

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

STATE OF TEXAS,

Plaintiff

vs.

BILLY W. WILLIAMS

Defendant

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Civil Action No. _____

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Plaintiff the STATE OF TEXAS, acting by and through the Attorney General of Texas, GREG ABBOTT, files this Original Complaint against Defendant BILLY W. WILLIAMS and for causes of action would respectfully show the Court as follows:

JURISDICTION AND VENUE

1. This action is brought by Attorney General Greg Abbott, through his Consumer Protection & Public Health Division, in the name of the STATE OF TEXAS and in the public interest under the authority granted to him pursuant to the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, 15 U.S.C. § 7701 *et seq* ("CAN-SPAM Act"), by the Texas Electronic Mail Solicitation Act, TEX. BUS. & COM. CODE § 46.001 *et seq.* (Vernon Supp. 2004-2005) and by the Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE § 17.41 *et seq.* (Vernon 2002 & Supp.2005) ("DTPA").

2. The Court has jurisdiction over the subject matter of these claims pursuant to 15 U.S.C. §§ 1331 and 15 U.S.C. § 1337(a). The Court further has supplemental jurisdiction over the

subject matter of the state law causes of action pursuant to 28 U.S.C. § 1367 (a).

3. Venue of this suit lies in the Northern District of Texas, Dallas Division, pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims alleged herein occurred within the Northern District of Texas, as more specifically described below.

DEFENDANT

4. Defendant BILLY W. WILLIAMS is an individual who resides in Kailua, Hawaii and can be served at his residence located at 1205 Kupau St., Kailua, Hawaii.

“SPAM” AND THE FEDERAL CAN-SPAM ACT AND THE TEXAS ELECTRONIC MAIL SOLICITATION ACT

4. In passing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, 15 U.S.C. § 7701 *et seq.*, known as the “CAN-SPAM Act,” Congress found that the “...convenience and efficiency of electronic mail are threatened by the extremely rapid growth in the volume of unsolicited commercial electronic mail” and estimated that in 2003 such unsolicited commercial electronic mail “...accounted for over half of all electronic mail (email) traffic, up from an estimated 7 percent in 2001.”

5. Congress further found that “...the growth in unsolicited commercial electronic mail imposes significant monetary costs on providers of Internet access services, businesses, and educational and nonprofit institutions that carry and receive such mail, as there is a finite volume of mail that such providers, businesses, and institutions can handle without further investment...” and that “the receipt of a large number of unwanted messages...decreases the convenience of electronic mail and creates a risk that wanted...messages...will be lost, overlooked, or discarded amidst the larger volume of unwanted messages, thus reducing the reliability and usefulness of electronic mail to the recipient.”

6. Congress specifically found that “many senders of unsolicited commercial electronic mail purposefully disguise the source of such mail” and “purposefully include misleading information in the messages’ subject lines in order to induce the recipients to view the messages.”

7. In passing the CAN-SPAM Act, Congress did not declare the sending of all unsolicited commercial email to be unlawful, but rather addressed specific problems associated with the rapid growth and abuse of unsolicited commercial email. For example, Congress specifically declared it to be unlawful for any person to initiate the transmission to a protected computer of a commercial email message if the header information is misleading or if the subject heading would be likely to mislead a recipient acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message. Congress further required that such messages include a valid physical address for the sender as well as a method for the consumer to request not to receive future messages. Congress also made it an aggravated offense to relay or retransmit an email message from a protected computer that the person has accessed without authorization.

8. The State of Texas has also acted to protect the public interest from problems associated with the abuse of unsolicited commercial email and enacted the Electronic Mail Solicitation Act which, like the federal law, does not prohibit the sending of all unsolicited commercial email, but rather addresses problems related to its use.

PUBLIC INTEREST

9. Plaintiff, STATE OF TEXAS, has reason to believe that Defendant has engaged in a pattern or practice of unlawful practices as set forth below. Plaintiff has reason to believe that an interest of the residents of Texas have been or are threatened or adversely affected by Defendant’s

practices as alleged herein. Plaintiff also has reason to believe that Defendant has caused and will continue to cause injury, loss, and damage to the STATE OF TEXAS, and will also cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in this State.

ACTS OF AGENTS

10. Whenever it is alleged in this petition that Defendant did any act, it is meant that the Defendant performed or participated in the act or that Defendant's officers, agents or employees performed or participated in the act on behalf of and under the authority of the Defendant.

NATURE OF DEFENDANT'S OPERATION AND STATEMENT OF FACTS

11. Defendant has been involved in sending unsolicited commercial email to consumers in Texas and throughout the United States. From at least January, 2004, through December, 2004, Defendant sent his email messages from computer servers that were located in Dallas, Texas.

12. Defendant's email messages advertise a wide variety of goods and services, including but not limited to mortgage refinancing, anti-spyware products, generic Viagra and other prescription medications, automobile extended warranties, and online diplomas. Plaintiff has reason to believe that in most cases Defendant does not actually sell the goods and services he advertises. Instead, Defendant is an "affiliate" of numerous different marketing programs orchestrated by other individuals or companies. Defendant gets paid a commission for persons that he refers to the actual seller.

13. When sending his email messages, Defendant takes extreme measures to hide his identity. For example, Defendant omits from his email messages any postal address or other information identifying who is sending the message or offering the goods or services. In addition, on information and belief, Plaintiff alleges that Defendant forges the header information on the

emails he sends. For example, Defendant often alters the “From” line in his messages to make it appear as if the messages come from an Internet domain or email address that does not belong to Defendant. Defendant also routinely alters the email so that if a recipient tries to reply to the email, the response is sent to yet another email address that does not belong to Defendant. In addition, many of Defendant’s emails fail to include any way to contact Defendant to ask to be removed from his email list.

14. But Defendant’s efforts to disguise who is sending the messages is even more egregious than just altering the content of the email. Defendant actually sends his email messages through the computers of innocent third parties without their authorization so that if anyone attempts to track the message, it appears as if the third party sent it. Defendant does this by, at least in part, using “open proxies.” In general, a proxy server is a combination of software and hardware that acts as an intermediary between one or more computers and the Internet. If that proxy is not properly configured and is left unsecured (often referred to as an open proxy) it can allow unauthorized Internet users to connect through it to, *inter alia*, send mail messages to other computers. As a result, rather than appearing to come from the true sender, the emails appear to come from the unsuspecting third party.

15. In large part because of Defendant’s efforts to conceal his identity, the exact number of illegal emails Defendant has sent is unknown to Plaintiff at this time, but on information and belief, Plaintiff alleges that Defendant has sent hundreds of thousands of such emails between January 1, 2004, and the present. For example, between August 30, 2004, and December 29, 2004, Defendant attempted to send more than 37,000 commercial emails through a single innocent third party’s machine.

16. In addition to illegally concealing his identity and accessing third parties' computers without their consent, Defendant also attempts to trick consumers into opening emails they would otherwise delete by utilizing false, deceptive, or misleading subject lines in many of his emails. For example, Defendant's subject lines have included but are not limited to:

- (a) Re: Order Confirmation - #EO-2357;
- (b) Re: what time;
- (c) Re: Bugs Bunny;
- (d) You still planning on coming over today;
- (e) Application # 159315 has been received;
- (f) About last night;
- (g) when;
- (h) Man, did you see that on TV?; and
- (i) Status update for account 61HP387LA.

17. Although such subject lines create the impression that the email is either from a personal acquaintance or regarding a specific transaction, the emails are actually merely advertisements for, *inter alia*, mortgage refinancing services, prescription drugs, diplomas, and software that is purported to remove spyware from a person's computer.

**FIRST CAUSE OF ACTION
VIOLATIONS OF THE CAN-SPAM ACT**

18. Plaintiff realleges paragraphs one through 17 in this Complaint and incorporates them here as if set forth in full.

19. Defendant engaged in a pattern or practice of initiating, to protected computers, commercial email messages that:

- a) contained header information that was materially false or materially misleading;
- b) contained subject headings that Defendant knew, or reasonably should have known, were likely to mislead recipients, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the messages;
- c) failed to contain a functioning return email address or other Internet-based mechanism, clearly and conspicuously displayed, that a recipient could use to submit a request not to receive future commercial email messages from the sender;
- d) failed to include a clear and conspicuous identification that the message was an advertisement or solicitation; and
- e) failed to include a valid physical postal address of the sender.

20. Defendant knowingly relayed or re-transmitted commercial email messages from protected computers or computer networks that Defendant accessed without authorization.

21. Defendant's conduct violated 15 U.S.C. § 7704(a)(1), (a)(2), (a)(3), (a)(5), and (b)(3) of the CAN-SPAM Act.

**SECOND CAUSE OF ACTION
VIOLATIONS OF THE TEXAS ELECTRONIC MAIL SOLICITATION ACT**

22. Plaintiff realleges paragraphs one through 17 of this Complaint and incorporates them here as if set forth in full.

23. Defendant intentionally transmitted commercial email messages that:

- a) falsified the email transmission information; and

b) contained false, deceptive, or misleading information in the subject line.

24. Defendant's conduct violated §§ 46.002(a)(1) and (a)(2) of the TEXAS ELECTRONIC MAIL SOLICITATION ACT.

**THIRD CAUSE OF ACTION
VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT**

25. Plaintiff realleges paragraphs one through 17 and incorporates them herein as if set forth here in full.

26. Defendant sent his messages through third party computers without their authorization in order to:

- a) cause confusion or misunderstanding as to the source of the goods or services; and
- b) cause confusion or misunderstanding as to affiliation, association, or connection with another.

27. Defendant utilized misleading subject lines in order to trick consumers into opening the emails.

28. Such false, misleading, or deceptive acts and practices are in violation of DTPA §§ 17.46(a), 17.46(b)(2), 17.46(b)(3), 17.46(b)(5), 17.46(b)(12), and 17.46(b) (24).

PRAYER

29. Because Defendant has engaged in the acts and practices described above, Defendant has violated the law as alleged in this Complaint and, unless restrained by this Honorable Court, Defendant will continue to violate the laws of the UNITED STATES OF AMERICA and the STATE OF TEXAS and will cause injury, loss, and damage to the STATE OF TEXAS and to the general public.

30. WHEREFORE, Plaintiff prays that Defendant be cited according to law to appear and answer herein; and that upon notice and hearing preliminary and permanent injunctions be issued, restraining and enjoining Defendant, Defendant's agents, servants, employees, successors, assigns, attorneys, and any other person in active concert or participation with Defendant from continuing to violate the CAN-SPAM Act, the Texas Electronic Mail Solicitation Act, or the Texas Deceptive Trade Practices Act.

31. In addition, Plaintiff STATE OF TEXAS respectfully prays that this Court adjudge against Defendant civil penalties in favor of Plaintiff STATE OF TEXAS as follows:

- a. Two Hundred and Fifty and No/100 Dollars (\$250.00) for each violation of the CAN-SPAM Act;
- b. Seven Hundred and Fifty and No/100 Dollars (\$750.00) for each violation of 15 U.S.C. § 7704(b) of the CAN-SPAM Act and each violation of 15 U.S.C. § 7704(a) of the CAN-SPAM Act that was committed willfully and knowingly.
- c. Ten and No/100 Dollars (\$10.00) for each unlawful message or action or Twenty-Five Thousand and No/100 Dollars (\$25,000.00) for each day an unlawful message is received or an action was taken by Defendant in violation of § 46.002(a) of the TEXAS ELECTRONIC MAIL SOLICITATION ACT; and
- d. Twenty Thousand and No/Dollars (\$20,000.00) for each violation of § 17.46(a) and (b) of the Texas Deceptive Trade Practices Act.

32. Plaintiff STATE OF TEXAS further prays that this Court order Defendant to pay all

costs of Court, costs of investigation, and reasonable attorneys' fees authorized pursuant to 15 U.S.C. § 7706(f)(4) of the CAN-SPAM Act. and TEX. GOV'T CODE § 402.006(c) (Vernon Supp 2004-2005).

33. The Plaintiff further prays that the Court grant all other relief to which the Plaintiff may show itself entitled.

Respectfully submitted,

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