

Kiwi in \$15M CAN-SPAM Act Judgement

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In our recent article, "[Spamalittleless](#)", we reported on the \$100,000 fine imposed in the New Zealand courts on Shane Atkinson for his part in a massive international spamming campaign involving various pharmaceutical products. His brother Lance Atkinson had been fined the same amount in a New Zealand court a year earlier.

Now a United States Federal District Court judge in Illinois has granted a default judgment against Lance Atkinson and his company, for the massive sum of US\$15.15, and the further sum of \$US3.77 million against his US associate Jody Smith and his three companies. The judgment is for breaches of the Federal Trade Commission Act ("FTC Act") and of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (known as the "CAN-SPAM" Act), in relation to billions of email messages directing consumers to websites selling products such as male-enhancement pills, prescription drugs and weight-loss pills.

By using false header information to hide the origin of the messages, and by failing to provide an opt-out link or list a physical postal address, the spammers violated the CAN-SPAM Act. They also made false claims in breach of the FTC Act that medicines came from a US licensed pharmacy dispensing FDA approved generic pharmaceuticals, and the security of transacting on the sites.

There were three million complaints by spam victims to the FTC.

Lance Atkinson, a New Zealander, now lives in Australia, so any judgment will need to be enforced against him there or in New Zealand, should he return here.

US judgments do not fall within the statutory registration scheme in either country, and may therefore only be enforced at common law. Enforcement may be refused if there has been a denial of natural justice, the judgment is tainted by misleading conduct or fraud or if there are issues as to jurisdiction.