

Hilton

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA,
ALEXANDRIA DIVISION

Civil Action No. 03-474-A

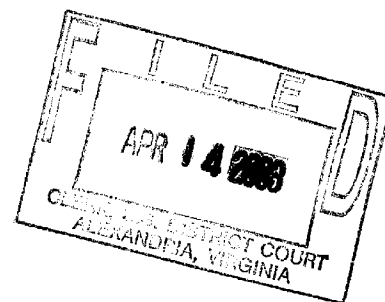
AMERICA ONLINE, INC.

Plaintiff,

v.

JOHN DOES 1-20;

Defendants.



AMERICA ONLINE'S COMPLAINT
FOR VIOLATIONS OF THE VIRGINIA COMPUTER CRIMES ACT,
THE FEDERAL COMPUTER FRAUD & ABUSE ACT,
AND THE COMMON LAW

Unsolicited Bulk E-mail ("UBE") – known popularly as "spam" – has become a public epidemic. At little or no cost to themselves, on a daily basis, senders of UBE – known as "spammers" – bombard the private computer networks of Internet service providers ("ISPs") with billions of messages peddling adult web sites, "get rich quick schemes," mortgage offers, pharmaceuticals, and other products. ISPs must process, sort, block, or deliver these e-mails. UBE imposes daily burdens and costs on ISP customers as well, exposing them to unwanted communications, frequently of a vulgar or offensive nature.

1. Acting in concert with one another and with third parties, Defendants have transmitted millions of unsolicited bulk e-mail ("UBE") messages advertising certain goods and services to America Online, Inc. ("AOL") and its Members. The goods and services advertised by Defendants include, but are not necessarily limited to, mortgage offers. The UBE messages claim to offer low mortgage rates ("we offer the lowest rates") and encourage the viewer to click on hypertext links that take the viewer from the e-mail message itself to Internet websites at domain names like

bestmortgagebuy.com, where the viewer is asked to submit personal information. An example of Defendants' UBE messages and the advertised websites are attached as Exhibit A to this Complaint.

PUBLICLY POSTED PROHIBITION OF TRANSMISSION OF UBE TO AOL MEMBERS

2. At all times relevant to this Complaint, AOL has prohibited the transmission of unsolicited bulk e-mail ("UBE") through its system to its Members:

America Online, Inc. ("AOL") does not authorize the use of its proprietary computers and computer network (the "AOL Network") to accept, transmit or distribute unsolicited bulk e-mail sent from the Internet to AOL members.

AOL's UBE policy is publicly available on the Internet at <http://www.aol.com/info/bulkemail.adp> and is attached hereto as Exhibit B.

UBE IMPOSES COSTS ON AOL

3. AOL's computer system located in Virginia includes equipment that receives, process, store and deliver e-mail transmitted to AOL Members. AOL's e-mail system presently receives nearly 2 billion e-mail messages per day. Since 1999, AOL has installed and implemented proprietary e-mail filters for identifying and blocking messages that appear to be UBE. On average, these filtering systems currently block in excess of 1 billion messages per day. This figure is ten times higher than the average daily volume that was being blocked as recently as 1999.

4. On information and belief, Defendants used a number of fraudulent and deceptive methods to evade AOL's e-mail filters and to hide their true identities and thereby make it more difficult to discover who was responsible. On information and belief, these methods include: the use of multiple and false identities to register for e-mail accounts and domain names and to acquire other Internet-related services; the use of multiple e-mail accounts, domain names and IP addresses to transmit messages and host websites; and the use of randomized subject lines.

5. AOL's mail servers and UBE filters have a finite processing speed and memory storage capacity that limit AOL's ability to receive, sort, deliver and store e-mail and thus limit the rate at which e-mail can be processed. AOL's e-mail system must spend time processing e-mails to distinguish legitimate e-mail from UBE. UBE impairs the delivery of legitimate e-mail and the functioning of AOL's computer network.

**UBE GENERATES AOL MEMBER COMPLAINTS &
UNFAIRLY SHIFTS THE COST OF ADVERTISING ONTO AOL**

6. Defendants' UBE messages further harm AOL by triggering Member complaints, thus damaging AOL's business reputation and goodwill.

7. By advertising through UBE, Defendants have also shifted their advertising costs onto AOL. Having shifted those costs, Defendants have indiscriminately targeted as many recipients as they can possibly reach. Targeting vast numbers of Internet users through UBE is facilitated because e-mail addresses can be purchased or "harvested" using automated "trolling" programs.

THE PARTIES

Plaintiff AOL, Inc. (AOL)

8. AOL is a Delaware corporation with its principal place of business at 22000 AOL Way, Dulles, VA 20166. AOL provides a proprietary, content-based online service, which enables Members to pursue a variety of online activities, such as use of e-mail and access to the Internet. AOL's central computer system, which includes specialized computers (called "servers") that process e-mail messages, is located in Northern Virginia, within the United States Eastern District of Virginia. E-mail sent to and from AOL Members is processed through and stored on these computers. Moreover, AOL's computers in Virginia provide the functionality and content for the AOL service provided throughout the United States and abroad.

Defendant John Does 1-20

9. Defendant John Does ("Defendants") have transmitted, or have facilitated the transmission of, millions of UBE messages to and through AOL's computer systems and to AOL

Members. They have acted either alone, in concert with one another, or with other unknown parties to commit the illegal acts alleged in AOL's Complaint.

JURISDICTION AND VENUE

10. This action arises out of, among other things, Defendants' violation of the Federal Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.* The Court has subject matter jurisdiction of this action based on 28 U.S.C. §§ 1331 and 1332, and has supplemental jurisdiction of AOL's state law claims based on 28 U.S.C. § 1367.

11. Pursuant to 28 U.S.C. § 1391(b), venue is proper in this judicial district. A substantial part of the events or omissions giving rise to AOL's claims occurred in this judicial district, and a substantial part of the property that is the subject of AOL's claims is situated in this judicial district. The federal District Court for the Eastern District of Virginia has personal jurisdiction over Defendants because, by transmitting UBE messages to AOL Members through AOL's computers and computer system, they have used a computer network located in the Eastern District and have caused tortious injury in this judicial district.

**COUNT I
AGAINST JOHN DOE DEFENDANTS 1-20
COMPUTER FRAUD
IN VIOLATION OF § 18.2-152.3 OF THE VIRGINIA COMPUTER CRIMES ACT**

12. AOL repeats and re-alleges the allegations of paragraphs 1 through 11 of the Complaint.

13. In connection with its provision of online and Internet services to its Members who are citizens of the Commonwealth of Virginia and other States, AOL maintains computers and a computer network in the Commonwealth of Virginia.

14. Defendants have used AOL's computers and computer network "without authority," as that term is defined in Virginia Code § 18.2-152.2, by transmitting UBE messages in contravention of the authority granted by AOL and in violation of AOL's Unsolicited Bulk E-Mail Policy.

15. Without authority, Defendants have obtained access to and used AOL's computers and computer network with the intent to obtain the use of AOL's property and services by false pretenses, in violation of Virginia Code § 18.2-152.3, and have thus committed computer fraud.

16. Defendants' acts have caused injury to AOL, AOL's computers and computer network, and to AOL's business relations, reputation, and goodwill.

COUNT II
AGAINST JOHN DOE DEFENDANTS 1-20
COMPUTER TRESPASS
IN VIOLATION OF § 18.2-152.4 OF THE VIRGINIA COMPUTER CRIMES ACT

17. AOL repeats and re-alleges the allegations of paragraphs 1 through 16 of the Complaint.

18. AOL maintains computers and computer network in the Commonwealth of Virginia through which it (i) acts as an intermediary in sending or receiving e-mail and (ii) provides its Members the ability to send or receive e-mail, and as such is an "electronic mail service provider" as defined in Virginia Code § 18.2-152.2.

19. Defendants have falsified or forged electronic mail transmission information or other routing information in connection with the transmission of their UBE messages through AOL's computers and computer network. By transmitting UBE messages to AOL and its Members using such false and deceptive tactics, Defendants have committed computer trespass in violation of Virginia Code § 18.2-152.4(A)(7).

20. Defendants' acts have caused injury to AOL, AOL's computers and computer network, and to AOL's business relations, reputation, and goodwill.

COUNT III
AGAINST JOHN DOE DEFENDANTS 1-20
THEFT OF COMPUTER SERVICES
IN VIOLATION OF § 18.2-152.6 OF THE VIRGINIA COMPUTER CRIMES ACT

21. AOL repeats and re-alleges the allegations of paragraphs 1 through 20 of the Complaint.

22. The e-mail and electronic message services AOL provides constitute "computer services" pursuant to Virginia Code § 18.2-152.2.

23. Defendants have willfully used AOL's computers and computer network with intent to obtain computer services without authority. Defendants' conduct constitutes theft of computer services in violation of Virginia Code § 18.2-152.6.

24. Defendants' acts have caused injury to AOL, AOL's computers and computer network, and to AOL's business relations, reputation, and goodwill.

COUNT IV
AGAINST JOHN DOE DEFENDANTS 1-20
ACCESSING PROTECTED COMPUTERS WITHOUT, OR IN EXCESS OF, AUTHORIZATION,
IN VIOLATION OF § 1030(a)(2)(C) OF THE FEDERAL COMPUTER FRAUD & ABUSE ACT

25. AOL repeats and re-alleges the allegations of paragraphs 1 through 24 of the Complaint.

26. In connection with the provision of online and Internet services to its Members, AOL owns and maintains one or more "protected computers" as the term is defined in the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(e)(2)(B). AOL's protected computers engage in two-way communication with mail transfer agents seeking to transmit email to AOL Members, and then receive, store and disseminate e-mail transmissions through interstate and/or foreign commerce or communication.

27. AOL's UBE Policy expressly prohibits the transmission of *any* type of UBE message to or from AOL Members.

28. On information and belief, Defendants have obtained information from AOL's protected computers.

29. By their actions, Defendants have intentionally accessed a computer without authorization, or in excess of authorization, and have thereby obtained information from a protected computer via an interstate or foreign communication, in violation of 18 U.S.C. § 1030(a)(2)(C). The damages suffered by AOL as a result of Defendants' conduct include the impairment of the integrity and/or availability of data, programs, systems, and/or information in AOL's protected computers, and aggregate to at least \$5,000 in value in the year preceding the date of filing of this Complaint.

30. Defendants threaten to continue to engage in the unlawful actions alleged herein, and unless restrained and enjoined will continue to do so, causing irreparable harm to AOL. It is difficult to ascertain the amount of compensation that could afford AOL adequate relief for Defendants' continuing unlawful acts. AOL's remedy at law is, therefore, inadequate to compensate for the injuries threatened.

COUNT V
AGAINST JOHN DOE DEFENDANTS 1-20
IMPAIRING COMPUTER FACILITIES IN VIOLATION OF
§ 1030(a)(5) OF THE FEDERAL COMPUTER FRAUD & ABUSE ACT

31. AOL repeats and re-alleges the allegations of paragraphs 1 through 30 of the Complaint.

32. Defendants knowingly caused to be transmitted UBE messages to and through AOL's protected computers without authorization. As a result of such conduct, Defendants caused damage to AOL's protected computers in violation of 18 U.S.C. § 1030(a)(5).

33. On information and belief, the damages suffered by AOL as a result of Defendants' conduct include the impairment of the integrity and/or availability of data, programs, systems, and/or information in AOL's protected computers, and aggregate to at least \$5,000 in value in the year preceding the date of filing of this Complaint.

COUNT VI
AGAINST JOHN DOE DEFENDANTS 1-20
TRESPASS TO CHATTELS
IN VIOLATION OF THE COMMON LAW

34. AOL repeats and re-alleges the allegations of paragraphs 1 through 33 of the Complaint.

35. The computers and computer network that constitute AOL's e-mail system are the personal property of AOL.

36. Without authorization, Defendants have intentionally and repeatedly obtained access to, and made use of, AOL's computers and computer network to transmit UBE messages to AOL Members for their own economic benefit.

37. Through their practice and pattern of repeatedly transmitting UBE messages through AOL's computers and computer network, Defendants have wrongfully exercised dominion over AOL's computers and computer network in denial of AOL's rights to that property. Defendants' wrongful exercise of dominion over AOL's computers and computer network has deprived AOL and its Members of the legitimate use of this commercially valuable system.

38. Under the common law, Defendants' conduct constitutes trespass to AOL's chattels.

39. Defendants' acts have caused injury to AOL, AOL's computers and computer network, and to AOL's business relations, reputation, and goodwill.

40. Defendants' acts of trespass have been undertaken intentionally with malice, oppression and fraud, justifying the imposition of punitive damages in an amount sufficient to punish Defendants and deter Defendants and others from engaging in similar conduct.

COUNT VII
AGAINST JOHN DOE DEFENDANTS 1-20
COMMON LAW CONSPIRACY
TO VIOLATE FEDERAL AND VIRGINIA STATUTES AND THE COMMON LAW

41. AOL repeats and re-alleges the allegations of paragraphs 1 through 40 of the Complaint.

42. Defendants have conspired and combined with one another and third parties to send UBE messages to and through AOL's computers and computer system to AOL Members and to commit the other acts alleged throughout this Complaint, in violation of Federal and Virginia statutes and Virginia common law as alleged in Counts I through VI.

43. On information and belief, Defendants' acts of conspiracy have been undertaken intentionally with malice, oppression and fraud, justifying the imposition of punitive damages in amount sufficient to punish Defendants and deter Defendants and others from engaging in similar conduct.

44. Defendants' acts have caused injury to AOL, AOL's computers and computer network, and to AOL's business relations, reputation and goodwill.

45. Defendants' acts have caused injury to AOL, AOL's computers and computer network, and to AOL's business relations, reputation, and goodwill.

COUNT VIII
AGAINST JOHN DOE DEFENDANTS 1-20
UNJUST ENRICHMENT AND
THE IMPOSITION OF A CONSTRUCTIVE TRUST IN FAVOR OF AOL

46. AOL repeats and re-alleges the allegations of paragraphs 1 through 45 of the Complaint.

47. By transmitting UBE messages through AOL to AOL Members, Defendants have knowingly obtained, conferred, or retained advertising-related benefits acquired at AOL's expense. Defendants' knowing acquisition of these benefits has occurred under circumstances that render it inequitable for Defendants to retain the benefits without paying for their value.

48. As a result of Defendants' unjust enrichment, Defendants should be ordered to compensate AOL for the value of the services it unwillingly provided and ordered to disgorge all profits derived from all bulk e-mailing activities. A constructive trust should also be imposed in favor of AOL on all moneys received by or due Defendants and on all profits generated by Defendants' illegal activities as a result of their bulk e-mail activities and on all real property, motor vehicles, and other personal property purchased with moneys received by Defendants as a result of their bulk e-mail activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff AOL requests entry of judgment in its favor and against Defendants:

a. Granting preliminary and permanent injunctive relief against Defendants, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, enjoining them from directly or indirectly:

1. Sending or transmitting to any destination, or directing, aiding, or conspiring with others to send or transmit to any destination, electronic mail or

electronic communication bearing any false, fraudulent, anonymous, inactive, deceptive, or invalid source, routing, or return information;

2. Using, or directing, aiding, or conspiring with others to use AOL's computers or computer networks, or the computers or computer networks of any of AOL's subsidiaries or affiliates, in any manner, directly or indirectly, in connection with the transmission or transfer of any form of electronic information across the Internet;

3. Opening, creating, obtaining access to, and/or using in any way, or directing, aiding, or conspiring with others to open, create, obtain access to, and/or use in any way, any AOL membership or account;

4. Acquiring, compiling or transferring AOL Member e-mail addresses or e-mail addresses that contain an AOL domain;

5. Sending or transmitting, or directing, aiding, facilitating or conspiring with others to send or transmit, any electronic mail message, or any electronic communication of any kind, to or through AOL or its Members;

6. Creating, registering, or maintaining any Internet services by providing false or misleading information;

7. Participating in or operating any Internet Website which offers any "click-through" or referral-revenue sharing compensation program; and

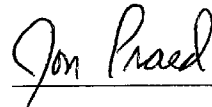
8. Hiring or retaining any employee or contractor to advertise any products or services without first obtaining and retaining on file: (i) information adequate to effect service of a legal complaint filed in a United States district court on such employee or contractor; and (ii) that employee's or contractor's signed acknowledgement that the employee or contractor has received notice of this Order, agrees to be bound by it, and agrees to submit to the jurisdiction of this Court for any alleged violations of this Order.

b. Awarding AOL statutory, compensatory, and punitive damages, and restitution, in an amount to be proven at trial, caused by Defendants' violation of the Computer Fraud and Abuse Act, Virginia Computer Crimes Act, and common law;

- c. Imposing a constructive trust on all real and personal property purchased by Defendants with funds derived from their illegal bulk email activities;
- d. Awarding AOL its attorneys' fees and costs associated with prosecuting this action; and
- e. Granting AOL such other or additional relief as this Court deems just and proper under the circumstances.

April 14, 2003

Respectfully submitted,



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