

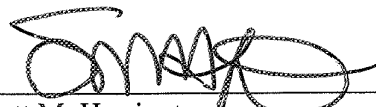
RETURN DATE: SEPTEMBER 8, 2009

ADAPTIVE MARKETING LLC) SUPERIOR COURT
v.) J.D. OF STAMFORD/NORWALK
YAHOO!, INC.) AT STAMFORD
AUGUST 14, 2009

APPLICATION FOR BILL OF DISCOVERY

The Plaintiff in the above-referenced matter, ADAPTIVE MARKETING LLC (hereinafter "ADAPTIVE"), hereby makes application for a Bill of Discovery against the Defendant, YAHOO! INC. (hereinafter "YAHOO"), pursuant to the Verified Complaint for Bill of Discovery submitted herewith, and respectfully requests that the Defendant be ordered to appear at an early date to show cause why the Bill of Discovery should not be granted.

THE PLAINTIFF

BY: 
Scott M. Harrington
DISERIO MARTIN O'CONNOR &
CASTIGLIONI LLP #102036
One Atlantic Street
Stamford, CT 06901
(203) 358-0800

~~SEPTEMBER 19 12 21 02
STAMFORD-NORWALK
JUDICIAL DISTRICT~~

RETURN DATE: SEPTEMBER 8, 2009

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|------------------------|---|--------------------------|
| ADAPTIVE MARKETING LLC |) | SUPERIOR COURT |
| |) | |
| v. |) | J.D. OF STAMFORD/NORWALK |
| |) | AT STAMFORD |
| YAHOO!, INC. |) | |
| |) | AUGUST , 2009 |

ORDER TO SHOW CAUSE

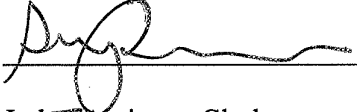
WHEREAS, the foregoing Complaint for Bill of Discovery and Application for Bill of Discovery, duly verified, has been presented to the Court; and

WHEREAS, upon application of the Plaintiff, it appears that an Order should be issued directing the Defendant in this action to appear before the Court to show cause as to why a Bill of Discovery should not issue.

NOW, THEREFORE, it is ordered that the Defendant, YAHOO!, INC., be summoned to appear before the Superior Court for the Judicial District of Stamford/Norwalk at Stamford, 123 Hoyt Street, Stamford, Connecticut 06901 on 9/21, 2009, at 9:30 a.m., then and there to show cause why a Bill of Discovery should not issue against it as prayed for in the foregoing Complaint for Bill of Discovery and Application.

Dated at Stamford, Connecticut, this 19 day of August, 2009.

BY THE COURT

 (J.)

Judge/Assistant Clerk

RETURN DATE: SEPTEMBER 8, 2009

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| ADAPTIVE MARKETING LLC |) | SUPERIOR COURT |
| |) | |
| v. |) | J.D. OF STAMFORD/NORWALK |
| |) | AT STAMFORD |
| YAHOO!, INC. |) | |
| |) | AUGUST , 2009 |

ORDER OF SERVICE

TO ANY PROPER OFFICER:

BY AUTHORITY OF THE STATE OF CONNECTICUT, YOU ARE HEREBY COMMANDED to give notice of the foregoing Order for Bill of Discovery of the Defendant, YAHOO!, INC., by serving upon it, in the manner provided by statute for the service of process, a true and attested copy of the foregoing Writ, Verified Complaint, Order for Bill of Discovery, Order to Show Cause and this citation on or before 9/10, 2009, and due return make this Court.

Dated at Stamford, Connecticut, this 19 day of August, 2009.

BY THE COURT

 (J.)
Judge/Assistant Clerk

RETURN DATE: SEPTEMBER 8, 2009

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|------------------------|---|--------------------------|
| ADAPTIVE MARKETING LLC |) | SUPERIOR COURT |
| |) | |
| v. |) | J.D. OF STAMFORD/NORWALK |
| |) | AT STAMFORD |
| YAHOO!, INC. |) | |
| |) | AUGUST , 2009 |

SUMMONS

TO ANY PROPER OFFICER:

BY AUTHORITY OF THE STATE OF CONNECTICUT, YOU ARE HEREBY COMMANDED to summon the Defendant in the foregoing action to appear before the Superior Court for the Judicial District of Stamford/Norwalk at Stamford at the place and time specified in the foregoing Order, then and there to show cause why a Bill of Discovery should not be issued against it as prayed for in the foregoing Complaint for Bill of Discovery and Application, by serving in the matter provided by statute for the service of process, a true and attested copy of the foregoing Writ and Verified Complaint, Application, Order and this Summons on the Defendant before _____, 2009.

HEREOF FAIL NOT, but due service and return make.

Dated at Stamford, Connecticut, this _____ day of August, 2009.

Scott M. Harrington
Commissioner of the Superior Court

RETURN DATE: SEPTEMBER 8, 2009

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|------------------------|---|--------------------------|
| ADAPTIVE MARKETING LLC |) | SUPERIOR COURT |
| |) | |
| v. |) | J.D. OF STAMFORD/NORWALK |
| |) | AT STAMFORD |
| YAHOO!, INC. |) | |
| |) | AUGUST , 2009 |

ORDER FOR BILL OF DISCOVERY

Plaintiff's Verified Complaint and Application for Bill of Discovery, having come before the Court pursuant to an Order to Show Cause by a Bill of Discovery should not issue as prayed for; and

The Plaintiff appeared and was fully heard and the Defendant was duly notified of the Order as appeared by the Officer's Return endorsed thereon, but the Defendant failed to appear; and

It appearing to the Court that a Bill of Discovery ought to issue as requested in the Application and Complaint.

NOW, THEREFORE, IT IS HEREBY ORDERED:

That the Plaintiff, ADAPTIVE MARKETING LLC, may take discovery of a record keeper or other appropriate individual of YAHOO!, INC., or seek other discovery from YAHOO!, INC., to obtain the disclosure of all information in the possession of YAHOO!, INC. relative to the identity of, names of, addresses of, IP addresses of, and e-mail addresses of the YAHOO! e-mail user with the name flaneurdefraude@yahoo.com.

BY THE COURT

_____ (J.)

Judge/Assistant Clerk

RETURN DATE: SEPTEMBER 8, 2009

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|------------------------|---|--------------------------|
| ADAPTIVE MARKETING LLC |) | SUPERIOR COURT |
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COMPLAINT FOR BILL OF DISCOVERY

The Plaintiff in the above-referenced matter, ADAPTIVE MARKETING LLC (hereinafter "ADAPTIVE"), seeking a Bill of Discovery against the Defendant, YAHOO! INC. (hereinafter "YAHOO"), complains and alleges as follows:

1. The Plaintiff, ADAPTIVE, is a Delaware limited liability company with an office and place of business at 20 Glover Avenue, Norwalk, Connecticut 06850.
2. The Defendant, YAHOO, is, upon information and belief, a corporation with an executive office and place of business at 701 First Avenue, Sunnyvale, CA 94089, which at all relevant times mentioned herein conducted business within the State of Connecticut.
3. At all relevant times mentioned herein, the Defendant, YAHOO, permits individuals to establish e-mail accounts using YAHOO's yahoo.com mail service.
4. Upon information and belief, YAHOO provides these yahoo.com e-mail accounts to members of the public who register their identities with YAHOO (hereinafter "YAHOO users") and

permits these YAHOO users to send and receive e-mails using only their user name selected and assigned when the YAHOO user registers with YAHOO.

5. A YAHOO user with the e-mail address flaneurdefraude@yahoo.com maintains and operates a weblog known as Flaneur de fraude on the Internet, and said YAHOO user provides as his or her only contact information the e-mail address of flaneurdefraude@yahoo.com.

6. On or about July 17, 2009, the YAHOO user with the e-mail address flaneurdefraude@yahoo.com made a posting on the Flaneur de fraude weblog site which makes multiple statements accusing ADAPTIVE of inappropriate, deceptive, and illegal conduct, including allegations of "running a predatory bait-and-switch campaign" and engaging in "deceptive business practices." A copy of the weblog entry is attached hereto as Exhibit "A" and made a part hereof.

7. The weblog entry posted by the YAHOO user with the e-mail address flaneurdefraude@yahoo.com also implies a pattern of wrongful conduct on the part of ADAPTIVE.

8. ADAPTIVE believes it has a valid cause of action against the YAHOO user with the e-mail address flaneurdefraude@yahoo.com for defamation, trade libel, and tortious interference with contractual relations and business expectancies.

9. In order to analyze and initiate actions against the YAHOO user with the e-mail address flaneurdefraude@yahoo.com who posted the actionable weblog entry, ADAPTIVE requires discovery from YAHOO to identify the name and address of the YAHOO user with the e-mail address flaneurdefraude@yahoo.com who posted the actual entry.

10. ADAPTIVE requests a Bill of Discovery against YAHOO permitting it to take the deposition of a record keeper or other appropriate individual at YAHOO and obtain disclosure of the identities, names, addresses, IP addresses, and e-mail addresses of the YAHOO user with the e-mail address flaneurdefraude@yahoo.com.

11. ADAPTIVE has no other adequate means of identifying and commencing an action against the YAHOO user with the e-mail address flaneurdefraude@yahoo.com without obtaining discovery from YAHOO pursuant to the requested Bill of Discovery.

WHEREFORE, for all of the foregoing reasons, the Plaintiff requests the following relief:

1. A Bill of Discovery permitting ADAPTIVE MARKETING LLC to take the deposition of a record keeper or other appropriate individual at YAHOO! INC. and to obtain the disclosure from YAHOO! INC. of the identities, names, addresses, IP addresses and e-mail addresses of the YAHOO user with the e-mail address flaneurdefraude@yahoo.com.
2. Such other and further relief as the Court deems just and proper.

THE PLAINTIFF

BY: 

Scott M. Harrington
DISERIO MARTIN O'CONNOR &
CASTIGLIONI LLP #102036
One Atlantic Street
Stamford, CT 06901
(203) 358-0800

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VERIFICATION

I, GEORGE W. M. THOMAS, Senior Vice President and General Counsel of the Plaintiff, ADAPTIVE MARKETING LLC, in the above entitled action, being duly sworn, depose and state that I have read the Application and Complaint for Bill of Discovery and Order to Show Cause in the foregoing matter, and that the allegations made therein are true to the best of my knowledge and belief.

ADAPTIVE MARKETING LLC

BY: 

George W. M. Thomas
Its Senior Vice President &
General Counsel

STATE OF CONNECTICUT)

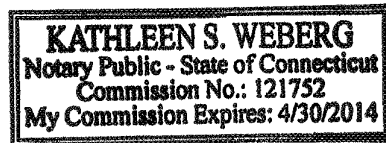
) ss. Stamford

COUNTY OF FAIRFIELD)

On this 13th day of August 2009, personally appeared, GEORGE W. M. THOMAS as Senior Vice President and General Counsel of the Plaintiff, ADAPTIVE MARKETING LLC, in the foregoing action, and made oath to the truth of the matters contained in the Verified Complaint and Application herein, before me, the undersigned officer.



Notary Public
Commissioner of Superior Court



flâneur de fraude

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← [Science for investigators](#) [Puzzle vs. Mystery](#) →

Ben Stein steals your money

July 16, 2009 · [2 Comments](#)

I know it. I'm a bit of a leech when it comes to the blog entry; I riff shamelessly off of other blogs. That said, I think I've got something to add to the story of Ben Stein's descent from [New York Times windbag](#) to douchebag to scumbag.

As Felix Salmon [discusses](#) in his blog, Stein is shilling for a new website, [freescore.com](#) (also [freescore.tv](#)), that is running a "predatory bait-and-switch." Freescore provides a "free" credit report, and then charges \$29.95 per month for not doing so much else. I wonder what the [FTC has to say](#) about charging for a credit report when the [Fair Credit Reporting Act](#) requires the credit rating agencies to hand it out once a year via [annualcreditreport.com](#).

To use some horrible business-speak, here goes my "value add" to the story:

Not shockingly, the company that owns [freescore.com](#), [Vertrue Inc.](#), has a history of deceptive business practices. For years it has been figuring out creative ways to gain access to credit cards to charge monthly fees with the hopes that victims won't notice. If a victim does notice, Vertrue makes them [jump through hoops](#) to get the monthly fees removed.

FREESCORE'S CONNECTION TO VERTRUE, INC.

Freescore.com's registration with the [US Patent and Trademark Office](#) lists the owner as [Adaptive Marketing LLC](#). Freescore.com is also listed as an Adaptive Marketing product on [its website](#). Adaptive Marketing is listed as Vertrue company on [its website](#). Adaptive Marketing was the registered owner of the website [freescore.com](#) from at least April 2008 until sometime in late June 2009, when the registrant changed to Corporation Service Company of Yarmouth, Nova Scotia. I'm not sure why that would be.

QUICK HISTORY OF VERTRUE

Vertrue started out life as [CardMember Publishing Corporation](#) in the late '80s. In 1996 it changed its name to [MemberWorks Incorporated](#) and then again in 2006 to [Vertrue Incorporated](#). It went [public](#) in 1996 and then was taken [private](#) again in 2007.

THE SALACIOUS AND DECEPTIVE STUFF

So just to start with, take a look the [Better Business Bureau report](#) on Vertrue. BBB is a fairly conservative organization, and it gives Vertrue an "F"! BBB received more 2,595 complaints against the company.

Complaints reported to the Bureau primarily involve claims of unauthorized charges by the Company's affiliates. In such cases, customers reported no recollection of having agreed to the programs that were billed to their credit card, debit card or bank account. In some of the cases, consumers reported being charged for two or three years.

In 2000, when Vertrue was still called MemberWorks, it settled a case brought by the New York Attorney General. MemberWorks offered a free 30-day trial membership in discount programs. It then charged the victims a \$144 annual fee without their knowledge.

At about the same time, according to the FTC,

. . . Minnesota, New York . . . , Nebraska, and California—have obtained either an Assurance of Voluntary Compliance (“AVC”) or a court settlement with MemberWorks. Nebraska obtained an AVC in February 2001 that applies nationwide. The AVC requires MemberWorks to provide refunds to consumers alleging unauthorized charges and includes detailed conduct provisions applicable to MemberWorks’ marketing of membership programs.

MODERN-DAY SALACIOUS AND DECEPTIVE STUFF

Vertrue received a request in May from the Senate Commerce Committee regarding its billing practices. It’s the same old Vertrue story—monthly charges on a credit card unless the dubious subscription is canceled.

In January of this year, a civil case was filed in Cuyahoga County Court of Common Pleas against Adaptive Marketing and Vertrue. The case made its way into federal court as a civil fraud case, Smith *et al.* v. Vertrue Inc. *et al.*, in U.S. District Court in Cleveland, and is now listed as Vertrue Inc. Marketing and Sales Practices Litigation case number 09-vm-75000-PAG. It remains to be seen what will happen with this case, but the complaint tells the usual story of no permission and monthly fees etc.

For the obsessed there are also these cases here, here and here.

LAST PITHY NOTE

So the co-founder, CEO and president at Vertrue lists on his LinkedIn profile that he has a Harvard MBA. He probably should have taken Harvard’s new MBA oath.

And Ben . . . WTF? Did you really need the money that badly? I hope the NY Times drops you over this.

Categories: Uncategorized

Tagged: Adaptive Marketing LLC, Ben Stein, Freescore.com, FTC, Harvard, MemberWorks, Vertrue Inc.

2 responses so far ↓

- Ben Stein gets caught with his hand in the cookie jar | PunditCountry // July 17, 2009 at 11:23 PM | Reply

[...] according to the blog, flâneur de fraude, the company that owns freescore.com is owned by another company with a shady past: Not shockingly, [...]

- Ben Stein and Not-So-Free Credit Scores « The Bankruptcy Blog // July 22, 2009 at 8:24 AM | Reply

[...] blogosphere has been all over Ben Stein, a financial guru, spokesperson and New York Times columnist, over his [...]

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