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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MATTHEW OLSON and JENNIFER LeROY

Defendants.

Case No.

**COMPLAINT FOR INJUNCTION
AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “the Commission”), for its Complaint alleges as follows:

1 **PLAINTIFF**

2 4. Plaintiff FTC is an independent agency of the United States Government created by
3 statute. 15 U.S.C. §§ 41-58. The Commission is charged with, *inter alia*, enforcement of Section 5(a)
4 of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting
5 commerce. The Commission is also charged with enforcing CAN-SPAM as if a statutory violation of
6 CAN-SPAM "were an unfair or deceptive act or practice proscribed under Section 18(a)(1)(B) of the
7 [FTC Act] (15 U.S.C. 57a(a)(1)(B))." See 15 U.S.C. § 7706(a). The Commission is authorized to
8 initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act, and
9 to secure such equitable relief, including restitution for injured consumers, as may be appropriate in
10 each case. 15 U.S.C. §§ 53(b), 57b.

11 **DEFENDANTS**

12 5. Defendant Matthew Olson at all times material to this Complaint, acting alone or in
13 concert with others, formulated, directed, controlled or participated in the acts and practices set forth in
14 this Complaint. Defendant Olson transacts or has transacted business and resides in the Western
15 District of Washington.

16 6. Defendant Jennifer LeRoy at all times material to the Complaint, acting alone or in
17 concert with others, formulated, directed, controlled or participated in the acts and practices set forth in
18 this Complaint. Defendant LeRoy transacts or has transacted business and resides in the Western
19 District of Washington.

20 **COMMERCE**

21 7. At all times relevant to this Complaint, defendants have maintained a substantial course
22 of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C.
23 § 44.

24 **DEFINITIONS**

25 8. "Electronic mail message" (or "email") means a message sent to a unique electronic
26 mail address. 15 U.S.C. § 7702(6).

27 9. "Electronic mail address" means a destination, commonly expressed as a string of
28 characters, consisting of a unique user name or mailbox (commonly referred to as the "local part") and

1 a reference to an Internet domain (commonly referred to as the "domain part"), whether or not
2 displayed, to which an electronic mail message can be sent or delivered. 15 U.S.C. § 7702(5).

3 10. "Commercial electronic mail message" means any electronic mail message the primary
4 purpose of which is the commercial advertisement or promotion of a commercial product or service
5 (including the content of an Internet website operated for commercial purposes). 15 U.S.C. § 7702(2).

6 11. "Header information" means the source, destination, and routing information attached to
7 an electronic mail message, including the originating domain name and originating electronic mail
8 address, and any other information that appears in the line identifying, or purporting to identify, a
9 person initiating the message. 15 U.S.C. § 7702(8).

10 12. "Initiate," when used with respect to a commercial email message, means to originate or
11 transmit such message or to procure the origination or transmission of such message. 15 U.S.C.
12 § 7702(9).

13 13. "Procure," when used with respect to the initiation of a commercial email message,
14 means intentionally to pay or provide other consideration to, or induce, another person to initiate such a
15 message on one's behalf. 15 U.S.C. § 7702(12).

16 14. "Protected Computer" means a computer that is used in interstate or foreign commerce
17 or communication, including a computer located outside the United States that is used in a manner that
18 affects interstate or foreign commerce or communication of the United States. 15 U.S.C. § 7702(13).

19 15. "Sender" means a person who initiates a commercial email message and whose product,
20 service, or Internet Web site is advertised or promoted by the message. 15 U.S.C. § 7702(16).

21 **DEFENDANTS' BUSINESS PRACTICES**

22 16. Since at least March 2004, defendants have initiated the transmission of commercial
23 email messages to protected computers. The primary purpose of these commercial email messages has
24 been the commercial advertisement or promotion of Internet Web sites. These Web sites market
25 multiple goods or services, including a device that increases a car's gas milage, and mortgage
26 opportunities.

27 17. In numerous instances, defendants have initiated commercial email messages containing
28 materially false or misleading header information. In many instances, the email contains an originating

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1 27. Section 5(a)(5)(A) of CAN-SPAM states:

2 It is unlawful for any person to initiate the transmission of
3 any commercial electronic mail message to a protected
4 computer unless the message provides:

- 5 (i) clear and conspicuous identification that
6 the message is an advertisement or
7 solicitation;
8 (ii) clear and conspicuous notice of the
 opportunity under [section 5(a)(3)] to
 decline to receive further commercial
 electronic mail messages from the sender;
 and
 (iii) a valid physical postal address of the
 sender.

9 15 U.S.C. § 7704(a)(5)(A).

10 28. Section 7(a) of CAN-SPAM states:

11 [T]his Act shall be enforced by the [FTC] as if the
12 violation of this Act were an unfair or deceptive act or
13 practice proscribed under section 18(a)(1)(B) of the [FTC
 Act] (15 U.S.C. 57a(a)(1)(B)).

14 15 U.S.C. § 7706(a).

15 **COUNT ONE**

16 29. In numerous instances, the defendants have initiated the transmission, to protected
17 computers, of commercial email messages that contained or are accompanied by, header information
18 that is materially false or materially misleading.

19 30. The defendants' acts or practices as described in Paragraph 29 violate 15 U.S.C.
20 § 7704(a)(1).

21 **COUNT TWO**

22 31. In numerous instances, the defendants have initiated the transmission, to protected
23 computers, of commercial email messages that contain subject headings that would be likely to mislead
24 a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or
25 subject matter of the message.

26 32. The defendants' acts or practices, as described in Paragraph 31 violate 15 U.S.C.
27 § 7704(a)(2).

28

1 **COUNT THREE**

2 33. In numerous instances, the defendants have initiated the transmission, to protected
3 computers, of commercial email messages that advertise or promote Internet Web sites, products or
4 services, and do not include:

- 5 a. a clear and conspicuous notice of the recipient’s opportunity to decline to receive further
6 commercial electronic mail messages from the defendants at the recipient’s email
7 address; and/or
8 b. a functioning return email address or other Internet-based mechanism, clearly and
9 conspicuously displayed, that a recipient could use to submit a reply email message or
10 other form of Internet-based communication requesting not to receive future commercial
11 email messages from the defendants at the electronic mail address where the message
12 was received, and that remains capable of receiving such messages or communications
13 for no less than 30 days after the transmission of the original message.

14 34. The defendants’ acts or practices, as described in paragraph 32 violate 15 U.S.C.
15 § 7704(a)(5)(A) and/or § 7704(a)(3).

16 **COUNT FOUR**

17 35. In numerous instances, the defendants have initiated the transmission of commercial
18 email messages to protected computers that fail to provide a valid physical postal address of the sender.

19 36. The defendants acts or practices as described in Paragraph 35 violate 15 U.S.C.
20 § 7704(a)(5)(A).

21 **CONSUMER INJURY**

22 37. Consumers throughout the United States have suffered and continue to suffer substantial
23 monetary loss as a result of the defendants’ unlawful acts or practices. Absent injunctive relief from
24 this Court, the defendants are likely to continue to injure consumers and harm the public interest.

25 **THIS COURT’S POWER TO GRANT RELIEF**

26 38. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
27 injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the
28 FTC Act.

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

3
4 Dated: November 28, 2005

Respectfully Submitted,

5 WILLIAM BLUMENTHAL
6 General Counsel

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8 Regional Director

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