UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS NOV 2 9 2005 EASTERN DIVISION
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FEDERAL TRADE COMMISSION,)
Plaintiff,

v.

ZACHARY A. KINION,
Defendant.

COMPLAINT FOR 1N.lUNCTIVE AND OTHER EQUITABLE RELIEF
Plaintiff, the Federal Trade Commission ('FTC" or "Commission"), for its Complaint
alleges as follows:
1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 55 53(b) and 57b, and under Section 7(a) of the Controlling
the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM),
15 U.S.C. 5 7706(a), to obtain preliminary and permanent injunctive relief, rescission of contracts, restitution, redress, disgorgement and other equitable relief for Defendant's deceptive and unfair acts or practices for violation of CAN-SPAM, 15 U.S.C. 5 7701 et

seq.
,JURISDICTION AND VENUE
2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. $5 45(a), 53(b), 57b, 7706(a) and 28 U.S.C. $5 1331, 1337(a) and 1345.

3. Venue in the United States District Court for the Northern District of Illinois is proper
under 15 U.S.C. 8 53(b).

PLAINTIFF

4. Plaintiff FTC is an independent agency of the United States Government created by
statute. 15 U.S.C. $8 41-58. The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. 8 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also is charged with enforcing CAN-SPAM as if statutory
violations of CAN-SPAM "were an unfair or deceptive act or practice proscribed under Section 18(a)(l)(B) of the WC Act] (15 U.S.C. 57a(a)(l)(B))." 15 U.S.C. $ 7706(a).
5. Sections 13(b) and 19 of the FTC Act authorize the FTC to initiate federal district court
proceedings, in its own name by its designated attorneys, to enjoin violations of any provision of law enforced by the FTC, and to secure such equitable relief as may be appropriate in each case. 15 U.S.C. $5 53(b), 57b.

DEFENDANT

6. Defendant Zachary A. Kinion has formulated, directed, controlled, or participated in the
acts or practices set forth in this Complaint. Kinion has transacted business in the
Northern District of Illinois and throughout the United States.
COMMERCE
7. At all times material to this Complaint, Defendant has 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

8. "Electronic mail message" (or "email") means a message sent to a unique electronic mail address. 15 U.S.C. 5 7702(6).

14. "Protected Computer" means a computer which is used in interstate or foreign
commerce or communication, including a computer located outside the United States that
is used in a manner that affects interstate or foreign commerce or communication of the United States. 15 U.S.C. 5 7702(13).
15. "Sender"means a person who initiates a commercial email message and whose
product, service, or Internet Web site is advertised or promoted by the message. 15
U.S.C. fj 7702(16).
DEEENDANT'S BUSINESS ACTIVITIES

16. Since at least August 2004, Defendant has initiated the transmission of commercial email
messages to protected computers. The primary purpose of these commercial email
messages has been the commercial advertisement or promotion of Internet Web sites.
The commercial email messages market multiple goods or services, including mortgage opportunities and adult entertainment.
17. In numerous instances, Defendant has initiated commercial email messages containing
materially false or misleading header information. In many instances, the email contains
an originating email address that was not assigned by the email service provider or was
used without the authorization of the subscriber wh95 0 Td�(site)Tj�049 the email a

18. In numerous instances, in order to induce consumers to open and read their commercial
emails, Defendant has initiated commercial email messages that contain subject
headers that misrepresent the content or subject matter of the message.
19. In numerous instances, Defendant has initiated commercial email messages that fail to include any notification to recipients of their ability to decline receiving future email messages from Defendant, and they fail to include a reply email address or other
mechanism that recipients can use to decline receiving future email messages from Defendant.
20. In numerous instances, Defendant has initiated commercial email messages that failed
to include a valid physical postal address of the sender.
VIOLATIONS OF THE CAN-SPAM ACT
21. The Controlling The Assault of Non-Solicited Pornography and Marketing Act of 2003
("CAN-SPAM), 15 U.S.C. 5 7701 et seq., became effective on January 1,2004, and has since remained in full force and effect.

22. Section 5(a)(l) of CAN-SPAM, 15 U.S.C. 5 7704(a)(l), states:
It is unlawful for any person to initiate the transmission, to a

protected computer, of a commercial electronic mail message .. . that contains, or is accompanied by, header information that is
materially false or materially misleading.
23. Section 5(a)(6) of CAN-SPAM, 15 U.S.C. 4 7704(a)(6), states:
For purposes of [section 5(a)(l)], the term "materially", when used with respect to false or misleading header information, includes the alteration or concealment of header information in a manner that would impair the ability of an Internet access service processing
the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or

It is unlawful for any person to initiate the transmission of any
commercial electronic mail message to a protected computer unless
the message provides:
(i) 	clear and conspicuous identification that the message is an advertisement
or solicitation;
(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.
28. 	Section 7(a) of CAN-SPAM, 15 U.S.C. 5 7706(a), states:
[Tlhis Act shall be enforced by the [ETTC] as if the violation of this
Act were an unfair or deceptive act or practice proscribed under
section 18(a)(l)(B) of the [FTC Act] (15 act or2 Td�(to)j�3.937 0�;5d�(by)Tj�0 Tc 1.1Td�6T1_0 1 Tf�00o06(a), states:
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COUNT I11
33. In numerous instances, Defendant has initiated the transmission, to protected
computers, of commercial email messages that do not include:
a. a clear and conspicuous notice of the recipient's opportunity to decline to receive further commercial electronic mail messages from Defendant at the recipient's
electronic mail address; and/or
b. a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that a recipient could use to submit a reply
electronic mail message or other form of Internet-based communication
requesting not to receive future commercial electronic mail messages from
Defendant at the electronic mail address where the message was received, and
that remains capable of receiving such messages or communications for no less
than 30 days after the transmission of the original message.
34. Defendant's acts or practices, as described in paragraph 33 above, violate 15 U.S.C. 8
7704(a)(5)(A)(ii) and/or 3 7704(a)(3).

COUNT IV
35. In numerous instances, Defendant has initiated the transmission, to protected
computers, of commercial email messages that do not include the sender's valid physical postal address.
36. Defendant's acts or practices, as described in paragraph 35 above, violate 15 U.S.C.
5 7704(a)(5)(A)(iii).

INDIVIDUAL AND BUSINESS INJURY
37. Individuals and businesses throughout the United States and beyond have suffered, and continue to suffer, substantial monetary loss and other injury as a result of Defendant's unlawful acts or practices. In addition, Defendant has been unjustly enriched as a result
of his unlawful practices. Absent injunctive and other equitable relief by this Court, Defendant is likely to continue to injure consumers, reap unjust enrichment, and harm
the public interest.

THIS COURT'S POWER TO GRANT RELIEF

38. Sections 13(b) and 19 of the FTC Act, 15 U.S.C. 53 53(b) and 57b, empowers this Court to grant injunctive and other ancillary equitable relief to prevent and remedy Defendant's violations of the FTC Act, and in the exercise of its equitable jurisdiction, to award
redress to remedy the injury to individuals and businesses, to order the disgorgement of
monies resulting from Defendant's unlawful acts or practices, and to order other ancillary equitable relief. A violation of CAN-SPAM may be remedied in the same manner as a violation of the FTC Act. 15 U.S.C. 5 7706.
PRAYER FOR RELIEF
WHEREFORE, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15
U.S.C. $5 53@) and 57b, Section 7(a) of CAN-SPAM, 15 U.S.C. 5 7706(a), and the Court's own equitable powers, requests that the Court:
1. Enter an order enjoining Defendant preliminarily and permanently from violating Section 5 of the FTC Act, CAN-SPAM, and preserving Defendant's assets;

2. Award such relief as the Court finds necessary to address injury resulting from

Defendant's violations of the FIT Act and CAN-SPAM, including, but not limited to,

rescission of contracts, restitution, redress, disgorgement of ill-gotten gains, and the

refund of monies paid; 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.

Respectfully submitted,

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General Counsel

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