

## Doctor's spam crusade is brought to a halt

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In the case of Dutch Government v Rath (LJN AE7612), the District Court of Almelo invoked the EU E-communications Directive (as yet unimplemented in the Netherlands) to determine whether unsolicited e-mails sent to the government constituted an unlawful act. According to the court freedom of speech was not at issue, finding instead that e-mails constituted unlawful spam.

The Dutch government received more than 600 million unsolicited e-mails containing a message from Dr Matthias Rath, who is opposed to European regulation on the trade in vitamins. Rath's website allowed internet users to send e-mails containing standardized text to members of the Dutch Parliament with the purpose of influencing vitamin regulation. As a result, the government sustained substantial damage, including a reduction in the available bandwidth.

The court decided that Rath's activities were unlawful because of the nature, seriousness and duration of the damage sustained. It ruled that because Rath trades in vitamins, the e-mails could be considered to be commercial in nature, and the EU directive prohibits the unlawful sending of unsolicited commercial e-mail (ie, spam). It rejected Rath's argument that his freedom of speech had been curtailed.

The court prohibited Rath from sending any further spam to any governmental entity, body or individual. Failure to observe this ban will result in a fine of €50 per e-mail, up to a maximum of € million.

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