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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

SI03, INC.,)	
)	MISC. CASE NO. 07-6311-EJL
Plaintiff,)	
v.)	(Civil Case No. 07 C 3266
)	Northern District of Illinois)
BODYBUILDING.COM, LLC,)	
)	PLAINTIFF’S MEMORANDUM IN
Defendant.)	SUPPORT OF MOTION TO COMPEL
)	

COMES NOW Plaintiff, SI03, Inc. (“SI03”), by and through its counsel of record, and, pursuant to Federal Rule of Civil Procedure 37 and Local Rule 7.1, submits this Memorandum in Support of its Motion to Compel. In its Motion to Compel (“Motion”), SI03 respectfully requests that the Court order Bodybuilding.com, LLC (“Bodybuilding.com”) to respond fully to the subpoena served upon it by SI03 in August 2007 and produce the documents requested in the subpoena, as more fully described below. To date, Bodybuilding.com has refused to provide this very relevant discovery, leaving SI03 with no choice but to file the Motion.

I. INTRODUCTION

This miscellaneous matter arises from SI03's effort to determine the identities of those defendants that have consistently and methodically defamed it and its products over a significant period of time. The individual defendants have used pseudonyms to publish defamatory statements about SI03 and its products for the benefit of, upon information and belief, SI03's competitors. Thus, SI03 does not seek the identity of consumers who may simply dislike its products. Rather, SI03 seeks the identity of individuals that have intentionally sought to harm SI03 by making repeated defamatory statements over a course of time. This effort remains consistent with First Amendment principles regarding anonymous and pseudonymous communications on the Internet. Applying the summary judgment standard articulated in *Doe v. Cahill*, 884 A.2d 451 (Del. 2005) to the claims in the Complaint, SI03 clearly is entitled to the information it seeks about the pseudonymous individuals. Therefore, this Court should grant SI03's Motion.

II. STATEMENT OF FACTS

SI03 is internationally known for bringing new and innovative products to the nutraceutical and food industries. Compl. ¶ 57 (Doc. #1) (attached hereto as Exhibit A1); Affidavit of Greg Davis ("Davis Aff.") ¶ 3 (attached hereto as Exhibit C). Among its products, SI03 manufactures and markets over thirty (30) Syntrax brand products. Compl. ¶ 52; Davis Aff. ¶ 4. The Syntrax brand of products includes fruit juice flavored proteins, antioxidants, fat loss agents, and muscle volumizers. Compl. ¶ 53; Davis Aff. ¶ 5. These products are utilized for a variety of health and fitness related purposes including athletic enhancement, equilibrium, fat loss, and maintaining basis nutritional building blocks. Compl. ¶ 54; Davis Aff. ¶ 6. The Syntrax brand is known for utmost quality and consistency, excellent taste, and products that

deliver cost effective results. Compl. ¶ 55; Davis Aff. ¶ 7. SI03 markets the Syntrax brand within the United States and internationally. Compl. ¶ 56; Davis Aff. ¶ 8. Both SI03 and the Syntrax brand have a strong Internet presence that is responsible for a significant portion of the ultimate sales SI03 obtains through the Syntrax brand. Compl. ¶ 59; Davis Aff. ¶ 9.

Since 2006, pseudonymous individuals have escalated a campaign and conspiracy to defame and disparage SI03 and the Syntrax brand of products. Compl. ¶¶ 60, 65; Davis Aff. ¶ 10. SI03 believes these individuals to be directly related to, serve as the agents of, and/or have acted in concert with SI03's competitors in the nutraceutical and food industries. Compl. ¶ 61; Davis Aff. ¶ 17. Indeed, at least eight of the pseudonyms discussed below have explicitly identified themselves as representatives for SI03's competitors. Davis Aff. ¶¶ 18-24. These individuals have systematically published numerous defamatory statements about SI03 and its products through various online *fora*, Compl. ¶ 61; Davis Aff. ¶ 12. Most recently, the nature and severity of the defamatory statements made by these individuals have increased significantly. Compl. ¶ 65; Davis Aff. ¶ 14. These defamatory statements have significantly affected the reputation of SI03 and the Syntrax brand. Compl. ¶ 66; Davis Aff. ¶ 15. Indeed, these defamatory statements have directly affected sales and rankings of Syntrax products. Compl. ¶ 66; Davis Aff. ¶ 16. Because of the recent escalation and resulting impact of the campaign and conspiracy, SI03 could no longer dismiss the false statements as a "necessary evil" in the course of doing business. Compl. ¶ 64; Davis Aff. ¶ 25. It had to act.

On June 11, 2007, SI03 filed a Complaint against John Does 1-30 and Doe Companies 1-5 in the United States District Court for the Northern District of Illinois. *See generally* Compl. On June 13, 2007, as a routine practice involving complaints filed against Doe defendants, Judge Ruben Castillo dismissed the Complaint without prejudice, but allowed SI03 to "proceed with

expedited discovery to identify the appropriate defendants and to determine if jurisdiction and venue are appropriate in this district.” Order, June 13, 2007 (Doc. #6) (attached hereto as Exhibit A2). Pursuant to the Court’s order, SI03 began proceeding with discovery to determine the identities of the appropriate defendants.

The pseudonymous defendants published hundreds of defamatory statements about SI03 and its products on the website www.bodybuilding.com. Compl. ¶¶ 62, 63; Davis Aff. ¶ 13. 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. Compl. ¶ 63; Affidavit of Charles Lee Mudd, Jr. (“Mudd Aff.”) ¶ 2. On July 18, 2007, counsel for SI03 sent a letter to Bodybuilding.com requesting that it preserve information relevant to the Complaint, particularly the Bodybuilding.com usernames identified in the Complaint. Mudd Aff. ¶ 3, Ex. 1 (Letter from Charles Lee Mudd, Jr. to Ryan DeLuca, July 18, 2007) (attached hereto as Exhibit B1). The letter also explained Bodybuilding.com’s duties to preserve such information. *Id.* From the middle to end of July 2007, SI03 and Bodybuilding.com discussed the possibility of informal production of information by Bodybuilding.com. Davis Aff. ¶ 26. At one point, the parties discussed the production of IP addresses by Bodybuilding.com, which Bodybuilding.com had done on previous occasions. *Id.* ¶ 27. In the end, Bodybuilding.com indicated it would not produce any information. *Id.* ¶ 28.

On July 27, 2007, SI03 served a subpoena upon Bodybuilding.com seeking information that would tend to identify the anonymous and pseudonymous individuals that posted defamatory statements about SI03 on www.bodybuilding.com. Affidavit of Kasey L. Vink (July 27, 2007) (attached hereto as Exhibit D1). On August 8, 2007, counsel for SI03 received correspondence from Attorney M. Kelly Tillery on behalf of Bodybuilding.com that raised

objections to the subpoena. Mudd Aff. ¶ 4, Ex. 2 (Letter from M. Kelly Tillery to Charles Lee Mudd, Jr., August 8, 2007) (attached hereto as Exhibit B2). Among the objections, Bodybuilding.com ignored the Court's clear order authorizing discovery, made much of the Court having dismissed the Complaint, and indicated Bodybuilding.com need not respond because the electronic record indicated that the case had been closed. *Id.* On August 9, 2007, SI03 responded by letter to Bodybuilding.com's objections.

In addition, on August 10, 2007, SI03 served a second subpoena upon Bodybuilding.com ("August 2007 Subpoena") that resolved some minor issues that had been raised in the August 8, 2007 letter from M. Kelly Tillery. Affidavit of Kasey L. Vink (August 29, 2007) (attached hereto as Exhibit D2). Through the August 2007 Subpoena, SI03 sought documents demonstrating the dates and times on which a computer accessed the pseudonymous accounts; documents listing the Internet Protocol ("IP") addresses associated with the pseudonymous accounts; additional information that had been provided when the pseudonymous accounts were created or that tended to identify the individuals using the pseudonymous accounts; and other relevant information. *Id.* Bodybuilding.com again formally objected.

On August 17, 2007, in light of Bodybuilding.com's continued reliance upon the dismissal of the Complaint and the case "being closed," SI03 filed a motion seeking clarification of the Court's June 13, 2007 Order. Mot. for Clarification (Doc. #7) (attached hereto as Exhibit A3). On August 22, 2007, the Court entered an order granting SI03's motion for clarification and expressly providing that:

Plaintiff may proceed with expedited discovery, including but not limited to subpoenas issued pursuant to Rule 45, to identify the appropriate defendants and to determine if jurisdiction and venue are appropriate in this district, where such discovery may include, but not be limited to, seeking the production of identifying information related to those pseudonyms Plaintiff reasonably believes to be used by the defendants.

August 22, 2007 Order (Doc. #11) (attached hereto as Exhibit A4). With respect to the case being closed, the Court stated that “[i]t’s only administratively closed. It’s a technicality . . . That should not impede your discovery.” Transcript, August 22, 2007 (attached hereto as Exhibit A5). Despite this, Bodybuilding.com served its formal objections to the August 2007 Subpoena on August 23, 2007. Mudd Aff. ¶ 5, Ex. 3 (Letter from M. Kelly Tillery to Charles Lee Mudd, Jr., August 23, 2007) (attached hereto as Exhibit B3).

Bodybuilding.com has failed to produce any requested documents or information. Mudd. Aff. ¶ 6. As such, SI03 has no choice but to file a motion to compel.

III. LAW OF OBTAINING IDENTITY OF ANONYMOUS SPEAKERS

The advent of electronic communications has required courts to apply long-standing constitutional principles to new technologies and communications media. With particular relevance to this case, courts have been required to apply First Amendment principles to situations where a plaintiff seeks to discover information that would identify an anonymous online speaker. For, courts have long recognized that the First Amendment of the United States Constitution protects anonymous speech and these same principles have been applied to electronic communications. In *Doe v. Cahill*, 884 A.2d 451 (Del. 2005), the Supreme Court of Delaware issued the first opinion from a State Supreme Court to address this specific issue. In doing so, it adopted a summary judgment standard as the most effective means of balancing the interests of all parties.¹

¹ On July 13, 2006, the Supreme Court of Wisconsin issued the second opinion from a state supreme court to address this specific issue. *See Lassa v. Rongstad*, 718 N.W.2d 673 (Wisc. 2006), *reh’g denied*, 724 N.W.2d 207, *cert. denied*, 127 S. Ct. 2251. In *Lassa*, the Wisconsin Supreme Court discussed and adopted the concerns raised by *Doe v. Cahill*. However, the *Lassa* court concluded that a motion to dismiss standard would satisfy these concerns in Wisconsin because, unlike Delaware, Wisconsin requires particularity in pleading the claims at issue. *Id.* at 687. Because Idaho is a notice pleading state (like Delaware), *see Cook v. Skyline Corp.*, 135 Idaho 26, 33, 13 P3d 857, 864 (Idaho 2000), *Lassa* is inapplicable to this motion.

A. PROTECTION OF ANONYMOUS SPEECH.

The First Amendment protects the right to speak anonymously. *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 200 (1999); *Talley v. California*, 362 U.S. 60, 65 (1960). The Supreme Court has stated that “[a]nonymity is a shield from the tyranny of the majority,” that “exemplifies the purpose” of the First Amendment: “to protect unpopular individuals from retaliation . . . at the hand of an intolerant society.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 357 (1995) (holding that an “author’s decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment”). Consequently, courts must “be vigilant . . . [and] guard against undue hindrances to political conversations and the exchange of ideas.” *Buckley*, 525 U.S. at 192. This vigilant review “must be undertaken and analyzed on a case-by-case basis,” where the court’s “guiding principle is a result based on a meaningful analysis and a proper balancing of the equities and rights at issue.” *Dendrite Int’l, Inc. v. Doe No. 3*, 775 A.2d 756, 760-61 (N.J. Super. A.D. 2001).

B. PRIVILEGED SPEECH APPLIED TO ANONYMOUS ELECTRONIC COMMUNICATIONS.

The principles protecting anonymous speech have been extended to the Internet and electronic communications. *Reno v. ACLU*, 521 U.S. 844, 870 (1997) (there is “no basis for qualifying the level of First Amendment protection that should be applied to” the Internet). Because the First Amendment protects the right to speak anonymously and this right extends to electronic communications, any discovery device seeking anonymous speakers’ names and addresses is subject to a qualified privilege. Consequently, courts must consider this qualified privilege before authorizing discovery in such cases. *See Sony Music Entertainment v. Does*, 326 F.Supp.2d 556, 565 (S.D.N.Y. 2004) (“Against the backdrop of First Amendment protection

for anonymous speech, courts have held that civil subpoenas seeking information regarding anonymous individuals raise First Amendment concerns.”). In so doing, the courts addressing these issues have made efforts to balance the interests of the anonymous speakers against the plaintiff’s need for the subpoenaed information. *See, e.g., Cahill*, 884 A.2d 451; *Doe v. 2theMart.com*, 140 F.Supp.2d 1088 (W.D. Wash. 2001); *Dendrite*, 775 A.2d at 771; *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 578 (N.D. Cal.1999).

As these courts have recognized, an inherent problem arises in such cases because, at the outset of litigation, plaintiffs typically rely upon mere allegations of wrongdoing. However, a privilege is generally not overcome by mere allegations. Indeed, a serious chilling effect on anonymous speech would result if Internet speakers knew they could be identified by persons who merely allege wrongdoing, without necessarily having any intention of carrying through with actual litigation. *See, e.g., Seescandy.com*, 185 F.R.D. at 578 (“People who have committed no wrong should be able to participate online without fear that someone who wishes to harass or embarrass them can file a frivolous lawsuit and thereby gain the power of the court’s order to discover their identity.”); *see also 2theMart.com*, 140 F.Supp.2d at 1093 (“If Internet users could be stripped of . . . anonymity by a civil subpoena enforced under the liberal rules of civil discovery, this would have a significant chilling effect on Internet communications and thus on basic First Amendment Rights. Therefore, discovery requests seeking to identify anonymous Internet users must be subject to careful scrutiny by the courts.”).

Consequently, courts have employed standards and imposed strict requirements upon plaintiffs that must be met prior to authorizing the discovery of information identifying anonymous speakers. *See, e.g., Cahill*, 884 A.2d at 460-461; *2theMart.com*, 140 F.Supp.2d 1088; *Dendrite*, 775 A.2d at 771; *Seescandy.com*, 185 F.R.D. at 578.

C. EMERGENCE OF THE CAHILL STANDARD.

In October 2005, the Delaware Supreme Court addressed the issue of what standard should be applied to determine when the disclosure of an anonymous speaker's identity could be obtained through discovery. In so doing, it thoroughly analyzed the various standards employed by other courts in similar circumstances. The *Cahill* court concluded that the most effective standard would be a synthesized version of the standard adopted in *Dendrite Int'l, Inc. v. Doe No. 3*, 775 A.2d 756, 760-61 (N.J. Super. A.D. 2001).

Essentially, the standard employed by *Cahill* requires the Plaintiff seeking discovery of an anonymous speaker's identity to: (a) "undertake efforts to notify the anonymous poster that he is the subject of a subpoena or application for an order of disclosure, and to withhold action to afford the anonymous defendant a reasonable opportunity to file and serve opposition to the application" and (b) demonstrate that it would survive a summary judgment motion. *Cahill*, 884 A.2d at 460-461. With respect to the notification requirement, the Court held that:

The notification provision imposes very little burden on a [] plaintiff while at the same time giving an anonymous defendant the opportunity to respond. When *First Amendment* interests are at stake we disfavor *ex parte* discovery requests that afford the plaintiff the important form of relief that comes from unmasking an anonymous defendant.

Id. As to the summary judgment requirement, the Court concluded that requiring a plaintiff to demonstrate it would survive a summary judgment provides the most effective balance between a plaintiff's rights and those of the defendant anonymous speaker. *Id.* The *Cahill* opinion represented the first state supreme court opinion to address these issues. Last year, the United States District Court for the District of Arizona agreed with *Cahill*, concluding that "a summary judgment standard should be satisfied before [a party] can discover the identifies of [an anonymous defendant]." *Best Western International, Inc. v. Doe*, No. CV-06-1537-PHX-DGC,

2006 U.S. Dist. LEXIS 56014, *11 (D. Ariz. July 25, 2006).

IV. ARGUMENT - SI03 MEETS THE CAHILL STANDARD

By applying the summary judgment standard to the claims in the Complaint, this Court will readily determine that SI03 meets the standard articulated in *Cahill* and is therefore entitled to obtain the information sought from the subpoena served upon Bodybuilding.com.²

A. SUMMARY JUDGMENT STANDARD.

In reviewing a motion for summary judgment, a court must examine the factual record and reasonable inferences therefrom in the light most favorable to the party opposing summary judgment. *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987) (citing *Celotex Corp v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548 (1986)). The burden imposed on the nonmovant is not a heavy one; the nonmoving party is simply required to show specific facts, as opposed to general allegations, that present a genuine issue worth of trial.” *Dark v. Curry County*, 451 F.3d 1078, 1082 n. 2 (9th Cir. 2006) (citing 10A WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE, Civil 3d § 2727 (1998)); *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348 (1986).

B. DEFAMATION AND DISPARAGEMENT STANDARDS.³

To state a defamation claim under Illinois law, a plaintiff must allege facts tending to demonstrate that the defendant made a false statement of fact about the plaintiff, that there was an unprivileged publication of the false statement to a third party by the defendant, and that the

² As to the *Cahill* publication requirement, Bodybuilding.com took it upon itself to inform its forum members of SI03’s Complaint and the subpoenas issued upon Bodybuilding.com. As such, the pseudonymous individuals have received notice of the subpoenas.

³ Because SI03 need only show that it would survive summary judgment on one claim for purposes of satisfying the *Cahill* standard and because the underlying conduct relating to the motion to compel emanates from the defamatory and disparaging statements made by the pseudonyms, SI03 has chosen not to address its tortious interference, conspiracy, and statutory claims for the Motion and in this memorandum. Should the Court seek briefing on these claims or should any party opposing the Motion address these claims, SI03 expressly reserves its right to demonstrate that it could survive summary judgment on these claims as well.

publication damaged the plaintiff. *Popko v. Continental Casualty Co.*, 823 N.E.2d 184, 188 (Ill. App. Ct. 2005). In Illinois, a “statement is defamatory if it impeaches a person’s reputation and thereby lowers that person in the estimation of the community or deters third parties from associating with that person.” *Schivarelli v. CBS, Inc., et al.*, 776 N.E.2d 693, 696 (Ill. App. Ct. 2002).

Defamatory statements may be classified as either defamatory *per se* or defamatory *per quod*. *Id.* To constitute a statement that is defamatory *per se*, a statement must fit into one of five categories that Illinois recognizes as being “so obviously and naturally harmful to the person to whom it refers that injury to his reputation may be presumed.” *Id.* These five categories include those statements (1) imputing the commission of a criminal offense; (2) imputing infection with a loathsome communicable disease; (3) imputing an inability to perform or want of integrity in the discharge of duties of office or employment; (4) imputing a lack of ability or prejudicing a party in one’s trade, profession, or business; and (5) imputing adultery or fornication. *Id.* In such cases, a plaintiff need not allege or prove special damages. *Van Home v. Muller*, 705 N.E.2d 898, 903 (Ill. 1998). Indeed, “[s]uch statements are so obviously and materially harmful that injury to the plaintiff’s reputation is presumed.” *Green v. Trinity Int’l Univ.*, 344 Ill. App. 3d 1079, 1092-1093 (Ill. App. Ct. 2003).

Where the published statements assail a “corporation’s financial position or business methods, or accuse it of fraud or mismanagement,” the statements will give rise to a claim for trade libel. *Geske & Sons v. NLRB*, 103 F.3d 1366, 1373 (7th Cir. 1997). Where the published statements demean the quality of one’s products or services, the statements constitute and will give rise to a claim for commercial disparagement. *Crinkley v. Dow Jones & Co.*, 67 Ill. App. 3d 869, 876-878 (Ill. App. Ct. 1978).

C. SI03 MEETS SUMMARY JUDGMENT STANDARD FOR EACH OF PSEUDONYMS.

In the August 2007 Subpoena served upon Bodybuilding.com, SI03 seeks identifying information for each of several pseudonyms. *Supra*, Section II. These pseudonyms included: “Aeternitatis,” “Androgenic,” “Aoba,” “Bloute,” “BuckeyeMuscle,” “canadaBBOY,” “chimpilico,” “cxm,” “deserusan,” “dito,” “dwm230000,” “ElMariachi,” “EMISGOD,” “Ephedra,” “Flagg3,” “getbusted,” “INGENIUM,” “jkeithc82,” “NATHAN518,” “RobW,” “Seth25,” and “uhockey.”⁴ Each of these pseudonyms made statements about the Plaintiff. Although at times the statements reference “Syntrax,” the individuals making the statements and the forum audience understood and continue to understand the statements to reference the Plaintiff, SI03, Inc. and its Syntrax line of products. Davis Aff. ¶ 11. In determining whether SI03 can survive summary judgment, each of the pseudonyms must be addressed individually.

1. “Aeternitatis”

The individual using the pseudonym “Aeternitatis” has posted defamatory statements on Bodybuilding.com. Specifically, on May 11, 2006 at 9:12p.m., “Aeternitatis” posted to the www.bodybuilding.com forum board the defamatory statement: “I just think everyone should be aware of the dishonest tactics used by this company. And there's even more stuff you don't know about.” Affidavit of Greg Davis (“Supp. Davis Aff.”) ¶ 3, Ex. 1 (attached hereto as Exhibit E1). On September 26, 2006, this pseudonym posted to the www.bodybuilding.com forum a communication affirmatively stating that the Plaintiff is violating a patent. *Id.* These statements accuse SI03 of being dishonest, using dishonest tactics, stealing intellectual property, and engaging in additional similar conduct. In essence, the statements implicitly state that SI03 lacks integrity and engaged in fraud. These statements are false. Davis Aff. ¶¶ 32-36. Consequently,

⁴ SI03 no longer needs identifying information for “Bobo,” “Coulaid,” “dermotti,” “Kohen_Gadol,” “Marcus,” “Patrick Arnold,” “Sixpack,” and “Truth Speaker.” Consequently, these pseudonyms have been omitted.

the statements constitute defamation *per se* and trade libel. *See Hackman v. Dickerson Realtors, Inc.*, No. 06 C 50240, 2007 U.S. Dist. LEXIS 64669, *41 (N.D. Ill. August 31, 2007); *Geske & Sons*, 103 F.3d at 1373.

On April 4, 2007 at 11:53a.m., “Aeternitatis” posted to the www.bodybuilding.com forum board a statement stating that Matrix, a Syntrax product, contained contaminated/spoiled protein powder. This statement is false. Davis Aff. ¶ 39. This statement demeans the quality of the Plaintiff’s products. Consequently, the statement constitutes commercial disparagement. *See Crinkley*, 67 Ill. App. 3d at 876-878.

As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact with respect to its defamation, commercial disparagement, and trade libel claims, SI03 can survive a summary judgment motion with respect to this pseudonym. *See Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

2. “Androgenic”

The individual using the pseudonym “Androgenic” has posted defamatory statements on Bodybuilding.com. Specifically, on February 19, 2007 at 9:46am, “Androgenic” posted to the www.bodybuilding.com forum a statement accusing SI03 of doing “illegal things and immoral things” and engaging in unethical behavior. Supp. Davis Aff. ¶ 4, Ex. 2. On April 2, 2007 at 11:30am, Androgenic posted to the www.bodybuilding.com forum a statement referring to the Plaintiff as “Satan embodied” that has been involved in crime, death, and illegal shell companies. *Id.* Androgenic repeats these statements in a number of additional posts. *Id.* With respect to illegal shell companies, this pseudonym has falsely stated that SI03 is the same company as Zima, Forge Nutrition, Creative Compounds, and Syntrax. *Id.* Additionally, this pseudonym

posted a defamatory statement to www.bodybuilding.com on April 2, 2007 stating that the Plaintiff has failed to list ingredients, has written deceptive advertising, and engaged in other illegal activities. *Id.* This pseudonym has also accused the Plaintiff of theft of intellectual property. Supp. Davis Aff. ¶ 4, Ex. 2. On April 2, 2007, this pseudonym falsely claimed that SI03 had been formed to avoid paying for damages resulting from death caused by the Plaintiff's products. *Id.* These statements accuse SI03 of being dishonest, using dishonest business tactics, engaging in illegal conduct, and causing death. In essence, the statements implicitly state that SI03 lacks integrity and engaged in fraud. These statements are false. Davis Aff. ¶¶ 29-47. Consequently, the statements constitute defamation *per se* and trade libel. *See Hackman*, 2007 U.S. Dist. LEXIS 64669 at *41; *Geske & Sons*, 103 F.3d at 1373.

Additionally, on April 2, 2007, this pseudonym posted statements that falsely claim the Plaintiff's products have killed individuals. This statement demeans the quality of the Plaintiff's products. Consequently, the statements constitute commercial disparagement. *See Crinkley*, 67 Ill. App. 3d at 876-878.

As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. *See Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

3. "Aoba"

The individual using the pseudonym "Aoba" has posted defamatory statements on Bodybuilding.com. Specifically, on February 18, 2007 at 1:32pm, "Aoba" posted to the www.bodybuilding.com forum a statement accusing SI03 of using shills. Supp. Davis Aff. ¶ 5, Ex. 3. By accusing SI03 of using shills, this pseudonym accuses SI03 of using its employees or

other individuals to create numerous fake or fraudulent accounts on electronic forums (such as www.bodybuilding.com) to publish false or fraudulent postings that contain positive comments and statements about its products. Davis Aff. ¶ 44. These statements accuse SI03 of being dishonest and using dishonest business tactics. In essence, the statements implicitly state that SI03 lacks integrity and engaged in fraud. These statements are false. *Id.* ¶¶ 32-36, 45. Consequently, the statements constitute defamation *per se* and trade libel. *See Hackman*, 2007 U.S. Dist. LEXIS 64669 at *41; *Geske & Sons*, 103 F.3d at 1373. As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. *See Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

4. “Bloute”

The individual using the pseudonym “Bloute” has posted defamatory statements on Bodybuilding.com. Specifically, on December 28, 2006 at 2:49am, “Bloute” posted to the www.bodybuilding.com forum a statement characterizing the Plaintiff as a “shady company.” Supp. Davis Aff. ¶ 6, Ex. 4. In doing so, “Bloute” characterized the Plaintiff as being a business of questionable honesty, unscrupulous, and/or “a fly-by-night operation.” <http://wordnet.princeton.edu/perl/webwn?s=shady> (last visited on October 7, 2007). On February 16, 2007, this pseudonym thanked a representative of the Plaintiff for innovating liver disease, implying that the Plaintiff’s products cause liver disease. *Id.* On February 7, 2007 at 5:41pm, “Bloute” posted to the www.bodybuilding.com forum a statement accusing SI03 of using skills. *Id.* This pseudonym repeated these statements. These statements accuse SI03 of being dishonest and using dishonest business tactics. In essence, the statements implicitly state

that SI03 lacks integrity and engaged in fraud. These statements are false. Davis Aff. ¶¶ 32-36, 41-42, 44-45. Consequently, the statements constitute defamation *per se* and trade libel. See *Hackman*, 2007 U.S. Dist. LEXIS 64669 at *41; *Geske & Sons*, 103 F.3d at 1373.

Additionally, on February 16 and 17, 2007, this pseudonym posted statements that claimed the Plaintiff's products cause liver disease and contain "rotten egg protein." Supp. Davis Aff. ¶ 6, Ex. 4. These statements are false. Davis Aff. ¶¶ 39-42. These statements demean the quality of the Plaintiff's products. Consequently, the statements constitute commercial disparagement. See *Crinkley*, 67 Ill. App. 3d at 876-878.

As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. See *Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. See *id.*

5. "BuckeyeMuscle"

The individual using the pseudonym "BuckeyeMuscle" has posted defamatory statements on Bodybuilding.com. Specifically, on February 19, 2007 at 9:57pm, "BuckeyeMuscle" posted to the www.bodybuilding.com forum a statement describing the Plaintiff as a shady company. Supp. Davis Aff. ¶ 7, Ex. 5. On numerous occasions, "BuckeyeMuscle" posted to the www.bodybuilding.com forum statements accusing SI03 of using shills. *Id.* These statements accuse SI03 of being dishonest and using dishonest business tactics. In essence, the statements implicitly state that SI03 lacks integrity and engaged in fraud. These statements are false. Davis Aff. ¶¶ 32-36, 44-45. Consequently, the statements constitute defamation *per se* and trade libel. See *Hackman*, 2007 U.S. Dist. LEXIS 64669 at *41; *Geske & Sons*, 103 F.3d at 1373.

Additionally, on February 16, 2007, this pseudonym claimed that the Plaintiff's products

are killing “peoples livers.” Supp. Davis Aff. ¶ 7, Ex. 5. This statement is false. Davis Aff. ¶¶ 40-42. On April 1, 2007, this pseudonym claimed that Matrix, one of SI03’s products, contains rotten egg protein. Supp. Davis Aff. ¶ 7, Ex. 5. This statement is also false. Davis Aff. ¶ 39. These statements demean the quality of the Plaintiff’s products. Consequently, the statements constitute commercial disparagement. *See Crinkley*, 67 Ill. App. 3d at 876-878.

As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. *See Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

6. “canadaBBOY”

The individual using the pseudonym “canadaBBOY” has posted defamatory statements on Bodybuilding.com. Specifically, on November 13, 2006 at 11:55pm, “canadaBBOY” posted to the www.bodybuilding.com forum a statement accusing SI03 of using shills to promote its products. Supp. Davis Aff. ¶ 8, Ex. 6. “canadaBBOY” has made additional post stating the Plaintiff of using shills. *Id.* In essence, the statements implicitly state that SI03 lacks integrity and engaged in fraud. These statements are false. Davis Aff. ¶¶ 44-45. Consequently, the statements constitute defamation *per se* and trade libel. *See Hackman*, 2007 U.S. Dist. LEXIS 64669 at *41; *Geske & Sons*, 103 F.3d at 1373. As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. *See Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

7. “chimpilico”

The individual using the pseudonym “chimpilico” has posted defamatory statements on Bodybuilding.com. Specifically, on March 31, 2007 at 6:36pm, “chimpilico” posted to the www.bodybuilding.com forum a statement referring to the Plaintiff as a company whose product “has killed a few people.” Supp. Davis Aff. ¶ 9, Ex. 7. This statement is false. The Plaintiff has not produced a single product that has killed anyone. Davis Aff. ¶ 40. In essence, the statements implicitly state that SI03 lacks integrity and mismanages its quality control. Consequently, the statements constitute defamation *per se* and trade libel. *See Hackman*, 2007 U.S. Dist. LEXIS 64669 at *41; *Geske & Sons*, 103 F.3d at 1373. Moreover, the statements demean the quality of the Plaintiff’s products. Consequently, the statements constitute commercial disparagement. *See Crinkley*, 67 Ill. App. 3d at 876-878. As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. *See Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

8. “cxm”

The individual using the pseudonym “cxm” has posted defamatory statements on Bodybuilding.com. Specifically, on January 30, 2007 at 5:33pm, “cxm” posted to the www.bodybuilding.com forum a statement referring to the Plaintiff’s products as having “caused the death of people.” Supp. Davis Aff. ¶ 10, Ex. 8. The Plaintiff has not produced a single product that has killed anyone. Davis Aff. ¶ 40. In the same January 30, 2007 post, this pseudonym refers to the Plaintiff as a shady company. Supp. Davis Aff. ¶ 10, Ex. 8. “cxm” has repeated this defamatory statement on other occasions. *Id.* On January 30, 2007 at 6:03pm, this

pseudonym posted to the www.bodybuilding.com forum a statement referring to the Plaintiff as “shilling,” in addition to accusing Plaintiff of selling products that “endanger people’s life [sic].” *Id.* This individual repeated the shilling accusations more than once. *Id.* With respect to shilling, this pseudonym has accused the Plaintiff of being dishonest and committing fraud. In essence, the statements implicitly state that SI03 lacks integrity. By the foregoing statements, “cxm” has falsely described the Plaintiff as a company that sells products that kill people or endanger their lives; is dishonest and unscrupulous; and, commits fraud. These statements by “cxm” are false. Davis Aff. ¶¶ 32-36, 40-42, 44-45. Consequently, the statements constitute defamation *per se* and trade libel. *See Hackman*, 2007 U.S. Dist. LEXIS 64669, at *41; *Geske & Sons*, 103 F.3d at 1373.

On February 16, 2007 and March 30, 2007, this pseudonym claimed that one of Plaintiff’s products contains rotten egg protein. Supp. Davis Aff. ¶ 10, Ex. 8. This statement is also false. Davis Aff. ¶ 39. These statements demean the quality of the Plaintiff’s products. Consequently, the statements constitute commercial disparagement. *See Crinkley*, 67 Ill. App. 3d at 876-878.

As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. *See Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

9. “deserusan”

The individual using the pseudonym “deserusan” has posted defamatory statements on Bodybuilding.com. On December 9, 2006, this pseudonym published a post that stated the Plaintiff steals patents. Supp. Davis Aff. ¶ 11, Ex. 9. On January 11, 2007, this pseudonym

posted false statements that described the Plaintiff as a company that has lied, produced dangerous products that have sent individuals to the hospital, and committed “numerous” infringements of intellectual property rights. *Id.* On April 3, 2007, “deserusan” posted to the www.bodybuilding.com forum a statement informing readers that the Plaintiff does not care about the health of its customers. *Id.* Also, this pseudonym posted a statement referring to the SI03 Board representative as a liar. *Id.* On January 13, 2007 at 4:51pm, “Deserusan” posted to the www.bodybuilding.com forum a statement accusing SI03 of using shills to promote its products. Supp. Davis Aff. ¶ 11, Ex. 9. This pseudonym has repeated this false statement. *Id.* These statements accuse SI03 of being dishonest and using dishonest business tactics. In essence, the statements implicitly state that SI03 lacks integrity and engaged in fraud. These statements are false. Davis Aff. ¶¶ 32-48. Consequently, the statements constitute defamation *per se* and trade libel. *See Hackman*, 2007 U.S. Dist. LEXIS 64669 at *41; *Geske & Sons*, 103 F.3d at 1373.

Additionally, on January 16, 2007 at 9:12pm, this individual accused the Plaintiff of having products that have been responsible for “killing a few people.” Supp. Davis Aff. ¶ 11, Ex. 9. This statement demeans the quality of the Plaintiff’s products. Consequently, this statement constitutes commercial disparagement. *See Crinkley*, 67 Ill. App. 3d at 876-878.

As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. *See Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

10. “dito”

The individual using the pseudonym “dito” has posted defamatory statements on

Bodybuilding.com. Specifically, on February 16, 2007 at 10:39am, “dito” posted to the www.bodybuilding.com forum a statement characterizing the Plaintiff as a “one of the most shadiest companies in existance.” Supp. Davis Aff. ¶ 12, Ex. 10. He published similar characterizations on August 2, 2006 and February 13, 2007. *Id.* In doing so, “dito” characterized the Plaintiff as being a business of questionable honesty, unscrupulous, and/or “a fly-by-night operation.” <http://wordnet.princeton.edu/perl/webwn?s=shady> (last visited on October 7, 2007). This pseudonym also published a statement referring to the Plaintiff as “Scamtrax,” suggesting its involvements in scams. Supp. Davis Aff. ¶ 12, Ex. 10. This statement again accuses SI03 of being dishonest and using dishonest business tactics. In essence, the statements implicitly state that SI03 lacks integrity and engaged in fraud. These statements are false. Davis Aff. ¶¶ 29, 32-36. Consequently, the statements constitute defamation *per se* and trade libel. *See Hackman*, 2007 U.S. Dist. LEXIS 64669 at *41; *Geske & Sons*, 103 F.3d at 1373. As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. *See Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

11. “dwm230000”

The individual using the pseudonym “dwm230000” has posted defamatory statements on Bodybuilding.com. Specifically, on October 4, 2006 at 8:31am, “dwm230000” posted to the www.bodybuilding.com forum a statement accusing SI03 of misrepresenting the ingredients included in its products. Supp. Davis Aff. ¶ 13, Ex. 11. Additionally, this pseudonym posted statements accusing the Plaintiff of using skills to promote its products. *Id.* In fact, this pseudonym’s byline reads “Frye, Spyce, and Shylls” – Frye and Spyce represent SI03 products.

Id.; Davis Aff. ¶ 43. By accusing SI03 of using skills and making false claims about its products, these statements accuse SI03 of being dishonest and using dishonest business tactics. In essence, the statements implicitly state that SI03 lacks integrity and engaged in fraud. These statements are false. Davis Aff. ¶¶ 32-36, 43-46. Consequently, the statements constitute defamation *per se* and trade libel. *See Hackman*, 2007 U.S. Dist. LEXIS 64669 at *41; *Geske & Sons*, 103 F.3d at 1373. As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. *See Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

12. “ElMariachi”

The individual using the pseudonym “ElMariachi” has posted defamatory statements on Bodybuilding.com. Specifically, on September 23, 2006 at 8:35pm, “ElMariachi” posted to the www.bodybuilding.com forum a statement accusing SI03 of being a shell company. Supp. Davis Aff. ¶ 14, Ex. 12. On December 9, 2006 at 4:49pm, this pseudonym stated that the Plaintiff could not develop its own patents, but could “only rip them off from companies” *Id.* On December 13, 2007, this pseudonym claimed that the Plaintiff “steal things from other companies” and is comprised of “rip-off artists.” *Id.* This pseudonym also accused the Plaintiff of using skills and of “shady behavior.” *Id.* On February 10, 2007, this pseudonym described the Plaintiff as a company that has a “shoddy track record of releasing dangerous, health-threatening compounds in the past.” *Id.* By accusing SI03 of being a shell company, stealing intellectual property, and using skills, this pseudonym accuses SI03 of being dishonest and using dishonest business tactics. In essence, the statements implicitly state that SI03 lacks integrity

and engaged in fraud. These statements are false. Davis Aff. ¶¶ 29-42, 44-46. Consequently, these statements constitute defamation *per se* and trade libel. See *Hackman*, 2007 U.S. Dist. LEXIS 64669 at *41; *Geske & Sons*, 103 F.3d at 1373.

Additionally, on September 23 at 8:35pm, this individual accused the Plaintiff of having “health-damaging” products. Supp. Davis Aff. ¶ 14, Ex. 12. On February 10, 2007, this pseudonym also stated that the Plaintiff’s “last fatburner made a whole bunch of people sick and put them in the hospital.” *Id.* These statements demean the quality of the Plaintiff’s products. Consequently, the statements constitute commercial disparagement. See *Crinkley*, 67 Ill. App. 3d at 876-878.

As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. See *Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. See *id.*

13. “EMISGOD”

The individual using the pseudonym “EMISGOD” has posted defamatory statements on Bodybuilding.com. Specifically, on February 17, 2007, “EMISGOD” posted to the www.bodybuilding.com forum a statement accusing the Plaintiff of inaccurately labeling its products. Supp. Davis Aff. ¶ 15, Ex. 13. This statement accuses the Plaintiff of illegal conduct and fraud. This statement is false. Davis Aff. ¶¶ 32-36, 46. Consequently, these statements constitute defamation *per se* and trade libel. See *Hackman*, 2007 U.S. Dist. LEXIS 64669 at *41; *Geske & Sons*, 103 F.3d at 1373. As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. See *Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587.

Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

14. “Ephedra”

The individual using the pseudonym “Ephedra” has posted defamatory statements on Bodybuilding.com. Specifically, on August 3, 2006, “Ephedra” posted to the www.bodybuilding.com forum statements accusing the Plaintiff of stealing intellectual property. Supp. Davis Aff. ¶ 16, Ex. 14. This pseudonym also characterized the Plaintiff as “shady.” *Id.* In addition, this pseudonym has accused the Plaintiff of using skills. *Id.* In fact, this pseudonym consistently identifies individuals posting positive comments about the Plaintiff as skills. *Id.* These statements accuse SI03 of being dishonest and using dishonest business tactics. In essence, the statements implicitly state that SI03 lacks integrity and engaged in fraud. These statements are false. Davis Aff. ¶¶ 32-38, 44-45. Consequently, the statements constitute defamation *per se* and trade libel. *See Hackman*, 2007 U.S. Dist. LEXIS 64669 at *41; *Geske & Sons*, 103 F.3d at 1373. As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. *See Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

15. “Flagg3”

The individual using the pseudonym “Flagg3” has posted defamatory statements on Bodybuilding.com. Specifically, on November 14, 2006 at 12:21am, “Flagg3” posted to the www.bodybuilding.com forum a statement accusing the Plaintiff of using “fake user IDs” to false promote its products. Supp. Davis Aff. ¶ 17, Ex. 15. This pseudonym also posted

statements accusing the Plaintiff of using skills to describe the same conduct. *Id.* In the November 14 post, this pseudonym accused the Plaintiff of using the fraudulent tactics to “rip-off unsuspecting customers.” *Id.* This individual made similar statements on a number of occasions. *Id.* These statements accuse SI03 of being dishonest and using dishonest business tactics. In essence, the statements implicitly state that SI03 lacks integrity and engaged in fraud. These statements are false. Davis Aff. ¶¶ 32-36, 44-45. Consequently, the statements constitute defamation *per se* and trade libel. See *Hackman*, 2007 U.S. Dist. LEXIS 64669 at *41; *Geske & Sons*, 103 F.3d at 1373. As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. See *Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

16. “getbusted”

The individual using the pseudonym “getbusted” has posted defamatory statements on Bodybuilding.com. Specifically, on September 21, 2006 at 7:11am, “getbusted” posted to the www.bodybuilding.com forum a statement accusing the Plaintiff of “lies, deception, shady practices” Supp. Davis Aff. ¶ 18, Ex. 16. On September 13 and 26, 2006, this pseudonym accused the Plaintiff as having “shady business practices.” *Id.* On September 19, 2006, this pseudonym accused the Plaintiff of “unscrupulous business practices” and using “shady reps.” *Id.* On November 10, 2006 at 5:56am, the same individual posted to the www.bodybuilding.com forum characterizing the Plaintiff as “a shady company” and a company that must “steal[] somebody else’s ideas.” *Id.* On October 6, 2006, at 6:50am, this same pseudonym posted to the www.bodybuilding.com forum a statement accusing the Plaintiff of “shady business practices,”

a “complete lack of corporate ethics,” and “poll manipulation.” *Id.* This pseudonym has described the Plaintiff as a “shady company” on numerous other occasions. Supp. Davis Aff. ¶ 18, Ex. 16. These statements accuse SI03 of being dishonest and using dishonest business tactics. In essence, the statements implicitly state that SI03 lacks integrity and engaged in fraud. These statements are false. Davis Aff. ¶¶ 32-38, 44-46. Consequently, the statements constitute defamation *per se* and trade libel. *See Hackman*, 2007 U.S. Dist. LEXIS 64669, at *41; *Geske & Sons*, 103 F.3d at 1373. As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. *See Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

17. “INGENIUM”

The individual using the pseudonym “INGENIUM” has posted defamatory statements on Bodybuilding.com. Specifically, on April 1, 2007 at 11:34am, “INGENIUM” posted to the www.bodybuilding.com forum a statement accusing the Plaintiff of lying, using dangerous ingredients, and theft of intellectual property. Supp. Davis Aff. ¶ 19, Ex. 17. On April 2, 2007, this pseudonym referred to the Plaintiff as a “company who makes their money by LYING.” *Id.* On April 4, 2007, this pseudonym referred to the Plaintiff as a company who killed people and ruined lives. *Id.* These statements accuse SI03 of being dishonest and using dishonest business tactics. In essence, the statements implicitly state that SI03 lacks integrity and engaged in fraud. These statements are false. Davis Aff. ¶¶ 32-42. Consequently, the statements constitute defamation *per se* and trade libel. *See Hackman*, 2007 U.S. Dist. LEXIS 64669 at *41; *Geske & Sons*, 103 F.3d at 1373.

This same pseudonym also accused the Plaintiff of having “kill[ed] people with usnic acid.” Supp. Davis Aff. ¶ 19, Ex. 17. This statement demeans the quality of the Plaintiff’s products. Consequently, the statements constitute commercial disparagement. *See Crinkley*, 67 Ill. App. 3d at 876-878.

As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. *See Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

18. “jkeithc82”

The individual using the pseudonym “jkeithc82” has posted defamatory statements on Bodybuilding.com. Specifically, on November 9, 2006 at 9:27pm, “jkeithc82” posted to the www.bodybuilding.com forum a statement accusing the Plaintiff of illegal activity on the forums. Supp. Davis Aff. ¶ 20, Ex. 18. On September 7, 2006, this pseudonym posted to the www.bodybuilding.com forum a statement accusing SI03 of using shills. *Id.* This individual repeated these statements in additional posts. *Id.* These statements accuse SI03 of being dishonest and using dishonest business tactics. In essence, the statements implicitly state that SI03 lacks integrity and engaged in fraud. These statements are false. Davis Aff. ¶¶ 32-36, 44-45. Consequently, the statements constitute defamation *per se* and trade libel. *See Hackman*, 2007 U.S. Dist. LEXIS 64669 at *41; *Geske & Sons*, 103 F.3d at 1373. As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. *See Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

19. “NATHAN518”

The individual using the pseudonym “NATHAN518” has posted defamatory statements on Bodybuilding.com. Specifically, on August 22, 2006, “NATHAN518” posted to the www.bodybuilding.com forum a statement accusing Plaintiff of knowingly “recommending products with potentially dangerous ingredients” on August 22, 2006. Supp. Davis Aff. ¶ 21, Ex. 19. On August 4, 2006 at 2:45pm, “NATHAN518” posted to the www.bodybuilding.com forum a statement accusing SI03 of using shills. *Id.* This individual repeated similar statements on several occasions. *Id.* These statements accuse SI03 of being dishonest and using dishonest business tactics. In essence, the statements implicitly state that SI03 lacks integrity and engaged in fraud. These statements are false. Davis Aff. ¶¶ 32-36, 39-42, 44-47. Consequently, the statements constitute defamation *per se* and trade libel. *See Hackman*, 2007 U.S. Dist. LEXIS 64669 at *41; *Geske & Sons*, 103 F.3d at 1373. As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. *See Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

20. “RobW”

The individual using the pseudonym “RobW” has posted defamatory statements on Bodybuilding.com. Specifically, on March 28, 2007 at 5:24pm, “RobW” posted to the www.bodybuilding.com forum board a defamatory statement accusing the Plaintiff of being a company engaged in fraud. Supp. Davis Aff. ¶ 22, Ex. 20. This statement implicitly states that SI03 also lacks integrity. This statement is false. Davis Aff. ¶¶ 32-47. Consequently, the statements constitute defamation *per se* and trade libel. *See Hackman*, 2007 U.S. Dist. LEXIS

64669 at *41; *Geske & Sons*, 103 F.3d at 1373. As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. *See Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

21. “Seth25”

The individual using the pseudonym “Seth25” has posted defamatory statements on Bodybuilding.com. Specifically, on July 12, 2006, “Seth25” posted to the www.bodybuilding.com forum board a statement inferring the Plaintiff deceives customers. Supp. Davis Aff. ¶ 23, Ex. 21. Additionally, on more than one occasion, “Seth25” posted to the www.bodybuilding.com forum a statement accusing SI03 of using shills. *Id.* These statements accuse SI03 of being dishonest and using dishonest tactics. In essence, the statements implicitly state that SI03 lacks integrity and engaged in fraud. These statements are false. Davis Aff. ¶¶ 32-36, 44-47. Consequently, the statements constitute defamation *per se* and trade libel. *See Hackman*, 2007 U.S. Dist. LEXIS 64669 at *41; *Geske & Sons*, 103 F.3d at 1373. As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. *See Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

22. “uhockey”

The individual using the pseudonym “uhockey” has posted defamatory statements on Bodybuilding.com. Specifically, on April 4, 2007 at 8:35am, “uhockey” posted to the www.bodybuilding.com forum a statement accusing SI03 of using shills. Supp. Davis Aff. ¶ 24,

Ex. 22. This pseudonym repeats this statement on other occasions. *Id.* These statements accuse SI03 of being dishonest and using dishonest business tactics. In essence, the statements implicitly state that SI03 lacks integrity and engaged in fraud. These statements are false. Davis Aff. ¶¶ 32-36, 44-45. Consequently, the statements constitute defamation *per se* and trade libel. *See Hackman*, 2007 U.S. Dist. LEXIS 64669 at *41; *Geske & Sons*, 103 F.3d at 1373.

In addition, this pseudonym has reposted false statements about the Plaintiff posted by other parties. On February 19, 2007, this pseudonym reposted statements that refer to the Plaintiff as being “very shady.” Supp. Davis Aff. ¶ 24, Ex. 22. He also reposted a statement that claims the Plaintiff has “issues with past products that have endangered the lives and personal health of their customers.” *Id.* The same February 19, 2007 post includes additional reposts containing false statements and inferences. *Id.* These statements accuse SI03 of being dishonest and using dishonest business tactics. In essence, the statements implicitly state that SI03 lacks integrity and engaged in fraud. These statements are false. Davis Aff. ¶¶ 32-36, 41-42, 44-45. Consequently, the statements constitute defamation *per se* and trade libel. *See Hackman*, 2007 U.S. Dist. LEXIS 64669 at *41; *Geske & Sons*, 103 F.3d at 1373.

As SI03 has produced evidence demonstrating, at the minimum, the existence of a genuine issue of fact, SI03 can survive a summary judgment motion with respect to this pseudonym. *See Dark*, 451 F.3d at 1082 n. 2; *Matsushita*, 475 U.S. at 587. Therefore, this Court should compel the production of identifying information relating to this pseudonym. *See id.*

D. SI03 CAN SURVIVE SUMMARY JUDGMENT.

Based on the foregoing discussion and exhibits attached hereto, SI03 has demonstrated that each of the pseudonyms has been used to make unprivileged false statements about the Plaintiff and/or its goods to third parties in an online public forum. *Supra*, Section IV.C.

Consequently, SI03 has provided specific facts that present genuine issues worthy of trial. Thus, SI03 would survive summary judgment filed against it. *See Dark*, 451 F.3d at 1082 n. 2. As such, SI03 has demonstrated that it is entitled to obtain identifying information related to each of the foregoing pseudonyms. *See Cahill*, 884 A.2d at 460-461. Consequently, this Court should grant SI03's motion to compel and order Bodybuilding.com to produce all of the information requested in the August 2007 Subpoena served upon it. *See id.*

CONCLUSION

For the foregoing reasons, this Court should grant SI03's Motion to Compel and order Bodybuilding.com to produce all of the information requested in the August 2007 Subpoena served upon it. SI03 also moves for attorney's fees and costs pursuant to Idaho Code § 12-121 and Rules 37 and 45 of the Federal Rules of Civil Procedure.

DATED this 22nd day of October, 2007

TROUT ♦ JONES ♦ GLEDHILL ♦ FUHRMAN, P.A.

By: /s/ Christopher P. Graham
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of October, 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	<i>twalker@cosholaw.com</i>
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Additionally, a copy of the foregoing was served on the following parties by first class mail, postage prepaid, addressed to:

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/s/ Christopher P. Graham
CHRISTOPHER P. GRAHAM