

March 23, 2011

Hamid Shojaee
13835 N. Northsight Blvd.
Suite 205
Scottsdale, AZ 85260

CC:

Kelly Lewis
GoDaddy General Counsel
14455 North Hayden Rd.
Suite 219
Scottsdale, AZ 85260
Phone: (480) 624-2552
Fax: (480) 247-4132

RE: Defamatory Statements Concerning Jason Hope and Jawa Published at
<http://www.azdisruptors.com>

Dear Mr. Shojaee:

We represent the interests of Jason Hope, a resident of Scottsdale, Arizona, as well as Jawa, a limited liability company organized under the laws of the State of Arizona. It has recently come to our attention that you have posted false and defamatory statements on your website concerning Mr. Hope and Jawa. These statements rise to the level of defamation, defamation per se, and false light invasion of privacy. Further, these statements constitute tortious interference with business relations and criminal harassment. This letter serves as your notice that your publication of these statements has subjected you to significant monetary damages and criminal liability under Arizona law. As such, our client hereby demands that you remove these statements or face the possibility of a lawsuit or criminal charges.

On Friday, March 18, 2011, you published a blog post titled "Local Tech Darling Jawa & Jason Hope a Big Scam?" Among other implications that Jason Hope is a scam artist, this

post states, “the mastermind behind the scams is Jason Hope, founder and CEO of Jawa.” A second post, published on March 19, 2011, again states that Jason Hope is running an “elaborate scam” that “could be the biggest ever in the state of Arizona.” To create this post, you presume that information published by a Gawker poster, identified by the user name “todbodman,” is true and, on the basis of this information, conclude that “If a person steals a car valued at \$1,000, they’ll spend years in jail for ‘Grand Theft Auto.’ What do you get when you steal hundreds of millions of dollars, \$3.99 to \$9.99 at a time? So far, you get to build North America’s Largest House and throw some lavish parties.” Also, on March 19, 2011, you published a post titled “WOW! I’m Victim of the Text Messaging Scams!” In this post, you again state that Jason hope is a “scumbag who run[s] text message fraud schemes.” You then proceed to discuss, in a narrative, that you have been the victim of a text message scheme involving short code 75075, a short code that is not owned by Jawa or Jason Hope. Despite this, you question whether “Jason Hope and the network of companies that he has created to scam people are also behind Textea.com and I didn’t even get an invite to his \$500,000 party that I helped pay for.”

On Monday, March 21, 2011, you created a post titled “Explanation of Text Message Scams & Cramming.” This video contained several false and defamatory statements, including the fact that a party receives “a text message from a number you don’t recognize saying text back stop if you don’t want to subscribe.” It also states that “by not responding stop and ignoring the message, that was all the confirmation AT&T needed to assume that I wanted to be charged \$9.99 a month for absolutely nothing.” This video further states that you “happened to run into a mastermind of one of these scams,” despite the fact that Jawa’s business model does not operate in the manner portrayed in the video. You further state, “This guy, Jason Hope. He’s the founder and CEO of... Jawa. Jawa is nothing but a front to a complex network of text message scams. They operate at least twenty different LLC’s and hundreds of domains that defraud unsuspecting telephone users, oftentimes teenagers or seniors, anywhere from \$3.99 to \$9.99 per scam.” The video also states that “cell phone companies keep as much as 50% of these charges, so a \$10 charge on your cell phone bill from a scammer nets AT&T as much as \$5 in profits.” Finally, on March 22, 2011, you published a post titled “JAWA’s Defense, Employees and Intimidation.” In that post, you again state that Jawa is a “large text message scam[.]” You further state that Jawa’s share of the revenues from this business model “JUST FROM VERIZON for the past 2 years has been over \$70 million.”

The false and defamatory statements contained within these posts rise to the level of defamation, defamation per se, and false light invasion of privacy under Arizona law. Further, these posts constitute an attempt to tortuously interfere with our clients’ prospective and current business relations, and your continued attempts to defame and harass our clients may constitute criminal harassment under Arizona law.

Under Arizona law, one who publishes a false and defamatory communication may be subject to liability if he “(a) knows that the statement is false and it defames the other, (b) acts in reckless disregard of these matters, or (c) acts negligently in failing to ascertain them.” *Dube v. Likins*, 216 Ariz. 406, 417 (Ariz. Ct. App. 2007). “To be defamatory, a publication must be false and must bring the defamed person into disrepute, contempt, or ridicule, or must impeach plaintiff’s honesty, integrity, virtue, or reputation.” *Id.* at 418-19. Negligence, in the defamation context, is “conduct which creates an unreasonable risk of harm. It is the failure to use that amount of care which a reasonably prudent person would use under like circumstances.” Similarly, under Arizona law, “a publication which impeaches the honesty, integrity or reputation of a person is libelous per se and actionable without proof of special damages because damages are presumed.” *Peagler v. Phoenix Newspapers, Inc.*, 114 Ariz. 309, 316 (1977).

Similarly, a plaintiff may show that it has been placed in a false light in the public eye under Arizona law where “(a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. *Hart v. Seven Resorts, Inc.*, 190 Ariz. 272, 280 (Ariz. Ct. App. 1997). “Thus, the tort is established if the defendant knowingly or recklessly published false information or innuendo about the plaintiff that a reasonable person would find highly offensive.” *Id.* One may be held liable for tortious interference with actual or prospective business relations where the plaintiff has a valid contractual relationship or business expectancy, the interferer has knowledge of the relationship or business expectancy, the interferer has intentionally interfered in that relationship or business expectancy, which has caused a breach or a termination of the relationship or expectancy, and this interference has resulted in damage to the party whose relationship or expectancy has been disrupted. *Miller v. Hehlen*, 209 Ariz. 462, 471-72 (Ariz. Ct. App. 2005).

Finally, under Arizona criminal law, “[a] person commits harassment if, with intent to harass or with knowledge that the person is harassing another person, the person:

1. Anonymously or otherwise contacts, communicates, or causes a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic or written means in a manner that harasses...; or
2. Repeatedly commits an act or acts that harass another person.

Ariz. Rev. Stat. Ann. § 13-2921. Under this section, harassment “means conduct that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person. One that is found guilty of harassment may be subject up to a \$2,500.00 fine and six months in jail. See Ariz. Rev. Stat. Ann. §§ 13-707, 13-802.

Your statements rise to the level of defamation, defamation per se, false light invasion of privacy, tortious interference, and harassment. To be clear, your statements concerning our clients' business model are unequivocally false and were, at the very least, made with negligence. Our clients' business follows the Mobile Marketing Association's guidelines concerning commercial SMS or MMS messaging. Those guidelines require content providers to obtain approval from subscribers before sending them commercial SMS or MMS messages. Further, those guidelines require content providers to clearly communicate to the subscriber the financial obligation involved in subscribing to a subscription-based content program and to provide the subscriber with information on how that subscriber may opt-out of the program.

Our clients' employ a double opt-in process to ensure that their customers voluntarily choose to participate in their services. First, potential customers reach one of our clients' websites through the web. Upon arriving at one of our clients' websites, potential customers may voluntarily input their cell phone numbers to receive content via SMS or MMS message. When inputting their cell phone numbers, potential customers are clearly and conspicuously apprised of the price and subscription terms associated with their subscription, as per industry standards. A potential customer is then sent a SMS or MMS message. This message contains a pin number, as well as pricing and subscription details. If the potential customer wishes to subscribe to our clients' services, the customer must then voluntarily enter the provided pin number on the website. Once that occurs, the customer will then receive a SMS or MMS message confirming their subscription.

As you can see, our clients' service requires customers to take voluntary and deliberate action to receive commercial SMS or MMS messages, contrary to your allegations. Your post titled "WOW! I'm Victim of the Text Messaging Scams!" attempts to claim that our clients do not follow this industry standard practice and, instead, subscribe customers without their consent. This is simply not true. The short code listed on the bill associated with this post, short code 75075, is not owned by or associated with our clients. Your allegations that our clients are involved in these illegal activities rise to the level of defamation per se and have caused our clients significant monetary and reputational damages.

Your comments allege that our clients are scam artists and are guilty of stealing hundreds of millions of dollars. You have also made blatantly false statements concerning our clients' revenue sharing agreement with wireless providers. These statements give publicity to our clients concerning an illegal matter that they are not involved in; these statements have placed our clients in a false light. This false light, namely, that our clients have scammed millions, would be highly offensive to a reasonable person. You have acted negligently and with a reckless disregard for the truth in reporting on these issues without even a cursory look into the facts.

Based on these actions, one can only conclude that you are attempting to tortuously interfere with our clients' existing and prospective business relations. You have knowledge of our clients' contractual and business relations and expectancies both in the Scottsdale, Arizona area and across the country; you attended a meeting with the Mayor of Scottsdale that was also attended by, and largely featured, our clients. In publishing these false and defamatory statements that allege criminality and wrongdoing, you have intentionally interfered with our clients' current and prospective business relations. This interference has resulted in significant damages to our clients. More concerning, your actions may constitute criminal activity under Arizona law. You have continuously and repeatedly attempted to defame, disparage, harass, and interfere with our clients and their business. We are unclear what, exactly, has motivated this harassment, but your pretextual consumer protection posturing certainly does not justify the false and defamatory statements that you have posted concerning our clients.

Your harassment of our client is particularly interesting because, despite your threats, your efforts at intimidation, and your portrayal of yourself as a white hat crusader, you have failed to disclose your true motives to your readers. It is not lost on us that you, both personally and as a business, have engaged in unlawful activity. Your registration, trafficking in, and use of the following domain names, among others, shows that you are engaged in a pattern of intentional and bad faith cybersquatting under the Anticybersquatting Consumer Protection Act, as well as willful and intentional trademark infringement and the counterfeiting of famous brands:

1. Macbugtracker.com (infringing the trademark MAC, Reg. Nos. 3298654, 1968965, 2076153, and 1964391);
2. Macbugtracking.com (infringing the trademark MAC, Reg. Nos. 3298654, 1968965, 2076153, and 1964391);
3. Photodrop.com (infringing the trademark PHOTOSHOP, Reg. Nos. 2920764, 3702607, 1850242, and 1651380);
4. Tarbucks.com (infringing the trademark STARBUCKS, Reg. Nos. 3907157, 3907156, 3428128, 3428127, etc.);
5. Tarbucks.net (infringing the trademark STARBUCKS, Reg. Nos. 3907157, 3907156, 3428128, 3428127, etc.);
6. Tarbucks.org (infringing the trademark STARBUCKS, Reg. Nos. 3907157, 3907156, 3428128, 3428127, etc.);
7. Windowsbugtracker.com (infringing the trademark WINDOWS, Reg. Nos. 2463526, 2559402, 2565965, 2463510, 2463509, etc.);
8. Windowsbugtracking.com (infringing the trademark WINDOWS, Reg. Nos. 2463526, 2559402, 2565965, 2463510, 2463509, etc.); and
9. Nycrunch.com (infringing the SYRACUSE CRUNCH mark);

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It is clear that your efforts to defame, harass, and disparage our clients with knowingly false statements of fact are simply an attempt to cover up and deflect from your unlawful activity.

In light of your potential liability, both civil and criminal, we hereby demand that you comply with the following requests **no later than Monday, March 28, 2011:**

1. Delete the posts located at the following links:
<http://www.azdisruptors.com/blog/2011/3/22/jawas-defense-employees-and-intimidation.html>; <http://www.azdisruptors.com/blog/2011/3/21/explanation-of-text-message-scams-cramming.html>; <http://www.azdisruptors.com/blog/2011/3/19/wow-im-victim-of-the-text-messaging-scams.html>;
<http://www.azdisruptors.com/blog/2011/3/19/have-jawa-and-jason-hope-stolen-100-million.html>; and <http://www.azdisruptors.com/blog/2011/3/18/local-tech-darling-jawa-jason-hope-a-big-scam.html>;
2. Publicly post a retraction to your <http://www.azdisruptors.com> website, in a stickied post, and an apology that specifically states that you have made false statements concerning our clients' business model;
3. Cease and desist from, now and in the future, posting any comments concerning Jason Hope, Jawa, its employees, its members, its successors, its assigns, its independent contractors, its associates, or its affiliates; and
4. Confirm in writing your compliance with the above requests.

Understand that our clients do not intend for this matter to go unresolved. Should you fail to comply with the above requests by Monday, March 28, 2011, our clients will file a defamation, false light invasion of privacy, and tortious interference lawsuit against you. Our clients reserve their full panoply of rights under the law, including the right to initiate a lawsuit against you at any time.

Do not hesitate to contact me, or have your attorney contact me, should you have any questions.

Sincerely,

TRAVERSE LEGAL, PLC



Enrico Schaefer

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