



HIRSCHLER FLEISCHER

August 20, 2007
Page 2

bc: CAG Productions, LLC (w/ encl.)

#1426499 v1 077777.77777

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF HENRICO

CIRCUIT CITY STORES, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. CL07-1919
)	
JOHN DOE, a.k.a. Speedy1961,)	
)	
presently an unknown individual,)	
)	
Defendant.)	

OBJECTION AND MOTION TO QUASH SUBPOENA

CAG Productions, LLC (“CAG”), by counsel, and pursuant to Code § 8.01-407.1 and Rule 4:9(c) of the Rules of the Supreme Court of Virginia, makes a special appearance herein for the sole purpose of objecting to and moving to quash a subpoena *duces tecum* issued to CAG by plaintiff Circuit City Stores, Inc.

1. On July 16, 2007, Circuit Cit filed a Complaint against John Doe, a.k.a. “Speedy1961” (“Doe”), seeking damages and injunctive relief allegedly resulting, in part, from Doe’s posting of information to a website maintained by CAG.
2. CAG is a New York limited liability company with principal offices in Merrick, New York and Tokyo, Japan. CAG does not do business in Virginia nor does it have any “minimum contacts” with Virginia sufficient to subject it to the jurisdiction of a Virginia Court. CAG facilitates a website at the address www.cheapassgamer.com which is administered in Tokyo, Japan and hosted in Lansing, Michigan.

3. On August 2, 2007, CAG was served with a copy of a subpoena *duces tecum* requesting information “concerning the identity of . . . forum user name Speedy 1961” and all information concerning a posting made to the CAG website by this user on July 5, 2007 (the “Subpoena”). A copy of the Subpoena is attached as **Exhibit A**.

4. Circuit City has no authority to subpoena the requested information from CAG without a commission from this Court to a New York court issued pursuant to the Uniform Foreign Deposition Act, Code § 8.01-411 and -412, showing that the information is necessary and proper to the administration of justice in the pending matter. Moreover, unless and until a New York court accepts such a commission from this Court and finds that the extension of comity is proper, Circuit City’s attempt to subpoena records from CAG is improper. N.Y. CPLR § 3102(e); *Ayliffe & Cos. v. Canadian Chem. Corp. of California*, 564 N.Y.S.2d 297 (1st Dept. 1990); *Kirkland & Ellis v. Chadbourne & Parke LLP*, 670 N.Y.S.2d 753 (Sup. Ct. New York County 1998).

5. The Subpoena served upon CAG also does not meet the minimum requirements of Code § 8.01-407.1, which must be strictly followed to obtain information about a website user’s identity. Specifically, none of the supporting materials listed in Code § 8.01-407.1(A)(1)(a) through (f) were included with the Subpoena as required by Code § 8.01-407.1(A)(2), nor were two (2) copies of the Subpoena and supporting materials served on CAG);

6. CAG reserves the right to further challenge the Subpoena on its merits after the procedural deficiencies noted above have been addressed by this Court.

7. Upon best information and belief, to date the identity of Doe has not been disclosed in any fashion by CAG or others.

WHEREFORE, CAG requests that Plaintiff's subpoena be quashed on the grounds it flaunts the necessary and proper procedures required by Va. Code § 8.01-407.1, -411, -412 as well as Rule 4:5(a)(1) and N.Y. CPLR § 3102(e) and fails to state a tortious action sufficient to compel the disclosure of Doe's identity under § 8.01-407.1.

Respectfully submitted,

CAG PRODUCTIONS, LLC

By: 

Counsel

Chandra D. Lantz (VSB No. 37245)
Luder F. Milton (VSB No. 71281)
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Telephone: 804/771-9530
Facsimile: 804/644-0957

Counsel for CAG Productions, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, to the following, this 10 day of August, 2007.

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
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Counsel for Plaintiff, Circuit City Stores, Inc.

A handwritten signature in black ink, appearing to be "Julia S. [unclear]", written over a horizontal line.

SUBPOENA DUCES TECUM (CIVIL) –
ATTORNEY ISSUED VA. CODE §§ 8.01-413, 16.1-89, 16.1-265;
Commonwealth of Virginia Supreme Court Rules 1:4, 4:9

Case No. 07-1919

HEARING DATE AND TIME

Henrico County Circuit Court
4301 E. Parham Road, Richmond, VA 23228
ADDRESS OF COURT

CIRCUIT CITY STORES, INC. v. JOHN DOE, aka Speedy1961

TO THE PERSON AUTHORIZED BY LAW TO SERVE THIS PROCESS:

You are commanded to summon

CAG PRODUCTIONS, LLC
NAME

XXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXX

TO the person summoned: You are commanded to make available the following documents, information and tangible things at the offices of, **McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219** on **AUGUST 31, 2007:**

all documents, information or tangible things mentioning or in any way concerning the identity of the holder and/or user of the CheapAssGamer.com forum user name Speedy1961, including but not limited to any and all documents, information or tangible things (including IP addresses used by Speedy1961), concerning electronic communications or messages posted on July 5, 2007 at 4:20PM EDT by Speedy1961 to the CheapAssGamer.com "Video Game Deals" forum in a thread entitled "Target/CC/Best Buy Prices: 7/15/07 - 7/21/07 ** Uber Thread **."

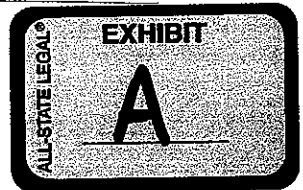
You are further commanded to permit such party or someone acting in his or her behalf to inspect and copy, test or sample such documents, information tangible things in your possession, custody or control.

This Subpoena Duces Tecum is issued by the attorney for and on behalf of Circuit City Stores, Inc.

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July 31, 2007
DATE ISSUED

Korot Wajler
SIGNATURE OF ATTORNEY



Notice to Recipient: See next page for further information.

RETURN OF SERVICE

TO the person summoned:

If you are served with this subpoena less than 14 days prior to the date that compliance with this subpoena is required, you may object by notifying the party who issued the subpoena of your objection in writing and describing the basis of your objection in that writing.

TO the person authorized to serve this process: Upon execution, the return of this process shall be made to the clerk of court.

NAME:	
ADDRESS:	
.....	
<input type="checkbox"/> PERSONAL SERVICE	Tel. No.
Being unable to make personal service, a copy was delivered in the following manner:	
<input type="checkbox"/> Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above: 	
<input type="checkbox"/> Posted on front door or such other door as appear to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)	
<input type="checkbox"/> not found, Sheriff
..... DATE	By....., Deputy Sheriff