

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HORMEL FOODS CORPORATION, and
HORMEL FOODS, LLC,

Petitioners,

v.

SPAM ARREST LLC,

Registrant.

Cancellation No. 92,042,143

Mark: SPAM ARREST

Reg. No.: 2,701,493

Filing Date: November 27, 2001

Registration Date: March 25, 2003

BOX TTAB NO FEE

Assistant Commissioner for Trademarks

2900 Crystal Drive

Arlington, VA 22202-3513

CERTIFICATE UNDER 37 C.F.R. § 1.8:

Express Mail mailing label number _____

The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service, "Express Mail Post Office to Addressee" in an envelope addressed to: BOX TTAB NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on May 27, 2004.

By: _____

Diana Au

Diana Au

REGISTRANT'S MOTION FOR SUMMARY JUDGMENT

Registrant, Spam Arrest LLC ("Registrant"), hereby moves for summary judgment, and requests that the Trademark Trial and Appeal Board (the "Board") dismiss the above captioned proceeding and hold that Registrant's mark SPAM ARREST, Reg. No. 2,701,493 (the "Mark"), is entitled to remain on the Principal Register of the United States Trademark Office.

NEWMAN & NEWMAN, ATTORNEYS AT LAW, LLP
505 Fifth Avenue South, Suite 610
Seattle, Washington 98104
phone: (206) 274-2800
fax: (206) 274-2801

TABLE OF CONTENTS

- I. SUMMARY OF ARGUMENT 1**
- II. UNDISPUTED MATERIAL FACTS 3**
 - A. The Popularity of Hormel’s Canned Meat Product 3
 - B. The Monty Python Skit 3
 - C. SPAM Becomes a Victim of “Genericide” 4
 - D. Widespread Use of the Term “Spam” in Brand Names for Software to Block Unsolicited Commercial Email 6
 - E. Dispute Between Hormel and Registrant 6
 - 1. No Evidence of Actual Confusion 6
 - 2. Reputation of Hormel’s Product 7
 - 3. Hormel and Registrant Sell Different Products in Different Marketing and Distribution Channels 7
 - 4. The Mantis Survey 8
- III. ARGUMENT 9**
 - A. Hormel Cannot Prevent Spam Arrest or Other Third Parties from Using the Generic Term “Spam” to Describe Their Goods and Services 9
 - 1. Spam is Generic for That Certain Type of Email 10
 - 2. Public Policy Disfavors Restrictions on the Use of Generic Terms 12
 - B. There Is No Likelihood of Confusion Between the Two Marks 13
 - 1. The Parties’ Marks are Different 13
 - 2. The Parties’ Products Are Different 14
 - 3. Hormel and Registrant Use Different Marketing Channels 14
 - 4. The Fame of Hormel’s Mark Is Irrelevant, Since the Word Spam Has Become Generic for a Certain Type of Email 15
 - 5. Many Other Parties Are Using Marks Containing the Word Spam 15
 - 6. There Is No Evidence of Actual Confusion 15
 - 7. Hormel’s “Family of Marks” Is Unrelated to Commercial Email 16
 - 8. Registrant Has the Right to Prevent Others from Using Its Mark 16
 - 9. The Potential for Confusion Is Low 16
 - C. Use of Registrant’s Mark Does Not Dilute Hormel’s Mark 16
 - 1. There Is No Evidence of Actual Dilution 17
 - 2. There Is No Blurring 18
 - i. The Marks Are Not Substantially Similar, Which Precludes a Dilution Claim 18
 - ii. Hormel May Not Resurrect a Generic Mark That Has Lost Its Distinctiveness 18

3.	There Is No Tarnishment	19
i.	Registrant’s Product Bears No “Inferior or Offensive” Connotation	19
ii.	Hormel’s Product Enjoys a Less-Than-Sterling Reputation	19
D.	Registrant’s Mark Is Neither Generic Nor Descriptive	20
1.	Registrant’s Mark Is Not the Generic Name for Any Product or Service ...	20
2.	Registrant’s Mark Is Not “Merely Descriptive”	21
i.	Consumers Must Exercise Imagination to Determine What Registrant’s Product Is	21
ii.	Registrant’s Competitors Do Not Need the Mark to Describe Their Products	22
E.	Hormel Has Acquiesced in the Generic Use of “Spam” and Is Estopped from Claiming Trademark Rights in the Generic Term	23
IV.	CONCLUSION	24

I. SUMMARY OF ARGUMENT

Spam Arrest LLC (“Registrant”) owns the trademark, SPAM ARREST®, for computer software designed to eliminate unsolicited commercial email, pursuant to United States Trademark Registration No. 2,701,498 (the “Mark”). Petitioners Hormel Foods Corporation and Hormel Foods, LLC (collectively, “Hormel”) own the trademark, SPAM®, for canned meat and related goods. In their Petition for Cancellation (“Petition”), Hormel alleges that Registrant’s SPAM ARREST® Mark should be cancelled. As a matter of law, none of Hormel’s arguments provides a sufficient basis for cancelling the Mark. Accordingly, the Petition should be dismissed.

Hormel’s first argument is Registrant’s Mark creates a likelihood of confusion with Hormel’s SPAM® trademark. Petition, ¶8-9. Specifically, Hormel contends consumers will assume that Hormel is the source of Registrant’s product or has given that product its endorsement. **As even Hormel admits, however, the word “spam” is a generic term when used in reference to email.** Hormel has acquiesced to this generic use of “spam”. Dozens of software vendors now use the word “spam” in their trademarks as a generic term, and Hormel cannot prevent them from using a term that has fallen into the linguistic commons.

No reasonable person would confuse canned meat with computer software, and virtually all references to “spam” on the Internet mean unsolicited commercial email, not “canned meat.” Registrant sells its product exclusively over the Internet, while the vast bulk of Hormel’s SPAM product is sold in grocery stores. Hormel may not, on the one hand, admit that “spam” is generic for unsolicited email; and then, on the other hand, deny software vendors the right to use that term as part of a brand name for a product relating to email.

Hormel’s second argument is use of Registrant’s Mark “dilutes the distinctive quality of Petitioners’ SPAM trademark and family of SPAM marks.” Petition, ¶10. A dilution argument may involve claims of “blurring” or “tarnishment.” Hormel has produced no evidence of actual dilution

attributable to Registrant – accordingly, its dilution claim fails as a matter of law. Moreover, the use of Registrant’s mark cannot blur Hormel’s SPAM mark because the marks are not “substantially similar”. Blurring occurs when there is a threat that the use of one mark will cause another mark to “lose its ability to serve as a unique identifier of the plaintiff’s product”. **All parties acknowledge that Hormel’s SPAM mark has already lost that ability.** The word “spam” is both a registered trademark for meat products and a generic term referring to a type of email. As such, it no longer “uniquely identifies” Hormel’s product – rather, it identifies both Hormel’s product and a category of email. The “blurring” process is over, even if consumers associate software marks including the word “spam” with Hormel’s marks. Hormel’s tarnishment argument fails as well. Tarnishment occurs when a famous mark is associated with an “inferior or offensive product or service,” and there is nothing “inferior or offensive” about software that keeps unwanted email out of Internet users’ in-boxes. To the contrary, there is considerable evidence that Hormel’s SPAM mark is already associated with an “inferior or offensive product.”

Hormel’s third argument is the Mark is “generic or merely descriptive of Registrant’s services.” Petition, ¶13. Hormel cannot meet the relevant standard to prove either of these claims. A generic term is “one that is commonly used as the name of a kind of goods,” and Hormel has no evidence that anyone uses the term “spam arrest” to refer to anything other than Registrant’s product. Nor is there any credible evidence that Registrant’s Mark is “merely descriptive” – as the Trademark Office has determined, consumers must exercise some thought and imagination to determine what product the Mark signifies.

All of Hormel’s arguments fail as a matter of law. Therefore, Registrant is entitled to summary judgment.

///

///

II. UNDISPUTED MATERIAL FACTS

This is the story of a successful Minnesota canned meat vendor, six British comedians, a rogues' gallery of unscrupulous email marketers, and a brave legion of computer programmers determined to defend the public against an onslaught of unwanted email.

A. THE POPULARITY OF HORMEL'S CANNED MEAT PRODUCT

Since 1937, Hormel has sold billions of cans of its SPAM canned meat product, made of pork shoulder and ham.¹ The United Kingdom is one of the largest foreign markets for Hormel's canned meat product. *See* Becky Ebenkamp, *Haute Hormel*, BRANDWEEK, Feb. 3, 1997, at 25 (Ex. 2). "Spam's shelf stability helped popularize the brand in Britain during World War II. Even Margaret Thatcher recalled serving the 'wartime delicacy' ... in 1943 on Boxing Day..." *Id.* An American soldier who traveled on the Queen Elizabeth during World War II was served Spam for breakfast "[e]very morning for the eight days it took to cross."² Another person recalls restaurant meals "during the later days of the war" when she would select items from a lengthy menu only to hear the waiter reply, "Spam only. There's a war on, you know!"³

B. THE MONTY PYTHON SKIT

The ubiquitous Spam eventually became the subject of one of the most popular comedy sketches of all time. On December 15, 1970, the British comedy sextet Monty Python performed a Spam-related skit on their television show, "Monty Python's Flying Circus" (the "Monty Python Skit").⁴ This skit involves the hapless Mr. and Mrs. Bun – two ordinary Britons looking for some breakfast – and "a group of Vikings [who] chant the word spam in a cafe whose breakfast menu is devoid of all

¹ Dirk Johnson, *A Feast from the Can: Honors for Spam at 50*, N.Y. TIMES, Jul. 5, 1987, at 12 (Ex. 1).

² Mikel Stettner, *About Spam*, N.Y. TIMES, Jul. 24, 1994, at SM4 (Ex. 3).

³ Hana Stranska, *Untitled Letter to the Editor*, N.Y. TIMES, Jul. 24, 1994, at SM4 (Ex. 4).

⁴ *See* 2 THE COMPLETE MONTY PYTHON'S FLYING CIRCUS: ALL THE WORDS 27-29 (Pantheon, 1989) (Ex. 5).

else”.⁵

C. SPAM BECOMES A VICTIM OF “GENERICIDE”

Years after its first broadcast, the Monty Python Skit took on an entirely new meaning as Internet users and journalists used it as a metaphor for an avalanche of unwanted email. In the mid-1990s, as the Internet grew in popularity, there arose a nefarious group of marketers whose chief weapons were ruthless efficiency and an almost fanatical devotion to the use of email. A 1994 article in *New Scientist* described their method of “posting advertising messages to several [Usenet] newsgroups, a practice known as spamming.”⁶ In 1995, *U.S. News and World Report* defined “spamming” as “[s]ending out on the Internet the cyberspace equivalent of junk mail – dispatching a barrage of advertising or political messages at random. The term is said to have been inspired by an old ‘Monty Python’ sketch in which ‘Spam’ was repeated again and again.”⁷

Ten years have passed since the first use of “spam” to describe a type of email. The word now appears in *Merriam-Webster’s Collegiate Dictionary*:

spam \spam\ *n* [fr. a skit on the British television series *Monty Python’s Flying Circus* in which chanting of the word *Spam* (trademark for a canned meat product) overrides the other dialogue] (1994): unsolicited usu. commercial Email sent to a large number of addresses.⁸

Countless magazine articles discuss the problem of “spam” on the Internet.⁹ Congress and various state

⁵ *Verizon Online Services, Inc. v. Ralsky*, 203 F.Supp.2d 601, 606 n. 1 (E.D.Va. 2002).

⁶ Charles Arthur, *How to Turn Spam into Cash on the Internet*, NEW SCIENTIST, Oct. 22, 1994, at 23 (Ex. 6).

⁷ Gerald Parshall, *Buzzwords: The Language That Will Shape Our World in 1996*, U.S. NEWS AND WORLD REPORT, Dec. 25, 1995, at 86 (Ex. 7).

⁸ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (10th ed. 1999) (emphases original) (Ex. 8). *See also* MICROSOFT ENCARTA COLLEGE DICTIONARY (2001) (cited in *Verizon*, *supra*, 203 F.Supp.2d at 606) (defines “spam” as “an unsolicited, often commercial, message transmitted through the Internet as a mass mailing to a large number of recipients”).

⁹ *See, e.g.*, Wilson Smith, *How to Get Rid of All Your Junk Email*, MONEY, Jul. 1996, at 21 (“there’s a new kind of Spam clogging the Internet that users are finding hard to stomach”) (Ex. 9); Samantha Miller, *Spam Wars*, PEOPLE WEEKLY, Nov. 18, 1996, at 39 (discusses “computer mailboxes...flooded with junk email touting get-rich-quick schemes and miracle cures – up to a dozen such messages a day for some people. Such so-called spam, named after a Monty Python sketch in which the word is shouted ad nauseam, is now America Online’s top user complaint”) (Ex. 10); Ed Bott, *Internet Lies*, PC/COMPUTING, Oct. 1996, at 189 (“Spamming is the spiritual descendant of high-pressure, boiler-room telephone sales scams...”) (Ex. 11).

legislatures have passed laws that refer to unsolicited commercial email as “spam.”¹⁰

Hormel has now, like many other trademark owners in the past, become a victim of its own success. Its canned meat product was perhaps too popular with Britons during the Second World War, and Mrs. Bun’s anguished wail, “I DON’T LIKE SPAM!” has echoed around the world and become the rallying cry for millions of perturbed email users whose in-boxes are filled with a daily salvo of unwanted advertisements. The public has appropriated the word “spam” for use in describing a category of email. Accordingly, the mark no longer refers exclusively to Hormel’s canned meat product.¹¹ Used in reference to email, the term is generic.

Indeed, Hormel has admitted that “spam” is generic when used in reference to email. As of this writing, Hormel’s website at <http://www.spam.com/ci/ci_in.htm> provides a “Statement on SPAM Use” advising that **“We do not object to the use of this slang term to describe [unsolicited commercial email]”** (Ex. 12). (Emphasis added.) Hormel lawyers have written to individuals acquiescing to the generic use of “spam”. See Ex. 13 (“We have no objection of [sic] your use of the slang term ‘spam’” provided the term appears in all lower case letters). In discovery depositions, all of Hormel’s witnesses admitted that the term “spam” is now generic with respect to that certain type of email.¹² A Hormel spokesperson has even said that the “confusion over SPAM (the meat) and spam (the junk Email) is actually helping the [Hormel] brand” because use of the word “spam” has now “crept into popular culture.”¹³

¹⁰ See, e.g., Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM Act”), Pub. L. No. 108-187; CAL. BUS. & PROF. CODE § 17529 (West 2003) (refers to unsolicited commercial email as “spam” and indicates that spam is an expensive, time-consuming “annoyance”); VA. CODE ANN. §18.2-152.3:1 (Michie 2003) (entitled “Transmission of unsolicited bulk electronic email (spam); penalty”).

¹¹ “[E]ven when created words for new products have become strong marks, the public’s pervasive use of these marks sometimes creates a real risk that their distinctiveness will disappear, a process Professor McCarthy terms ‘genericide,’ as occurred with earlier trademarks such as ‘Thermos,’ ‘Aspirin,’ ‘Cellophane,’ and ‘Escalator.’” America Online, Inc. v. AT&T Corp., 57 U.S.P.Q.2D 1902, 243 F.3d 812, 821 (4th Cir. 2001).

¹² See Deposition of George Mantis (“Mantis Dep.”) (Ex. 14), p. 47, lines 21-24; Deposition of Gregory Carpenter (“Carpenter Dep.”) (Ex. 15), p. 17, lines 9-11; Deposition of Nicholas Meyer (“Meyer Dep.”) (Ex. 16), p. 23, lines 17-25; Deposition of Kevin Jones (“Jones Dep.”) (Ex. 17), p. 28, lines 7-11.

¹³ Diane R. Khirallah, *Spam by Any Other Name*, INFORMATIONWEEK, Jun. 4, 2001, at 17 (Ex. 18).

D. WIDESPREAD USE OF THE TERM “SPAM” IN BRAND NAMES FOR SOFTWARE TO BLOCK UNSOLICITED COMMERCIAL EMAIL

As spam on the Internet became more prevalent a growing number of entrepreneurs, including Registrant, began to create software applications to monitor and filter out unwanted email. Many of these vendors have included the now-generic word SPAM in their product names, and they have sought to protect their trademark rights in those names. See Ex. 19. Most of these applications are for software that filters out spam, or for services relating to the control of spam (including an application by the United States government itself)¹⁴.

Registrant’s Mark is the first of these marks to achieve Principal Registration, which it did on March 25, 2003 for “computer software, namely, software designed to eliminate unsolicited commercial electronic mail.”

E. DISPUTE BETWEEN HORMEL AND REGISTRANT

On August 30, 2002, before Registrant’s SPAM ARREST® Mark was placed on the Principal Register, Hormel filed Opposition No. 9153159 before the Board. After the Mark’s registration, the parties filed a Stipulated Motion Requesting Suspension of Opposition and Proceeding with Cancellation (“Stipulated Motion”). The Stipulated Motion provided that the parties would “incorporate the discovery from the Opposition to the Cancellation proceeding.”

The following is an analysis of the most relevant evidence from the opposition and cancellation proceedings between Hormel and Registrant:

1. No Evidence of Actual Confusion

Nicholas Meyer is a senior product manager at Hormel. Hormel designated him as “at least as knowledgeable as anyone else” regarding actual or potential consumer confusion between the sources of Hormel’s and Registrant’s products. Meyer Dep. (Ex. 16), p. 10, lines 4-9; p. 20, lines 15-22. At

¹⁴ The United States Federal Trade Commission filed an application to register NATIONAL DO NOT SPAM REGISTRY (Serial No. 78347112). Network Associates owns SPAMKILLER, Reg. No. 2762980, for “computer software for detecting, removing, blocking, responding to, and evading electronic communications.”

his deposition, Meyer indicated that he did not have personal knowledge of any actual confusion. Id., p. 21, line 15, to p. 22, line 5. Meyer said the closest information relating to actual confusion was derived from customer “verbatim,” which are records of emails, phone calls, and letters received by Hormel; and that any such verbatims relating to Registrant had been produced in discovery in the above captioned action. Id., p. 22, line 6, to p. 23, line 10.

It is notable that Hormel has produced **only one message** that could conceivably indicate actual consumer confusion, and the tone and language of that message indicates the message was sent as a joke. See Ex. 20 (H007370). Notably, even this one message was produced **after Hormel filed its opposition to Registrant’s Mark**. The “verbatim” Hormel produced are all dated between December 1, 2002 and December 15, 2003.¹⁵

2. Reputation of Hormel’s Product

The Hormel SPAM products are viewed by customers as unsavory and low class. See Exs. 21-27 (Hormel’s customer surveys) and Ex. 28 (Mantis Survey; negative comments about Hormel’s product are highlighted). The documents produced by Hormel indicate that any decline in the reputation of Hormel’s product cannot fairly be attributed to Registrant.

3. Hormel and Registrant Sell Different Products in Different Marketing and Distribution Channels

For decades, Hormel’s SPAM mark has been predominantly associated with canned meat. Registrant’s Mark is registered for “computer software, namely, software designed to eliminate unsolicited commercial electronic mail.” The Hormel product is very different from the Spam Arrest product.

Hormel produced a list of all of its retail outlets (Ex. 29). None of those vendors specialize in selling computer software, nor do any primarily sell their goods over the Internet. In contrast, Registrant sells its product exclusively over the Internet, and its consumers purchase most of their

¹⁵ See pages H007326 to H007412 of Hormel’s discovery responses (Ex. 20).

products via the Internet. (Declaration of Cameron Elliott (“Elliott Decl.”) ¶ 4.) It is impossible to buy Registrant’s product in the brick-and-mortar stores that comprise the vast majority of Hormel’s retailer list.

When asked whether there are Internet sites that sell both Registrant’s product and Hormel’s, Nick Meyer stated that it was possible that consumers could buy both products on <ebay.com>, but could not name any other Internet sites where consumers might be able to purchase both products. Meyer Dep. (Ex. 16), p. 93, lines 10-20. In fact, Spam Arrest does not and has never sold its product on <ebay.com>. (Elliott Decl. ¶ 7.)

4. The Mantis Survey

Between December 4, 2003 and December 17, 2003, Hormel’s expert George Mantis conducted a survey that purported to determine whether Registrant’s Mark has acquired secondary meaning, and whether the use of Registrant’s Mark dilutes the distinctiveness of Hormel’s SPAM mark (the “Mantis Survey”). Hormel conducted this survey exclusively in shopping malls. Mantis Survey, p. 3 (Ex. 28) However, Registrant does not sell its product in malls. (Elliott Decl. ¶ 3.) A review of the Mantis Survey indicates that Mantis surveyed an irrelevant group, arbitrarily reduced the percentage of respondents who associated SPAM ARREST® with a single company, and structured his survey questions in a way that maximized Hormel’s chances of obtaining its desired results. (Declaration of Lea Knight, Ex. B.)

5. Hormel’s Admission That Third Party Use of the Word Spam Has “Whittled Away” at the Distinctiveness of Its Mark

Hormel’s lawyer Kevin Jones has admitted that at least *eight other marks* besides Registrant’s have “whittled away” at the strength of Hormel’s mark. Jones Dep. (Ex. 17), p. 80, line 21, to p. 103, line 10. Hormel’s expert witness, Gregory Carpenter, also conceded that third party marks containing the word “spam” have “evoke[d] the Hormel brand, and therefore, reduce[d] some of its meaning.” Carpenter Dep. (Ex. 15), p. 43, line 17, to p. 46, line 3. In addition, Carpenter testified that the public’s

generic use of the word “spam” to describe a certain type of email has caused Hormel’s mark to become “less unique and therefore less valuable.” *Id.*, p. 21, line 10, to p. 22, line 14.

III. ARGUMENT

The United States Patent and Trademark Office issued a certificate of registration for Registrant’s SPAM ARREST® Mark, and has determined the Mark merits Principal Registration. This certificate of registration is prima facie evidence that the Mark is valid, that Registrant is the owner, and that Registrant has the exclusive right to use the mark in connection with the goods or services specified in the registration. 15 U.S.C. §1057(b). Thus, Hormel has the burden of establishing valid grounds for cancelling Registrant’s mark. West Florida Seafood v. Jet Restaurants, Inc., 31 U.S.P.Q.2D 1660, 31 F.3d 1122, 1125 (Fed. Cir. 1994).

Registrant is entitled to summary judgment if there is no genuine issue of material fact regarding the arguments Hormel raises in favor of cancellation. Fed.R.Civ.P. 56(c); *see also Armco, Inc. v. Cyclops Corp.*, 791 F.2d 147, 149, 229 U.S.P.Q. 721, 722 (Fed.Cir. 1986) (to defeat the motion the non-movant must present sufficient evidence to show an evidentiary conflict as to a material fact in dispute). As discussed below, Hormel cannot meet the burden of proving a material conflict of evidence. Accordingly, the Board should dismiss this action.

A. **HORMEL CANNOT PREVENT SPAM ARREST OR OTHER THIRD PARTIES FROM USING THE GENERIC TERM “SPAM” TO DESCRIBE THEIR GOODS AND SERVICES**

“A generic term is the common descriptive name of a class of goods or services, and, while it remains such common descriptive name, it can never be registered as a trademark . . .” H. Marvin Ginn Corp. v. International Asso. of Fire Chiefs, Inc., 228 U.S.P.Q. 528, 782 F.2d 987, 989 (Fed.Cir. 1986). “The generic name of a thing is in fact the ultimate in descriptiveness.” *Id.*, *see also In re Northland Aluminum Products, Inc.*, 777 F.2d 1556, 227 U.S.P.Q. 961, 963 (Fed. Cir. 1985). The law of trademarks “protects for public use those commonly used words and phrases that the public has adopted, denying to any one competitor a right to corner those words and phrases by expropriating

them from the public ‘linguistic commons.’” America Online, Inc. v. AT&T, 57 U.S.P.Q.2D 1902, 243 F.3d 812, 821 (4th Cir. 2001). Even an incontestable mark “does not confer any rights to a phrase that was generic at the outset *or has become so through use.*” Te-Ta-Ma Truth Foundation v. World Church of the Creator, 297 F.3d 662, 63 U.S.P.Q.2d 1760 (7th Cir. 2002) (emphasis added).

1. Spam is Generic for That Certain Type of Email

The word “spam” is generic because it is the ultimate in descriptiveness for unsolicited commercial email. As part of the public “linguistic commons”, neither Spam Arrest nor any other party may be denied the right to use that word in association with products relating to email. Hormel has admitted “spam” is generic for unsolicited commercial email; the term “spam” now appears in dictionaries; countless magazine and newspaper articles refer to “spam” in the generic sense; and government officials regularly refer to unwanted email as “spam.” Consequently, anyone can use “spam” as part of a brand concerning email related goods and services.

Hormel’s public Web site “Statement on SPAM Use” represents an unsuccessful attempt to “convert the world to its gospel” and to restrict the public’s use of a word that appears in dictionaries. See DuPont Cellophane Co., Inc. v. Waxed Products Co., 85 F.2d 75 (2d Cir. 1936) (“It...makes no difference what efforts or money the DuPont Company expended in order to persuade the public that ‘cellophane’ means an article of DuPont manufacture. So far as it did not succeed in actually converting the world to its gospel it can have no relief”). To allow Hormel to prevent others from using a generic term like “spam” would be tantamount to allowing Hormel to appropriate for itself words in the English language. “No manufacturer can take out of the language a word, even a slang term, that has generic meaning as to a category of products and appropriate it for its own trademark use.” Harley-Davidson, Inc. v. Grottanelli, 49 U.S.P.Q.2D 1458, 164 F.3d 806, 810 (2d Cir. 1999) (citing Abercrombie & Fitch Co. v. Hunting World, Inc., 189 U.S.P.Q. 759, 537 F.2d 4, 9 (2d Cir. 1976)). If a term is used both as a trademark and as a generic term, the trademark owner may not bar

the generic use. King-Seeley Thermos Co. v. Aladdin Industries, Inc., 169 U.S.P.Q. 85, 320 F.Supp. 1156, 1158 (D.Conn. 1970). In this case, “spam” is a generic term for unsolicited commercial email services.

Apple Computer, Inc. owns the famous trademark APPLE for computers and related goods, and may prohibit third parties from using APPLE in association with that class of goods. However, Apple Computer cannot stop Celestial Seasonings, Inc. from offering CRANBERRY APPLE ZINGER® brand tea, Can Well Nursery, Inc. from offering ADAMS APPLE® brand apple trees, or Arabica Funding, Inc. from offering HOT APPLE BLAST® brand apple cider beverages. *See* Ex. 30. Similarly, Hormel owns the trademark SPAM for canned meat, and may prohibit third parties from using SPAM in association with that class of goods. Hormel cannot, however, stop Registrant from offering SPAM ARREST® brand spam filtering software.

When a word used to denote origin in one context becomes generic in another context, courts will refuse to enjoin the use of the word in the context in which it has become generic. In Lucasfilm Ltd. v. High Frontier, 227 U.S.P.Q. 967, 622 F.Supp. 931, 933 (D.D.C. 1985), the creator of the movie “Star Wars” brought a trademark infringement action against public interest groups who used the term STAR WARS to refer to then-President Reagan’s Strategic Defense Initiative (“SDI”). The court refused to enjoin defendants’ use of the words “star wars”, noting that the term was widely used by journalists to describe the SDI. *Id.* Judge Richard Posner later commented on the Lucasfilm decision:

If someone bought rights to the SDI from the U.S. government and sold the anti-missile program to another country under the name ‘Star Wars,’ nothing in the Lucasfilm opinion or in the principles of trademark law would entitle Lucasfilm to enjoin that use of the name. The name would have become attached by the public to another product as well as to the movies, just as happened here.

Illinois High School Ass’n v. GTE Vantage Inc., 40 U.S.P.Q.2D 1633, 99 F.3d 244, 248 (7th Cir. 1996). Hormel is in the same position as Lucasfilm: It may not prevent others from using a generic

name for their goods and services, even though that name is identical to its trademark.

2. Public Policy Disfavors Restrictions on the Use of Generic Terms

Hormel is requesting the Board to stop third parties from using the word “spam” as part of an identifier of source, even when exclusivity to use “spam” is disclaimed. In doing so, Hormel is attempting to place an enormous restraint on First Amendment rights to free speech – a restraint the court soundly rejected in Illinois High School Association, *supra*. In that case, the Seventh Circuit affirmed an order denying an injunction against defendant’s use of “March Madness”, finding that the media had appropriated “March Madness” to describe the NCAA’s basketball tournament before defendant began labeling its products with the term. *Id.* at 246. The Seventh Circuit stated as follows:

[March Madness is] a name that the public has affixed to something other than, as well as, the Illinois high school basketball tournament. A trademark owner is not allowed to withdraw from the public domain a name that the public is using to denote someone else’s good or service, leaving that someone and his customers speechless... It is an issue of first impression, and we think that for the sake of protecting effective communication it should be resolved against trademark protection, thus assimilating dual-use or multipleuse (sic) terms to generic terms.

Id. at 247. In this case, the media has used the word “spam” in reference to bulk email for a decade. Any rights Hormel has in the SPAM trademark must be balanced against free speech issues. As indicated above, the term “spam” is now generic with respect to that certain type of email, and Hormel therefore has **no trademark rights at all** regarding the use of SPAM in reference to email or identifying the source of products used to eliminate spam. The public’s right to free speech must prevail, and Hormel cannot prevent others from incorporating the generic term SPAM into their trademarks. Registrant should not be required to change its Mark to an unwieldy phrase like UNSOLICITED COMMERCIAL EMAIL ARREST. Use of the generic term SPAM is essential to inform the public that software products bearing marks including the word “spam” are related to email.

///

///

B. THERE IS NO LIKELIHOOD OF CONFUSION BETWEEN THE TWO MARKS

The existence of likelihood of confusion is an inquiry involving the application of various factors. In re E. I. DuPont DeNemours & Co., 177 U.S.P.Q. 563, 476 F.2d 1357 (C.C.P.A. 1973) (cited favorably in In re Coors Brewing Co., 68 U.S.P.Q.2D 1059, 343 F.3d 1340 (Fed.Cir. 2003)). These factors are: (1) the similarity of the marks, (2) the similarity of the goods or services, (3) the similarity of the parties' trade channels, (4) consumer sophistication, (5) the fame of the prior mark, (6) the number and nature of similar marks in use on similar goods, (7) the nature and extent of any actual confusion, (8) the duration of concurrent use without actual confusion, (9) the variety of goods on which the marks are used, (10) the "market interface" between the applicant and the owner of a prior mark, (11) the extent to which applicant has a right to exclude others from use of its mark on its goods, (12) the extent of potential confusion, and (13) "[a]ny other established fact probative of the effect of use." DuPont, 476 F.2d at 1361.

The fourth DuPont factor (customer sophistication) is neutral; and the tenth factor (market interface) is inapplicable. The remaining factors weigh decisively in Registrant's favor.

1. The Parties' Marks are Different

In Paco Sport, Ltd. v. Paco Rabanne Parfums, 54 U.S.P.Q.2D 1205, 86 F.Supp.2d 305, 315-16 (S.D.N.Y. 2000), two parties used the term PACO in their trademarks. The court held that use of the term PACO was not likely to cause confusion because "[t]he word PACO on [one party's] products [was] always accompanied by the word RABANNE." Id. In this case, the word SPAM in Registrant's Mark is always accompanied by the word ARREST. Hormel's and Registrant's trademarks are easily distinguishable.¹⁶

///

¹⁶See also J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION §23:49 (4th ed. 1998) ("If a common portion of the two conflicting marks is a public domain generic name, the emphasis of enquiry should be upon the confusing similarity of the non-generic portion...")

2. The Parties' Products Are Different

Courts conclude that a likelihood of confusion does not exist where the two goods or services are so unrelated that consumers are unlikely to confuse the origin of the two products. Federal Express Corp. v. Federal Espresso, Inc., 1998 U.S. Dist. Lexis 15607 *27, No. 97-CV-1219 (RSP/GJD) (N.D.N.Y. Sept. 30, 1998) (providing that confusion was unlikely since coffee shop related products and services were dissimilar enough to plaintiff's overnight delivery service). Hormel produces lunch meats and related food products. Registrant, on the other hand, produces software and related services for the purpose of blocking unsolicited email. There is little likelihood that consumers will view canned meat and software as originating from the same source.

In fact, Hormel's efforts to enforce its SPAM mark for products which are unrelated to luncheon meats have previously been unsuccessful. See Hormel Foods Corp. v. Jim Henson Productions, Inc., 37 U.S.P.Q.2D 1516, 73 F.2d 497 (2d Cir. 1996). In Hormel Foods, Hormel alleged that Jim Henson's use of the movie character "Spa'am", a fictional, parodic high priest of a tribe of wild boars that worshipped Miss Piggy, was likely to result in consumer confusion. The court concluded that consumer confusion was unlikely because the two products (luncheon meats and a motion picture) were extremely different. Hormel's other goods and services sold under its "SPAM family of marks", such as mousepads and clocks, are all associated with Hormel's main product, luncheon meat. Accordingly, if consumers are unlikely to confuse Registrant's software with Hormel's canned meat, they are also unlikely to confuse Hormel's secondary products with Registrant's product. See Hormel Foods, *supra*, 73 F.2d at 504. Registrant's product is not associated in any way with a source of pork, and is therefore even less similar to Hormel's product than the movie character pig named "Spa'am".

3. Hormel and Registrant Use Different Marketing Channels

Hormel and Registrant sell their products through completely different channels. Hormel sells the vast bulk of its canned meat through brick-and-mortar stores, while Registrant sells its product

exclusively via the Internet. There is virtually no overlap between the channels of marketing and distribution between the two products.¹⁷

4. The Fame of Hormel's Mark Is Irrelevant, Since the Word Spam Has Become Generic for a Certain Type of Email

“Generic marks... are not entitled to any protection against infringement, **even if they have become famous as marks,**” because protecting generic terms would deprive others of “the right to refer to their goods by name.” TCPIP Holding Co. v. Haar Communications, Inc., 57 U.S.P.Q.2D 1969, 244 F.3d 88, 93 (2d Cir. 2001) (emphasis added). Because the word “spam” is generic for a certain type of email, Hormel may not deprive others of the right to use it in that context, regardless of how famous Hormel's mark may be.

5. Many Other Parties Are Using Marks Containing the Word Spam

As indicated above, many other parties are using trademarks containing the generic term “spam”. The widespread third party use of SPAM marks, as well as the near-universal use of the term to describe unwanted email, weigh heavily in Registrant's favor. Any confusion originated long ago, when Hormel failed to prevent the word from falling into the public domain.

6. There Is No Evidence of Actual Confusion

Hormel has not produced any evidence of actual confusion, but rather only proffers a hearsay message it received that was obviously a joke. Hormel received this message after it filed its Opposition to Registrant's Mark, which would diminish its credibility as evidence even if it were **not** written in a jocular, sarcastic tone. The message constitutes hearsay. Hormel does not know the source of the message, the message has not been verified, and the unknown sender has never been questioned about its intent in sending the message.

///

¹⁷ The fact that Hormel has a website at <spam.com> does not lead to the conclusion that the parties use common marketing channels; rather, this factor would weigh in Hormel's favor only if Hormel showed that “both parties use the Web as a *substantial* marketing and advertising channel” and that the parties' marks are used “in conjunction with Web-based products.” Therma-Scan, Inc. v. Thermoscan, Inc., 63 U.S.P.Q.2D 1659, 295 F.3d 623, 637 (6th Cir. 2002) (emphasis original).

7. Hormel’s “Family of Marks” Is Unrelated to Commercial Email

Recognition of a family of trademarks “is achieved when the pattern of usage of the common element is sufficient to be indicative of the origin of the family.” J&J Snack Foods Corp. v. McDonald’s Corp., 18 57 U.S.P.Q.2D 1889, 932 F.2d 1460, 1463 (Fed.Cir. 1991). The pattern of usage for the word “spam” in the context of commercial email is undeniably generic. Hormel does not sell commercial email services, nor does it sell products designed to manage or filter such email. Accordingly, Hormel cannot credibly argue that its “family of marks” extends into the sphere of commerce occupied by Registrant.

8. Registrant Has the Right to Prevent Others from Using Its Mark

As provided in 15 U.S.C. §1057(b), Registrant has the exclusive right to use the Mark SPAM ARREST for email filtering software.

9. The Potential for Confusion Is Low

Hormel sells canned meat, primarily in grocery stores. In contrast, Registrant uses a composite mark containing a term Hormel admits is generic, and uses that Mark to sell computer software exclusively over the Internet. Confusion is unlikely.

The Board should dismiss Hormel’s likelihood of confusion claim on summary judgment.

C. USE OF REGISTRANT’S MARK DOES NOT DILUTE HORMEL’S MARK

To prevail on a dilution claim, the senior user of a famous mark must “demonstrate...that the junior user’s conduct damages the senior’s interest in the mark ‘by blurring its product identification or by damaging positive associations that have attached to it.’” Jet, Inc. v. Sewage Aeration Systems, 49 U.S.P.Q.2D 1355, 165 F.3d 419, 424 (6th Cir. 1999). Blurring “occurs when another’s use of a mark creates the possibility that the mark will lose its ability to serve as a unique identifier of the plaintiff’s product . . . Tarnishment occurs when a famous mark is improperly associated with an inferior or offensive product or service.” Playboy Enterprises v. Netscape Communications Corp., 69 U.S.P.Q.2D 1417, 354 F.3d 1020, 1033 nn. 58-59 (9th Cir. 2004) (cite omitted). To withstand summary judgment,

a party must show that **actual** dilution has occurred, and not simply the likelihood of dilution. Moseley v. V Secret Catalogue, Inc., 65 U.S.P.Q.2D 1801, 537 U.S. 418, 433, 123 S.Ct. 1115, 155 L.Ed.2d. 1 (2003). Dilution does not occur unless the marks are **substantially** similar. Luigino's, Inc. v. Stouffer Corp., 50 U.S.P.Q.2D 1047, 170 F.3d 827, 832 (8th Cir. 1999). Moreover, unless the marks are **identical**, “the mere fact that consumers mentally associate the junior user’s mark with a famous mark is not sufficient to establish actionable dilution.” Moseley, supra, 537 U.S. at 433.

1. There Is No Evidence of Actual Dilution

Hormel has never produced a scintilla of evidence of actual dilution. The Mantis Survey does not show evidence of actual dilution, and no other documents or testimony of Hormel indicate actual dilution. Without proof of actual dilution, Hormel’s claim fails as a matter of law. Moseley, supra, at 433.

In Moseley, the Supreme Court held that a mere mental association of one mark with another is **not** enough to establish dilution. A mental link between the marks, however, is the **only** thing the Mantis Survey establishes:

The study...demonstrates that consumers associate the name “spam arrest” with Hormel’s SPAM product. I conclude that the use of the “spam arrest” name dilutes the distinctiveness of Hormel’ [sic] SPAM trademark.¹⁸

Under Moseley, this is not proof of dilution. In Moseley, “[t]here [was] a complete absence of evidence of any lessening of the capacity of the [famous] mark to identify and distinguish goods and services...”. Moseley, supra, at 433.

In this case, the Mantis Survey indicates only that some consumers mentally associate Hormel’s mark with Registrant’s, which the Supreme Court has held to be insufficient proof of dilution.¹⁹

¹⁸ Mantis Survey (Ex. 28), p. 9 (H08543). Gregory Carpenter’s report depends entirely on the Mantis Survey and on Carpenter’s speculation regarding **future** events, in alleging damage to Hormel’s mark. Carpenter Report (Ex. 31), pp. 4-7. Kevin Jones testified that Hormel’s blurring claim is based on “logic” and on Hormel’s expert testimony. Jones Dep. (Ex. 17), p. 105, line 10, to p. 107, line 17.

¹⁹ Moreover, Mantis concluded that Registrant’s mark has “no trademark significance” and that a mark without trademark significance **cannot** dilute a famous mark. Mantis Dep. (Ex. 14), p. 41, lines 17-23 and p. 43, line 15 to p. 44, line 12. He further claimed that the relevant standard is “likelihood of dilution” rather than the **actual** dilution discussed in

Moreover, the marks are **not** substantially similar, and consequently no dilution can take place. Finally, a vast number of journalists, computer users, lexicographers, and legislators have **already** blurred identification by using “spam” generically for ten years. It is impossible for Hormel to single out Registrant as the cause of the blurring.

2. There Is No Blurring

i. The Marks Are Not Substantially Similar, Which Precludes a Dilution Claim

In Luigino, *supra*, the court held that there was no “genuine issue for trial on whether the marks [were] similar” in a dilution case involving the marks LEAN CUISINE and LEAN ‘N TASTY. Id., 170 F.3d at 833. The court noted that to support a blurring claim, “the marks must at least be similar enough that a significant segment of the target group of customers sees the two marks as **essentially the same.**” Id. at 832 (citing McCarthy, *supra*, §24:90.1) (emphasis added). Hormel has not submitted proof that consumers see SPAM and SPAM ARREST® as “essentially the same”; the Mantis Survey only purports to show that consumers “associate” the two marks.²⁰ As a matter of law, Hormel’s evidence fails to support its dilution claim.

ii. Hormel May Not Resurrect a Generic Mark That Has Lost Its Distinctiveness

“When a trademark becomes generic...[a]n antidilution statute won’t resurrect it, since if a mark becomes generic it is no longer distinctive, as the statutes require”. Illinois High School Ass’n, *supra*, 99 F.3d at 247. SPAM has become a generic term with respect to that certain type of email. Because the mark lacks distinctiveness when used to describe email related goods and services, Hormel’s attempt to resurrect it with a dilution claim must fail. Hormel has admitted that third party use of the word “spam” has *already* made Hormel’s made less distinctive, so causation cannot fairly be

Moseley, *supra* Id., p. 104, lines 10-20.

²⁰ See also Mead Data Central, Inc. v. Toyota Motor Sales, U.S.A., Inc., 10 U.S.P.Q.2D 1961, 875 F.2d 1026, 1029 (2d Cir. 1989) (finding no substantial similarity in a dilution case involving the marks LEXIS and LEXUS); Federal Express Corp., *supra*, at *60 (another dilution case holding that “although the marks FEDERAL ESPRESSO and FEDERAL EXPRESS have some similarities, viewed in the context in which the parties use them, the marks are not similar”).

attributed to Registrant. *See* Section II.E.5, *supra*.

3. There Is No Tarnishment

i. Registrant's Product Bears No "Inferior or Offensive" Connotation

Tarnishment occurs when a mark is associated with an "inferior or offensive product or service." *See Playboy Enterprises, supra*. Registrant's Mark does not tarnish Hormel's. There is no "inferior or offensive" connotation involved in stopping unwanted email.²¹

Moreover, there is no evidence that Registrant's product is "inferior or offensive." Registrant's product **stops** unsolicited email from entering its customers' mailboxes. This is a positive thing. Hormel contends that because the generic word SPAM means something generally viewed as bad, its use to describe anti-spam software will cause consumers to think bad thoughts about Hormel's product. Hormel's argument is similar to a claim that "cold remedy" is a pejorative term because it is associated with a loathsome illness. Even if this were true – and Hormel has not offered any proof that it is true – it would be irrelevant because Registrant's product is not "inferior or offensive"; rather, it is designed to **block** something that is "inferior or offensive" and which happens to bear the same name as Hormel's product.

ii. Hormel's Product Enjoys a Less-Than-Sterling Reputation

"The sine qua non of tarnishment is a finding that plaintiff's mark will suffer negative associations through defendant's use." *Hormel Foods, supra*, at 507. Accordingly, if Hormel's product **already** suffered negative associations before Registrant's product existed, Registrant's use of the word "spam" cannot be the cause of those associations. Hormel's product has, in fact, been the subject of jokes for decades. *Id.*, at 501 ("(C)ountless jokes have played off the public's unfounded suspicion that SPAM is a product of less than savory ingredients. For example, in one episode of the television cartoon *Duckman*, *Duckman* is shown discovering 'the secret ingredient to SPAM' as he

²¹ See Meyer Dep. (Ex. 16), p. 80, line 10 to p. 81, line 2 (tarnishment **might** occur if there were "something wrong" with Registrant's product, but Hormel has no evidence that there is anything wrong with it).

looks on at ‘Murray’s Incontinent Camel Farm.’”). There is a great deal of evidence that if consumers have a negative opinion of Hormel’s product, that has nothing to do with Registrant. *See* Exs. 21-28.

As a matter of law, Hormel cannot prove blurring or tarnishment. Accordingly, the Board should dismiss Hormel’s dilution claim on summary judgment.

D. REGISTRANT’S MARK IS NEITHER GENERIC NOR DESCRIPTIVE

The Trademark Office’s decision to place Registrant’s Mark on the Principal Register is “powerful evidence that the registered mark is suggestive and not merely descriptive.” RFE Indus. Inc. v. SPM Corp., 41 U.S.P.Q.2D 1626, 105 F.3d 923, 926 (4th Cir. 1997). Accordingly, to withstand summary judgment Hormel must introduce sufficient evidence to rebut the presumption that the Mark is suggestive. There is no such evidence.

1. Registrant’s Mark Is Not the Generic Name for Any Product or Service

A generic term indicates what something is, while a trademark identifies a specific product within a defined category. *See* McCarthy, *supra*, §12:1. The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question. *See, e.g., Department of Justice, Federal Bureau of Investigation v. Calspan Corp.*, 198 U.S.P.Q. 147, 149, 578 F.2d 295, 299 (CCPA 1978).

“Determining whether a mark is generic therefore involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered or retained on the register understood by the relevant public primarily to refer to that genus of goods or services?” H. Marvin Ginn Corp. v. International Asso. of Fire Chiefs, Inc., 228 U.S.P.Q. 528, 782 F.2d 987, 990 (Fed. Cir. 1986). When examining a mark for genericness, one must evaluate the mark as a whole instead of “looking to its constituent parts individually.” Committee for Idaho’s High Desert, Inc. v. Yost, 39 U.S.P.Q.2D 1705, 92 F.3d 814, 821 (9th Cir. 1996).

SPAM ARREST® is not generic. The genus of goods or services is spam filtering software.

The public does not understand “Spam Arrest” to refer primarily to spam filtering software, but rather

as the identifier of one source of spam filtering software. The Yost court upheld a finding of no genericness in a case where it was “not at all ‘difficult to imagine another term of reasonable conciseness and clarity by which the public [could] refer[]’ to [the] goods and services”. Id. at 822 (cite omitted). In this case, it is easy to think of a number of generic names for software that filters out spam: “anti-spam”, “spam-blocking software”, “spam eliminating software”, etc. The public does not use “spam arrest” as a generic name for software. Rather, a search for the term “spam arrest” on Internet search engines Google and Yahoo both return hundreds of search results, almost all of which refer to Registrant itself, some of which refer to criminal arrests against spammers (*e.g.*, “Kilgore Announces Nation’s First Felony Spam Arrest”), and none of which refer to the genus of goods (*i.e.*, spam filtering software). (Declaration of Sara Hill, ¶ 2.) Accordingly, the Board should dismiss Hormel’s claim that the Mark is generic.

2. Registrant’s Mark Is Not “Merely Descriptive”

The Trademark Office’s registration of the Mark without proof of secondary meaning “affords a rebuttable presumption that the [M]ark is more than merely descriptive.” Arrow Fastener Co. v. Stanley Works, 35 U.S.P.Q.2D 1449, 59 F.3d 384, 393 (2d Cir. 1995) (cite omitted). Hormel cannot overcome this presumption. The Mark passes the tests that determine whether a mark is suggestive.

i. Consumers Must Exercise Imagination to Determine What Registrant’s Product Is

A term is *prima facie* merely descriptive if it conveys to the relevant public an immediate idea of a significant feature, attribute or function of a product or service. In re Conductive Systems, Inc., 220 USPQ 84 (TTAB 1983). If some imagination is required to reach from the mark itself to a description of the nature of the services the mark is then not merely descriptive; rather, it is suggestive. In re MBNA America Bank, 67 U.S.P.Q.2D 1778, 340 F.3d 1328, 1332 (Fed. Cir. 2003).

ROACH MOTEL, used for insect traps, is an example of a mark that requires imagination to determine the nature of the underlying goods. “While roaches may live in some motels against the will of the owners, motels are surely not built for roaches to live in. Hence the mark is fanciful in

conception. Indeed, its very incongruity is what catches one’s attention.” American Home Products Corp. v. Johnson Chemical Co., 200 U.S.P.Q.2D 417, 589 F.2d 103, 106 (2d Cir. 1978).

On a similar note, while some senders of unwanted email may be subject to criminal penalties, policemen do not cruise the streets seeking to “arrest” unwanted email. SPAM ARREST, like ROACH MOTEL, is an incongruous mark that does not directly describe the goods for which it is used. Indeed, the Trademark Office routinely grants registration of marks containing a generic term followed by the word “ARREST” to suggest “to stop”. See Ex. 32. Accordingly, The Trademark Office generally finds such marks suggestive, and not merely descriptive.

Moreover, the Mark has more than one possible meaning – for example, it could refer to software used by law enforcement agencies to prevent illegal “spamming”; or it could refer a service of harvesting spam messages for persons looking for products marketed by spam. There is enough ambiguity to require some thought and imagination before one comprehends that the mark designates a product designed to eliminate spam. Thus, the mark is not “merely descriptive.”

ii. Registrant’s Competitors Do Not Need the Mark to Describe Their Products

One rationale behind denying Principal Registration to “merely descriptive” marks is that “[n]o one seller should be allowed the exclusive right to describe a product by its primary characteristic, and thus preempt or limit competitors’ use of the term to describe their own products.” McCarthy, *supra*, §11:18. Courts apply the “need test” to determine whether competitors will need to use a certain term to describe their products. “If the message conveyed by the mark about the goods and services is so direct and clear that competing sellers” would probably need the term to describe their own services, then the mark is descriptive. Rodeo Collection, Ltd. v. West Seventh, 2 U.S.P.Q.2D 1204, 812 F.2d 1215, 1218 (9th Cir. 1987). The two tests are related, because suggestive marks are less likely to be needed by competitors to describe their services. Id.

The court in Minnesota Mining & Mfg. Co. v. Johnson & Johnson, 172 U.S.P.Q.2D 491, 454 F.2d 1179, 1180 (C.C.P.A. 1972) held that registration of the mark SKINVISIBLE for transparent

medical adhesive tape would not deprive competitors of “any right to use the language in the normal way” to describe their products. Similarly, there is no evidence that any of Registrant’s competitors need the term “spam arrest” to describe their products. As discussed above, the Mark does not convey a message about Registrant’s product directly, but requires the use of thought and imagination. Accordingly, it is unlikely that Registrant’s competitors will need to use the Mark.

Hormel has no evidence sufficient to rebut the presumption that the Mark is **not** descriptive. Accordingly, the Board should dismiss Hormel’s descriptiveness claim on summary judgment.

E. HORMEL HAS ACQUIESCED IN THE GENERIC USE OF “SPAM” AND IS ESTOPPED FROM CLAIMING TRADEMARK RIGHTS IN THE GENERIC TERM

Hormel has acquiesced to the generic use of the term in its public “Statement on SPAM Use” and in letters, and therefore cannot prevent others from using the term in its generic sense.

Acquiescence occurs when 1) a party actively represents that it will not assert a right or claim, 2) the delay between the active representation and the assertion of the claim is inexcusable, and 3) the delay causes the registrant undue prejudice. Coach House Restaurant, Inc. v. Coach and Six Restaurants, Inc., 19 U.S.P.Q.2D 1401, 934 F.2d 1551, 1558 (11th Cir. 1991). The Lanham Act provides that “in all inter partes proceedings equitable principles of laches, estoppel, and acquiescence, where applicable may be considered and applied.” Loglan Institute, Inc. v. Logical Language Group, Inc., 22 U.S.P.Q.2D 1531, 962 F.2d 1038, 1042 (Fed.Cir. 1992) (citing 15 U.S.C. §1069).

A waiver is the relinquishment of a known right. Sambo’s Restaurants, Inc. v. Ann Arbor, 214 U.S.P.Q. 775, 663 F.2d 686, 693 (6th Cir. 1981). By permitting others to use the “slang term spam”, Hormel allowed the term to become generic with respect to that certain type of email and relinquished the right to prevent such use.²² Although Hormel objects to the use of “spam” in trademarks, the whole point of designating a word as generic is to allow **everyone** to use it in commerce. A word is not

²² See Illinois High School Ass’n, *supra*, at 246: “A serious trademark holder is assiduous in endeavoring to convince dictionary editors, magazine and newspaper editors, journalists and columnists, judges, and other lexicographically influential persons to avoid using his trademark to denote anything other than the trademarked good or service.” See also Jones Dep. (Ex. 17), p. 70, lines 10-15 (Hormel did nothing proactive to urge the use of a term other than “spam” to describe that type of email).

generic if one party, such as Hormel, may prevent others from using it to describe their goods and services, even as part of a trademark. Hormel allowed the term “spam” to acquire the common meaning of unsolicited commercial email, but now Hormel wants to prevent others from using this generic term to describe their goods and services. Hormel allowed “spam” to enter the public domain. It cannot now prevent the public from using the term in commerce to refer to email-related goods and services.

Hormel acquiesced to third party use of the generic term “spam”. Its own “Statement on SPAM Use” indicates that Hormel will not assert a claim when others use “spam” as a “slang term” to describe unsolicited commercial email. Hormel issued the Statement on SPAM Use well before Registrant first used its Mark, and waited until after Registrant had applied to register the Mark before asserting the right to prohibit use of the word “spam” to identify unsolicited commercial email. This delay caused Registrant undue prejudice – if Hormel had not acquiesced in the Mark’s generic use, but instead had actively policed its use, the Mark would not have become generic, and Registrant would not have used the generic term as part of its Mark. (Elliott Decl. ¶ 6.)

Hormel has waived its rights in the term “spam” with respect to that certain type of email, and is estopped from asserting the rights it has voluntarily relinquished.

IV. CONCLUSION

“Spam” is now a generic term for a category of email. Trademark law, public policy, and Hormel’s own acquiescence all support Registrant’s right to use that generic term in commerce. There is no credible evidence of likelihood of confusion, nor has Hormel produced any evidence of actual dilution, as required by the Supreme Court. Hormel’s product was offensive to many people decades before Registrant came into existence, which eliminates any reasonable claim of tarnishment. Finally, Hormel cannot rebut the strong presumption in favor of the Mark’s suggestiveness. As a matter of law, all of Hormel’s claims fail.

///

Therefore, Registrant respectfully requests that the Board dismiss Petitioners' cancellation proceeding and hold that the Mark may remain on the Principal Register of the United States Trademark Office.

Dated this 27th day of May, 2004.

Respectfully Submitted

**NEWMAN & NEWMAN,
ATTORNEYS AT LAW, LLP**

By:



Derek A. Newman
Venkat Balasubramani
Randall Moeller

505 Fifth Avenue South, Suite 610
Seattle, WA 98104
(206) 274-2800 Telephone
(206) 274-2801 Facsimile
Attorneys for Registrant

PROOF OF SERVICE

The person whose signature appears below confirms that **REGISTRANT'S MOTION FOR SUMMARY JUDGMENT** (the attached document) has been served upon the other parties as set forth herein. The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service, "Express Mail Post Office to Addressee" in an envelope addressed to:

WILLIAM D. SHULTZ
Merchant & Gould P.C.
P.O. Box 2910
Minneapolis, MN 55402
612/332-5300

Express Mail mailing label number _____

Diana Au

Diana Au

EXHIBIT 1

Dirk Johnson, *A Feast from the Can: Honors for Spam at 50*, N.Y. TIMES, Jul. 5, 1987, at 12

A Feast From the Can: Honors for Spam at 50

By DIRK JOHNSON

Special to The New York Times

AUSTIN, Minn., July 4 — Revelers here are paying tribute this weekend to a slice of Americana that somehow never made its way into a Norman Rockwell painting.

Spam, the canned meat product that was fed by the frigate-load to GI's in World War II and that has served as the butt of jokes by countless comedians since then, turns 50 this year. And this southern Minnesota town where it was born is having a three-day celebration.

"It's truly Spamdemonium here," said John Myers, a gourmet chef who came from Austin, Tex., to be a judge in the Spamo-rama cooking contest, broadcast live on local radio.

T-Shirts Pro and Con

The festival, sponsored by the Chamber of Commerce as part of the town's Fourth of July activities, includes a "Salute to Spam" airshow, the Jaycees' Spam 'n' Hotcakes breakfast and an art retrospective, "Celebrating 50 years of Spam."

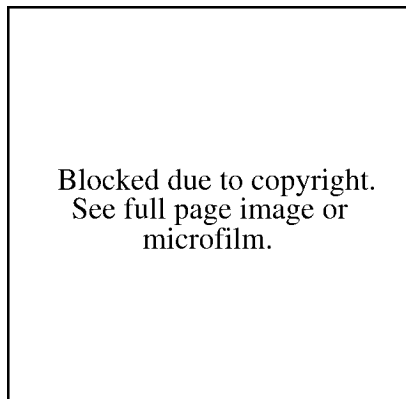
All around town, people were wearing blue T-shirts with bright yellow "Spam" lettering and trading stories about their first taste of the product, made by Geo. Hormel & Company, the Austin-based company.

But along with Spam T-shirts were those that urged, "Cram Your Spam."

The festival comes nearly a year after a bitter 13-month strike at the Hormel plant, and, although workers approved a new contract last September, several hundred Hormel employees continue to picket the company and remain out of work. They erected a "tent city" at the edge of town as a symbol of their protest.

"Hormel has co-opted the Fourth of July holiday and turned it into a glorification of dead pig meat in a can," said Jim Guyette, who was removed as president of Local P-9 by the United Food and Commercial Workers international union for refusing to end the strike.

But festival organizers said most Austin residents wanted to put the labor strife behind them, that the



The New York Times/July 5, 1987
The festival sponsors say Spam is part of the history of Austin.

celebration and its humor gave people an opportunity to feel good about the town.

"Spam is a part of the history of Austin," said Sharon Piller, a Chamber of Commerce spokeswoman. "And people just don't want to hear anything negative about the community anymore."

More than 4 billion cans of Spam, made of pork shoulder and ham, have been produced since 1937, and today it is selling better than ever, holding 75 percent of the market for canned luncheon meat, said Allan Krejci, a spokesman for Hormel.

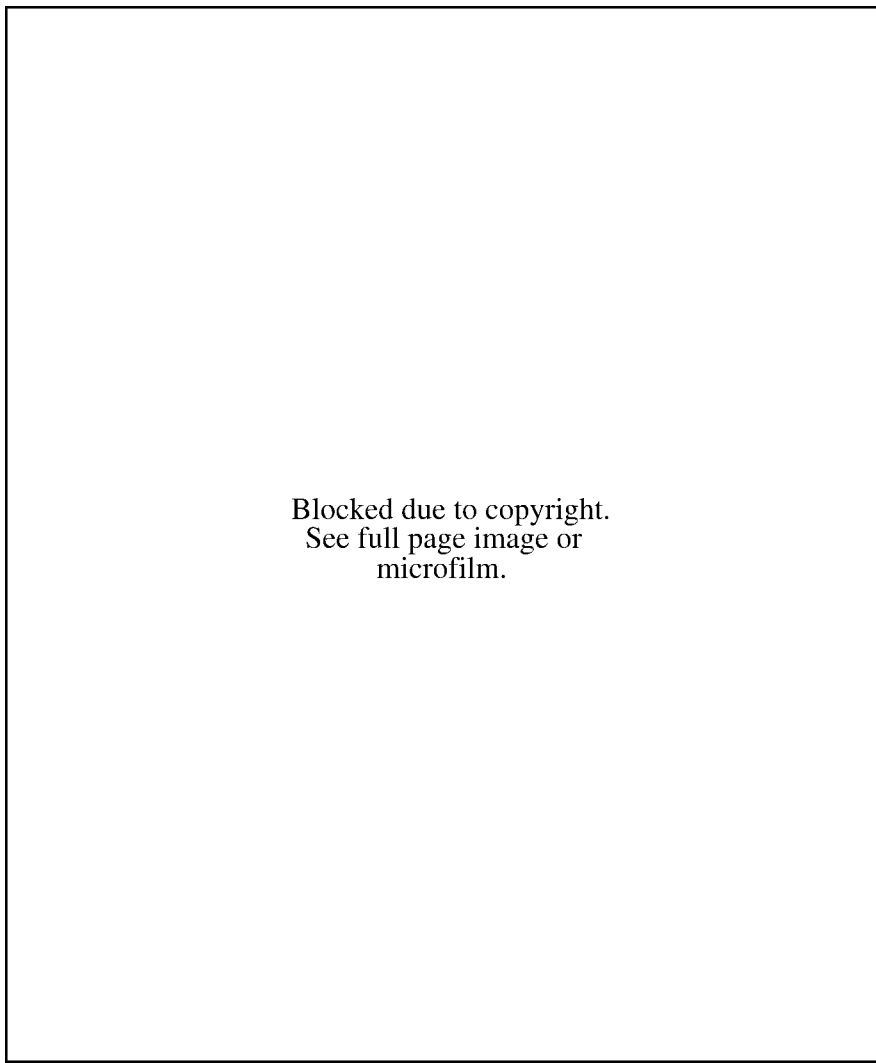
More than three cans of Spam are eaten every second, he said.

"I've been eating Spam ever since they started making it," said Wesley Glynn, a 75-year-old Austin resident who recalled the days he could buy a can for 28 cents, now priced in the stores here at about \$1.50.

Cook's Prize: Trip and 144 Cans

"You know, when some products get popular they start cutting out ingredients and making it cheaper," he said. "Not Spam. It tastes just like it always did."

In the cooking contest, top honors went to Jerry Dahlback for his Mexican Spam Bake, a casserole consisting of pancake mix, milk, eggs, green



The New York Times
Gloria and John Weis with some of the 850 crosses on their lawn representing jobs lost at the Geo. Hormel & Company plant. Mr. Weis worked for the company 40 years before retiring on Wednesday.

onions, chili powder, garlic, cheddar cheese — and Spam, of course.

"It's good, but I usually like it straight out of the can on white bread," said Mr. Dahlback, a 38-year-old computer repairman.

The prize was a trip for two to Las Vegas, along with 144 cans of Spam, which the contest sponsors, the local newspaper and radio station, considered to be a year's supply. (That's nearly five ounces a day.)

But before Las Vegas, Mr. Dahl-

back will be traveling to the East Coast, where he has been beckoned by television interview programs.

"I was just a plain, ordinary guy," he said. "And now — instant celebrity."

Letter From Eisenhower

Spam has been a source of humor for the British comedy troupe Monty Python, which sang about "wonderful Spam, lovely Spam," and for television's David Letterman, who has joked about "Spam-on-a-rope," for on-the-go people who want to eat and shower at the same time.

"I ate my share of Spam along with millions of other soldiers," Dwight D. Eisenhower wrote to Hormel in 1966. "I'll even confess to a few unkind remarks about it — uttered during the strain of battle, you understand. But as former Commander in Chief, I believe I can still forgive you your only sin: sending us so much of it."

As part of the celebration, many restaurants modified their menus; Down at Tolly's restaurant, today's soup of the day was Spam Chowder.

But Spam served also as food for the soul, and the art retrospective offered a gallery full of Spam culture.

Lots of Recipes

Mary Ann Peterson, for instance, presented her painting of those creatures without which there would be no Spam celebration, indeed no Spam — hogs. "They posed for me out in the backyard," said Mrs. Peterson, who lives on a farm in Dexter, Minn.

The paintings were on sale, some for as much as \$500, and would serve as souvenirs of the Spam festival. But most people simply headed home with a full belly and some new recipes for such fare as Cheesy Spam Olé, Spam Veggie Pizza and Spam Eggs au Gratin.

Mr. Myers, the cooking judge from Texas, said he had even prepared Spam Cordon Bleu. But he had a confession: "This was the first time I've eaten Spam in 15 years. I can't stand the stuff."

Blocked due to copyright.
See full page image or
microfilm.

EXHIBIT 2

Becky Ebenkamp, *Haute Hormel*, BRANDWEEK, Feb. 3, 1997, at 25



Seattle Public Library

Gen'l Reference Ctr Gold



Article 4 of 5



BRANDWEEK.COM

Print

 Brandweek, Feb 3, 1997 v38 n5 p25(2)

Mark

Haute Hormel. (the popularity of Spam canned meat in Hawaii) *Becky Ebenkamp.*

Abstract: Hawaii leads the US in consumption of Spam, Hormel's canned meat product, at over four cans annually per person. Spam, along with other canned products, became popular as a result of the need to import food into Hawaii during World War II. Spam's saltiness appeals to the local tastes, it is used in many recipes, and it is honored by an annual cook-off on the island of Maui.

Full Text: COPYRIGHT 1997 ADWEEK L.P.

New York loves its bagels, New Orleans its gumbo, Chicago its pizza and Hawaii its Spam. Yup, the 50th state is crazy for that gelatinous pork in a can with a shelf life that's probably longer than the shelves. Boasting recipes for Spam & Eggs and Spam Musubi (rice ball) on menus at restaurants like the Ala Moana Pol Bowl, and known for selling Spam Sushi right off the counter at convenience stores, Hawaii is the nation's biggest per-capita Spam consumer, with an annual consumption rate of more than four cans per Hawaiian, according to Spam marketer Hormel. A Spam cook-off is held each year on the island of Maui. The Spam Jam in Austin, Minn., Hormel's home town, is the only official Hormel-sponsored event, but in Hawaii, "You see it chopped up in everything," said Suzan Harada, who teaches Hawaiian culture and history at Kapiolani Community College in Honolulu. If you're thinking that all this came about because Hormel devised some intricate, locally tailored marketing plan to make the brand a Hawaiian dietary staple, think again. A Hormel representative said Spam is not marketed differently or any more aggressively in Hawaii than in other parts of the U.S. (Hormel brand managers, Brandweek was told, were not allowed to give interviews.) Rather, Spam gained significance in Hawaii because of a confluence of economic and historical happenstance.



Harada credits trade with foreigners in the 1800s as a precursor to Spam's popularity in Hawaii. Because pigs and cattle weren't native to the islands, meat was coveted and became a popular trade

item. Spam was introduced in 1937, and it seemed destined to mesh with the Hawaiian diet. Polynesians only have two basic taste palates--salty and sweet, Harada said. The Japanese share this basic palate, Harada said, noting Spam's popularity with Asian tourists who today visit the islands in high numbers. But Spam's real legacy began after the attack on Pearl Harbor. A very self-sufficient culture until then, Hawaii now found itself unable to meet consumption demands with its local resources. Aid was received from the U.S. military in the form of millions of tons of Spam, enlisted along with Vienna sausages, tuna and other non-rationed canned meats to feed Hawaiians and soldiers.

According to Harada, wartime conditioning for non-rationed foods shot Spam and other canned meats to an elevated status, even after access to fresh meats became available. The high consumption of Spam today stems from this perception. We find it amusing that Spam is considered tacky on the mainland, Harada said.

Love of Spam is so ingrained in Hawaiian culture that even local superstitions can't squelch its power. It's long been considered bad luck to carry pork on Oahu's Pali Highway, a mountainous main route that spans the island. But this doesn't deter Spam's suppliers.

We know for a fact that the drivers don't alter their course because of Spam on the truck; to do that would triple their driving time, says Hoagy Gamble, president of food broker L. H. Gamble, told a Spam-fan's unofficial Web site. But there hasn't been any trouble. I think it has something to do with the integrity of the container; the can keeps all that wonderful pork sealed up nice and tight and deflects bad luck.

CANNERY ISLANDS

Hawaii's Visitors Council named some other products that are vastly popular in the Aloha State. Harkening to the state's Spam phenomenon (accompanying story), Libby's canned meats and vegetables topped the list, as canned products enjoy a big sales legacy likely born of World War-time consumption habits.	<ul style="list-style-type: none"> * Libby's Vienna Sausages * Libby's Corned Beef Hash * Pork 'n' Beans (no particular brand) * Libby's Canned Corn * Ragu and Hunt's Pasta Sauce * Honey Nut Cheerions * Granny Goose Shrimp Chips * Oreos
---	--

Downloads

GOING PRIVATE: THE TALLY Moscow is the most expensive Eastern European capital for Western business executives, and the cost of doing business there is nearly three times as high as in London, according to a DHL Worldwide Express survey. DHL compiled its Price of Business Index through its offices in 14 major Central and Eastern European cities. Other findings:

* Phone installation is a staggering 2,500 in Moscow, while Bucharest,

Romania, rates run around 50.

* The passing rate for a bilingual secretary ranges from 500 in Kiev, Ukraine, to 50 in Kishinev, Moldova. If you want to buy that secretary a desk, pick it up in Zagreb, Croatia, for a whopping 700, or Bratislava, Slovakia, for just 200.

* Expect to pay 1,250 a month for a two-bedroom apartment in Warsaw, or try Sofia, Bulgaria, where similar digs average 250.

* But to kick back in that apartment, don't have a drink in Sofia--a single malt whiskey there goes for 15. Your best bet is in Tirana, Albania, where it'll set you back a meager 1.50, one-tenth the cost.

SITUATE US

Help us understand your corner of the global market. Contact Matthew or Becky at mgrimm@brandweek.com or bebenkamp@brandweek.com

SPAM ACROSS THE WATERS

The U.K. and South Korea are the largest of Spam's 50 foreign markets. Spam's shelf-stability helped popularize the brand in Britain during World War II. Even Margaret Thatcher recalled serving the wartime delicacy with a salad of lettuce, tomatoes and peaches in 1943 on Boxing Day (Dec. 26). In South Korea, Spam is so huge that imitations like Dak, Plumrose and Lo-Spam have cropped up to meet consumer demand. Spam is also a highly cherished gift item that can be purchased in a stylish nine-pack. Hormel exports 10 million cans of Spam annually and ships another 20 million out of overseas plants.

Products: Spam (Meat) - Usage

Bus.Coll.: 99U1876

Article A19093463

View other articles linked to these subjects:

Canned Foods Industry

[View](#)

170 Newspaper references

[View](#)

3184 Periodical references

Canned Foods Industry Product Information

[View](#)

156 Periodical references

[See also](#)

117 other subdivisions

Canned Meat

[View](#) 3 Newspaper references

[View](#) 258 Periodical references

Canned Meat Usage

[See also](#) 28 other subdivisions

Hawaii

[View](#) 1 Encyclopedia excerpt

[View](#) 8 Reference book excerpts

[View](#) 1066 Newspaper references

[View](#) 7785 Periodical references

Hawaii Food and Nutrition

[View](#) 21 Periodical references

[See also](#) 107 other subdivisions

Hormel Foods Corp.

[View](#) 78 Newspaper references

[View](#) 432 Periodical references

Hormel Foods Corp. Product Information

[View](#) 50 Periodical references

[See also](#) 44 other subdivisions

Print, e mail, and other retrieval options

[Browser Print](#) — *Full Content* —

Reformat article with full size graphics for printing (approximately 3 pages) from your browser. To return to InfoTrac, use the *back* function of your browser.

[Acrobat Reader](#) — *Full Content* —

Retrieve article in originally published format for viewing and printing from Acrobat™ Reader. Please allow a few minutes for the retrieval operation to complete (2 full pages PDF)

E Mail Delivery — *Text Only* —

We will send a plain text version to the e-mail address you enter (e.g. *bettyg@library.com*).

E-Mail Address:

Subject
(defaults to title):

[Submit E-mail Request](#)



Article 4 of 5



[Copyright and Terms of Use](#)

EXHIBIT 3

Mikel Stettner, *About Spam*, N.Y. TIMES, Jul. 24, 1994, at SM4

Letters

Our investigation of Spam, "eulogizing the ubiquitous luncheon meat that darkened the life of every G.I. during World War II," inspired dozens of letter writers to share Spam war stories, many of them almost fond. One Army Air Corps veteran, calling himself "the all-time expert on Spam," claims he ate 723 Spam meals during a 22-month period of the war.

ABOUT SPAM

As a soldier in World War II, I crossed the Atlantic on the Queen Elizabeth ("More Than You Wanted to Know About Spam," by Judith Stone, July 3). Every morning for the eight days it took to cross, we were served Spam for breakfast. On the seventh morning, I had my fill and asked the British steward if he couldn't serve us something other than Spam. He replied: "You Yanks invented it. Now eat it!"

MIKEL STETTNER
West Orange, N.J.

EXHIBIT 4

Hana Stranska, *Untitled Letter to the Editor*, N.Y. TIMES, Jul. 24, 1994, at SM4

Letters

Margaret Thatcher's recollection of Spam as a wartime delicacy may well be of the days when it first reached Britain in World War II. My memories, however, during the later days of the war, are of eagerly anticipated meals in restaurants where the waiter would slap a lengthy menu on the table, then, after we had made our selections, come back and announce: "Spam only. There's a war on, you know!"

I don't mean to belittle Spam, though. What would we have eaten if it hadn't been available? To this day, I keep a tin in my refrigerator.

HANA STRANSKA
Jackson Heights, Queens

EXHIBIT 5

2 THE COMPLETE MONTY PYTHON'S FLYING CIRCUS: ALL THE WORDS 27-29 (Pantheon, 1989)

THE COMPLETE
MONTY
PYTHON'S
FLYING
CIRCUS

ALL THE WORDS

VOLUME TWO

Written and Conceived by

Graham Chapman

John Cleese

Terry Gilliam

Eric Idle

Terry Jones

Michael Palin

PANTHEON BOOKS

NEW YORK

Cut to a café. All the customers are Vikings. Mr and Mrs Bun enter – downwards (on wires).

Mr Bun (ERIC) Morning.

Waitress (TERRY J) Morning.

Mr Bun What have you got, then?

Waitress Well there's egg and bacon; egg, sausage and bacon; egg and spam; egg, bacon and spam; egg, bacon, sausage and spam; spam, bacon, sausage and spam; spam, egg, spam, spam, bacon and spam; spam, spam, spam, egg and spam; spam, spam, spam, spam, spam, spam, baked beans, spam, spam, spam, and spam; or lobster thermidor aux crevettes with a mornay sauce garnished with truffle pâté, brandy and a fried egg on top and spam.

Mrs Bun (GRAHAM) Have you got anything without spam in it?

Waitress Well, there's spam, egg, sausage and spam. That's not got *much* spam in it.

Mrs Bun I don't want *any* spam.

Mr Bun Why can't she have egg, bacon, spam and sausage?

Mrs Bun That's got spam in it!

Mr Bun Not as much as spam, egg, sausage and spam.

Mrs Bun Look, could I have egg, bacon, spam and sausage without the spam.

Waitress Uuuuuuggggh!

Mrs Bun What d'you mean uuugggh! I don't like spam.

Vikings (*singing*) Spam, spam, spam, spam, spam . . . spam, spam, spam, spam . . . lovely spam, wonderful spam . . .

Brief stock shot of a Viking ship.

Waitress Shut up. Shut up! Shut up! You can't have egg, bacon, spam and sausage without the spam.

Mrs Bun Why not!

Waitress No, it wouldn't be egg, bacon, spam and sausage, would it.

Mrs Bun I don't like spam!

Mr Bun Don't make a fuss, dear. I'll have your spam. I love it. I'm having spam, spam, spam, spam, spam . . .

Vikings (*singing*) Spam, spam, spam, spam . . .

Mr Bun . . . baked beans, spam, spam and spam.

Waitress Baked beans are off.

Mr Bun Well can I have spam instead?

Waitress You mean spam, spam, spam, spam, spam, spam, spam, spam, spam, spam?

Vikings (*still singing*) Spam, spam, spam, spam . . . (*etc.*)

Mr Bun Yes.

Waitress Arrggh!

Vikings . . . lovely spam, wonderful, spam.

Waitress Shut up! Shut up!

The Vikings shut up momentarily. Enter the Hungarian.

Hungarian Great boobies honeybun, my lower intestine is full of spam, egg, spam, bacon, spam, tomato, spam . . .

Vikings (*starting up again*) Spam, spam, spam, spam . . .

Waitress Shut up.

A policeman rushes in and bundles the Hungarian out.

Hungarian My nipples explode . . .

Cut to a historian.

SUPERIMPOSED CAPTION: 'A HISTORIAN'

Historian (MICHAEL) Another great Viking victory was at the Green Midget café at Bromley. Once again the Viking strategy was the same. They sailed from these fiords here, (*indicating a map with arrows on it*) assembled at Trondheim and waited for the strong north-easterly winds to blow their oaken galleys to England whence they sailed on May 23rd. Once in Bromley they assembled in the Green Midget café and spam selecting a spam particular spam item from the spam menu would spam, spam, spam, spam, spam . . .

The backdrop behind him rises to reveal the café again. The Vikings start singing again and the historian conducts them.

Vikings (*singing*) Spam, spam, spam, spam, spam, lovely spam, wonderful spam. Lovely spam wonderful spam . . .

Mr and Mrs Bun rise slowly in the air.

SUPERIMPOSED CAPTION: 'IN 1970 MONTY PYTHON'S FLYING CIRCUS LAY IN RUINS, AND THEN THE WORDS ON THE SCREEN SAID:'

Fade out and roll credits, which read:

MONTY PYTHON'S FLYING CIRCUS
WAS CONCEIVED, WRITTEN AND SPAM PERFORMED BY
SPAM TERRY JONES
MICHAEL SPAM PALIN
JOHN SPAM JOHN SPAM
JOHN SPAM CLEESE
GRAHAM SPAM SPAM
SPAM CHAPMAN
ERIC SPAM EGG AND
CHIPS IDLE
TERRY SPAM SAUSAGE SPAM
EGG SPAM GILLIAM
ALSO APPEARING ON TOAST
THE FRED TOMLINSON SPAM EGG
CHIPS AND SINGERS
RESEARCH PATRICIA HOULIHAN AND SAUSAGE

MAKE-UP PENNY PENNY PENNY AND SPAM NORTON
COSTUMES EGG BAKED BEANS SAUSAGE AND TOMATO, OH, AND
HAZEL PETHIG TOO

ANIMATIONS BY TERRY (EGG ON FACE) GILLIAM
FILM CAMERAMAN JAMES (SPAM SAUSAGE EGG AND TOMATO)
BALFOUR (NOT SUNDAYS)

FILM EDITOR RAY (FRIED SLICE AND GOLDEN THREE DELICIOUS)
MILLICHOPE (SPAM EXTRA)

SOUND CHIPS SAUSAGE LIVERWURST, PHEASANT, SPAM,
NEWSAGENTS, CHIPS, AND PETER ROSE

LIGHTING OTIS (SPAM'S OFF DEAR) EDDY

DESIGNER ROBERT ROBERT ROBERT ROBERT BERK AND TOMATO

PRODUCED BY IAN (MIXED GRILL) MACNAUGHTON 7/6d

BBC SPAM TV

SERVICE NOT INCLUDED

Voice Over (MICHAEL) Haagbard Etheldronga and his Viking hordes are currently appearing in 'Grin and Pillage it' at the Jodrell Theatre, Colwyn Bay. 'The Dirty Hungarian Phrase Book' is available from Her Majesty's Stationery Office, price – a kiss on the bum.

Fade out. Fade in Karl Marx and Che Guevara lying post-coitally in bed. Karl switches off the light.

EXHIBIT 6

Charles Arthur, *How to Turn Spam into Cash on the Internet*, NEW SCIENTIST, Oct. 22, 1994, at 23



Seattle Public Library

Gen'l Reference Ctr Gold



Article 2 of 2

*ew Scientist*, Oct 22, 1994 v144 n1948 p23(1)

Mark

How to turn spam into cash on the Internet. *Charles Arthur.*



Print

Abstract: Long-term users of the Internet are protesting against Lawrence Canter and Martha Siegel's *How to Make a Fortune on the Information Superhighway* as it commercializes the information superhighway. The book explains the advantages of posting advertising messages to several newsgroups, a process known as spamming. The users resent having to pay for messages that are irrelevant and feel that spamming is a violation of the unofficial ethical code of the Internet.

Products: Internet - Usage

Named Works: *How to Make a Fortune on the Information Superhighway* (Book) - Criticism and interpretation

Article A16505030

View other articles linked to these subjects:

New Scientist, Oct 22, 1994

other articles in this issue

Print, e mail, and other retrieval options

Browser Print — *Abstract* —

Reformat for printing (approximately 1 page) from your browser. To return to InfoTrac, use the *back* function of your browser.

E Mail Delivery — *Abstract Only* —

We will send a plain text version to the e-mail address you enter (e.g. *bettyg@library.com*).

E-Mail Address: Subject
(defaults to title):



Article 2 of 2



[Copyright and Terms of Use](#)

EXHIBIT 7

Gerald Parshall, *Buzzwords: The Language That Will Shape Our World in 1996*, U.S. NEWS AND WORLD REPORT, Dec. 25, 1995, at 86



Seattle Public Library

Gen'l Reference Ctr Gold



Article 220 of 228


 U.S. News and World Report, Dec 25, 1995 v119 n25 p86(2)

Mark

Keywords: the language that will shape our world in 1996. (Special Double Issue: Outlook 1996) *Gerald arshall.*

 Print

Abstract: Terms that will be heard more in 1996 include the anxious class, referring to the middle class concerned about money. Cross-functional, electronic sweatshop, fright mail, home meal replacement, mouse potato, netspeak and others are also defined.

Full Text: COPYRIGHT 1995 U.S. News and World Report, Inc.

The middle class in America, beset by static income levels and rising insecurity for more than two decades. The term was coined by Secretary of Labor Robert Reich, who belongs to another anxious class--Clinton administration officials who must explain what became of the president's 1992 pledge to play Sir Lancelot to the middle class's Guinevere.

ASTROTURF LOBBYING. Trying to influence lawmakers with a counterfeit display of grass-roots opinion. Special interests deluge legislators with Mailgrams ostensibly sent by constituents, sometimes getting constituents' permission, sometimes not. The practice is the spiritual descendant of voting the cemeteries, an exercise of the franchise perfected by big-city machines in days of yore.

CROSS-FUNCTIONAL. A worker who must perform a variety of duties in a company so downsized that it is undermanned, underwomanned and overwhelmed. With this trend accelerating fast, cross-functionals will have even more reason to be cross in 1996.

DOLEFUL. An adjective meaning sorrowful or mournful, a condition that could afflict moderate Republicans at intervals throughout the year. See Powellmania.

ELECTRONIC SWEATSHOP. A workplace in which managers use technology to monitor individual productivity. The same computers on which employees perform such routine tasks as making airline reservations or recording credit card purchases can tell the boss who is swift and who is poky. Sweatshop workers of old lived at risk of heatstroke; today, they prosper or perish by keystroke.

FRIGHT MAIL. Special-interest letters that seek to arouse fears of a loss of benefits or of some other precious asset (e.g., a pure environment or untrammled property rights) at the hands of evil forces (big business in one scenario, federal bureaucrats in another). The object is to raise funds or to energize the faithful. In any election year, fright mail hatches more hobgoblins than Stephen King.

HOME MEAL REPLACEMENT. An ungainly new name for an old idea. In a quest to catch the next promotional wave, the restaurant industry is buzzing about home meal replacement. Although it is sometimes more upscale with gourmet touches, the product is at bottom what a simpler age called takeout. Not to be confused with a mere meal replacement, a diet drink touted as a meal in itself.

KOMBUCHA TEA. A concoction--consisting of bacteria and yeast fermented in sweet black tea--that dates from 221 B.C. in China. This latest American health fad, according to its champions, cures everything from flatulence to cancer. But the U.S. Food and Drug Administration says its benefits are uncertain. And if you aren't careful, you could end up swallowing harmful micro-organisms along with your tasty kombucha.

LO-FI. A rough-around-the-edges sound that is increasingly popular with rock stars. It is achieved by remixing sophisticated studio sessions down to a few tracks, using technology to undo technology. Lo-fi rides high when it sounds as if it was recorded in a garage or some other dingy hide-hole.

MOUSE POTATO. A computer addict, pale of complexion and intense of mien, a species replicating ever faster in the techno-loam of modern society. A mouse potato clings to a computer as persistently as a couch potato roots before a television set. Only one means is known for freeing a mouse from a mouse potato's hand: replacing it with a trackball.

NETSPEAK. The special argot of the Internet. See spamming, mouse potato, webmaster. Netspeak is not to be confused with newspeak, an Orwellian language that means the opposite of its literal meaning, or with Newtspeak, an Orwellian language that means the opposite of its literal meaning.

OPEN-COLLAR WORKER. A telecommuter or other person who works at home. Unlike a blue-collar worker or a white-collar worker, an open-collar worker need not dress for success--or even dress at all, for that matter, if he or she is sufficiently warmed by the friendly glow of the computer monitor. The open collar now beckons to Americans just as open spaces once called to an earlier set of pioneers dressed in their skins.

POWELLMANIA. A fever that shot through the populace in 1995 like grain through a goose, only to go into remission when its source deselected himself for Mount Rushmore. Even so, flare-ups could recur during the coming enervated presidential race, in which expressions of enthusiasm for the declared candidates may register at decibel levels only dogs can hear.

ROAD WARRIOR. A new name for an old profession--traveling salesman. In the 19th century, traveling salesmen, also known as commercial travelers or drummers, had no more than a sample case and a stovepipe hat to use as an office. Nowadays, road warriors of both sexes unsheathe their cellular phones, laptop computers and portable fax machines and charge into battle beeping like robots.

SPAMMING. Sending out on the Internet the cyberspace equivalent of junk mail--dispatching a barrage of advertising or political messages at random. The term is said to have been inspired by an old **Monty Python** sketch in which **Spam** was repeated again and again. **Spam**, of course, is best known as the famed canned meat dubbed by GIs the ham that failed

its physical.

THIGH-HIGHS. Opaque stockings that stop just above the knee, exposing several inches of bare leg below the skirt. Already fashionable in the populace, thigh-highs may next find a market among politicians hoping for a draft. In the 1996 elections, victory will go to candidates who pull up their socks, show early foot and manage to persuade the media that they have legs.

TRIANGULATION. The re-election strategy fashioned by consultant Dick Morris for his client William Jefferson Clinton. The idea is for Clinton to triangulate off liberal Democrats and conservative Republicans, find the turf halfway between them and stake it out as his own. In sum, the greatest surveying project since Lewis and Clark is now underway.

VERTICAL DISINTEGRATION. A process by which corporations shed tier after tier of full-time workers until their operations are performed largely by contract employees. Business guru Thomas Malone expects many professionals in the 21st century to constitute companies of one. Finally, a cure for downsizing is in sight.

WEBMASTER. Not a spider, strictly speaking--but a manager of one of the 100,000 sites on the Internet's World Wide Web. From pure silicon, webmasters construct diaphanous domains into which a keyboard clientele is meant to fly and become ensnared by a desire for products, services, data or dirty pictures.

WEDDINGMOON. A wedding followed immediately by a honeymoon in the same scenic locale, usually as part of a package deal offered by a resort or a cruise line. So far, no one is guaranteeing money back plus a divorce in the absence of total satisfaction. Word nominations by members of the magazine's staff and by Jesse Sheidlower of the Random House reference department.

Mag.Coll.: 82C1439

Bus.Coll.: 91Q2213

Article A17876986

View other articles linked to these subjects:

Popular Culture

[View](#)

2 Reference book excerpts

[View](#)

861 Newspaper references

[View](#)

3663 Periodical references

Popular Culture Terminology

[View](#)

16 Periodical references

[See also](#)

223 other subdivisions

U.S. News & World Report, Dec 25, 1995

[View](#)

other articles in this issue

Print, e mail, and other retrieval options

Browser Print — *Full Text* —

Reformat for printing (approximately 3 pages) from your browser. To return to InfoTrac, use the *back* function of your browser.

Acrobat Reader — *Full Text* —

Retrieve for viewing and printing from Acrobat™ Reader. Please allow a few minutes for the retrieval operation to complete (approximately 2 pages)

E Mail Delivery — *Full Text* —

We will send a plain text version to the e-mail address you enter (e.g. *bettyg library.com*).

E-Mail Address:

Subject
(defaults to title):

Submit E-mail Request



Article 220 of 228



[Copyright and Terms of Use](#)

EXHIBIT 8

Definition of "spam" from MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (10th ed. 1999)

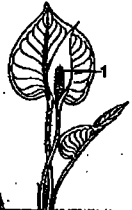


Merriam- Webster's Collegiate[®] Dictionary

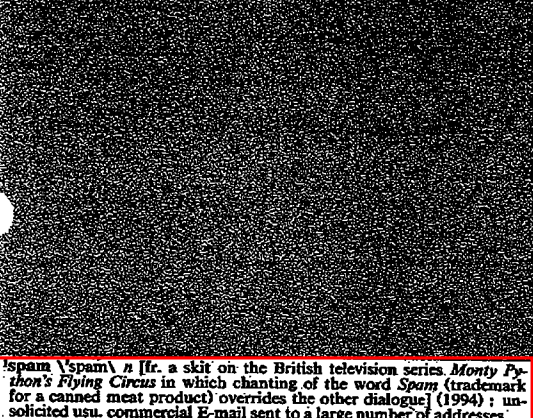
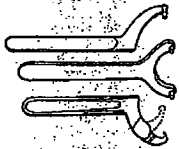
TENTH EDITION

Merriam-Webster, Incorporated
Springfield, Massachusetts, U.S.A.

spade beard n [ˈspæd] (1598). 1: an oblong beard with square ends 2: a beard rounded off at the top and pointed at the bottom — spade-beard-ed ˈspæd-bir-dəd adj
spade-fish ˈspæd-fɪʃ n (1704): a deep-bodied bony fish (Chaetoditerus faber) of the family Epippidae that resembles the angelfishes and is found in the warmer parts of the western Atlantic
spade-foot toad ˈspæd-foʊt n (1867): any of a family (Pelobatidae) of burrowing toads having the inner bone of the tarsus edged with a strong horny sheath with which they dig
spade-work ˈspæd-wɜrk n (1778) 1: work done with a spade 2: the hard plain preliminary drudgery in an undertaking
spadille ˈspæd-ɪl, -ɪˈdeɪ n [F, fr. Sp espadilla, dim. of espada broadsword, spade (in cards) — more at SPADE] (1728): the highest trump in various card games (as ombre)
spadix ˈspæd-ɪks n pl spadices ˈspæd-ɪˈsɛz [NL spadix, spadix, fr. L from torn from a palm tree, fr. Gk spadix, spadix, fr. span to draw, pull] (ca. 1760): a floral spike with a fleshy or succulent axis usu. enclosed in a spathe
spae ˈspæ n [spaed; spaɪ-ɪŋ] [ME span, fr. ON spā; akin to OHG spehan to watch, spy — more at SPY] (14c) chiefly Scot: FORETELL
spaezle ˈʃpɛt-sle, -sɪ, -sle ˈspæz-lə n pl spaezles or spaezles [G Spätzle, fr. G dial., dim. of Spatz sparrow, dumpling] (1933): a small dumpling cooked by running batter through a colander into boiling water
spaghetto ˈspæ-ɡe-tə n [It, fr. pl. of spaghetti, dim. of spago cord, string, fr. L spagulus] (1888)



: a member of any of several breeds of small or medium-sized mostly short-legged dogs usu. having long wavy hair, feathered legs and tail, and large drooping ears 2: a fawning servile person
Span-ish ˈspæn-ɪʃ n [Spanish, adj., fr. ME Spanish, fr. Spain] (15c) 1: the Romance language of the largest part of Spain and of the countries colonized by Spaniards 2 pl in constr: the people of Spain — Spanish adj — Spanishness n
Spanish American n (1811) 1: a resident of the U.S. whose native language is Spanish and whose culture is of Spanish origin 2: a native or inhabitant of one of the countries of America in which Spanish is the national language — Spanish-American adj
Spanish bayonet n (1843): any of several yuccas; esp.: one (Yucca aloifolia) with a short trunk and rigid spine-tipped leaves
Spanish chestnut n (1699): MARRON
Spanish fly n (1634) 1: a green blister beetle (Lytta vesicatoria) of southern Europe 2: CANTHARIS 2
Spanish mackerel n (1666): a large scombroid food and game fish (Scomberomorus maculatus) that is bluish above with oval brown spots on the sides and is found off the American Atlantic coast from Cape Ann to Brazil
Spanish moss n (1823): an epiphytic plant (Tillandsia usneoides) of the pineapple family forming pendant tufts of grayish green filaments on trees from the southern U.S. to Argentina
Spanish needles n pl but sing or pl in constr (1743): any of several bur-marigolds; esp.: an annual (Sida bipinnata) of No. America and Asia having yellow flowers and dissected leaves
Spanish omelet n (ca. 1886): an omelet served with a sauce containing chopped green pepper, onion, and tomato
Spanish rice n (1928): rice cooked with onions, green pepper, and tomatoes
spank ˈspæŋk v [fɪnɪt] (ca. 1727): to strike esp. on the buttocks with the open hand — spank n
spank v [back-formation fr. spanking] (ca. 1810): to move quickly, dashing, or spiritedly (~ing along in his new car)
span-ker ˈspæn-kər n [origin unknown] (1794) 1: the fore-and-aft sail on the mast nearest the stern of a square-rigged ship 2: the sail on the sternmost mast in a schooner of four or more masts
spanking ˈspæn-kiŋ adj [origin unknown] (1666) 1: remarkable of its kind 2: being fresh and strong: BRISK
spanking adv (1886): VERY (a ~ clean floor) (~ new)
span-ner ˈspæn-nər n [G. instrument for winding springs, fr. spannen to stretch; akin to MD spannen to stretch — more at SPAN] (ca. 1790) 1 chiefly Brit: WRENCH 2: a wrench that has a hole, projection, or hook at one or both ends of the head for engaging with a corresponding device on the object that is to be turned
span-new ˈspæn-nju ˌnju ˈnju adj [ME, part trans. of ON spannyr, fr. spann chip of wood + nyr new] (14c): BRAND-NEW
span-worm ˈspæn-wɜrm n [ˈspæn] (1820): COOPER
spare ˈspɑr n [ME sparre; akin to OE spere spear — more at SPAR] (14c) 1: a stout pole, 2: a stout rounded wood or metal piece (as a mast, boom, gaff, or yard) used to support rigging 3: any of the main longitudinal members of the wing of an airplane that carry the ribs
spar v [sparred; spar-ɪŋ] [prob. alter. of spurr] (1537) 1: a: box esp.: to gesture without landing a blow to draw one's opponent or create an opening b: to engage in a practice or exhibition bout of boxing 2: SKIRMISH, WRANGLE 3: to strike or fight with feet or spurs in the manner of a gamecock
spar n (1814) 1: a movement of offense or defense in boxing 2: a sparring match or session
spar n [LG; akin to OE spærstian gypsum, spærn of plaster] (1581): any of various nonmetallic usu. cleavable and lustrous minerals
SPAR ˈspɑr n [Semper Paratus, motto of the U.S. Coast Guard, fr. L. always ready] (1942): a member of the women's reserve of the U.S. Coast Guard
spare ˈspɑr, -spɑr v [spared; spar-ɪŋ] [ME, fr. OE spær; akin to OHG spærn to spare, OE spar, adj., scant] w (bef. 12c), 1: to forgo or to destroy, punish, or harm 2: to refrain from attacking or reprimanding with necessary or salutary severity 3: to relieve of the necessity of doing or undergoing something (~ yourself, the trouble) 4: to refrain from: AVOID (spared no expense) 5: to use or dispense frugally — used chiefly in the negative (don't ~ the syrup) 6: a: to give up as not strictly needed (do you have any cash to ~) b: to have left over or as margin (time to ~) ~ vi 1: to be frugal 2: to refrain from doing harm — spare-able ˌ-ə-ˈbəl adj — spar-er n
spare, adj spar-er; spar-est [ME, fr. OE spar sparing, scant; akin to OHG spar spar] (14c) 1: not being used; esp.: held for emergency use (a ~ tire) 2: being over and above what is needed: SUPERFLUOUS 4 (~ time) 3: not liberal or profuse: SPARING (a ~ person) 4: healthily lean 5: not abundant or plentiful syn see LEAN, MEAGER — spare-ly adv — spare-ness n
spare n (1642) 1: a spare tire b: a duplicate (as a key) of a machine part kept in reserve 2: the knocking down of all 10 pins with the first 2 balls in a frame in bowling
spare-ribs ˈspær-(r)ɪbz, -spɛr-, -sɒz n pl [by folk etymology fr. LG ribbesper pickled pork ribs roasted on a spit, fr. MLEG fr. ribbe ribs + ribbesper speer, spit] (1596): a cut of pork ribs separated from the bone strip
spare ˈspɑr v [spared; spar-ɪŋ] [prob. fr. MF sparere; akin to L spargere to scatter] (1785) 1: SPARKLE [REPROB. fr. SPARK] 2: to agitate (a liquid) by means of compressed air or gas entering through a pipe — sparge n — sparger n
spar-ing ˈspɑr-ɪŋ, -spɛr-ə adj (14c) 1: marked by or practicing careful restraint (as in the use of resources) 2: MEAGER, BARE (the map is ~ of information) — spar-ingly ˌ-ɪŋ-ly adv
syn SPARING, FRUGAL, THIRTY, ECONOMICAL, mean, careful, in the use of one's money or resources. SPARING stresses abstinence and restraint (sparring in the offering of advice). FRUGAL implies absence of luxury and simplicity of lifestyle (ran a frugal household). THIRTY stresses



spam ˈspæm n [fr. a skit on the British television series Monty Python's Flying Circus in which chanting of the word SPAM (trademark for a canned meat product) overrides the other dialogue] (1994): unsolicited usu. commercial E-mail sent to a large number of addresses

spare ˈspɑr n [ME sparre; akin to OE spere spear — more at SPAR] (14c) 1: a stout pole, 2: a stout rounded wood or metal piece (as a mast, boom, gaff, or yard) used to support rigging 3: any of the main longitudinal members of the wing of an airplane that carry the ribs
spar v [sparred; spar-ɪŋ] [prob. alter. of spurr] (1537) 1: a: box esp.: to gesture without landing a blow to draw one's opponent or create an opening b: to engage in a practice or exhibition bout of boxing 2: SKIRMISH, WRANGLE 3: to strike or fight with feet or spurs in the manner of a gamecock
spar n (1814) 1: a movement of offense or defense in boxing 2: a sparring match or session
spar n [LG; akin to OE spærstian gypsum, spærn of plaster] (1581): any of various nonmetallic usu. cleavable and lustrous minerals
SPAR ˈspɑr n [Semper Paratus, motto of the U.S. Coast Guard, fr. L. always ready] (1942): a member of the women's reserve of the U.S. Coast Guard
spare ˈspɑr, -spɑr v [spared; spar-ɪŋ] [ME, fr. OE spær; akin to OHG spærn to spare, OE spar, adj., scant] w (bef. 12c), 1: to forgo or to destroy, punish, or harm 2: to refrain from attacking or reprimanding with necessary or salutary severity 3: to relieve of the necessity of doing or undergoing something (~ yourself, the trouble) 4: to refrain from: AVOID (spared no expense) 5: to use or dispense frugally — used chiefly in the negative (don't ~ the syrup) 6: a: to give up as not strictly needed (do you have any cash to ~) b: to have left over or as margin (time to ~) ~ vi 1: to be frugal 2: to refrain from doing harm — spare-able ˌ-ə-ˈbəl adj — spar-er n
spare, adj spar-er; spar-est [ME, fr. OE spar sparing, scant; akin to OHG spar spar] (14c) 1: not being used; esp.: held for emergency use (a ~ tire) 2: being over and above what is needed: SUPERFLUOUS 4 (~ time) 3: not liberal or profuse: SPARING (a ~ person) 4: healthily lean 5: not abundant or plentiful syn see LEAN, MEAGER — spare-ly adv — spare-ness n
spare n (1642) 1: a spare tire b: a duplicate (as a key) of a machine part kept in reserve 2: the knocking down of all 10 pins with the first 2 balls in a frame in bowling
spare-ribs ˈspær-(r)ɪbz, -spɛr-, -sɒz n pl [by folk etymology fr. LG ribbesper pickled pork ribs roasted on a spit, fr. MLEG fr. ribbe ribs + ribbesper speer, spit] (1596): a cut of pork ribs separated from the bone strip
spare ˈspɑr v [spared; spar-ɪŋ] [prob. fr. MF sparere; akin to L spargere to scatter] (1785) 1: SPARKLE [REPROB. fr. SPARK] 2: to agitate (a liquid) by means of compressed air or gas entering through a pipe — sparge n — sparger n
spar-ing ˈspɑr-ɪŋ, -spɛr-ə adj (14c) 1: marked by or practicing careful restraint (as in the use of resources) 2: MEAGER, BARE (the map is ~ of information) — spar-ingly ˌ-ɪŋ-ly adv
syn SPARING, FRUGAL, THIRTY, ECONOMICAL, mean, careful, in the use of one's money or resources. SPARING stresses abstinence and restraint (sparring in the offering of advice). FRUGAL implies absence of luxury and simplicity of lifestyle (ran a frugal household). THIRTY stresses

good management and industry (thriftly sources). ECONOMICAL stresses prudent management, and use of things to their best advantage (care plan).
spark ˈspɑrk n [ME sparke, fr. OE spærca; akin to L spargere to scatter] (bef. 12c) 1: a burning substance thrown out by a body in when combustion is nearly completed b: a streak from a larger mass; esp.: one heated to cause disruptive electrical discharge of very sh conductors separated by a gas (as air) h: a plug c: the mechanism controlling the disc 2: SPARKLE, FLASH 4: something that sets off the ~ that helped the team to rally 5: a growth or developing; GERM (still retains a ~ in constr.) 1 a: to throw out sparks spark v [ˈspɑrk] (13c) 1: to throw out sparks 2: to produce sparks; specif.: to 1) working 3: to respond with enthusiasm 4: burst of activity; ACTIVATE (the question ~ dued used with off 2: to stir to activity; victory) — spark-er n
spark n [perh. of Scand origin; akin to ON sp 1: a foppish young man 2: LOWER, BEAU — adj
spark vb (1787): WOO, COURT — spark-er n
spark chamber n (1961): a device usu. used high-energy particle that consists of a series of wires separated by a gas (as neon) in which charges follow the path of the particle
spark coil n (1896): an induction coil for pre-internal combustion engine
spark gap n (1889): a space between two big of an induction coil through which pass disc: a device having a spark gap
spark plug ˈspɑrk-plʌɡ n [Brit: SPARK PLUG] spark-er ˈspɑrk-ər n [sparked; spark-er n] spark-er n [ME, dim. of sparke] (14c) 1: a plug 2: the quality of sparking 3: a sparkler
sparkler ˈspɑrk-lɪər n (1713): one that spars: a firework that throws off brilliant sparks on the
sparkling wine n (1697): an effervescent table
spark plug n (1903) 1: a part that fits into internal combustion engine and carries two electrical wires across which the current from the ignition coil spark for combustion 2: one that it to an undertaking — spark-plug ˈspɑrk-plʌɡ n
sparkly ˈspɑrk-ɪli adj [sparked; spark-er n] (1870): LIVELY
sparrow ˈspɑr-əʊ n [ME sparrow, fr. OE spæra sparrow] (bef. 12c) 1: any of a genus (Passer) of small chiefly brownish or grayish Old World birds some of which have been widely introduced 2: any of various finches (as the song sparrow) having the true sparrows — sparrow-like ˌ-ɪ-ˈli
sparrow hawk n (15c): any of various small birds of prey (Accipiter virens) that is dark above and the female having a grayish brown barred chestnut barred underside. b: KESTREL
spare ˈspɑr n [spared; spar-ɪŋ] [ME, fr. OE spær; akin to OHG spærn to spare, OE spar, adj., scant] w (bef. 12c), 1: to forgo or to destroy, punish, or harm 2: to refrain from attacking or reprimanding with necessary or salutary severity 3: to relieve of the necessity of doing or undergoing something (~ yourself, the trouble) 4: to refrain from: AVOID (spared no expense) 5: to use or dispense frugally — used chiefly in the negative (don't ~ the syrup) 6: a: to give up as not strictly needed (do you have any cash to ~) b: to have left over or as margin (time to ~) ~ vi 1: to be frugal 2: to refrain from doing harm — spare-able ˌ-ə-ˈbəl adj — spar-er n
spare, adj spar-er; spar-est [ME, fr. OE spar sparing, scant; akin to OHG spar spar] (14c) 1: not being used; esp.: held for emergency use (a ~ tire) 2: being over and above what is needed: SUPERFLUOUS 4 (~ time) 3: not liberal or profuse: SPARING (a ~ person) 4: healthily lean 5: not abundant or plentiful syn see LEAN, MEAGER — spare-ly adv — spare-ness n
spare n (1642) 1: a spare tire b: a duplicate (as a key) of a machine part kept in reserve 2: the knocking down of all 10 pins with the first 2 balls in a frame in bowling
spare-ribs ˈspær-(r)ɪbz, -spɛr-, -sɒz n pl [by folk etymology fr. LG ribbesper pickled pork ribs roasted on a spit, fr. MLEG fr. ribbe ribs + ribbesper speer, spit] (1596): a cut of pork ribs separated from the bone strip
spare ˈspɑr v [spared; spar-ɪŋ] [prob. fr. MF sparere; akin to L spargere to scatter] (1785) 1: SPARKLE [REPROB. fr. SPARK] 2: to agitate (a liquid) by means of compressed air or gas entering through a pipe — sparge n — sparger n
spar-ing ˈspɑr-ɪŋ, -spɛr-ə adj (14c) 1: marked by or practicing careful restraint (as in the use of resources) 2: MEAGER, BARE (the map is ~ of information) — spar-ingly ˌ-ɪŋ-ly adv
syn SPARING, FRUGAL, THIRTY, ECONOMICAL, mean, careful, in the use of one's money or resources. SPARING stresses abstinence and restraint (sparring in the offering of advice). FRUGAL implies absence of luxury and simplicity of lifestyle (ran a frugal household). THIRTY stresses

spare ˈspɑr n [ME sparre; akin to OE spere spear — more at SPAR] (14c) 1: a stout pole, 2: a stout rounded wood or metal piece (as a mast, boom, gaff, or yard) used to support rigging 3: any of the main longitudinal members of the wing of an airplane that carry the ribs
spar v [sparred; spar-ɪŋ] [prob. alter. of spurr] (1537) 1: a: box esp.: to gesture without landing a blow to draw one's opponent or create an opening b: to engage in a practice or exhibition bout of boxing 2: SKIRMISH, WRANGLE 3: to strike or fight with feet or spurs in the manner of a gamecock
spar n (1814) 1: a movement of offense or defense in boxing 2: a sparring match or session
spar n [LG; akin to OE spærstian gypsum, spærn of plaster] (1581): any of various nonmetallic usu. cleavable and lustrous minerals
SPAR ˈspɑr n [Semper Paratus, motto of the U.S. Coast Guard, fr. L. always ready] (1942): a member of the women's reserve of the U.S. Coast Guard
spare ˈspɑr, -spɑr v [spared; spar-ɪŋ] [ME, fr. OE spær; akin to OHG spærn to spare, OE spar, adj., scant] w (bef. 12c), 1: to forgo or to destroy, punish, or harm 2: to refrain from attacking or reprimanding with necessary or salutary severity 3: to relieve of the necessity of doing or undergoing something (~ yourself, the trouble) 4: to refrain from: AVOID (spared no expense) 5: to use or dispense frugally — used chiefly in the negative (don't ~ the syrup) 6: a: to give up as not strictly needed (do you have any cash to ~) b: to have left over or as margin (time to ~) ~ vi 1: to be frugal 2: to refrain from doing harm — spare-able ˌ-ə-ˈbəl adj — spar-er n
spare, adj spar-er; spar-est [ME, fr. OE spar sparing, scant; akin to OHG spar spar] (14c) 1: not being used; esp.: held for emergency use (a ~ tire) 2: being over and above what is needed: SUPERFLUOUS 4 (~ time) 3: not liberal or profuse: SPARING (a ~ person) 4: healthily lean 5: not abundant or plentiful syn see LEAN, MEAGER — spare-ly adv — spare-ness n
spare n (1642) 1: a spare tire b: a duplicate (as a key) of a machine part kept in reserve 2: the knocking down of all 10 pins with the first 2 balls in a frame in bowling
spare-ribs ˈspær-(r)ɪbz, -spɛr-, -sɒz n pl [by folk etymology fr. LG ribbesper pickled pork ribs roasted on a spit, fr. MLEG fr. ribbe ribs + ribbesper speer, spit] (1596): a cut of pork ribs separated from the bone strip
spare ˈspɑr v [spared; spar-ɪŋ] [prob. fr. MF sparere; akin to L spargere to scatter] (1785) 1: SPARKLE [REPROB. fr. SPARK] 2: to agitate (a liquid) by means of compressed air or gas entering through a pipe — sparge n — sparger n
spar-ing ˈspɑr-ɪŋ, -spɛr-ə adj (14c) 1: marked by or practicing careful restraint (as in the use of resources) 2: MEAGER, BARE (the map is ~ of information) — spar-ingly ˌ-ɪŋ-ly adv
syn SPARING, FRUGAL, THIRTY, ECONOMICAL, mean, careful, in the use of one's money or resources. SPARING stresses abstinence and restraint (sparring in the offering of advice). FRUGAL implies absence of luxury and simplicity of lifestyle (ran a frugal household). THIRTY stresses

spade beard n [spade] (1598) 1: an oblong beard with square ends 2: a beard rounded off at the top and pointed at the bottom — spade-beard-ed [spad-'bir-dad] adj

spade-fish [spad-'fish] n (1704): a deep-bodied bony fish (Chaetodipterus faber of the family Ephippidae) that resembles the angelfishes and is found in the warmer parts of the western Atlantic

spade-foot toad [spad-'fut] n (1867): any of a family (Pelobatidae) of burrowing toads having the inner bone of the tarsus edged with a strong horny sheath with which they dig

spade-work [spad-'wɜ:k] n (1778) 1: work done with a spade 2: the hard plain preliminary drudgery in an undertaking

spad-dille [spad-'dil, -dij] n [F. fr. Esp. espadilla, dim. of espada broadsword, spade (in cards)] — more at SPADE (1728): the highest trump in various card games (as ombre)

spadix [spad-'diks] n, pl spadices [spad-'di-sēz] [NL spadix, spadix, fr. L. frond torn from a palm] tree, fr. Gk spadix, spadix, fr. span to draw, pull (ca. 1760): a floral spike with a fleshy or succulent axis usu. enclosed in a spathe

spae [spā] v; spaeed; spae-ing [ME span, fr. ON spā; akin to OHG spehan to watch, spy — more at SPY] (14c) chiefly Scot: FORETELL

spaezle [shpet-'slə, -sɪ, -sē] also [shpāt-'n, pl spaezles or spaezles [G Spätzle, fr. G dial., dim. of Spätz sparrow, dumpling] (1933): a small dumpling cooked by running batter through a colander into boiling water

spaghet-ti [spa-'ge-ti] n [It. fr. pl. of spaghetti, dim. of spago cord, string, fr. L. spagnum (1838) 1: pasta made in thin solid strings 2: insulating tubing typically of varnished cloth or of plastic for covering bare wire or holding insulated wires together — spaghet-ti-like [-li-kə] adj

spaghet-ti-ni [spa-'ge-ti-nē] n [It. dim. of spaghetti] (1923): a pasta thinner than spaghetti but thicker than vermicelli

spaghetti squash n (1975): an oval winter squash with flesh that once cooked is similar in texture to spaghetti

spaghetti western n, often cap W (1969): a western motion picture produced in Italy

spahi [spā-'hi] n [MF, fr. Turk sipahi, fr. Per sipahi cavalryman] (1562) 1: one of a former corps of irregular Turkish cavalry 2: one of a former corps of Algerian native cavalry in the French army

spake [spāk] archaic past of SPEAK



7 spadix

: a member of any of several breeds of small or medium-sized mostly short-legged dogs usu. having long wavy hair, feathered legs and tail, and large drooping ears 2: a fawning servile person

Spanish [spā-'nish] n [Spanish, adj., fr. ME Spanish, fr. Spain] (15c) 1: the Romance language of the largest part of Spain and of the countries colonized by Spaniards 2 pl in constr: the people of Spain — Spanish adj. — Spanish-ness n

Spanish American n (1811) 1: a resident of the U.S. whose native language is Spanish and whose culture is of Spanish origin 2: a native or inhabitant of one of the countries of America in which Spanish is the national language — Spanish-American adj

Spanish bayonet n (1843): any of several yuccas; esp.: one (Yucca aloifolia) with a short trunk and rigid spine-tipped leaves

Spanish chestnut n (1699): MARRON

Spanish fly n (1634) 1: a green blister beetle (Lytta vesicatoria) of southern Europe 2: CANTHARIS 2

Spanish mackerel n (1666): a large scombroid food and game fish (Scomberomorus maculatus) that is bluish above with oval brown spots on the sides and is found off the American Atlantic coast from Cape Ann to Brazil

Spanish moss n (1823): an epiphytic plant (Tillandsia usneoides) of the pineapple family forming pendent tufts of grayish green filaments on trees from the southern U.S. to Argentina

Spanish needles n, pl but sing or pl in constr (1743): any of several bur marigolds; esp.: an annual (Bidens bipinnata) of No. America and Asia having yellow flowers and dissected leaves

Spanish omelet n (ca. 1886): an omelet served with a sauce containing chopped green pepper, onion, and tomato

Spanish rice n (1928): rice cooked with onions, green pepper, and tomatoes

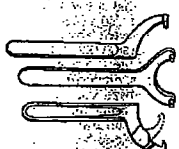
*spank [spānk] v [imit.] (ca. 1727): to strike esp. on the buttocks with the open hand — spank n

*spank v [back-formation fr. spanking] (ca. 1810): to move quickly, dashing, or spiritedly (~ing along in his new car)

span-ker [spān-'kər] n [origin unknown] (1794) 1: the fore-and-aft sail on the mast nearest the stern of a square-rigged ship 2: the sail on the sternmost mast in a schooner of four or more masts

*spanking [spān-'kiŋ] adj [origin unknown] (1666) 1: remarkable of its kind 2: being fresh and strong; BRISK

span-ner [spān-'nər] n [G. instrument for winding springs, fr. spannen to stretch; akin to MD spannen to stretch; more at SPAN] (ca. 1790) 1: chiefly Brit: a wrench at MD spanner to stretch; 2: a wrench that has a hole, projection, or hook at one or both ends of the head for engaging with a corresponding device on the object that is to be turned



spanner

span-new [spān-'nū, -nyū] adj [ME, part trans. of ON spännir, fr. spann chip of wood + nyr new] (14c): BRAND-NEW

good management and industry (thrifty sources). ECONOMICAL stresses prudent management, and use of things to their best advantage (care plan).

spark [spārk] [ME sparke, fr. OE sparc; and perh. to L. spargere to scatter] (bef. 12c) 1: burning substance thrown out by a body in which combustion is nearly completed b: struck from a larger mass; esp.: one heated b: non disruptive electrical discharge of very short conductors separated by a gas (as air) b: plug c: the mechanism controlling the disc

*SPARKLE FLASH 4: something that sets off the ~ that helped the team to rally 5: a growth or developing; GERM (still retains a sig in constr: a radio operator on a ship)

spark 2: to produce sparks; specif: to t. working 3: to respond with enthusiasm e: burst of activity: ACTIVATE (the question ~s also used with off 2: to stir to activity: i victory) — sparkle-er n

spark n [perh. of Scand origin; akin to ON spa 1: a lopsided young man 2: LOVER, BEAU — adj

spark v (1787): woo, COURT — sparkle-er n spark chamber n (1961): a device usu. used high-energy particle that consists of a series of wires separated by a gas (as neon) in which charges follow the path of the particle

spark coil n (1896): an induction coil for internal combustion engine

spark gap n (1889): a space between two high of an induction coil through which pass discharge: a device having a spark gap

sparkling plug n (1902) Brit: SPARK PLUG

sparkle [spārk-'l] v; spark-les; spark-ling [spārk-'liŋ] n (13c) 1: a: to throw off or reflect bright moving points of light b: EFFERVESCE (wine that ~s) 3: to become dialogue ~ with wit (eyes sparkling with a glitter or shine) c: see FLASH — sparkle-ly [-kē-ly] adj

sparkle n [ME, dim. of sparke] (14c) 1: a: a: the quality of sparkling 3: to become dialogue ~ with wit (eyes sparkling with a glitter or shine) c: see FLASH — sparkle-ly [-kē-ly] adj

sparkler [spārk-'lɜ:r] n (1713): one that sparks 1: a firework that throws off brilliant sparks on 1 work

sparkling wine n (1697): an effervescent table spark plug n (1903) 1: a part that fits into internal combustion engine and carries two electrical wires across which the current from the ignition coil flows to the spark for combustion 2: one that in an undertaking — sparkle-plug [spārk-'plʌg] n

sparkly [spārk-'li] adj [spark-er + -ly] (ca. 1860) 1: LIVELY — spark-ly [-kē-ly] adj

spark-row [spārk-'rəʊ] n [ME sparow, fr. OE sparrow (bef. 12c) 1: any of a genus (Passer) of small chiefly brownish or grayish Old World birds some of which have been widely introduced 2: any of various finches (as the song sparrow) that the true sparrows — spar-row-like [-ō-lī] adj

World accipiter (Accipiter nisus) that is dark g having a chestnut barred underside b: KESTREL

spare [spā'r] v; spared; spar-ing [ME, fr. OE spær; akin to OHG spærn to spare, OE spær, scant] w (bef. 12c) 1: to refrain from attacking or punishing, or harm 2: to refrain from attacking or punishing with necessary or salutary severity 3: to relieve of the necessity of doing or undergoing something (~ yourself the trouble) 4: to refrain from: AVOID (spared no expense) 5: to use frugally — used chiefly in the negative (don't ~ the syrup) 6: to give up as not strictly needed (do you have any cash to ~) 7: to leave over or as margin (time to ~) ~ v: to be frugal 2: to refrain from doing harm — spare-able [-ə-bəl] adj — spare-er n

*spare adj spar-er; spar-est [ME, fr. OE spær; akin to OHG spær] (14c) 1: not being used; esp.: held (in an aircraft use (a ~ tire) 2: being over and above what is needed: SPARING (~ time) 3: not liberal or profuse: SPARING (a ~ personality) 4: healthily lean 5: not abundant or plentiful SYN see SPARE — spare-ly adv — spare-ness n

*spare n (1642) 1: a spare tire b: a duplicate (as a ~ of a machine part) kept in reserve 2: the knocking down of all 10 balls in the first 2 balls in a frame in bowling

spare-rib [spā-'rɪb] n, pl [by folk etymology, fr. LG ribbesper pickled pork ribs roasted on a spit, fr. MLO ribbesper spear, spit] (1596): a cut of pork ribs separated from the bone strip

sparg [spārg] v; sparged; sparg-ing [prob. fr. MF sparger to spargere to scatter] (1785) 1: SPRINKLE, BESPATTER; esp.: to agitate (a liquid) by means of compressed air or gas entering through a pipe — sparge n — sparger n

spar-ing [spā-'riŋ, spər-'ɪŋ] (14c) 1: marked by or characterized by full restraint (as in the use of resources) 2: MEAGER, BARE (~ of information) — sparing-ly [-lī-ē] adv

SYN SPARING, FRUGAL, THRIFTY, ECONOMICAL, mean, careful, one's money or resources. SPARING stresses abstinence in spending (one's money in the offering of advice). FRUGAL implies abstinence and simplicity of lifestyle (ran a frugal household).

spasm [spāzəm] n [spāz-'m] n [ME spasme, fr. MF, fr. L. spasme contraction] 2: a sudden violent and temporary (~ of creativity)

spasmodic [spāz-'mā-dik] adj [NL spasmodicus] (ca. 1681) 1: a: relating to or affecting a: being or proceeding in a spasm esp. in sudden violent (~ of emotional excitement): EXCITABLE SYN see FIT (~ of creativity)

spasmolytic [spāz-mō-'li-tik] adj [ISV spasm + -lytic] (ca. 1935): tending or having effect on spasms or convulsions — spasmolytic n

spastic [spāz-'tik] adj [L. spasticus, fr. Gk spastikos] (1753) 1: of, relating to, characterized

EXHIBIT 9

Wilson Smith, *How to Get Rid of All Your Junk Email*, MONEY, Jul. 1996, at 21



Seattle Public Library

Gen'l Reference Ctr Gold



Article 213 of 228



oney, July 1996 v25 n7 p21(1)

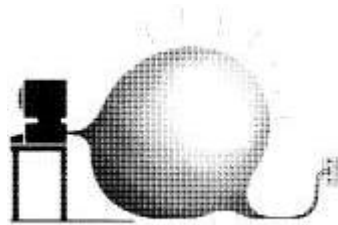
Mark

How to get rid of all your junk e mail. (Brief Article)*Wilson Smith.*

Print

Full Text: COPYRIGHT 1996 Time, Inc.

Whatever you think of a **Spam** sandwich, there s a new kind of **Spam** clogging the Internet that online users are finding hard to stomach. We re talking about electronic junk mail from advertisers, termed **Spam** by cybernauts. The nickname derives from a 1970s **Monty Python** skit, set in a cozy English diner, in which **Spam** has displaced everything else on the menu. Junk e-mail is becoming almost as pervasive. One leading bulk e-mailer, Cyber Promotions, boasts that it sends 1.5 million messages a day. E-mail s appeal to advertisers is irresistible. If an outfit wants to pitch its product to 750,000 people across the country, for example, it costs 1,500 to use a company like Cyber Promotions--a hefty 991/3 off the 241,000 cost of printing and bulk-rate postage.



But online users with a distaste for electronic **Spam** can take action; you can reduce the amount of junk mail your computer must digest. To protect yourself from the onslaught, follow these three steps:

junk mail finds a new audience --If you subscribe to a commercial online service such as America Online, CompuServe or Prodigy, forward copies of unwanted messages to your service s customer assistance department. All offer help, from providing instructions on how to get off an e-mailing list to suspending a spammer s account.

--Under the newsgroups function of your Internet browser, pay a visit to news.admin.net-abuse.misc, a discussion group that focuses on various forms of Internet abuse. There you ll find advice from anti-spammers, such as writing to the spammer s postmaster. To do that, substitute postmaster for the spammer s user name in its e-mail address (for example, change bozo otherwise.lovely.com to postmaster otherwise.lovely.com). Explain that you didn t ask for this message and don t appreciate being spammed; the postmaster will then warn the offending e-mailer or even cancel his or her account.

--Notify any online services you use that you don t want your name distributed. Some--including MONEY s online report, Money Daily--guard their subscriber lists and don t provide your name to marketers; many more won t distribute your name without your permission.

Article A18391303

View other articles linked to these subjects:

Direct Mail Advertising

[View](#) 330 Newspaper references

[View](#) 3708 Periodical references

Direct Mail Advertising Control

[See also](#) 111 other subdivisions

Electronic Mail Systems

[View](#) 1 Encyclopedia excerpt

[View](#) 1 Reference book excerpt

[View](#) 1307 Newspaper references

[View](#) 12422 Periodical references

Electronic Mail Systems Management

[View](#) 681 Periodical references

[See also](#) 139 other subdivisions

Online Services

[View](#) 7 Reference book excerpts

[View](#) 16123 Newspaper references

[View](#) 146241 Periodical references

Online Services Services

[View](#) 23016 Periodical references

[See also](#) 327 other subdivisions

Money, Jul 1, 1996

[View](#) other articles in this issue

Print, e mail, and other retrieval options

[Browser Print](#) — *Full Content* —

Reformat article with full size graphics for printing (approximately 1 page) from your browser. To return to InfoTrac, use the *back* function of your browser.

[Acrobat Reader](#) — *Full Content* —

Retrieve article in originally published format for viewing and printing from Acrobat™ Reader. Please allow a few minutes for the retrieval operation to complete (1 full page PDF)

E Mail Delivery — *Text Only* —

We will send a plain text version to the e-mail address you enter (e.g. *bettyg@library.com*).

E-Mail Address:

Subject
(defaults to title):

Submit E-mail Request





[Copyright and Terms of Use](#)

EXHIBIT 10

Samantha Miller, *Spam Wars*, PEOPLE WEEKLY, Nov. 18, 1996, at 39



Seattle Public Library

Gen'l Reference Ctr Gold



Article 204 of 228



eop e eek y, Nov 18, 1996 v46 n21 p39(1)

Mark

Spam wars. (America Online users inundated with junk mail)(Brief Article) *Samantha Miller.*

Print

Full Text: COPYRIGHT 1996 Time, Inc.

You have mail were once the most welcome three little words in cyberspace. That was before computer mailboxes started being flooded with junk e-mail touting get-rich-quick schemes and miracle cures--up to a dozen such messages a day for some people. Such so-called **spam**, named after a **Monty Python** sketch in which the word is shouted ad nauseum, is now America Online's top user complaint. The problem, explains AOL lawyer David Phillips, is that users pay for the time it takes to erase it. It's as if a telemarketer could call you collect, says Phillips.



A One irate ad recipient made his views clear on his Web page.

AOL and Cyber Promotions, a much vilified Philadelphia firm that sends ads to more than a million computer users for as little as \$59, will face off over the legality of junk e-mail in federal court this month. Meanwhile, CompuServe and Prodigy have their own suits pending against Cyber Promotions. But almost everyone thinks the ultimate solution will be technology, perhaps something like the program AOL unveiled last month that lets users block

incoming **spam**.

By forcing Netizens to choose between two of their ideals--privacy and free speech--the junk e-mail issue has sparked the hottest online debate since last spring's censorship wars. The result? Our business has gone up exponentially, brags Cyber Promotions founder Sanford Wallace.

Products: America Online (Online information service) - Advertising

Article A18852730

View other articles linked to these subjects:

Cyber Promotions Inc

11 Newspaper references

23 Periodical references

Cyber Promotions Inc Cases

11 Periodical references

8 other subdivisions

Direct Mail Advertising

[View](#) 330 Newspaper references
[View](#) 3708 Periodical references

Direct Mail Advertising Innovations

[View](#) 112 Periodical references
[See also](#) 111 other subdivisions

Electronic Mail Systems

[View](#) 1 Encyclopedia excerpt
[View](#) 1 Reference book excerpt
[View](#) 1307 Newspaper references
[View](#) 12422 Periodical references

Electronic Mail Systems Public Opinion

[View](#) 29 Periodical references
[See also](#) 139 other subdivisions

People Weekly, Nov 18, 1996

[View](#) other articles in this issue

Print, e mail, and other retrieval options

[Browser Print](#) — Full Content —

Reformat article with full size graphics for printing (approximately 1 page) from your browser. To return to InfoTrac, use the *back* function of your browser.

[Acrobat Reader](#) — Full Content —

Retrieve article in originally published format for viewing and printing from Acrobat™ Reader. Please allow a few minutes for the retrieval operation to complete (1 full page PDF)

E Mail Delivery — Text Only —

We will send a plain text version to the e-mail address you enter (e.g. *bettyg library.com*).

E-Mail Address:

Subject (defaults to title):

Submit E-mail Request

◀ — Article 204 of 228 — ▶

THOMSON

 GALE

[Copyright and Terms of Use](#)

EXHIBIT 11

Ed Bott, *Internet Lies*, PC/COMPUTING, Oct. 1996, at 189



Seattle Public Library

Gen'l Reference Ctr Gold



Article 206 of 228



Mark

omputin , Oct 1996 v9 n10 p189(6)**Internet lies.** (major myths of the Internet) (Internet/Web/Online Service Information) *Ed Bott.*

Print

Abstract: Ten major myths surrounding the Internet are discussed. It is almost impossible to take a census of the Internet or determine the exact number of users. Some claim the Net is a den of pornography, but pornography accounts for only 0.5 percent of all Net traffic. Internet growth cannot continue forever. The Internet is about to run out of IP address numbers, and experts are rushing to develop a new IP Next Generation (IPng) protocol to avert a crisis. High-bandwidth access methods such as cable modems will not cure all traffic problems. Hackers are not as big a threat as disgruntled or poorly trained workers or even natural disasters. Only technical topics and those related to popular culture are heavily covered on the Internet. Anything done on the Internet can be subject to the same laws applied to physical media. The early ARPAnet was designed as a Cold War defense, but the Internet today could not survive nuclear attack. Being online does not guarantee complete anonymity. **Spam**, the practice of unsolicited E-mail and Usenet advertising, is damaging Usenet and forcing users to upgrade to E-mail clients with filtering capabilities.

Full Text: COPYRIGHT 1996 ZDNet

Have you got everything you need to conquer the Internet? A well-configured TCP/IP connection? The latest Web browser? A big shovel? You'll need that last item most of all, because the fastest-growing areas of the Internet are the three Ms: myths, misconceptions, and misinformation. Plenty of people have plenty of reasons to slant the facts for their own selfish ends, but a lot of the hyperbole you'll read about the Internet is simply sloppy reporting. Now that the Net has gone mainstream, every newspaper, radio, and TV station has an opinion about it, backed up by a collection of half-truths, misinterpretations, and outright whoppers. But read on, and learn the truth behind the ten biggest Internet lies.

Lie 1: Someone Knows the Number of Net Users

Taking a census of the Internet is like trying to count funny hats at a Shriners convention. You know the number is pretty big, but there's a good chance you'll count the same heads more than once. You'll probably miss a bunch, too, because you surely won't be able to look in all the corners. How many America Online members actually use the Internet? If Joe Sixpack looks at his sister-in-law's Web page, does that make him an Internet user? Do you count IP addresses or e-mail listings or what?

Of course, all that ambiguity doesn't stop market researchers, interested corporations, and think tanks from trying to pin down the size of the Net. In fact, during one tenmonth stretch ending in mid-1996, at least nine top-tier analysts--including investment bankers Morgan Stanley and the pollmeisters at Nielsen--tried to count the number of users on the Internet. The definitions of what they were counting varied, from the extremely vague (U.S. Internet users) to the specific (North Americans [16] who used Web in past three months) to the sweeping (U.S. users

who use any Internet service except e-mail).

Their numbers varied even more than their definitions, ranging from 5.8 million U.S. users with direct Net access to 17.6 million North American home/office users. In the same year, other writers and researchers tossed out estimates for the worldwide Internet user base that started at 23.5 million (International Data Corporation) and headed as high as 60 million (Bob Metcalfe, InfoWorld).

Our conclusion, after analyzing all the conflicting counts: The population of the Internet is somewhere between 10 million and 100 million. More or less.

Net Census: Counting Internet Users

Guessing Game: How many Americans surf the Net? Who knows? Top market-research firms came up with wildly different answers.

Firm	Date	Users
Nielsen	Oct. '95	23.0M
Wall Street Journal	Mar. '96	17.6M
Hoffman/Novak	Apr. '96	16.4M
Computer Intelligence Infocorp	May '96	15.0M
FINN/SVP	Jan. '96	9.5M
Morgan Stanley	Feb. '96	9.0M
O'Reilly & Associates	July '95	5.8M

Source: CyberAtlas, 1996

Lie 2: Evil Abounds

Yes, there are dark alleys in cyberspace. Some of them are very dark indeed. But they represent a modest, perhaps microscopic amount of the traffic on the Net.

That's not what middle America heard last year, though, thanks to a whopper that made it all the way to the cover of Time magazine. Time's "Cyberporn" cover story was based on a study called "Marketing Pornography on the Information Superhighway," and repeated the bald-faced lie that 83.5 percent of the images on Usenet are pornographic. The research, published by Martin Rimm of Carnegie Mellon University, turned out to be an out-and-out fraud, but that didn't stop it from making the nightly news. The bogus study was even cited on the floor of the U.S. Senate.

Journalist Brock N. Meeks of the online publication CyberWire Dispatch earned a Computer Press Award for his reporting on the Time/Rimm scandal (cyberwerks.com:70/0h/cyberwire/cwd/cwd.95.07.04.html). His conclusion? Based on Rimm's own data, porn represents at most about one-half of 1 percent of all traffic in cyberspace each day. And no credible study has yet contradicted that figure.

Still, there's no denying that sexy destinations are popular. According to the records of one major search service, sex, nude, www, chat, software, game, Windows, and Microsoft are the most popular keywords submitted to search engines. Which leads to the inescapable conclusion that virtual sex and free software are the twin obsessions of most Net users.

The hunt for sex on the Net is getting more difficult, not easier, thanks to marketing consultants who have convinced unscrupulous Webmasters to embed popular words in their home pages, sometimes in white-on-white type. When the unsuspecting Web user clicks on one of these links, it leads him to a Web page that has nothing to do

with sex or porn. Search-engine architects add algorithms to their indexing routines to cancel out these bogus pointers; Webmasters respond with more sophisticated index-catching routines.

Here are the real facts: It's nearly impossible to stumble across pornography or Nazi propaganda on the Net accidentally, and it's almost impossible to miss it if you go looking for it. Even then, finding and viewing filthy pictures is a tedious, time-consuming process. And software solutions like SurfWatch do a superb job of blocking X-rated pages from young eyes. But those truths don't make good cover stories.


Untrue Blue: Net Porn

A Small Dose of Sex: On a well-stocked news server, sex-oriented newsgroups take up just a sliver of the available space, even in the anything-goes alt.* Usenet hierarchy.

Total Newsgroups: 14,001

Newsgroups in alt.* Hierarchy: 4,054 alt.sex Newsgroups: 176

Net Census: Counting Internet Users



Firm	Date	Users
Nielsen	Oct. '95	23.6M
Wall Street Journal	Mar. '96	17.6M
Huffman/Novak	Apr. '96	16.4M
Computer Intelligence Intocorp	May '96	15.0M
FINID/SVP	Jan. '96	9.5M
Morgan Stanley	Feb. '96	9.0M
O'Reilly & Associates	July '95	5.8M

Guessing Game: How many Americans surf the Net? Who knows? Top market-research firms came up with wildly different answers.

Source: CyberAtlas, 1996

Source: Scruz-Net News Feed, July 1996

Lie 3: The Net Knows No Limits

Actually, the Internet is about to run out of the most precious natural resource it needs to continue expanding: network numbers. According to the Internet Engineering Task Force committee responsible for solving this

imminent crisis, the current numeric scheme for assigning IP addresses will run out of room shortly after the end of the millennium. Robert Hinden, cochair of the IPng (for next-generation Internet protocol) working group, puts it bluntly: The Internet will eventually run out of network numbers. There is no question that an IPng is needed, but only a question of when. Fortunately, IPng has moved off engineers whiteboards and into the real world as IPv6. (To read all about it, point your browser to playground.sun.com/ipng.)

Untrue Blue: Net Porn

A Small Dose of Sex: On a well-stocked news server, sex-oriented newsgroups take up just a sliver of the available space, even in the anything-goes alt.* Usenet hierarchy.



Total Newsgroups
14,001

Newsgroups in
alt.* Hierarchy
4,054

alt.sex
Newsgroups
176

Source: Scruz-Net News Feed
July 1996

The current 32-bit IP addressing scheme (IPv4) allows a theoretical maximum of just under 4.3 billion addresses, in the format nnn.nnn.nnn.nnn. However, inefficiencies, built-in hierarchies, and reserved addresses reduce the practical supply of usable numbers to a tiny fraction of that total, perhaps as low as 15 percent. If that pool of network numbers were to run dry, the Internet would simply stop growing. And even with clever rationing of the available stock of IP addresses, routing tables are becoming increasingly overloaded and difficult to manage.

IPv6 supports addresses that use 128 bits of information, or 4 billion times 4 billion

times the size of the current 32-bit address space. (For compatibility's sake, that address space allows room for existing IPv4 addresses.) This works out to be 3.4×10^{38} theoretical addresses, a very large number indeed. In more practical terms, Hinden notes, the assignment and routing of addresses requires the creation of hierarchies which reduces the efficiency of the usage of the address space. He cites a 1994 analysis of address assignment efficiency that concludes, even using the most pessimistic estimates, that the new addressing scheme would permit more than 1,500 unique IP addresses for every square meter of the planet. Using a more efficient system for allocating addresses, there's room for nearly 4 billion billion IP addresses per square meter, or enough to uniquely identify most of the human DNA on the planet. That's not exactly infinite, but it's close.

The hardest part about gradually implementing IPv6 will be convincing the old IPv4 routers to talk to the new routers without getting confused. Don't underestimate the complexity or the impact of the problem, either. Even a trivial routing error can bring down an entire network, as Netcom discovered to its horror on June 18, 1996. All it took was a typo--an engineer accidentally entered an extra ampersand into the firmware of a Cisco router--and 400,000 Netcom subscribers lost access to the Web and e-mail for 13 hours.

That snafu didn't ripple out onto the rest of the Net, but who's to say the next outage won't affect an even larger group of people for even longer? Demand for bandwidth is growing faster than the technologies that support it. Anyone who's betting that the Internet can expand at its current rate without major growing pains is playing a sucker bet.

Growth Spurt: Internet Expansion

Getting Bigger: The number of Net hosts--computers connected directly to the Internet--nearly doubled in just the last year. At this rate, every living human will have an IP address by 2003.

Date	No. of Hosts
Jan. '96	9.5 Million
Jan. '93	1.3 Million

Source: Matthew Gray, MIT



Growth Spurt: Internet Expansion

Getting Bigger: The number of Net hosts--computers connected directly to the Internet--nearly doubled in just the last year.

At this rate, every living human will have an IP address by 2003.

Date No. of Hosts

Jan. '96 9.5 Million

Jan. '93 1.3 Million

Source: Matthew Gray, MIT

Lie 4: Speed Is All You Need

ISDN, ATM, cable modems, and other high-bandwidth networks will not cure the Internet's serious traffic problems. Remember Alice's Adventures in Wonderland, where the White Rabbit had to run at full speed to stay in the same spot? That's the problem on the Internet, where demand for bandwidth-sucking new data types is increasing faster than the capacity of the data pipes. Unless every piece of the network upgrades to bigger pipes simultaneously, the bottlenecks simply shift from place to place.

There are currently fewer than three dozen major connections along the Internet's backbone. Each step away from these Network Access Points is a potential bottleneck, especially if there's insufficient capacity on the smaller lines leading into the access point. For example, the massive MAE-West connection (the acronym stands for Metropolitan Area Ethernet) serves the Net-crazy Silicon Valley area of Northern California. At this critical junction, data traffic even along the backbone can bog down because of demand. Anyone who's tried to download a new beta of Netscape Navigator within a day or two of its release knows the phenomenon all too well. Other bottlenecks are more local--like those caused by Internet service providers that try to squeeze too many users onto a single T1 line.

Late last year Bob Metcalfe, widely acknowledged as the father of Ethernet, predicted the imminent collapse of the Internet. He paints a doomsday portrait of the Net as it buckles under the load of JavaScript applets, Internet phone calls, and, naturally, all those pornographic images clogging the network. Network engineers are adding capacity almost as fast as demand is rising, but over the next few years you can expect brownouts and occasional serious service outages on the Internet.

Lie 5: Beware of Hackers

The movies make it look so easy: A hacker sits down, taps a few keys, scrunches his face, taps another couple keys, and proclaims, "We're in." Reality is far less interesting, as most online evildoers gain unauthorized access to Internet hosts by guessing user IDs and passwords, usually with specific targets and scripts that automatically try common words and phrases until they find one that works.

Computer security experts marvel at the unwarranted fear that average Net users display when it comes to online commerce, compared with the unwarranted confidence they place in conventional transactions. The odds of having your credit card number intercepted by a cyberpunk are comparable to the odds that you'll be abducted by aliens, yet most of us think nothing of dialing a toll-free number and rattling off a Visa number to the operator on the other end. Those numbers will probably wind up in a computer file somewhere, and it's that collection that's most likely to be purloined by hackers.

Ordinary users, especially those on part-time dial-up connections or behind corporate firewalls, are mostly safe, as long as they exercise routine precautions. You probably have more to fear from programs than from people--especially macros (like those in Microsoft Word documents) and applets (Java and otherwise) that execute automatically. Anyone who operates a full-time Web or mail server, on the other hand, needs to remain up-to-date on security alerts, password policies, and patches for operating systems and other server software.

A recent report from the Computer Security Institute suggests that the greatest threat to network security comes from bored or recently terminated employees, and that outside infiltrators account for a tiny fraction--less than 3 percent--of online attacks. In the future, the threats may directly affect national security, too. In a speech to computer security professionals earlier this year, Deputy Attorney General Jamie Gorelick warned against the coming "cyberwar" and called for "the equivalent of the Manhattan Project . . . to help us harden our infrastructures against attack."

Sensationalism? Perhaps, but defense planners are taking the possibility seriously--just look at the agenda for the Fifth International Information Warfare Conference (www.ncsa.com/infowar1.html). After we read about "how to wreak disaster with a few well-placed pickaxes," we had trouble sleeping.

Net Threats: Know Your Enemies

Worldwide Hacker Shortage? The greatest threats to the Net come not from bored teenage hackers or even viruses, but from poorly trained workers, disgruntled employees, and Mother Nature.

Human Error: 55

Physical Security/Natural Disasters: 20

Dishonest/Disgruntled Employees: 19

Viruses: 4

Outside Attacks: 2

Source: Computer Security Institute, May 1996

Lie 6: You Can Find Everything on the Net

If your question is very, very specific and if it's related to pop culture or computer science, you have a good chance of finding what you want. Brute-force search engines and the vast, unindexed bulk of the Internet's information store conspire against more thoughtful questions, though.

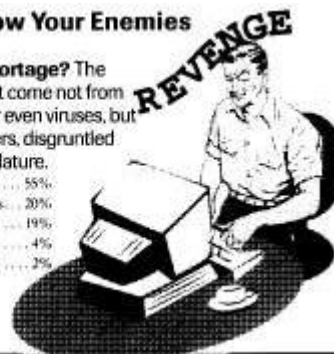
Bill Gates probably had something like the World Wide Web and a full-text index in mind when he first began musing about information at your fingertips years ago. But who would have expected it would come to this? According to Digital Equipment, in May of this year the AltaVista index hit 30 million pages, with another 3 million Usenet articles tossed in for fun. Not to be outdone, Excite announced its updated search engine with 50 million Web pages. The trouble with all that content is that it scrupulously follows Sturgeon's Law: Ninety percent of everything is crap.

Net Threats: Know Your Enemies

Worldwide Hacker Shortage? The greatest threats to the Net come not from bored teenage hackers or even viruses, but from poorly trained workers, disgruntled employees, and Mother Nature.

Human Error.....	55%
Physical Security/Natural Disasters.....	20%
Dishonest/Disgruntled Employees.....	19%
Viruses.....	4%
Outside Attacks.....	2%

Source: Computer Security Institute,
May 1996



Today's most successful search engines are the kind that work like close-up magicians doing a card trick. Pick a site, any site, they say, as long as it's one of the ones we've included in our neatly categorized list. To find truly random information, like Babe Ruth's batting average in 1923, you'll need to master complex

Boolean logic (check out *The Search Is Over*, page 143) and then forget it all (because www.yankees.com appears to have been organized by George Costanza).

It's no surprise that career counselors say librarians will be in great demand over the next decade. They're the only ones who understand that sometimes your best bet is to look in a book.

Info Overflow: Out of Sorts

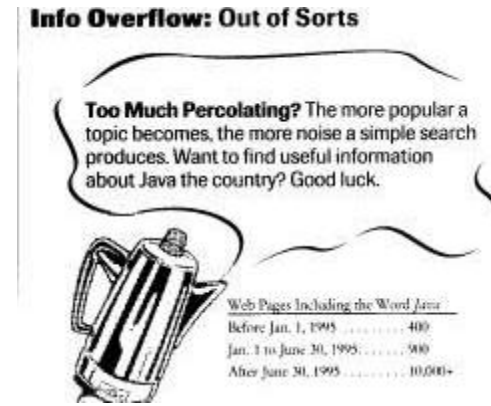
Too Much Percolating? The more popular a topic becomes, the more noise a simple search produces. Want to find useful information about Java the country? Good luck.

Web Pages Including the Word Java:

Before Jan. 1, 1995: 400

Jan. 1 to June 30, 1995: 900

After June 30, 1995: 10,000



Lie 7: Cyberspace Is Vast and Unregulated

Vast, yes. Unregulated? Tell that to Phil Zimmermann or Kevin Mitnick or Robert and Carleen Thomas, all of whom have run up enormous legal bills responding to federal felony charges tied directly to their activities in cyberspace.

Zimmermann was accused of exporting cryptographic software that

was more powerful than allowed by State Department regulations. According to the Feds, who later dropped all charges, it's illegal to export cryptographic software unless you first acquire a special munitions export license, normally issued for weapons sales. The same law forces international software giants like Lotus and Netscape to produce watered-down versions of their software that can legally be carried over international borders on the Internet.

Mitnick was charged with 23 counts of computer fraud. As part of a plea bargain, he pleaded guilty to a charge of illegally using a telephone access device and one charge of computer fraud.

The Thomases ran an adult-oriented BBS called Amateur Action out of their hometown of Milpitas, California. On the Left Coast that was hardly news, but in Memphis, Tennessee, it was a shocking offense. Federal postal inspectors in Memphis downloaded files from the Thomases' computer and promptly charged them with distributing material that was objectionable by community standards 2,000 miles away from the server's location. They were found guilty, despite never setting foot in Tennessee until their trial.

Anything you do on the Internet is potentially subject to the same rules, regulations, and laws that would apply if you did the same activity in a physical medium. Despite the relentless advocacy and common sense of groups like the Electronic Frontier Foundation (www.eff.org), cyberspace is not very friendly to civil rights, and in some cases publishers are less protected by the First Amendment than are their paper-and-ink cousins. Laws against obscenity, fraud, libel, trespassing, and conspiracy all apply. About the only thing that restricts the regulation of the Internet is its ability to cross international borders. Prosecutors in Tennessee would find it almost impossible to shut down a pornographer in Denmark.

The federal government earned all the headlines this year with the passage of the Communications Decency Act (CDA), a brand-new attempt at reining in the Net. But the states deserve dishonorable mention as well, for sponsoring (and in some cases passing) some truly lousy laws. Next time you get flamed in a newsgroup, for example, try to lure the offenders to Connecticut, where they can be charged with sending an online message with intent to harass, annoy, or alarm another person. While in Georgia, take a look at the Internet Police bill, which outlaws transmitting

data, if such data uses any individual name, trade name, registered trademark, logo, legal or official seal, or copyrighted symbol . . . [when] permission or authorization has not been obtained. According to the lawyers who've studied the fine print, if you established a link to The Real Thing on your home page, you'd have to answer to the Coca-Cola Company.

Legal Action: The Fight for Control

Think Globally, Act Stupidly: The Internet may be an international phenomenon, but that hasn't stopped a number of state legislatures from trying to rein it in by passing laws that restrict what Netizens can say and do.



Number of states with laws that directly govern computer crimes	47
Number of states where proposed laws restricting conduct on the Internet were introduced in 1995	16
Number of states where such laws were ratified	9

Source: Electronic Frontier Foundation

Law enforcement agencies and the rest of the criminal justice system are woefully ill-prepared to investigate high-tech crime. Still, it's encouraging that a three-judge panel in Philadelphia struck down the CDA after a government computer expert admitted he couldn't display a single piece of porn with SurfWatch installed on his PC. Even more encouraging was the crystal-clear statement of

principle expressed in the court's unanimous opinion: As the most participatory form of mass speech yet developed, the Internet deserves the highest protection from governmental intrusion.

Legal Action: The Fight for Control

Think Globally, Act Stupidly: The Internet may be an international phenomenon, but that hasn't stopped a number of state legislatures from trying to rein it in by passing laws that restrict what Netizens can say and do.

Number of states with laws that directly govern computer crimes: 47

Number of states where proposed laws restricting conduct on the Internet were introduced in 1995: 16

Number of states where such laws were ratified: 9

Source: Electronic Frontier Foundation

Lie 8: The Nuke-Proof Net

The intriguing myth that the Internet can survive a nuclear attack actually has a kernel of truth behind it. Pioneering research in the 1960s that led to ARPAnet (the ancestor of today's Internet) was funded by the Department of Defense. These researchers argued that a distributed, highly redundant, self-healing, packet-switching network was the best defense against unexpected disruptions in network traffic, like the kind that happen when one node on the network gets blown away.

In fact, military experts say that during the Gulf War in 1991, Iraq's TCP/IP network remained intact despite hundreds of direct hits from Allied smart bombs. Too bad the Pentagon's information warriors didn't try diverting packets headed for www.penthouse.com to Iraq's network instead--the extra traffic would have brought Saddam's network to its knees more effectively than any cruise missile.

In the United States, ARPAnet is history and MilNet (which handles secure military data communications) long ago split from the Net. Still, the basic structure of the Internet hasn't changed that much. Damage to isolated segments simply causes traffic

to find other routes around the out-of-service sections. Extensive damage, especially in the down part of the backbone, would almost certainly render the Net useless as a reliable communications tool. Let's hope we never find out for sure.

Lie 9: Online, You're Completely Anonymous

Oh yeah? If you think anything you do online is truly private, think again. That goes if you use the office computer to access the Internet.

Employers can legally read e-mail sent to and from your corporate account. According to the Privacy Rights Clearinghouse, the employer owns [the e-mail system] and is allowed to read its contents. Messages sent within the company as well as those that are sent from you to another company or from another company to you can be subject to monitoring by your employer. And as Oliver North learned the hard way, deleting e-mail from your system doesn't destroy all traces of it, especially at companies or government organizations that have comprehensive backup programs.

Web site administrators can gather a surprising amount of information about who you are and where you're from, just by scanning the headers on packets that arrive from your machine. They can store information in a "cookies" file, also known as client-side persistent information. To find out what they can learn, visit the Center for Democracy and Technology at www.cdt.org, and click on the CDT Privacy Demonstration button. For one possible cure, look at www.anonymizer.com.

There are at least four national phone directories on the Net (www.switchboard.com, for example), and anyone who can glean a bit of information about you can probably construct a picture of you by turning to one of these sources.

Anyone with access to your hard disk can see where you've been Web surfing, simply by looking through your cache and history files. Some companies have gone a step further, installing software that keeps a log of every site you access from work.

Digital information lasts a long time. Some aspects of the Net are truly ephemeral, but many are disturbingly persistent. Newsgroup archives, for example, may contain words written in the expectation that they were being spoken in a contemporaneous debate among a handful of well-wired friends. Try searching for your own name using a Web search engine and see what comes back. You might be unpleasantly surprised.

Countdown: Civil Rights on the Internet

Tick, Tick, Tick: It's 11:52--do you know where your civil liberties are? Patterned after the famous Atomic Doomsday Clock, the Digital Doomsday Clock (www.io.org/~sherlock/doom/doom.html) tracks the status of free speech in cyberspace. This site links to info about Net privacy.



Countdown: Civil Rights on t

Tick, Tick, Tick: It's 11:52--do you know where your civil liberties are? Patterned after the famous Atomic Doomsday Clock, the Digital Doomsday Clock (www.io.org/~sherlock/doom/doom.html) tracks the status of free speech in cyberspace. This site links to info about Net privacy.

Lie 10: Spam Is Harmless

That's what the people who are flooding your e-mailbox and unrelated newsgroups with unsolicited advertisements claim. Why not just press the Delete key? they ask. The problem is not cost, or even time (although that's a more precious resource than money for many people), but the problem is signal-to-noise ratio. Already, some newsgroups have been so heavily flooded with spam that it's practically impossible to pick out the few on-topic posts lost in the welter of announcements and indignant responses to them. And as electronic junk mail increases,

popularity, e-mail users will be forced to upgrade (at significant cost) to client software that can filter out unwanted messages.

Ham It Up: The Legal Implications

Busy Lawyers: Kraft and Hormel Foods, maker of the pressed-meat product known as Spam, have their hands full trying to protect their trademarks on the Internet.

Number of Web sites worldwide containing the word Spam: 10,000+

Number of Web sites worldwide containing the word Jell-o: About 4,000

Number of Web sites worldwide containing the word Velveeta: About 600

Number of Web sites officially sponsored by Hormel and Kraft: 0



Spamming is the spiritual descendant of high-pressure, boiler-room telephone sales scams, so it should come as no surprise that Spam-masters often got their start selling bogus office supplies over the phone. The worst offenders use the same hit-and-run tricks, too: phony names, nonexistent return addresses, and breathless pitches that sound too good to be true.

One of the best sources of information about Spam is the

Blacklist of Internet Advertisers, whose FAQ is available in the United States at www.cco.caltech.edu/~cbrown/BL. This detailed resource includes definitions of the subtle differences between the digital versions of Spam, Velveeta, and Jell-o, along with lists of infamous offenders and (mostly legal) tactics for dealing with Spam when you run across it. Best of all, the Blacklist includes a pointer to the legendary Monty Python Spam sketch, available as a transcript and an audio file.

Ham It Up: The Legal Implications

Busy Lawyers: Kraft and Hormel Foods, maker of the pressed-meat product known as Spam, have their hands full trying to protect their trademarks on the Internet.

Number of Web sites worldwide containing the word Spam: 10,000

Number of Web sites worldwide containing the word Jell-o: About 4,000

Number of Web sites worldwide containing the word Velveeta: About 600

Number of Web sites officially sponsored by Hormel and Kraft: 0

Mag.Coll.: 86M1522

Article A18706821

View other articles linked to these subjects:

Internet

- [View](#) 1 Encyclopedia excerpt
- [View](#) 16 Reference book excerpts
- [View](#) 5100 Newspaper references
- [View](#) 40061 Periodical references

Internet Usage

View	12974 Periodical references
See also	245 other subdivisions

PC/Computing, Oct 1, 1996

View	other articles in this issue
-------------	------------------------------

Print, e mail, and other retrieval options

Browser Print — *Full Content* —

Reformat article with full size graphics for printing (approximately 10 pages) from your browser. To return to InfoTrac, use the *back* function of your browser.

Acrobat Reader — *Full Content* —

Retrieve article in originally published format for viewing and printing from Acrobat™ Reader. Please allow a few minutes for the retrieval operation to complete (6 full pages PDF)

E Mail Delivery — *Text Only* —

We will send a plain text version to the e-mail address you enter (e.g. *bettyg library.com*).

E-Mail Address:

Subject
(defaults to title):

Submit E-mail Request

◀ — Article 206 of 228 — ▶

THOMSON
—*—
GALE

[Copyright and Terms of Use](#)

EXHIBIT 12

Statement on SPAM Use taken from Hormel's website at
<http://www.spam.com/ci/ci_in.htm>



SPAM and the Internet

You've probably seen, heard or even used the term spamming to refer to the act of sending unsolicited commercial email (UCE), or spam to refer to the UCE itself. Following is our position on the relationship between UCE and our trademark SPAM.

Use of the term spam was adopted as a result of the Monty Python skit in which our SPAM meat product was featured. In this skit, a group of Vikings sang a chorus of spam, spam, spam . . . in an increasing crescendo, drowning out other conversation. Hence, the analogy applied because UCE was drowning out normal discourse on the Internet.

We do not object to use of this slang term to describe UCE, although we do object to the use of the word spam as a trademark and to the use of our product image in association with that term. Also, if the term is to be used, it should be used in all lower-case letters to distinguish it from our trademark SPAM, which should be used with all uppercase letters.

This slang term, which generically describes UCE, does not affect the strength of our trademark SPAM. In a Federal District Court case involving the famous trademark STAR WARS owned by LucasFilms, the Court ruled that the slang term used to refer to the Strategic Defense Initiative did not weaken the trademark and the Court refused to stop its use as a slang term. Other examples of famous trademarks having a different slang meaning include MICKEY MOUSE, to describe something as unsophisticated and CADILLAC, used to denote something as being high quality. It is only when someone attempts to trademark the word spam that we object to such use, in order to protect our rights in our famous trademark SPAM. We coined this term in 1937 and it has become a famous trademark. Thus, we don't appreciate it when someone else tries to make money on the goodwill that we created in our trademark or product image, or takes away from the unique and distinctive nature of our famous trademark SPAM. Let's face it. Today's teens and young adults are more computer savvy than ever, and the next generations will be even more so. Children will be exposed to the slang term spam to describe UCE well before being exposed to our famous product SPAM. Ultimately, we are trying to avoid the day when the consuming public asks, Why would Hormel Foods name its product after junk e-mail?

Position Statement on "Spamming"

We oppose the act of spamming or sending UCE. We have never engaged in this practice, although we have been victimized by it. If you have been one of those who has received UCE with a return address using our website address of SPAM.com, it wasn't us. It's easy and commonplace for somebody sending UCE to simply adopt a fake header ID, which disguises the true source of the UCE and makes it appear that it is coming from someone else. If you have or do receive UCE with this header ID, please understand that it didn't come from us.

Other "spam" Websites

This is the one and only official SPAM Website, brought to you by the makers of the SPAM Family of products. All of the others have been created by somebody else. We are not associated with those other websites and are not responsible for their content. As a Company, we are opposed to content that is obscene, vulgar or otherwise not family friendly. We support positive family values and you can count on us for safe surfing by your children.

Thank you for visiting the official SPAM Website
For more information see [Legal and Copyright Info](#)

<| [home](#) > < [SPAM](#) | > < [SPAM in time](#) > | < [eat SPAM](#) > < [|SPAM stuff](#) | >
| < [re: SPAM](#) > |

SPAM is a registered trademark of Hormel Foods Corporation.

EXHIBIT 13

Hormel's April 4, 2000 letter to David Rosso (produced by Hormel)



KCF
5-1

Corporate Office

Hormel Foods, LLC
1 Hormel Place
Austin MN 55912-3680

Writer's Direct Dial Number: (507) 437-5240
Law Department Fax Number: (507) 437-5135
Writer's E-Mail Address: mjcciccese@hormel.com

April 4, 2000

Mr. David Rosso
1732 East 30th St.
Lorain, OH 44055-1718

RE: Our Trademark SPAM

Dear Mr. Rosso:

It recently came to our attention that you are portraying clip art of our SPAM® luncheon meat trademark and our trademark with a ban symbol over it on your website, where you discuss ways to combat unsolicited commercial e-mail ("UCE").

While we also oppose UCE and applaud your efforts in that regard, we object to your visual use of our trademark in connection with UCE. Because SPAM® luncheon meat is a high quality product and one which enjoys a very large following worldwide, we do not want it used as a symbol of the objectionable and unethical practice of sending UCE. We have no objection of your use of the slang term "spam," but we do object to increasing the negative association between our product and this practice. Thus, the slang term "spam" can be used, but only in all lower case letters rather than all capital letters. One way we distinguish between our trademark SPAM and the slang term "spam" is to put our trademark in all capital letters and the slang term in all lower case letters.

Thank you for your anticipated compliance with this matter. Once the word "spam" is converted to all lower case letters within the ban symbols, and the SPAM trademark logo at the top of your page is removed, you will be in compliance. Please feel free to contact me if you have any questions regarding this matter. Thank you for your anticipated cooperation.

Very truly yours,

MELANIE J. CICHESE
Assistant General Attorney
and Assistant Secretary
(507) 437-5240

krm

EXHIBIT 18

Diane R. Khirallah, *Spam by Any Other Name*, INFORMATIONWEEK, Jun. 4, 2001, at
17



Seattle Public Library

Gen'l Reference Ctr Gold

— Article 1 of 1 —

 Information week, June 4, 2001 p17

Mark

Spam by any other name ... (Company Business and Marketing)(Brief Article) *iane Rezendes hirallah.*

Print

Full Text: COPYRIGHT 2001 All rights reserved. No part of this information may be reproduced, republished or redistributed without the prior written consent of CMP Media, Inc.

Is still something that the more cautious among us hesitate to open, be it junk E-mail or canned luncheon meat. And now, Hormel says it's not going to fight over use of its trademark. In fact, a spokeswoman says the confusion over SPAM (the meat) and spam (the junk E-mail) is actually helping the brand. Sales of its SPAM T-shirts, SPAM snow globes, and SPAM glow-in-the-dark boxers are up. It's really crept into popular culture, she says.

Next: The company plans a 16,000-square-foot museum, including an interactive tribute to SPAM over the years.

<http://www.iweek.com/>

Copyright [copyright] 2001 CMP Media LLC

Article A75244602

— View other articles linked to these subjects: —

Food Industry

- [View](#) 2 Reference book excerpts
- [View](#) 10654 Newspaper references
- [View](#) 56467 Periodical references

Food Industry Marketing

- [View](#) 8 Periodical references
- [See also](#) 339 other subdivisions

Hormel Foods Corp.

- [View](#) 78 Newspaper references
- [View](#) 432 Periodical references

Hormel Foods Corp. Marketing

- [View](#) 39 Periodical references
- [See also](#) 44 other subdivisions

Pork Industry

- [View](#) 336 Newspaper references
- [View](#) 3588 Periodical references

Pork Industry Marketing

[View](#) 2 Periodical references
[See also](#) 170 other subdivisions

InformationWeek, Jun 4, 2001

[View](#) other articles in this issue

Print, e mail, and other retrieval options

[Browser Print](#) — *Full Text* —

Reformat for printing (approximately 1 page) from your browser. To return to InfoTrac, use the *back* function of your browser.

[Acrobat Reader](#) — *Full Text* —

Retrieve for viewing and printing from Acrobat™ Reader. Please allow a few minutes for the retrieval operation to complete (approximately 1 page)

E Mail Delivery — *Full Text* —

We will send a plain text version to the e-mail address you enter (e.g. *bettyg@library.com*).

E-Mail Address:

Subject
(defaults to title):

Submit E-mail Request

Article 1 of 1



[Copyright and Terms of Use](#)

EXHIBIT 19

Table including U.S. Patent and Trademark Office registrations and pending applications for marks including the word SPAM

MARK	REGISTRATION OR APPLICATION NUMBER AND BRIEF DESCRIPTION OF USE
SPAMKILLER	Reg. No. 2762980 (computer software for detecting and blocking electronic communications)
NATIONAL DO NOT SPAM REGISTRY	App. No. 78347112 (providing a nationwide Federal database for individuals who do not want to receive unsolicited commercial e-mail (UCE), also known as "spam," to register their e-mail addresses with the Federal Trade Commission (FTC) or other legally designated entity or entities, and for authorized persons and entities to download or otherwise consult such data for purposes of complying with any anti-spam provisions under applicable laws, regulations, and policies)
SPAM CUBE	App. No. 78411511 (computer hardware for filtering junk email)
SPAM ZAPPER	App. No. 78351787 (computer software for filtering unwanted email)
SPAMEATER*	App. No. 78315899 (computer software for accessing and filtering email)
SPAMBEAR	App. No. 78396221 (computer software for filtering unwanted email)
SPAMSTOMPER*	App. No. 78248113 (computer software for filtering unwanted email)
ETRUST EZ ANTI-SPAM	App. No. 78378464 (computer software for filtering unwanted email)
DSPAM	App. No. 78375968 (computer software)
SPAMLION*	App. No. 78246980 (computer software for use in email sender verification)
SPAMSHREDDER	App. No. 78372921 (computer software for filtering unwanted email)
SPAM SHREDDER	App. No. 78372918 (computer software for filtering unwanted email)
PAYSPAM	App. No. 78368177 (dissemination of advertising matter)
SPAM PAL	App. No. 78368174 (dissemination of advertising matter)

SPAMPAY	App. No. 78368172 (dissemination of advertising matter)
SPAMGUARD	App. No. 78366679 (service that blocks unsolicited email)
SPAM CHECKPOINT*	App. No. 78234945 (computer database services)
WHAM! BAM! NO MORE SPAM!	App. No. 78362709 (computer software for filtering unwanted email)
SPAM EXTRACT	App. No. 78362646 (computer software for filtering unwanted email)
SPAMSENTINEL	App. No. 78416497 (computer software for filtering unwanted email)
SURFCONTROL ANTI-SPAM AGENT	App. No. 78158162 (computer software for filtering unwanted email)
SPAM POLICE	App. No. 78412800 (computer networking hardware)
POSTINI ANTI-SPAM ENGINE (PASE)	App. No. 78293083 (electronic mail management and security services)
SPAM XPLODER	App. No. 78285608 (email and spam filtering services)
SPAM SAFE	App. No. 78358894 (Internet web hosting anti-spam solution blocking unwanted e-mail)
ACTIVESTATE FIELD GUIDE TO SPAM	App. No. 78276337 (providing an online repository of advanced "tricks" -- represented as HTML code used by senders of unsolicited email to hide their messages from email filters)
MAKING SPAM HISTORY	App. No. 78259936 (computer software for the detection, blocking, filtering or modification of unsolicited, bulk, and/or junk electronic messages)
MAKING SPAM HISTORY	App. No. 78259922 (services aimed at reducing junk e-mail, recognizing, detecting and analyzing unsolicited bulk e-mail and creating countermeasures to reduce, combat and prevent unwanted e-mail)
SPAM SMACKER	App. No. 78228929 (computer software to filter junk mail from e-mail servers)
NO SPAM TODAY!	App. No. 78323972 (computer software for use in blocking unwanted electronic mail transmitted via computer)

SPAMFREE	App. No. 78184381 (computer software filtering out unwanted e-mails)
YOU'VE GOT SPAM*	App. No. 78132563 (computer software for use in blocking unwanted electronic mail) NOTE: ABANDONED AFTER APPROVED FOR PUBLICATION
BLOCK ALL SPAM	App. No. 78251751 (computer services screening and authenticating the source of incoming e-mail)
SPAMWARE	App. No. 78292045 (computer software for detecting, blocking, removing, and evading electronic communications)
SPAMERASER	App. No. 78290920 (computer programs for blocking, preventing delivery, and deleting unwanted electronic messages)
SPAMFILTER.COM	App. No. 78285613 (computer email and spam filtering services)
SPAM MARSHALL	App. No. 78349551 (software for blocking spam and junk email from inboxes and servers)
SPAM CALCULATOR	App. No. 78253601 (software and services regarding unsolicited emails)
SPAMTAG	App. No. 78243175 (denoting unsolicited commercial email received as spam by adding a SPAMTAG to the recipient's subject line.)
SPAMSWATTER	App. No. 76547186 (software for blocking of unwanted email and advertisements)
SPAMTRAQ	App. No. 76545372 (Internet based computer protection services, featuring, anti-virus and anti-spam services)
SPAMTRAQ	App. No. 76545373 (computer software for security, authentication and virus and spam detection, prevention and removal)
KILL SPAM DEAD*	App. No. 76547165 (software for blocking of unwanted email and advertisements)
SPAM WASHER*	App. No. 76414318 (computer software, namely software to reduce unsolicited electronic mailings directed at a user's electronic mailing address) NOTE: ABANDONED AFTER APPROVED FOR PUBLICATION
SPAM TERMINATE	App. No. 76575862 (computer software development tools)

SPAMAWAY*	App. No. 76457236 (computer software downloadable via the Internet for screening and blocking unwanted e-mail) NOTE: ABANDONED AFTER APPROVED FOR PUBLICATION
SPAMZAP *	App. No. 76410067 (software designed to prevent unauthorized access to email addresses and to eliminate unsolicited email) NOTE: ABANDONED AFTER INTER PARTES TTAB ACTION
SPAM ZAPPER *	App. No. 76410066 (computer software designed to prevent unauthorized access to email addresses and to eliminate unsolicited email) NOTE: ABANDONED AFTER INTER PARTES TTAB ACTION
SPAM GENE	App. No. 76562611 (computer software for detecting, filtering, monitoring, reporting, blocking, removing, and preventing unsolicited, bulk, unwanted or content-inappropriate electronic mail)
SPAM DNA	App. No. 76562609 (computer software for detecting, filtering, monitoring, reporting, blocking, removing, and preventing unsolicited, bulk, unwanted or content-inappropriate electronic mail)
SPAMFROG	App. No. 76517356 (computer software to filter and block unsolicited electronic messages)
SPAM TERMINATOR*	76452922 (computer software development tools) OPPOSITION PENDING BEFORE TTAB
SPAMAZING	76567883 (telephone and email authentication software)
SPAMXTERMINATOR	App. No. 76549097 (software for blocking of unwanted email and advertisements)
SPAM-O-MATIC	App. No. 76555232 (computer services redirecting junk electronic mail based on user preferences)
REVENGE ANTI-SPAM	App. No. 76554202 (computer software for actively identifying and filtering an unsolicited message; and for redirecting an unsolicited message to its origin with a cease and desist request)
SPAMSMART	App. No. 76534547 (on-line electronic mail management, routing, and delivery services)
SPAMEXTERMINATOR	App. No. 76549203 (software for blocking of unwanted email and advertisements)

CP SPAMSHIELD	App. No. 76471325 (computer services for screening and deleting unwanted emails from global or publicly accessible computer networks)
IHATESPAM *	App. No. 76416684 (computer software to filter and quarantine unwanted, unsolicited and/or inappropriate e-mail) OPPOSITION PENDING BEFORE TTAB
SPAMDUNK *	App. No. 75950568 (software designed to filter junk(spam)email from regular email) NOTE: ABANDONED AFTER INTER PARTES TTAB ACTION
SPAMGUARD *	App. No. 75892556 (Electronic mail services) NOTE: ABANDONED AFTER INTER PARTES TTAB ACTION
SPAM SENTRY *	App. No. 75556121 (designing and implementing custom web interface for users of the global computer information network to enable them to create and maintain personalized e-mail filters) NOTE: ABANDONED AFTER INTER PARTES TTAB ACTION
SPAMSCREEN*	Reg. No. 2452248 (computer software used to filter email) NOTE: CANCELLED
THIS IS NO SPAM!*	Reg. No. 2213532 (direct mail advertising services) NOTE: CANCELLED

An asterisk indicates that the mark has been approved for publication in the Official Gazette of the Trademark Office.

EXHIBIT 30

Table including U.S. Patent and Trademark Office registrations for selected marks including the word APPLE



UNITED STATES PATENT AND TRADEMARK OFFICE

[Home](#)
[Index](#)
[Search](#)
[System Alerts](#)
[eBusiness Center](#)
[News & Notices](#)
[Contact Us](#)

T E S S E T

TESS was last updated on Wed May 6 0 : :1 E T 00

[PTO HOME](#)
[TRADEMARK](#)
[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE DICT](#)
[BOTTOM](#)
[HELP](#)

Logout Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

Check Status

(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark	HOT APPLE BLAST
Goods and Services	IC 032. US 045 046 048. G & S: Apple Cider-Based Beverage. FIRST USE: 19951200. FIRST USE IN COMMERCE: 19951200
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76425240
Filing Date	June 27, 2002
Current Filing Basis	1A
Original Filing Basis	1A
Published for Opposition	January 7, 2003
Registration Number	2702491
Registration Date	April 1, 2003
Owner	(REGISTRANT) Arabica Funding, Inc. CORPORATION DELAWARE 445 Broad Hollow Road, Suite 239 Melville NEW YORK 11747
Attorney of Record	Travis L. Bachman
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE HOT APPLE APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2004-05-27 00:15:13 ET

Serial Number: 76425240

Registration Number: 2702491

Mark (words only): HOT APPLE BLAST

Standard Character claim: No

Current Status: Registered.

Date of Status: 2003-04-01

Filing Date: 2002-06-27

Transformed into a National Application: No

Registration Date: 2003-04-01

Register: Principal

Law Office Assigned: TMO Law Office 114

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -Warehouse (Newington)

Date In Location: 2003-04-08

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [Arabica Funding, Inc.](#)

Address:

[Arabica Funding, Inc.](#)
[445 Broad Hollow Road, Suite 239](#)
[Melville, NY 11747](#)
[United States](#)

Legal Entity Type: [Corporation](#)

State or Country of Incorporation: [Delaware](#)

GOODS AND/OR SERVICES

[Apple Cider-Based Beverage](#)

International Class: [032](#)

First Use Date: 1995-12-00

First Use in Commerce Date: 1995-12-00

Basis: 1(a)

ADDITIONAL INFORMATION

Disclaimer: HOT APPLE

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2003-04-01 - Registered - Principal Register

2003-01-07 - Published for opposition

2002-12-18 - Notice of publication

2002-10-29 - Approved for Pub - Principal Register (Initial exam)

2002-10-25 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent (Owner)

Travis L. Bachman (Attorney of record)

TRAVIS L. BACHMAN
DORSEY & WHITNEY LLP
SUITE 1500, 50 SOUTH SIXTH STREET
MINNEAPOLIS, MINNESOTA 55402-1498
United States

Phone Number: (612) 340-2656

Fax Number: (612) 340-8856



UNITED STATES PATENT AND TRADEMARK OFFICE

[Home](#)
[Index](#)
[Search](#)
[System Alerts](#)
[eBusiness Center](#)
[News & Notices](#)
[Contact Us](#)

T E S S E T

TESS was last updated on Wed May 6 0 : :1 E T 00

[PTO HOME](#)
[TRADEMARK](#)
[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE DICT](#)
[BOTTOM](#)
[HELP](#)
[PREV LIST](#)
[CURR LIST](#)
[NEXT LIST](#)
[FIRST DOC](#)
[PREV DOC](#)
[NEXT DOC](#)
[LAST DOC](#)

Logout Please logout when you are done to release system resources allocated for you.

Start List At: OR Jump to record: **Record 1 out of 20**

Check Status

(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark	ADAMS APPLE
Goods and Services	IC 031. US 001 046. G & S: live fruit trees, namely, apple trees for commercial orchards. FIRST USE: 20010209. FIRST USE IN COMMERCE: 20021102
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	78133688
Filing Date	June 6, 2002
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	August 5, 2003
Registration Number	2828553
Registration Date	March 30, 2004
Owner	(REGISTRANT) Van Well Nursery, Inc. CORPORATION WASHINGTON 2821 Grant Road East Wenatchee WASHINGTON 98101
Attorney of Record	PATRICK H. BALLEW
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE APPLE APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK

Register PRINCIPAL
Live/Dead Indicator LIVE

-
- [PTO HOME](#)
 - [TRADEMARK](#)
 - [TESS HOME](#)
 - [NEW USER](#)
 - [STRUCTURED](#)
 - [FREE FORM](#)
 - [BROWSE DICT](#)
 - [TOP](#)
 - [HELP](#)
 - [PREV LIST](#)
 - [CURR LIST](#)
 - [NEXT LIST](#)
 - [FIRST DOC](#)
 - [PREV DOC](#)
 - [NEXT DOC](#)
 - [LAST DOC](#)
-

[H](#) [E](#) [EX](#) [E](#) [H](#) [TE](#) [E](#) [T](#) [B](#) [I](#) [E](#) [E](#) [TE](#) [E](#) [TI](#) [E](#)
[T](#) [T](#) [I](#) [T](#) [TE](#) [E](#) [T](#)

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2004-05-27 00:11:39 ET

Serial Number: 78133688

Registration Number: 2828553

Mark (words only): ADAMS APPLE

Standard Character claim: No

Current Status: Registered.

Date of Status: 2004-03-30

Filing Date: 2002-06-06

Transformed into a National Application: No

Registration Date: 2004-03-30

Register: Principal

Law Office Assigned: LAW OFFICE 116

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 900 -Warehouse (Newington)

Date In Location: 2004-04-06

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [Van Well Nursery, Inc.](#)

Address:

[Van Well Nursery, Inc.](#)
[2821 Grant Road](#)
[East Wenatchee, WA 98101](#)
[United States](#)

Legal Entity Type: [Corporation](#)

State or Country of Incorporation: [Washington](#)

GOODS AND/OR SERVICES

[live fruit trees, namely, apple trees for commercial orchards](#)

International Class: [031](#)

First Use Date: 2001-02-09

First Use in Commerce Date: 2002-11-02

Basis: 1(a)

ADDITIONAL INFORMATION

Disclaimer: [APPLE](#)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2004-03-30 - Registered - Principal Register

2004-01-23 - Allowed for Registration - Principal Register (SOU accepted)

2004-01-15 - Case file assigned to examining attorney

2004-01-14 - Case File in TICRS

2003-12-16 - Statement of use processing complete

2003-12-16 - Amendment to Use filed

2003-12-22 - TEAS Change of Correspondence Received

2003-12-16 - TEAS Statement of Use Received

2003-10-28 - Notice of allowance - mailed

2003-08-05 - Published for opposition

2003-07-16 - Notice of publication

2003-05-15 - Approved for Pub - Principal Register (Initial exam)

2003-05-15 - EXAMINERS AMENDMENT E-MAILED

2003-03-31 - Communication received from applicant

2003-03-31 - PAPER RECEIVED

2002-11-12 - Unresponsive paper received

2002-11-12 - PAPER RECEIVED

2002-09-30 - Non-final action mailed

2002-09-26 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent (Owner)

PATRICK H. BALLEW (Attorney of record)

Patrick H. Ballew
Stratton Ballew PLLC
213 South 12th Avenue
Yakima WA 98902

Phone Number: 509-453-1319

Fax Number: 509-453-4704



UNITED STATES PATENT AND TRADEMARK OFFICE

[Home](#)
[Index](#)
[Search](#)
[System Alerts](#)
[eBusiness Center](#)
[News & Notices](#)
[Contact Us](#)

Trademark Electronic Search System(Tess)

TESS was last updated on Wed May 26 04:44:17 EDT 2004

[PTO HOME](#)
[TRADEMARK](#)
[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE DICT](#)
[BOTTOM](#)
[HELP](#)

Logout Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

[Check Status](#)

(TARR contains current status, correspondence address and attorney of record for this mark. Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark	CRANBERRY APPLE ZINGER
Goods and Services	IC 030. US 046. G & S: Teas. FIRST USE: 20011100. FIRST USE IN COMMERCE: 20011100
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76227157
Filing Date	March 20, 2001
Current Filing Basis	1A
Original Filing Basis	1B
Published for Opposition	June 18, 2002
Registration Number	2782464
Registration Date	November 11, 2003
Owner	(REGISTRANT) Celestial Seasonings, Inc. CORPORATION DELAWARE 4600 Sleepytime Drive Boulder COLORADO 80301
Attorney of Record	Robert W. Smith
Prior Registrations	1390142;1390146;1481773;1515651;1834824;1948634;AND OTHERS
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CRANBERRY APPLE" APART FROM THE MARK AS SHOWN
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

[PTO HOME](#)
[TRADEMARK](#)
[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE DICT](#)
[TOP](#)
[HELP](#)

[HOME](#) | [INDEX](#) | [SEARCH](#) | [SYSTEM ALERTS](#) | [BUSINESS CENTER](#) | [NEWS&NOTICES](#) | [CONTACT US](#) | [PRIVACY STATEMENT](#)

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2004-05-27 00:07:08 ET

Serial Number: [76227157](#)

Registration Number: [2782464](#)

Mark (words only): [CRANBERRY APPLE ZINGER](#)

Standard Character claim: [No](#)

Current Status: [Registered](#).

Date of Status: [2003-11-11](#)

Filing Date: [2001-03-20](#)

Transformed into a National Application: [No](#)

Registration Date: [2003-11-11](#)

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 114](#)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: [900 -Warehouse \(Newington\)](#)

Date In Location: [2003-11-18](#)

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. [Celestial Seasonings, Inc.](#)

Address:

[Celestial Seasonings, Inc.](#)
[4600 Sleepytime Drive](#)
[Boulder, CO 80301](#)
[United States](#)

Legal Entity Type: [Corporation](#)

State or Country of Incorporation: [Delaware](#)

GOODS AND/OR SERVICES

[Teas](#)

International Class: [030](#)

First Use Date: [2001-11-00](#)

First Use in Commerce Date: [2001-11-00](#)

Basis: [1\(a\)](#)

ADDITIONAL INFORMATION

Disclaimer: ["CRANBERRY APPLE"](#)

Prior Registration Number(s):

1390142
1390146
1481773
1515651
1834824
1948634

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2003-11-11 - Registered - Principal Register
2003-09-16 - Allowed for Registration - Principal Register (SOU accepted)
2003-08-26 - Case file assigned to examining attorney
2003-08-25 - Case File in TICRS
2003-08-06 - Statement of use processing complete
2003-07-15 - Amendment to Use filed
2003-07-15 - TEAS Statement of Use Received
2003-06-24 - Notice of allowance - mailed
2002-06-18 - Published for opposition
2002-05-29 - Notice of publication
2001-09-26 - Approved for Pub - Principal Register (Initial exam)
2001-09-26 - Examiner's amendment mailed
2001-05-18 - Non-final action mailed
2001-05-15 - Case file assigned to examining attorney

CONTACT INFORMATION

Correspondent (Owner)

Robert W. Smith (Attorney of record)

ROBERT W. SMITH
MCCARTER AND ENGLISH, LLP
FOUR GATEWAY CENTER
100 MULBERRY STREET
NEWARK, NJ 07101-0652

Phone Number: (973) 622-4444

Fax Number: (973) 624-7070

EXHIBIT 32

Table including U.S. Patent and Trademark Office registrations for marks including the word ARREST

MARK	LIVE/DEAD STATUS	REG. NO. AND BRIEF DESCRIPTION OF USE
SMOKE ARREST	LIVE	2626274 (nutritional supplement to stop nicotine cravings)
TICK ARREST	LIVE	2107765 (flea and tick collars)
SPARKARREST	LIVE	2532426 (digital readout device that deters fire on electrodes by controlling sparking of the electrode)
MICRO PARTICLE ARREST	LIVE	1881431 (disposable vacuum cleaner filter bags)
RUN ARREST	DEAD	1781993 (non-aerosol spray for stopping runs in nylon hosiery)
MITE ARREST	DEAD	1701398 (pesticide used to control mites in laboratory animals)
FUNGARREST	DEAD	1692369 (topical ointment, cremes, lotions and powders to stop fungus foot)
PENETONE DUST-ARREST	LIVE	1651152 (dust suppressants for industrial use)
HERP-ARREST	DEAD	1295558 (topical treatment for cold sores, fever blisters, sun blisters, and herpes simplex)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HORMEL FOODS CORPORATION, and
HORMEL FOODS, LLC,

Petitioners,

v.

SPAM ARREST LLC,

Registrant.

Cancellation No. 92,042,143

Mark: SPAM ARREST

Reg. No.: 2,701,493

Filing Date: November 27, 2001

Registration Date: March 25, 2003

BOX TTAB NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

CERTIFICATE UNDER 37 C.F.R. § 1.8: Express Mail mailing label number _____

The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service, "Express Mail Post Office to Addressee" in an envelope addressed to: BOX TTAB NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on May 27, 2004.

By: _____
Diana Au

**DECLARATION OF CAMERON ELLIOTT
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Cameron Elliott declares as follows:

1. I am the President of Registrant Spam Arrest LLC ("Spam Arrest"), and I make this declaration based upon my own personal knowledge.
2. Spam Arrest creates and sells a product (the "Product") under the registered trademark

CANCELLATION NO. 92,042,143
DECLARATION OF CAMERON ELLIOTT – PAGE 1 of 4

NEWMAN & NEWMAN, ATTORNEYS AT LAW, LLP
505 Fifth Avenue South, Suite 610
Seattle, Washington 98104
phone: (206) 274-2800
fax: (206) 274-2801

SPAM ARREST. The Product is computer software that monitors and filters unsolicited email messages.

3. Spam Arrest and its licensed distributors sell the Product exclusively over the Internet. Spam Arrest does not sell, and has not granted any other party the right to sell, the Product via any other marketing channels.
4. I oversee Spam Arrest's customer service department. Our employees in that department routinely ask our customers where they buy computer software. Our customers regularly and consistently report that they buy software via the Internet, not in shopping malls or other "brick-and-mortar" stores. In fact, our customers report that they make **most** of their purchases over the Internet, whether they are buying software or any other item.
5. Spam Arrest first used the trademark SPAM ARREST on August 24, 2002.
6. Spam Arrest would not have used the word "spam" in its trademark if the Petitioners in the above captioned action had aggressively enforced their SPAM trademark. By failing to do so and allowing the mark to become a commonly used term meaning unsolicited commercial email, Petitioners allowed the principals of Spam Arrest to believe that the word is free for anyone to use to describe email-related products. I still believe that the word "spam" is free for anyone to use in that manner. In selecting a trademark for the Product, Spam Arrest's principals relied on the fact that "spam" is a widely used term to describe unsolicited commercial email.
7. Spam Arrest does not sell its Product on <ebay.com>, and has never sold its Product

there.

I declare under penalties of perjury under the laws of the United States of America that the foregoing is true and correct, to the best of my knowledge and belief.

Dated this 27th day of May, 2004.



Cameron Elliott

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HORMEL FOODS CORPORATION, and
HORMEL FOODS, LLC,

Petitioners,

v.

SPAM ARREST LLC,

Registrant.

Cancellation No. 92,042,143

Mark: SPAM ARREST

Reg. No.: 2,701,493

Filing Date: November 27, 2001

Registration Date: March 25, 2003

BOX TTAB NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

CERTIFICATE UNDER 37 C.F.R. § 1.8: Express Mail mailing label number _____

The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service, "Express Mail Post Office to Addressee" in an envelope addressed to: BOX TTAB NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on May 27, 2004.

By: _____
Diana Au

DECLARATION OF LEA KNIGHT
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Lea Knight declares as follows:

1. I am the principal of FBK Research in Seattle, Washington. My expertise includes research and facilitation for strategic business decisions, including advertising and public opinion analysis. A true and correct copy of my resume is attached as Exhibit A. I make

CANCELLATION NO. 92,042,143
DECLARATION OF LEA KNIGHT – PAGE 1

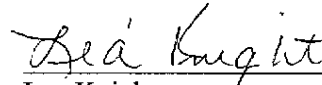
NEWMAN & NEWMAN, ATTORNEYS AT LAW, LLP
505 Fifth Avenue South, Suite 610
Seattle, Washington 98104
phone: (206) 274-2800
fax: (206) 274-2801

this declaration based upon my own personal knowledge.

2. I have reviewed The Mantis Group's report ("Mantis Survey") prepared for Petitioner's counsel in the above captioned action. The report is entitled, "Assessing Whether the Name 'Spam Arrest' Has Attained Secondary Meaning and Whether It Dilutes the Distinctiveness of Hormel's SPAM Trademark," and is dated January 2004.
3. After reviewing the Mantis Survey, I have concluded that its methodological, procedural, and design flaws are substantial enough that its results are neither representative nor credible, and that the results of the Mantis Survey should be disregarded. A true and correct copy of my analysis of the Mantis Survey is attached as Exhibit B.

I declare under penalties of perjury under the laws of the United States of America that the foregoing is true and correct, to the best of my knowledge and belief.

Dated this 27 day of May, 2004.



Lea Knight

EXHIBIT A to Knight Decl.

Curriculum Vitae of Lea Knight

Consultant Bio:

Lea Knight
FBK Research
3607 NW 60th Street
Seattle, WA 98107
206.783.9555
Lea@fbkresearch.com

Work History:

- 1996 - : *FBK Research, Owner*
Primary responsibilities include designing and executing research.
- 1995-1996: *Elway Research, Inc.*
Primary responsibilities included strategic planning, organizational development and change, and management of specific research and facilitation projects.
- 1983-1994: *Altair Research, Inc., President*
Responsibilities included all facets of business operations, including the design and execution of market research.

Education:

- 1982-1983 *University of Colorado at Denver*
Graduate Work in MBA Program with a concentration in Marketing Research.
- 1976-1980: *University of Washington*
Degree in Business Administration with an emphasis in Marketing and Organizational Development

Lea is a customer strategist & research expert with close to 25 years of marketing research experience. Her experience covers all areas of market research including study design, instrument design, data collection, moderation, analysis and report writing.

Lea left graduate school in order to open Altair Research, Inc. in 1983. Altair Research, Inc. was listed three years running by the *Puget Sound Research Journal* as one of the 25 largest women-owned businesses in the Puget Sound Region.

Over the course of her career, Lea has managed well over 3,000 research projects and has worked in a wide variety of industries on a broad range of topics. Most of her work is with private, for-profit organizations. Some of her clients include:

3Comm	Group Health Cooperative
7 th -Day Adventist Healthcare System	McDonald's
American Express	MacTarnahan's
AT&T Wireless	Microsoft
Agilent Technologies (formerly Hewlett Packard)	Network Commerce
Bank of America	NexTag.com
Burke Museum	Pacific Medical Centers
Boeing	PEMCO Insurance
Certiport	Pyramid Breweries
Classmates.com	Seattle Opera
Click2Learn	Seattle Public Utilities
Clorox, Inc.	Sumitomo Bank
Coinstar	U S WEST
Community Health Plan of Washington	U S WEST Direct
Conversay	University of Washington Hospital and Medical Center
Evergreen Hospital	Westin
Gevity	Weyerhaeuser

Over the past five years, Lea has enjoyed long-term relationships with Microsoft and PEMCO Mutual Insurance Company. With Microsoft, Lea collaborated on projects for:

- Microsoft Office 2003 (launch)
- Microsoft Project 2003 and beyond
- Microsoft FrontPage 2003 and beyond
- Microsoft Publisher 2003 and beyond
- Microsoft New Products and Technologies
- Mice and Keyboard Awareness and Usage
- Gaming Device Usage

Lea's multi-year relationships with other companies have brought her the opportunity to conduct research and provide strategic direction in these areas:

- Corporate culture assessment
- Customer metrics
- Branding, advertising and collateral
- Product development
- Channel strategy

Over the course of her career, Lea has managed well over 3,000 research projects and has worked in a wide variety of industries on a broad range of topics. Most of her work is with private, for-profit organizations. Some of her clients include:

3Comm	Group Health Cooperative
7 th -Day Adventist Healthcare System	McDonald's
American Express	MacTarnahan's
AT&T Wireless	Microsoft
Agilent Technologies (formerly Hewlett Packard)	Network Commerce
Bank of America	NexTag.com
Burke Museum	Pacific Medical Centers
Boeing	PEMCO Insurance
Certiport	Pyramid Breweries
Classmates.com	Seattle Opera
Click2Learn	Seattle Public Utilities
Clorox, Inc.	Sumitomo Bank
Coinstar	U S WEST
Community Health Plan of Washington	U S WEST Direct
Conversay	University of Washington Hospital and Medical Center
Evergreen Hospital	Westin
Gevity	Weyerhaeuser

Over the past five years, Lea has enjoyed long-term relationships with Microsoft and PEMCO Mutual Insurance Company. With Microsoft, Lea collaborated on projects for:

- Microsoft Office 2003 (launch)
- Microsoft Project 2003 and beyond
- Microsoft FrontPage 2003 and beyond
- Microsoft Publisher 2003 and beyond
- Microsoft New Products and Technologies
- Mice and Keyboard Awareness and Usage
- Gaming Device Usage

Lea's multi-year relationships with other companies have brought her the opportunity to conduct research and provide strategic direction in these areas:

- Corporate culture assessment
- Customer metrics
- Branding, advertising and collateral
- Product development
- Channel strategy

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HORMEL FOODS CORPORATION, and
HORMEL FOODS, LLC,

Petitioners,

v.

SPAM ARREST LLC,

Registrant.

Cancellation No. 92,042,143

Mark: SPAM ARREST

Reg. No.: 2,701,493

Filing Date: November 27, 2001

Registration Date: March 25, 2003

BOX TTAB NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

CERTIFICATE UNDER 37 C.F.R. § 1.8: Express Mail mailing label number _____

The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service, "Express Mail Post Office to Addressee" in an envelope addressed to: BOX TTAB NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, on May 27, 2004.

By: _____
Diana Au

DECLARATION OF SARA HILL
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Sara Hill declares as follows:

1. I am a legal assistant at Newman & Newman LLP, which firm is counsel for Spam Arrest LLC ("Registrant") in the above captioned action. I make this declaration based upon my own personal knowledge.

CANCELLATION NO. 92,042,143
DECLARATION OF SARA HILL – PAGE 1 of 2

NEWMAN & NEWMAN, ATTORNEYS AT LAW, LLP
505 Fifth Avenue South, Suite 610
Seattle, Washington 98104
phone: (206) 274-2800
fax: (206) 274-2801

2. On May 26, 2004, I performed a search for the term “spam arrest” on the Internet search engines <google.com> and <yahoo.com>. Both searches returned hundreds of search results. Almost all of these results referred to Registrant itself. Some of them referred to criminal proceedings against people who had sent unsolicited commercial email, for example, “Kilgore Announces Nation’s First Felony Spam Arrest”. Other than the references to Registrant’s product, none of the search results referred to spam filtering software.

I declare under penalties of perjury under the laws of the United States of America that the foregoing is true and correct, to the best of my knowledge and belief.

Dated this 26th day of May, 2004.



Sara Hill