

Noted Case

Jason Kalish v. Leapfrog Online

Illinois Circuit Court of Cook County Case No. 03 L 11695: JASON KALISH, an individual v. LEAPFROG ONLINE CUSTOMER ACQUISITION, LLC, a Delaware limited liability company, DAVID HUSAIN, an individual, SCOTT ESKAMP, an individual, and JASON WADLER, an individual.

Digest of November 15, 2005 Public Record by Judge Ronald Bartkowicz

Plaintiff Jason Kalish sued Leapfrog Online after he left the company claiming that the company owed him \$781,632 in commissions and salary. Forensicon was hired to inspect Jason Kalish's work computer and found a "zip" file of company data that had been e-mailed outside the company on Jason Kalish's last day of work. Leapfrog Online then sued Jason Kalish for misappropriation of a trade secret.

After several months, Jason Kalish admitted to e-mailing a "zip" file to his home computer but refused to allow inspection of that machine. Leapfrog Online sought a court order compelling an inspection of Jason Kalish's home computer, but Jason Kalish objected to the choice of Forensicon as the independent expert since Leapfrog already used them in this case.

On August 11, 2005 Defendants' attorney, Peter Land of Babbitt & Melton, LLP, filed their Reply In Support of Motion to Compel, stating:

"Finally, there is no reason not to select Forensicon. The company routinely works as a neutral third party examiner, is practiced at complying with protective orders, and fully understands the need to protect a producing party's privacy... There is no reason to suspect that Forensicon would disclose non-responsive materials to Defendants or anyone else... Plaintiff's true concern appears to be that Forensicon's experience with Mr. Jason Kalish's other deceptive computer conduct will result in a more thorough, effective search for responsive documents. This is a reason to select Forensicon, not reject it."

Decision

Cook County Circuit Court Judge Ronald Bartkowicz ordered Forensicon to perform a forensic examination of Jason Kalish's home computer to establish whether Plaintiff left the company with Leapfrog Online property. Following the order, Forensicon provided a report detailing their findings on January 19, 2006. Shortly after Forensicon's report, the parties agreed to dismiss all claims without any compensation to Jason Kalish or his counsel. As part of the settlement, Jason Kalish paid Leapfrog Online a significant sum of money.

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