UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS DEC 08 2005
EASTERN DIVISION
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FEDERAL TRADE COMMISSION, 1
)
Plaintiff,) Case No.
)

BRIAN McMULLEN, also doing business)
as BM ENTEiRTAINMENT and B PIMP, 1
)
Defendant. 1

COMPLAINT FOR INJUNCTIVE AND OTHER EOUITABLE 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 Act7'), 15 U.S.C. 95 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. $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. 3 7701 et

seq.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. $9 45(a), 53(b), 57b,

7706(a) and 28 U.S.C. $9 133171337(a) and 1345.

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

4. Plaintiff FTC is an independent agency of

DEFINITIONS

8. "Electronic mail message" (or "email") means a message sent to a

respond to a person who initiated the electronic mail message or to investigate the alleged violation, or the ability of a recipient of the message to respond to a person who initiated the electronic
message.

24. Section 5(a)(2) of CAN-SPAM, 15 U.S.C. 5 7704(a)(2), states:

It is unlawful for any person to initiate the transmission to a
protected computer of a commercial electronic mail message if
such person has actual knowledge, or knowledge fairly implied
on the basis of objective circumstances, that a subject heading
of the message would be likely to mislead a recipient, acting
reasonably under the circumstances, about a material fact regarding the content or subject matter of the message (consistent with the criteria used in enforcement of Section 5 of the Federal Trade

Commission Act (15 U.S.C. 3 45)).

25. Section 7(e) of CAN-SPAM, 15 U.S.C. 3 7706(e), states that in any a n y i f a

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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; andlor
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.5
7704(a)(5)(A)(ii) andlor 5 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 IN.TURY

37. Individuals and businesses throughout the United States and beyond

2. Award such relief as the Court finds necessary to address injury resulting from Defendant's violations of the FTC 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.

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