

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

RECEIVED

PARTIES

with enforcement of Section 5(a) of the

COMMERCE

9. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFINITIONS

10. “Spoofing” means the practice of disguising an e-mail to make the e-mail appear to come from an address from which it actually did not originate. Spoofing involves placing in the “From” or “Reply-to” lines in e-mails an e-mail address other than the actual sender’s address without the consent or authorization of the user of the e-mail address whose address is spoofed.

DEFENDANT’S BUSINESS ACTIVITIES

11. Since at least May 2002, Defendants, or agents acting on their behalf, have sent commercial bulk e-mail (“spam”) to consumers.
12. Defendants’ spam contains a “from” and “subject” line in the e-mail header (“header information”).
13. This header information appears in a consumer’s e-mail inbox upon receipt and purports to

identify the sender and subject of the underlying message. The header information thus

provides the basis for the consumer’s decision whether to open the e-mail.

“Re: your email address,” “I found your address,” “Fwd: Your software,” “Did you hear the news?” “What is wrong?” and “New movie info.”

15. In numerous instances, spam with the subject lines in Paragraph 14, and similar subject lines, are sexually explicit solicitations to visit Defendants’ adult-oriented Web sites. Sexually explicit images are immediately viewable upon opening the message.
16. Because of the deceptive subject line, consumers have no reason to expect to see such material. Some consumers may open these e-mails in their offices, in violation of company policies. In other cases, children may believe they are dealing with someone they know already, and be exposed to inappropriate adult-oriented materials upon opening the e-mail.

a message they might otherwise delete.

placed in the "reply-to" portion of Defendants' spam.

19. Innocent third parties whose e-mail addresses or domain names are spoofed may suffer injury and damage to their computer systems from the unexpected influx of e-mail messages to

them. In addition, consumers often reply and complain about spam with "return" e-mails.

As a result, third parties whose e-mail addresses or domain names are spoofed also often

the underlying e-mail message contain sexually explicit images or other material that is unrelated to the subject matter identified in the subject line.

24. Therefore, Defendants' representation, as set forth in Paragraph 22, is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

25. Defendants or their agents engage in spoofing, as defined above in Paragraph 10. By engaging in spoofing, Defendants cause consumers' e-mail accounts to receive unwanted e-mail messages, without consumers' consent or authorization.

26. Defendants' practice set forth in Paragraph 25 causes or is likely to cause substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and that is not reasonably avoidable by consumers.

27. Defendants' practice as alleged in Paragraph 25 is an unfair practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

28. In numerous instances, Defendant Brian Westby, directly or indirectly, represent, expressly or by implication, that the e-mail addresses of spam recipients will, upon request, be removed from any list of addresses to which future such solicitations will be sent.

29. In ~~addition~~ ~~as set forth~~ in ~~fact~~ in numerous instances, the e-mail addresses of the spam recipients will



Therefore Defendant Brian Woelby's representation as set forth in Paragraph 28 is false and

2. Award such relief as the Court finds necessary to redress the injury to consumers caused by Defendants' violations of the FTC Act, including, but not limited to, restitution, the refund of monies paid, and the disgorgement of ill-gotten gains; and


3. 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:

Respectfully submitted,

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