

Andrew Brunner's Complaint Brunner Vs. Pennypacker

Definitions:

The **Defendant** shall mean Bruce Pennypacker residing at 171 Swanton St, Winchester, MA 01890.

The **Plaintiff** shall mean Andrew Brunner residing at 519 Mountain View Road, Nazareth, PA 18064.

Plaintiff claims that the Defendant named in the attached small claim complaint:

- 1.) On or near June 21, 2000 Defendant libeled Plaintiff on a public message board. Defendant maliciously succeeded in defaming Plaintiff's software products.

Plaintiff is seeking \$19.00 court costs, \$2000.00 actual recovery caused by Defendant's illegal actions.

I hereby swear that the above information is correct to the best of my abilities.

Andrew Brunner. July 27, 2000.

Andrew Brunner's Testimony

Brunner Vs. Pennypacker

Definitions

Anti-footprint technology: A proprietary technology for maximizing email deliverability.

Spam: A derogatory word describing an email message that was not solicited.

Spammer: A derogatory word for describing a person who sends Spam.

Spamware: A derogatory word for computer software designed for sole the purpose of sending Spam. See **Exhibit A**

Testimony

I own and operate an Internet based software company whose flagship product is Avalanche, a direct email-marketing package. CyberCreek's main assets are intellectual property. CyberCreek.Com, an intangible asset, is just as important to CyberCreek than any product residing on the shelf at Macy's department store.

Branding is essential in developing a successful "dot com" business. The Defendant's malicious attack was one of many attempts to label my software illegal and unusable.

- **Exhibit B** is evidence of libel. This document was one of many published in a malicious, collective effort to deter my product sales as well as have me removed from the Internet.
- **Exhibit C** is corroborating evidence that supports that Bruce Pennypacker was the author of this document and that his admission acknowledges his publication (**Exhibit B**).
- **Exhibit D** is evidence depicting the backlash I received when trying to persuade Mr. Pennypacker to retract his libelous statement. Since I could not afford to allow these people to further defame me, I felt compelled to bring this complaint to court.

The Defendant made damaging claims that have hindered my ability to maintain a profitable business. Spam is something that is despised by Internet service providers and Internet users alike. I suspect the reason why these few people have made such a strong effort to run me out of the software development business is because I do not discriminately select the users of my software as I follow a civil license policy.

CyberCreek Avalanche was designed to enable marketing departments to conduct and develop accurate direct email marketing campaigns. Avalanche is an open-ended software application that contains features to be configured to suit the needs of everyone. **Exhibit E** is an affidavit by one of my customers and is testimony to the fact that my

software is essential in getting e-mail delivered. While Avalanche is in full compliance with every state law the fact remains some people use it to send Spam. Under no circumstances are any of the features in my software designed specifically for Spam nor have I marketed Avalanche specifically to Spammers.

The consequences of being branded as a Spammer, due to the defendant's libel, have had an effect on my ability to maintain an Internet connection. Internet backbones, or common carriers, are banding together to enforce strict anti-Spam policies. If someone has been labeled as a Spammer, providers will deny access to the Internet. The Defendant's libel essentially has had a significant impact on the opinions of some of our suppliers of Internet connections in effect causing the termination of several partnerships.

- **Exhibit F** is a copy of a letter issued from Global Crossing that clearly illustrates how wide spread this problem is. I am being forced off the Internet because I have been labeled as a Spammer and a Spamware Manufacturer.
- **Exhibit G** is a copy of a letter issued from UUNet Technologies that again, clearly illustrates that this small group of people has been effective in their campaign to remove me from the Internet. As per my agreement with UUNet, I paid them \$1,700/month for Internet access. That agreement was terminated because of the Defendant's actions.

Consequences and the rule of law are essential in order to subdue improper social behavior. Without accountability, people like Mr. Pennypacker would literally have a field day. America has no place for people who take the law into their own hands and interpret it to suit their political gain.

The Defendant's behavior was intentional in the defamation of CyberCreek and in the end he did what he set out to do. Prior to my stand their habitual actions were part of a pattern of seek and destroy. **Exhibit H** is testimony that the effects Defendant's actions were pervasive on my personal life as well.

The right to innovate and the freedom of expression are rights we all possess. Without innovation the future of direct email advertising is in the hands of these few people who are out to stop me. As the evidence clearly shows, the Defendant played a role in making sure that the development of CyberCreek was hindered.

I am seeking to recover the following:

- I am seeking General Damages in the amount of \$2,000.00.
- Or I am seeking Special Damages as monetary amounts from lost revenues are well beyond \$2,000 as compensation to the effects of the Defendant's actions.
- And I agree to waive Punitive Damages as MA law dictates.



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>> Thread: Brunner to Sue Forbes Magazine?
>> Message 1 of 2

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Subject: Brunner to Sue Forbes Magazine?
Date: 09/09/2000
Author: Steve Linford <steve@uxn.com>



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Exhibit A

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Forbes Magazine have printed a story which brands Andrew Brunner of CyberCreek, LLC a "Junk e-mail software seller". Forbes Magazine captioned its photo of Brunner's CyberCreek world headquarters (photo at <<http://www.panix.com/~dbland/burglar.jpg>>) with the words "Junk e-mail software seller Andrew Brunner".

Junk e-mail software, termed "spamware", is software specifically designed for sending unsolicited bulk email and which facilitates the falsification of the mail transmission information, such as by randomizing the message's origin domain or host, and is outlawed in the state of Virginia under VA's Computer Crimes Act of July 1999.

Brunner is currently attempting to use small claims courts to sue individuals for calling him a seller of "illegal spamware", a case which centers around his software CyberCreek Avalanche being "spamware", and hence illegal under Virginia's Computer Crimes Act. By printing that Brunner's firm CyberCreek, LLC is a Spamware vendor, as has been long claimed by mail system experts and anti-spam organizations, Forbes Magazine has added itself to the long list of entities to be sued by Brunner.

Brunner has not yet confirmed a date for the Forbes court case.

--
Steve Linford

POST REPLY

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* indicates new message

Messages

Message	Author	Date
Msg 1 *	Steve Linford	9/09/2000
L Msg 2 *	Rob Mitchell	9/09/2000

From: "Bruce Pennypacker"
Subject: Re: Brunner + RBL
Date: 21 Jun 2000 00:00:00 GMT
Message-ID:
References: <8iojpt\$qbi\$1@nnrp1.deja.com> <8ip63g\$7hb\$1@nnrp1.deja.com> <210620001028375904%steve@uxn.com>
X-Priority: 3
X-MimeOLE: Produced By Microsoft MimeOLE V5.00.2615.200
X-Complaints-To: abuse@mediaone.net
X-Trace: typhoon.ne.mediaone.net 961599059 24.218.240.177 (Wed, 21 Jun 2000 10:50:59 EDT)
Organization: Road Runner
X-MSMail-Priority: Normal
NNTP-Posting-Date: Wed, 21 Jun 2000 10:50:59 EDT
Newsgroups: news.admin.net-abuse.email

Steve Linford wrote in message
news:210620001028375904%steve@uxn.com...

> In article , Sam
> wrote:

>
> > -----BEGIN PGP SIGNED MESSAGE-----
> > Hash: SHA1

> >
> > In article <8ip63g\$7hb\$1@nnrp1.deja.com>,
> > dejacreek@my-deja.com writes:

> >
> > > As we all well know by now Avalanche is 100% legal. Each statement in
> > > writing by those of you who frequent this group who in writing stated
> > > that Avalanche was illegal are beyond a reasonable doubt guilty of
> > > trade libel. Which is what I've been saying since Day 1. I have
> > > every

> > > intention of filing these suits provided that this group continues on
> > > this dismal path.

> >
> > Avalanche is 100% illegal spamware.

> >
> > File away.

>
> Yup, CyberCreek Avalanche is 100% illegal spamware. File mine too.

I say its 200% illegal spamware. So Spamdrew can file two law suites against me, either for calling Spamalanche spamware twice or for calling Spamalanche spamware and for calling it more spamware than is mathematically possible.

-Bruce

Exhibit B

From: "Bruce Pennypacker"
Subject: Re: I feel so special! I made Andy's list!
Date: 23 Jun 2000 00:00:00 GMT
Message-ID: <6CP45.1266\$Zr5.167262@typhoon.ne.mediaone.net>
References: <395bc37a.68423347@news.mem.bellsouth.net>
X-Priority: 3
X-MimeOLE: Produced By Microsoft MimeOLE V5.00.2615.200
X-Complaints-To: abuse@mediaone.net
X-Trace: typhoon.ne.mediaone.net 961791490 24.218.240.177 (Fri, 23 Jun 2000 16:18:10 EDT)
Organization: Road Runner
X-MSMail-Priority: Normal
NNTP-Posting-Date: Fri, 23 Jun 2000 16:18:10 EDT
Newsgroups: news.admin.net-abuse.email

Wm James wrote in message
news:395bc37a.68423347@news.mem.bellsouth.net...
> On Thu, 22 Jun 2000 23:36:02 GMT, "Bruce Pennypacker"
> wrote:
>
> >When I got home just a few minutes ago I had a message on my answering
> >machine. Here's a full transcript:
> >
> >"Hi Bruce, uh, Andy Brunner calling from Cybercreek. I just called to
> tell
> >you, uh, congrats, you made it on the list."
> >
> >In case you want to listen to the entire message yourself:
> >
> ><http://people.ne.mediaone.net/brucep/brunner.wav>
> >
> >Since he obviously knows my phone number (and most likely my mailing
> >address) I wonder how long it'll be until I get a cartonney letter!
> >
> >-Bruce
>
>
> OK, what's your secret? I tried to get on the list repeatedly, but
> >AFAIK, no luck.

That's a darned good question. All I did was tag along with everybody else
a few days ago when people reposted for the umpteenth time that Cybercreek
Avalanche is an illegal software product. I've never threatened Andy in any
way or made any slanderous statements of any sort. About the only thing I
can think of is that my home phone number and mailing address are extremely
easy for anybody with even a little bit of intelligence to figure out, so I
guess he just decided to pick on me since it was easy to track me down.

-Bruce

Exhibit C

From: Steve Linford
Subject: Re: Open letter to Andy Brunner
Date: 24 Jun 2000 00:00:00 GMT
Message-ID: <240620001029056495%steve@uxn.com>
Content-Transfer-Encoding: 8bit
References: <1NK45.1153\$Zr5.159286@typhoon.ne.mediaone.net> <8j041i\$8rf\$1@nnrp1.deja.com>
<8j13ba\$r0a\$1@laurel.tc.umn.edu>
Content-Type: text/plain; charset=ISO-8859-1
Organization: The Spamhaus Project
X-1: -----
X-2: All posts from news.alt.net are killfiled. If you follow-up
X-3: from alt.net please note that your posts can not be seen.
X-4: -----
User-Agent: YA-NewsWatcher/4.2.6
Mime-Version: 1.0
Newsgroups: news.admin.net-abuse.email

> In article <8j041i\$8rf\$1@nnrp1.deja.com>, wrote:
> > Dear Bruce:
> >
> > Thanks for being so open. I sure will take you up on your offer. Your
> > terms sound fair. I will email you the details a bit later today.

He'll obviously email you the details of a sock who will, surprize
surprize, want to remain anonymous.

> > also need assurance from the rest of the you (IKTINW) won't slander
> > CyberCreek and the people I bring to the table.

I never slander CyberCreek, and we won't mention the criminal record.

--
Steve Linford

Exhibit D

AFFIDAVIT

BE IT ACKNOWLEDGED, that Roger Miller of Roger D Miller & Associates, Inc., the undersigned deponent, being of legal age, does hereby depose and say under oath as follows:

Our company is a search engine placement submission company. We have numerous search engine quotes on a daily basis. Before we began using Cyber Creek Avalanche we had customers who were very angry and complained about never receiving our quotes. Since we have been using Avalanche we now get very few complaints where a customer states they never received a quote from us. This software is essential to our business since we are internet based and most communication is completed via email.

And I affirm that the foregoing is true except as to statements made upon information and belief, and as to those I believe them to be true.

Witness my hand under the penalties of perjury this 7th day of September, 2000.



Signature

2014 N. Saginaw Rd., Suite 133

Midland, MI 48640

On Thursday, September 7, 2000 before me, Roger D. Miller, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



Signature

ELLEN D MILLER
Notary Public, Midland County, MI
My Commission Expires Dec 12, 2004

Exhibit E



DELIVERY VIA FAX AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED
610-759-7114

June 20, 2000

Andrew Brunner
CyberCreek
519 Mountain View Road
Nazareth, PA 18064

Re: CyberCreek

Dear Mr. Brunner:

Section 6 of the UUNET UUDirect T-1 Agreement that you signed on behalf of CyberCreek LLC (the "Agreement") allows either party to the Agreement to cancel Service with 60 days advance written notice (attached). UUNET Technologies, Inc. ("UUNET") has decided to exercise this contractual right and to terminate your Service.

In accordance with Section 6 of the Agreement, this letter provides advanced written notice that UUNET intends to terminate Service at 5:00 PM Eastern Time on August 21, 2000. While UUNET agrees to provide Service until this termination date, please also be aware that UUNET may suspend or terminate Service before that date in order to enforce the UUNET Acceptable Use Policy ("AUP") as set forth in Section 2 of the Agreement.

If you have any questions, please give me a call at 703-886-5578.

Sincerely,

Neil S. Patel
Assistant General Counsel

UUNET Technologies, Inc.
Legal Department, Bldg. E1-3-501
22501 Suddown County Parkway
Ashburn, VA 20147
tel: +1 703 896 0700
fax: +1 703 896 4399
http://www.uunet.net

Exhibit G

**IF YOU'RE NOT RECYCLING**

Welcome to Surfree.com Web Mail. Checking your email via the Web from anywhere in the world is one of the many value-added features you get with Surfree.com. Let us know what you think and whether you have comments or suggestions by sending a message to support@surfree.com.



surfree.com
got to be free™

abrunner@surfree.com

Inbox message 2 of 13

Trash

Folders

Inbox 1/13

Sent 8

Trash

Filters

Addresses

Preferences

Help

Empty Trash

From: Jimmy Rimmer <jrimmer@alumni.utexas.net>
Date: Wed, 13 Sep 2000 23:07:11 -0700 (PDT)
To: abrunner@surfree.com
Subject: [none]

Return-Path: <jrimmer@alumni.utexas.net>
Content-Type: TEXT/PLAIN; charset=US-ASCII
Content-Length: 1406
Mime-Version: 1.0

X-Received: 14 Sep 2000 06:07:12 GMT

X-Sender: rimbo@lenin.nu

Message-Id: <Pine.LNX.4.21.0009132200050.15489-100000@lenin.nu>

Received: from localhost (sendmail-bs@127.0.0.1)

by localhost with SMTP; 14 Sep 2000 06:07:11 -0000

from lenin.nu (192.31.21.154)

by smtp.c008.sfo.cp.net (209.228.14.123) with SMTP; 13 Sep 2000 23:07:12 -0700 (qmail 31629 invoked by uid 955); 14 Sep 2000 06:07:11 -0000

from localhost (sendmail-bs@127.0.0.1)

by localhost with SMTP; 14 Sep 2000 06:07:11 -0000

My name is Jimmy Rimmer, and I'm a programmer living in San Diego, California.

Several weeks ago, when a friend of mine met Andrew Brunner, she told me what he did for a living, my first reaction was that he was a spammer, a force of evil, and that she should stay as far away from him as possible -- that hanging around him was equivalent to dating a murderer, a rapist, or Al Gore. I likened him to Darth Vader, evil Dark Lord of the Sith, or to Frankenstein.

What made things worse was when I recognized his name. I've hung around the anti-spam crowd for a while, and so I've heard a few names thrown around, and his name rung a bell. "THE Andrew Brunner?" I'd had doubts about my best friend's taste in men before, but this was like she was dating someone truly evil, as if she had fallen in love with Adolf Hitler.

It took almost two weeks of discussion with my friend before I was able to see him as anything other than a monster.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

James B. Rimmer
San Diego, California
September 13, 2000

Jimmy Rimmer
"The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."

--Supreme Court Justice Louis Brandeis

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Exhibit H

From: "Bruce Pennypacker"
Subject: Open letter to Andy Brunner
Date: 23 Jun 2000 00:00:00 GMT
Message-ID: <1NK45.1153\$Zr5.159286@typhoon.ne.mediaone.net>
X-Priority: 3
X-MimeOLE: Produced By Microsoft MimeOLE V5.00.2615.200
X-Complaints-To: abuse@mediaone.net
X-Trace: typhoon.ne.mediaone.net 961771709 24.218.240.177 (Fri, 23 Jun 2000 10:48:29 EDT)
Organization: Road Runner
X-MSMail-Priority: Normal
NNTP-Posting-Date: Fri, 23 Jun 2000 10:48:29 EDT
Newsgroups: news.admin.net-abuse.email

Andy -

Since you state I "made it on the list" I will be more than happy to publicly retract my statement that Avalanche is illegal under the following conditions:

1. You provide me with the name of a company that is currently using Avalanche as an MTA and is completely unaffiliated with you except for the relationship involving the use of Avalanche. This company must be using the anti-filtration features of Avalanche for legitimate reasons (for example, a verified opt-in mailing list). If you can provide more than company one that would be even better. A customer residing in Virginia would also be preferred but not required.
2. You provide me with the name, telephone number, and mailing address of a contact at that company who is willing to talk to me and one or two other people about their use of Avalanche.
3. Allow me and one or two other people who are experts in SMTP mail delivery to talk with these people to verify that they are using Avalanche responsibly for opt-in mailings and that they do in fact need the anti-filtration features of Avalanche to do this.

If you can provide contacts in this manner that can credibly vouch for Avalanche and the needs for its features then I will gladly make a public apology for my statements here and urge others to do likewise.

-Bruce

Exhibit I

From: "Bruce Pennypacker"
Subject: Re: Brunner + RBL
Date: 21 Jun 2000 00:00:00 GMT
Message-ID: <7i845.212\$Qp5.4789@typhoon.ne.mediaone.net>
References: <8iem6f\$24j\$1@uranium.btinternet.com> <8igov2\$4\$1@plutonium.btinternet.com> <8iojpt\$gbi\$1@nnrp1.deja.com> <8ip63g\$7hb\$1@nnrp1.deja.com> <8iqlr2\$ed3\$2@hiram.io.com> <49E8EB25354D10A5.52E8786329807259.3BDDBD3EA7CDF097@lp.airnews.net>
X-Priority: 3
X-MimeOLE: Produced By Microsoft MimeOLE V5.00.2615.200
X-Complaints-To: abuse@mediaone.net
X-Trace: typhoon.ne.mediaone.net 961614083 24.218.240.177 (Wed, 21 Jun 2000 15:01:23 EDT)
Organization: Road Runner
X-MSMail-Priority: Normal
NNTP-Posting-Date: Wed, 21 Jun 2000 15:01:23 EDT
Newsgroups: news.admin.net-abuse.email

wrote in message
news:49E8EB25354D10A5.52E8786329807259.3BDDBD3EA7CDF097@lp.airnews.net...
> On Wed, 21 Jun 2000 15:08:25 GMT, alun@taxis.com (Alun Jones) wrote:
>
> >Let's go just one step further. All of those features, as described, are
> >designed solely to gain unauthorised access. Not just that they
> could
> >be used, but that they can only be used, to gain access which is not
> just
> >unauthorised by omission, but which the system owners have actively tried
> to
> >prevent. Sure sounds illegal to me.
>
> I dunno if that's illegal or not. I know I don't like it, I just
> don't know what the law says about it.
>
> But everyone is screaming "Your software is illegal", yet there seems
> to be no prosecution. If it's illegal, one of you guys doing the
> screaming ought to file charges. Otherwise, you are doing something
> similar (not the same, but similar) as Andy, who has been screaming
> "I'm gonna sue all of you bastards" for as long as he's been posting
> here.
>
> Yelling "It's illegal" isn't going to change anything. Hell, his
> entire goal here is to get people to scream and yell, so it
> seems to be playing right into his hands.

Unfortunately there's not a whole lot that can be done about it at this point. Software in and of itself is not illegal, however if used as advertised, Avalanche is almost guaranteed to violate a number of state and federal laws. One can't simply take a person to court if they have written software that can be illegal if used in a certain way. Heck, I could write hundreds of computer viruses but if they're never released then what can anybody do about them?

If somebody wanted to see Andy in court then first we'd need definite proof that his software is being used illegally. This isn't exactly a simple thing since you'd need to prove fraud and/or trespass and/or violation of some state anti-spamming law by a spammer that used Avalanche. You'd then need to find a way to extend the charges to include the author of the software, and AFAIK, there's no precedent for this sort of thing. You might be able to do this in a civil suit: Spammer Q trespassed on my private computer system by spamming through it using Avalanche. Sue spammer Q for the damages, and since Andrew wrote Avalanche and the software is designed to simplify spamming, include him as a defendant as well. However trying to prove any sort of criminal charges against him would be extremely difficult.

-Bruce

Exhibit J