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## California ISP Files First CAN-SPAM Suit

March 08, 2004

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Hypertouch, a Foster City, CA, Internet service provider, sued the operator of homebuilder Bob Vila's Web site in the alleged sending of fraudulent commercial e-mail to its customers, in what is likely the first lawsuit brought under the CAN-SPAM Act.

Hypertouch's lawsuit named BVWebTies, owner of BobVila.com, and its Sacramento online ad company BlueStream Media in the complaint filed in U.S. District Court in San Francisco on Thursday.

It alleges that the ISP received 41 messages for Vila's newsletter Jan. 1, the day CAN-SPAM took effect. Hypertouch claims the messages contained false header information to obscure their origin. The suit also claims that the defendants ignored three unsubscribe requests; used at least one harvested e-mail address; and sent 57 messages using a dictionary attack. It also alleges that messages did not contain a physical address, as required by the federal anti-spam law.

The lawsuit asks for the court to order BVWebTies and BlueStream Media to comply with the law and for the award of damages.

A BlueStream Media representative said the company had yet to see the lawsuit.

"The accusations are false, and we're going to prove those wrong," he said. "We're in full compliance with the CAN-SPAM Act."

BVWebTies did not respond to a request for comment.

Under CAN-SPAM, only ISPs, state attorneys general and the Federal Trade Commission are allowed to file cases. Critics of the law say allowing consumers to sue, as was permitted in many state laws that were wiped off the books by CAN-SPAM, would do more to target spammers.

"I think if direct marketers are smart, they will not keep pushing the envelope on this issue and just comply with the bare bones of the new federal law," said John Fallat, Hypertouch's attorney.

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