

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

LIGHTSPEED MEDIA CORPORATION,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 12-cv-889 GPM-SCW
)	
ANTHONY SMITH, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

**DEFENDANT COMCAST’S MOTION TO DISMISS
PLAINTIFF’S FIRST AMENDED COMPLAINT**

Defendants Comcast Cable Communications LLC and Comcast Corporate Representative #1 (together, “Comcast”¹), hereby move to dismiss Count I (Computer Fraud and Abuse Act, 18 U.S.C. § 1030 (“CFAA”)), Count IV (Unjust Enrichment), Count VII (Civil Conspiracy), Count VIII (Illinois Consumer Fraud and Deceptive Practices Act, 815 I.L.C.S. 505/1 *et. seq.* (“ICFA”)), and Count X (Aiding and Abetting) of Plaintiff’s First Amended Complaint (“Am. Compl.”),² pursuant to Fed. R .Civ. Proc. 12(b)(6) and Local Rule 7.1. As more fully set forth in the accompanying memorandum of law, Lightspeed’s claims against Comcast should be dismissed for the following reasons:

1. Count I of the Amended Complaint, alleging an undifferentiated violation of the CFAA, 18 U.S.C. § 1030, is wholly deficient as it fails to specify the CFAA prohibition

¹ Because corporations act solely through officers, representatives and employees, *e.g.*, *Metro Premium Wines v. Bogle Vineyards, Inc.*, 2011 WL 5403635, *4 (N.D. Ill. Nov. 8, 2011), and multiple counts of the Complaint allege conspiracy and/or aiding and abetting, under which Comcast and its “Corporate Representative” cannot be held separately liable, *e.g.*, *Window World of Chicagoland, LLC, v. Window World, Inc.*, 2012 WL 1886467, *4 (N.D. Ill. May 23, 2012), we refer herein to all Comcast Defendants as “Comcast,” though all arguments are on behalf of each of them individually as well.

² Though the Counts number I through X, there is no Count IX in the Amended Complaint.

purportedly violated, allege any intent by Comcast to harm any computer, or to engage in, or bring about, any violation, or properly plead both damage and loss.

2. Lightspeed's unjust enrichment claim in Count IV also fails inasmuch as Illinois does not recognize a separate cause of action for unjust enrichment. *Pearson v. Garrett-Evangelical Theological Seminary, Inc.*, 790 F.Supp.2d 759, 769 (N.D. Ill. 2011).

3. Lightspeed fails to state causes of action for civil conspiracy or aiding and abetting in Counts VII and X, which are otherwise precluded by the Communications Decency Act ("CDA"), which grants ISPs like Comcast immunity that prevents holding them civilly liable as the publisher of statements or transmissions by third parties using their service. 47 U.S.C. § 230(c).

4. Lightspeed fails to state an ICFA cause of action in Count VIII because Lightspeed is not a consumer and lacks standing to bring an ICFA claim against Comcast, *Walsh Chiropractic, Ltd. v. Stratacare, Inc.*, 752 F.Supp.2d 869, 913 (S.D. Ill. 2010), and Lightspeed's allegations do not meet the applicable heightened pleading standard of Rule 9(b). Fed. R. Civ. P. 9(b); *Windy City Metal Fabricators & Supply, Inc. v. CIT Tech Fin. Servs.*, 536 F.3d 663, 670 (7th Cir. 2008).

5. All of Lightspeed's state law claims against Comcast are disguised claims for copyright infringement and are thus preempted by the Federal Copyright Act, 17 U.S.C. §§ 101, *et seq.*, and must be dismissed. 17 U.S.C. § 301(a); *Seng-Tiong Ho v. Taflove*, 648 F.3d 489, 500 (7th Cir. 2011).

WHEREFORE, on account of the foregoing, the Court should dismiss, with prejudice, all claims against Comcast in each of Counts I, IV, VII, VIII, and X of Lightspeed's Complaint for failure to state a claim.

Dated: August 29, 2012

Respectfully submitted,

By: /s/ John D. Seiver

John D. Seiver (admitted *pro hac vice*)
Ronald G. London
DAVIS WRIGHT TREMAINE, LLP
1919 Pennsylvania Ave., NW
Suite 800
Washington, DC 20006
(202) 973-4200

Andrew G. Toennies
LASHLY & BAER, P.C.
20 East Main Street
Belleville, Illinois 62220-1602
(618) 233-5587

*Attorneys for Defendants Comcast Cable Communications,
LLC and Comcast Corporate Representative #1*

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of August, 2012, I electronically filed the foregoing Motion to Dismiss, Memorandum of Law, and Exhibits thereto with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record as listed below:

Kevin T. Hoerner

Becker, Paulson et al.
5111 West Main Street
Belleville, IL 62226
618-235-0020
Email: KTH@bphlaw.com

Paul A. Duffy

Prenda Law, Inc.
161 N. Clark Street, Suite 3200
Chicago, IL 60601
312-880-9160
Email: paduffy@wefightpiracy.com

Bart Westcott Huffman

Locke Lord LLP - Austin
100 Congress Avenue
Suite 300
Austin, TX 78701
512-305-4746
Fax: 512-391-4741
Email: bhuffman@lockelord.com

Troy A. Bozarth

HeplerBroom LLC - Edwardsville
130 North Main Street
P.O. Box 510
Edwardsville, IL 62025
618-656-0184
Fax: 618-656-1364
Email: troy.bozarth@heplerbroom.com

/s/ John D. Seiver
John D. Seiver