

IN THE DISTRICT COURT OF CLEVELAND COUNTY  
STATE OF OKLAHOMA

DEC 21 2004

ROBERT H. BRAVER, an individual, )  
Plaintiff, )  
vs. )  
NEWPORT INTERNET MARKETING )  
CORPORATION, and )  
ROBERT ALAN SOLOWAY, Individually, )  
Defendants. )

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Rhonda Hall, Court Clerk  
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No. CJ-2004-19 48 W

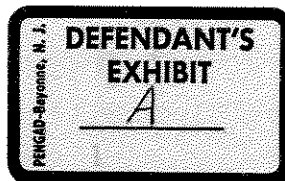
PETITION

COMES NOW the Plaintiff by and through his attorney, Michael R. McKee, and for his cause of action against the Defendants NEWPORT INTERNET MARKETING CORPORATION and ROBERT ALAN SOLOWAY, alleges and states:

1. Plaintiff is an "Electronic Mail Service Provider" as defined under Title 15, Oklahoma Statutes, §§ 776.4 and 776.5, whose facilities are located in Norman, Cleveland County, Oklahoma.

2. Defendant Newport Internet Marketing Corporation is a California corporation operating out of defendant Soloway's apartment residence in Washington State.

3. Defendant Robert Alan Soloway is an individual residing in Washington State who at all times relevant to this case has been the driving force behind the criminal enterprise described herein, and at times has used various Internet domain names in the furtherance of said criminal enterprise for which he was, in his individual capacity, the legal registrant.



4. The Defendants named herein are major Internet spammers, and appear on the well-known and respected **ROKSO** list of the top 200 spammers in the world. In addition to the Oklahoma statutes upon which Plaintiff relies on to seek relief herein, the Defendants' acts and activities constitute criminal offenses under the **CAN-SPAM Act of 2003, 15 U.S.C. § 7701 et seq;** the **Electronic Communications Privacy Act, 18 U.S.C. § 2701 et seq;** the **Computer Fraud and Abuse Act, 18 U.S.C. § 1030 et seq;** and various other state and federal laws.

5. This action is brought under **Title 15, Oklahoma Statutes, §§ 776.1 - 776.4, Fraudulent Use of Electronic Mail,** and **Title 15, Oklahoma Statutes, §§ 776.5 - 776.7, Unsolicited Commercial Electronic Mail,** wherein Defendants **Newport Internet Marketing Corporation** and **Robert Alan Soloway** sent or caused to be sent the hereinafter listed electronic mail messages in violation of said statutes.

6. This Court has general and specific personal jurisdiction over these Defendants as the acts complained of herein constitute acts occurring within the State of Oklahoma as a matter of law as set forth at **15 O.S. § 776.3;** and Defendants unilateral, unlawful, and indeed criminal contacts with Plaintiff's server facilities have been systematic and ongoing since at least August, 2003.

7. 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 between November 1 and December 31, 2003 without including "ADV:" as the first four characters of the subject line;
- d. 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;
- e. Utilizing fraudulent techniques to disguise the origin of the messages to make their e-mails appear to come from random persons, locations and/or the domain names of innocent third parties in a deliberate and transparent 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;
- f. 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.

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

- a. The fraudulent e-mail messages herein listed consumed Plaintiff's finite server and network resources.
- b. Defendants' fraudulent 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.
- c. Defendants' fraudulent e-mails resulted in complaints by Plaintiff's customers to the Plaintiff. Such complaints took time to review and respond to.
- d. Defendants' fraudulent e-mails consume Plaintiff's and Plaintiff's customers' time to look at and open.
- e. Defendants' fraudulent 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.

- f. 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.

9. Defendants transmitted one or more e-mail messages to or through Plaintiff's electronic mail server facilities in violation of the **Fraudulent Use of Electronic Mail** statute, 15 O.S. §§ 776.1 – 776.4, on or about the following dates:

- a. August 14 and 25, 2003
- b. September 27 and 29, 2003
- c. October 29 and 30, 2003
- d. November 21, 22, and 24, 2003
- e. December 3, 8, 9, 18, 19, 22, and 29, 2003
- f. January 31, 2004
- g. February 4, 5, 7, and 27, 2004
- h. March 6, 7, 8, 15, 23, and 31, 2004
- i. April 2, 9, 15, 18, 19, 21, 22, 29, and 30, 2004
- j. May 3, 4, 7, 6, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, and 28, 2004
- k. June 26, 2004
- l. July 3, 5, 9, 12, and 15, 2004
- m. August 8, 22, 24, 27, and 29, 2004
- n. September 2, 6, 11, 12, 13, 14, 17, and 25, 2004
- o. October 2, 3, 5, 6, 7, 11, 13, 15, 17, 19, 21, 22, 23, 25, 26, 27, 28, 29, and 30, 2004
- p. November 7, 14, and 28, 2004
- q. December 6 and 15, 2004

for a total of 99 separate and distinct days.

10. Defendants transmitted one or more additional e-mail messages to or through Plaintiff's electronic mail server facilities in violation of the **Unsolicited Commercial Electronic Mail** statute, 15 O.S. §§ 776.5 – 776.7 on or about the following dates:

- a. December 3 and 22, 2003
- b. February 4, 2004
- c. March 6 and 31, 2004
- d. April 15 and 29, 2004
- e. May 9, 10, 11, 13, 14, 16, 17, 18, 19, 20, 21, 24, 25, and 28, 2004
- f. July 3, 9, 12, and 15, 2004

- g. August 8, 22, 27, and 29, 2004
- h. September 2, 6, 11, 12, 13, 14, and 17, 2004
- i. October 2, 5, 11, 13, 15, 17, 19, 21, 22, 23, 26, 27, 28, and 29, 2004
- j. November 28, 2004
- k. December 15, 2004

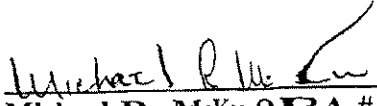
for a total of 52 separate and distinct days.

11. In lieu of actual damages for the fraudulent electronic mail messages listed in Paragraph 6, Plaintiff is entitled to and elects to claim statutory damages of \$25,000.00 per each day pursuant to 15 O.S. § 776.2(C).

12. In lieu of actual damages for the fraudulent unsolicited commercial electronic mail messages listed in Paragraph 7, Plaintiff is entitled to and elects to claim statutory damages of \$25,000.00 per each day pursuant to 15 O.S. § 776.7(C).

13. 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, jointly and severally, actual and statutory damages in excess of \$10,000.00, along with court costs, discovery and attorney's fees, and such other relief as this Court deems fair and equitable.

  
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