

1 PETER D. KEISLER
Assistant Attorney General
2 Civil Divison

3 EUGENE M. THIROLF
Director, Office of Consumer Litigation
4 ELIZABETH STEIN (VA Bar No. 15288)
Attorney, Office of Consumer Litigation
5 950 Pennsylvania Avenue, N.W.
Washington, DC 20530
6 (202)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

1 ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and
2 56(a), and the Controlling the Assault of Non-Solicited
3 Pornography and Marketing Act of 2003 ("CAN-SPAM"), 15
4 U.S.C. § 7706(a), to obtain monetary civil penalties, and
5 injunctive and other relief for Defendant's violations of CAN-
6 SPAM, 15 U.S.C. § 7701 et seq., and injunctive relief for
7 Defendant's deceptive practices in violation of Section 5(a)(1)
8 of the FTC Act, 15 U.S.C. § 45(a)(1).

9 JURISDICTION AND VENUE

10 2. This Court has jurisdiction over this matter under 28
11 U.S.C. §§ 1331, 1337(a), 1345, and 1355 and under 15 U.S.C. §§
12 45(m)(1)(A), 53(b), 56(a), and § 7706(a). This action arises
13 under 15 U.S.C. § 45(a)(1).

14 3. Venue in the Northern District of California is proper
15 under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b)-(c) and
16 1395(a).

17 INTRADISTRICT ASSIGNMENT

18 4. The events giving rise to the United States' claims
19 occurred in substantial part in San Francisco County.

20 THE DEFENDANT

21 5. Defendant Jumpstart Technologies, LLC ("Jumpstart") is
22 a limited liability company registered in Delaware. Jumpstart's
principal office or place of business is located at One Market
Plaza, 39th Floor, San Francisco, California 94105. Jumpstart
transacts business in the Northern District of California.

1 COMMERCE

2 6. At all times material to this complaint, Defendant's
3 course of business, including the acts and practices alleged
4 herein, has been and is in or affecting commerce, as "commerce"
5 is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6 DEFENDANT'S BUSINESS PRACTICES

7 7. Since July 2000, Defendant has advertised, offered for
8 sale, sold, and distributed marketing information and advertising
9 services to buyers throughout the United States. Defendant
10 transacts business on the Internet through a number of business
11 lines or subsidiaries, including but not limited to, FreeFlixTix,
12 Bonus Bonez, Harding Innovations LLC, Infinity Brands LLC, and
13 Launchpad Services LLC.

14 8. In the course of conducting its business, Defendant
15 initiates commercial email messages to consumers, the primary
16 purpose of which is the commercial advertisement or promotion of
17 websites, such as FreeFlixTix.com. The FreeFlixTix.com website
18 serves as a vehicle to provide direct marketing opportunities for
19 Defendant's advertising partners and to collect marketing
20 information for the Defendant to sell to third parties.

21 9. Through the FreeFlixTix website, Defendant collects
22 personal information by offering to send free movie tickets to

1 consumers who, among other things, submit the email addresses of
2 five or more of their friends. The website advertises in large
3 black print: "Get 5 friends to sign up. Get a free movie
4 ticket." Consumers are asked, in large black print: "Where
5 should we send your free tickets?" and are asked to provide their
6 full names, street addresses, birth dates, and email addresses.
7 Beneath this form, another black bolded link appears, which is
8 labeled, "Get Free Tickets." Directly above this link, in small
9 white print, is the statement, "By signing up, I certify that I
10 have read and accept your Terms of Service." Consumers who click
11 on the Terms of Service link are taken to another web page which
12 describes, among other things, the additional steps consumers
13 must take before getting their free tickets. When consumers
14 click on the "Get Free Tickets" link, they are taken to an online
15 form where they are instructed to list the email addresses of ten
16 of their friends. According to this page, if five of the friends
17 sign up to become members of FreeFlixTix: "We'll send you free
18 movie tickets!"

19 10. Once a consumer signs up for the promotion and submits
20 the email addresses of ten friends, the Defendant initiates an
21 email, to each of these friends. The "from" line of these emails
22 contains the consumer's actual email address and make no

1 reference to the Defendant. Consequently, the emails appear to
2 have been transmitted directly from the consumer to each of
3 his/her friends ("recipients"). The Defendant includes personal
4 greetings in the subject lines of these email messages such as:

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

1 13. In many instances, subsequent email messages
2 transmitted to referred email addresses bear subject headings
3 which indicate that the referring consumer has procured free
4 tickets for the recipient. For example, one such email message
5 transmitted by the Defendant reads as follows: "Subject: [John]

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

1 consumer must sign up for a promotion by submitting his/her
2 credit card information to one of the Defendant's advertising
3 partners. Certain advertising partners require that the consumer
4 pay for the promotion being offered, while others make "free"
5 offers that must be cancelled at a later date to avoid a charge.
6 Approximately twelve weeks after the Defendant receives
7 confirmation from one of its partners that the consumer has
8 completed an offer and submitted a valid credit card number, the
9 consumer receives two certificates that are redeemable in movie
10 theaters.

11 THE CAN-SPAM ACT

12 16. The Controlling the Assault of Non-Solicited
13 Pornography and Marketing Act of 2003, ("CAN-SPAM") 15 U.S.C.
14 § 7701, et seq., became effective on January 1, 2004, and has
15 since remained in full force and effect.

16 17. Section 3(2) of the CAN-SPAM Act, 15 U.S.C. § 7702(2),
17 defines "commercial electronic mail message" to mean, "any
18 electronic mail message the primary purpose of which is the
19 commercial advertisement or promotion of a commercial product or
20 service (including content on an Internet website operated for a
21 commercial purpose)."

22 18. 20

21

1 defines "header information" to mean, "the source, destination,
2 and routing information attached to an electronic mail message,
3 including the originating domain name and originating electronic
4 mail address, and any other information that appears in the line
5 identifying, or purporting to identify, a person initiating the
6 message."

7 19. Section 3(9) of the CAN-SPAM Act, 15 U.S.C. § 7702(9),
8 defines "initiate," when used with respect to a commercial email
9 message, to mean, "to originate or transmit such message or to
10 procure the origination or transmission of such message, but
11 shall not include actions that constitute routine conveyance of
12 such message. For the purposes of this paragraph, more than one
13 person may be considered to have initiated a message."

14 20. Section 3(12) of the CAN-SPAM Act, 15 U.S.C. §
15 7702(12), defines "procure," when used with respect to the
16 initiation of a commercial email message, to mean, "intentionally
17 to pay or provide other consideration to, or induce, another
18 person to initiate such a message on one's behalf."

19 21. Section 3(13) of the CAN-SPAM Act, 15 U.S.C.
20 § 7702(13), defines "protected computer" by reference to 18
21 U.S.C. § 1030(e)(2)(B), which states that a protected computer is
22 "a computer which is used in interstate or foreign commerce or

1 communication, including a computer located outside the United
2 States that is used in a manner that affects interstate or
3 foreign commerce or communication of the United States."

4 22. Section 3(14) of the CAN-SPAM Act, 15 U.S.C. § 7702(14)
5 defines "recipient," when used with respect to a commercial email
6 message, to mean, "an authorized user of the electronic mail
7 address to which the message was sent or delivered."

8 23. Section 3(16) of the CAN-SPAM Act, 15 U.S.C.
9 § 7702(16), defines "sender," when used with respect to a
10 commercial email message, to mean, "a person who initiates such a
11 message and whose product, service, or Internet web site is
12 advertised or promoted by the message."

13 24. Section 5(a)(1) of CAN-SPAM states: "It is unlawful for
14 any person to initiate the transmission, to a protected computer,
15 of a commercial electronic mail message . . . that contains, or
16 is accompanied by, header information that is materially false or
17 materially misleading." 15 U.S.C. § 7704(a)(1).

18 25. Section 5(a)(2) of CAN-SPAM states: "It is unlawful for
19 any person to initiate the transmission to a protected computer
20 of a commercial electronic mail message if such person has actual
21 knowledge, or knowledge fairly implied on the basis of objective
22 circumstances, that a subject heading of the message would be

1 address book could evade software programs used to screen out
2 unsolicited commercial email.

3 31. The Defendant's acts or practices, as described in
4 paragraph 29, violate 15 U.S.C. § 7704(a)(1).

5 COUNT II

6 32. In numerous instances, the Defendant has initiated the
7 transmission, to protected computers, of commercial email
8 messages that contained, or were accompanied by, a subject
9 heading that the Defendant knew, or had reason to know, would be
10 likely to mislead a recipient, acting reasonably under the
11 circumstances, about a material fact regarding the contents or
12 subject matter of the message. According to Section 2(a)(8) of
13 CAN-SPAM: "Many senders of unsolicited commercial electronic mail
14 purposefully include misleading information in the messages'
15 subject lines in order to induce the recipients to view the
16 messages." 15 U.S.C. § 7701(a)(8). A recipient of one of
17 Defendant's emails containing subject lines such as "Hiya,"
18 "Happy Valentine's Day," "Invite," or "[John] has sent you
19 complimentary movie tickets - Certificate #29936," would be
20 misled into opening it under the reasonable belief that the email
21 was personal rather than commercial in nature. CAN-SPAM
22 prohibits using the subject line as an initial contact with

1 consumers to get their attention by misrepresenting the purpose
2 of the contact.

3 333. Defendant's acts or practices, as described in
4 paragraph 31, violate 15 U.S.C. §§ 7704(a)(2).

5
6 COUNT III

7 34. In numerous instances, Defendant has initiated the
8 transmission of commercial email messages to recipients more than
9 ten (10) business days after Defendant had received an opt-out
10 request from such recipients indicating that they decline to
11 receive further email messages from the Defendant.

12 35. Defendant's acts or practices, as described in
13 paragraph 33, violate 15 U.S.C. § 7704(a)(4).

14 COUNT IV

15 36. In numerous instances, Defendant has initiated the
16 transmission of commercial email messages to protected computers
17 that fail to provide clear and conspicuous identification that
18 the message is an advertisement or solicitation. Defendant's
19 email messages have contained text which appeared to be personal
20 in nature.

21 37. Defendant's acts or practices, as described in
22 paragraph 35, violate 15 U.S.C. § 7704(a)(5).

1 COUNT V

2 38. In numerous instances, Defendant has initiated the
3 transmission of commercial email messages to protected computers
4 that fail to provide clear and conspicuous notice of the
5 opportunity to decline to receive further email messages from the
6 Defendant. The links labeled, "Mailing Preferences," "Visit the
7 BonusBonz Mailings Manager" and "Why wait? You can stop getting
8 mail at any time," did not clearly inform consumers that they
9 provided them with an opportunity to opt out of receiving further
10 solicitation from the Defendant.

11 39. Defendant's acts or practices, as described in
12 paragraph 37, violate 15 U.S.C. § 7704(a)(5).

13 SECTION 5 OF THE FTC ACT

14 40. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),
15 provides that "unfair or deceptive acts or practices in or
16 affecting commerce are hereby declared unlawful."

17 VIOLATIONS OF SECTION 5 OF THE FTC ACT

18 COUNT VI

19 41. In numerous advertisements, including email messages
20 sent to consumers, such as Exhibits A and B, and on its
21 FreeFlixTix website pages, such as Exhibits C and D, Defendant
22 has represented, expressly or by implication, that:

1 A. The recipient of the email is receiving a personal
2 message sent directly from the consumer identified
3 in the "from" line of the email.

4 B. The subject of the message is a personal
5 invitation from the consumer identified in the
6 "from" line.

7 C. The consumer whose first name appears at the end
8 of the message wrote the text of the message.

9 D. The consumer identified in the "from" line of the
10 email has sent the recipient of the email
11 complimentary movie tickets redeemable using the
12 given certificate number.

13 E. The promotion works as follows: "1) Sign up. 2)
14 Tell Friends. 3) Get FREE tickets."

15 F. The promotion works as follows: "Get 5 friends to
16 sign up, GET A FREE MOVIE TICKET!"

17 G. Defendant will, "send an email and reminder" to
18 each of the consumer's friends.

19 42. In truth and in fact:

20 A. The recipient of the email is not receiving a
21 personal message sent directly from the consumer
22 identified in the "from" line of the email.

1 Instead, the consumer is receiving an unsolicited
2 advertisement from the Defendant.

3 B. The subject of the message is not a personal
4 invitation from the consumer identified in the
5 "from" line. Instead, the subject of the email is
6 an unsolicited advertisement.

7 C. The consumer whose first name appears at the end
8 of the message did not write the text of the
9 message. The Defendant wrote the message.

10 D. The consumer identified in the "from" line of the
11 email has not sent the recipient of the email
12 complimentary movie tickets redeemable using the
13 given certificate number. The certificate number
14 is a meaningless fiction.

15 E. The promotion does not work as follows: 1) Sign
16 up. 2) Tell Friends. 3) Get FREE tickets. To
17 qualify for movie tickets: 1) Consumers must
18 submit the email addresses of ten of their
19 friends. 2) Defendant initiates six or more
20 commercial emails to each of these friends which
21 appear to have been sent and authored by the
22 consumers. 3) At least five of these friends must

1 sign up as members on the site. 4) The consumers
2 must sign up for a promotion offered by one of the
3 Defendant's advertising partners, which requires
4 the submission of credit card information, and in
5 some instances, payment.

6 F. The promotion does not work as follows: "Get 5
7 friends to sign up, GET A FREE MOVIE TICKET!" As
8 described in part E of this paragraph, a consumer
9 must do more than get 5 friends to sign up in
10 order to receive a free movie ticket from the
11 Defendant.

12 G. The Defendant does not send an email and a
13 reminder to each of the consumer's friends.
14 Instead, the Defendant initiates six or more
15 commercial email messages to each of the
16 consumer's friends.

17 43. Therefore, Defendant's representations as set forth in
18 paragraph 40 above are false or misleading and constitute a
19 deceptive practice, and the making of false advertisements, in or
20 affecting commerce, in violation of Section 5(a) of the FTC Act,
21 15 U.S.C. § 45(a).

22 CONSUMER INJURY

1 44. Consumers in the United States have suffered and will
2 suffer injury as a result of Defendant's violations of CAN-SPAM
3 and the FTC Act. Absent injunctive relief by this Court, the
4 Defendant is likely to continue to injure consumers and harm the
5 public interest.

6 CIVIL PENALTIES AND INJUNCTIVE RELIEF

7 45. The Defendant has violated CAN-SPAM as described above
8 with knowledge as set forth in Section 5(m)(1)(A) of the FTC Act,
9 15 U.S.C. § 45(m)(1)(A).

10 46. Each commercial email message initiated by the
11 Defendant in which the Defendant has violated CAN-SPAM in one or
12 more of the ways described above constitutes a separate violation
13 for which plaintiff seeks monetary civil penalties.

14 47. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. §
15 45(m)(1)(A), as modified by Section 4 of the Federal Civil
16 Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and
17 Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R.
18 § 1.98(d), authorizes this Court to award monetary civil
19 penalties of not more than \$11,000 for each such violation of
20 CAN-SPAM.

21 48.

22

1 the Defendant's violating the FTC Act.

2 PRAYER

3 WHEREFORE, plaintiff requests this Court, pursuant to 15
4 U.S.C. §§ 45(a)(1), 45(m)(1)(A), and 53(b), and to the Court's
5 own equitable powers to:

- 6 (1) Enter judgment against the Defendant and in favor of
7 plaintiff for each violation alleged in this complaint;
8 (2) Award plaintiff monetary civil penalties from the
9 Defendant for each violation of CAN-SPAM;
10 (3) Permanently enjoin the Defendant from violating the FTC
11 Act and CAN-SPAM;
12 (4) Award plaintiff such additional relief as the Court may
13 deem just and proper.

14
15 Dated: _____

Respectfully submitted,

16
17
18 OF COUNSEL:

FOR THE UNITED STATES OF AMERICA:

19 JEFFREY KLURFELD
20 Regional Director
21 Western Region
22 FEDERAL TRADE COMMISSION

PETER D. KEISLER
Assistant Attorney JSDOd1
Civil Division
U.S. DEPARTMENT OF JUSTICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

LINDA K. BADGER
LISA D. ROSENTHAL
Attorneys
Federal Trade Commission
901 Market St., Ste. 570
San Francisco, CA 94103
PHONE: (415)848-5100
FAX: (415)848-5142
EMAIL: lbadger@ftc.gov

EUGENE M. THIROLF
Director
Office of Consumer Litigation

ELIZABETH STEIN
Trial Attorney
Office of Consumer Litigation
Civil Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
PHONE: (202) 307-0066
FAX: (202) 514-8742