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First CAN-SPAM Lawsuit Filed

By Kevin Murphy

The first lawsuit to be filed in the US under its recently introduced CAN-SPAM Act will see a court showdown between a Stanford robotics graduate student and a home improvement guru TV celebrity.

The plaintiff is Hypertouch Inc, is a small company based in Foster City, California. The company's president and principle employee, Joe Wagner, has a history of using local state law to go after spammers and junk faxers.

Hypertouch's attorney John Fallat said: "Joe believes that if spam is not checked it is going to ruin the internet. We're not pleased at all with the new federal law, we think it gives companies a license to spam... but it's the only tool we've got to work with."

Named as defendants are email marketing firm BlueStream Media and BVWebTies LLC, which runs BobVila.com, the online presence of Bob Vila, a TV personality who hosted a home improvement show in the US during the 1980s.

Hypertouch, which says it offers internet hosting and services and thus is permitted to sue under CAN-SPAM, says it received 41 unsolicited commercial emails from BlueStream, on BobVila.com's behalf since the law came into effect January 1 this year.

The company claims that it received some email after having opted out, some that had no valid postal address included, and some that were sent to email addresses harvested from online sources, all in violation of CAN-SPAM.

BobVila.com issued a statement in response to the suit, saying: "We were shocked by this action, and believe that BVWebTies will show that it operated in good faith and in full compliance with existing law."

Chris Bryan, a spokesperson for BlueStream, which does send email advertisements for BobVila.com, said: "We are in full compliance with the law, and we made many changes before January to make sure we were in full compliance."

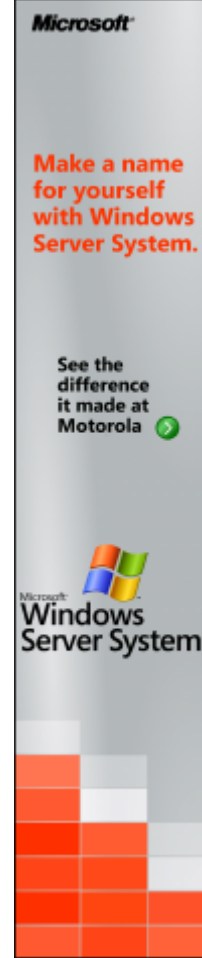
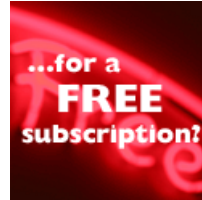
It is believed to be the first time the federal CAN-SPAM Act, which allows attorneys general and ISPs to sue, but denied individual spam victims that right, has been invoked. Previous lawsuits have come under state law or federal fraud law.

It is perhaps ironic that Hypertouch v BobVila.com should be the first suit to be filed, given that CAN-SPAM seemed to envisage the Microsofts and the AOLs of the world suing the pill pushers, rather than a tiny part-time ISP with a handful of clients suing a household name.

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