

Zango's Federal Lawsuit Against Epic Cash Dismissed

XBIZ NEWS REPORT

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SEATTLE — A federal judge on Friday agreed with affiliate program Epic Cash and dismissed claims brought on by online advertising company Zango Inc.

The legal dispute began after Epic Cash filed suit in California against Zango and the owners of AdultFriendFinder.com in August for unfair business practices, among others, on the grounds that Zango's "wrongful display" of popups and other advertisements "blocked content on [Epic Cash's] websites for the purpose of promoting Zango's clients, who offered services directly competitive to [Epic Cash's]," according to court documents.

Zango responded with a counter-lawsuit, and Epic Cash submitted a motion to U.S. District Court in Seattle in late November.

In a stinging rebuke, U.S. District Judge Ricardo S. Martinez said that Zango's complaint was so broad that it would have amounted to an attempt to pre-empt all of Epic's claims in the California action.

"Consideration of this complaint would impermissibly entangle this court in needless determinations of state law, possibly both Washington and California law under the 'violates no right' language of the request for relief," he wrote.



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Martinez also said that Zango's suit at federal court in Seattle amounted to "forum-shopping."

"The court notes the fact that Zango filed this suit just six days after counsel was shown the proposed California complaint as an invitation to discuss settlement," Martinez wrote. "This can only be viewed as a race to the courthouse in an effort to gain a more favorable forum. Zango concealed from Epic the fact that the suit had been filed for more than five months, thereby stalling the filing of Epic's complaint in California."

Epic Cash attorney Gary Kaufman told XBIZ he agreed with the judge.

"[This was] a blatant attempt to gain a hometown advantage," said Kaufman of Los Angeles-based law firm Kaufman Law Group. "Zango deliberately concealed this action and then used it as an ace in the hole to preempt Epic Cash's California claims and keep the litigation in its backyard."

"Epic Cash can now move forward with its suit against Zango and AdultFriendFinder in the proper forum."

In the California case, filed at Santa Clara County Superior Court, Epic Cash claims that once a computer is infected with Zango adware, the Zango Search Assistant monitors the user's browser and collects keywords that are then used to trigger pop-up ads.

In that suit, AdultFriendFinder, a competitor of Epic Cash's EpicCams.com website, is accused of having used Zango's services to have "diverted traffic away from Epic Cash sites and converted Epic Cash's business to their benefit," by "taking advantage of plaintiff's marketing efforts," presumably when potential consumers are inputting certain keywords or searching for specific sites, which subsequently leads to Zango pop-up ads.

Epic Cash attorney Colin Hardacre, of Kaufman Law Group, told XBIZ that the California case was stayed pending the federal court's decision.

"Now that the Washington case has been dismissed we can now move ahead aggressively in discovery," he said. "We have depositions pending, of both Zango and AdultFriendFinder, including Zango's president, Keith Smith. They also owe us written discovery."

"Gary [Kaufman] and I both feel that Epic Cash's chances of success in the California case are very good — we don't take losing cases."

Epic Cash has asked for \$750,000 in damages in the California case.

Zango spokesman Steve Stratz did not return XBIZ call for comment by post time.