

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FILED ENTERED
LOANED RECEIVED
★ OCT 21 2004 ★
CLERK U.S. DISTRICT COURT
BY WESTERN DISTRICT OF WASHINGTON DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NO. CV04-2171 RSM

STATE OF WASHINGTON,

Plaintiff,

v.

AVTECH DIRECT, also doing business
as AVTECH COMPUTERS and
EDUCATIONAL PURCHASING
SERVICES; ARLENE SEDIQZAD, also
known as ARLENE GRANT and
ARLENE HUNZIKER, manager of
AVTECH DIRECT, individually and on
behalf of her marital community; and
GARY HUNZIKER, manager of
AVTECH DIRECT, individually and on
behalf of his marital community; MD&I
CORPORATION, a California for-profit
corporation; and MIN HUI ZHAO, also
known as MICHAEL ZHAO,
individually, and on behalf of his marital
community,

Defendants.

COMPLAINT FOR RELIEF
UNDER THE CAN-SPAM ACT;
THE WASHINGTON
COMMERICAL ELECTRONIC
MAIL ACT; AND THE
WASHINTON CONSUMER
PROTECTION ACT

1. Plaintiff, State of Washington brings this action under the Controlling the Assault
of Non-Solicited Pornography and Marketing Act ("CAN-SPAM Act"), 15 U.S.C. § 7701, et seq.

COPY

1 Plaintiff seeks a permanent injunction and other equitable relief, including damages and attorneys'
2 fees, based on defendants' violations of the CAN-SPAM Act.

3 2. Plaintiff, State of Washington, as part of the same case or controversy, also brings
4 this action pursuant to RCW 19.190, the Commercial Electronic Mail Act ("UCE Act"). Plaintiff
5 seeks a permanent injunction and other equitable relief, including damages, civil penalties, and
6 attorneys' costs and fees based on violations of the UCE Act.

7 3. Plaintiff, State of Washington, as part of the same case or controversy, also brings
8 this action pursuant to RCW 19.86, the Unfair Business Practices-Consumer Protection Act
9 ("Consumer Protection Act"). Plaintiff seeks a permanent injunction and other equitable relief,
10 including damages, civil penalties, and attorneys' costs and fees based on violations of the
11 Consumer Protection Act.

12 **I. JURISDICTION AND VENUE**

13 4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331,
14 1337(a), 28 U.S.C. § 1367 and 15 U.S.C. §. 7706.

15 5. Venue in this district is proper under 28 U.S.C. § 1391 and 15 U.S.C. §. 7706. A
16 substantial portion of the acts complained of herein have occurred in King County and elsewhere
17 in the Western District of Washington.

18 **II. THE PARTIES**

19 6. Plaintiff, State of Washington, as *parens patriae*, is authorized, by 15 U.S.C. §
20 7706(f), to file federal district court actions to enjoin violations of the CAN-SPAM Act, to seek
21 recovery for actual monetary loss or damages of up to \$250 per violation on behalf of the
22 residents of the State of Washington, and to obtain such further and other relief as the court may
23 deem appropriate, including treble damages and attorneys' fees. Plaintiff is authorized by RCW
24 19.86.080 to enjoin violations of the Consumer Protection Act, to obtain restitution on behalf of
25 persons harmed by such violations, and to obtain such further and other relief as the court may
26 deem appropriate, including civil penalties and attorneys' fees. Pursuant to RCW 19.190.030(2),

1 a violation of RCW 19.190 et seq., the UCE Act, constitutes a violation of the Consumer
2 Protection Act and thereby gives rise to plaintiff's authorization to file actions enjoining violations
3 of the UCE Act, and seek damages of \$500 per violation of its provisions.

4 7. Defendant AvTech Direct, also doing business as Avtech Computers and
5 Educational Purchasing Services, is a California business with its offices and principal place of
6 business located at 4798 Regalo Road, Woodland Hills, California 91364. AvTech Direct
7 transacts or has transacted business in this District.

8 8. Defendant Arlene Sediqzad, also known as Arlene Grant and Arlene Hunziker, is
9 a manager of AvTech Direct and is married to Gary Hunziker. Together they constitute a marital
10 community. At all times material to this action, acting alone or in concert with others, she has
11 formulated, directed, controlled or participated in the acts and practices of AvTech Direct,
12 including the acts and practices set forth in this Complaint. All acts and practices undertaken by
13 Arlene Sediqzad on behalf of AvTech Direct were and are for the benefit of her marital
14 community. Defendant Sediqzad resides at 4798 Regalo Road, Woodland Hills, California
15 91364. She transacts or has transacted business in this District.

16 9. Defendant Gary Hunziker is a manager of AvTech Direct and is married to Arlene
17 Sediqzad. Together they constitute a marital community. At all times material to this action,
18 acting alone or in concert with others, he has formulated, directed, controlled or participated in the
19 acts and practices of AvTech Direct, including the acts and practices set forth in this Complaint.
20 All acts and practices undertaken by Gary Hunziker on behalf of AvTech Direct were and are for
21 the benefit of his marital community. Defendant Hunziker resides at 4798 Regalo Road,
22 Woodland Hills, California 91364. He transacts or has transacted business in this District.

23 10. Defendant MD&I Corporation is a California corporation with its offices and
24 principal place of business located at 3022 Durfee Avenue, Unit "C," El Monte, California 91732.
25 MD&I corporation is in the business of assembling, selling, and distributing computer software
26

1 and components, and has procured the transmission of commercial electronic mail to market its
2 products.

3 11. Defendant Min Hui Zhao, also known as Michael Zhao, is an officer of defendant
4 MD&I Corporation and is married to Jane Doe Zhao. At all times material to this action, acting
5 alone or in concert with others, he has formulated, directed, controlled, or participated in the
6 practices of MD&I Corporation. All acts and practices undertaken by Min Hui Zhao on behalf of
7 MD&I Corporation were and are for the benefit of his marital community. Defendant Zhao
8 resides in California

9 **III. DEFENDANTS' BUSINESS PRACTICES**

10 12. Since at least 2003, defendants have marketed the sale of desktop computers to
11 consumers in Washington and throughout the United States through the sending of unsolicited
12 commercial email ("email"). The emails are directed towards specific nonprofit groups, such as
13 employees of educational institutions or healthcare workers. The emails, which purport to be
14 from the email address administration@computeradmin.org, state that "through a special
15 arrangement" defendants are offering a "limited allotment of brand new, top-of-the-line, name-
16 brand desktop computers at more than 50% MSRP" to all nonprofit "Members and Staff" who
17 respond to the email before a specified short time frame. The computers are described as "fully
18 equipped with 2004 next generation technology, making them the best performing computers
19 money can buy," and are purported to have "the latest Intel technology." The emails are flagged
20 as high priority to instill a sense of urgency. Defendants charge \$297 for the computers and
21 promise a "100% satisfaction" guarantee. They state that their offer is available only to those
22 who are members, staff or associates of a nonprofit organization. Among others, defendants have
23 targeted the Seattle school district with their emails, blanketing its employees with over 1500
24 solicitations in a two-month period between May and July 2004.

1 **IV. THE CAN-SPAM ACT**

2 13. The CAN-SPAM Act makes it unlawful to initiate the transmission of an email
3 that contains materially misleading or materially false header information. 15 U.S.C. §
4 7704(a)(1). The term “materially” includes the alteration or concealment of header information
5 that would impair the ability of a law enforcement agency, among other entities, to identify the
6 initiator of the email message or to investigate an alleged violation of the Act. 15 U.S.C. §
7 7704(a)(6). The Act also makes it unlawful to initiate email with misleading subject lines.
8 15 U.S.C. § 7704(a)(2). Additionally, the Act requires senders of commercial electronic mail to
9 provide a functioning mechanism by which recipients can opt out of receiving future emails from
10 the sender, and makes it unlawful to send additional solicitations to those who have opted out. 15
11 U.S.C § 7704(a)(4)(A). Once a recipient requests not to receive future commercial electronic mail
12 messages from the sender, the sender has a 10-day grace period after which it is unlawful to send
13 any messages to that recipient. 15 U.S.C. § 7704(a)(4)(A)(i).

14 **VIOLATIONS OF THE CAN-SPAM ACT**

15 **V. FIRST CAUSE OF ACTION – FALSE HEADERS**

16 14. In numerous instances, defendants have altered or concealed header information,
17 making it appear as though their emails have originated from unassigned Internet protocol
18 addresses or addresses registered to domains belonging to Apple Computer, General Electric and
19 others. By doing so, defendants have initiated the transmission of commercial electronic mail
20 messages with materially misleading or materially false header information, thus impairing the
21 ability of plaintiff to identify and locate the initiator of the email. “Header information,” as
22 defined in the Act, means “the source, destination, and routing information attached to an
23 electronic mail message, including the originating domain name and originating electronic mail
24 address, and any other information that appears in the line identifying, or purporting to identify, a
25 person initiating the message.” 15 U.S.C. § 7702(8).

26 15. The practices described above constitute violations of 15 U.S.C § 7704(a)(1).

1 **VI. SECOND CAUSE OF ACTION – MISLEADING SUBJECT LINES**

2 16. Plaintiff realleges paragraphs 1 through 15 and incorporates them herein as if set
3 forth in full. Defendants' commercial email messages display various subject lines. At least one
4 of those subject lines, "Staff Bulletin," creates the false impression that the email consists of
5 official business that was generated from within the recipient's own organization. Additionally,
6 the use of the term "bulletin" implies that the message is of a high priority and requires immediate
7 attention. The subject line is likely to mislead a recipient, acting reasonably under the
8 circumstances, about a material fact regarding the contents or subject matter of the message.

9 17. The practices described above constitute violations of 15 U.S.C. § 7704(a)(2).

10 **VIII. THIRD CAUSE OF ACTION – FAILURE TO HONOR OPT-OUT REQUESTS**

11 18. Plaintiff realleges paragraphs 1 through 17 and incorporates them herein as if set
12 forth in full. Defendants' solicitations include a hypertext link which purportedly permits the
13 recipient to "unsubscribe" from defendants' mailing list. Recipients have clicked on the hypertext
14 link in defendants' email messages and thereby attempted to opt out of receiving future
15 solicitations. Despite recipients' requests, defendants have continued to send email solicitations
16 to them.

17 19. The CAN-SPAM Act prohibits the initiation of additional electronic messages to a
18 recipient who has made, through an email reply or any other form of Internet-based
19 communication, a request not to receive such messages. Defendants' continued solicitation of
20 recipients who had opted out of receiving future email messages constitutes violations of 15
21 U.S.C. § 7704(a)(4)(A)(i).

22 **VIOLATIONS OF WASHINGTON'S COMMERCIAL ELECTRONIC MAIL ACT**

23 **IX. FOURTH CAUSE OF ACTION – MISREPRESENTING POINT OF ORIGIN**

24 20. Plaintiff realleges paragraphs 1 through 19 and incorporates them herein as if set
25 forth in full. The UCE Act prohibits misrepresenting or obscuring any information in identifying
26 the point of origin or the transmission path of a commercial electronic mail message. RCW

1 19.190.020(1)(a). In some instances, defendants' email purports to originate from Internet
2 protocol addresses that are unassigned and falsified. Defendants have also falsely designated their
3 email as being transmitted from Internet domains registered to, among others, Apple Computer
4 and General Electric. Defendants' messages have been sent to Washington residents, including
5 but not limited to electronic mail addresses held by teachers and staff of the Seattle school district.

6 21. A violation of the UCE Act constitutes a *per se* violation of the Consumer
7 Protection Act. RCW 19.190.030(3). By engaging in the practices described in Paragraph 20,
8 defendants have misrepresented or obscured the transmission paths of commercial email
9 messages and thereby violated the UCE Act and the Consumer Protection Act. RCW
10 19.190.020(1)(a); RCW 19.86, et seq.

11 **X. FIFTH CAUSE OF ACTION – MISLEADING SUBJECT LINES**

12 22. Plaintiff realleges paragraphs 1 through 21 and incorporates them herein as if set
13 forth in full. Defendants' commercial email messages display various subject lines. At least one
14 of those subject lines, "Staff Bulletin," creates the false impression that the email consists of
15 official business that was generated from within the recipient's own organization. Additionally,
16 the use of the term "bulletin" implies that the message is of a high priority and requires immediate
17 attention.

18 23. The use of false or misleading information in the subject line of a commercial
19 email message violates RCW 19.190.030(1)(b). Pursuant to RCW 19.190.030(2), defendants'
20 violation of RCW 19.190.030(1)(b) constitutes a *per se* violation of the Consumer Protection Act,
21 RCW 19.86, et seq.

22 **VIOLATIONS OF WASHINGTON'S CONSUMER PROTECTION ACT**

23 **XI. SIXTH CAUSE OF ACTION – MISREPRESENTATIONS**

24 24. Plaintiff realleges paragraphs 1 through 23 and incorporates them herein as if set
25 forth in full. In the context of their sale and marketing of desktop computers, defendants make
26 numerous misrepresentations, including but not limited to the following

1 a. Defendants represent that “through a special arrangement” they are able to
2 offer a “limited allotment” of computers at “50% off MSRP.” Defendants imply that there
3 are only a few computers available for sale, creating a false sense of urgency. In fact, the
4 “allotment” is not limited to a readily exhaustible pre-ordained quantity, as implied by
5 defendants.

6 b. Defendants represent that in order to take advantage of their offer,
7 recipients must respond by a designated time and date, usually within 24 or 48 hours of
8 receiving the message. For example, one email solicitation to a Seattle school district
9 employee dated Wednesday, June 23, 2004, stated that the recipient had to respond by
10 Thursday, June 24, 2004 at 5:00 in order to make a purchase from defendants. By
11 requiring a quick turnaround response time, defendants create a false sense of urgency to
12 their offer. In fact, defendants do not require the recipient to contact them in the brief
13 window of time represented; consumers who contact them after the prescribed deadline
14 are able to make purchases.

15 c. Defendants target their sales to non-profit organizations, and state
16 specifically in their email messages that the purchaser must be directly associated with the
17 organization in order to buy a computer. For example, in their solicitation to the Seattle
18 school district employees, they state, “You must be a Teacher, Student, Faculty or Staff
19 Member” (sic) in order to make a purchase. In fact, defendants will sell their computers to
20 anyone, regardless of their affiliation with a non-profit organization.

21 d. Defendants describe their computers as being equipped with “2004 next
22 generation technology, making (them) the best performing computers money can buy.” In
23 fact, they are neither equipped with “2004 next generation technology” nor are they “the
24 best performing computers money can buy.”

25 e. Defendants represent that their computers feature the “latest Intel
26 technology.” In fact, they do not.

1 f. Defendants post an 800-number in their solicitations as a way of
2 contacting them about making a purchase. Consumers have called defendants at this
3 number and requested to stop receiving further solicitations. Defendants have represented
4 that the consumers' requests will be honored and no future solicitations will be sent. In
5 fact, in some instances, defendants have continued to send solicitations to the consumers.

6 25. The misrepresentations described above constitute unfair and deceptive acts or
7 practices in trade or commerce and unfair methods of competition in violation of the Consumer
8 Protection Act, RCW 19.86.020.

9 **XII. SEVENTH CAUSE OF ACTION – FAILURE TO HONOR GUARANTEE AS**
10 **REPRESENTED**

11 26. Plaintiff realleges paragraphs 1 through 25 and incorporates them herein as if set
12 forth in full. Defendants' email solicitation offers "100% satisfaction guaranteed." The guarantee
13 impliedly represents that there is no risk in purchasing, and places no qualifications on the terms
14 of the guarantee. In fact, defendants impose a number of conditions on their "guarantee" which
15 significantly restrict its effectiveness. These conditions, which are not disclosed in defendants'
16 solicitation, include the following:

17 a. Defendants will only provide refunds to consumers who return their
18 computers within 14 days of purchase;

19 b. Defendants require any claims for shortage, damage or shipping error to be
20 made within three working days of receipt of the computers.

21 c. Defendants charge a 15% restocking fee for returned computers.

22 27. The practices described above constitute unfair and deceptive acts or practices in
23 trade or commerce and unfair methods of competition in violation of the Consumer Protection
24 Act, RCW 19.86.020.

1 **XIII. EIGHTH CAUSE OF ACTION – DECEPTIVE “FROM” LINES**

2 28. Plaintiff realleges paragraphs 1 through 27 and incorporates them herein as if set
3 forth in full. In the context of defendants’ email solicitations, defendants post in the “from” line
4 of the message itself, the following email addresses as the originating sender:
5 “administration@computeradmin.org.” When the recipient is notified of the existence of the
6 message in his or her inbox, the originating sender’s email address is truncated and displayed as
7 simply “Admin.” This truncation is typical of the most commonly used email programs, such as
8 Outlook.

9 29. The effect of the “Admin” posting in the recipient’s mailbox is deceptive. The
10 recipient believes that the email message originates from the administration of his or her
11 organization, and considers it to be official business. The misrepresentation greatly enhances the
12 chance that the email will be clicked on and read by the recipient. In fact, the message is not
13 official business from the recipient’s internal administration, but rather a commercial solicitation
14 received at the workplace.

15 30. The misrepresentation described above constitutes an unfair and deceptive act or
16 practice in trade or commerce and an unfair method of competition in violation of the Consumer
17 Protection Act, RCW 19.86.020.

18 **XIV. THIS COURT’S POWER TO GRANT RELIEF**

19 31. The CAN-SPAM Act empowers this Court to enjoin further violations by
20 defendants. 15 U.S.C. § 7706(f)(1)(A). This Court is also empowered to award the greater of
21 actual or statutory damages. 15 U.S.C. § 7706(f)(1)(B).

22 32. The Commercial Electronic Mail Act, RCW 19.190, may be enforced by this
23 Court through pendant jurisdiction. 28 U.S.C. § 1367. This Court is empowered to award the
24 greater of actual or statutory damages under the Act. RCW 19.190.040(1).

25 33. The Consumer Protection Act, RCW 19.86, may be enforced by this Court
26 through pendant jurisdiction. 28 U.S.C. § 1367. This Court is empowered to grant injunctive and

1 such other relief as it may deem appropriate to halt and redress violations of the Consumer
2 Protection Act, including civil penalties, costs and fees. RCW 19.86.080, 19.86.090.

3 **XV. PRAYER FOR RELIEF**

4 34. WHEREFORE, plaintiff, STATE OF WASHINGTON, prays that this Court grant
5 the following relief:

6 a. Adjudge and decree that defendants have engaged in the conduct
7 complained of herein;

8 b. Adjudge and decree that the conduct complained of in Paragraphs 14, 16,
9 and 18 constitutes violations of the CAN-SPAM Act, 15 U.S.C. § 7701, et seq.

10 c. Adjudge and decree that the conduct complained of in Paragraphs 20 and
11 22 constitutes violations of the Commercial Electronic Mail Act, RCW 19.190, and
12 pursuant to RCW 19.190.030(3) constitutes per se violations of the Consumer Protection
13 Act, RCW 19.86, et seq.;

14 d. Adjudge and decree that the conduct complained of in Paragraphs 20, 22,
15 24, 26, 28, and 28 constitutes unfair or deceptive acts or practices in violation of the
16 Consumer Protection Act, RCW 19.86;

17 e. Permanently enjoin defendants and their representatives, successors,
18 assigns, officers, agents, servants, employees, and all other persons acting or claiming to
19 act for, on behalf of, or in active concert or participation with defendants from continuing
20 or engaging in the unlawful conduct complained of herein;

21 f. Award such relief as the Court finds necessary to redress injury to
22 consumers resulting from defendants' violations of the CAN-SPAM Act, the Commercial
23 Electronic Mail Act, and the Consumer Protection Act.

24 g. Assess a civil penalty, pursuant to RCW 19.86.140, of up to \$2,000 for
25 each violation of RCW 19.86.020 caused by the conduct herein;

26

1 h. Award plaintiff the costs of bringing this action, pursuant to 15 U.S.C. §
2 7706(f)(4) and RCW 19.86.090, as well as such other and additional relief as the Court
3 may determine to be just and proper.

4 DATED this 20th day of October, 2004.

5 CHRISTINE O. GREGIORE
6 Attorney General

7 

8 PAULA SELIS, WSBA #12823
9 Senior Counsel
10 Office of Attorney General
11 Attorneys for Plaintiff
12 State of Washington
13 paulas@atg.wa.gov

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
STATE OF WASHINGTON

CV04-2171

DEFENDANTS
AVTECH DIRECT dba AVTECH COMPUTERS, et al

FILED _____
LOGGED _____
ENTERED _____
RECEIVED _____

(b) County of Residence of First Listed Plaintiff KING
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed WOODLAND HILLS, Calif.
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
PAULA L. SELIS, SENIOR COUNSEL
OFFICE OF ATTORNEY GENERAL
900 4TH AVENUE, SUITE 2000
SEATTLE, WA 98164
206-464-6268

Attorneys (If Known) BY WESTERN DISTRICT OF WASHINGTON DEPUTY

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|--------------------------------|---|----------------------------|--------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 DEF | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 DEF |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY— <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

15 U.S.C. Sec. 7701 CONTROLLING THE ASSAULT OF NON-SOLICITED PORNOGRAPHY AND MARKETING ACT ("CAN-SPAM")

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE 10/20/04

SIGNATURE OF ATTORNEY OF RECORD

Paula Selis

COPY

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b.) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States, are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a) Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.