

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

OCT 08 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

MARK J. FERGUSON, doing business as  
Whew.com,

Plaintiff - Appellant,

v.

ACTIVE RESPONSE GROUP, a New  
York company,

Defendant

QUINSTREET, INC., a California  
corporation,

Defendant - Appellee.

No. 08-35709

D.C. No. 3:07-cv-05378-RJB

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Robert J. Bryan, District Judge, Presiding

Submitted October 6, 2009\*\*  
Seattle, Washington

Before: D.W. NELSON, SILVERMAN and IKUTA, Circuit Judges.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Plaintiff Mark J. Ferguson appeals the district court's grant of partial summary judgment in favor of Defendant Quinstreet, Inc. We have jurisdiction under 28 U.S.C. § 1291. We review the summary judgment decision de novo, *Gordon v. Virtumundo, Inc.*, 575 F.3d 1040, (9th Cir. 2009), and we affirm.

Ferguson lacks standing to pursue his claim under the CAN-SPAM Act, codified at 15 U.S.C. § 7701 *et seq.* *See Gordon*, 575 F.3d at 1048–57 (holding that a plaintiff who merely provided e-mail accounts and hosted a website on leased server space did not have standing under CAN-SPAM). In addition, the district court correctly concluded that Ferguson's state law claims under Wash. Rev. Code § 19.190.010 *et seq.* and Wash. Rev. Code § 19.86.010 *et seq.* are preempted by CAN-SPAM. *See Gordon*, 575 F.3d at 1057–66.

AFFIRMED.