



CLOUDMARK[®]
Intelligent Threat Protection

Security Threat Report

2016 Q2

Gamesmanship, laziness and lies, oh my!

- The man behind DanHatesSpam.com, Dan Balsam, quit his career as a marketer and decided to enter law school
- Dan has been fighting spam for 14 years and has no plans to stop
- He won more than 90 percent of his small claims cases before graduating from law school, and now represents dozens of clients in superior court who received unlawful spam

Dan Balsam has made a name for himself in a very unique niche. Like many, he hates spam, but instead of just hitting the ‘delete’ button, he decided to go to law school, so he could to learn how to most effectively fight spam. Even before graduating from U.C. Hastings in 2008, Balsam had gained experience by filing dozens of lawsuits in the San Francisco Superior Court small claims court, superior court, and even the 9th U.S. Circuit Court of Appeals.

According to a recent report⁹ conducted by market research firm The Radicati Group, Inc., in 2015 over 205 billion emails were sent and received per day, on average.

Business Email	2015	2016	2017	2018	2019
Average Number of Emails Sent/Received per User/Day	122	123	124	125	126
Average Number of Emails Received	88	90	92	94	96
Average Number of Legitimate Emails	76	76	76	76	77
Average Number of Spam Emails	12	14	16	18	19
Average Number of Emails Sent	34	33	32	31	30

That is roughly 84 spam emails per day, per mailbox in a week and 336 spam emails in a month, making it a whopping estimated total of 4,032 spam emails per year.

We sat down to speak with Balsam to learn about what has changed since he started, what he has learned in his career and what he sees for the future.

Balsam says a lot has changed since he first started fighting spam. For example, early on, a lot of spam contained false subject lines, promising “Take a survey, get a free laptop,” or similar rewards. These aren’t as frequent now. Another example: in the past, many sending domain names were registered via proxy registrations. Today, the domain registration information is simply false: for example, the domain names are registered to “customer service” and the address is a P.O. box. This false registration violates California’s anti-spam law, Business & Professions Code §17529.5.

⁹ <http://www.radicati.com/wp/wp-content/uploads/2015/02/Email-Statistics-Report-2015-2019-Executive-Summary.pdf>

What remains the same is the misleading information spammers use. The law prohibits companies from sending spam with false or deceptive headers, such as misrepresented 'From Names', subject lines that are misleading about the content of the emails, and the inclusion of third parties' domain names without permission. Spammers like to create nonsense names such as, "Dancing at the Zombie Zoo Media Group," and register domain names to those nonsense names while claiming their addresses to be mailboxes at The UPS Store branches all over the country. Spammers often register generic text like "cheap car insurance" as a fictitious business name and use it as the "From Name" in emails. This is still misrepresented information because it does not indicate who the emails are really from.

Balsam believes the first case by a consumer recipient to go to trial under Business & Professions Code §17529.5 (other than small claims) was his own case, Balsam vs. Trancos Inc., No. CIV471797 (Super. Ct. Cal. Cty. of San Mateo Mar. 10, 2010). Balsam was awarded \$7,000 in liquidated damages for seven unlawful spams and more than \$80,000 in attorneys' fees. Trancos sent spam with generic 'From Names' and domain names that were proxy-registered and, therefore, not readily traceable to the sender. The court was not impressed with Trancos's claim that it tried to avoid advertising in deceptive spam, and found that Trancos took extensive steps to hide its identity. The court also rejected Trancos's claim that Balsam supposedly opted in to a third party and that constituted "direct consent" for Trancos to send him emails. The Court of Appeals affirmed the trial court's judgment in all respects. Balsam v. Trancos Inc., 203 Cal. App. 4th 1083 (1st Dist. 2012). The California Supreme Court and the United States Supreme Court denied Trancos's petitions for review and made the company pay the judgement.

In the past couple of years, Balsam has noticed a lot of spammers are forging email headers, so the sending email address appears to be e.g. customerservice@wellsfargo.com. Recipients and ISPs cannot readily block these spams because Wells Fargo is a legitimate company and its domain name is also legitimate. There is no excuse for such actions other than attempting to bypass filters by impersonating Wells Fargo, exploiting (and damaging) the brand's reputation.

"Spammers lie, they like to play games and they are lazy, and often their attorneys do the same. For example, their attorneys often copy and paste affirmative defenses from answers in older cases, even though they make no sense given the facts of the current case. Spammers also attack plaintiffs' attorneys personally along with the plaintiffs, claiming we all have 'unclean hands.' "But the affirmative defenses rarely have anything to do with the facts and they can never back them up," said Balsam.

Some false claims he has experienced include:

- Balsam supposedly opted-in to receive email from an IP address in Washington, when he was in Cambodia
- A spammer claimed one of his clients opted-in from an IP address in South Carolina, but she was in Australia at the time. She even provided her passport stamps and bank records to prove her location.
- Another client was accused of opting-in from Arkansas when in fact, he had never traveled to that state
- One spammer even claimed that Balsam had opted-in at a particular date and time, but he was busy taking the Bar exam

Balsam also enjoys it when his clients' claims cause advertisers to drop networks, and networks to drop publishers. It is especially satisfying when advertisers, networks, and publishers sue each other.

Balsam has filed lawsuits against, and made settlements on behalf of his clients with, companies ranging from small to large, as well as individuals. Although he is only licensed in California, there is a reason why people go to him asking, "Can you do something about all of this spam I'm getting?" Thanks to Balsam (and his frequent co-counsel, Jacob Harker), his dozens and dozens of clients, especially those he has been representing for longer, tend not to receive as much spam, demonstrating that his tactics and strategies are working. Bottom line, spammers and their advertiser/clients turn a blind eye to their violations of the law until it hits them in their pockets.

With over \$2 million in court judgments and settlements against companies accused of sending spam, Balsam says, "I'm still having fun doing it and as long as spam is out there, I will still be around." Well, we certainly enjoy seeing you around, Balsam, and we hope to continue hearing about you helping us fight spam.

About Cloudmark

Cloudmark provides intelligent network security solutions that protect organizations' most valuable resources and defend against security breaches that result in revenue loss, increased costs, and brand damage.

Only Cloudmark combines predictive global threat intelligence from hundreds of service providers and thousands of enterprises with real-time defense and cross-vector correlation, including messaging and DNS, in a software solution that deploys rapidly to safeguard organizations and detect attacks before they happen.

Cloudmark protects more than 120 tier-one service providers and 70,000 enterprise customers through partners, including Cisco, McAfee, and Microsoft. Key customers include AT&T, Verizon, Swisscom, Comcast, Cox, NTT and more than 1 billion subscribers worldwide.

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