

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Charles P. Kocoras	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	06 C 3958	DATE	October 19, 2006
CASE TITLE	e360 Insight vs. The Spamhaus Project		

DOCKET ENTRY TEXT

Plaintiffs' motion [26] for a rule to show cause is denied without prejudice.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

ORDER

This matter comes before the court on the motion of Plaintiff e360 Insight, LLC ("e360"), for a rule to show cause why Defendant The Spamhaus Project ("Spamhaus") should not be held in contempt for failure to comply with the injunction issued by this court on September 13, 2006.

Spamhaus has not appeared to defend the allegations against it in this case, but on October 13, 2006, it filed a notice of appeal in the Seventh Circuit seeking review of the default judgment entered on the same date as the injunction. Ordinarily, the filing of a notice of appeal divests a district court of jurisdiction to consider further matters in a case before it. See Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58, 103 S. Ct. 400, 402 (1982). However, this rule does not extend to questions regarding compliance with an injunction whose effect has not been stayed. See Union Oil Co. of California v. Leavell, 220 F.3d 562, 565-66 (7th Cir. 2000). Thus, we retain jurisdiction to consider the instant motion.

In its moving papers, e360 requested three forms of relief for the claimed noncompliance: first, suspension of Spamhaus's domain name until it complies with the terms of the injunction; second, steps to prevent third parties from accessing Spamhaus's technology or permission to add them as defendants to this suit if they continue to do so; and third, a monetary sanction against Spamhaus for each day that it fails to comply with the injunction. When e360 appeared in court to present the motion, we noted the breadth of the requested relief and directed e360 to submit a draft order that was more tailored.

The proposed order is limited to only the first remedy, suspension of the domain name by The Internet Corporation for Assigned Names and Numbers ("ICANN"), the entity responsible for coordinating unique

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identifiers used for Internet communication, or Tucows, Inc., the registrar through which Spamhaus obtained its domain name. Neither of these outfits are parties to this case. Though more circumscribed than the preceding request, this relief is still too broad to be warranted in this case. First, there has been no indication that ICANN or Tucows are not independent entities, thus preventing a conclusion that either is acting in concert with Spamhaus to such a level that they could be brought within the ambit of Fed. R. Civ. P. 65(d). Though our ability to enforce an injunction is not necessarily coterminous with the rule, the limitations on its scope inform an exercise of our power to address contempt. See, e.g., Rockwell Graphic Systems, Inc. v. DEV Industries, Inc., 91 F.3d 914, 920 (7th Cir. 1996). Second, the suspension would cut off all lawful online activities of Spamhaus via its existing domain name, not just those that are in contravention of this court's order. While we will not condone or tolerate noncompliance with a valid order of this court, neither will we impose a sanction that does not correspond to the gravity of the offending conduct.

Accordingly, the motion for a rule to show cause is denied without prejudice.

Dated: October 19, 2006



CHARLES P. KOCORAS
U.S. District Court Judge