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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

MELALEUCA, INC.,)
)
 Plaintiff,) Case No. _____
vs.)
) COMPLAINT AND DEMAND FOR
DARYL HANSEN,) JURY TRIAL
)
 Defendant.)
)
 _____)
)

INTRODUCTORY PARAGRAPHS
The Parties

1. Plaintiff Melaleuca, Inc., ("Melaleuca") is an Idaho corporation with its principal place of business located at 3910 S. Yellowstone Highway, Idaho Falls, Idaho 83402.

2. Defendant Daryl Hansen is an individual and a resident of the state of California.

3. Defendants Hansen and Belova (collectively “Defendants”), at all relevant times, have been married.

4. Non-Party IP Applications, Inc. (“IP Applications”) owns certain servers and other equipment discussed below. IP Applications has assigned all of its rights, title, and interest in any claims, demands, and cause or causes of action of any kind whatsoever that IP Applications has that arise, result from, or otherwise relate to the Defendant’s actions in the sending of unsolicited commercial email to email accounts sold by Melaleuca to the general public for which IP Applications provides services and equipment.

Jurisdiction and Venue

5. This Court has subject matter jurisdiction over the claims set forth in this Complaint pursuant to the CAN-SPAM Act of 2003, 15 U.S.C. § 7701, *et seq.*; 28 U.S.C. § 1331; 28 U.S.C. 1332; and the doctrine of pendant jurisdiction.

6. Venue is proper in the United States District Court for District of Idaho pursuant to 28 U.S.C. § 1391(b) because both a substantial part of the property that is the subject of Plaintiff’s claims is situated in, and because a substantial part of the events giving rise to the claims occurred within, this judicial district. At all relevant times herein, Plaintiff provided Internet access service within the meaning of 15 U.S.C. § 7702(11). Plaintiff’s Internet services provided, among other things, electronic mail connectivity and access to residents of the state of Idaho and others through the domain name iglide.net. Certain equipment used to provide electronic mail connectivity is owned by IP Applications.

7. This Court has jurisdiction over the person of Defendant by virtue of the fact Defendant directed electronic mail communications to residents of this judicial district, which

communications were routed through Plaintiff's servers causing injury to Plaintiff within this judicial district. Defendant also knowingly and willfully sent at least one electronic mail to an address using the iglide.net mail domain, which domain is owned by the Plaintiff.

**COUNT ONE
VIOLATION OF THE CAN-SPAM ACT OF 2003**

8. Plaintiff restates and re-avers Paragraphs 1 through 7 of this Complaint as Paragraph 8 of Count One of this Complaint.

9. From, on, and after March 6, 2007, on information and belief, Defendant knowingly and willfully acted in concert to initiate the transmission, to a protected computer, of a commercial electronic mail message, or a transactional or relationship message, that contained, or was accompanied by, header information that was materially false or materially misleading, in violation of 15 U.S.C. § 7704(a)(1).

10. On information and belief, Defendant knowingly and willfully engaged in the pattern or practice of initiating the transmission to a protected computer of commercial electronic mail messages, while knowing that the electronic mail addresses of the recipients were obtained using address harvesting and dictionary attacks in violation of 15 U.S.C. § 7704(b).

11. From, on, and after March 6, 2007, on information and belief, Defendant knowingly and willfully engaged in a pattern or practice of initiating the transmission to a protected computer of a commercial electronic mail message when Defendant had actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that a subject heading of the message 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, in violation of 15 U.S.C. § 7704(a)(2).

12. From, on, and after March 6, 2007, on information and belief, Defendant knowingly and willfully engaged in a pattern or practice of initiating the transmission to a protected computer of a commercial electronic mail message that did not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that (i) a recipient may have used to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and (ii) remained capable of receiving such messages or communications for no less than 30 days after the transmission of the original message, in violation of 15 U.S.C. § 7704(a)(3).

13. Defendant also knowingly and willfully sent at least one electronic mail to Plaintiff's mail server that did not provide clear and conspicuous identification that the message therein was an advertisement or solicitation, all in violation of 15 U.S.C. § 7704(a)(5)(A)(i).

14. Defendant also knowingly and willfully sent at least one electronic mail to Plaintiff's mail server that did not contain a notice of the opportunity to decline to receive further electronic mail from Defendant, all in violation of 15 U.S.C. § 7704(a)(5)(A)(ii).

15. Defendant also knowingly and willfully sent at least one electronic mail to Plaintiff's iglide.net mail server that did not contain a valid physical postal address of the sender, all in violation of 15 U.S.C. § 7704(a)(5)(A)(iii).

16. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff has been damaged and is entitled to damages for the actual monetary losses it incurred or, in the alternative, statutory damages for each violation, as set forth in 15 U.S.C. § 7706(g)(3), which damages exceed \$75,000.

COUNT TWO
VIOLATION OF THE IDAHO CONSUMER PROTECTION ACT

17. Plaintiff restates and re-avers Paragraphs 1 through 16 of this Complaint as Paragraph 16 of Count Two of the Complaint.

18. From on and after March 6, 2007, Plaintiff received at least one bulk electronic mail advertisement that was knowingly and willfully directed to Plaintiff by Defendant that did not provide a readily identifiable electronic mail address to which the recipient could send a request to decline such mail, all in violation of Idaho Code § 48-603E(2).

19. On at least one occasion, Plaintiff also received bulk electronic mail advertisements sent to Plaintiff by Defendant when Defendant knew or had reason to know that the bulk electronic mail advertisements either (a) used the name of a fictitious name of a third party in the return address field without the permission of the third party; or (b) misrepresented any information in identifying the point of origin of the transmission path of the bulk electronic mail advertisement; or (c) failed to contain information identifying the point of origin of the transmission path of the bulk electronic mail advertisement, all in violation of Idaho Code § 48-603E(3).

20. As a direct and proximate result of Defendant's unlawful conduct as complained of in this Count Two, Plaintiff has suffered damages in an amount to be determined at trial, but which exceed \$75,000.

COUNT THREE
MISAPPROPRIATION OF TRADE SECRETS

21. Plaintiff restates and re-avers Paragraphs 1 through 20 of this Complaint as Paragraph 21 of Count Three of the Complaint

22. Upon information and belief, Defendant has been provided information by Ariana Reed-Hager and/or other Melaleuca independent marketing executives that is confidential trade secret information protected by the Idaho Trade Secrets Act, Idaho Code §§ 48-801, *et seq.*

23. Defendant Hansen has misappropriated and improperly used said information in violation of Idaho Code § 48-801(2)(b)(B).

24. As a direct and proximate result of Defendant's unlawful conduct as complained of in this Count Three, Plaintiff has suffered damages in an amount to be proven at trial, but which exceed \$75,000.

**COUNT FOUR
TORTIOUS INTERFERENCE WITH CONTRACT**

25. Plaintiff restates and re-avers Paragraphs 1 through 26 of this Complaint as Paragraph 27 of Count Four of the Complaint.

26. Defendant is aware that Melaleuca has contracts in place with its independent marketing executives, including without limitation Ariana Reed-Hager.

27. Defendant nevertheless sought to intentionally induce marketing executives to leave Melaleuca, to join with or assist such marketing executives in a competing business, and/or to recruit Melaleuca customers and marketing executives to the competing business, in breach of the marketing executives' agreements with Melaleuca.

28. Defendant used Plaintiff's confidential information to assist in the recruitment of Melaleuca customers.

29. Defendant further violated federal and state "anti-spam" laws (as set forth in Counts One and Two) as part of his efforts to recruit Melaleuca customers and independent marketing executives.

30. Upon information and belief, Defendant's efforts resulted in the breach, by one or more independent marketing executives, of their agreements with Melaleuca.

31. As a direct and proximate result of Defendant's unlawful actions as alleged in this Count Four, Plaintiff has suffered damages in an amount to be proven at trial, but which exceed \$75,000.

PRAYER FOR RELIEF AND DEMAND FOR JURY TRIAL

Wherefore, Plaintiff prays for the following relief:

1. For actual monetary damages according to proof on all Counts, or in the alternative, for statutory damages pursuant to 15 U.S.C. § 7706(g)(3) on Count One and pursuant to Idaho Code § 48-603E(4) on Count Two;

2. For aggravated damages under 15 U.S.C. § 7706(g)(3)(C) of up to three times the amount above awarded for the federal law claims for those violations committed by the Defendant willfully and knowingly;

3. For a preliminary and permanent injunction, pursuant to 15 U.S.C. § 7706(g)(1)(A), barring the Defendant from violating the CAN-SPAM Act of 2003; for an injunction barring further violations of the Idaho Consumer Protection Act and the Idaho Trade Secrets Act; and for an injunction barring the Defendant from tortiously interfering with Plaintiff's contractual relationships;

4. For its reasonable attorneys' fees and costs pursuant to 15 U.S.C. § 7706(g)(4) and relevant provisions of Idaho law. In the event that Defendant defaults, a reasonable award of attorney's fees is \$5,000; and

5. For further relief as the Court deems just and proper.

PLAINTIFF DEMANDS A JURY TRIAL.

RESPECTFULLY SUBMITTED THIS 10th DAY OF November, 2010.

HAWLEY TROXELL ENNIS & HAWLEY

/s/

By: Bradley R. Frazer, ISB #3857
D. John Ashby, ISB #7228

Attorneys for Plaintiff