

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

Interactive, LLC transacts or has transacted business in this district and throughout the United States.

7. Defendant 7657030 Canada, Inc., which also does business as Acquinity

and practices alleged below. These Defendants have conducted the business practices described below through interrelated companies that have common ownership, officers, managers, business functions, employees, and office locations. Because these Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendant Somani has formulated, directed, controlled, had authority to control, or participated in the acts and practices of these Defendants that constitute the common enterprise. Revenue Path E-Consulting Private Limited, Revenuepath Limited, and Somani are referred to herein as “the Revenue Path Defendants.”

COMMERCE

17. At all times material to this complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “) f(at)-6v(e P)-8 0 Tc 0.22 T09-6 -136.4888 Td [(be)4(f)3(e)4(nda)(

Path Defendants, either directly or through an intermediary, pay third parties for driving consumer traffic to the free merchandise websites through text message spam. The Acquinity and Revenue Path Defendants are responsible for the transmission and content of this text message spam.

20. Many such text messages represent, expressly or by implication, that the consumer receiving the message has won a contest, or has been specially selected to receive a gift or prize. For example, the text messages contain statements such as: "You WON! Go to www.prizeconfirm.com to claim your \$1000 Walmart Gift Card Now!" or "FREE MSG: you have been chosen to test & keep the new iPad for free only today!! Go to <http://testnkeepcell.com> and enter 2244 and your zipcode to claim it now!"

21. Many, if not all, of the consumers who received the text message spam sent by or on behalf of the Acquinity or Revenue Path Defendants never agreed to be contacted by those Defendants or by those sending messages on their behalf.

22. Some of the recipients of text message spam have wireless service plans that require them to pay a fixed fee for each text message received by their wireless handsets. Accordingly, such recipients were required to pay a fee for the receipt of the text message spam.

23. Other recipients of text message spam have wireless service plans that allow them a fixed, limited number of text messages per month without charge beyond their monthly service charge, with text messages that exceed the monthly allowance billed on a per-message basis. Accordingly, many such recipients had their monthly allowance of text messages reduced upon receipt of each text message spam sent by or on behalf of the Acquinity or Revenue Path Defendants.

24. The consumer injury caused by the Acquinity and Revenue Path Defendants, or by third parties acting on those Defendants' behalf, cannot be reasonably avoided by consumers. Text message spam is routinely foisted upon consumers without their advance knowledge or permission.

25. Text message spam sent by or on behalf of the Acquinity and Revenue Path Defendants does not create countervailing benefits to consumers or to competition that outweigh the harm caused by their unlawful activity.

26. The text messages contain links that, when clicked on, take consumers to one of the websites described below.

Text Message Spam Websites

27. Some consumers who click on the link in the text message spam are first taken to an Internet web page that recapitulates and expands upon the initial promised free merchandise offer (“text message spam page”). The text message spam page is operated by the third parties that send some of the text message spam, and those third parties are acting on behalf of and for the benefit of the Acquinity and Revenue Path Defendants. The Acquinity and Revenue Path Defendants, either directly or indirectly through an intermediary, pay these third parties for driving consumer traffic to the free merchandise websites through the text message spam pages and are responsible for the content of these text message spam pages. The text message spam page contains statements such as “Receive a FREE \$1,000 Walmart Gift Card” in large type. Each text message spam page requires consumers to enter a “code” (sent as part of the text message spam) in a text box and click on a button labeled “Continue” to go to the next page. Consumers who provide their code on the text message spam page are told that they have a “winning code” and are then taken to a page on one of the free merchandise websites (the “landing page”).

28. In some instances, consumers who click on links in the text message spam are taken directly from the text message spam to the landing page without going through an intermediate text message spam page.

The Free Merchandise Websites

29. The landing page reinforces the message that the promised free merchandise is in fact “free” through statements such as “GET A FREE \$1,000 WALMART GIFT CARD” or “Get

the new iPad Free” and asks consumers to submit their email address or zip code in a text box.

Consumers who submit their email address or zip code and click a “Claim Now” or “Continue”

button near the text “@bandwidth.com” in the text box.

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clearly and conspicuously disclose the costs and obligations associated with participating in the third-party promotions.

33. The consumer usually must complete a total of thirteen (13) offers in order to qualify for the promised free merchandise. Clicking on each offer reveals what the consumer must do to “complete” or “participate in” the offer. In most cases, completing an offer entails paying money or incurring some other obligation, such as applying and qualifying for credit cards.

34. Some of the offers have free trial periods, but require consumers to participate for a minimum period of time to qualify for the promised free merchandise and to pay an initial

only in separate hyperlinked pages or in print not of a type, size, or location sufficiently noticeable for an ordinary consumer to read and comprehend it.

38. The free merchandise websites, and other websites operated by and for the benefit of the Acquinity and Revenue Path Defendants, including the landing pages, registration pages, and survey pages, represent that Defendants collect consumers' personal information to send them the promised free merchandise. However, few if any consumers ever receive the promised free merchandise, and the Acquinity and Revenue Path Defendants instead proceed to sell or otherwise share with third parties the personal information they have collected. These websites refer to sharing consumers' personal information only in separate hyperlinked pages or in print not of a type, size, or location sufficiently noticeable for an ordinary consumer to read and comprehend it.

Initiating Robocalls Without Express Written Consent

39. The Acquinity and Revenue Path Defendants supply personal information that consumers provide on the free merchandise websites to WCA, Firebrand, and Beucler. WCA, Firebrand and Beucler then use this information to send those consumers prerecorded voice messages through telephone calls ("robocalls" or "prerecorded messages").

40. The free merchandise websites fail to clearly and conspicuously disclose that consumers' personal contact information will be transferred to third parties and then used to deliver prerecorded messages to consumers. Instead, the free merchandise websites provide any such disclosures only in separate hyperlinked pages or in print not of a type, size, or location sufficiently noticeable for an ordinary consumer to read and comprehend the disclosures.

41. Through a program called Special Offer Service ("SOS"), WCA, Firebrand, and Beucler deliver to consumers robocalls that include offers for various types of goods and services, including travel, home security, satellite television, and entertainment. Consumers who elect to respond to an offer presented on a SOS robocall are transferred to one of several third-party offer sponsors willing to fulfill a particular offer.

42.

VIOLATIONS OF THE FTC ACT

46. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

47.

COUNT II

THIS COURT'S POWER TO GRANT RELIEF

68. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

69. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants

rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

4. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: July 29, 2013

Respectfully submitted,
JONATHAN E. NUECHTERLEIN
General Counsel

/s/ Steven Wernikoff

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