

Blocking Incoming E-Mails and Internet Postings — The Empire Strikes Back

California employers received two pieces of good news from the California courts in the final weeks of 2001. In *Intel Corp. v. Hamidi*, 2001 DJDAR 12793 (December 10, 2001), an appellate court affirmed a lower court's grant of an injunction barring a former Intel employee from sending mass e-mails to thousands of company workers. Mr. Hamidi, a former engineer at Intel, obtained Intel's internal e-mail address list and on at least six occasions over a two-year period sent e-mails to up to 29,000 employees. The e-mails criticized Intel and the employment conditions at the company. Intel sent a letter to Hamidi demanding that he stop sending the e-mails, but he refused. Intel sued seeking to enjoin Hamidi from sending further e-mails alleging, among other things, that Hamidi's conduct constituted a trespass to chattel. The trial court granted an injunction prohibiting Hamidi and those acting in concert with him from "sending unsolicited e-mail to addresses on INTEL's computer systems."

Hamidi appealed asserting that even if trespass to chattel was proven, which he denied, the injunction violated principles of free speech. The Court of Appeals disagreed, and affirmed the trial court's ruling. It stated that private e-mail servers like the one owned by Intel are not

traditional public forums: "[t]he Intel e-mail system is private property used for business purposes." The court further stated that Intel's system is not transformed into a public forum merely because it permits some personal use by employees or because it invites the public to communicate with the company through its e-mail system for business purposes. After confirming Intel's private property rights in its e-mail system, the court went on to explain the basis for its decision: "Intel is as much entitled to control its e-mail system as it is to guard its factories and hallways. No citizen has the general right to enter a private business and pester an employee trying to work. It may be a few unwanted e-mails would not be sufficient to trigger a court's equity powers. Indeed, such may be an inevitable, though regrettable, fact of modern life, like unwelcome junk mail and telephone solicitations.... However, the massive size of Hamidi's campaign caused Intel much trouble, not the least of which was caused by the lost time of each employee who had to read or delete an unwanted message, either out of fear of a virus or a lack of desire to communicate with Hamidi." The bottom line of the court's decision was that Intel had a right to exclude others from speaking on its property.

In the other case decided in December, *Varian Medical Systems v. Delfino*, Case No. 780187 (Santa Clara County), a jury found that two research scientists had defamed their former bosses and employer by posting defamatory comments on Internet message boards. The company alleged that the former employee-defendants posted more than 13,000 messages and also sought to impersonate others in messages. The messages apparently included calling former bosses liars, accusing them of having extramarital affairs, of being homophobic and incompetent, and accusing the company of videotaping children and others inside a company bathroom and listing information concerning company executives' wealth, where they lived and where their children could be located. The case appears to be the first such corporate lawsuit to actually go to trial. The jury awarded the plaintiffs \$425,000 in damages, and found that the defendants acted with malice, fraud and oppression, thereby setting the stage for a further award of punitive damages. The judge also issued a permanent injunction barring the defendants from posting messages regarding certain specific subjects in the future. The defendants have said they will appeal.

These two December court decisions make clear that both judges and juries are willing to put limits on how far disgruntled former employees can go in their use of electronic communications to attack their former employers and bosses. The cases also demonstrate that employers are becoming more aggressive in monitoring cyberspace and protecting their rights to be free from unwanted electronic intrusions and defamatory publications. In fact, many employers have already established electronic communication policies for employees that notify them that the company monitors and reviews e-mail and Internet use on company equipment and systems. It is likely that these cases represent the beginning of what will be an ongoing battle between employers and former/current employees over the rights to use electronic communications and the Internet to deliver and receive controversial messages and other information.

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