

Claim No:

IN THE COLCHESTER COUNTY COURT

BETWEEN

-

NIGEL ROBERTS

Claimant

- and -

MEDIA LOGISTICS LIMITED

Defendant

PARTICULARS OF CLAIM

1. The Defendant is a legal person, incorporated with Limited Liability in England and Wales (Company Registration Number 4568099) whose Registered Office is at 137 Barnards Green Malvern in the County of Worcestershire and carrying on business at Arnot Grange Maggiewoods Lane, Falkirk in Scotland.
2. The Claimant is a natural person, of 4 Hughes Stanton Way, Manningtree in the County of Essex and of 5 St Anne's Walk, Alderney.
3. The Facts
4. On several occasions, including 8th August 2005, the Claimant received email messages from the Defendant's email servers containing commercial solicitations.
5. One particular email, sent on the 8th of August at 12:09 p.m. had the title '*Email Update from Kwikar*' advertising motor vehicles for sale at a website at the address of www.dealertestdrive.net. It purported to come from one of the Defendant's employees, one Laura Williams.
6. The email originated from a computer server which is and was at the material time controlled by the Defendant and appears to be located at the premises of an Internet Service Provider, Fasthosts Limited ("Fasthosts") in Gloucester, having an Internet Protocol (IP) address of 217.174.240.202 ("the Defendant's server").
7. The Defendant's server is known in the Internet Domain Naming System as "*localhost.mxboxx01.com*", alternatively "*server217.174.240.202.live-servers.net*".

8. The **mxboxx01.com** domain (and therefore all Internet names ending with that suffix) is and was at all material times registered to and under the control of the Defendant, while the **live-servers.net** domain is and was at all material times registered to and under the control of Fasthosts.
9. The Claimant is not a customer of the Defendant nor of any company named 'Kwikar', 'Kwik-Car' or anything similar. The Defendant has no legitimate reason for acquiring, storing or processing Personal Data relating to the Claimant.
10. On or before the 21st July 2005 the Defendants acquired Personal Data about the Claimant, and commenced transmission of advertising material to the Claimant by means of unsolicited email, also known as 'spam'.
11. On 8th August 2005, the Claimant wrote to the Defendant, drawing their attention to their apparent breach of the *Privacy and Telecommunications (EC Directive) Regulations 2003*. The letter also contained a Data Subject Access Request under s.7 of the *Data Protection Act 1998*
12. On 15th August 2005 the Defendant responded, refusing the Data Subject Access request, stating that he had deleted the relevant data following receipt of the Claimant's letter (see para 3). In the Defendant's letter, in which he admitted to sending unsolicited email to the Claimant, he apologised to the Claimant for inconvenience caused by unsolicited emails (see para 1).

13. The Defendant also admitted to obtaining the personal data of the Claimant from a “data broker”, but refused to disclose the name of such person, claiming that the Data Protection Act would make it unlawful to do so (see para 2).

14. In sending these emails, and in allowing their server to be used for this, the Defendant was in breach of a statutory duty. and /or negligent, in that:

PARTICULARS OF BREACH OF DUTY

- (a) The Defendant sent unsolicited emails either knowing that the Claimant had not given his informed consent to the storing and/or processing of his personal data for such purposes, or was reckless as to whether such consent had been given.

- (b) The Defendant processed the Defendant’s Personal Data in contravention of the Data Protection Principles.

- (c) The Defendant refused the Claimant’s Data Subject Access Request made under s.7 of the *Data Protection Act 1998*.

- (d) The Defendant refused to reveal the source of the data, and the purposes for which the Personal Data are processed by his company.

PARTICULARS OF DAMAGE

15. The Defendant, while admitting sending unsolicited emails, rejected the Claimant’s claim, but has offered to pay £50 to charity “as a goodwill gesture”.

16. The Claimant has been subject to annoyance and nuisance caused by the actions of the Defendant.
17. The Claimant has been put to inconvenience and expense, (including *inter alia* having taken out a subscription to the “SpamCop.Net” email filtering service), in order to attempt to prevent the flood of unsolicited emails he is receiving that is caused by the unlawful trading of his Personal Data.
18. Such unsolicited email includes advertising emails such as those from the Defendant. Such unsolicited email interferes with the proper functioning of his email, requires additional disk storage, delay receipt of legitimate email and take up considerable amounts of the Claimant’s time examining the contents in order to determine whether the mail is from a legitimate source or not.

AND the Claimant claims:

- (1) Damages