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First Can Spam Suit Filed

By

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By Ron Miller

A California ISP filed suit Friday in the first action under the recently enacted federal Can Spam Act, naming BobVila.com as the defendant.

San Francisco attorney John Fallat filed a lawsuit in U.S. District Court for the Northern District of California on behalf of Foster City-based Internet Service Provider Hypertouch. It alleges Sacramento-based BlueStream Media and Boston-based BVWebTies, owner of BobVila.com, violated the federal Can Spam Act by sending Hypertouch and its customers Bob Vila's "Home Again Newsletter."

The suit alleges the defendants sent spam e-mail advertisements with fraudulent headers and no legally required physical address. According to the plaintiffs, they also sent e-mail to randomly generated and harvested addresses, even to addresses that had been submitted to the "opt-out" links of other spam.

Although a spokesperson for Hypertouch said the company didn't think the Can Spam Act did enough to control spam, it will use the law to control spam whenever marketers fail to comply.

"The Can Spam Act provides only the most minimal protections to the public," says Hypertouch President and Founder Joe Wagner. "But BobVila.com and BlueStream Media failed to observe even those."

The lawsuit seeks to stop the defendants from sending out illegal spam, and asks they be forced to pay damages and the plaintiff's legal fees.

"I cannot understand why any legitimate business would run the tremendous legal and public relations risk in harassing millions of people with spam," Wagner said.

Representatives of BVWebTies and BlueStream Media did not respond to calls for comment from *internetnews.com*.

David Daniels, research director at Jupiter Research (which shares a parent company with this publication), says this lawsuit should make

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e-mail marketers stand up and take notice.

"Any company that hasn't already gotten in line with the law runs the risk of this type of litigation. It's a shot across the bow and a wake up call to be sure they are compliant," Daniels said.

Many major e-mail marketers are still not in compliance with the Can Spam Act, according to new research conducted by Jupiter, Daniels said.

Jupiter surveyed 55 major e-mail marketers as recently as January and found only 64 percent included a valid street address as required by law, and as many 16 percent were not in compliance with the provision that they remove subscribers who opt out within 10 days.

"We found that surprising because it's pretty easy to satisfy," Daniels said.

Anne P. Mitchell, president and CEO at the Institute for Spam and Internet Public Policy believes this lawsuit sends a message to e-mail marketers that ISPs intend to fight back using the new federal law.

"I think that perhaps one of the most important aspects of this lawsuit is that it was filed by an ISP, under Can Spam," she said. "That is important for many reasons, not the least of which is that it demonstrates that ISPs both can and should take action under Can Spam."

In fact, she thinks the lawsuit was a great idea.

"Hypertouch is to be applauded for standing up and saying 'not here, not in our Internet space you don't'. If more ISPs would get involved on this level, we'd make a much bigger dent in the spam situation much more quickly," Mitchell said.

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