

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

DATE & TIME: April 28, 1998
JUDGE : JOHN R. LEWIS
RECORDER : NONE

DEPT. NO: 53
CLERK : S. SLOCUMB
BAILIFF : C. UMALI

98A905067 INTEL CORPORATION VS. KOUROSH KENNETH HAMIDI, ET AL
MOTION FILED BY: JACOBS, MICHAEL A.

ATTORNEYS PRESENT:

NATURE OF PROCEEDING: MOTION FOR SUMMARY JUDGMENT

TENTATIVE RULING

At the previous hearing on this matter, plaintiff Intel Corporation filed a waiver of money damages and a dismissal of its second count for nuisance. This matter was therefore continued for a ruling on the merits of plaintiff's motion for summary judgment. The Court now rules as follows.

Plaintiff's motion for summary judgment is GRANTED.

Plaintiff has produced evidence that, on six occasions during 1996, 1997 and 1998, defendant Hamidi sent e-mail messages concerning Intel employment practices to over 30,000 Intel employees at their e-mail addresses on Intel's proprietary computer system. Intel has requested that Hamidi stop sending the messages, but Hamidi has refused, and has employed surreptitious means to circumvent Intel's efforts to block entry of his messages into Intel's system.

Intel's e-mail system is part of its general proprietary computer system affording access to the internet. The e-mail system is dedicated for use in conducting business, including communications between Intel employees and its customers and vendors. Employee e-mail addresses are not published for use outside company business. An inference arises from Intel's evidence that Hamidi has been using an outdated employee e-mail address list not released for public use.

Reasonable personal use of the e-mail access to the internet by employees is permitted, but is subject to various restrictions, and communications are expressly not private. The company guidelines regarding e-mail internet and computer use expressly provide that employees have no proprietary interest in any part of the system or its use.

The intrusion by Hamidi into the Intel e-mail system has resulted in the expenditure of company resources to seek to block his "mailings", and to address employee concerns about the mailings. Given Hamidi's evasive techniques to avoid blocking, the self help remedy available to Intel is ineffective.

Trespass to chattels is defined as the unauthorized interference

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with possession of personal property which causes injury. It can include unauthorized use of personal property. Thrifty-Tel, Inc. v. Bezenek (1996) 46 Cal.App.4th 1559, 1566 (electronic signals sent by computer "hacker"); CompuServe, Inc. v. Cyber Promotions, Inc. (S.D. Ohio 1997) 962 F.Supp. 1015 (unsolicited e-mail advertisements sent to ISP). The above referenced evidence is sufficient to meet Intel's initial burden of establishing entitlement as a matter of law to summary judgment. The burden shifts to Hamidi to produce evidence sufficient to raise a triable issue of material fact. As the following analysis indicates, he has not met that burden.

Hamidi, without any explanation as to his source or use of the employee e-mail list, asserts that he is not trespassing because he sends his messages (addressed to individual employees) to "an internet server". However, a trespass may be committed through an agency. Hamidi's employment of someone or something else to gain unauthorized access to Intel's e-mail system does not shield him. See Elton v. Anheuser-Busch Beverage Group, Inc. (1996) 50 Cal.App.4th 1301, 1306-1307, including its reference to Thrifty-Tel, Inc. v. Bezenek, supra.

Hamidi further contends that his e-mail messages have caused no injury to Intel's e-mail system. Physical harm to the system is not required. Rather, any impairment in the value to Intel of its e-mail system is sufficient to show injury. See Thrifty-Tel, Inc. v. Bezenek, supra at 1564 (system overburdened so that some subscribers denied access to phone lines); CompuServe, Inc. v. Cyber Promotions, supra, at 1021-1022 (multiple e-mailings that drain disk space and processing power deprive customers from those resources). Here, the evidence establishes (without dispute) that Intel has been injured by diminished employee productivity, and in devoting company resources to blocking efforts and to addressing employees about Hamidi's e-mails. These injuries, which impair the value to Intel of its e-mail system, are sufficient to support a cause of action for trespass to chattels.

Hamidi finally contends that his messages are protected by the constitutional guarantees of freedom of speech. The federal guarantee of free speech operates against governmental entities, not private parties. Lloyd Corp. v. Tanner, (1972) 407 U.S. 551, 556. Intel is not a governmental entity, and there is no evidence that Intel exercises powers that are traditionally the exclusive prerogative of the state, or that it shares any of the attributes of a company-owned town. Cf. Marsh v. Alabama, 326 U.S. 501 (1946).

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Contrary to Plaintiff's contention in its reply papers that Hamidi has abandoned his claim of violation of the California Constitution, the Court finds that his argument (albeit ambiguous in this respect) relies upon both federal and state constitutions. Hence, the Court must rule on the state issue as well. The state guarantee of free speech is broader than the federal. It, for example, protects access to large retail shopping centers that are the functional equivalent to the traditional town center, being open to the general public and having a largely public character. *Robins v. Pruneyard Shopping Center* (1979) 23 Cal.3d 899, 910. Under the California doctrine, access may be denied where an establishment does not share the characteristics of a large retail shopping center. Thus, constitutional protection is denied where a facility is open only for specific purposes and does not provide an opportunity for the general public to congregate. See, e.g., *Bank of Stockton v. Church of Soldiers* (1996) 44 Cal.App.4th 1623 (privately owned bank); *Allred v. Harris* (1993) 14 Cal.App.4th 1386, 1390-1391 (privately owned medical center).

The mere connection of Intel's e-mail system with the Internet does not convert it into a public forum. *Cyber Promotions v. AOL* (E.D.Penn. 1996) 948 F.Supp. 436, 442. Hamidi argues that, by allowing some reasonable internet access for employee personal use, Intel has converted its e-mail system into a public forum. But, under both federal and state constitutional law, limited access for specific purposes does not convert private property to a public forum. See *Perry Education Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 47 (1983) (allowing some non-affiliated groups to access school's internal mail did not create public forum); *Bank of Stockton v. Church of Soldiers*, supra, at 1630 (private sidewalk leading from bank's parking lot to bank is not public forum as its use is limited to access for purpose of conducting banking business). Nothing about Hamidi's statement that his messages are initially sent to "an internet server" affects this analysis. There is no evidence that the "internet server" to which Hamidi refers functions as a public postal service. (See discussion of the significance of this point in *CompuServe, Inc. v. Cyber Promotions, Inc.*, 962 F. Supp. at 1026-1027.)

The Court finds that Hamidi's e-mails are not (under either federal or state constitutions) protected speech. (Thus, Hamidi's argument as to state action involved in the issuance of injunctive relief is a non-issue.) Hamidi has made it clear that, unless restrained he will persist in his mass mailings to Intel employees via Intel's proprietary

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computer system. It is clear that Intel's self-help remedies are insufficient to the task of protecting Intel's property. Intel has met the requirements for issuance of a permanent injunction.

The prevailing party is directed to prepare an order for the court's signature pursuant to CCP 437c(g). TERA PHARMACEUTICALS v. SUPERIOR COURT(1985) 170 Cal.App.3d 530,

COURT RULING

Tentative ruling accepted, no appearance requested.

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SACRAMENTO SUPERIOR and MUNICIPAL COURTS
BY: Slocumb **DEPUTY**