

Court rules that spam infringes database's exclusive property rights

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In *Nationalevacaturebank v. CVBank*, the District Court of The Hague has ruled that CVBank (www.cvbank.nl), which operates an online database of curriculum vitae (CVs), may not send unsolicited correspondence to users of the Nationalevacaturebank.nl website (www.nationalevacaturebank.nl), which features an online database of vacancies. Further, CVBank was ordered to stop collecting user contact information from Nationalevacaturebank.nl's database.

The court held that CVBank committed a tort against Nationalevacaturebank.nl by using its database without permission. According to the court such use constitutes and infringement of Nationalevacaturebank.nl's exclusive property rights. The court found that the underlying situation was similar to the *XS4ALL Case* (see Wolter Wefers Bettink, 'Supreme Court rules that spam violates ISP's property rights', in: *World eBusiness Law Report*, 24 May 2004) where the Supreme Court ruled that (i) an Internet Service Provider (ISP) has exclusive rights to its computer system (and customer database), and (ii) it is a tortuous act to use the ISP's computer system without permission in order to collect contact information about the ISP's customers for the purposes of sending them unsolicited commercial emails.

As the court held that CVBank had committed a tort, it found it superfluous to decide on other claims made by Nationalevacaturebank.nl, such as the claim that CVBank infringed its database rights.

The court also held that CVBank committed a tort against the director of Vitaflex, a user of the Nationalevacaturebank.nl website. According to the court, CVBank acted contrary to the opt-in regime for spam set out in the Dutch Telecommunications Act when it sent emails of a commercial nature to the director of Vitaflex without his permission. The court found that it was irrelevant whether the director was contacted in his capacity as a natural person or as the director of Vitaflex.

CVBank was ordered to send a rectification notice to all contacted users of the Nationalevacaturebank.nl website, and to pay advance damages to Nationalevacaturebank.nl of €5,000.

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