

Court Holds Recipients of Unlawful “Spam” Are Entitled to \$1,000 Per Email

Redwood City, California

March 15, 2010

In the first case brought by a “spam” recipient to actually go to trial in California, the Superior Court of California held that people who receive false and deceptive spam emails are entitled to liquidated damages of \$1,000 per email under California Business & Professions Code § 17529.5.

On March 10, 2010, Judge Marie Weiner of the San Mateo County Court awarded \$7,000 plus attorneys’ fees and costs to Plaintiff Daniel Balsam, who received unlawful spams sent by Trancos Inc. of Redwood City, California. *Balsam v. Trancos Inc. et al*, No. CIV471797.

Until now, other than in small claims court, only Internet Service Providers have defeated spammers after a contested hearing.

Judge Weiner ruled that California’s anti-spam law is not pre-empted by the federal CAN-SPAM Act, and that recipients of spam are entitled to \$1,000 per email even if they did not “click through” and purchase anything.

The Court found that generic words such as “Paid Survey” and “Your Business” in the “From Line” misrepresented the source of the emails. The Court refused to reduce damages, noting that not only did Trancos fail to implement practices and procedures to prevent advertising in unlawful spam, but Trancos’ actions – such as privately registering its domain names, using multiple domain names to send its spam, and identifying itself only by the unregistered fictitious business name “USAProductsOnline.com” and a box at The UPS Store – were intentional steps to prevent spam recipients from contacting or even identifying Trancos as the source of the spam emails.

The Court noted that Trancos – who acquired Balsam’s email address from a third party – did not have Balsam’s “direct consent” to send him email. Trancos was unable to present any evidence that Balsam had opted in to receive the emails, and the Court found that the claims in the emails that Balsam had opted in were false.

Plaintiff Daniel Balsam stated, “I have been working towards this for a long time. Spammers take pains to remain hidden, and when they’re found, they’ll often say

anything to avoid responsibility. I am pleased that Judge Weiner saw Trancos' actions for what they were and enforced the law."

Balsam's attorney, Timothy Walton, said, "It is reasonable for the law to require that email advertisements correctly identify the source. Advertisers need to know what is legally permitted and they need to follow the law. And there is no question that advertisers who work to hide their identities are violating consumer trust."

Daniel Balsam is a 2008 graduate of U.C. Hastings College of the Law in San Francisco, and he focuses on Internet law, consumer protection, and civil litigation.

Timothy Walton is an attorney in Redwood City who has been litigating Internet issues since 1998.

The judgment is posted at www.DanHatesSpam.com/trancos.html.

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