

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-80295-CIV-MIDDLEBROOKS/JOHNSON

EMARKETERSAMERICA.ORG, INC.,
A Florida not-for-profit corporation,

Plaintiff,

v.

SPEWS.ORG d/b/a THE HERMES GROUP;
SPAMHAUS.ORG d/b/a THE SPAMHAUS PROJECT;
CSL GMBH JOKER.COM;
STEVE LINFORD;
JULIAN LINFORD;
ALAN MURPHY;
SUSAN WILSON a/k/a SUSAN GUNN a/k/a SHIKSAA;
STEVEN J. SOBOL;
CLIFTON T. SHARP;
RICHARD C. TIETJENS a/k/a MORLEY DOTES;
ADAM BROWER; and
STEPHEN JOSEPH JARED a/k/a JOE JARED,

Defendants.

**MOTION TO DISMISS FOR LACK OF STANDING, LACK OF
SUBJECT MATTER JURISDICTION, LACK OF PERSONAL
JURISDICTION AND FAILURE TO STATE A CLAIM UPON
WHICH RELIEF MAY BE GRANTED AND MEMORANDUM
OF FACT AND LAW IN SUPPORT THEREOF**

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Defendants Spamhaus.Org (“Spamhaus”), Steve Linford (“Linford”), Alan Murphy (“Murphy”), Susan Gunn (“Gunn”), Steven Sobol (“Sobol”), Clifton Sharp (“Sharp”), Richard Tietjens (“Tietjens”), Adam Brower (“Brower”), and Stephen Jared (“Jared”) (the “Defendants”) hereby move this Court to dismiss the Complaint of EmarketersAmerica.org, Inc. (“EMA”) on the following grounds: (1) EMA lacks standing; (2) this Court lacks subject matter jurisdiction; (3) this Court lacks personal jurisdiction over the Defendants; and (4) EMA’s Complaint fails to state a claim upon which relief may be granted. In support of this motion, the Defendants offer the following memorandum of fact and law.

INTRODUCTION

Mark Felstein is EMA’s founder, lead director, mouthpiece, head of day-to-day operations and chief counsel. (*Exhibit A.1, Florida Division of Corporations Inquiry Response (“Corp. Inquiry”); Exhibit A.2, Felstein Open Letter*). After forming EMA to serve as plaintiff, Felstein filed the instant lawsuit as a publicity stunt designed to deter the Defendants and similarly-situated third-parties from engaging in the ongoing war against the sending of unsolicited commercial e-mail (“spam”). **Even without reference to the unquestionable illegality of spam, there exists no legal or factual basis for the claims asserted by Felstein and EMA.** Instead of legal research or investigation that would have revealed the frivolous nature of his rambling, incoherent Complaint, Felstein’s case-related efforts have focused on transforming his sham lawsuit into a media spectacle. Felstein’s publicity-hawking conduct has included (but not been limited to): (1) service upon certain of the Defendants (none of whom had concealed themselves) in front of hundreds of anti-spam advocates at the May 2003 Federal Trade Commission anti-spam forum in Washington D.C.; (2) an improper attempt to conduct discovery via the questioning/heckling of certain Defendants who, at the FTC’s invitation, were speakers at the forum; and (3) in the wake of the commotion his other misconduct caused, a physical altercation involving FTC Commissioner Orson Swindell (*See Exhibit A.3, DMNews.com Article; Exhibit A.4 Newsday.com Article*). The substantive law of Florida, the Federal Rules of Civil Procedure, and fundamental principles of equity and justice demand the dismissal of Felstein/EMA’s lawsuit.

FACTS

I. THE PARTIES

A. The Plaintiff

Plaintiff EMA is a non-profit Florida corporation. (*Complaint at p. 1*). Felstein incorporated EMA on March 10, 2003, apparently for the sole purpose of filing the instant lawsuit. (*Exhibit A.1, Corp. Inquiry*). EMA's "principal" (only) office is Felstein's law firm. (*Id.*; *see also Exhibit A.5, EmarketersAmerica.org "WhoIs"*). According to Felstein, EMA has 50 members, including e-mail marketers and ISPs from across the country. (*Exhibit A.6, South Florida Business Journal Article (May 9, 2003); Exhibit A.5, Felstein/EMA Press Release*). Felstein claims that roughly 40 of these 50 members have paid annual dues of \$3,000/member.¹ (*Id.*). The identities of EMA's members are unknown because Felstein has refused to disclose that information.² Felstein has, however, alleged via the EMA web site and through various media outlets that EMA's membership is composed entirely of permission-based commercial e-mailers, none of whom has ever sent unsolicited commercial e-mails. (*Exhibit A.7, EMA Press Release*). At other times, however, Felstein has characterized the current lawsuit as an effort to vindicate the unfettered right of commercial e-mailers to send unsolicited commercial e-mails. (*See Exhibit A.9, Tallahassee Democrat Article* (where Felstein states goal of instant lawsuit is the vindication of spammers' right to send all unsolicited commercial e-mails advertising a non-fraudulent product or service); *Exhibit A.10, Creative Loafing Article* (where Felstein offers same argument and alleges that all anti-spammers have a hidden financial agenda)). Under either interpretation of EMA's incoherent Complaint, EMA's/Felstein's claims are baseless.

B. The Defendants

The Defendants are individuals and entities involved in varying degrees in the fight against spam. None of the defendants has any meaningful contact with Florida whatsoever. (*Exhibits B.1-B.9, Declarations of Defendants, each at ¶3*). No defendant is a Florida resident, and no defendant does business in Florida. (*Id.*). No defendant owns land or other property in

¹ If and when the Defendants are awarded sanctions, Felstein must account for the \$120,000 cash assets that the EMA coffers should contain.

² In May 2003, Wellborn explained to Felstein, orally and in writing, the defects inherent in the Felstein/EMA Complaint and offered to allow him to dismiss. Felstein ignored this admonition. (*Exhibit A, Wellborn Dec. at ¶ 9 and Exhibit A.8, Wellborn letter*).

Florida. (*Id.*). Until this lawsuit was filed, no defendant had ever even heard of EMA, much less published any statements concerning EMA. (*Id.* at ¶4).

II. THE FRIVOLOUS COMPLAINT

It is impossible to determine from Felstein/EMA's unintelligible, self-contradictory Complaint the wrongs that were allegedly committed or even who was allegedly injured. In many sections, the Complaint speaks of direct injury to plaintiff EMA (e.g., defamation of EMA, improper attribution to EMA of illegal business practices, "blacklisting" of EMA's IP addresses, and tortious interference with EMA's contract and business relations). (*Complaint* at ¶¶ 21-27, 32, 38, 40, 36(2), 40(2), 44, 48, 52, 56, 59, 61, 63 and 64). In other paragraphs, however (indeed, often in mid-sentence or mid-count), the Complaint flip-flops without explanation and instead alleges unspecified injuries to EMA's anonymous members. (*Id.* at ¶¶ 21, 22, 43(2), 51, and 54). In still other sections, the Complaint speaks perplexingly of injuries to the "plaintiffs." (*Id.* at ¶¶ 36, 44, and 52) (emphasis added).

Given, however, that when Felstein/EMA filed the instant lawsuit on April 14, 2003:

- no defendant had ever heard of EMA, which had been formed only a few weeks earlier; (*Exhibits B.1- B.9, Declarations of Defendants, each* at ¶4);
- consistent with their lack of knowledge regarding EMA's existence, no defendant had ever made a statement of any sort regarding EMA; (*Id.*);
- EMA had no web site until after this lawsuit was filed; (*Exhibit A.7, Felstein Press Release (explaining that domain name was initially "parked")*);
- upon information and belief, EMA did not (and does not) own any IP blocks or other domains;
- EMA was not itself engaged in the business of sending of commercial e-mails; (*Id.*); and
- EMA had not, upon information and belief, entered into any Internet-related contracts whatsoever, other than its domain name and web site agreements,

It is impossible that any Defendant defamed EMA or otherwise interrupted its business relations.

Accordingly, all claims of direct injury to EMA are necessarily frivolous. This point alone is sufficient grounds for the dismissal of Felstein/EMA's rambling, incoherent complaint.

Even if rewritten from scratch in the best light for EMA and its members, the Complaint would still be fatally defective. In the best of all worlds for Felstein/EMA, a complaint filed by EMA on behalf of its members would allege specific injury to one or more specific EMA

members, none of whom had ever engaged in spam-friendly practices (i.e., spamming, hosting “spamvertised” web sites, hosting domain name servers for spammers, etc.).³ **Even then, Felstein/EMA’s Complaint would lack any legal or factual basis and would demand dismissal.**

ARGUMENT

I. FELSTEIN/EMA’S LAWSUIT MUST BE DISMISSED BECAUSE EMA LACKS STANDING.

Article III of the United States Constitution limits the adjudicatory powers of federal courts to “Cases” and “Controversies.” U.S. Const. Art III, § 2. This “case and controversy” constraint includes the requirement that a given federal plaintiff have standing to bring the lawsuit. Allen v. Wright, 468 U.S. 737, 750, 104 S. Ct. 3315, 3324, 82 L. Ed.2d 556 (1984). Standing is a “threshold question in every federal case, determining the power of the court to entertain the suit.” Warth v. Seldin, 422 U.S. 490, 498, 95 S. Ct. 2197, 2205, 45 L. Ed.2d 343 (1975). The burden of establishing standing in a federal lawsuit rests upon the party that invoked the federal jurisdiction. Lujan v. Defenders of Wildlife, 504 U.S. 555, 561, 112 S. Ct. 2130, 2136, 119 L. Ed. 2d 351 (1992). “Because standing is fundamental to the [plaintiff’s] ability to maintain a suit, and because the [Supreme] Court has saddled the complainant with the burden of clearly alleging facts sufficient to ground standing, . . . where standing is at issue, heightened specificity is obligatory [even] at the pleading stage.” U.S. v. AXV Corp., 962 F.2d 108, 115 (1st Cir. 1992) (emphasis added).

Where, as here, the plaintiff is an association seeking to redress alleged injuries to its members,⁴ a special set of standing-related rules apply. Under the doctrine of “associational standing,” an organization may sue to redress its members’ injuries **only** when “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of the individual members in the lawsuit.” Hunt v. Washington State

³ The Complaint does not assert these claims, and this Court is not empowered to rewrite the Complaint for Felstein. The Defendants address the “what if EMA’s Complaint was not unintelligible?” issue to foreclose any futile effort by Felstein to cure the existing defects by refileing a differently-worded Complaint on EMA’s behalf.

⁴ EMA’s claims of direct injury at the hands of the Defendants within a few weeks after EMA’s formation are facially incredible. (*See Facts, Section II above*). Accordingly, the instant matter is properly and wholly characterized as an associational standing case.

Apple Advertising Comm’n, 432 U.S. 333, 343, 97 S. Ct. 2434, 2441, 53 L. Ed.2d 383 (1977).

Unless all three prongs are satisfied, the plaintiff association lacks standing, and the suit must be dismissed. Id. EMA’s Complaint fails to satisfy even one of the three required elements.

A. Felstein/EMA Has Failed To Show That Any EMA Member Could Sue In Its Own Capacity.

“An individual plaintiff must have suffered a concrete and particularized injury so as to give him or her a personal stake in the outcome of the litigation, not just a mere interest.” Arbor Hill Concerned Citizens Neighborhood Ass’n v. City of Albany, New York, 250 F. Supp. 2d 48, 56 (N.D. N.Y. 2003) (citing Warth, 422 U.S. at 501, 95 S. Ct. at 2205). Where, as here, an association seeks to assert a claim on behalf of some or all of its members, the requirement of injury-in-fact applies to the represented members. **Accordingly, the associational plaintiff is required to plead and show member-specific injuries, including “factual allegations of injury to someone, not just in general, and not just in the purely hypothetical or speculative sense.”** Id. at 57 (emphasis added). In short, an associational plaintiff must identify the injured members by name and must describe the alleged injuries with particularity. AXV Corp., 962 F.2d at 116; Arbor Hill, 250 F. Supp. at 56.

In their Complaint, Felstein/EMA fails to identify **any** member-specific injuries and fail to identify **even one** EMA member. Because “not one of plaintiff’s member’s names is ever explicitly mentioned in the complaint . . . , [the complaint] is [necessarily] insufficient.” Arbor Hill, 250 F. Supp. at 57. The AXV court could have been writing of Felstein/EMA’s lawsuit when it stated:

the members are unidentified; . . . [their individual damages allegedly suffered at the hands of the defendants are] left open to surmise. In short, the asserted injury is not anchored in any relevant particulars. . . . A barebones allegation [like those of the plaintiff association], bereft of any vestige of a factual fleshing-out, is precisely the sort of speculative argumentation that cannot pass muster where standing is contested.

AXV Corp., 962 F.2d at 117 (dismissing association complaint) (emphasis added). Thus, Felstein/EMA’s Complaint fails the first prong of the standing test and must be dismissed.

B. Felstein/EMA Have Failed To Show That The Interests EMA Seeks To Protect Via This Lawsuit Are Germane To EMA’s Purpose.

The second prong of the associational standing test also demands dismissal – Felstein/

EMA's Complaint does not show (or even allege) that the interests EMA seeks to protect are germane to EMA's purpose. Other than a claim that EMA's members are "e-mail marketers, internet service providers . . . and other related businesses," Felstein/EMA's Complaint is bereft of any allegation that would even tend toward satisfying this element. (*Complaint at ¶ 1*).

Moreover, because EMA was formed only a few weeks before it filed suit, EMA cannot point to past conduct or activities to prove any associational purpose. (*Exhibit A.1 Corp. Inquiry*). Even EMA's web site is devoid of content relevant to this issue, other than defamatory ranting about the Defendants and the instant lawsuit. (*See, e.g., Exhibit A.7, Felstein Press Release*).

C. Both The Claims Asserted And The Relief Sought By Felstein/EMA Require The Active Participation Of Each Allegedly-Damaged EMA Member.

1. The Claims Asserted By Felstein/EMA Require The Participation Of Each Allegedly-Damaged EMA Member.

Felstein/EMA's lawsuit is also barred by the third-prong of the standing test – the claims set forth therein necessarily require the participation of the allegedly-injured members. See Hunt, 432 U.S. at 343, 97 S. Ct. at 2442; United Food and Commercial Workers Union Local 751 v. Brown Group, Inc., 517 U.S. 544, 556, 116 S. Ct. 1529, 1536, 134 L. Ed.2d 758 (1996) (judicial resources would be wasted when a plaintiff association lacked member-specific records necessary for the proof of member-specific claims). Indeed, the facts underlying the claims of the allegedly-injured EMA members are necessarily unique from one member to the next. Even if construed (*i.e.*, rewritten) in a light best for Felstein/EMA, the Complaint would allege that the Defendants mischaracterized certain EMA members as spam-friendly. **In relation to the claims of each respective EMA member, the pertinent underlying facts would relate to – indeed, be limited to –that specific member.** There is, in fact, little or no evidentiary overlap among the hypothetical claims of the respective, allegedly-injured EMA members. See Lake Lucerne Civic Ass'n, Inc. v. Dolphin Stadium Corp., 801 F. Supp. 684 (S.D. Fla. 1992) (homeowners association did not have standing to sue for damages to members because it would require the participation of individual members to determine specific damages). This element, as well, requires that Felstein/EMA's Complaint be dismissed.

2. The Relief Requested By EMA Requires The Participation Of Each Allegedly-Damaged EMA Member.

a. EMA's Lawsuit Impermissibly Seeks Monetary Damages.

In addition to the *nature of the claims* asserted, the *form of the relief* requested also demands dismissal of Felstein/EMA's Complaint under the third prong of the associational standing test – an association is not allowed, as EMA attempts herein, to sue for money damages on behalf of its members. United Food 517 U.S. at 554, 116 S. Ct. at 1535; see also Reid v. Department of Commerce, 793 F.3d 277 (Fed. Cir. 1986); Dalworth Oil Co. v. Fina Oil & Chemical Co., 758 F.Supp. 410 (N.D. Tex. 1991). “[F]ederal courts have consistently rejected association assertions of standing to seek monetary [damages].” Telecommunications Research & Action Center v. Allnet Communications Services, Inc., 806 F.2d 1093, 1095 (D.C. Cir. 1986) (cited with approval in United Food, 517 U.S. at 554, 116 S. Ct. at 1535, and listing myriad cases in support of this fundamental proposition); see also Hunt, 432 U.S. at 343, 97 S. Ct. at 2441 (noting that only cases involving “a declaration, injunction, or some other form of prospective relief” are proper vehicles for associational standing). The no-money-damages rule addresses, among others, concerns regarding: (1) the legal capability of the association's attorney, and (2) the possibility that the association might fail to distribute the recovered monies to the injured members. Int'l Union, United Auto., Aerospace and Agr. Implement Workers of America v. Brock, 477 U.S. 274, 297, 106 S.Ct. 2523, 2536, 91 L.Ed.2d 228 (1986) (Powell, J., dissenting on other grounds); Hunt, 432 U.S. at 343, 97 S.Ct. at 2241. **These concerns are paramount in a case like the present matter, where the low moral character of the association's principal/attorney (Felstein) weighs heavily against empowering him in any fiduciary role in relation to the allegedly-injured association members. See, e.g., In the Matter of Mark E. Felstein**, 2003 N.Y. Slip. Op. 14968 (June 6, 2003) (denying Felstein admission to the New York Bar due to “misconduct in college, history of substance abuse, criminal record, and lack of candor [regarding said matters]”) (copy attached at Exhibit A.11). Accordingly, to the extent it seeks money damages of any kind, EMA's Complaint must be dismissed.

b. EMA's Lawsuit Seeks Impermissible Injunctive Relief.

Once the monetary prayer in the Complaint is stricken, the baseless nature of Felstein/EMA's lawsuit becomes even clearer – the injunctive relief prayed for is an impermissible, nonsensical, across-the-board, prior restraint on the Defendants' free speech. Specifically,

Felstein/EMA seeks an absurdly-broad injunction prohibiting the Defendants from any public comment whatsoever concerning any EMA member, regardless of the member's Internet-related misconduct. (*See Complaint at Count I*). In fact, since the defendants have a fundamental, constitutional right to "out" spammers (*i.e.*, Internet criminals) and thereby allow other Internet users to protect themselves, there is no set of facts under the sun that might give rise to the broad, prospective injunction sought by EMA. Even in a lawsuit brought by a specific EMA member, the result is unchanged – if an EMA member spams or commits related misconduct, the Defendants will always have the absolute right to alert other Internet users. Accordingly, the impermissible nature of the injunctive relief sought by Felstein/EMA and the similarly impermissible nature of the monetary relief they seek demand that their lawsuit be dismissed.

II. FELSTEIN'S EMA'S LAWSUIT MUST BE DISMISSED BECAUSE THIS COURT LACKS SUBJECT MATTER JURISIDCTION.

"[B]ecause a federal court is powerless to act beyond its statutory grant of subject matter jurisdiction, a court must zealously insure that jurisdiction exists over a case." Smith v. GTE Corp., 236 F.3d 1292, 1299 (11th Cir. 2001). "[Subject-matter] jurisdiction is not conferred by the [mere] stroke of a lawyer's pen." Diefenthal v. Civil Aeronautics Bd., 681 F.2d 1039, 1052 (5th Cir. 1982). "It is the plaintiff's burden both to allege with sufficient particularity the facts creating jurisdiction, in view of the nature of the right asserted, and, if appropriately challenged . . . to support the allegation." St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 287 at n.10, 58 S.Ct. 586, 590 at n.10, 82 L.Ed. 845 (1938) (citations omitted) (emphasis added). "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." F.R.C.P. 12(h)(3) (emphasis added).

Felstein/EMA alleges that the Court herein has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332 (the "diversity jurisdiction" statute), which includes an absolute requirement that the "amount-in-controversy" exceed \$75,000.00. 28 U.S.C. § 1332; Morrison v. Allstate Indem. Co., 228 F.3d 1255, 1268 (11th Cir. 2000) (diversity jurisdiction statute must be strictly construed); Burns v. Anderson, 502 F.2d 970, 972 (5th Cir. 1974). In a doomed effort to satisfy the amount-in-controversy threshold, EMA has attempted to aggregate the claims of EMA and

its members against each and every Defendant.⁵ Such aggregation is, however, expressly forbidden as a means of bootstrapping diversity jurisdiction. Instead, the claims of each allegedly-injured association member against each respective defendant must be considered separately for diversity purposes. Morrison, 228 F.3d at 1263-64 (citing Alvarez v. Pan American Life Ins. Co., 375 F.2d 992, 993-94 (5th Cir. 1967) and Troup v. McCart, 238 F.2d 289, 295-96 (5th Cir. 1957)). Unless the members' individual rights arise from an indivisible joint interest in commonly-held property,⁶ "[the] claims are separate and distinct . . . [for] diversity jurisdiction." Id. at 1264. Even where the claims of multiple plaintiffs (i.e., members) have been "unite[d] for convenience and economy in a single suit . . . it is essential that the demand of each be of the requisite jurisdictional amount." Morrison, 228 F.3d at 1262.

[I]f the law were otherwise, then [this rule] could facilely be undercut by the cosmetic expedient of forming a so-called "association" to embrace the (individually insufficient) claims of putative class members and agglomerating those claims to exceed the limit required for the amount in controversy.

Ferris, 645 F. Supp. 1363-64. Thus, no diversity jurisdiction exists in the instant matter. This Court must dismiss Felstein/EMA's Complaint.

III. FELSTEIN/EMA'S LAWSUIT MUST BE DISMISSED BECAUSE THIS COURT LACKS PERSONAL JURISDICTION OVER THE DEFENDANTS.

Personal jurisdiction is required for the court to impose a judgment on a defendant. Burnham v. Superior Court, 495 U.S. 604, 609-10, 110 S. Ct. 2105, 2109-10, 109 L. Ed.2d 631 (1990). "To invoke a court's *in personam* jurisdiction, a plaintiff must make a *prima facie* case

⁵ In other words, EMA bases its claim of diversity jurisdiction on the following formula: (EMA claims vs. Defendant #1) + (EMA claims vs. Defendant #2) + (EMA claims vs. Defendant #3) . . . (etc.) . . . + (EMA Member #1 claims vs. Defendant #1) + (EMA Member #1 claims vs. Defendant #2) + (EMA Member #1 claims vs. Defendant #3) . . . (etc.) . . . + (EMA Member #2 claims vs. Defendant #1) + (EMA Member #2 claims vs. Defendant #2) + (EMA Member #2 claims vs. Defendant #3) . . . (etc.) > \$75,000.

⁶ "[T]he presence of [such] a 'common and undivided interest' is uncommon, existing only when the defendant owes an obligation to the group of plaintiffs as a group and not to the individuals severally." Morrison, 228 F.3d at 1262 (citations omitted) (emphasis added). Only when the plaintiffs' claims are actually "derived from rights that they hold in group status" are the claims sufficiently common and undivided to allow aggregation." Eagle v. American Tel. and Tel. Co., 769 F.2d 541, 546 (9th Cir. 1985); Zahn v. International Paper, 414 U.S. 291, 294, 94 S.Ct. 505, 508, 38 L.Ed.2d 511 (1973) (aggregation requires "a single title or right, in which [the various plaintiffs] have a common and undivided interest") (emphasis added).

by presenting enough evidence that jurisdiction exists to withstand a directed verdict." General Cigar Holdings, Inc. v. Altadis, S.A., 205 F. Supp.2d 1335, 1340 (S.D. Fla. 2002) (citing Meier v. Sun Int'l Hotels, Ltd., 288 F.3d 1264, 1269 (11th Cir. 2002)). Even when the plaintiff's jurisdictional allegations satisfy the threshold requirements, a defendant may submit evidence showing that personal jurisdiction does not exist. Id. As long as the defendant's evidence is more than "conclusory assertions," the jurisdictional burden shifts back to the plaintiff. Id.

In a diversity case, the court's exercise of jurisdiction must comport with both the forum state's long-arm statute and the dictates of federal due process. See Sculptchair, Inc. v. Century Arts, Ltd., 94 F.3d 623, 626 (11th Cir. 1996); Madara v. Hall, 916 F.2d 1510, 1516 (11th Cir. 1990). Accordingly, in the present matter, this Court must consider each defendant's Florida contacts under both the Florida long-arm statute (Fla. Stat. § 48.193) and federal due process concerns. See Venetian Salami Co. v. Parthenais, 554 So.2d 499, 502 (Fla. 1989). Those Florida contacts are, in fact, non-existent – the only relevant forum connection lies in the Boca Raton, Florida address shared by EMA and its founder/director/counsel/spokesperson Mark Felstein. Accordingly, the pertinent jurisdictional analysis may be concisely stated as a single question: Does an injured party's coincidental membership in a Florida trade association vest Florida courts with automatic jurisdiction over the injured party's claims against non-Florida defendants? The answer is, of course, a resounding "no" – this Court lacks jurisdiction over each and every Defendant.

A. This Court's Assertion Of Jurisdiction Over The Defendants Is Prohibited By The Florida Long-Arm Statute.

Long-arm statutes fall into two categories – (1) those that restrict jurisdiction to an even greater extent than does federal due process (i.e., "restrictive" long-arm statutes); and (2) those that confer jurisdiction in all circumstances permissible under due process standards ("coextensive" long-arm statutes). Florida's long-arm statute falls into the former category – it is not coextensive with due process and is accordingly "strictly construed" to confer jurisdiction in a smaller set of cases and circumstances than would otherwise be allowed by federal due process. Williams Electric Co. v. Honeywell, Inc., 854 F.2d 389, 394 (11th 1988); Venetian Salami, 554 So.2d at 502; Nida Corp. v. Nida, 118 F. Supp.2d 1223, 1226-27 (M.D. Fla. 2000).

1. Subsections (1)(a), (c), (d), (e), And (f) Of The Florida Long-Arm Statute Are Facially Inapplicable.

The Florida long-arm statute describes a variety of circumstances in which Florida courts can exercise jurisdiction over an out-of-state defendant. Since none of the defendants:

- does business in Florida or has an office or presence in Florida, as contemplated by § 48.193(1)(a);
- owns real property in Florida, as contemplated by § 48.193(1)(c);
- contracted to provide insurance in Florida, as contemplated by § 48.193(1)(d);
- is involved in a Florida divorce, as contemplated by § 48.193(1)(e); or
- caused personal injury or physical property damage (as opposed to economic injury) in Florida, as contemplated by § 48.193(1)(f),

subsections (1)(a) and (1)(c)-(f) of the Florida long-arm statute are not even arguably applicable.

Accordingly, that statute permits jurisdiction, if at all, on the basis of each Defendant having “committed a tortious act within [Florida].”

2. Subsection (1)(b) Is Also Inapplicable Because No Defendant Has Committed A Tortious Act Within Florida.

Fla. Stat. § 48.193(1)(b) confers jurisdiction over non-Florida defendants who have “committed a tortious act within [Florida.]” No defendant has any meaningful contact with Florida; no defendant has directed any out-of-state acts toward or into Florida; and no defendant had even heard of EMA prior to the commencement of the instant litigation. (*Exhibits B.1-B.9, each at ¶¶ 3, 4*). Accordingly, the Florida Long Arm Statute prohibits the exercise of jurisdiction over each and every Defendant.

B. This Court's Assertion Of Jurisdiction Over The Defendants Is Also Prohibited By The Due Process Guarantees Of The United States Constitution.

Consistent with federal due process, a court may assert personal jurisdiction over a party not present in the forum state only if that party has “certain minimum contacts with [the forum] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95 (1945). To sustain jurisdiction, these “minimum contacts” must proximately result from actions by the defendant that created a “substantial connection” with the forum State. *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 109, 107 S. Ct. 1026, 1030, 94 L. Ed. 2d 92 (1987). The “constitutional touchstone” of the minimum contacts/substantial connection test is

“whether the defendant purposefully established 'minimum contacts' in the forum State.” Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474, 105 S. Ct. 2174, 2183, 85 L.Ed.2d 528 (1985) (emphasis added). In other words, the foreign defendant’s contacts with the forum state must be based on “some act by which the defendant purposefully avails [himself] of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” Id. at 475, 105 S. Ct. at 2183 (emphasis added). Consistent with this requirement of purposeful personal availment, the “unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.” Hanson v. Denckla, 357 U.S. 235, 253, 78 S. Ct. 1228, 1239-40, 2 L. Ed. 2d 1283 (1958). Rather, in relation to each defendant, the defendant’s “conduct and connection with” Florida must be such that he “should reasonably [have] anticipate[d] being haled into court [here].” World-Wide Volkswagen v. Woodson, 444 U.S. 286, 297, 100 S. Ct. 559, 567, 62 L. Ed. 2d 490 (1980).

1. "General Jurisdiction" Does Not Exist In The Present Matter.

Personal jurisdiction may be “general” or “specific.” Sher v. Johnson, 911 F.2d 1357, 1361 (9th Cir. 1990). “General jurisdiction is grounded on the defendant's contacts that are unrelated to the litigation.” Williams Electric, 854 F.2d at 392 at n.2 (11th Cir. 1988). A defendant whose contacts with the forum state are of such great quality and quantity as to support general jurisdiction may be sued in the forum state in any lawsuit, whether or not the claims and the forum contacts are related. Id. The quality and quantity of forum contacts necessary to support general jurisdiction is substantial. Id. (contacts must be “systematic and continuous”). There can be no serious contention in the present matter that any Defendant is subject to general jurisdiction in Florida. (*See Exhibits B.1-B.9, each at ¶3*).

2. "Specific Jurisdiction" Does Not Exist In The Present Matter.

“Specific jurisdiction” encompasses the concept of claim-relatedness and is based upon a defendant’s case-related contacts with the forum state. Helicopteros Nacionales de Columbia, S.A. v. Hall, 466 U.S. 408, 413-14, 104 S. Ct. 1868, 1872, 80 L. Ed. 2d 404 (1984). On the basis of the relationship between the forum and the facts giving rise to the plaintiff's claims, specific jurisdiction may exist in situations where general jurisdiction does not. Even under the principles of specific jurisdiction, however, this Court's exercise of jurisdiction over the Defendants is prohibited by the guarantees of federal due process.

a. No Jurisdiction Exists In The Present EMA-As-Plaintiff Lawsuit.

Any claims asserted by Felstein/EMA on EMA's own behalf are necessarily frivolous, given that EMA was formed only a few weeks before it filed the instant lawsuit. (*See Facts, Section II*). Given the Defendants' dearth of Florida contacts and the fact that they had never heard of EMA until it filed suit, there is not even a colorable argument that the Defendants established contacts with Florida sufficient to support this Court's jurisdiction over them. (*Exhibits B.1-B.9, each at ¶4; see also, discussion of "effects test" jurisdiction*). Moreover, to the extent that Felstein/EMA's Complaint is read to allege claims against EMA members, the result is even clearer – it is patently absurd to suggest that jurisdiction in an associational plaintiff case exists in the association's home state solely on the basis of the injured entity's association membership. (*See "purposeful availment" cases cited immediately above*). Thus, in relation to Felstein/EMA's Complaint as currently pleaded, this Court lacks jurisdiction over the Defendants.

b. Even If Allegedly-Injured EMA Members Had Themselves Filed The Present Lawsuit, This Court Would Still Lack Jurisdiction.

The plaintiff in the instant matter is EMA. No member of EMA is a party to Felstein/EMA's lawsuit, and the Complaint must stand or fall in light of the current identities and alignment of the parties. Nonetheless, the Defendants foresee the possibility of additional frivolous legal activity by Felstein on behalf of EMA and/or its members following the imminent dismissal of the present Felstein/EMA Complaint. Accordingly, to further highlight the baseless nature of the instant lawsuit and to preempt any further harassment of the Defendants by Felstein, the discussion below shows that personal jurisdiction would be lacking over the Defendants even if the instant matter involved one or more EMA members as plaintiffs (*i.e.*, if Felstein sought to refile or to somehow substitute EMA members for EMA in the instant action).

(i) There Would Be No Basis For Jurisdiction In Relation To Claims Asserted By Non-Florida EMA Members.

In relation to claims asserted by EMA members who are not Florida residents, there is not even an arguable basis for Florida jurisdiction. Any contention to the contrary – *i.e.*, that Florida jurisdiction over non-Florida defendants is proper because the non-Florida plaintiff happens to belong to a Florida trade association – is ludicrous. (*See Argument, Section III.B.2.b above*).

(ii) There Would Be No Basis For Jurisdiction In Relation To Claims Asserted By Florida EMA Members.

In a lawsuit involving the direct claims of a Florida-residing EMA member that the Defendants mischaracterized the member's IP addresses or domains as spam-friendly (the true essence of what Felstein apparently attempted to plead in the EMA-as-plaintiff case), this Court would still lack jurisdiction over the Defendants, even under the rule of "effects test" jurisdiction.⁷ See Calder v. Jones, 465 U.S. 783, 104 S. Ct. 1482, 79 L.E.2d (1984). In that case, the Court explained that where a defendant:

- (a) expressly directs his intentional, tortious acts toward a plaintiff's home state,
- (b) such that that state is the focal point of both the intentional wrongful act and the resulting harm,
- (c) knowing that the plaintiff will suffer the brunt of the harm there,

specific jurisdiction may exist. Id. at 788-89, 104 S. Ct. at 1486-87. The rule of Calder does not create a "mechanical test" that is satisfied anytime "an intentional tortfeasor knowingly causes injury in the forum state." Laykin v. McFall, 830 S.W.2d 26/6, 271 (Tex. Ct. App. 1992) (citing the inapplicability of Calder, even in cases where the defendant commits an intentional tort and knows that the plaintiff will be harmed in the plaintiff's home state, where the home state is not the willful focal point of the wrongful acts). Rather, Calder jurisdiction may exist only where the defendant's intentional misconduct and the resulting harm are willfully and specifically focused into the forum state. Calder v. Jones, 465 U.S. at 788-89; 104 S. Ct. at 1486-87.

Courts across the country have recognized the narrow scope of fact patterns in which Calder jurisdiction may be exercised. For example, in Wallace v. Herron, 778 F.2d 391, 394-95 (7th Cir. 1985), cert. denied, 475 U.S. 1122, 106 S. Ct. 1642, 90 L. Ed. 2d 187 (1986), the court explained:

We do not believe that the Supreme Court, in Calder, was saying that any plaintiff may hale any defendant into court in the plaintiff's home state, where the defendant has no contacts, merely by asserting that the defendant has committed an intentional tort against the plaintiff. . . . [T]he so-called "effects" test is merely

⁷ "Effects test" jurisdiction is the only category of specific jurisdiction that specifically looks to the plaintiff's home state as the possible forum and, accordingly, is the only category of jurisdiction that could even arguably apply, given the Defendants' above-explained lack of any Florida contacts.

another way of assessing the defendant's relevant contacts with the forum state, thus invoking the benefits and protections of its laws.

See also Wilson v. Belin, 20 F.3d 644, 648-49 (5th Cir. 1994), cert. denied, 513 U.S. 930, 115 S. Ct. 322, 130 L. Ed. 2d 282 (1994) (refusing to assert Calder jurisdiction); Hoechst Celanese Corp. v. Nylon Engineering Resins, Inc., 896 F. Supp. 1190, 1196 (M.D. Fla. 1995) (foreign defendant's forum contacts – including the commission of intentional torts against the forum plaintiff – were “too attenuated to establish the minimum contacts necessary for [the forum court] to exercise jurisdiction”); Edmunds v. Superior Court, 24 Cal. App. 4th 221, 230, 29 Cal. Rptr. 2d 281 (1994) (the mere causing of an effect in the forum “is not [in and of itself] sufficient” to support jurisdiction); Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414, 420 (9th Cir. 1997) (stressing that the “‘effects’ test [does not] apply with the same force to [a corporate plaintiff] as it would to an individual, because a corporation does not suffer harm in a particular geographic location in the same sense that an individual does”).

In the hypothetical Florida member vs. Defendant lawsuit, jurisdiction could not possibly exist unless the member could show that the Defendant, with full knowledge of the member's Florida residency, committed an intentional tort against the member and purposefully directed the misconduct toward the Florida forum with the specific aim of causing harm to the member in Florida. There is not even an inkling of fact in EMA's current lawsuit to suggest that any member could sustain such a heavy burden.

IV. FELSTEIN/EMA'S LAWSUIT MUST BE DISMISSED BECAUSE IT FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

A. The Complaint Fails To State A Claim For Conversion.

Conversion is “an act of dominion wrongfully asserted over another's property inconsistent with his ownership therein.” 12 Fla. Jur.2d, Conversion and Replevin § 1 (1979). The only act of “dominion” pled by Felstein/EMA is the claim that the Defendants allegedly misidentified certain IP addresses owned by EMA as being sources of spam or otherwise spam-friendly. (*Complaint at Count II*). Contrary to the new legal rule that Felstein/EMA attempts to create, a business defamation claim is not converted into a conversion claim by a summary assertion that the false statement caused a decline in the economic value of the subject property.

B. The Complaint Fails To State A Claim For Invasion of Privacy.

Florida recognizes a cause of action for invasion of privacy for “the publicizing of one's private affairs with which the public has no legitimate concern and/or] the wrongful intrusion into one's private activities, in such manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities.” State Farm Fire & Cas. Co. v. Compupay, Inc., 654 So.2d 944, 948 (Fla. 3rd DCA 1995) (quoting Cason v. Baskin, 20 So.2d 243, 249 (Fla. 1945)). The elements of a Florida privacy claim are: “1) the publication, 2) of private facts, 3) that are offensive, and not of public concern.” Woodard v. Sunbeam Television Corp., 616 So.2d 501, 503 (Fla. 3rd DCA 1993). Felstein/EMA's privacy claims are baseless – the cause does not exist in relation to a corporate plaintiff, does not apply to a statement the truth of which the plaintiff contests, and does not apply to statements regarding matters of public concern.

1. There Exists No Corporate Cause Of Action For Invasion of Privacy.

“[A]n invasion of privacy action [like that asserted by EMA for public disclosure of private facts] can be brought only by a living person[.]” Williams v. City of Minneola, 575 So.2d 683, 689 (Fla. 5th DCA 1991) (citing with approval the Restatement (Second), Torts § 652I, including a passage to the effect that “the action is a personal right peculiar to the individual whose privacy is invaded”) (emphasis added). Accordingly, “[a] corporation, partnership or unincorporated association has no personal right of privacy [and thus] no cause of action for [invasion of privacy.]” Restatement (Second) of Torts § 652I cmt. c (1977); see also West v. Media General Convergence, Inc., 53 S.W.3d 640, 648 (Tenn. 2001) (holding that “the right to privacy . . . cannot attach to corporations or other business entities.”).

2. The Invasion Of Privacy Cause Of Action Applies Only To Statements Admitted By The Plaintiff To be True.

An essential element of Florida's privacy cause of action is that the “facts” (i.e., the statement) at issue be true. Tyne v. Time Warner Entertainment Co., 204 F. Supp. 2d 1338, 1344 (M.D. Fla. 2002) (citing with approval the Restatement (Second) of Torts rule adopted by the Florida courts). Where, as here, a plaintiff's entire case is premised on the alleged *falsity* of the statements attributed to the defendants, there is no cause of action for public disclosure of private facts. Id. (explaining that where the “facts” disclosed in a publication are, in actuality, false, the interest invaded is not protected by this cause of action). “Because none of the facts [allegedly]

disclosed by the [Defendants] are alleged [by Felstein/EMA] to be true, [Felstein/EMA] ha[s] no cause of action for invasion of privacy based on public disclosure of private facts.” Id.

3. Spamming Is An Issue Of The Utmost Public Importance.

“The right of privacy does not protect against publication of . . . matters of legitimate public interest.” Woodard v. Sunbeam Television Corp., 616 So.2d 5021 (Fla. Dist. Ct. App. 3 1993). “Florida courts have long recognized the restriction placed upon the general right to privacy by the public's right to . . . the dissemination of news and information.” Cape Publications v. Hitchner, 549 So.2d 1374, 1377 (Fla. 1989). Such news and information includes “matters of a private nature in which the public has a legitimate interest.” Id. at 1378. To argue that spam – unsolicited commercial e-mail – is not a matter of grave public concern is ridiculous.

The issue of spam is of the utmost urgency and importance to the American public. There are presently no less than nine spam-related bills before the 108th Congress and almost three dozen spam-related state statutes. (*See* www.spamlaw.com for bill/act names and summaries of each). According to Senator Conrad Burns (the sponsor of one of the currently-pending federal bills), spam costs the United States public at least \$10 billion per year in lost worker productivity and expenses association with anti-spam measures. (*Burns Press Release*, http://burns.senate.gov/index.cfm?FuseAction=PressReleases.Detail&PressRelease_id=847 (April 10, 2003)). Even without regard to any e-mail specific statutes or bills, the law is well-established: spamming is illegal and constitutes a multitude of statutory and common law violations against the victim ISPs and Internet users. *See, e.g., America Online, Inc. v. IMS*, 24 F. Supp. 2d 548, 551-52 (E.D. Va. 1998) (finding that spamming and spoofing constitute numerous violations, including trespass, false designation of origin, and dilution of the plaintiff's trademark and service mark, and awarding injunctive relief); America Online, Inc. v. LCGM, 46 F. Supp.2d 444 (E.D. Va. 1998) (finding that spamming and spoofing constitute, among other violations, false designation of origin, trademark and service mark dilution, a violation of the Computer Fraud and Abuse Act, and a trespass to chattels, and awarding injunctive relief); Hotmail Corp. v. Van\$ Money Pie Inc., 1998 WL 388389, 47 U.S.P.Q.2d 1020 (N.D. Cal. 1998) (spam-related violations include false designation of origin, federal and state dilution of trademark, violation of the Computer Fraud and Abuse Act, state and federal unfair competition, breach of contract, fraud, misrepresentation, and trespass to chattels).

C. The Complaint Fails To State A Claim For False Light.

As with the privacy claim, Felstein/EMA's false light claim is facially defective since there exists no such cause on behalf of a corporation. See Restatement (Second) of Torts § 652I cmt. c (1977) (stating that "[a] corporation, partnership or unincorporated association has no personal right of privacy [and thus] no cause of action for [false light]"); see also Intercity Maintenance Co. v. Local 254 Service Employees Intern. Union, 62 F. Supp.2d 483, 506 (D. R.I. 1999), *partially vacated on other grounds*, 241 F.3d 82 (1st Cir. 2001) (no corporate cause of action for tort of false light); Southern Air Transport, Inc. v. American Broadcasting Cos., Inc., 670 F. Supp. 38, 42 (D. D.C. 1987) (to same effect).

D. The Complaint Fails To State A Claim For Tortious Interference.

The elements of Florida's cause of action for tortious interference with a business relationship are: (1) the existence of a business relationship; (2) the defendant's knowledge of the relationship; (3) the defendant's intentional and unjustified interference with the relationship, and (4) damage to the plaintiff as a result of the breach of the relationship. St. Johns River Water Management Dist. v. Fernberg Geological Services, Inc., 784 So.2d 500, 504 (Fla. 2001). Given that no Defendant had ever heard of EMA until after the lawsuit was filed, it is impossible that any Defendant knew of any EMA relationships (element 2) or intentionally interfered with such relationships (element 3). Moreover, given that EMA was formed immediately prior to the commencement of this lawsuit, Felstein/EMA's claim that EMA even had any contracts or relations likewise is inherently incredible.

E. The Complaint Fails To State A Claim For Defamation.

Felstein/EMA asserts that the Defendants have, at some unknown time between 1999 and April 2003, defamed EMA and its members by attributing spam-friendly practices to them. To the extent these claims relate to EMA directly, they are inherently absurd – it is legally and factually impossible for a corporation formed in March 2003 to have been harmed by statements made prior to its date of formation. Indeed, until this lawsuit was filed, no Defendant had even heard of EMA, much less published any defamatory statements concerning EMA. Moreover, to the extent that EMA seeks to assert defamation claims on behalf of its members, the claims are similarly defective. Under well-established Florida law, a cause of action for defamation exists only when the plaintiff itself is the subject of the allegedly false statements. See, e.g., Bass v. Rivera, 826 So.2d 534 (Fla. Dist. Ct. App. 2 2002); Razner v. Wellington Regional Medical

Center, Inc., 837 So.2d 437 (Fla. Dist. Ct. App. 4, 2002); Valencia v. Citibank Intern., 728 So.2d 330 (Fla. Dist. Ct. App. 3 1999); Thompson v. Orange Lake Country Club, Inc., 224 F.Supp.2d 1368 (M. D. Fla. 2002). Furthermore, insofar as the defamation claims set forth in Felstein/EMA's Complaint arise from or relate to material published at such public resources as the SPAMHAUS and/or SPEWS web sites (i.e., media defendants), the claims are precluded by Felstein's failure to serve written, pre-lawsuit notice on the defendant, "specifying the article . . . and the statements which he or she alleges to be false and defamatory." Fla. Stat. § 770.01 (2003); see Mancini v. Personalized Air Conditioning & Heating, Inc., 702 So.2d 1376 (Fla. Dist. Ct. App. 4 1997) (failure to comply with statutory provision requiring notice before bringing libel suit based on media publication requires dismissal of complaint for failure to state cause of action); Orlando Sports Stadium, Inc. v. Sentinel Star Co., 316 So.2d 607 (Fla. Dist. Ct. App. 4 1975) (failure to give notice cannot be cured subsequent to filing suit). Finally, Felstein/EMA's Complaint fails to allege the time, place, and content of the complained-of statements, all of which are required to state a justiciable claim for defamation. Pentz v. Downey, 110 F. Supp. 642 (E.D. Pa. 1953).

CONCLUSION

For the foregoing reasons, the Defendants respectfully request that the Felstein/EMA Complaint be dismissed with prejudice in its entirety, that the Defendants be awarded their costs, expenses, and attorneys' fees incurred in bringing this motion and otherwise defending this lawsuit, and that this Court award such other and further relief as it deems just and proper.

Respectfully submitted this 2nd day of September, 2003.

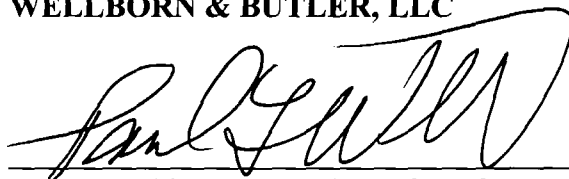
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A handwritten signature in black ink, appearing to read "Paul F. Wellborn, III", written over a horizontal line.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-80295-CIV-MIDDLEBROOKS/JOHNSON

EMARKETERSAMERICA.ORG, INC.,

A Florida not-for-profit corporation,

Plaintiff,

v.

SPEWS.ORG d/b/a THE HERMES GROUP;

SPAMHAUS.ORG d/b/a THE SPAMHAUS PROJECT;

CSL GMBH JOKER.COM;

STEVE LINFORD;

JULIAN LINFORD;

ALAN MURPHY;

SUSAN WILSON a/k/a SUSAN GUNN a/k/a SHIKSAA;

STEVEN J. SOBOL;

CLIFTON T. SHARP;

RICHARD C. TIETJENS a/k/a MORLEY DOTES;

ADAM BROWER; and

STEPHEN JOSEPH JARED a/k/a JOE JARED,

Defendants.

CERTIFICATE OF SERVICE

This is to certify that I have this 2nd day of September, 2003 served a copy of the foregoing Motion To Dismiss upon the below-listed counsel by hand:

Mark E. Felstein

Felstein & Associates, P.A.

555 South Federal Highway, Suite 450

Boca Raton, Florida 33432

HUNTON & WILLIAMS, LLP

A handwritten signature in black ink, appearing to read "S.A. Danon", written over a horizontal line.

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INDEX TO EXHIBITS

A. Declaration of Paul F. Wellborn III

1. "E marketersAmerica.Org, Inc." Inquiry Response, "Corporations Online," Florida Department of State, Division of Corporations Web Site (<http://www.sunbiz.org>)
2. Mark E. Felstein "Open Letter," E marketersAmerica.Org home page at <http://www.emarketersamerica.org>
3. Magill, Anti-Spammers Served With Court Papers At Forum," DMNews.com, http://dmnews.com/cgi-bin/artprevbot.cgi?article_id=23788 (May 1, 2003).
4. Harrington, "Spam Issue A Meaty One," Newsday.com, <http://www.newsday.com/business/local/newyork/ny-bzspam023264441may02,0,2652558> (May 2, 2003)
5. "WhoIs Search Results For E marketersAmerica.Org" from GoDaddy.com (registrar of that domain), <http://www.godaddy.com>
6. Duggan, "Marketers Serve Up Suit Against Spam Blockers," South Florida Business Journal, <http://www.southflorida.bizjournals.com/southflorida/stories/2003/05/12/story1.html> (May 12, 2003)
7. Mark E. Felstein, E marketersAmerica.org Press Release ("E marketersAmerica.org Fights For Free Speech"), <http://www.emarketersamerica.org/pr.html>
8. Paul F. Wellborn III Letter to Mark E. Felstein (May 6, 2003)
9. Chachere, "Nelson To Launch Attack On Spam," Tallahassee Democrat, <http://www.tallahassee.com/mld/democrat/5846889.htm> (May 13, 2003)
10. Henry, "Damn Spam," Creative Loafing, <http://www.atlanta.creativeloafing.com/2003-07-10/cover.html> (July 10, 2003)
11. In the Matter of Mark E. Felstein, 2003 N.Y. Slip. Op. 14968 (June 6, 2003)

B. Declarations of the Defendants

1. Declaration of Spamhaus.Org
2. Declaration of Steve Linford
3. Declaration of Alan Murphy
4. Declaration of Susan Gunn
5. Declaration of Steven J. Sobol
6. Declaration of Clifton T. Sharp
7. Declaration of Richard T. Tietjens
8. Declaration of Adam Brower
9. Declaration of Stephen Joseph Jared

A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-80295-CIV-MIDDLEBROOKS/JOHNSON

EMARKETERSAMERICA.ORG, INC.,
A Florida not-for-profit corporation,

Plaintiff,

v.

SPEWS.ORG d/b/a THE HERMES GROUP;
SPAMHAUS.ORG d/b/a THE SPAMHAUS PROJECT;
CSL GMBH JOKER.COM;
STEVE LINFORD;
JULIAN LINFORD;
ALAN MURPHY;
SUSAN WILSON a/k/a SUSAN GUNN a/k/a SHIKSAA;
STEVEN J. SOBOL;
CLIFTON T. SHARP;
RICHARD C. TIETJENS a/k/a MORLEY DOTES;
ADAM BROWER; and
STEPHEN JOSEPH JARED a/k/a JOE JARED,

Defendants.

DECLARATION OF PAUL F. WELLBORN III

PAUL F. WELLBORN III hereby declares as follows:

1.

My name is Paul F. Wellborn III. I am counsel for Defendants Attorneys for Defendants Spamhaus.Org, Steve Linford, Alan Murphy, Susan Gunn, Steven J. Sobol, Clifton T. Sharp, Richard C. Tietjens, Adam Brower, and Stephen Joseph Jared (the "Defendants"). I offer this declaration in support of the Defendants' Motion To Dismiss For Lack Of Standing, Lack Of Subject Matter Jurisdiction, Lack Of Personal Jurisdiction And Failure To State A Claim Upon Which Relief May Be Granted. I am over 18 years of age and am otherwise competent to give

this Declaration regarding the matters set forth herein.

2.

The document attached at Exhibit 1 to my declaration is a true and correct copy of the “E marketersAmerica.Org, Inc.” Inquiry Response from the official “Corporations Online” web site operated by the Florida Department of State, Division of Corporations at <http://www.sunbiz.org>.

3

The document attached at Exhibit 2 to my declaration is a true and correct copy of Mark E. Felstein’s “Open Letter” from the E marketersAmerica.Org home page at <http://www.emarketersamerica.org>.

4.

The document attached at Exhibit 3 to my declaration is a true and correct copy of a May 1, 2003 news report entitled “Anti-Spammers Served With Court Papers At Forum” from the DMNews.com web site at http://dmnews.com/cgi-bin/artprevbot.cgi?article_id=23788.

5.

The document attached at Exhibit 4 to my declaration is a true and correct copy of a May 2, 2003 news report entitled “Spam Issue A Meaty One” from the Newsday.com web site at <http://www.newsday.com/business/local/newyork/ny-bzspam023264441may02,0,2652558>.

6.

The document attached at Exhibit 5 to my declaration is a true and correct copy of the search results from the “WhoIs” search engine located at www.godaddy.com and belonging to the domain name registrar GoDaddy.com for “E marketersAmerica.Org.”

7.

The document attached at Exhibit 6 to my declaration is a true and correct copy of a May 12, 2003 news report entitled “Marketers Serve Up Suit Against Spam Blockers” from the South Florida Business Journal web site at <http://www.southflorida.bizjournals.com/southflorida/stories/2003/05/12/story1.html>.

8.

The document attached at Exhibit 7 to my declaration is a true and correct copy of the press release issued by Mark E. Felstein and published at the EmarketersAmerica.org web site (<http://www.emarketersamerica.org/pr.html>) under the title “EmarketersAmerica.org Fights For Free Speech”.

9.

The document attached at Exhibit 8 to my declaration is a true and correct copy of a letter that I wrote and faxed to Mark Felstein on May 6, 2003 at his law firm fax number listed in the record of this case. The facts and statements set forth in that letter, which are incorporated by reference herein, are true and correct.

10.

The document attached at Exhibit 9 to my declaration is a true and correct copy of a May 13, 2003 news report entitled “Nelson To Launch Attack On Spam” from the Tallahassee Democrat web site at <http://www.tallahassee.com/mld/democrat/5846889.htm>.

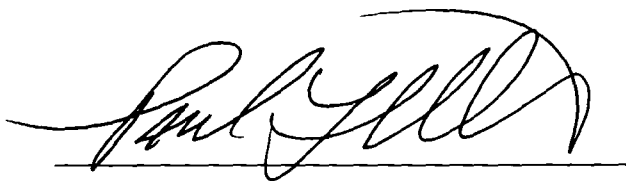
11.

The document attached at Exhibit 10 to my declaration is a true and correct copy of a July 10, 2003 news article entitled “Damn Spam” from the Creative Loafing web site at <http://www.atlanta.creativeloafing.com/2003-07-10/cover.html>.

12.

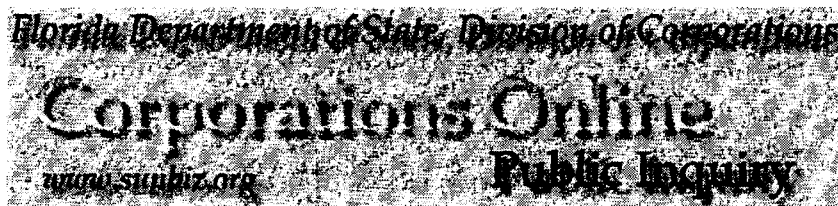
The document attached at Exhibit 11 to my declaration is a true and correct copy of the follow slip opinion: In the Matter of Mark E. Felstein, 2003 N.Y. Slip. Op. 14968 (June 6, 2003).

I declare under penalty of perjury this 27th day of August, 2003 that the foregoing information is true and correct.

A handwritten signature in black ink, appearing to read "Paul F. Wellborn III", is written over a horizontal line.

Paul F. Wellborn III

1



Florida Non Profit**EMARKETERSAMERICA.ORG, INC.**

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555 SOUTH FEDERAL HIGHWAY
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Name & Address
FELSTEIN, MARK E 555 SOUTH FEDERAL HIGHWAY SUITE 450 BOCA RATON FL 33432

Officer/Director Detail

Name & Address	Title
FELSTEIN, MARK E 555 SOUTH FEDERAL HIGHWAY SUITE 450 BOCA RATON FL 33432	D
MILLER, ADAM E 555 SOUTH FEDERAL HIGHWAY SUITE 450 BOCA RATON FL 33432	D
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Dear Marketing Colleague:

EMarketersAmerica.Org, Inc. is devoted to advocating for the rights of the electronic marketer. Opt-in permission based email marketers have been blacklisted, harassed and threatened by anti-spammers---legitimate businesses wrongly pushed to the precipice of extinction. We need your help in keeping our industry vital by protecting email marketers.

On April 14, 2003, EMarketersAmerica.Org, Inc. filed suit against SPEWS, The Spamhaus Project, Joker.com, and the individuals that hide behind these organizations as they endeavor to destroy our right to market via the Internet. To date they've been much louder then our industry. United in their quest. Ruthless. Stopping at nothing---even stomping on good taste---to drive their side of the issue. We've been quiet far too long. But, we will not let them prevail in their attempt to obliterate our right of free trade. We're the direct marketers. It's time for us to flex our combined muscle and deliver our message! We generate millions of dollars that help stimulate our economy. We continually invest in equipment, inventory and technology. And, most importantly we create jobs!

The time has come for EMarketersAmerica.Org, Inc. The email marketing industry needs a unified effort as catalyst towards the proliferation and uniformity of laws and regulations that will guarantee Free Speech and Free Trade via the Internet. Over half the states have laws geared to regulating electronic mail and speech. Most likely, this Congressional Session, the Federal Government will create a law of its own. Our industry must support this effort and assure our needs are met within the new legislation. Now is the time to join together. Speaking, with a united voice, we'll have real input into the creation of a balanced Federal Regulation, which would comport with the Constitution and allow our marketing efforts to continue without the interference of those opposed to our industry. Please join with us today!

Whether you're a marketer, support industry or an individual allied with email marketers we need your support! Just use the attached form and return along with your membership dues. By joining with us today you'll help assure a robust industry email marketing industry tomorrow!

Sincerely,

A handwritten signature in black ink, reading "Mark E. Felstein".

Mark E. Felstein, Esq.

Director & Chief Counsel

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Anti-Spammers Served With Court Papers at Forum

May 01, 2003

By: Ken Magill
iMarketing News Editor
ken@dmnews.com

WASHINGTON -- The ongoing feud between e-mail marketers and anti-spammers reared its head during the lunch break at yesterday's Federal Trade Commission spam forum as two anti-spam activists were served with court papers.

The action was part of a lawsuit filed April 14 by EmarketersAmerica.org against some well-known anti-spam activists involving e-mail blacklisting groups Spamhaus.org and Spam Prevention Early Warning System, or SPEWS.org.

Mark Felstein, director and chief counsel of Boca Raton, FL-based EmarketersAmerica.org, declined to name any companies he represents, claiming fear of retaliation from anti-spammers.

"Right now if I name anybody, their business is gone," Felstein said, adding that most of the plaintiffs are around the Boca Raton area, though some are outside Florida.

Served with papers yesterday were Alan Murphy of Spamhaus.org and Adam Brower, who apparently is not officially affiliated with any anti-spam organization. However, the suit names him as a principal of Spamhaus and SPEWS. Both Spamhaus and SPEWS publish spam blacklists, or "blocklists," as anti-spammers refer to them. They list IP addresses suspected of being sources of spam.

Many ISPs and e-mail administrators use these blacklists to check incoming e-mail and filter out e-mail from suspected spam sources. Marketers, however, increasingly complain of "false positives" in which wanted e-mail is being blocked as spam.

Also, blacklists are known to list entire blocks of addresses and, as a result, prevent non-spammers who use the same service provider from sending e-mail. This is done hoping that customers of the service provider either take their business elsewhere or at least complain loudly enough to make the service provider police spammers more diligently. Anti-spammers refer to non-spammers denied e-mail service because of blacklists as collateral damage.

As a result, blacklisting is highly controversial.

Meanwhile, Spamhaus.org's proprietors are readily identifiable, but SPEWS' proprietors are not. SPEWS.org is registered in Russia and run anonymously to avoid lawsuits.

To get removed from SPEWS' blocklist, marketers have had to post messages on anti-spam group discussion list Nanae to make their case. However, EmarketersAmerica's complaint says that all the individuals named are proprietors of both Spamhaus and SPEWS. The complaint also says the plaintiffs believe SPEWS has offices in California and Illinois.

The complaint accuses the defendants of having "intentionally posted on their Web sites www.spamhaus.org and www.spews.org false, misleading and otherwise trade libelous information concerning the plaintiff." It also accuses the defendants of using Spamhaus.org and Spews.org "in direct efforts to maliciously interfere with the businesses of the plaintiff and its members."

The suit, filed in the U.S. District Court Southern District of Florida, accuses the defendants of libel and slander, asking for an injunction and an unspecified award for attorney fees, court costs, interest and the right to make a claim for punitive damages.

Calling the suit "a wake-up call" to anti-spammers and marketers, Felstein said, "this should have been done a long time ago." However, he said, he doesn't expect to get any money from the defendants.

Felstein also said his organization will conduct a national public information campaign to educate consumers that not all commercial messages on the Internet are the same as spam.

Since the suit was filed, Felstein said, he has received threatening telephone calls and corruption of his e-mail addresses. In addition, when his organization simply registered and parked its domain with a well-known register, it was wrongly blacklisted and immediately terminated by anti-spammers.

After just having been served with the lawsuit, Murphy declined to "address specific issues." When asked about the libel claim, however, he said, "What I'm doing is lawful, and my speech is protected speech. I don't publish anything that I know not to be true."

Anti-spam nonprofit SpamCon Foundation is expected to announce today that it has set up a legal defense fund for the defendants.

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Spam Issue a Meaty One

FTC hears arguments for free speech, blocking e-mails

By Mark Harrington
STAFF CORRESPONDENT

May 2, 2003

Washington - "This man's assaulting me!" yelled Mark Felstein, director and chief counsel of Emarketersamerica.org Inc., as the roughly 300 people at the Federal Trade Commission's first spam conference broke for lunch yesterday.

FTC commissioner Orson Swindle gently put himself between Felstein and an unidentified man who, like many at the forefront of the anti-spam movement, view Felstein as the embodiment of the thousands of unwanted e-mail messages that clog their in-boxes with offers of cheap mortgages, prescription drugs and money-making schemes.

Felstein said his members offer e-mails only to people who want them - a claim that drew a dry guffaw from an observer who witnessed the scuffle.

To say that tensions are running high here this week is something of an understatement. With talk of new federal legislation to punish spammers on a front burner and companies bemoaning the high costs of a phenomenon spiraling out of control, it is little wonder that people are near the breaking point.

"The volume of e-mail is threatening to burst the system," FTC attorney Dan Salsberg said.

Out on the sidewalk, Jim Ferguson, senior network specialist at Social & Scientific Systems in Silver Spring, Md., eyed Felstein from behind dark sunglasses and a cap with SPAM on it. Ferguson said he has had enough.

"It's unreal the amount of spam we get. It's a losing war."

Felstein, who was shouted down during a panel session when he tried to question a panelist he has sued, accused the anti-spam movement of targeting him with death threats and even threats against his mother.

"I suspect they don't have much of a life," he said. "They don't get out much. They sit in a room in front of computers and the network is their life."

Some here unaffiliated with the e-mail marketing firms suggested the harshest anti-spam measures, such as blacklists of spam-senders, impede free speech.

Cindy Cohn, an attorney at the Electronic Freedom Foundation, complained

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that the most extreme blacklists - which seek to block e-mails from certain spammers - provide a means for online censorship and "content-based discrimination," particularly in the political arena.

Julian Haight, co-author of SpamCop, a spam tracking and reporting application that hosts a popular blacklist, said the issue is emotional because "e-mail is personal. When people receive something revolting, they get emotional."

FTC commissioner Mozelle Thompson, a native of West Babylon, said the prospect of the worst spammers facing jail time - the penalty under a state law enacted in Virginia - "could be justified" on a larger scale, particularly when spam contains offers that break existing laws.

"Some of those kinds of [jail] penalties are appropriate," Thompson said. "For the get-rich-quick schemes or pornography involving those underage, there is a probability some spammers should go to jail."

Most spam contains false or misleading messages, the FTC said this week. U.S. Sen. Charles Schumer (D-N.Y.) this week proposed a national "do not e-mail" registry that would bar marketers from sending e-mails to addresses on the list.

In the interim, panelists here suggested consumers and businesses could cut spam by using long, seemingly random e-mail addresses, but otherwise should expect it to continue.

"You're really dealing with a situation here where the counter measures are quickly being met with counter-counter measures," said Jason Catlett, a computer scientist and founder of the software company Junkbusters Corp.

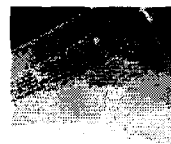
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 Mark Felstein
 555 South Federal Highway ste 450
 Boca Raton, FL 33432
 US
 Phone: 561-367-7990
 Email: mefels@aol.com

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Registrar Homepage: http://www.register.com

Domain Name: EMARKETERSAMERICA.ORG

Created on.....: Thu, Jan 16, 2003

Expires on.....: Mon, Jan 16, 2006

Record last updated on...: Tue, Jul 15, 2003

Administrative Contact:

Emarketers America
 Mark Felstein
 555 South Federal Highway ste 450
 Boca Raton, FL 33432
 US
 Phone: 561-367-7990
 Email: mefels@aol.com

Technical Contact, Zone Contact:

Register.Com

Domain Registrar
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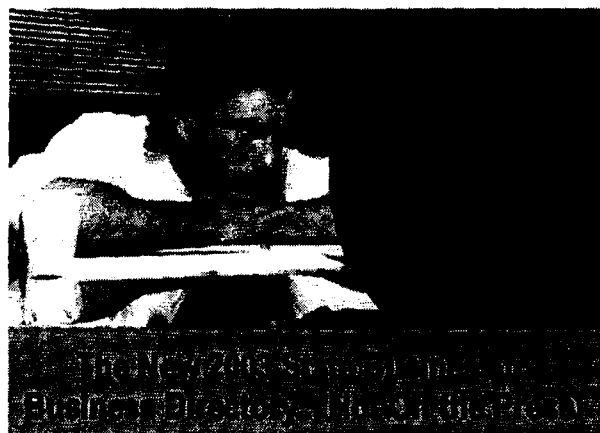
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EXCLUSIVE REPORTS

Marketers serve up suit against spam blockers

Ed Duggan

Spam - unsolicited, bulk e-mail that clogs computer inboxes with advertisements for everything from bargain software to home mortgage refinancing, discount drugs and hard-core pornography - has provoked a firestorm of frustration, criticism and attempts to eliminate it.



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It has also sparked an unusual lawsuit by a month-old South Florida trade association of permission-based e-mail marketers against would-be spam blockers.

The suit asks for a temporary injunction against the anti-spammers' block lists and

claims damages of at least \$75,000.

"In their attempts to stop spam, the blacklisters have injured legitimate, permission-based e-mail marketers," said Boca Raton attorney Mark Felstein, also a director of [eMarketersAmerica.org](#), plaintiff in the suit filed April 14 in U.S. District Court in West Palm Beach.

A dozen entities and individuals have been named as defendants in the case, including Steve Linford and The Spamhaus Project, a U.K.-based group that publishes the Internet addresses of chronic spammers on its Web site.

"It's a SLAPP suit [Strategic Lawsuit Against Public Participation]



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and a badly filed one too, full of fantasies, almost certain to be thrown out," said Linford in an e-mail response to questions from the South Florida Business Journal.

The complaint was rushed

He is not alone in his disdain for the suit.

"I think the suit is frivolous," said Sam Lewis, who teaches computer law the Shepard Broad Law Center at Nova Southeastern University and specializes in computer and Internet law at the Miami-based law firm of Feldman Gale Weber.

He has no connection to any of the parties involved with the suit.

"The temporary restraining order has already been denied by the judge," Lewis added.

The restraining order was turned down because a rule of the court requires a memorandum of law citing supporting authorities to accompany the filing, Felstein said.

"I rushed to get the complaint out the door," he said.

He said he plans to re-file the motion with the memorandum of law and add additional defendants to the suit at the same time.

Felstein declined to give his age, but said he's in his 30s. He said he is also in talks with at least one "major South Florida law firm" to join the case as co-counsel.

Felstein filed corporate registration March 10 for plaintiff eMarketersAmerica.org. It lists Adam E. Miller and Bari Nemeroff as additional directors. Miller is an attorney in Margate and Nemeroff is an IT recruiter in Broward, Felstein said.

"We are in the process of getting additional board members who will be active in the organization," he said.

The actual members of eMarketers-America.org are a mystery. Felstein said there are approximately 50 who are members and approximately 40 have paid the \$3,000 annual dues, but he refuses to name any of them for fear of retaliation by anti-spammers on the groups' members.

"I can't give out the names right now because of a history of threatening calls and e-mails to my office," Felstein said. "They probably will be released in about three weeks."

Complaints by anti-spammers to the Scottsdale, Ariz.-based Internet service provider Go Daddy Software, with whom the eMarketersAmerica Web site was registered and parked, caused it to be delisted. The firm is temporarily without a Web site or e-mail service.

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The corporation's IRS 501(c)6 request for non-profit status has been filed with the IRS, Felstein said. That category is typically used for business leagues, chambers of commerce, and trade or professional associations, the IRS Code shows.

Membership base damaged

The eMarketersAmerica complaint alleges the defendants "damaged its membership base of e-mail marketers, Internet services providers, Florida and other related businesses."

Linford and Spamhaus have issued a rebuttal to the suit (posted at www.spamhaus.org/legal/answer-03-80295.html). In it, they deny all the allegations made in the complaint.

"eMarketersAmerica didn't exist until four weeks ago," said Linford in an e-mail. "So we don't know who they are (and consequently could never have blocked their spam). However we are 99.999 percent sure eMarketersAmerica.org is simply a cover for Florida's most notorious spammer, Eddy Marin, currently the No. 1 spammer in the world."

A local high-tech executive, who asked not to be named, said Felstein is Marin's personal attorney and Marin is the force behind eMarketersAmerica.

"Not so," Marin said. "I'm not a member of the group, not behind it, and don't have anything to do with it. I work for Opt-In Services, a Boca Raton Internet marketer, and am there to be sure that spam doesn't go on."

Marin Enterprises is the managing entity for Opt-In Services, filings with the Florida Department of State show.

Felstein said he has done previous legal work for Marin and he is currently listed as the registered agent for Interplex, a company for which Marin is listed as VP, and his brother Denny as president, state records show.

"[Interplex] has some real estate interests and probably does some marketing," Felstein said. "But I think Eddy transferred his interests in it to his brother."

"I feel bad that Mark [Felstein] is taking so much heat - I certainly support him for speaking out - but the people who are making the allegations about me haven't done their due diligence," Marin said. "I got out of the adult business in 2000."

Spamhaus tracks the Internet's worst spammers, known spam gangs and spam support services, according to its Web site. It works with Internet service providers and law enforcement agencies to identify and remove persistent spammers from the Internet. It posts a database of Internet addresses of verified spammers that is used by Internet service providers and corporate networks worldwide to block all e-

mails from the offending Internet service providers.

The free spam-blocking list does not block the transmission of e-mail, but specifically blocks the receipt of junk mail for computer owners who choose to use it.

There can be a downside. Blocking has the effect of blocking legitimate senders' e-mail along with the spammers - the crux of eMarketersAmerica.org's complaint.

Regulation: A crazy quilt

Miami computer lawyer Lewis doubts many of the claims made by so-called permission-based e-mailers.

"I have a number of e-mail addresses that have never been used to send or receive e-mail," Lewis said. "Yet I have received numerous spam e-mails that said I had impossibly 'opted in through one of their partners' in those dead accounts."

The problem is more than just a nuisance.

"The Economist estimated that as much as 45 percent of the e-mail that comes in is spam," said attorney Brian Nelson, an attorney specializing in computer and information technology at Akerman Senterfitt in Miami. "It's a huge problem that uses up system capacity, clogs memory, slows down networks and even with spam filters it's possible to lose some important messages."

Computer owners are complaining to regulatory agencies and pushing politicians to pass stringent anti-spam laws. So far, 28 states - not including Florida - have passed anti-spam laws and bills have been introduced in both the U.S. Senate and the House of Representatives.

U.S. Rep. Zoe Lofgren, D-Calif., recently introduced a bill that would establish guidelines on commercial e-mail and authorize the Federal Trade Commission to pay a bounty of 20 percent of fines collected to reward individuals who identify spammers.

In the Senate, Charles Schumer, D-N.Y., is pushing a bill that would call for jail time of up to two years for serious repeat spammers, as well as a no-spam registry, similar to a do-not-call list.

"I had a client who was in technical breach of Utah's laws on spam for a very minor glitch," Nelson said. "It is very difficult for legitimate Internet marketers to comply with 28 different sets of laws. Although I am not usually in favor of legislative answers, I'd prefer one federal law rather than the crazy quilt of regulations we are getting."

E-mail technology writer Ed Duggan at Eduggan@bizjournals.com.

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Washington, D.C., April 30, 2003-Everyone hates spam... and that includes e-mail marketers. However, groups that call themselves Anti-Spammers are trying to eradicate all e-mailers by blacklisting even the legitimate companies. eMarketersAmerica.org is a trade organization representing legitimate permission-based e-mail marketers on the Internet who are fighting back. This month, they surprised the industry by filing a lawsuit against the Anti-Spammers, many of which hide in Europe.

"Our organization wants to clean up and regulate the e-mail marketing industry because spam only gives permission-based e-mail a bad name. But the Anti-Spammers have a mob mentality and want to get rid of both the innocent and guilty," said Mark E. Felstein, Director and Chief Counsel, in remarks delivered today at an anti-spam conference at the Federal Trade Commission. "The members of this organization are permission-based e-mail marketers who have been blacklisted, harassed and threatened by Anti-Spammers. Why do Anti-Spammers want to get rid of legitimate business- that's the real question."

Felstein said his organization will conduct a national public information campaign to educate consumers that not all commercial messages on the Internet are the same as the unsolicited emails known as spam. eMarketersAmerica.org represents permission-based emailers who obtain permission from recipients before emailing commercial messages on behalf of legitimate companies, including many Fortune 500 companies, for whom Internet marketing represents over a billion dollars in revenue.

eMarketersAmerica.org hopes to work with lawmakers this year on legislation to regulate the industry. Since the suit was filed April 14th, Mark E. Felstein has received threatening phone calls, corruption of his e-mail addresses and when his organization simply registered and parked its domain with a well-known register, it was wrongly blacklisted and immediately terminated by Anti-spammers.

"It's easy for these Anti-Spammers to label and blacklist companies as spammers, even if it means destroying a legitimate business. Not only is this wrong, but what's next... direct mail, magazine and TV advertisements, or basically anything that these Anti-Spammers don't like for one reason or another. Or maybe the real reason is that these Anti-Spammers have a financial stake in these matters," said Felstein.

Please return to this URL in the next few weeks as we launch the eMarketersAmerica website.

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May 6, 2003

Via Facsimile (561) 367-7980

Original Via Federal Express (Overnight)

Mark E. Felstein, Esq.
Felstein & Associates, P.A.
555 South Federal Highway, Suite 450
Boca Raton, Florida 33432

Re: [Emarketersamerica.org, Inc. v. Spews.org et al.](http://emarketersamerica.org)

Dear Mr. Felstein:

As you know, I represent, among other defendants in the above-styled case, Alan Murphy and Adam Brower. I write to confirm the May 5, 2003 conversation that you and I had regarding this case. This letter is sent with full and express reservation of all rights and defenses of my clients, including all jurisdiction and venue-related defenses.

During our conversation, you refused to disclose the identities of any members of Emarketersamerica.org, Inc. and told me that you intended to withhold that information "as long as possible." You vowed that you would force the defendants to seek judicial relief to obtain that information. You also represented that neither Eddy Marin nor any company with which he is affiliated have any relation whatsoever to Emarketersamerica.org, Inc. or this lawsuit. In response, I notified you of my clients' intention to seek frivolous litigation damages from all involved individuals (including you) and gave you the opportunity to dismiss to avoid such damages.

Among other fatal defects in the lawsuit, you have no colorable basis whatsoever to assert that Emarketersamerica.org, Inc. has standing to have filed the present matter. You likewise have no right to withhold the true identities of the members of that sham organization. Finally, if your clients (the "members") are, in fact, involved in the sending of unsolicited commercial e-mails ("spam") into networks that prohibit such e-mails (i.e., virtually every ISP in the United States), be aware that these members are violating various criminal and civil laws, including RICO, the Computer Fraud and Abuse Act, and trespass to chattel. The last judgment I obtained against a spammer was \$25 million. If your clients are spammers, they are next, thanks to this bogus lawsuit. Indeed, if your clients are spammers, your entire lawsuit is per se frivolous, and, along with your clients, you will be held responsible for the damages and attorney's fees incurred by the defendants.

Govern yourself accordingly.

Sincerely,

Paul F. Wellborn III

cc: Alan Murphy
Adam Brower

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Thursday, Aug 14, 2003

Tallahassee Democrat

Posted on Tue, May. 13, 2003

Tallahassee Democrat

Nelson to launch attack on spam

By Vickie Chachere
THE ASSOCIATED PRESS

TAMPA - With unsolicited e-mail consuming his staff members' time and crowding their inboxes with even ads for Internet sex sites, U.S. Sen. Bill Nelson said Monday he will file legislation today to make such "spam" illegal.

Nelson's bill would allow prosecutors to use federal racketeering laws against the worst of the marketers, including those who conceal their identity with forged e-mail addresses. Nelson, a member of the Senate committee that regulates electronic commerce, intends to introduce the legislation today in Washington.

About 45 percent of all e-mail is unsolicited correspondence, federal regulators have been told. Nelson said wading through all those unwanted messages is wasting valuable time and impeding the flow of legitimate e-mail.

Earlier this month, technology experts and industry officials called for a federal anti-spam law in a hearing before the Federal Trade Commission. About two-thirds of the spam sent are solicitations for dubious products or business opportunities,

"People in this country are getting fed up," Nelson said. "They can't even turn on their computer; they can't even get their e-mail.

"... All across America there is a cry: 'Enough already!'"

The legislation allows for businesses to send unsolicited e-mail but requires them to allow the recipients to opt out of receiving future messages. It also would be illegal for companies to make it appear the spam e-mail is coming from another source or use other tricks to conceal who is sending the e-mail.

Those who break the law could face fines and prison terms up to five

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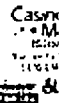
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years.

There are anti-spam laws in 29 states, and last month Virginia passed the nation's toughest anti-spam law, which allows authorities to seize the assets of companies that send spam and allows for five-year prison terms.

Florida has no anti-spam law. Nelson said anti-spam software some consumers purchase to block the e-mail works for only a short while until the marketers find a way around it.

Mark Felstein, a Boca Raton attorney who represents e-mail marketers in a lawsuit against two anti-spam Web sites claiming they are interfering with business, said not all businesses who send unsolicited e-mail are bad.

"They are being lumped in together with people who have fraudulent and deceptive trade practices," Felstein said.

Heather Wells, Nelson's spokeswoman, said she spends 45 minutes a day deleting spam from her official e-mail account, and Nelson held up a long list of unsolicited e-mails from another staff member's inbox, which included an ad for an Internet sex site.

"You would think these guys would have more sense than to send it to a United States senator," Nelson said. "That shows you the brazenness."



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Damn spam!

An unnerving descent into a world of organ enlargements, toner cartridges and deposed Nigerian dictators

BY **SCOTT HENRY**

It's difficult to say in retrospect just what it was about Dr. Fred Unongo's message that was so compelling.

Of course, it had a certain urgency. That I could tell from the subject line: "PRIVATE REPLY URGENT." But so was the message I'd gotten the day before from Mr. Perry Abdul Guei. And the one from Mrs. Sara Tadobe. Come to think of it, they were all urgent.

And it wasn't about the money, although the \$820,000 that Dr. Fred was offering definitely wasn't chump change. Mr. Guei, on the other hand, was tempting me with \$1.6 million. Mrs. Tadobe's promise of \$5 million tax-free, however, seemed a tad pie-in-the-sky-ish, especially coming from someone who, in the space of a four-paragraph e-mail, couldn't seem to decide whether her name was Sara or Rosa.

There was, shall we say, a refreshing lack of pretension about Dr. Fred's missive.

Granted, he wasn't the son of the late military dictator of Ivory Coast, like Mr. Guei (who thoughtfully provided a link to a BBC story about his father's untimely murder. I must remember to send my condolences.). Nor was he the widow of a wealthy tribal chief from Sierra Leone, as was Mrs. Tadobe.

No, Dr. Fred was merely an accountant with the Gulf Bank of Nigeria who had happened upon an unclaimed \$8.2 million account belonging to Mr. Huang L. Tanaga, a Korean national who'd died in a plane crash.

I wasn't sure quite how I was going to pass myself off as next of kin to some Korean guy I'd never met, as Dr. Fred suggested, but suffice it to say, I was intrigued by his proposal. And I was touched by his request that "both parties will not for any reason cheat each other."

The fact that the link he included for his longtime employer's



INTERNET ENFORCERS: Judge, chief technical officer of CipherTrust, a network security firm, heads up the company's spam-fighting force

(Jim Stawniak)



Pete Wellborn, attorney for EarthLink, has represented the company in winning several multimillion-dollar judgments against spammers

(Jim Stawniak)

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website was actually for the Gulf Coast Bank in Louisiana somehow made him seem more human. I'd received only one message from Dr. Fred -- two, if you count the duplicate e-mail he sent me a minute later -- yet I felt as if I already knew this man who had called me his "DEAR FREIND."

In a way, of course, I did.

By the most recent estimate, spam accounts for slightly more than 60 percent of *all* e-mail messages, triple the rate of only a year ago. That's despite the efforts of Internet service providers to filter it out. Despite ever-stricter state laws against spamming. Despite aggressive counter-attacks by anti-spam vigilantes.

The reason for this, of course, is the fact that spam is the least expensive marketing ploy in the history of Western civilization, which has obvious appeal for those with a something-for-nothing outlook.

"Anybody with a \$500 computer, \$100 worth of e-mail software and an Internet connection can reach a million people," says Pete Wellborn, an Atlanta-based anti-spam attorney for EarthLink.

Wellborn, who seems to enjoy his *nom de guerre*, "Spammer Hammer," knows whereof he speaks. In May, he won the company a \$16 million civil judgment against Howard Carmack, aka "The Buffalo Spammer." Carmack, a 25-year-old ex-high school jock who still lived with his mother, is accused of sending out 825 r hunks o' spam from his home computer before the Atlanta-based ISP managed to track him.

In the year that EarthLink spent trying to identify him, Carmack managed to elude his pursuers by allegedly splicing into a neighbor's phone line; bouncing his messages across several continents; hiding their source; using fake names; stealing strangers' online identities; and exploiting friends and family members alike.

For instance, when EarthLink investigators located the spammer's phone number, it led to an answering machine in a Buffalo personal-care home apartment occupied by Carmack's mentally disabled brother.

Usually, being hit with a multimillion lawsuit produces what Wellborn calls the "Oh, shit! factor" with Carmack. Even after finally being served, he continued to send out millions of e-mails hawked such must-haves as cable de-scramblers and "herbal sexual stimulants," Wellborn says. The spammer now also faces felony identity-theft charges under New York state law that could send him seven years behind bars.

EarthLink, the country's third-largest ISP, has also been the most aggressive when it comes to nailing spammers. Wellborn explains that, contrary to popular belief, an ISP's network is private property, which means it can set its own rules of conduct among users, such as "no unsolicited advertising."

To send spam to EarthLink subscribers in violation of its user agreement is the legal equivalent of unlawful trespassing, he says. If that sounds far-fetched, then consider Wellborn's string of victories: a \$2 million civil judgment against the self-proclaimed "King of Spam," Californian Mark Wallace, in 1998. Last year, he won a \$25 million judgment against a Tennessee man who sent more than 1 billion unsolicited e-mails, many containing viruses he used to manipulate his computers.

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That particular spammer had allegedly earned at least \$3 million, in addition to costing Ear estimated \$1 million, if you use the accepted formula that every million e-mails carries \$1,000 bandwidth costs.

But Carmack was no high-flying e-commerce mogul. Quite the contrary; he was a work-a-day spammer-for-hire who apparently was more than willing to annoy the entire U.S. population ten times over for about what you'd earn flipping burgers at McDonald's.

One "herbal remedy" retailer who hired Carmack to handle his marketing told authorities that 10 million e-mails sent, he made 20 sales, netting a less-than-grand total of \$300.

So what's the point of all that effort and risk when there's so little to be gained?

"Every spammer thinks he's going to be the one who's gonna grab the brass ring," Wellborn dismissively.

And yet, because of e-mail's low overhead, there is a great deal of money to be made by e-mail marketers who manage to evade ISP lawsuits, fraud charges and spam filters. Mostly, it's made by companies or individuals, like Carmack, hired to send spam for other companies. E-mail retailers with a knack for knowing what appeals to online impulse buyers -- i.e. porn sites and modern-day snake-oil salesmen whose products -- real or imaginary -- would have been at a decade ago in the back pages of sleazy men's magazines.

Referred to coyly by the Federal Trade Commission as "organ enlargement offers," these ubiquitous e-mails seem targeted at guys whose brain power is directly proportional to the size of their johnson. Which means there are plenty of suckers out there.

Consider the case of C.P. Direct, a Scottsdale, Ariz.-company busted last year for credit-card fraud and making outlandish medical claims for various herbal products. C.P. offered pills for enlarging penis and breasts, growing taller, avoiding baldness and even making the customer a better lover.

Not surprisingly, an estimated 90 percent of the company's revenues came from Longitude, a penis-enlargement pill that was said to work by expanding the "soft tissue" around blood vessels.

What is surprising -- and depressing in equal measure -- is the fact that C.P. Direct raked in \$74 million in sales in the two years before it was shut down. U.S. Customs officials estimate that as many as 500,000 under-endowed men had responded to the company's ads.

It also should shock only the pathologically gullible that, no matter what its specific, totally guaranteed effects were supposed to be, every herbal product the company sold was -- you guessed it -- made from exactly the same combination of worthless ingredients.

While pills are certainly the most common penis-enlargement product touted through spam, there's far from your only opportunity for flushing money down the crapper.

There's likely e-mail on its way to you right now that will link to websites where you can shop for such atrocities as the "BIB Hanger," which, according to the spiel, "takes the discomfort out of hanging heavy weights from the penis." Darn, and Father's Day has already passed.

Or how about a "JES Extender," a traction device that makes it look as if one's mini-member is wearing a tiny neck brace. Just make sure you take it off before a hot date.

Then there's the Dr. Joel Kaplan Penis Pump, which comes in a basic hand-pump model for \$150 or on up to the \$600 flagship set-up that presumably lights you a cigarette after each workout.

If you need help deciding which PE scam may be right for you, you'll want to consult www.penisenlargementmagazine.com -- sort of a cut-rate, dick-obsessed J.D. Powers -- which claims its reviewers exhaustively test and rate each system.

But Dr. Howard Rottenberg of the North Atlanta Urology clinic in Sandy Springs suggests that you not waste your money on pills, stretching methods or even surgery.

"I don't think any of these techniques have any real merit," he says. "The size of the corpus cavernosa -- the part of the penis that fills with blood -- is pretty well fixed. You could conceivably stretch your penis, but that won't make it bigger where it counts."

On the other hand, he says, a patient of his who's distraught over his minuscule manhood said he was thinking of investing in a penile vacuum pump.

"I told him to give it a try," Rottenberg says. "I mean, what's he got to lose?"

A common question among the spammed is, "How did they get my e-mail address?" Ah, that was the easy part.

One of the many possibilities is that the spammer unleashed an "e-mail harvesting" program that crawls the Internet to find corporate e-mail directories, 'blogs and newsgroups, capturing addresses of characters with an "@" in the middle.

Addresses can also be generated from scratch using a "dictionary attack," a program that jumbles common names with the bigger Internet domains in hopes of hitting a few live targets. Examples: jsmith@aol.com, ksmith@aol.com, lsmith@aol.com, and so on.

If the spammer really wants to reach people whose addresses might not otherwise appear, he'll employ an "alphabet attack," an astoundingly inefficient approach that creates countless addresses by lumping together random sequences of letters and numbers. Examples: ahkdy1@msn.com, ahkdy2@msn.com, ahkdy3@msn.com, adinfinitum@msn.com.

But, more likely, he'll simply buy a CD-ROM containing millions of e-mail addresses from a sleazebag who's already done all the work, says EarthLink attorney Wellborn.

In fact, the spam industry was jump-started in earnest by the bursting of the dot-com bubble: many failed companies were ordered to sell off their customer e-mail lists as part of their bankruptcy settlements.

There are literally hundreds of online vendors selling address lists, as well as bulk mailing software and "how-to" starter kits for wannabe spammers. Wellborn is currently looking into avenues for suing the shit out of these spam-enablers.

Once a would-be bulk-mailer has his computer, his spamware and his Internet connection, then the real challenge begins: the high-stakes cat-and-mouse game with the ISPs.

Although Atlanta is understandably partial to homegrown carrier MindSpring/EarthLink, the thousands of smaller ISPs scattered across the globe -- and nearly all of them have an "acceptable use policy" that prohibits unsolicited bulk e-mail. So, if a spammer is dumb enough to send messages with a return address of his own hotmail.com account, he'll find his service switched off before he can say, "HERBAL V1AGRA."

To avoid being identified as spammers, they'll scour the Net to find unprotected mail servers known as "open relays" -- that can be hijacked into sending out spam for them. It's not unc-

for a particularly stinky piece of spam to have bounced between half-a-dozen open relays : many continents on its way to your inbox.

A true guerilla spammer will nearly always insert a false return e-mail address in the "from" any bulk mail he sends. Called "spoofing," it's another method for hiding his identity from ISPs as important, it's a way to avoid the inconvenience of dealing with the hundreds of thousand undeliverable e-mails that would otherwise be bounced back to his server.

But fooling the ISP is only part of the struggle. Any prolific spammer also must contend with growing anti-spam community, which includes dozens of websites, newsgroups and individual hackers who have been known to reroute bulk e-mail back to the spammer's address or even the e-merchant's home telephone number online in retaliation to being spammed.

A spammer knows he's hit the big time when he earns his own listing in Spamhaus, a London online anti-spam clearinghouse that maintains one of the more authoritative "black lists" of confirmed spam-senders.

Winding up on a black list can make it very difficult for an e-marketer to find an ISP that will hire him. Although independent, Spamhaus has become powerful enough within Internet circles to threaten some of the smaller ISPs with black listing unless they drop their spamming customers.

But why should Internet vigilantes be responsible for policing e-mail? Isn't that what laws are for? Well, so far, Congress has yet to pass any laws regarding spam -- which may be a good thing.

For instance, critics of the proposed CAN-SPAM Act say the bill would do more harm than simply requiring that all unsolicited e-mail include an "opt-out" button, it would effectively legalize spam, undercutting any state or private efforts to ban it.

Others, such as dot-com pioneer Brad Templeton, say that any attempt to regulate spam is out of time when you're talking about guys offering drugs without prescriptions.

"Half the people who are spamming are already selling fraudulent products and illegal cons schemes," he says.

In other words, if you outlaw spam, only outlaws will send it.

Blame it on HBO, but the hot techno-gadget being hawked in e-mail inboxes this year is the de-scrambler. It certainly stands to reason. Since much of America already believes new media should be free, why shouldn't "Sex and the City," as well?

Trouble is, these black boxes don't actually, like, work. That is, unless your cable carrier still uses analog cable, which is going the way of the slide rule. So far, digital cable has foiled the fix in Korea. (Although they have somehow been able to design a cheap, plastic box that none is guaranteed bulletproof!)

Even if your carrier does offer analog cable, using the boxes without paying for the service, believe it or not, is illegal. Although a major record label is unlikely to spend its time hunting you for swiping songs off a Napster knockoff, your local cable company has grown used to nail boys for splicing into their lines, so it's not likely to cut you any slack if it finds out you're been stealing Pay-Per-View.

Another popular spam offering right now is human growth hormone, often advertised under headings "Lose weight while you sleep" or "Regain your youth."

Actually, there's a kernel of truth amid the crappola. Since 1990, the medical community has debated the ability of human growth hormone to reverse some of the effects of aging, such as muscle mass and fading energy. Some studies have shown that, combined with sex hormone replacement, growth hormones can help patients lose weight and increase stamina without exercise.

Growth hormone, however, has nothing to do with the junk that spammers are peddling. And hormone therapy costs thousands of dollars at pricey clinics; it doesn't come in plastic jugs in the mail and it doesn't sell for \$49.99 for a one-month trial supply. Next!

It's ironic that, in the world of spam, pornographers have proven to have the most integrity. Often than not, the subject lines for their messages tell you exactly what you'll find inside. And when you hit the link, you're sent straight to a porn site, as promised. And if you offer up your credit card, you get what you pay for. No bait, no switch.

Which makes sense, when you consider that sex is still the Internet's big money-maker. It's estimated that one-third of all Internet content revenue comes from such sites as "Horny.com" and "Trannie-a-gogo!" **Covering his tracks** will do a spammer little good if his e-mail reaches its intended targets. For that to happen, he must navigate a mine field of spam filters that work within the ISP's mail servers, the e-mail software, even individual PCs.

Keep in mind that, no matter how pathetically spammy an e-mail might appear at first glance, you wouldn't be looking at it now if it hadn't managed to trick the system into thinking it was a legitimate message.

This is where Dr. Paul Judge comes in. As chief technical officer for CipherTrust, an Alpha based network security firm, it's Judge's job to figure out how to block spam in transit so we can see it.

Besides the annoyance factor, defeating spam is an urgent goal, he says, because of the skyrocketing hardware costs that the average Netizen isn't aware of until his next rate increase for monthly Internet service.

"If spam accounts for half of all e-mail, then the networks have to double bandwidth and server capacity just to handle the extra volume," he explains.

Judge's team is always on the lookout for new spam detection and filtering programs that can be installed on CipherTrust's main product, IronMail, a hardware server he estimates is used by about 15 percent of the country's Fortune 500 companies.

IronMail also combats viruses and network attacks by hackers, and has been used by client companies to catch employees who were sending company secrets to competitors, as well as wise guys who were running side businesses out of their cubicles. Yet Judge concedes that spam is the most constant and insidious problem.

He also serves as chairman for the Anti-Spam Research Group, an arm of the Internet Research Task Force, one of the foremost independent Internet industry think tanks. Which pretty much makes Judge a big wheel in geekdom.

Fortunately, Judge comes across as thoughtful and self-effacing. Otherwise, it could spark resentment that he's a 26-year-old whiz kid who blew through college at Morehouse and a Tech doctorate in a combined six years, and was recruited straight into a job as chief of research and development that pays more than most of us will earn before we're 60 ... But we digress.

Of the various spam-filtering programs, the most basic is a rule-based filter, which weeds out e-mails that has selected spammy words and phrases in the subject line, such as "wild teen sluts," "low-priced," "toner cartridges" and that old standby, "wild teen sluts prefer our low-priced toner cartridges."

The way around this pitfall, spammers have found, is to misspell key words, add hyphens or an unrelated phrase in the subject box, such as "hi there" or "RE: your colon."

A somewhat more sophisticated filter is one used by Brightmail, a company contracted to filter out spam for EarthLink -- which calls the service "the Spaminator" -- and several other large ISPs.

Brightmail sets up thousands of decoy e-mail addresses and fake open relays that are intended to attract spam much like shit draws flies. As soon as spam hits a bogus inbox, the program flags it and then proceeds to eradicate any duplicate e-mails.

The spammer antidote to Brightmail, however, are the strings of random characters that often appear in the subject line: "Hot granny-grabbing action! vvgh3y7kxwq." Using a program that changes different characters to each e-mail, spammers have found they often can foil the filter.

Last year saw the introduction of the most effective anti-spam filter so far, a type of program based upon the complex probability theories of Thomas Bayes, an 18th-century British mathematician who created a new branch of algebra that is the basis of many modern-day Internet search engines.

(For all his brain power, Bayes wasn't smart enough to change out of his damp clothes after a rain; his early death was attributed to pneumonia.)

The advantage of a Bayesian filter is that the program gets progressively "smarter" over time, according to its creator, MIT-educated hotshot hacker Paul Graham.

To get the program started, you need two inbox trash cans -- one to dispose of legitimate e-mails and the other to get rid of spam. The filter analyzes each e-mail, picking out the 15 most "statistically significant" words in order to compare the occurrence of spammy words (i.e. "orgy," "refined," "prescriptions") against those of unspammy words (i.e. "Kafkaesque," "hypotenuse," "Schenectady.")

The filter starts from scratch but should be almost totally effective within three or four days, according to Graham, who sounds like a well-read surfer dude.

"If you write a Bayesian filter program that doesn't screen out at least 99 percent of the spam, you'll be laughed at by the other programmers," he says.

By contrast, Brightmail's effectiveness as a spam-blocker is estimated at around only 70 percent. "All they end up filtering out is spam by people who don't know what they're doing," Graham says.

Graham, who is semi-retired after signing a lucrative programming deal with Yahoo! a few years ago, would like nothing better than to be known as the man who killed spam -- and he thinks it could happen.

"Contrary to popular belief, sending spam isn't free," he says. "Spammers do have a profit margin, and if you can cut it down to almost nothing, it won't be worth their time."

For instance, he says, the cost of sending out 1 million e-mails is approximately \$200, for a spammer might earn \$500 in commissions -- a profit of \$300. But if a spammer is forced to send out 2 million e-mails in order to make the same \$500, eventually he'll go into a different line of business.

better yet, starve.

The bad news is, of course, that spammers study every new anti-spam program to try to le to beat it, Judge says. Already we're seeing spam that includes sequences of non-spammy that are invisible to the recipient, but can be read by the filter. It will be another year or so t long-term effectiveness of the Bayesian system can be determined, he says.

In the meantime, EarthLink recently introduced its newest product, Spam Blocker. Termed "challenge-response" system, it automatically responds to e-mail from every new sender, r that he copy a three-character series into a box before his message will be delivered. The that the characters are contained in an image that cannot be read by a computer program, that your mail actually comes from a real person.

In previous centuries, the most popular kind of "advance fee fraud" was commonly know "Spanish prisoner" and it went something like this: The son of a wealthy family from (fill in t country) is being held unjustly in a Spanish prison. So-and-so needs your financial assista can bribe the guards to free the boy, whose family will then shower you with riches.

Today, of course, this form of con game is better known among Netizens as the "Nigerian : "4-1-9," after the code section in that country's laws that makes such rip-offs illegal.

Why Nigeria? Well, it's reputed to be one of the more corrupt nations on the planet and the scam has been going on over there at least since the 1970s. In the early days, the crooks ' mail handwritten letters to their prospective victims or call them long-distance. Later on, the produced the letters on word-processors; then they sent them out using fax machines. The they've shifted their operations to spam. Ain't technology wonderful?

The pitches usually fall into one of a handful of scenarios, but always involve several millio that needs to be smuggled out of Africa -- with your help, of course.

One common story is that the money was left in a bank account by a rich foreigner who die plane crash. Other versions hold that the money is graft from a crooked contract deal or ha embezzled from an outgoing government. The website www.scamorama.com has posted ' variations of the Nigerian scam, waggishly annotated for your amusement.

Perhaps the very first time you received an urgent plea for help from the former Nigerian tr minister, you wondered for a moment if it was for real. Now that you've been contacted by every ex-bureaucrat in the country at least twice, you've grown a mite cynical. It would see reasonable to assume that the very ubiquity of the Nigerian scam will cause its own demisi over-exposure.

And perhaps it will, but in the meantime, the scam is surprisingly lucrative.

Unlike most Internet scams, this one is far more complex than some loser-geek's typically transparent attempt to get your credit card number. The folks behind the Nigerian scam m know English so well, but they are often veteran con artists working within large organized networks. When they get their hooks into a real, live sucker, they will spend weeks trying to their victim's confidence by sending them forged documents, linking them to fake bank wel reminding them in phone conversations to maintain utter secrecy.

Along the way, they ask for ever-increasing sums to cover attorney's fees, transfer costs, b officials and -- falling back on a classic con game -- the purchase of very expensive chemic needed to clean off a coating of black ink that was sprayed over the money so it could smu across the border.

Often, they'll have the victim travel to Nigeria or a neighboring country, where he'll meet with lawyers and imposter bureaucrats -- or even actual corrupt bureaucrats who are in on the scam.

The average amount lost by victims of the scam has been estimated at \$6,000, but there are a world-class pigeons who seem to be trying to throw off the curve. Last year, a Wisconsin businessman reported handing over \$200,000 in "transfer fees" to collect a share of an imaginary \$50 million payday.

The Nigerian booby prize, however, has to go to the Ghasemis, an Iranian-American couple in Tampa who got stung for nearly \$400,000 over the course of three months in 2000. They received the money, they later told authorities, by cashing in their savings, borrowing from friends and mortgaging their house.

Do you recall a time when, still un-jaded by the sight of your e-mail inbox clogged with an offers and wicked deals on toner ink, you wondered, "Where does all this crap come from?"

Well, here's your answer -- and it should be no big surprise: It comes from South Florida. Specifically, from Boca Raton, home of the penny-stock swindle and the boiler-room sales.

For as long as anyone can remember, this sunny, ocean-front town just south of Palm Beach has been a haven for racketeers big and small, with miles of offices housing shady telemarketing fly-by-night brokerage firms. Even some of the area's Fortune-500 big shots have proven themselves as crooked as a dog's hind leg, the most recent examples being Tyco International's prison-bound CEO Dennis Kozlowski.

In short, Boca Raton has incubated such a pervasive culture of fraud that the local Chamber of Commerce would do well to offer bonding services and discounted flights to non-extraditable destinations.

And yet, for all its long history as a mecca for con artists, cheats and petty chiselers, Boca's reputation has never before taken the beating it's getting now, thanks to its newest, and arguably most dubious, distinction as spam capital of the known universe.

According to Spamhaus, of the world's 150 most prolific spammers -- remember them? -- Boca Raton is home to at least 40. But why Boca?

Theories for this phenomenon vary. One partial explanation is that the city lies along a segment of the Internet "backbone," the bundle of cables that form the actual infrastructure of the information superhighway. This enables spammers to send huge wads of e-mail more cheaply and efficiently much the same way that Atlanta enjoys the country's lowest gas prices by virtue of its location along the huge pipeline running from Texas to the East Coast.

While it's true that plenty of cities sit atop the Internet backbone -- predictably, Atlanta is at the center of a Hartsfield-sized hub -- Boca is located in the Sunshine State, which, in addition to warm weather, has the most liberal bankruptcy laws in the nation. Florida has long been a favorite for the shady set because of legal loopholes that allow crooks to shield their ill-gotten fortunes from seizure.

Boca is also the home base of Naviant, one of the country's largest e-mail marketers. Now a subsidiary of Equifax, the Atlanta-based credit-reporting giant, Naviant boasts a mailing list of more than 60 million "opt-in" customers.

The problem is, of course, that there's no standard definition of "opt-in." According to a disingenuous broad interpretation contained in a Naviant press release from two years ago: "Opt-in means

customers have ... requested to receive information about products and services from companies like yours."

But John Ford, privacy officer with Equifax, insists that Naviant now sends mail only to folks explicitly given their permission; clearly identifies itself as the sender; reminds the recipient and where he signed up; and provides a working "opt-out" button.

"We try to avoid even the appearance of spam," Ford says.

Across town, however, a competing bulk e-mailer isn't quite as concerned about appearances. Among the messages sent to my *Creative Loafing* account by Omni Point Marketing were digital cameras, life insurance for pets and a plan to Generate a Lifetime of Unlimited Wealth.

At the bottom of each message was fine print assuring me that I would not have gotten the message hadn't somehow asked for it. Sure, blame the victim. Likewise included was an "opt-out" link, even Omni Point's address and phone number.

But, because I was certain I hadn't requested information about cheesy get-rich-quick schemes or anyone else, I called to ask how Omni Point defines "opt-in." I was told repeatedly I would be contacted by an appropriate, but unnamed, person. Shockingly, none of my calls returned.

One Boca denizen who isn't shy about discussing spam is Mark Felstein, an spotlight-hungry attorney who's taken on the thankless role of de facto spokesperson for the bulk e-mail industry.

During the course of our conversation, he defends e-mail marketing in a rambling monologue that's difficult to follow because of its many logistical pirouettes.

The problem, Felstein begins, is that e-marketing has been given a black eye because a few apples break the rules by using open relays, fake subject lines, bogus return e-mail addresses and non-functioning opt-out links.

When I point out that it's actually the rarest of spam that doesn't employ at least one of the deceptive practices he just described, he shifts gears.

"I don't know why so many people have a problem with bulk e-mail," he says, adding that if he's getting spam at the office, "maybe these employees should be working instead of surfing the Internet."

Then he offers his theory that public antipathy toward spam has been exaggerated by an e-mail industry with a vested interest in painting bulk e-mail to seem like it's some kind of serious threat.

"The people who are making a big deal about this are trying to sell something," he explains, "somehow managing to keep a straight face."

Felstein made news in Internet circles earlier this year by filing a lawsuit against Spamhaus, the stateside counterpart, the Spam Prevention Early Warning System, better known as SPEW. His suit accuses the spam blacklist sites of libel, invasion of privacy and of attempting to "maliciously interfere with the business of the plaintiffs," who include several Boca-based e-marketers.

Felstein previously has sued various ISPs for denial of services for shutting out his spam-sending clients, but he concedes that those suits were busts because his clients invariably went bankrupt before their cases got to court.

This time, however, he feels certain he will be able to teach a lesson to Spamhaus and other

appointed vigilante groups" that are making life tough for Internet entrepreneurs who are just trying to make a living.

Besides, he says, it's not like spam is so awful; if you don't want it, it's easy enough to delete or opt-out.

"Maybe some ISP like MSN has to spend a few bucks it didn't plan on," Felstein says, "but it's not getting hurt by bulk e-mail."

scott.henry@creativeloafing.com

07.10.03

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Matter of Felstein
2003 NYSlipOp 14968
Decided on June 6, 2003
Appellate Division, Third Department
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided and Entered: June 6, 2003

**[*1]In the Matter of MARK E. FELSTEIN, an Applicant for Admission to the Bar.
MARK E. FELSTEIN, Petitioner.**

MEMORANDUM AND ORDER

Calendar Date: March 17, 2003

Before: Cardona, P.J., Mercure, Spain, Carpinello and Kane, JJ.

Mark E. Felstein, Boca Raton, Florida, petitioner pro
se.

Per Curiam.

Petitioner passed the New York State Bar exam and has been certified for admission to this Court by the New York State Board of Law Examiners (*see* 22 NYCRR 520.7 [a]).

After holding a formal hearing on the application, the Committee on Character and Fitness issued a decision concluding that petitioner should be denied admission. Petitioner seeks an order granting his application for admission to practice notwithstanding the Committee's decision (*see* 22 NYCRR 805.1 [m]).

The petition is denied. Our review of the record indicates that the Committee's decision fully and reasonably assessed the character and fitness concerns raised by the application, as well as the mitigating circumstances proffered by petitioner. The character and fitness concerns included petitioner's misconduct in college, history of substance abuse, criminal record and lack [*2]of candor since college concerning such matters. We are not satisfied that petitioner presently possesses the character and general fitness requisite for an attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-80295-CIV-MIDDLEBROOKS/JOHNSON

EMARKETERSAMERICA.ORG, INC.,

A Florida not-for-profit corporation,

Plaintiff,

v.

SPEWS.ORG d/b/a THE HERMES GROUP;

SPAMHAUS.ORG d/b/a THE SPAMHAUS PROJECT;

CSL GMBH JOKER.COM;

STEVE LINFORD;

JULIAN LINFORD;

ALAN MURPHY;

SUSAN WILSON a/k/a SUSAN GUNN a/k/a SHIKSAA;

STEVEN J. SOBOL;

CLIFTON T. SHARP;

RICHARD C. TIETJENS a/k/a MORLEY DOTES;

ADAM BROWER; and

STEPHEN JOSEPH JARED a/k/a JOE JARED,

Defendants.

FIRST DECLARATION OF STEVE LINFORD IN SUPPORT
OF HIS MOTION TO DISMISS

STEVE LINFORD HEREBY DECLARES AS FOLLOWS:

1.

My name is Steve Linford. I am competent in all respects to testify regarding the matters set forth herein. I have first-hand knowledge of the facts stated in this declaration and know them to be true. I am a defendant in the above-styled action. I give this declaration in support of my contemporaneously-filed motion to dismiss.

2.

I am a British Citizen, resident of London, UK. My home address is The Phoenix, Taggs Island, Hampton Court, TW12 2HA, United Kingdom.

3.

I have no connection or contacts whatsoever with the State of Florida. Specifically, I do not own real or personal property in Florida. I have never lived in Florida and do not knowingly engage in any business transactions in Florida or with Florida companies or residents. I have never been to Florida, or to the United States of America.

4.

Until the present lawsuit was filed, I had never heard of EmarketersAmerica.org, Inc. ("EMA"). At no time prior to my execution of this declaration have I had any knowledge whatsoever regarding membership roster of EMA. Specifically, to this day, I am unable to identify a single person or business as a member of EMA.

5.

I own the domain name "spamhaus.org" and the servers which run The Spamhaus Project.

I swear under penalty of perjury that the testimony set forth in this declaration is true and correct.

This 22nd day of August, 2003.

A handwritten signature in black ink, appearing to read 'Steve Linford', written over a horizontal line.

STEVE LINFORD

3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-80295-CIV-MIDDLEBROOKS/JOHNSON

EMARKETERSAMERICA.ORG, INC.,

A Florida not-for-profit corporation,

Plaintiff,

v.

SPEWS.ORG d/b/a THE HERMES GROUP;

SPAMHAUS.ORG d/b/a THE SPAMHAUS PROJECT;

CSL GMBH JOKER.COM;

STEVE LINFORD;

JULIAN LINFORD;

ALAN MURPHY;

SUSAN WILSON a/k/a SUSAN GUNN a/k/a SHIKSAA;

STEVEN J. SOBOL;

CLIFTON T. SHARP;

RICHARD C. TIETJENS a/k/a MORLEY DOTES;

ADAM BROWER; and

STEPHEN JOSEPH JARED a/k/a JOE JARED,

Defendants.

FIRST DECLARATION OF ALAN MURPHY IN SUPPORT

OF HIS MOTION TO DISMISS

ALAN MURPHY HEREBY DECLARES AS FOLLOWS:

1.

My name is Alan Montgomery Murphy. I am competent in all respects to testify regarding the matters set forth herein. I have first-hand knowledge of the facts stated in this declaration and know them to be true. I am a defendant in the above-styled action. I give this declaration in support of my contemporaneously-filed motion to dismiss.

2.

I am a resident of the State of Washington. My home address is 14313 NE 9th Street, Vancouver, WA 98684.

3.

I have no connection or contacts whatsoever with the State of Florida. Specifically, I do not own real or personal property in Florida. I have never lived in Florida and do not knowingly engage in any business transactions in Florida or with Florida companies or residents. I have only been to Florida once, for a ten day vacation in February of 1996.

4.

Until the present lawsuit was filed, I had never heard of EmarketersAmerica.org, Inc. ("EMA"). At no time prior to my execution of this declaration have I had any knowledge whatsoever regarding membership roster of EMA. Specifically, to this day, I am unable to identify a single person or business as a member of EMA.


5.

I am a volunteer editor at The Spamhaus Project. As such, I have authorized (password-protected) "write" permission for the SBL and ROKSO databases. I am not paid for the services I perform for The Spamhaus Project and am not an employee of The Spamhaus Project.

I swear under penalty of perjury that the testimony set forth in this declaration is

true and correct.

This 22 day of August, 2003.


ALAN MONTGOMERY MURPHY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-80295-CIV-MIDDLEBROOKS/JOHNSON

EMARKETERSAMERICA.ORG, INC.,
A Florida not-for-profit corporation,

Plaintiff,

v.

SPEWS.ORG d/b/a THE HERMES GROUP;
SPAMHAUS.ORG d/b/a THE SPAMHAUS PROJECT;
CSL GMBH JOKER.COM;
STEVE LINFORD;
JULIAN LINFORD;
ALAN MURPHY;
SUSAN WILSON a/k/a SUSAN GUNN a/k/a SHIKSAA;
STEVEN J. SOBOL;
CLIFTON T. SHARP;
RICHARD C. TIETJENS a/k/a MORLEY DOTES;
ADAM BROWER; and
STEPHEN JOSEPH JARED a/k/a JOE JARED,

Defendants.

FIRST DECLARATION OF SUSAN GUNN IN SUPPORT
OF HER MOTION TO DISMISS
SUSAN GUNN HEREBY DECLARES AS FOLLOWS:

1.

My name is Susan F. Gunn. I am competent in all respects to testify regarding the matters set forth herein. I have first-hand knowledge of the facts stated in this declaration and know them to be true. I am a defendant in the above-styled action. I give this declaration in support of my contemporaneously-filed motion to dismiss.

2.

I am a resident of the State of California. My home address is 10682 Bell Street, Stanton, CA 90680.

3.

I have no connection or contacts whatsoever with the State of Florida. Specifically, I do not own real or personal property in Florida. I have never lived in Florida and do not knowingly engage in any business transactions in Florida or with Florida companies or residents. I have never been to Florida.

4.

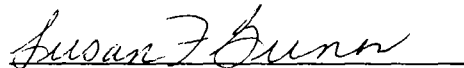
Until the present lawsuit was filed, I had never heard of EmarketersAmerica.org, Inc. ("EMA"). At no time prior to my execution of this declaration have I had any knowledge whatsoever regarding membership roster of EMA. Specifically, to this day, I am unable to identify a single person or business as a member of EMA.

5.

I am a volunteer on the ROKSO/SBL team for spamhaus.org. I am not paid any compensation whatsoever for the work I perform for spamhaus.org. My primary job is gathering information on the spammers who qualify for a ROKSO listing. I tend to focus on participation in NANAE rather than creating/editing ROKSO records. In other words, I spend most of my time doing research on publicly-available information on particular spammers. One of the other team members may or may not choose to include that info on the spammer's ROKSO record. I am authorized to create and/or edit SBL listings, but have never done so.

I swear under penalty of perjury that the testimony set forth in this declaration is true and correct.

This 21st day of August, 2003.


SUSAN F. GUNN

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-80295-CIV-MIDDLEBROOKS/JOHNSON

EMARKETERSAMERICA.ORG, INC.,

A Florida not-for-profit corporation,

Plaintiff,

v.

SPEWS.ORG d/b/a THE HERMES GROUP;

SPAMHAUS.ORG d/b/a THE SPAMHAUS PROJECT;

CSL GMBH JOKER.COM;

STEVE LINFORD;

JULIAN LINFORD;

ALAN MURPHY;

SUSAN WILSON a/k/a SUSAN GUNN a/k/a SHIKSAA;

STEVEN J. SOBOL;

CLIFTON T. SHARP;

RICHARD C. TIETJENS a/k/a MORLEY DOTES;

ADAM BROWER; and

STEPHEN JOSEPH JARED a/k/a JOE JARED,

Defendants.

FIRST DECLARATION OF STEVE SOBOL IN SUPPORT
OF HIS MOTION TO DISMISS

STEVEN J. SOBOL HEREBY DECLARES AS FOLLOWS:

1.

My name is Steven J. Sobol. I am competent in all respects to testify regarding the matters set forth herein. I have first-hand knowledge of the facts stated in this declaration and know them to be true. I am a defendant in the above-styled action. I give this declaration in support of my contemporaneously-filed motion to dismiss.

2.

At the time the original complaint was filed, I was a resident of the State of Ohio. My previous home address was 5686 Davis Drive, Mentor, OH 44060. As of August 1st, 2003, my current home address is 22674 Motnocab Road, Apple Valley, CA 92307.

3.

I have no connection or contacts whatsoever with the State of Florida. Specifically, I do not own real or personal property in Florida. I have never lived in Florida and do not knowingly engage in any business transactions in Florida or with Florida companies or residents. My only contacts with Florida are several recreational trips to Palm Beach County before my grandmother passed away in 1997 and my grandfather moved back to Ohio.

4.

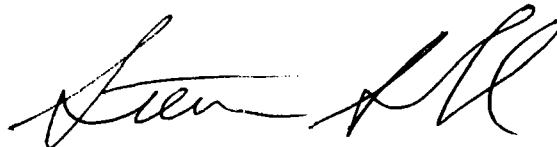
Until the present lawsuit was filed, I had never heard of EmarketersAmerica.org, Inc. ("EMA"). At no time prior to my execution of this declaration have I had any knowledge whatsoever regarding membership roster of EMA. Specifically, to this day, I am unable to identify a single person or business as a member of EMA.

5.

I provide secondary DNS services for spamhaus.org as a favor to Steve Linford I am not paid or compensated in any way for these services. I am not an officer of Spamhaus or any organizations owned by Steve Linford. I am not an officer in any organization that Steve Linford is involved in.

I swear under penalty of perjury that the testimony set forth in this declaration is true and correct.

This ^{25th}~~25~~ day of August, 2003.

A handwritten signature in black ink, appearing to read "Steve Sobol", written over a horizontal line.

STEVE SOBOL

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-80295-CIV-MIDDLEBROOKS/JOHNSON

EMARKETERSAMERICA.ORG, INC.,

A Florida not-for-profit corporation,

Plaintiff,

v.

SPEWS.ORG d/b/a THE HERMES GROUP;

SPAMHAUS.ORG d/b/a THE SPAMHAUS PROJECT;

CSL GMBH JOKER.COM;

STEVE LINFORD;

JULIAN LINFORD;

ALAN MURPHY;

SUSAN WILSON a/k/a SUSAN GUNN a/k/a SHIKSAA;

STEVEN J. SOBOL;

CLIFTON T. SHARP;

RICHARD C. TIETJENS a/k/a MORLEY DOTES;

ADAM BROWER; and

STEPHEN JOSEPH JARED a/k/a JOE JARED,

Defendants.

FIRST DECLARATION OF CLIFTON T. SHARP, JR. IN SUPPORT
OF HIS MOTION TO DISMISS

CLIFTON T. SHARP, JR. HEREBY DECLARES AS FOLLOWS:

1.

My name is Clifton T. Sharp, Jr. I am competent in all respects to testify regarding the matters set forth herein. I have first-hand knowledge of the facts stated in this declaration and know them to be true. I am a defendant in the above-styled action. I give this declaration in support of my contemporaneously-filed motion to dismiss.

2.

I am a resident of the State of Illinois. I currently reside in Plainfield, Illinois 60544.

3.

I have no connection or contacts whatsoever with the State of Florida. Specifically, I do not own real or personal property in Florida. I have never lived in Florida and do not knowingly engage in any business transactions in Florida or with Florida companies or residents. I have never been to Florida, but I have a cousin who, as of ten years ago, resided there.

4.

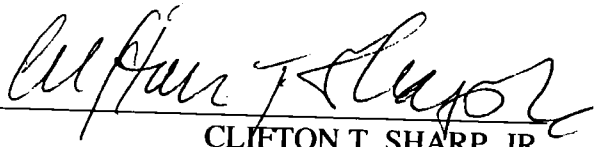
Until the present lawsuit was filed, I had never heard of EmarketersAmerica.org, Inc. ("EMA"). At no time prior to my execution of this declaration have I had any knowledge whatsoever regarding membership roster of EMA. Specifically, to this day, I am unable to identify a single person or business as a member of EMA.

5.

I have no connections with spews.org, spamhaus.org or joker.com whatsoever. I am acquainted with all of the other individual defendants through communications on the Usenet newsgroup news.admin.net-abuse.email.

I swear under penalty of perjury that the testimony set forth in this declaration is true and correct.

This 23rd day of August, 2003.


CLIFTON T. SHARP, JR.

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and counselor-at-law (*see* Judiciary Law § 90 [1] [a]).

Cardona, P.J., Mercure, Spain, Carpinello and Kane, JJ., concur.

ORDERED that the petition is denied.

[Return to Decision List](#)

B

1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-80295-CIV-MIDDLEBROOKS/JOHNSON

EMARKETERSAMERICA.ORG, INC.,

A Florida not-for-profit corporation,

Plaintiff,

v.

SPEWS.ORG d/b/a THE HERMES GROUP;

SPAMHAUS.ORG d/b/a THE SPAMHAUS PROJECT;

CSL GMBH JOKER.COM;

STEVE LINFORD;

JULIAN LINFORD;

ALAN MURPHY;

SUSAN WILSON a/k/a SUSAN GUNN a/k/a SHIKSAA;

STEVEN J. SOBOL;

CLIFTON T. SHARP;

RICHARD C. TIETJENS a/k/a MORLEY DOTES;

ADAM BROWER; and

STEPHEN JOSEPH JARED a/k/a JOE JARED,

Defendants.

FIRST DECLARATION OF SPAMHAUS BY AND THROUGH
STEVE LINFORD IN SUPPORT OF HIS MOTION TO DISMISS
SPAMHAUS BY AND THROUGH STEVE LINFORD HEREBY DECLARES
AS FOLLOWS:

1.

My name is Steve Linford, and I operate The Spamhaus Project. I am competent in all respects to testify regarding the matters set forth herein. I have first-hand knowledge of the facts stated in this declaration and know them to be true. I am a defendant in the above-styled action. I give this declaration in support of my contemporaneously-filed motion to dismiss.

2.

I am a British Citizen, resident of London, UK. My home address is The Phoenix, Taggs Island, Hampton Court, TW12 2HA, United Kingdom.

3.

I have no connection or contacts whatsoever with the State of Florida. Specifically, I do not own real or personal property in Florida. I have never lived in Florida and do not knowingly engage in any business transactions in Florida or with Florida companies or residents. I have never been to Florida, or to the United States of America.

4.

Until the present lawsuit was filed, I had never heard of EmarketersAmerica.org, Inc. ("EMA"). At no time prior to my execution of this declaration have I had any knowledge whatsoever regarding the membership of EMA. Specifically, to this day, I am unable to identify a single person or business as a member of EMA.

6.

The Spamhaus Project ("Spamhaus") is a non-profit, British-based organization dedicated to tracking known, confirmed mass senders of Unsolicited Bulk Email ("Spam").

Spamhaus has no connection whatsoever to SPEWS.

I swear under penalty of perjury that the testimony set forth in this declaration is true and correct.

This 22nd day of August, 2003.

A handwritten signature in black ink, appearing to read 'Steve Linford', written over a horizontal line.

THE SPAMHAUS PROJECT by and through STEVE LINFORD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-80295-CIV-MIDDLEBROOKS/JOHNSON

EMARKETERSAMERICA.ORG, INC.,

A Florida not-for-profit corporation,

Plaintiff,

v.

SPEWS.ORG d/b/a THE HERMES GROUP;

SPAMHAUS.ORG d/b/a THE SPAMHAUS PROJECT;

CSL GMBH JOKER.COM;

STEVE LINFORD;

JULIAN LINFORD;

ALAN MURPHY;

SUSAN WILSON a/k/a SUSAN GUNN a/k/a SHIKSAA;

STEVEN J. SOBOL;

CLIFTON T. SHARP;

RICHARD C. TIETJENS a/k/a MORLEY DOTES;

ADAM BROWER; and

STEPHEN JOSEPH JARED a/k/a JOE JARED,

Defendants.

FIRST DECLARATION OF RICHARD TIETJENS IN SUPPORT
OF HIS MOTION TO DISMISS

RICHARD TIETJENS HEREBY DECLARES AS FOLLOWS:

1.

My name is Richard C. Tietjens. I am competent in all respects to testify regarding the matters set forth herein. I have first-hand knowledge of the facts stated in this declaration and know them to be true. I am a defendant in the above-styled action. I give this declaration in support of my contemporaneously-filed motion to dismiss.

2.

I am a resident of the State of Oregon. My home address is 712 E. 5th Street, Newberg, OR 97132.

3.

I have no connection or contacts whatsoever with the State of Florida. Specifically, I do not own real or personal property in Florida. I have never lived in Florida and do not knowingly engage in any business transactions in Florida or with Florida companies or residents. I have never been to Florida, except in transit through the Miami International Airport in connection with travel on official military business.

4.

Until the present lawsuit was filed, I had never heard of EmarketersAmerica.org, Inc. ("EMA"). At no time prior to my execution of this declaration have I had any knowledge whatsoever regarding membership roster of EMA. Specifically, to this day, I am unable to identify a single person or business as a member of EMA.

5.

I previously provided backup DNS for the SPEWS website. I registered SPEWS.US as a redirect via the registrar. I have never had contact with anyone from SPEWS.

I swear under penalty of perjury that the testimony set forth in this declaration is true and correct.

This 21 day of August, 2003.


RICHARD C. TIETJENS

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-80295-CIV-MIDDLEBROOKS/JOHNSON

EMARKETERSAMERICA.ORG, INC.,

A Florida not-for-profit corporation,

Plaintiff,

v.

SPEWS.ORG d/b/a THE HERMES GROUP;

SPAMHAUS.ORG d/b/a THE SPAMHAUS PROJECT;

CSL GMBH JOKER.COM;

STEVE LINFORD;

JULIAN LINFORD;

ALAN MURPHY;

SUSAN WILSON a/k/a SUSAN GUNN a/k/a SHIKSAA;

STEVEN J. SOBOL;

CLIFTON T. SHARP;

RICHARD C. TIETJENS a/k/a MORLEY DOTES;

ADAM BROWER; and

STEPHEN JOSEPH JARED a/k/a JOE JARED,

Defendants.

FIRST DECLARATION OF ADAM BROWER IN SUPPORT

OF HIS MOTION TO DISMISS

ADAM BROWER HEREBY DECLARES AS FOLLOWS:

1.

My name is Adam Brower. I am competent in all respects to testify regarding the matters set forth herein. I have first-hand knowledge of the facts stated in this declaration and know them to be true. I am a defendant in the above-styled action. I give this declaration in support of my contemporaneously-filed motion to dismiss.

2.

I am a resident of the State of Illinois. My home address is 1111 5th Street, Mendota, IL 61342.

3.

I have no connection or contacts whatsoever with the State of Florida. Specifically, I do not own real or personal property in Florida. I have never lived in Florida and do not knowingly engage in any business transactions in Florida or with Florida companies or residents. I last visited Florida in 1956.

4.

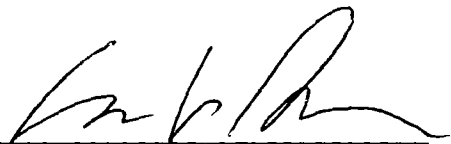
Until the present lawsuit was filed, I had never heard of EmarketersAmerica.org, Inc. ("EMA"). At no time prior to my execution of this declaration have I had any knowledge whatsoever regarding membership roster of EMA. Specifically, to this day, I am unable to identify a single person or business as a member of EMA.

5.

I am not affiliated in any way with the entities named in the complaint.

I swear under penalty of perjury that the testimony set forth in this declaration is true and correct.

This 22nd day of August, 2003.



ADAM BROWER

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-80295-CIV-MIDDLEBROOKS/JOHNSON

EMARKETERSAMERICA.ORG, INC.,

A Florida not-for-profit corporation,

Plaintiff,

v.

SPEWS.ORG d/b/a THE HERMES GROUP;

SPAMHAUS.ORG d/b/a THE SPAMHAUS PROJECT;

CSL GMBH JOKER.COM;

STEVE LINFORD;

JULIAN LINFORD;

ALAN MURPHY;

SUSAN WILSON a/k/a SUSAN GUNN a/k/a SHIKSAA;

STEVEN J. SOBOL;

CLIFTON T. SHARP;

RICHARD C. TIETJENS a/k/a MORLEY DOTES;

ADAM BROWER; and

STEPHEN JOSEPH JARED a/k/a JOE JARED,

Defendants.

FIRST DECLARATION OF JOE JARED IN SUPPORT
OF HIS MOTION TO DISMISS

JOE JARED HEREBY DECLARES AS FOLLOWS:

1.

My name is Stephen Joseph Jared. I am competent in all respects to testify regarding the matters set forth herein. I have first-hand knowledge of the facts stated in this declaration and know them to be true. I am a defendant in the above-styled action. I give this declaration in support of my contemporaneously-filed motion to dismiss.

2.

I am a resident of the State of California. My home address is 517 N. Emerald, Orange, CA 92868.

3.

I have no connection or contacts whatsoever with the State of Florida. Specifically, I do not own real or personal property in Florida. I have never lived in Florida and do not knowingly engage in any business transactions in Florida or with Florida companies or residents. I have never been to Florida, other than _____.

4.

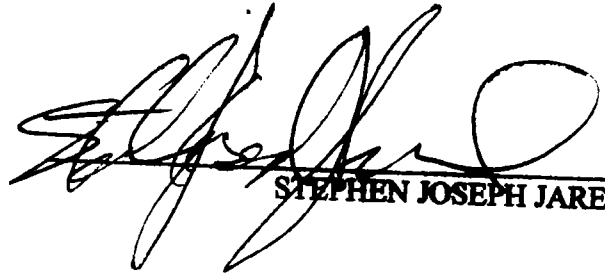
Until the present lawsuit was filed, I had never heard of EmarketersAmerica.org, Inc. ("EMA"). At no time prior to my execution of this declaration have I had any knowledge whatsoever regarding membership roster of EMA. Specifically, to this day, I am unable to identify a single person or business as a member of EMA.

5.

I download data from Spamhaus.org and Spews.org for use on my website, relays.osirusoft.com. I operate this website as a hobby, not a business, and I neither derive nor accept any form of monetary compensation for the operation of this website. The downloaded data is used to filter incoming email to Osirusoft's mail servers. I have no editorial control over the downloaded data. I am not an officer or otherwise affiliated with Spews or Spamhaus, including the creation and or registration of either website.

I swear under penalty of perjury that the testimony set forth in this declaration is true and correct.

This 24th day of August, 2003.


STEPHEN JOSEPH JARED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-80295-CIV-MIDDLEBROOKS/JOHNSON

EMARKETERSAMERICA.ORG, INC.,
A Florida not-for-profit corporation,

Plaintiff,

v.

SPEWS.ORG d/b/a THE HERMES GROUP;
SPAMHAUS.ORG d/b/a THE SPAMHAUS PROJECT;
CSL GMBH JOKER.COM;
STEVE LINFORD;
JULIAN LINFORD;
ALAN MURPHY;
SUSAN WILSON a/k/a SUSAN GUNN a/k/a SHIKSAA;
STEVEN J. SOBOL;
CLIFTON T. SHARP;
RICHARD C. TIETJENS a/k/a MORLEY DOTES;
ADAM BROWER; and
STEPHEN JOSEPH JARED a/k/a JOE JARED,

Defendants.

CERTIFICATE OF SERVICE

This is to certify that I have this 29th day of August, 2003 served a copy of the foregoing
Motion To Dismiss upon the below-listed counsel by hand:

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Boca Raton, Florida 33432

HUNTON & WILLIAMS, LLP

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