I$ PETER D. KEISLER

ssistant Attorney General

UGENE M. THIROLF

Director, Office of Consumer Litigation Ir

LIZABETH STEIN (VA Bar No. 15288) ttorney, Office of Consumer Litigation ivil ~ivision
nited States Department of Justice
Pennsylvania Ave., NW
ashington, D.C. 20530
elephone: 202-307-0066
202-514-8742

mail: Elizabeth.Stein2@usdoi.sov

ttorneys for Plaintiff United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, 06 6611

No.

Plaintiff,

v. COMPLAINT FOR CIVIL
PENALTIES AND

YESMAIL, INC, d/b/a @ONCE PERMANENT INJUNCTIVE
CORPORATION, a Delaware RELIEF
corporation,

Defendant.

Plaintiff, the United States of America, acting upon

~otification and authorization to the Attorney General by the

'ederal Trade Commission ("FTC" or "Co~ission"), pursuant to

Section 16(a) (1) of the Federal Trade Commission Act ("FTC Act")

15 U.S.C. § 56(a)(l), for its complaint alleges:

1. Plaintiff brings this action under Sections 5(a),

5(m) (1) (A), 13(b), 16(a), and 19 of the FTC Act, 15 U.S.C.

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;S 45 (a), 45 (m) (1) (A), 53 (b) , 56 (a), and 57b, and under Section ' (a) of the Controlling the Assault of Non-Solicited Pornography ~ nd Marketing Act of 2003 ("CAN-SPAM" or the "CAN-SPAM

intentionally to pay or provide other consideration to,
or induce, another person to initiate such a message on
one's behalf.

11. Section 3(13) of the CAN-SPAM Act, 15 U.S.C.
7702(13), defines "protected computer" by reference to
8 U.S.C. § 1030(e)(2)(B), which states that a protected computer

r :
II

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.
12. Section 3(14) of the CAN-SPAM Act, 15 U.S.C.
7702(14), defines "recipient," when used with respect to a ommercial email message, as:
an authorized user of the electronic mail address to
which the message was sent or delivered.
13. Section 3(16) of the CAN-SPAM Act, 15 U.S.C.
7702(16), defines "sender," when used with respect to a

II.ommercial email message, as:
a person who initiates such a message and whose
product, service, or Internet web site is advertised or promoted by

act or practice proscribed under section 18 (a) (1) (B) of
the [FTC Act] (15 U.S.C. 57a(a) (1)(B)) .
DEFENDANT'S BUSINESS PRACTICES
17. Since at least September 2004, Defendant has owned and 3perated an email marketing company. The marketing services that Defendant provides to its clients include ongoing web hosting, data processing, data management, and consulting services.
18. In connection with the email marketing services that Defendant provides to its clients, Defendant transmits commercial ?mail messages. Defendant is an "initiator," as that term is Aefined under CAN-SPAM, of the email messages sent on behalf of its clients.
19. As such, Defendant receives and processes unsubscribe requests from recipients of the email messages it sends on behalf 3f certain clients.
20. Defendant's spam filtering software identified and
filtered out certain "reply to" unsubscribe requests from recipients, filtering such requests as "spam."
21. As a result, Defendant failed to honor such unsubscribe requests, and sent thousands of commercial email messages on 3ehalf of its clients to a recipient's email address more than ten business days after receipt of a request"from the recipient lot to receive future commercial email messages from Defendant's zlients.
COUNT I

22. In numerous instances, Defendant has initiated the transmission of commercial electronic mail messages to a recipient mope than ten business days after receipt of a request Page 6 of 9

1 1. ot to receive further commercial electronic mail messages from

2 lpefendant at the recipientf s email address.
3 23. Therefore, Defendant's acts or practices, as described 4 in paragraph 20, violated Section 5(a) (4) (A) (i)of the CAN-SPAM

pet, 15 U.S.C. 5 7704 (a)

26. Section 5(m) (1) (A) of the FTC Act, 15 U.S.C.
; 45 (m) (1) (A), as modified by Section 4 of the Federal Civil 'enalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as ~mended, and as implemented by 16 C.F.R. § 1.98(d) (1997), luthorizes this Court to award monetary civil penalties of not lore than $11,000 for each violation of CAN-SPAM. Defendant's riolations of CAN-SPAM were committed with the knowledge required)y Section 5(m) (1) (A) of the FTC Act, 15 U.S.C. 5 45(m) (1) (A).
27. Section 13 (b) of the FTC Act, 15 U.S.C. § 53(b),
Lmpowers this Court to grant injunctive and other ancillary
. elief to prevent and remedy any violation of any provision of
. aw enforced by the FTC.
PRAYER FOR.RELIEF

WHEREFORE, Plaintiff requests that this Court, as authorized
~y Sections 5 (a), 5 (m) (1) (A), 13 (b) and 19 of the FTC Act,
. 5 U.S.C. §§ 45 (a), 45 (m) (1) (A), 53 (b) and 57b, and pursuant to
. ts own equitable powers:
. Enter judgment against Defendant and in favor of Plaintiff
'or each violation alleged in this complaint;
. Award plaintiff monetary civil penalties from Defendant for
:very violation of the CAN-SPAM Act;

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I. Permanently enjoin Defendant from violating the CAN-SPAM
ict;
. Order Defendant to pay the costs of this action; and
I. Award Plaintiff such other preliminary and permanent
!quitable relief as the Court may determine to be just and

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Dated: ~c)oksq , 2006

OF COUNSEL:

LOIS GREISMAN
Associate Director for Marketing Practices
FEDERAL TRADE COMMISSION

Karen S. Hobbs
LaShawn Johnson
Attorneys
Federal Trade Commission 600 Pennsylvania Ave., N Rm. 221

Washington, D.C. 20580 PHONE: 202-326-3587
FAX: 202-326-3395

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

PETER D. KEISLER

Assistant Attorney General

EUGENE M. THIROLF
Director
Office of Consumer Litigation

1 ELIZALBETH STEIN

~ riai Attorney Office of Consumer Litigation

U.S. Department of Justice 950 Pennsylvania Ave., NW Washington, D.C. 20530 PHONE: 202-307-0066
FAX: 202-514-8742

Elizabeth.Stein2@usdoi.qov

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