

WAL★MART

WAL★MART STORES, INC., LEGAL DEPT.

BENTONVILLE, AR 72716-8095

PHONE: [REDACTED]

FAX: [REDACTED]

[REDACTED]
Sr. Division Counsel, Intellectual Property

[REDACTED]
Sr. Legal Assistant

November 15, 2002

VIA Fax (815-623-3679)

Tim Storm
Fatwallet.com

Re: Illegal Posting of Wal-Mart Thanksgiving Circular

Dear Mr. Storm:

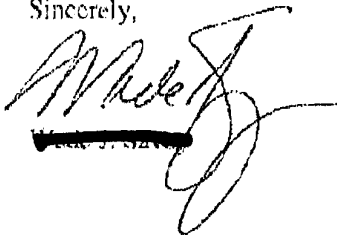
I am in-house intellectual property counsel for Wal-Mart Stores, Inc. I understand that you have spoken with [REDACTED] of Wal-Mart regarding the illegal posting of our Thanksgiving Circular on the Fatwallet.com website and that you are willing to remove the Circular upon receipt of this fax.

I confirm that the posting of the Circular violates Wal-Mart's intellectual property rights in the Circular. I therefore request that you remove the Circular immediately from your website.

As you discussed with [REDACTED], we also request that you provide us with any identifying information you have for the person who posted the Circular, including name, contact information, and IP address. Please send that information directly to [REDACTED] attention at [REDACTED]@wal-mart.com.

Thank you for your prompt response to our concerns.

Sincerely,


[REDACTED]

WAL★MART

WAL★MART STORES, INC., LEGAL DEPT.

BENTONVILLE, AR 72716-8095

PHONE: [REDACTED]

FAX: [REDACTED]

WALDE J. SAVOY,
Sr. Division Counsel, Intellectual Property

[REDACTED]
Sr. Legal Assistant

November 18, 2002

VIA Fax (815-623-3679)

Tim Storm
Fatwallet.com

Re: Illegal Posting of Wal-Mart Thanksgiving Circular

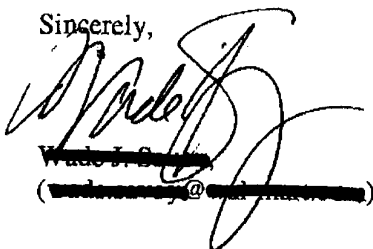
Dear Mr. Storm:

In furtherance of my fax dated November 15, 2002, I would like to thank you for your cooperation regarding the posting on your website (at thread ID 124163 and posted on November 13, 2002, at 12:04 PM, by "TheGMan") that infringes Wal-Mart's intellectual property in its Thanksgiving Circular, including its copyrights.

In accordance with the Digital Millennium Copyright Act, 17 U.S.C. § 512(c), I hereby provide you with official statutory notice of the infringement on your website (assuming without admitting that your company qualifies for the safe harbor provided by 17 U.S.C. § 512(c)). I have a good faith belief that use of the material described above in the manner complained of is not authorized by Wal-Mart, its agent, or the law. The information in this notification is accurate, and under penalty of perjury, I confirm that I am authorized to act on behalf of Wal-Mart, owner of the rights infringed.

Soon our outside counsel should contact you with a subpoena issued under 17 U.S.C. § 512(h) directing you to reveal the identity of the infringer who posted the Thanksgiving Circular. We would appreciate your prompt compliance with the terms of that subpoena.

Sincerely,


Walde J. Savoy
([REDACTED]@[REDACTED])

Tim Storm

From: "[REDACTED]" <[REDACTED]>
To: <tim@fatwallet.com>
Sent: Friday, November 22, 2002 12:47 PM
Attach: Storm Concepts Subpoena.pdf
Subject: Subpoena to Storm Concepts LLC regarding copyright infringement occurring on Fatwallet.com

Mr. Storm,

I represent Wal-Mart Stores, Inc. ("Wal-Mart"). By letter dated November 18, 2002, [REDACTED], who is Senior Division Counsel, Intellectual Property for Wal-Mart, provided you notification under the Digital Millennium Copyright Act ("DMCA") of copyright infringement occurring on the FatWallet.com web site that your company operates. Attached to this email, please find an electronic copy of a subpoena that was issued by the United States District Court for the Northern District of Illinois, Western Division, directing Storm Concepts LLC to produce information sufficient to identify the individual who posted the infringing material by no later than November 27, 2002. Please advise if you do not intend to respond unless you receive personal service of the subpoena, so that we can make appropriate arrangements. In any event, if you have not contacted us by the close of business (EST) Monday, we will take steps to effect service on Tuesday.

We will accept a response to the subpoena via email, if you prefer to respond in that manner. Please contact me if you have any questions, provided that you have not retained your own counsel. In any event, you should be aware that I will continue to represent Wal-Mart and only Wal-Mart throughout this process.

Thank you for what I expect will be prompt and complete compliance.

[REDACTED]
Kirkpatrick & Lockhart LLP
Henry W. Oliver Building
[REDACTED]
Pittsburgh, PA 15222

[REDACTED]
Phone: (412) [REDACTED]
Fax: (412) [REDACTED]

<<Storm Concepts Subpoena.pdf>>

Issued by the
United States District Court

NORTHERN DISTRICT OF ILLINOIS

SUBPOENA IN A CIVIL CASE

In re Anonymous copyright infringement

CASE NUMBER:¹ **02050454**

TO:
Storm Concepts LLC d/b/a Fatwallets.com
Mr. Tim Storm, President
11704 Main Street
Roscoe, IL 61073

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Information sufficient to identify the alleged infringer who posted the material described in the notification attached hereto, including for example that person's name, address, telephone number, and email address.

PLACE Jeffrey M. Stuebel Kirkpatrick & Lockhart LLP Henry W. Oliver Building 555 Smithfield Street Pittsburgh, PA 15222 Facsimile: 412-355-6501	DATE AND TIME: November 27, 2002, 12:00 pm EST
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YOU ARE COMMANDED to produce and permit inspection of the following premises at the date and time specified below.

¹ If action is pending in district other than district of issuance, state district under case number.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

Issuing Officer Signature and Title (Indicate if attorney for Plaintiff or Defendant) Date 11-21-02
 MICHAEL W. DOBBINS, CLERK
 Issuing Officer's Name, Address, and Phone Number
 Crystal Bankman, Reg. Clerk

(See Rule 45, Federal Rules of Civil Procedure Parts C & D on Reverse)

AO 88 (Rev. 1/94) Subpoena in a Civil Case

PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ DATE _____ SIGNATURE OF SERVER _____ ADDRESS OF SERVER _____

Rule 45, Federal Rules of Civil Procedure, Parts C & D

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for

deposition, hearing or trial.

(2)(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection is made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production

shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

GRAY MATTERS

1928 Calvert St. NW, Suite 6
Washington, DC 20009

tel. 202-265-2738
fax. 202-265-0954

www.megangray.com
mg@megangray.com

Via Fax

November 27, 2002

[REDACTED]
Kirkpatrick & Lockhart
Henry W. Oliver Building
[REDACTED]
Pittsburgh, PA 15222

Re: Walmart DMCA Subpoena

Dear [REDACTED]

Along with the Samuelson Law, Technology and Public Policy Clinic, I have recently been retained to represent Mr. Tim Storm and Storm Concepts LLC in connection with the DMCA subpoena that you served on him yesterday.

We are contemplating a Motion to Quash that subpoena. In accordance with the Local Rules for the Northern District of Illinois, we need to discuss whether it is possible to resolve our differences regarding this subpoena. In particular, we request that Walmart withdraw the subpoena. If Walmart does not agree to withdraw the subpoena, we will proceed with the Motion to Quash.

We will call you shortly to discuss this matter.

Sincerely,


[REDACTED]
GRAY MATTERS

cc: Deirdre Mulligan, Esq. (Samuelson Clinic)
Tim Storm

1928 Calvert St. NW, Suite 6
Washington, DC 20009

GRAY MATTERS

tel. 202-265-2738
fax. 202-265-0954

Via Fax

www.megangray.com
mg@megangray.com

November 27, 2002

~~██████████~~
Kirkpatrick & Lockhart
Henry W. Oliver Building
~~██████████~~
Pittsburgh, PA 15222

Re: Walmart DMCA Subpoena

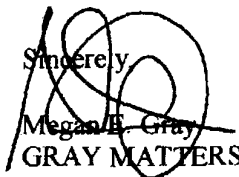
Dear ~~██████████~~

Thank you for your recent phone call. I am sending this letter in confirmation of our agreement. If this letter does not accurately state our agreement, please contact me immediately.

Walmart has not decided whether it will withdraw the subpoena. We have agreed to postpone the requisite "meet and confer" until Tuesday, December 3rd.

In return, Walmart agrees that my client will have until Tuesday, December 10th to file a Motion to Quash. Walmart further agrees that it will not file a Motion to Compel prior to the Motion to Quash to be filed on December 10. Finally, Walmart agrees that it will not oppose the Motion to Quash on the grounds that it is untimely.

On a separate note, during our "meet and confer," please be prepared to discuss whether your client will agree to forego DMCA notices and subpoenas over similar postings in the future. Furthermore, I would appreciate it if you could explore with your client, prior to our "meet and confer," whether it is willing to pay damages and attorneys' fees pursuant to DMCA Sections 512(f)(1) and (2), which we contend must be paid regardless of whether Walmart withdraws the subpoena.

Sincerely,

Megan E. Gray
GRAY MATTERS

cc: ~~██████████~~ (Kirkpatrick & Lockhart)
Deirdre Mulligan, Esq. (Samuelson Clinic)
Tim Storm (FatWallet)