

Jury Hits American Whole Health for \$210,000 Judgment

COMPANY ENGAGED IN UNAUTHORIZED USE OF DATABASE TO SEND JUNK MAIL

Editorial Staff

An Orange County Superior Court jury in Santa Ana, Calif., has found American Whole Health, a managed care company, liable for damages of \$210,000 for unauthorized taking and use of names and addresses of providers from the Web site of MPA Media, the publishers of *Dynamic Chiropractic*. MPA Media attorney Michael Schroeder praised the jury's decision:

"This was an arrogant East Coast managed care company that thought they could take private names and addresses off a Web site and use them for junk mail. They even kept doing it after they got caught and were told to cease and desist."

One of the important services ChiroWeb provides to both doctors of chiropractic and consumers is the ChiroLocator. The ChiroLocator is the only online database of every known doctor of chiropractic in the world. As many as 10,000 searches are made on the ChiroLocator in a month. Each one of those searches represents consumers who are looking to find a doctor of chiropractic. The ChiroLocator is the best referral database on the Internet.

To protect the doctor's ChiroLocator contact information from commercial use, MPA Media (DC's parent company) has set specific "terms of use" prohibiting any commercial use by any company (please see www.chiroweb.com/locator). It is considered theft for a company to take names from the ChiroLocator for any purpose besides locating a DC in their area.

To further protect doctors from unwanted solicitations resulting in their names being added to a bunch of junk mail lists, MPA Media plants "seed names" that are registered with the U.S. Postal Service on all of its locators. When a company steals one of the databases off the Web site, they inadvertently mail their junk to one of those seed names and addresses. This is then reported and exposes the fact that the company stole the database.

In the first part of 2004, MPA Media received a mailing piece from a managed care company called American Whole Health to one of its seed names. A cease-and-desist letter was immediately sent to American Whole Health. They responded by claiming that they were entitled to use MPA Media's names, and MPA Media received three additional mailings.

MPA Media responded by filing a lawsuit in California Superior Court, asking for an injunction, damages and legal costs. Interestingly enough, there were no more mailings to the seed names once the lawsuit was filed.

Additional information came forward as a result of testimony during the trial. The director of operations for American Whole Health testified that someone in their organization "did go to the Web

site" to see if it was something they could use. She also testified that she knew about the terms of use and about the damages clause that was a part of those terms. Perhaps the most interesting part of her testimony was her admission that "(a)ll mailings are in the (our) databases" and that "I went through our databases where I did not find" the seed names.

The fact that they did four mailings on different dates to different parts of the country over a five-month period, and that the names they mailed to were no longer in the database, was very revealing. It suggested the possibility that the company tried to cover up the theft of the database.

On Dec. 12, 2005, after three days of testimony, the jury decided unanimously for MPA Media. They went on to award \$210,000 against American Whole Health exclusive of attorneys' fees, which is a separate award to the prevailing party.

This decision is more than just one publisher taking on a managed care company for stealing its database. It reinforces MPA Media's ability to protect doctors' contact information from companies that would like to take those names to send junk mail. This decision allows MPA Media the ability to continue providing an important online service that facilitates thousands of consumers locating doctors in their area.

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