

Atlanta Journal-Constitution, The (GA)

August 23, 2003

Section: Business

Edition: Home; The Atlanta Journal-Constitution

Page: F1

Firstwave leak spawns lawsuit

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Atlanta-based Firstwave Technologies put a preliminary second-quarter earnings announcement on its Web site last month before it was ready to make it public. When Firstwave did release the news, its stock fell 20 percent.

But before that, somebody got a sneak peek and posted a link to the releases on a Yahoo message board. Now the company is trying to track down those who took a look-see, in order to sue them for unspecified damages.

Firstwave filed a complaint July 18 in Cobb County Superior Court, alleging an invasion of computer privacy by message board users. The company said two releases were in a Web site location "not generally accessible to the public." One was the profit forecast; the other was an announcement of a new version of its software.

The company has subpoenaed Yahoo and at least one Internet service provider in search of the names of those who saw the releases.

One of the John Does named in the suit hired an attorney to fight a subpoena issued to BellSouth, which is his -- or her -- Internet service provider. That attorney promises to test the law on the issue of whether the anonymity of message board participants is protected.

Failing that, attorney **Paul Silverberg** says he will argue that once Firstwave put the releases on the Web site July 9, they became public information.

Firstwave's leak developed quickly. The company said in its lawsuit that there was a "suspicious amount of activity" on its Web site as early as July 9.

The leak widened the evening of July 10, when a message board user using the moniker "jaymoski" posted a link to the software company's Web site, along with this message: "Was surfing the site and stumbled on this... maybe they are delaying official release for late tonight or possibly the weekend?"

The next day, Firstwave announced its second-quarter earnings would be hurt because some customers had delayed orders for consumer relations software. The stock tumbled on the news.

Firstwave's lawsuit does not raise the question of whether anybody who saw the announcements ahead of time traded stock based on the information.

But message board user "Sandor3" posted a note saying he -- or she -- sold shares on July 10 and 11.

Firstwave stock rose nearly 8 percent July 9 on trading volume that was a little above the daily average. The shares fell by less than 2 percent on July 10, on above-average volume.

One of the issues Firstwave is looking at is whether its stock price was driven down by trading based on information that wasn't public yet, according to Bryan Harrison, a Morris, Manning & Martin attorney who is representing the company.

Harrison said Firstwave is not certain how the two press releases were found by whoever uncovered them.

Silverberg, an attorney in Weston, Fla., near Miami, said his client did not "have to type in any password" or resort to special efforts to access the announcements.

"There was no breaking and entering," he said.

Computer hacking, or finding a way to look at password-protected data, would be "improper," said Paul Heald, a University of Georgia law professor who teaches intellectual property issues.

Finding something while surfing the Internet would not be, he said. It's not difficult to find pages on a Web site that aren't meant for public consumption, Heald added. Sometimes it can be done with backward slashes and guessing the right word, he explained.

"If a company has important, confidential information, they should password-protect it," Heald said.

Silverberg's first line of defense against the subpoena will be free speech rights under the First Amendment, not whether Firstwave's information was there for the taking. No hearing date has been set.

Silverberg thinks he has support for the free speech grounds from existing court decisions.

In fact, some federal courts have ruled that the anonymity of Internet speakers should be protected, said Robert Brussack, a University of Georgia law professor who specializes in cyberlaw. But the protection is not absolute, he added.

Brussack said that when it comes to identifying Internet users, courts require subpoena seekers to show their claims have merit and that the information is important to their case.

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