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ISP Files First Can-Spam Lawsuit By Amit Asaravala

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A California Internet service provider is putting the federal Can-Spam Act to its first test, two months after the law passed, by filing a lawsuit against the owner of home-improvement website BobVila.com.

Hypertouch, based in Foster City, California, filed the [suit](#) on Thursday claiming the owner of BobVila.com and its marketing affiliate BlueStream Media violated provisions of the Can-Spam Act by sending out e-mail advertisements containing missing contact information. The suit claims that BlueStream Media forged the header information that can help e-mail recipients identify where a message originated.

Under the Can-Spam Act, which is the United States' first nationwide attempt at reducing the amount of spam clogging the Internet, all e-mail advertisements must contain valid headers and contact information.

Critics of the act, however, contend that the law is too weak to have any serious effect and point out that it overrides stricter state laws against spam.

Hypertouch President Joe Wagner and attorney John Fallat said that they agree with the critics, but that the lawsuit was necessary to show that ISPs are not giving up in the fight against spam.

"We're dealing with what we've got," said Fallat. "We want to send a message to legitimate operators like BobVila.com that if they hire spammers, they will be responsible for spamming."

Chris Bryan, a representative for BlueStream Media, said that his company had not yet been served with papers for the lawsuit, and that it would release a statement soon afterward. He said the allegations against his company were false. "We are complying with the Can-Spam Act," he said.

Representatives for BVWebTies, which operates BobVila.com, did not immediately return calls on Friday.

Even if Hypertouch succeeds in its case, the message to spammers and the companies that hire them might not be loud enough to make a difference. The ISP is asking for \$100 in damages -- the maximum allowed by the Can-Spam Act -- for each of the approximately 100 messages that it claims were sent by BlueStream Media.

Under California's previous antispam law, plaintiffs in an antispam suit would have been

able to ask for awards 10 times as large. Individuals, too, would have had the right to sue -- not just ISPs and government authorities.

In addition to statutory damages, Hypertouch is also asking for an injunction to prevent BobVila.com and BlueStream Media from sending out further messages that contain false headers or are missing contact information.

Unless other ISPs file their own lawsuits claiming additional damages, such a penalty would amount to little more than a slap on the wrist and an admonition to "get it right" the next time.

This, says Fallat, is a problem that is not likely to change any time soon. "A lot of times, in response to public pressure, politicians rush out a law that isn't very helpful," he said.

Still, he hopes the lawsuit will inspire other ISPs to take a more active role in fighting spam.

Politicians "took away the private right of action, but they did give ISPs the right to sue," said Fallat. "Will this stop spam? No. But at least we'll shrink it, hopefully."



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