

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

MUMMAGRAPHICS, INC., an)	
Oklahoma Corporation, dba)	
WEBGUY INTERNET SOLUTIONS,)	
)	
Plaintiff,)	
)	
vs.)	
)	Case No.
OMEGA WORLD TRAVEL, INC.,)	
dba CRUISE.COM, its Agents,)	
Employees and Assigns.)	
et al)	
)	
Defendant.)	

P E T I T I O N

COMES NOW the Plaintiff by and through its attorney, My My K. Hoang, and for its cause of action against the Defendant, OMEGA WORLD TRAVEL, INC., its Agents, Employees, and Assigns. et al, (hereinafter referred to as “Omega”), alleges and states:

1. Plaintiff MummaGraphics, Inc., (“WebGuy”) is an “Electronic Mail Service Provider” as defined under Title 15, Oklahoma Statutes, Sec. 776.4, whose facilities are located in the City of Oklahoma City, Oklahoma County, Oklahoma.

2. WebGuy is informed and believes, and based thereon alleges, that Omega is, and at all times relevant herein was, a Virginia Corporation with its principal place of business in Virginia.

3. This action is brought under Title 15, Oklahoma Statutes, §§ 776.1-776.4, Fraudulent Use of Electronic Mail, wherein Defendant, Omega, sent or caused to be sent the hereinafter listed electronic mail messages that include fraudulent message headers

falsely indicating the transmission path of the electronic mail messages and/or include false or misleading information that purposely or negligently injured Plaintiff in violation of Title 15, O.S. Sec. 776.1 - 776.4 on the following dates:

December 29, 2004	January 5, 2005	January 11, 2005
January 18, 2005	January 19, 2005	January 20, 2005
January 27, 2005	January 28, 2005	February 1, 2005
February 2, 2005	February 9, 2005	

consisting of a total of 11 separate and distinct days.

4. WebGuy is informed and believes, and based thereon alleges, that Defendant is engaged in a pattern and practice of:

- a. Sending unsolicited commercial e-mail messages with the knowledge that the transmission of such messages are a violation of the Acceptable Use Policies of virtually all Internet and electronic mail service providers worldwide;
- b. Sending unsolicited commercial e-mail messages with the knowledge that they contributed to the overwhelming flood of unwanted, nuisance messages that present a major burden for Internet and electronic mail service providers and individual users;
- c. Sending unsolicited commercial e-mail messages that erroneously claim that the intended recipients somehow asked for the email messages to be sent in an effort to circumvent existing state and federal unsolicited commercial email laws;

5. All of the e-mail messages herein listed consumed Plaintiff's finite server and network resources.

6. All of the e-mail messages herein listed contributed to the considerable burden on Plaintiff and/or Plaintiff's clients of sorting through unwanted messages to find legitimate e-mail messages without missing or inadvertently discarding desirable

communications.

7. All of the e-mail messages herein listed contributed to the considerable burden on Plaintiff in terms of server maintenance due to unwanted and fraudulent e-mails that thwart automated blocking methods.

8. Actual damages exceed One Dollar (\$1.00) based upon the following:

- a. Defendant's e-mails made it more difficult for Plaintiff and/or his clients to read and respond to legitimate e-mails by contributing to the clutter of unwanted, unsolicited messages in Plaintiff's and/or Plaintiff's clients' mailboxes.
- b. Defendant's e-mails consume Plaintiff's and/or Plaintiff's clients' time to look at and open.
- c. Defendant's e-mails contribute in large part to what has become a relentless tide of unwanted and unsolicited e-mail messages that bury the electronic mailboxes of the Plaintiff and/or Plaintiff's clients, often to the point that e-mail service becomes totally useless.
- d. In an effort to provide some remediation, Plaintiff has been forced to establish e-mail filtering and blocking protocols. Such protocols take time on an ongoing basis to maintain, and consume storage space, additional network traffic, and CPU time.
- e. Defendant's e-mails generate log entries. Logs must be pruned and/or archived more often due to the relentless tide of unwanted and unsolicited e-mail messages.
- f. Defendant's e-mails contaminated once viable email addresses, thereby requiring Plaintiff and/or Plaintiff's clients to discontinue using said email address and to create new email addresses, modify their web sites and/or email reply address(es) to reflect the newly created email addresses, reconfigure email programs as well as contacting customers to have them update their email address books. Such necessary changes take time and effort to complete.
- g. Defendant's e-mails contribute to the cost of bandwidth charges assessed to Plaintiff each month by its upstream internet connection provider.
- h. Determining the identity of the Defendant, its agents, employees,

assigns and/or end users and customers required a fair amount of detective work which took valuable time away from Plaintiff's day to day business responsibilities.

- i. Removing Plaintiff's multiple email addresses and/or the email addresses of Plaintiff's clients from Defendant's e-mail marketing list(s) required postal correspondence via certified letter with return receipt and/or long distance telephone calls on one or more occasions.

9. In lieu of actual damages for the fraudulent electronic mail messages listed in paragraph 3. Plaintiff is entitled to and elects to claim statutory damages of \$25,000.00 per each day pursuant to Title 15 O.S. Sec. 776.2(C) which totals not less than \$275,000.00.

10. Plaintiff is entitled to and elects to claim attorney fees and costs pursuant to Title 15 O.S. Sec. 776.2(C), in amounts to be determined at the conclusion of this action.

11. Plaintiff anticipates that existing and additional fraudulent electronic mail messages received on other dates will be attributable to Defendant upon further investigation, and therefore reserves the right to amend the total damages prior to trial.

WHEREFORE, Plaintiff prays that upon hearing by this Court, the Court find for Plaintiff and against Defendant actual and statutory damages in excess of \$10,000.00, along with court costs and attorney's fees, and such other relief as this Court deems fair and equitable.

Respectfully submitted,

My My K. Hoang

My My K. Hoang, OBA # 18730
Attorney for Plaintiff
228 Robert S. Kerr, Suite 100
Oklahoma City, OK 73102
(405) 290-7030/(405) 290-7035 facsimile

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

MARK W. MUMMA, of lawful age, being first duly sworn upon oath, states that:

He is the Petitioner above named. He has read the within and foregoing Petition, knows the contents thereof, and the matters and things therein stated are true and correct to the best of his knowledge and belief.



MARK W. MUMMA

SUBSCRIBED AND SWORN to before me this ___ day of _____, 2005

Notary Public

My commission expires: _____