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Microsoft puts lid on spam

Major mass e-mailer settles suit for \$7 million in widely hailed deal

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Microsoft will receive \$7 million from an alleged "spam king" -- the largest settlement yet in the company's legal struggle against the flood of unwanted e-mail.

The Redmond company's top lawyer described the deal with online marketer Scott Richter as a key step in the fight against spam. Microsoft plans to use much of the money to finance more anti-spam efforts.

Law enforcement agencies and anti-spam groups welcomed the news.

But a leader of one anti-spam group said he doubted that the settlement, by itself, would do anything to cause other spammers to change their ways.

Richter, who admits no wrongdoing, plans to remain in the business. But he says he already has altered his practices to exceed the requirements of anti-spam laws. Spamhaus, a group that once ranked him as the world's third-biggest spammer, has taken him off the list and says it has seen a drop in overall spam since Richter reformed.

Microsoft says Richter and his affiliates were, at one point, sending e-mails at a rate of more than 38 billion per year.

The settlement represents "something of a turning of the tide against spam," Brad Smith, Microsoft's general counsel, said in an interview yesterday.

"It means that we can now succeed in separating spammers from their money, and the profits they've been making," Smith said, calling the deal "a strong message" to other spammers.

Microsoft deserves "all the gratitude in the world for hitting Mr. Richter where it hurts," said John Mozna, co-founder and vice president of the Coalition Against Unsolicited Commercial Email. However, he said, such cases haven't succeeded in dissuading the spam industry.

Despite some high-profile suits, spammers can still "basically figure into their business practices that they've got the same risk of getting sued or convicted as they do of getting hit by lightning," Mozna said.

The settlement, which requires court approval, would end a 20-month-long dispute with Richter, an outspoken Colorado businessman whose appearances in the national media have made him something of a celebrity. Richter once told an interviewer on Comedy Central's "Daily Show" that he preferred to be thought of not as a spammer but rather as a "high-volume e-mail deployer."

Microsoft has brought more than 100 spam-related cases so far. Smith described Richter and his company, OptInRealBig.com, as the largest and most sophisticated spam operation that Microsoft has targeted to date.

The company filed the suit in December 2003, as part of a joint anti-spam initiative with New York Attorney General Eliot Spitzer. Microsoft's suit cited statutes including Washington state's anti-spam law.

Neither that law nor the federal CAN-SPAM Act prohibits unsolicited commercial e-mail entirely. However, they restrict deceptive practices and require mechanisms for recipients to opt-out of bulk e-mail lists, among other things.

Washington Attorney General Rob McKenna said the Microsoft case shows the effectiveness of the state anti-spam law.

"Is there still going to be spam? Absolutely. But when you consider how much of the illegal spam this one company was responsible for, this settlement has to make a dent," McKenna said.

The suit against Richter alleged a series of deceptive practices, such as using misleading subject lines and trying to hide the origin of messages.

Richter, 34, has denied the allegations from the beginning, and he didn't admit to anything as part of this week's settlement.

"Based on the extent of the litigation that would have continued, we thought that this settlement was in the best interest of all the parties," said Steven Richter, lawyer for the company and Scott Richter's father.

Steven Richter said OptInRealBig's problems arose in part from its use of e-mail addresses bought from other firms. He said the company stopped that practice last year and instituted better oversight of affiliate firms. He also said the company already had offered mechanisms to opt out of e-mail lists.

Microsoft said it will use \$5 million from the settlement to expand its Internet safety partnerships, including anti-spam efforts, with governments and law enforcement. It also will give \$1 million to increase computer access at a variety of community centers in New York state.

Earlier this year, the case forced Scott Richter and his company into bankruptcy, from which they now plan to emerge.

According to the companies, this week's settlement requires Richter and his company to "continue to comply fully with all federal and state anti-spam laws." Another provision says Richter won't "send spam to any person who has not confirmed a willingness to receive the e-mail."

Richter settled his case with the New York attorney general for \$50,000 last year.

"We were able to force him into a legitimate business model," said Brad Maione, a spokesman for Spitzer's office.

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