

**Exhibit A**

<b>No.</b>	<b>BSI's Claim</b>	<b>Evidence Cited</b>	<b>Evidence In The Record</b>
(1)	"All of these e-mails contain a link to "clickbank.net" or "clickbank.com, or a link that redirects the visitor to the marketplace." (Opposition at 4)	None	The Emails contain hoplinks that direct a consumer's web browser to a independent third-party website maintained by the product publisher. <u>See</u> Johannsen Dep. at 15:15-17 (publisher products are " <u>actually sold from the publisher's website</u> " (emphasis added)).
(2)	Products sold through ClickBank are "largely e-books and software programs related to Internet marketing, including bulk e-mail services[.]" (opposition at 5)	Johannsen Dep. at 174	The cited deposition testimony concerned a <u>single</u> product allegedly sold through ClickBank. BSI offers no evidence that products sold through ClickBank "largely" pertain to Internet marketing or that there is anything inherently suspect about Internet marketing or "bulk email." <u>See</u> Keynetics' Reply, Part II.B.
(3)	Affiliates promote traffic by driving traffic to the Marketplace, which, like Amazon, includes hundreds of vendor sites." (Opposition at 6)	Johannsen Dep. at 181	Ms. Johannsen testified that affiliates direct consumers to <u>publisher</u> websites, not the ClickBank marketplace. Johannsen Dep. at 181. <u>See also</u> Johannsen Dep. at 15:10-17 ("Q: . . . So the Marketplace is the vehicle through which the electronic publications that you've already described are sold; is that correct? A. That's where they're listed on the ClickBank website. <u>They're actually sold</u>

			<p>from the publisher’s website. . . .” (emphasis added)); Johannsen Dep. at 83:1-5 (“Q: . . . Has ClickBank ever sold products of anyone’s from a ClickBank website? A. We have the ClickBank marketplace, which leads to publisher websites, but no, <u>we haven’t sold anything directly off clickbank.com . . . .</u>” (emphasis added)).</p>
(4)	<p>“Affiliates ‘drive traffic’ to ClickBank by broadcasting advertisements containing ‘hoplinks,’ which are hyperlinks containing the affiliate’s ClickBank ID.” (Opposition at 6)</p>	<p>Plaintiff’s Exhibit 72 (“Hoplink FAQ”)</p>	<p>Affiliates promote products offered for sale by publishers. They do not “drive traffic” to the ClickBank website – rather, as explained above, affiliates attempt to direct consumers to <u>publisher websites</u> (not the ClickBank website). See No. 2, above.</p>
(5)	<p>“Some of the hoplinks are ‘cloaked’ to with characters that conceal the affiliate ID and the word, ‘clickbank,’ but nevertheless take the viewer to a vendor at the Marketplace.” (Opposition at 7)</p> <p>“Keynetics also encourages its affiliates to use ‘cloaked’ hoplinks, which conceal the affiliate IDs and the word, ‘clickbank.’”</p>	<p>Plaintiff’s Exhibits 82, 130, and 149</p>	<p>Plaintiff’s Exhibits 82, 130, and 149 have nothing to do with the subject matter of this statement. “Cloaking” is simply a colloquial term for redirecting a consumer’s web browser from one URL to another. It is not inherently suspicious, and, in any event, has nothing to do with sending commercial email.</p>
(6)	<p>“This concealment helps evade spam filters set to screen for unwanted email from ‘ClickBank’ and its affiliates.” (Opposition at 6)</p>	<p>None</p>	<p>There is no evidence supporting this preposterous statement.</p>
(7)	<p>“At least 2,000 of the emails at issue contain cloaked hoplinks.”</p>	<p>Plaintiff’s Exhibit 165 (Wagner</p>	<p>Wagner states that “2,235 of the emails at issue</p>

	(Opposition at 6)	“Expert” Report at 4-7)	<p>promote ‘ClickBank’ directly” and goes on to unreasonably conclude that these emails must contain “cloaked” hoplinks. First, Wagner cites a single email, which, on its face, does not promote ClickBank – rather, it appears to promote a product that will help people “promote over 6,257 products in the ClickBank marketplace” on their websites.</p> <p>Wagner Report at 4 (citing Plaintiff’s Exhibit 169). Second, even if an email promoted the ClickBank service – and BSI offers not a single example of such an email – Wagner offers no basis to conclude that such an email contains a “cloaked” hoplink. This is pure speculation, devoid of probative evidence, and should be disregarded.</p>
(8)	Keynetics “receives a high volume of spam-based complaints . . . .” (Opposition at 10)	None	There is no evidence for this statement in the record.
(9)	Keynetics “admits that affiliates have been caught abusing bulk email in their advertising activities.” (Opposition at 11 n.10)	Johannsen Dep. at 181	The cited deposition testimony has nothing to do with this statement. Pursuant to the ClickBank Client Contract, Keynetics reserves the right to terminate affiliate accounts based on complaints about commercial email and does in fact do so. <u>See</u> Johannsen Dep., Ex. 2

			(list of 777 terminated accounts, including approximately 77 accounts terminated based on complaints about commercial email).
(10)	Opposition, Part II.H, “Keynetics’ Control Over Its Affiliates”	Plaintiff’s Exhibits 155, 157, 160 (purported versions of ClickBank policies)	The cited exhibits <u>are not</u> from the ClickBank website; rather, they are unauthenticated, hearsay from a third party website, “www.archives.org,” and should be disregarded.
(11)	Keynetics has advanced the same jurisdictional arguments as BSI in other cases. (Opposition at 18)	Plaintiff’s Exhibit 138 (Keynetics Inc., et al. v. R U On the Net, Inc., District of Idaho Case No. 1:06-00312-BLW)	This document is a complaint filed by Keynetics in a trademark infringement and unfair competition suit. Keynetics alleges that the defendant’s unauthorized use of the term “KEYNETLINKS” caused Keynetics a direct tortious injury in Idaho. (See <u>id.</u> , ¶¶ 18-21.) Unlike BSI, Keynetics does not advance a nebulous and unprecedented vicarious jurisdiction theory, based on hollow allegations of “conspiracy,” “assistance,” or “agency.”