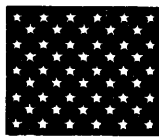


RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL



**SUSAN  
BITTER  
SMITH**  
for **CONGRESS**

RECEIVED  
FEC MAIL ROOM

2001 APR 23 A 10:17  
April 17, 2001

APR 23 2 52 PM '01

Mr. Kamau Philbert  
Office of General Counsel  
99 E Street, NW  
Washington, D. C. 20463

Dear Mr. Philbert:

Relative to previous correspondence the Bitter Smith campaign and I have had with your office, I wanted to make you aware of some articles that recently appeared in two of the largest newspapers in Arizona. These articles are significant to MUR #5103 in that they reference Acacia National Mortgage, one of the parties we previously referenced in the pending case before you.

As you will note from the articles, Acacia National Mortgage clearly uses and has the capability to send unsolicited mass communications. These articles point out that there are ethical and legal questions regarding Acacia National Mortgage's spamming methods. This mortgage company most definitely has the resources to reach thousands of people in the Phoenix area as well as the ability to target certain areas.

In our initial correspondence with you we not only addressed the fraudulent and malicious faxes sent out against our campaign, but also deceptive voice mail messages placed the day before the election. The messages left on voice mails and answering machines throughout the District had the recording of a person claiming to be a representative of the Bitter Smith campaign and made defamatory comments against another candidate in the Arizona Congressional District One race. Acacia National Mortgage clearly has the technology to send out mass communications through voice mail and faxes. This, coupled with the fact that the President of Acacia National Mortgage, George Youhanaie, had a vested financial interest in one of the candidates in the Congressional District One race (Sal DiCiccio), raises serious concerns about the possible illegal involvement of Acacia National Mortgage and its representatives in the District One race in Arizona.

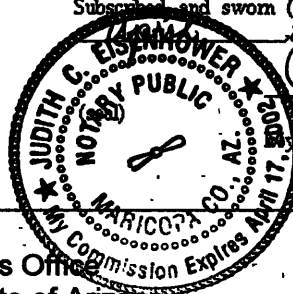
Again, your assistance in this matter is greatly appreciated. Enclosed are copies of our previous correspondence for your perusal.

Sincerely,

  
Jasen Hutchinson  
Friends of Susan Bitter Smith

Enclosures

CC: Rick Romley, Maricopa County Attorney  
Jill Kennedy, Maricopa County Attorney's Office  
Janet Napolitano, Attorney General, State of Arizona  
Paul Charlton, United States Attorney

State of Arizona)
) County of <u>Maricopa</u>
Subscribed and sworn (or affirmed) before me this <u>17<sup>th</sup></u> day of <u>April</u> , 2001
 <u>Judith C. Eisenhower</u> Notary Public My commission expires <u>April 17, 2002</u>

# Wireless spam irksome, costly

Associated Press

James Backen was at dinner in late March when he got a short message on his cell phone. When he checked, he discovered it was an advertisement from a local mortgage company.

"It kind of made me mad," Backen said, "and now it's going to show up on my phone bill."

Backen, a computer programmer, was one of thousands in the Phoenix area targeted by Acacia National Mortgage Corp. for "wireless spam," a new twist on the junk e-mail that's become so commonplace on the Internet. Spam can be sent to cell phones using the text-messaging services now offered as a standard feature by most wireless companies. And because the e-mail address for cell phones is usually a combination of the phone number and the carrier's name, wireless spam allows advertisers to target a specific audience by geographic location. This new scheme is creat-

People should not, without some form of notice to the receiver, be allowed to force receivers to pay for the message.

**Jerry Cerasale**  
Direct Marketing Association  
spokesman

ing an outcry because it's not only intrusive, but costly. The recipient has to read the message to know who it's from, and is charged by the phone carrier for doing so.

"This will become a huge problem when text messages become more popular in the states," said Todd Bernier, a wireless technology analyst with Morningstar. "The industry is going to have to do something to control itself. People just won't tolerate it."

The industry and government are wondering how to deal with wireless spam.

Advertisers and phone carriers each say the other has to come up with a solution. Some lawmakers are looking into adapting the 1991 Telephone Consumer Protection Act, an anti-telemarketing bill, to the newest technology.

"Spam is a major problem because it shifts the cost from the sender to the receiver," said Rodney Joffe, a Phoenix businessman who sent the mortgage company a letter asking for \$1,000 for the two messages he received. That's the penalty for sending junk faxes.

While the charges for retrieving the messages are usually only a few cents, experts say the cost to wireless users could be considerable if this spam spreads.

"I think this is just the tip of the iceberg," said Adrienne Dowley, 29, a chemical researcher in Scottsdale, who also got the mortgage ad.

Wireless spam is cheap and easy for advertisers.

Phone numbers are often allocated to wireless companies in blocks of 9,999 all beginning with the same three-digit prefix after the area code. The text-messaging address for each mobile phone is derived from the phone number assigned to each subscriber's handset and the wireless company's name.

That means an advertiser can simply choose any three-digit prefix in an area code and send a message to 10,000 people by changing the last four digits after the prefix.

Gerry Youhanane, president of Acacia Mortgage, said the ads brought in new clients for his company. He declined to comment on Joffe's request.

But even trade groups that oppose spam legislation argue that an advertising tactic where the receiver has to pay for the ad will not work.

"People should not, without some form of notice to the receiver, be allowed to force receivers to pay for the message," Direct Marketing Association spokesman Jerry Cerasale said.

# Wireless spam shifts cost of ad from sender to receiver

BY GIOVANNA DELL'ORTO  
THE ASSOCIATED PRESS

James Backen was at dinner in late March when he got a short message on his cell phone. When he checked, he discovered it was an advertisement from a local mortgage company.

"It kind of made me mad," Backen said. "And now it's going to show up on my phone bill."

Backen, a computer programmer, was one of thousands in the Valley targeted by Acacia National Mortgage Corp for the "wireless spam," a new twist on the junk e-mail that has become so commonplace on the Internet.

Spam can be sent to cell phones using

the text-messaging services now offered as a standard feature by most wireless companies. And because the e-mail address for cell phones is usually a combination of the phone number and the carrier's name, wireless spam allows advertisers to target a specific audience by geographic location.

This new marketing tool is creating an outcry because it's not only intrusive, but costly. The recipient has to read the message to know who it's from, and then gets charged by the phone carrier for doing so.

"This will become a huge problem when text messages become more popular in the states," said Todd Bernier, a wireless technology analyst with Morningstar. "The industry is going to have to do something to control itself. People just won't tolerate it."

The industry and the government are puzzling over how to deal with wireless spam.

Advertisers and phone carriers each say the other has to come up with a solution. Some lawmakers are looking into adapting the 1991 Telephone Consumer Protection Act, an anti-telemarketing bill, to the newest technology.

"The issue of spam is a major problem because it shifts the cost from the sender to the receiver," said Rodney Joffe, a Phoenix businessman who has sent a letter to the mortgage company asking for \$1,000 for the two messages he received. That's the current penalty for sending junk faxes.

Please see **SPAM**, Page B2

## SPAM: Costs could rise if marketing spreads

From Page B1

While the charges for retrieving the messages are usually only a few cents, experts say the cost to wireless users could be considerable if this method of marketing spreads.

"I think this is just the tip of the iceberg," said Adrianne Dowley, a 29-year-old chemical researcher in Scottsdale, who received the mortgage ad.

And it might be, since wireless spam is cheap and easy for advertisers.

Phone numbers are often allocated to wireless companies in blocks of 9,999 all beginning with the same three-digit prefix following the area code. The text-messaging address for each mobile phone is derived from the phone number assigned to each subscriber's handset and the wireless company's name.

That means an advertiser can simply choose any three-digit prefix in an area code and send a message to 10,000 people by changing the last four digits after the prefix.

Gerry Youhanaie, president of Acacia Mortgage, said the advertisements brought in new clients for his company. He declined to comment on Joffe's request.

"There still isn't any FCC rule against e-mailing," he said.

But even trade groups that oppose spam legislation argue that an advertising tactic where

the receiver has to pay for the ad will not work.

"People should not, without some form of notice to the receiver, be allowed to force receivers to pay for the message," said Direct Marketing Association spokesman Jerry Cerasale. But, he said, wireless spam will spread once the payment problem is resolved.

Consumers and analysts worry uncontrolled spam could spell significant trouble for the wireless phone industry.

Allen Nogee, a Cahners In-Stat Group wireless analyst, said he would cancel his service if he got commercial messages.

"This has the potential effect of killing the whole (wireless messaging) system," Nogee said.

Wireless carriers are taking precautions. Verizon Wireless customers can get a refund for reading spam, said company spokesman Andrew Colley. He added that the service might change to show message headers.

Lawmakers are also taking action. An anti-spam bill introduced by Rep. Rush Holt, D-N.J., would allow consumers to choose which messages they receive.

In late March, the House Energy and Commerce Committee passed a bill by Rep. Heather Wilson, R-N.M., that would oblige e-mail spam to be labeled and to show a return address under penalty of fines.