

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

OPTIONMONSTER HOLDINGS, INC.,
Plaintiff

V.

DELICIOUS MONSTER, LLC,
Defendant.

Case No. 1:08-cv-00894

Honorable Ronald A. Guzman

DECLARATION OF MARK ROSENCRANTZ

I, Mark Rosencrantz, hereby make the following declaration:

1. I make this declaration in support of defendant Delicious Monster, LLC's ("Delicious Monster") Reply in Support of Motion for Order of Dismissal. I am of legal age and am competent to testify to the matters contained herein. If called to do so, I would testify as to their truthfulness. I have personal knowledge of the facts contained in this declaration.

2. I am an attorney with the law firm of Stanislaw Ashbaugh, Delicious Monster's co-counsel in this matter. I am licensed to practice law in the State of Washington.

3. The first I heard of OptionMonster suggesting a “co-existence agreement” was in a telephone conversation I had with Caroline Plater well after this case was filed. During that conversation, I confirmed that OptionMonster was proposing that Delicious Monster grant it a full release of liability for all past actions, acknowledge that OptionMonster could continue to use its logo in any way it sees fit, but receive nothing in return. I then indicated that co-existence agreement would not be acceptable, but immediately told Ms. Plater that

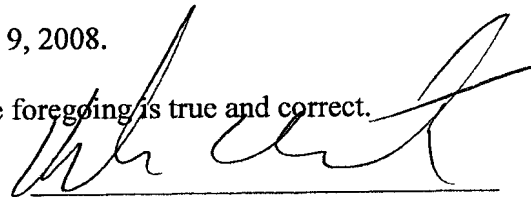
Delicious Monster would be willing to sell OptionMonster a license to use its logo, and invited OptionMonster to make a specific offer along those lines. OptionMonster has thus far failed to make such an offer, or otherwise participate in any settlement negotiations.

4. Attached as Exhibit A is a true and correct copy of the Declaration of Service I filed in the Western District of Washington confirming that Delicious Monster served OptionMonster.

5. Attached as Exhibit B is a true and correct copy of an e-mail string between Caroline Plater and I that was exchanged on April 9, 2008.

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: April 22nd, 2008


Mark Rosencrantz

INDEX TO EXHIBITS

- Exhibit A: Declaration of Service I filed in the Western District of Washington.
- Exhibit B: April 9, 2008 e-mail exchange between Mark Rosencrantz and Caroline Plater.

EXHIBIT A

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DELICIOUS MONSTER SOFTWARE, LLC,

Plaintiff,

v.

OPTIONMONSTER HOLDINGS, INC.,

Defendant.

NO. C08-0324 MJP

DECLARATION OF SERVICE

Attached as Exhibit A is an Affidavit of Special Process Server, indicating that OptionMonster Holdings, Inc. was personally served on April 11, 2008.

Dated this 21st day of April, 2008.

STANISLAW ASHBAUGH

By: 

Mark Rosencrantz, WSBA #26552
mrosencrantz@lawasresults.com
Rebecca S. Ashbaugh, WSBA #38186
bashbaugh@lawasresults.com
Attorneys for Plaintiff
701 Fifth Avenue, Suite 4400
Seattle, WA 98104
(206) 386-5900

ClientCaseID:
Law Firm ID: MASUDA



CaseReturnDate: 4/29/08

Affidavit of SPECIAL PROCESS SERVER

COOK COUNTY CIRCUIT COURT, STATE OF ILLINOIS

Case Number **C080324MJP**

I, **LARUE BEY**

FIRST DULY SWORN ON OATH STATES THAT I AM OVER 18 YEARS OF AGE AND NOT A PARTY TO THIS SUIT AND IS A REGISTERED EMPLOYEE OF ILLINOIS DEPARTMENT OF PROFESSIONAL REGULATION PRIVATE DETECTIVE AGENCY #117-001292 STERN PROCESS & INVESTIGATION LLC 205 W. RANDOLPH ST. #1210 CHICAGO IL 60606

CORPORATE SERVICE

THAT I SERVED THE WITHIN **SUMMONS AND COMPLAINT**
ON THE WITHIN NAMED DEFENDANT **OPTIONMONSTER HOLDINGS INC**
PERSON SERVED **ERIN SNIDER, LEGAL ASSISTANT**
BY LEAVING A COPY OF EACH WITH THE SAID DEFENDANT ON **4/11/08**

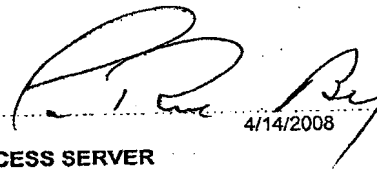
That the sex, race and approximate age of the person whom I left the **SUMMONS AND COMPLAINT**
are as follow:

Sex **FEMALE** Race **WHITE** Age **20s**
Height **5'4"** Build **AVERAGE** Hair **BROWN**

LOCATION OF SERVICE **333 W WACKER DR 2600**
CHICAGO, IL, 60606

Date Of Service **4/11/08**

Time of Service **2:06 PM**


LARUE BEY
SPECIAL PROCESS SERVER
PERC # 129-299771

4/14/2008

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statement are true and correct, except as to matters therein stated to be on information and belief and such matters the undersigned certifies as aforesaid that he/she verily believes same to be true.

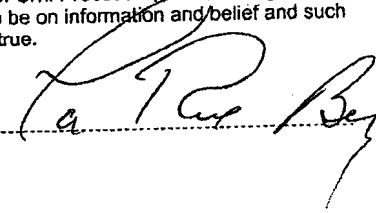


EXHIBIT A2

EXHIBIT B

Mark Rosencrantz

From: Plater, Caroline C. [CPlater@KelleyDrye.com]
Sent: Wednesday, April 09, 2008 11:06 AM
To: Mark Rosencrantz
Subject: ***SPAM*** RE: ***SPAM*** RE: OptionMonster v. Delicious Monster -Response

Mark - I've put in my inquiries with my client and will get back to you once we've had a chance to discuss their position or additional ideas.
Carrie

-----Original Message-----

From: Mark Rosencrantz [mailto:MRosencrantz@lawasresults.com]
Sent: Wednesday, April 09, 2008 12:31 PM
To: Plater, Caroline C.
Subject: RE: ***SPAM*** RE: OptionMonster v. Delicious Monster - Response

Carrie,

I will wait to hear from you then.

As I indicated previously, my client does not view the co-existence agreement you proposed as a settlement, as Delicious Monster clearly already has the right to use its monster. That is why I proposed a license. Moreover, the license I envisioned would be perpetual, allow any use your client wished, and involve a one-time up front payment from your client to mine that would mean the two companies do not have continuing ties.

If you have other ideas, I will be happy to discuss them with my client.

Mark

MARK ROSENCRANTZ | PARTNER



Stanislaw Ashbaugh
LAW AS RESULTS

COLUMBIA CENTER | 701 FIFTH AVE | SUITE 4400 | SEATTLE, WA 98104
T. 206.386.5900 | F. 206.344.7400

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From: Plater, Caroline C. [mailto:CPlater@KelleyDrye.com]

4/22/2008

Sent: Wednesday, April 09, 2008 10:18 AM
To: Mark Rosencrantz
Subject: ***SPAM*** RE: OptionMonster v. Delicious Monster - Response

Mark, I can't say that we have no interest in settlement discussions. We always are interested. However, we were not able to put a number on the license that your client proposed and frankly would want something other than a license as I do not envision that our respective clients want continuing ties with each other (which a license would do). Sorry for not calling back on this. I wanted to get this on file for my client and re-visit the prospect of settlement options with them before re-engaging in any discussions. We still remain open to ideas.
Carrie

-----Original Message-----

From: Mark Rosencrantz [mailto:MRosencrantz@lawasresults.com]
Sent: Wednesday, April 09, 2008 12:12 PM
To: Plater, Caroline C.
Subject: RE: OptionMonster v. Delicious Monster - Response

Carrie,

As you suspected, I have already reviewed copies of the pleadings my co-counsel sent, but thank you for the e-mail.

I assume from the opposition and your failure to call me back as you said you would after our telephone conversation that your client has no interest in any settlement discussions. Please let me know if I am mistaken.

Very truly yours,

Mark

MARK ROSENCRANTZ | PARTNER



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From: Plater, Caroline C. [mailto:CPlater@KelleyDrye.com]
Sent: Wednesday, April 09, 2008 10:02 AM

4/22/2008

To: Mark Rosencrantz
Subject: OptionMonster v. Delicious Monster - Response

Mark - Enclosed please find courtesy copies of our filing from yesterday. I meant to send them last night, but it slipped my mind. You likely have them from your local counsel already. I just wanted to make sure you got them since you are not on the service list.

Regards, Carrie

Caroline C. Plater
Kelley Drye & Warren LLP
333 W. Wacker, Suite 2600
Chicago, IL 60606
312.857.2501 (direct)
312.857.7095 (fax)

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