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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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
COMMERCIAL ELECTRONIC
MAIL ACT; AND THE
WASHINGTON CONSUMER
PROTECTION ACT



04-CV-02171-CMP

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.

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.
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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.
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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

