

August 18, 2004

John S. Bosen

James Hardy, Sheriff Hillsborough County Sheriff's Dept 300 Chestnut Street Manchester, NH 03101-2492

Jonathan S. Springer Christopher B. Milligan

RE: Atriks, et al v. Jay Stuler

Dear Sheriff Hardy:

Enclosed please find an original and service copy of a Writ of Summons for service upon the Defendant, Jay Stuler through the Secretary of State's Office pursuant to RSA 510:4. Also enclosed is a check in the amount of \$10.00 made payable to the Secretary of State.

Please make service of process and make your return of service to my attention, along with an invoice for your services.

A service copy of the process is being sent to Mr. Stuler by registered mail, postage prepaid.

If you have any questions or comments please let me know.

Very truly yours,

[Signature]

Jonathan S. Springer

JSS/sml Enclosures

cc: Atriks, Inc. Distributed Mail Corporation Brian Haberstroh cc: Jay Stuler

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One New Hampshire Avenue, Suite 215 • Peace International Building • Portsmouth, New Hampshire 03801 • phone: 603.427.6600 • fax: 603.427.5510

The State of New Hampshire

SUPERIOR COURT

HILLSBOROUGH COUNTY NORTHERN DISTRICT

(22) COURT

() JURY

WRIT OF SUMMONS

ATRIKS, Inc. 55 Bridge Street Manchester, NH 03105 and Distributed Mail Corporation 55 Bridge Street Manchester, NH 03105 and Brian Haberstroh 119 Langford Road Raymond, NH 03077

Jay Stuler 5072 Open Meadows Drive, Apt #4 Columbus, OH 43228

The Sheriff or Deputy of any County is ordered to summon each defendant to file a written appearance with the Superior Court at the address listed below by the return day of this writ which is the first Tuesday of the 20th month 2004.

The PLAINTIFF(S) state(s):

See attached Declarations.

and the Plaintiff(s) claim(s) damages within the jurisdictional limits of this Court.

[Signature]

8/16/04 DATE SERVED

NOTICE TO THE DEFENDANT: The Plaintiff's intent herein, by serving this process against you, is to bring you to court. You do not have to physically appear in court on this date. However, you must file a written appearance with the Court's Office by the return day of this writ. Failure to do so may result in a default judgment being entered against you. You will file money owed to the Court at all times. You are hereby notified that you are being served by the return day of judgment in the event you fail to appear in court on the date specified in this writ.

Witness: Walter L. Murphy, Chief Justice, Superior Court.

John M. Safford, Clerk NH Superior Court Hillsborough County Northern District 300 Chestnut St Manchester NH 03101-2490 (603) 669-7410 213-6033

SIGNATURE OF PLAINTIFF(S)

Jonathan S. Springer, Esq.

BOSEN & SPRINGER, P.L.L.C. One New Hampshire Avenue, Suite 215 Portsmouth, NH 03801 ADDRESS: Portsmouth, NH 03801 / (603) 427-6600 PHONE

DECLARATION

- 1. The plaintiff, ATRIKS, Inc., is a New Hampshire corporation with a place of business at 55 Bridge Street, Manchester, New Hampshire (hereafter 'ATRIKS'). 2. The plaintiff, Distributed Mail Corporation, is a New Hampshire corporation with a place of business at 55 Bridge Street, Manchester, New Hampshire (hereafter 'DMC'). 3. The Plaintiff, Brian Haberstroh is a New Hampshire resident with an address of 119 Langford Road, Raymond, New Hampshire (hereafter "Haberstroh"). 4. The defendant, Jay Stuler is, upon information and belief, an individual residing in Ohio, with an address of 5072 Open Meadows Drive, Apt. #4, Columbus, Ohio 43228 (hereafter "the defendant"). 5. This court has personal jurisdiction over the defendant pursuant to RSA 510:4(i) as the defendant has committed a tortious act within this state. 6. This court has subject matter jurisdiction over this matter pursuant to RSA 491:7. 7. Venue is proper in this court pursuant to RSA 507:9, as ATRIKS and DMC conduct business in this county. 8. ATRIKS conducts several for-profit activities, including providing Internet hosting services which allows other companies access to the Internet. 9. The access to the Internet provided by ATRIKS can be used by another company, such as the plaintiff DMC, to send commercial emails. 10. DMC is an email deployment service bureau which, on behalf of its clients, sends commercial e-mail to customers of those clients who have chosen (or "opted-in") to receive e-mail. 11. In 2003, the Congress of the United States enacted the "CAN-SPAM Act of 2003" ("CAN-SPAM Act"). 12. The CAN-SPAM Act became effective on or about January 1, 2004. 13. The CAN-SPAM Act regulates interstate commerce by imposing limitations and penalties on the transmittal of certain unsolicited commercial electronic mail via the Internet. 14. The CAN-SPAM Act requires commercial e-mail which is distributed on the Internet to meet certain requirements, including but not limited to: A. Contain "header" information which is accurate and which includes the correct Internet Protocol ("IP") address of the sender of the e-mail; B. A "from" line which accurately identifies the person initiating the e-mail message; C. A functioning return e-mail address which clearly and conspicuously displays that the recipient may respond and request not to receive future e-mail messages from that sender at the e-mail address where the message was received, and which remains capable of receiving such messages for no less than thirty (30) days after the transmission of the original message; D. Cessation of sending e-mails to a person who has "opted" out or has otherwise requested that such e-mails not be sent; E. A clear and conspicuous identification that the message is an advertisement or solicitation, notice of the opportunity to decline to receive future e-mail messages, and a valid physical postal address of the sender; and F. Transmission of e-mail messages to e-mail addresses which were not obtained by using automated means by combining names, letters or numbers into numerous different mutations (known as "harvesting") or similar means. 15. The activities of ATRIKS, in providing Internet hosting, and DMC, in sending commercial email, meet the requirements of the CAN-SPAM Act. 16. ATRIKS does not originate or send commercial e-mail to third parties, and does not otherwise conduct activities regulated by the CAN-SPAM Act. 17. In order to conduct its business, ATRIKS enters into contracts with third parties which provide access to the Internet through a server or servers to which have been assigned certain, distinct IP addresses. 18. Pursuant to such contracts, ATRIKS pays the third party in return for access to the Internet via the third party's IP address or addresses. 19. DMC in turn contracts with ATRIKS to provide the hosting, which allows DMC to conduct its email business. 20. In the past, ATRIKS has entered into such contracts with New Hampshire companies including, but not limited to, Lightship Telecom, 1 Executive Park Drive, Bedford, New Hampshire and Spectra Access, Inc., 25 Lowell Street, Suite 407, Manchester, New Hampshire. 21. In addition, in the past ATRIKS has contracted for such services with a Massachusetts company, North Atlantic Internet, Inc., 800 South Main Street, Mansfield, Massachusetts. 22. The defendant has repeatedly contacted the third parties who provided Internet access to the Plaintiff, knowing that a contract existed at the time between the third party and ATRIKS, and has convinced the third parties to terminate their contracts with ATRIKS. 23. The defendant has convinced the third parties to terminate the contracts based upon the defendant's statements that ATRIKS is "a notorious spam gang" who has been "spamming" thousands of people for two years. 24. The defendant has stated to one or more of those third parties that the president of ATRIKS, Brian Haberstroh, is a "criminal." 25. The defendant has stated to one or more of those third parties that he has "made it [his] personal mission to stop [ATRIKS] whenever [he] can." 26. The statements regarding ATRIKS and its president are unfounded and untrue. 27. As a result of the defendant's acts, ATRIKS contracts with Lightship Telecom, Spectra Access, Inc., and North Atlantic Internet, Inc., have been terminated, thus terminating ATRIKS ability to conduct its business. 28. Upon information and belief, the defendant has made his statements in e-mails to Lightship Telecom, Spectra Access, Inc., and other third parties, which e-mails were deliberately directed by the defendant to places in New Hampshire, and received by the third parties in New Hampshire. 29. Further, the defendant has made similar statements in public postings on the Internet, which, upon information and belief, are viewed third parties in New Hampshire. 30. Each time a contract is terminated due to the acts of the defendant, ATRIKS must shut its business down, until it can locate and contract with another IP provider, causing

Count I Tortious Transaction with Contract

- 31. The allegations contained in paragraph 1 through 24, above, are incorporated herein by reference as if fully realleged. 32. A contract existed between ATRIKS and Lightship Telecom, and Spectra Access, Inc., pursuant to which ATRIKS was to pay for certain services, and Lightship Telecom and Spectra Access, Inc., were to provide the same, including but not limited to, access to the internet for ATRIKS' e-mail business. 33. The defendant knew that such contracts existed. 34. The defendant intentionally and improperly interfered with the performance of the said contracts by inducing Lightship Telecom and Spectra Access, Inc., to terminate the contracts. 35. The defendant's interference also extends to the contract between ATRIKS and DMC, or its corporate predecessor. 36. The defendant induced the termination by intentionally making misrepresentations about ATRIKS and Brian Haberstroh to the said third parties.

Count II Defamation

- 37. The allegations contained in paragraph 1 through 29, above, and Count I are incorporated herein by reference as if fully re-alleged. 38. The defendant intentionally and without reasonable care published a defamatory statement or statements concerning ATRIKS to third parties. 39. The defamatory statements included, but are not limited to, the statements that ATRIKS is a "notorious spam gang" that ATRIKS violates the CAN-SPAM Act, and that its president, Brian Haberstroh is a "criminal." 40. The defamatory statements are not true. 41. The defendant, knew, or had reason to know, that the defamatory statements were not true. 42. The defendant knew that, if the said third party contracts were terminated, ATRIKS would suffer monetary losses. 43. As a direct and proximate cause of the defendant's acts and statements, ATRIKS has suffered pecuniary loss and consequential damages, all within the minimum and maximum jurisdictional limits of this court. 44. Due to the intentional acts and statements of the defendant, ATRIKS should be awarded its attorney's fees, costs, and statutory interest.

Count III Defamation

- 45. The allegations contained in paragraph 1 through 41, above, and Courts I and II are incorporated herein by reference as if fully realleged.

Count IV Defamation

- 46. The defendant intentionally and without reasonable care published a defamatory statement or statements concerning Brian Haberstroh to third parties. 47. The defamatory statements included, but are not limited to, the statements that Brian Haberstroh is a "criminal" and that the company of which he is President, ATRIKS, is a "notorious spam gang" and that ATRIKS violates the CAN-SPAM act. 48. The defamatory statements are untrue. 49. The defendant, knew or had reason to know that the defamatory statements are not true. 50. The defamatory statements constitute defamation per se. 51. As a direct and proximate cause of the defendant's defamatory statements, Brian Haberstroh has suffered damages, all within the minimum and maximum jurisdictional limits of this court. 52. Due to the intentional acts and statements of the defendant, Brian Haberstroh should be awarded his attorney's fees, costs and interest.

Count V Defamation

- 46. The defendant intentionally and without reasonable care published a defamatory statement or statements concerning Brian Haberstroh to third parties. 47. The defamatory statements included, but are not limited to, the statements that Brian Haberstroh is a "criminal" and that the company of which he is President, ATRIKS, is a "notorious spam gang" and that ATRIKS violates the CAN-SPAM act. 48. The defamatory statements are untrue. 49. The defendant, knew or had reason to know that the defamatory statements are not true. 50. The defamatory statements constitute defamation per se. 51. As a direct and proximate cause of the defendant's defamatory statements, Brian Haberstroh has suffered damages, all within the minimum and maximum jurisdictional limits of this court. 52. Due to the intentional acts and statements of the defendant, Brian Haberstroh should be awarded his attorney's fees, costs and interest.