

# Daily Journal

JANUARY 28, 2009

## TOP PLAINTIFF VERDICTS OF 2008



### ONE-SIDED BATTLES

Two California default judgments totaling \$1.1 billion are among the largest awards last year.

ROBERT LEVINS

**S**uits filed by social networking sites against Internet spam senders accused of breaking federal law resulted in two massive default judgments in 2008 totaling \$1.1 billion.

In April, MySpace won a case filed in Los Angeles under a federal anti-spamming law for \$230 million. Then, in November, Facebook followed suit in San Jose, winning \$873 million in a dispute filed under the same 2003 statute.

Those verdicts dwarfed the previous record, a \$10 million award from 2005. If they had been bench rulings or jury awards, they would rank among the highest in 2008 nationwide and are believed to be among California's largest default judgments ever.

The 2008 cases were *MySpace Inc. v. Wallace*, CV071929 (C.D. Cal., filed March 23, 2007) and *Facebook, Inc. v. Adam Guerbuez, Atlantis Blue*, C0803889, (N.D. Cal., filed Aug. 14, 2008.)

Though the money may never be collected, lawyers said the judgments may deter future spammers.

Previously, the biggest award against spammers, Internet scam artists who send out malicious e-mail blitzes, was a pair of 2005 verdicts against a Seattle scam artist named Michael Soloway, who was ordered to pay Microsoft and an Internet service provider \$7.8 million and \$10 million, respectively.

The MySpace verdict opened the floodgates for behemoth default judgments against non-cooperative or non-present spam defendants, lawyers said.

"Ours was the biggest ever, and it serves as the basis for the even bigger [Facebook] award," said Ian C. Ballon of Greenberg Traurig in Los Angeles, who argued MySpace's case in federal court.

"It sends out a pretty strong message that engaging in these types of scams can lead to significant liability," Ballon said.

He said MySpace plans to collect as much as it can from defendant Sanford Wallace and his associate, Walter Rines.

Sanford Wallace, dubbed "Spamford" for his spam exploits in the 1990s, sent out 730,000 "phishing" messages to MySpace users, posing as official correspondence from the popular social networking site.

MySpace alleged that Wallace used a phony log-in page to harvest the users' passwords and personal information to then send more spam to everyone on each victim's MySpace friends list.

Wallace initially retained Cynthia Woolacott of Woollacott Jannol in Santa Monica as his defense counsel in 2007, but she withdrew, telling the court that Wallace had not paid her. She declined to comment.

Responding to the court's finding on his blog in April, Wallace, who is now a DJ in Las

Vegas, wrote "[The verdict] is pretty amazing since I haven't even been served in this case since the preliminary injunction about a year ago. Regardless, the check's in the mail."

He and his company, Cyber Promotions, lost several lawsuits in 1996 and 1997 to AOL, CompuServe and Earthlink for Federal Trade Commission violations, the legal avenue lawyers had to take before the anti-spamming law was on the books.

Ballon, whose book, "The Complete CAN-SPAM Practice Guide," was published in 2008, said the recent cases set legal precedent that extends federal regulations on spam to social media companies like MySpace and Facebook.

"We clearly established that social networks were protected by the CAN-SPAM Act," Ballon said.

The law, enacted during President George W. Bush's first term, is a set of compliance regulations for how and what messages may be sent online. It supersedes state anti-spam laws and adds civil and criminal penalties for e-mail abuse.

Facebook's lawyer, I. Neel Chatterjee at Orrick Herrington & Sutcliffe in Palo Alto, said social networks can sue under the act because it defines an Internet service provider very broadly.

"Anyone who provides access to information on a Web site is an ISP," Chatterjee said.

He said the significance of the two judgments is their indication that as MySpace and Facebook grow, both companies are working to make their Internet spaces friendlier for social and commerce interaction.

As in conventional harassment suits, it is common for the defendants not to show up in their own defense, he said.

"What are they going to say?" Chatterjee said.

The Canadian defendant, Adam Guerbuez, said he did not show up to trial because he did not think he could win against Facebook's "multimillion-dollar legal team."

Guerbuez denied any illicit activity on Facebook, and said he is a legitimate Internet marketing entrepreneur with several homes and businesses in Montreal. "I'm not a spammer," he said. He said he doubted Facebook would come after him.

"They have absolutely no legal jurisdiction over me in my country," Guerbuez said.

— Noah Barron