

Kraft sued over alleged Gevalia spam

California ISP says firm wouldn't stop coffee e-mail pitches

By Bob Sullivan

Technology correspondent
MSNBC

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A small California Internet service provider has sued Kraft Foods Inc., alleging the firm is responsible for thousands of illegal spam messages. Hypertouch.com founder Joe Wagner said his company has in the past 12 months received 8,500 copies of an e-mail pitching Kraft's high-end coffee subscription service, Gevalia.

Wagner, who filed the suit in federal court in San Francisco, claims he's entitled to \$11.7 million in compensation under federal and state anti-spam laws.

"Like most folks with an e-mail address, we've been getting spam pushing Gevalia coffee for years," Wagner said. "We've finally had enough."

Kraft spokeswoman Pat Riso said the firm "does not comment on pending litigation."

Wagner's lawyer John Fallat said the e-mail pitches violate the federal CAN-SPAM act and California's state anti-spam law because the addressing information in the messages have been faked. The e-mails appear to come from a sender who is not a real person, rather from the marketing firm responsible for sending the e-mail, Fallat said. Such "fraudulent headers" are illegal under both federal and California spam laws.

Fallat said Wagner is entitled to \$2.5 million from the CAN-SPAM claim -- \$100 per spam e-mail, with triple damages applied for willful disregard of the law. Wagner's also entitled to another \$8.5 million, or \$1,000 per spam, under California law, he said.

In 2003, [during a special report on spam](#), MSNBC.com reported receiving multiple Gevalia-related spam messages. At the time, the company said it didn't tolerate spam, but that occasionally third-party marketing firms erroneously sent out unsolicited e-mails to consumers.

Abbe Serphos said in a July 25, 2003, e-mail to MSNBC that Kraft had "strict policies in place that govern our e-mail communications to consumers." She said then that the firm had canceled contracts with marketers that sent out spam.

"We are very clear about our criteria for opt-in/opt-out controls and our partners have to agree to meet them. While we cannot share specific numbers, we have pulled offers from and stopped working with vendors and networks altogether that cannot meet those criteria," she wrote.

Examples of coffee spam

But Wagner said Hypertouch has continued to receive Gevalia spam, even after the lawsuit was filed on Monday.

"Try Gevalia coffee and get a free stainless steel coffeemaker," says one message, which appears to come from a sender named Sarah Miller at a Web site named BreedingCoverage.com. But the IP address in the e-mail doesn't resolve to BreedingCoverage servers, the lawsuit claims, indicating the e-mail header information had been faked. It was sent to Hypertouch last Nov. 5, according to the lawsuit.

Another spam in the lawsuit contains a chunk of text copied from ABCNews.com, apparently in an effort to evade spam filters. And on March 26, 2005, the lawsuit claims, representatives of Gevalia sent 761 similar spam e-mails claiming to be from 761 different people — indicating marketing companies were hiding behind fake names, the lawsuit says.

Most of the e-mails are sent by third-party marketing firms, Fallat said. Kraft still benefits from the messages, however, and is funding illegal spam efforts, he charged.

"These kinds of e-mails should not be coming from the Fortune 500," Fallat said. "This is an important lawsuit because we want to send a message to big corporate America that ... they are under an obligation to monitor and supervise third-party marketers to ensure they do not send out fraudulent e-mail."

Wagner said he approached Kraft last November with evidence of spamming efforts, and offered to settle the case without a lawsuit if Kraft agreed to stop sending the messages. In February, he called a Kraft attorney and said that potential lawsuit damages were mounting, and now totaled \$5 million.

"Wow, \$5 million," he said the Kraft lawyer responded, sarcastically. The lawyer didn't respond to MSNBC.com's requests to verify the conversation. Kraft's Riso said she couldn't verify it.

Both Wagner and Fallat have filed spam-related lawsuits before. In March, the two sued BobVila.com for allegedly sending out spam. Wagner said they are now in settlement conversations.

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