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## First CAN-SPAM Lawsuit Filed in California

Posted by [timothy](#) on Saturday March 06, @02:40PM

from the [this-old-big-house](#) dept.

[rocketjam](#) writes "Foster City, California-based ISP Hypertouch, Inc. has filed the first lawsuit alleging violations of the new Federal CAN-SPAM Act of 2003. The lawsuit was filed against BobVila.com and the spammer they hired, Bluestream Media, for sending Hypertouch customers unwanted, unsolicited email advertisements for Vila's "Home Again Newsletter." *The suit alleges the defendants sent spam email ads with fraudulent headers and no physical address. It also alleges the emails were sent to randomly generated and harvested addresses as well as addresses that had replied to opt-out links in other spams. Hypertouch's attorney, John L. Fallat, said the CAN-SPAM Act offers little protection to the public, but they would use the few protections it offers to punish spammers.* Reader Clemence links to [Wired's coverage of the suit](#).



Unleash the revenue potential of your website.

## Joe Wagner (547696)

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 Karma: Good

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**Show how useless it is** (Score:5, Insightful)

by [Lord\\_Dweomer \(648696\)](#) on Saturday March 06, @02:45PM (#8487522)

"Hypertouch's attorney, John L. Fallat, said the CAN-SPAM Act offers little protection to the public, but they would use the few protections it offers to punish spammers."

If this case gets a lot of press coverage, it might help show people how utterly useless the CAN-SPAM act really is.

If a lawyer says its near useless, you know it must be bad. Hopefully the NY Times covers this in depth.

At least for once they are suing the company who uses the spammer and not just the spammer.

The instructions SPECIFICALLY SAID....."DO NOT TAUNT HAPPY FUN BALL"!!!!!!!!!!

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- [Re:Show how useless it is](#) by gravyfaucet (Score:2) Saturday March 06, @02:50PM

**California's tougher law still has some effect** (Score:5, Informative)

by [anonymous cowfart \(576665\)](#) on Saturday March 06, @02:49PM ([#8487549](#))

(Last Journal: [Monday April 29, @09:05AM](#))

California's tough spam law is mostly preempted by the new Federal law. But not entirely. The preemption clause reads

*This Act supersedes any statute, regulation, or rule of a State or political subdivision of a State that expressly regulates the use of electronic mail to send commercial messages, except to the extent that any such statute, regulation, or rule prohibits falsity or deception in any portion of a commercial electronic mail message or information attached thereto.*

So for any spam that has a forged header or a misleading subject, California's new law, with the \$1000 per spam penalty, will still apply. California allows private suits in small claims court by any party. So you can haul the bozos into court. Maybe even across state lines.

A year or two from now, we'll be rid of the chickenboners, but we'll be getting even more spam from "legitimate businesses".

So I'm a pervert. Welcome to the Internet.

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**Fraud** (Score:4, Insightful)

by [ScooterBill \(599835\)](#) \* on Saturday March 06, @02:43PM ([#8487511](#))

IANAL so I'll ask this question.

Faking an email header, return address, etc. is supposedly illegal under CAN-SPAM. If this is fraud, then wasn't this illegal before CAN-SPAM?

M

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**Hmm** (Score:3, Insightful)

by Anonymous Coward on Saturday March 06, @02:44PM ([#8487516](#))

At first I was kind of worried that the first target gone after was someone "respectable"-- bob vila-- and not like the people selling penis pumps or something.

But then I thought about it. How much of the problem is caused by ignorant businesses who just happen to hire the wrong marketing firm, and just say "we want you to increase our exposure on the internet" and don't realize this means millions of spam mails sent illegally through hijacked SMTP?

Perhaps to some degree education is the answer. If other legitimate businesses see bob vila getting smacked for spam mail, maybe they'll panic and make absolutely certain the people they're hiring aren't sending fraudulently-sent spam.

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- [Re:Hmm](#) by Joe Wagner (Score:1) Saturday March 06, @02:55PM

**Opportunism** (Score:2, Insightful)

by [StuWho \(748218\)](#) on Saturday March 06, @02:50PM ([#8487556](#))

(Last Journal: [Friday February 20, @01:11PM](#))

"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."

Sounds like there could be money in setting up as an ISP, and sueing any spammers who use you for \$100 per message. Given the millions of messages an individual spammer can send, even one victory against them would result in a cash windfall for the ISP concerned.

"If you think nobody cares if you're alive, try missing a couple of car payments." Earl Wilson

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**Act may be more useful than we think** (Score:2)

by [whoever57 \(658626\)](#) on Saturday March 06, @02:55PM ([#8487582](#))

There have been a lot of complaints that the CAN-SPAM act does not make filtering easy, but, I think that bayean filters may be quite effective if trained properly.

The physical address of a spammer is more difficult to change cheaply and, if trained properly, will find it's way into bayean databases.

I guess we will see over time.

Incidentally, my mailserver (and my company's mailservers) reject any emails with "bluestreammedia.com" in the body and have done so for some time.

---

Read "The Evaporating Allure of Free Snow" on [Simon's Comic Online Source](#) [scosource.com]

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**This Old Dot-Com** (Score:1)

by [AndroidCat \(229562\)](#) on Saturday March 06, @02:48PM ([#8487548](#))

(<http://slashdot.org/~AndroidCat> | Last Journal: [Friday May 02, @10:57AM](#))

[General article on Bob Vila's ebiz](#) [bizforward.com]

*One line blog. LOTD: [Spam fights back in Hawaii](#) [ananova.com]*

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**Who pays for the spam?** (Score:1)

by [d474 \(695126\)](#) on Saturday March 06, @02:52PM ([#8487568](#))

Until they start punishing the companies that benefit from the ads this is never going to stop. It should be handled like the drug war. If your company is benefitting from ads spammed to millions of people, you go down unless you reveal who you hired to do it.

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### Spammers "can" spam (Score:1)

by [ElliotLee \(713376\)](#) on Saturday March 06, @02:53PM ([#8487572](#))  
(<http://www.sizzly.com/slashdot/> | Last Journal: [Wednesday February 25, @04:54PM](#))

It's going to be very difficult to prove this. I could send spam and make it look like Slashdot sent it, routing it through some foreign country.

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- [Re:Spammers "can" spam](#) by d474 (Score:1) Saturday March 06, @02:55PM

### Say it ain't so! (Score:0)

by Anonymous Coward on Saturday March 06, @02:46PM ([#8487529](#))

Bob Vila sending spam?!?! Next you'll be telling me Norm Abrams wants me to have a longer penis.

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### fraudulent headers? (Score:0)

by Anonymous Coward on Saturday March 06, @02:47PM ([#8487536](#))

How can that be? Any sequence of ASCII characters is allowed in the headers and in the body of an e-mail. What the e-mails didn't have is a *digital signature*, but it's easy to delete e-mails that lack digital signatures on the client side. So what is the problem again?

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- [Re:fraudulent headers?](#) by Anonymous Coward Saturday March 06, @02:49PM

### Please help! (Score:0)

by Anonymous Coward on Saturday March 06, @02:51PM ([#8487563](#))

Where can I find quality recipes on the Internet? I don't even know where to begin!

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- [Re:Please help!](#) by Anonymous Coward Saturday March 06, @02:54PM
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QOTD: "I'm on a seafood diet -- I see food and I eat it."

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