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March 24, 2003

Internet Business Initiatives, LLC

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Kansas Spam Law Upheld by Johnson County Small Claims Court

Overland Park, Kansas – March 24, 2003 In the first court test of the Kansas Commercial Electronic Mail Act (K.S.A 50-6,107), Internet Business Initiatives of Overland Park, KS was successful as the plaintiff and recovered a \$551 fine from Market Advantage Consulting, Naperville, IL.

The trial was held in the Johnson County Small Claims Court on February 25th for transmission of an unsolicited commercial email message. The plaintiff had no prior business relationship with the defendant and never granted permission to the defendant to join their mailing list. It came out in the trial that the sender appears to have added the email address to their list by either harvesting it off of the American Marketing Association (AMA), KC Chapter website or off a printed directory of the AMA.

The suit sought \$1,000 in damages for violation of two sections of the law – failing to include the word ADV: in the subject line of the message and failing to include the sender's physical address or 800 phone number. According to Kansas law, firms that do not have your permission to send you commercial email must identify the message as an advertisement with the word ADV: in the subject line. And without a valid company address and phone number you have no way of knowing whether the unsubscribe link they provide is legitimate or a trick to verify your email address for their list.

The court concluded there had been a violation on both parts but allowed an exception to one of the violations based on the defense presented by the defendant. There is a provision in the law that permits an exception once every 12-months if the defendant can present a case that they have or are committed to best practices in permission marketing and the unsolicited commercial email could have been in error. Market Advantage Consulting did present documentation of procedures and policies they have implemented subsequent to the suit to preclude this from happening in the future.

Jerry Weinstock, the plaintiff, contended that this rule didn't apply as there was never any permission granted in the beginning that an error could have arisen from. It was always the matter of the defendant placing the plaintiff's email address on their list without permission or existing business relationship.

Dave Harder, currently an Assistant District Attorney with the Johnson County Consumer Fraud Unit, who was instrumental in getting the law passed when he worked in the

Kansas Attorney General's Office, had this to say, "Our office believes this case to be a positive step toward reducing unwanted Spam directed into Kansas. We hope that companies sending unsolicited e-mail advertisements to Johnson County or Kansas consumers will take notice that Kansas Courts will enforce the new Spam law. People don't have to put up with it. We encourage people to use the law to fight back against Spam."

Arthur Fillmore, an attorney with Craft, Fridkin & Ryhne had this perspective about the lawsuit; "Mr. Weinstock's determination and creativity are beginning to take their toll on spammers. He should not be viewed as a Don Quixote. Rather, Goliath's knees are beginning to buckle under the onslaught of pelting from David."

William J. Brunkhardt, CEO of Global Messaging Solutions, Inc., a provider of enterprise-class email and messaging services says; "This ruling sets a precedent for future Spam cases in Kansas." Furthermore; "It is refreshing to see actions being taken to limit annoying and productivity-killing Spam messages."

Mr. Weinstock is currently writing an eBook on "Kansas Spam Law – How to Fight Back". Mr. Weinstock's company is also developing a disposable email address system that will help fight the Spam problem by getting at the root cause in the process, how Spammers get your email address in the first place.

Mr. Weinstock has given presentations on 'Do you know Kansas and Missouri have Spam Laws?' at the Kansas City Information and Technology Show and the American Marketing Association, Kansas City Chapter. The presentation can be viewed on line at: <http://www.KansasNoSpam.com>

About Internet Business Initiatives, LLC

Internet Business Initiatives is an Overland Park company that specializes in helping companies integrate an Internet strategy into their business practices and process. The company builds electronic marketing programs for its clients, helps them accelerate their business by making their unproductive websites productive and develops and executes outbound email marketing programs. iBizInitiatives provides consulting services for permission based email marketing to its clients. iBizInitiatives doesn't like spammers, doesn't send Spam and won't help its clients send Spam. Mr. Jerry Weinstock, the company's CEO is currently serving on the Board of the Kansas City Chapter of the American Marketing Association as the president – elect.

Note to Editors: Information about the word Spam and the Hormel Company's recommendations on how to avoid trademark infringement can be found online at: http://www.spam.com/ci/ci_in.htm

A copy of the actual ruling can be found online at: <http://www.kansasnosпам.com>

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