

IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

ROBERT H. BRAVER, an individual )  
Plaintiff, )  
vs. )  
AMERIQUEST MORTGAGE COMPANY, INC., d/b/a )  
AMERIQUEST MORTGAGE CORPORATION, INC. )  
its AGENTS, EMPLOYEES, and ASSIGNS, et al, )  
Defendants. )

No. CJ-2004- 1158 Z

STATE OF OKLAHOMA } S.S.  
CLEVELAND COUNTY }  
FILED In The  
Office of the Court Clerk

P E T I T I O N

COMES NOW the Plaintiff by and through his attorney, Michael R. McKee, and for

his cause of action against the Defendants Ameriquest Mortgage Company, Inc. and Ameriquest Mortgage Corporation, Inc., its Agents, Employees, and Assigns, et al, alleges and states:

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Rhonda Hall, Court Clerk  
DEPUTY

1. Plaintiff is an "Electronic Mail Service Provider" as defined under Title 15, Oklahoma Statutes, Sec. 776.4, whose facilities are located in Norman, Cleveland County, Oklahoma.
2. The Defendant is a domesticated Oklahoma corporation doing business in this State.
3. This action is brought under Title 15, Oklahoma Statutes, Section 776.1 et seq, Fraudulent Use of Electronic Mail, wherein Defendant Ameriquest, by and through its businesses sent or caused to be sent the hereinafter listed electronic mail messages including fraudulent message headers falsely indicating various points of origin and/or transit paths in violation of Title 15, O.S. Sec. 776.1 – 776.4 on the following dates (See Exhibit A):
  - a. July 7 and 31, 2003;
  - b. August 3, 5, and 14, 2003;
  - c. June 10, 11, 13, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30. 2004;
  - d. July 1 and 2, 2004;

constituting a total of 25 separate and distinct days.

4. Defendant **Ameriquest** by and through its businesses sent additional electronic mail advertisements to and through Plaintiff's server facilities falsely indicating various points of origin or transit paths and/or used a third party's internet address or domain name without the third party's consent for the purpose of transmitting electronic mail in a way that makes it appear that the third party was the sender of such e-mail, all in violation of **Title 15, Oklahoma Statutes, Sec. 776.5 – 776.7** on the following dates (See Exhibit "B"):

- a. June 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, 2004;
- b. July 1 and 2, 2004

constituting a total of **15** separate and distinct days.

5. On information and belief, Defendants are engaged in a pattern and practice of:
- a. Sending unsolicited commercial e-mail messages with the knowledge that the transmission of such messages are a violation of the Acceptable Use Policies of virtually all Internet and electronic mail service providers worldwide;
  - b. Sending unsolicited commercial e-mail messages with the knowledge that they contribute to the overwhelming flood of unwanted, nuisance messages that present a major burden for Internet and electronic mail service providers and individual users;
  - c. Sending unsolicited commercial e-mail messages with the knowledge that if such messages were transmitted from the IP (Internet Protocol) address space assigned to them, their IP address ranges would very quickly be listed on one or more block lists, resulting in their e-mails being blocked from a large proportion of their intended recipients;
  - d. Utilizing fraudulent techniques to disguise the origin of the messages to make their e-mails appear to come from random locations and/or innocent third parties in a deliberate attempt to thwart the efforts of Plaintiff and other electronic mail service providers to mitigate their damages by simply blocking traffic from the senders of such unwanted, nuisance messages;
  - e. Utilizing fraudulent techniques including adding random characters, words, and/or sentences to the e-mail subject lines and/or bodies, and/or obfuscating the nature of the message by misspelling words or substituting various symbols for letters, in a deliberate attempt to engage in an escalating "arms war" with the Plaintiff and other electronic mail service providers who attempt further methods to mitigate their damages by employing more sophisticated analysis and filtering mechanisms.

6. All of the e-mail messages herein listed consumed Plaintiff's finite server and network resources.

7. All of the e-mail messages herein listed contributed to the considerable burden on Plaintiff and Plaintiff's clients of sorting through unwanted messages to find legitimate e-mail messages without missing or inadvertently discarding desirable communications.

8. All of the e-mail messages herein listed contributed to the considerable burden on Plaintiff in terms of server maintenance due to unwanted and fraudulent e-mails that thwart automated blocking methods.

9. Actual damages exceed One Dollar (**\$1.00**) based upon the following:

- a. Defendants' e-mails made it more difficult for Plaintiff and his clients to read and respond to legitimate e-mails by contributing to the clutter of unwanted, unsolicited messages in Plaintiff's and Plaintiff's clients' mailboxes.
- b. Defendants' e-mails consume Plaintiff's and Plaintiff's customers' time to look at and open.
- c. Defendants' e-mails contribute in large part to what has become a relentless tide of unwanted and unsolicited e-mail messages that bury the electronic mailboxes of the Plaintiff and Plaintiff's clients, often to the point that e-mail service becomes totally useless.
- d. In an effort to provide some remediation, Plaintiff has been forced to establish e-mail filtering and blocking protocols. Such protocols take time on an ongoing basis to maintain, and consume storage space, additional network traffic, and CPU time.
- e. Defendants' e-mails generate log entries. Logs must be pruned and/or archived more often due to the relentless tide of unwanted and unsolicited e-mail messages.

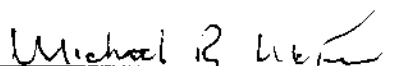
10. In lieu of actual damages for the fraudulent electronic mail messages listed in Paragraph 3, Plaintiff is entitled to and elects to claim statutory damages of **\$25,000.00** per each day pursuant to **Title 15 O.S. Sec. 776.2(C)** which totals not less than **\$625,000.00**.

11. In lieu of actual damages for the fraudulent unsolicited commercial electronic mail messages listed in Paragraph 4, Plaintiff is entitled to and elects to claim statutory damages of

\$25,000.00 per each day pursuant to **Title 15 O.S. Sec. 776.7(C)**, which totals an additional \$375,000.00.

12. Plaintiff anticipates that additional fraudulent e-mail messages received on other dates will be attributable to Defendants upon further investigation, and therefore reserves the right to amend the total damages prior to trial.

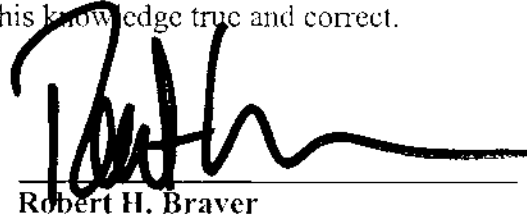
**WHEREFORE**, Plaintiff prays that upon hearing by this Court, the Court find for Plaintiff and against Defendants actual and statutory damages well in excess of \$10,000.00, along with court costs and attorney's fees, and such other relief as this Court deems fair and equitable.

  
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**Michael R. McKee, OBA # 6018**  
**Attorney for Plaintiff**  
**330 W. Gray St., Ste 180**  
**Norman, OK 73069**  
**(405) 360-2322**

VERIFICATION

STATE OF OKLAHOMA        )  
  )  
COUNTY OF CLEVELAND    )

Robert H. Braver, of lawful age, being duly sworn, deposes and says that he is the Plaintiff in the within and foregoing Petition, that he understands the contents thereof, and that the facts and the matters stated therein are to the best of his knowledge true and correct.



Robert H. Braver

My Commission expires Oct. 30, 2004  
Commission # 01017533

  
NOTARY PUBLIC