for service on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing, including but not limited to, the following:

Thomas G. Walker  
Cosho Humphrey, LLP  
800 Park Blvd., Ste. 790  
P.O. Box 9518  
Boise, ID 83707-9518

M. Kelly Tillery  
Pepper Hamilton LLP  
3000 Two Logan Square  
Eighteenth and Arch Streets  
Philadelphia, PA 19103-2799

/s/ Christopher P. Graham  
CHRISTOPHER P. GRAHAM

**MUDD LAW OFFICES**

A PROFESSIONAL CORPORATION

REPRESENTING INDIVIDUALS AND BUSINESS ORGANIZATIONS

18 July 2007

**BY FACSIMILE, ELECTRONIC MAIL, and  
FIRST CLASS MAIL**

3114 West Irving Park Road  
Chicago, Illinois 60618  
www.muddlawoffices.com

**Charles Lee Mudd Jr.**  
**Attorney at Law**  
**Principal**  
Admitted in Illinois, Indiana and Connecticut  
773.588.5410 Fax 773.588.5440  
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Charles Lee Mudd Jr.\*

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Anne Chestney Mudd \*\*\*

Mr. Ryan DeLuca  
bodybuilding.com, LLC  
305 Steelhead Way  
Boise, Idaho 83704

**Without Prejudice**

\* Admitted in IL, IN, CT  
\*\*\* Admitted in IL

**Re: Notice of Duty to Preserve Data  
SI03, Inc. v. John Does 1-31, et al.  
07 C 3266**

Dear Mr. DeLuca:

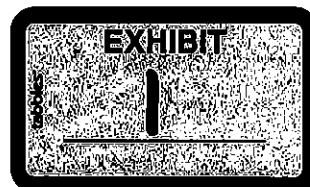
As you know by now, I represent SI03, Inc. in the above-referenced litigation that has been filed in the United States District Court, Northern District of Illinois. The litigation involves claims asserting coordinated efforts among SI03, Inc.'s competitors to harm it through defamatory posts and related communications on and through, at a minimum, your forums at [www.bodybuilding.com](http://www.bodybuilding.com). I have attached a copy of the Complaint for your reference.

In this litigation, the Court has allowed SI03, Inc. to proceed with discovery to determine the identities of those individuals alleged to be involved in the activities giving rise to SI03, Inc.'s claims. As such, I intend to issue a subpoena to bodybuilding.com, LLC shortly seeking information related to the usernames and/or pseudonyms identified in paragraphs 3 through 33 of the Complaint and the associated messages posted on bodybuilding.com, LLC's forums.

By this letter, I seek to inform you of the above-referenced litigation and ensure that you retain all relevant data related thereto. Thus, this letter serves as a NOTICE and DEMAND that bodybuilding.com, LLC immediately preserve and retain such evidence relating to the pseudonyms and/or usernames identified in the Complaint until further written notice from my offices.

Compliance with the foregoing demand is essential as the continued operation of your computer systems may result in the destruction of relevant evidence. Any failure to preserve and retain the electronic data outlined in this notice constitutes spoliation of evidence and will subject bodybuilding.com, LLC to legal claims for damages and/or evidentiary and monetary sanctions.

For purposes of this Notice, "electronic data" shall include, but not be limited to, any information related to the usernames and/or pseudonyms identified in paragraphs 3-33 of the attached Complaint contained within any electronic files including, but not limited to: the




dates and times a computer and/or computer connection accessed accounts associated with the usernames and/or pseudonyms; the Internet Protocol ("IP") addresses associated with the usernames and/or pseudonyms; and, any email address(es), ICQ Number(s), Yahoo! Messenger Handle(s), MSN Messenger Handle(s), AIM Screen Name(s), or personal names associated with the usernames and/or pseudonyms.

Bodybuilding.com, LLC must refrain from operating any computers (or removing or altering fixed or external drives and media attached thereto) which could result in the destruction of data identified herein.

SI03, Inc. reserves the right to supplement the list of relevant usernames and/or pseudonyms for which it seeks relevant electronic data and for which bodybuilding.com, LLC must preserve such electronic data.

Please contact me if you have any questions regarding this Notice.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles Lee Mudd, Jr.', with a stylized flourish at the end.

Charles Lee Mudd, Jr.

CLM/mms  
Enc.

**MUDD LAW OFFICES**

A PROFESSIONAL CORPORATION

REPRESENTING INDIVIDUALS AND BUSINESS ORGANIZATIONS

23 July 2007

**BY FACSIMILE, ELECTRONIC MAIL, and  
FIRST CLASS MAIL**

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Mr. Ryan DeLuca  
bodybuilding.com, LLC  
305 Steelhead Way  
Boise, Idaho 83704

*Without Prejudice*

\* Admitted in IL, IN, CT  
\*\*\* Admitted in IL

**Re: Supplement to Notice of Duty to Preserve Data  
SI03, Inc. v. John Does 1-31, et al.  
07 C 3266**

Dear Mr. DeLuca:

This letter follows the initial Notice of Duty to Preserve Data and should be treated as a supplement thereto.

Please find attached a list of usernames for which electronic data should be preserved, as discussed in the initial Notice of Duty to Preserve Data dated July 18, 2007.

Should any future subpoena issued on behalf of SI03, Inc. identify some, but not all, of the attached usernames, SI03 does not intend such limited identification to waive any duty regarding preservation with respect to the usernames not so identified therein.

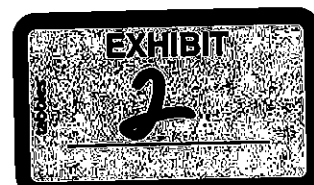
Please contact me if you have any questions regarding this Notice.

Sincerely,



Charles Lee Mudd, Jr.

CLM/mms  
Enc.





**Pepper Hamilton LLP**  
Attorneys at Law

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M. Kelly Tillery  
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tilleryk@pepperlaw.com

August 8, 2007

Via Overnight Courier

Charles Lee Mudd, Jr., Esquire  
MUDD LAW OFFICES  
3114 West Irving Park Road  
Chicago, IL 60618

Re: S103, Inc. v. John Does 1-31 et al., Civil Action No. 07 c 3266, U.S.D. Ct. N.D. Ill.

Dear Mr. Mudd:

We serve as Counsel to Bodybuilding.com, LLC and are in receipt of your Letters of July 18, 2007 and July 23, 2007 to Ryan DeLuca and your Third-Party Subpoena issued July 25, 2007 to the Custodian of Records for Bodybuilding.com, LLC.

The information sought by your Subpoena will not be produced absent specific Court Order. The privacy and thus identity of the members of the Bodybuilding.com Internet Forum must be maintained so as to encourage and promote the open and free exchange of ideas and discussions in this unique community of persons sharing similar interests. Any disclosure of the identities of Forum members may thwart open communications and discourage discussions about issues of significant concern to the community<sup>1</sup>. Upon review of the Complaint filed, the Dockets, and the Subpoena issued, your requests amount to an unwarranted fishing expedition for highly confidential, private information. The Subpoena is improper and invalid for several reasons set forth below. However, even if you remedy the procedural errors, and serve a new, proper, valid subpoena, we will still have no choice but to oppose same and, if necessary, to file a Motion to Quash and seek a Protective Order from the District Court of Idaho.

<sup>1</sup> Enclosed for your review are the Site's and Forum's Terms of Service, Rules, Policies and Privacy Statement, all of which our client takes very seriously.

#8766376 v1

Philadelphia	Boston	Washington, D.C.	Detroit	New York	Pittsburgh
Berwyn	Harrisburg	Orange County	Princeton	Wilmington	

**Pepper Hamilton LLP**  
Attorneys at Law

Charles Lee Mudd, Jr.  
August 8, 2007

You may also be aware that there is a substantial and growing body of law holding that in appropriate circumstances, the First Amendment trumps such a fishing expedition for the identity of an anonymous internet speaker. Statements of criticism, sarcasm, dissatisfaction, and other sardonic commentary made by anonymous voices do not warrant the disclosure of true identities of the speakers on third-party electronic bulletin/message boards. Highfields Capital Management L.P. v. Doe, 385 F.Supp.2d 969 (N.D.Ca. 2005); Rocker Management LLC v. John Does, No. 03-MC-33, 2003 WL 22149380 (N.D.Ca. May 29, 2003) (motion to quash granted as to Plaintiff's Subpoena to Third Party Internet Chat Room for identity of anonymous poster); Doe v. 2Themart.com, Inc., 140 F.Supp.2d 1088, 1092 (W.D.Wash. 2001) (denying Discovery and referencing that "Internet anonymity facilitates the rich, diverse and far ranging exchanges of ideas"); Dendrite Int'l, Inc. v. Doe No. 3, 342 N.J.Super. 134, 775 A.2d 756 (App.Div.2001) (denial of third-party discovery to ISP seeking to disclose identity of anonymous bulletin board poster). We will rely on these and additional cases in support of Bodybuilding.com's Motion to Quash the Subpoena.

Specifically, the procedural grounds upon which Bodybuilding.com, LLC shall object include, but are not limited to, the following:

- 1) The Subpoena issued does not comply with requirements of Federal Rule of Civil Procedure 45(a)(1)(B) as it fails to state "the name of the court in which it is pending."
- 2) The Subpoena issued does not comply with requirements of Federal Rule of Civil Procedure 45(a)(1)(C) as it fails to provide a "time ... therein specified."
- 3) The Subpoena issued does not comply with requirements of Federal Rule of Civil Procedure 45(c)(1) as it is not drafted so as to "avoid imposing an undue burden or expense on a person subject to that subpoena". The Subpoena is deficient as it requires identification of 27 persons using various pseudonyms on Bodybuilding.com, while the vast majority of conduct described in the Complaint could not possibly be defamatory and the requests are thus excessively overbroad and would cause undue burden to comply.
- 4) The Subpoena issued does not comply with the requirements of Federal Rule of Civil Procedure 45(b)(1) as it was delivered via U.S. Mail and not served by means appropriate under Federal Rule of Civil Procedure 5(b).
- 5) The Subpoena issued fails to include payment for the reasonable copying and document preparation charges (or even offer to pay same) for the documents



**Pepper Hamilton LLP**  
Attorneys at Law

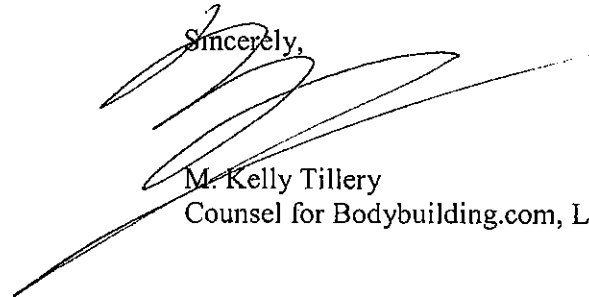
Charles Lee Mudd, Jr.  
August 8, 2007

sought. The requests made constitute an undue burden and expense on the recipient.

- 6) The Illinois Northern District Dockets indicate that the case was closed on June 13, 2007. Any subpoena issued after that date is invalid.
- 7) The Subpoena is dated July 25, 2007 and "service" by U.S. Mail effectuated shortly thereafter, nearly 45 days after Order of the Court terminating the litigation.
- 8) No showing of "good cause" by Motion has been made for any such requested information. The record consists solely of your client's Complaint without any claims as to why such is needed. Under relevant Federal Law, we do not believe you have established the necessary requirements for the Court's permitting such Expedited Discovery.
- 9) The Subpoena fails to comply with the general requirement that the request is so "narrowly tailored" so as to avoid undue burden on the recipients of the Subpoena. For example, alleged postings by user names "ElMariachi" ¶¶87-88; "NATHAN518" ¶¶99-101; and "RobW" ¶102 contain statements that no Court could possibly find defamatory. More relevant is the fact that 15 of the 27 user names listed in Plaintiff's Subpoena (Bloute, BuckyeyMuscle, canadaboy, Couloid, ditto, EMISGOD, Ephedra, jkeithc82, Kohen Gadol, Nathan1, OneBetter, Seth25, Sixpack, Truth Speaker and TheUnlikelyToad) are not even referenced in Plaintiff's Complaint as having made defamatory comments. The likely reason for their inclusion, and the subsequently sent supplementary list of names, is either intended to and/or will simply annoy, harass and intimidate Bodybuilding.com Forum members.

In sum, our client will not be responding to your Subpoena. When and if you serve a proper Subpoena, we will respond accordingly.

Sincerely,



M. Kelly Tillery  
Counsel for Bodybuilding.com, LLC