

April 25, 2008

Mr. Magill,

I find it highly ironic that someone with your history of anti-consumerism accuses *me* of having a skewed point of view.

Besides, doesn't an anti-spam law written by an anti-spam activist make a little more sense than an anti-spam law written by, say, the Direct Marketing Association or other business lobbyists? That would be the federal CAN-SPAM Act to which I'm referring.

Your *opinion*, as expressed in the article, is both uninformed and incorrect. My lawsuits have made marketers withhold commissions due to their affiliates' unlawful spamming, my lawsuits have made marketers drop particular spamming affiliates, my lawsuits have made companies rethink their marketing practices entirely, and my lawsuits have, on occasion, driven spammers out of business altogether.

Your *opinion* is incorrect that AB 2950, currently in the California Assembly, will do nothing to fix the problem. It *will* have an impact. Current California law has already had an impact, as described above, and as the law clarifies what spammer practices are false and deceptive, and expands the law to the extent permissible under federal law, it will have an even greater impact. Because federal law made "truthful" spam lawful, the only area that California can regulate is false and deceptive spam. Apparently, you *support* falsity and deception, bravo!

I believe that the legal system can effect positive change. Which is why this former marketer went to law school, to clean up the Internet. "Please," you say. And who the hell are you to know or judge my motivation?

On to more of your misstatements. AB 2950 never said that spam with the words breasts, penis, etc. should be unlawful. Get your facts right. As long as the spam is truthful, there's no cause of action under California law. On the other hand, if "penis" is spelled "p/e/n/i/s," that indicates an attempt to deceive spam filters.

The "Report Spam" button works, you say? Then why is it that spam now constitutes 90-95% of all email, according to Barracuda Networks? I'm truly glad to hear that Gmail, Yahoo, and Outlook spam filters are working well for you. Congratulations. So based on *your* anecdotal experience, California – and the rest of the country for that matter – is not entitled to protection from falsity and deception? The California Legislature found that spam filters are ineffective, due to spammer's deceitful techniques. I'll trust the California Legislature a little more than I'll trust your *opinion*.

Your final comment, that AB 2950 will only pose new litigation risks for law-abiding firms, sums up and demonstrates the depths of your ignorance. AB 2950 only regulates false and deceptive spams, as permitted by federal law. Therefore, law-abiding firms have *nothing* to worry about.

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