

Christopher P. Graham/ISB #6174
TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN, PA
225 North Ninth Street, Suite 820
P.O. Box 1097
Boise, ID 83701
Telephone: (208) 331-1170
Facsimile: (208) 331-1529

Charles Lee Mudd Jr. (pro hac vice application to be submitted)
(cmudd@muddlawoffices.com)

Heidi I. Schmid (pro hac vice application to be submitted)
(hschmid@muddlawoffices.com)

MUDD LAW OFFICES
3114 West Irving Park Road
Suite 1W
Chicago, Illinois 60618
Telephone: (773) 588-5410
Facsimile: (773) 588-5440

ATTORNEYS FOR MOVANT
SI03, INC.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SI03, INC.,)	MISC. CASE NO. 07-6311
)	
Plaintiff,)	(Civil Case No. 07 C 3266
)	Northern District of Illinois)
v.)	
)	AFFIDAVIT OF
BODYBUILDING.COM, LLC,)	CHARLES LEE MUDD JR.
)	
Defendant.)	

AFFIDAVIT OF CHARLES LEE MUDD JR.


I, CHARLES LEE MUDD JR., being duly sworn, do hereby declare, testify and state as follows:



1. I am an attorney licensed to practice in the State of Illinois and represent SI03, Inc.
2. Based upon research and publicly available information, the domain www.bodybuilding.com is hosted, maintained, owned and operated by Bodybuilding.com with a principal address of 305 Steelhead Way, Boise, Idaho 83704.
3. The document attached hereto as Exhibit B1 represents an authentic copy of a letter dated July 18, 2007, sent by me to Ryan DeLuca of Bodybuilding.com, LLC.
4. The document attached hereto as Exhibit B2 represents an authentic copy of a letter dated August 8, 2007, sent by Attorney M. Kelly Tillery on behalf of Bodybuilding.com to me in which Attorney Tillery raised objections to the subpoena served on Bodybuilding.com on July 27, 2007.
5. The document attached hereto as Exhibit B3 represents an authentic copy of a letter dated August 23, 2007, sent by Attorney M. Kelly Tillery on behalf of Bodybuilding.com to me in which Attorney Tillery raised formal written objections to the subpoena served on Bodybuilding.com on August 10, 2007.
6. To date, Bodybuilding.com has failed to produce any requested documents or information.

I declare under the penalty of perjury that the foregoing are true and correct statements.

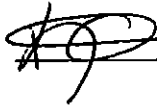
Dated this 15th day of October 2007.



Charles Lee Mudd, Jr.

STATE OF ILLINOIS)
)SS:
COUNTY OF COOK)

The foregoing AFFIDAVIT OF CHARLES LEE MUDD Jr. has been subscribed and sworn to me before this 15th day of October 2007, by Charles Lee Mudd, Jr..



Notary Public

My Commission Expires: 4/8/08



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
cmudd@muddlawoffices.com

ATTORNEYS

Principal
Charles Lee Mudd Jr.*

Associates
Heidi I. Schmid***

Of Counsel
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. 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.

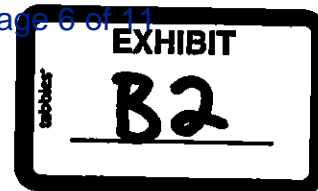
Please contact me if you have any questions regarding this Notice.

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.



Pepper Hamilton LLP
Attorneys at Law

3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799
215.981.4000
Fax 215.981.4750

M. Kelly Tillery
direct dial: 215-981-4401
direct fax: 215-981-4750
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 community¹. 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.

¹ 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.

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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

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Attorneys at Law

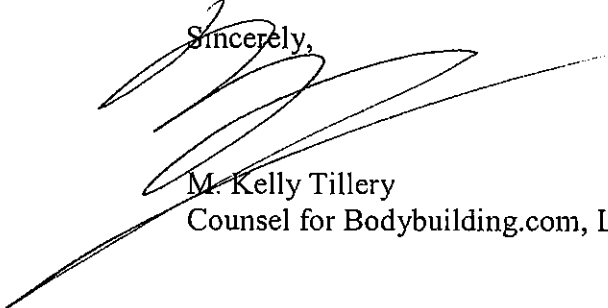
Charles Lee Mudd, Jr.
August 8, 2007

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 Bodybuiding.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



Pepper Hamilton LLP
Attorneys at Law

3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799
215.981.4000
Fax 215.981.4750

M. Kelly Tillery
direct dial: 215-981-4401
direct fax: 215-981-4750
tilleryk@pepperlaw.com

August 23, 2007

**Via Facsimile, Electronic Mail
And First Class Mail**

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 are in receipt of your Subpoena issued from the United States District Court for the District of Idaho on August 9, 2007, served August 10, 2007 on Bodybuilding.com, LLC. We have also received your email enclosing the Court's Order of August 22, 2007 permitting Expedited Discovery.

Pursuant to Federal Rule of Civil Procedure 45(c)(2)(B), please consider this letter as formal written objection of Bodybuilding.com, LLC to the August 9, 2007 Subpoena. Bodybuilding.com, LLC objects to the Subpoena, and to each and every request included therein. Since each of the seven (7) requests specifically relate to various aspects of producing the identity and personally identifiable information of a list of thirty-one (31) pseudonym usernames from the Bodybuilding.com Internet Forum, Bodybuilding.com, LLC objects to all Requests collectively on the following grounds:

1. Bodybuilding.com, LLC objects to the Subpoena to the extent that it is overbroad, burdensome and oppressive, particularly to the extent it seeks "all" documents that refer, relate to or concern a particular request, and spans a time period covering over seven years from January 1, 2000 to the present. Further, it assumes Bodybuilding.com, LLC maintains a database collecting all personally identifiable information for the usernames and that any such information in Bodybuilding.com, LLC's possession constitutes the true and accurate identity of the pseudonym.

#8817524 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 23, 2007

2. Bodybuilding.com, LLC objects to the Subpoena to the extent that it seeks irrelevant information not subject of the present litigation and not reasonably calculated to lead to the discovery of admissible evidence. For example, there is not a single allegation in the Complaint concerning a substantive statement made by 16 of the 31 usernames whose identities and personally identifiable information are sought in Request 1 of the Subpoena, including usernames: Bloute, Bobo, BuckyeyMuscle, canadaboy, Coulaid, dermotti, ditto, EMISGOD, Ephedra, jkeithc82, Kohen_Gadol, Patrick Arnold, Seth25, Sixpack, Truth Speaker and TheUnlikelyToad.

3. Bodybuilding.com, LLC objects to the Subpoena to the extent it is vague and ambiguous and seeks categories of documents not reasonably particularized. Specifically, there is no indication as to the purpose or relevance of determining whether a pseudonym user held employment at additional non-parties Athletes.com and Higher Power Nutrition.

4. Bodybuilding.com, LLC objects to the Subpoena to the extent that there exists no legal basis warranting the issuance of the August 9, 2007 Subpoena as the Illinois Northern District Dockets and Order of the Court of June 13, 2007 reflect that the case was closed on June 13, 2007 as a result of dismissal of Plaintiff's Complaint. With all due respect, the Court's August 22, 2007 subsequent Order appears in conflict with the current status of the litigation. It is our understanding that absent re-opening the case, any subpoena issued after June 13, 2007 is invalid.

5. Bodybuilding.com, LLC objects to the Subpoena to the extent that it 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 31 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 will cause undue burden on Bodybuilding.com, LLC to comply.

6. Bodybuilding.com, LLC objects to the Subpoena to the extent that the current record fails to evidence a showing of "good cause" by Motion of Plaintiff for any such requested information or Expedited Discovery. The Record consists solely of Plaintiff's client's dismissed Complaint without any claim as to why such expedited discovery is needed.

7. Bodybuilding.com, LLC objects to the Subpoena to the extent that the Subpoena fails to comply with the general requirement that such Expedited Discovery Request be so "narrowly tailored" so as to avoid undue burden on the recipients of the Subpoena. For example, alleged postings by user names "EIMariachi" (Compl. ¶¶87-88); "NATHAN518" (Compl. ¶¶99-101); and "RobW" Compl. ¶102) contain statements that no Court could possibly

Pepper Hamilton LLP
Attorneys at Law

Charles Lee Mudd, Jr.
August 23, 2007

find defamatory. More relevant is the fact that 16 of the 31 user names listed in Plaintiff's Subpoena are not even referenced in Plaintiff's Complaint as having made defamatory comments. The likely reason for their inclusion is intended to simply annoy, harass and intimidate Bodybuilding.com, LLC and is thus objectionable.

8. Bodybuilding.com, LLC objects to the Subpoena to the extent that it is dated August 9, 2007 with service effectuated on August 10, 2007, almost 60 days after Order of the Court terminating the litigation. This does not equate to expedited discovery.

9. Bodybuilding.com, LLC objects to the Subpoena to the extent that it seeks confidential, privately held information. 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 as a result of fishing expeditions may thwart open communications and discourage discussions about issues of significant concern to the community in contravention of the protections of the First Amendment.

Sincerely,



M. Kelly Tillery
Counsel for Bodybuilding.com, LLC