

1 WILLIAM BLUMENTHAL
General Counsel

2 CHRIS M. COUILLOU
3 ccouillou@ftc.gov
GERALD S. SACHS
4 gsachs@ftc.gov
Federal Trade Commission
5 225 Peachtree Street, NE, Suite 1500
Atlanta, GA 30303
6 (404) 656-1353 (Couillou)
(404) 656-1358 (Sachs)
7 (404) 656-1379 (Fax)

8 DAVID C. FIX
dfix@ftc.gov
9 Federal Trade Commission
600 Pennsylvania Avenue, NW, H-238
10 Washington, DC 20580
(202) 326-3298 (voice)
11 (202) 326-3395 (fax)

12 KENNETH ABBE, California Bar # 172416
kabbe@ftc.gov
13 Federal Trade Commission
10877 Wilshire Blvd., Ste. 700
14 Los Angeles, CA 90024
(310) 824-4318 (voice)
15 (310) 824-4380 (fax)

16 Attorneys for Plaintiff

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18 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
19 WESTERN DIVISION

20 FEDERAL TRADE COMMISSION,)

21 Plaintiff)

22 v.)

23 BURNLOUNGE, INC.,
a corporation;
24 JUAN ALEXANDER ARNOLD,
an individual;
25 JOHN TAYLOR,
an individual;
26 ROB DEBOER,
an individual; and
27 SCOTT ELLIOTT,
an individual;

28 Defendants.)

Case No.

**COMPLAINT FOR INJUNCTIVE
AND OTHER EQUITABLE RELIEF**

1 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), by its
2 undersigned attorneys, alleges:

3 1. Plaintiff FTC brings this action under Section 13(b) of the Federal
4 Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure a permanent
5 injunction, rescission of contracts and restitution, disgorgement of ill-gotten gains,
6 and other equitable relief against the Defendants for engaging in deceptive acts or
7 practices in connection with the advertising, marketing and sale of opportunities to
8 operate on-line digital music stores in violation of Section 5(a) of the FTC Act, 15
9 U.S.C. § 45(a).

10 **JURISDICTION AND VENUE**

11 2. This Court has subject matter jurisdiction over the FTC's claims
12 pursuant to 15 U.S.C. §§ 45(a) and 53(b) and 28 U.S.C. §§ 1331, 1337(a) and
13 1345.

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

16 **PLAINTIFF**

17 4. Plaintiff, the FTC, is an independent agency of the United States
18 government created by statute, 15 U.S.C. §§ 41 *et seq.* The Commission enforces
19 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or
20 deceptive acts or practices in or affecting commerce. The Commission may
21 initiate federal district court proceedings to enjoin violations of the FTC Act and
22 to secure such equitable relief as is appropriate in each case. 15 U.S.C. § 53(b).

23 **DEFENDANTS**

24 5. Defendant BurnLounge, Inc., ("BurnLounge") is a Delaware
25 corporation that has its principal place of business at 340 Hudson Street, 7th Floor,
26 New York City, New York. BurnLounge has conducted business since 2005.
27 BurnLounge conducts recruitment activities and training seminars in the Central
28 District of California and throughout the country.

1 opportunities to operate on-line digital music stores (“on-line stores”).

2 13. Participants join BurnLounge through the purchase of product
3 packages, of which there are three: (1) the Basic Package, which sells for \$29.95
4 per year; (2) the Exclusive Package for \$129.95 per year plus \$8 per month; and
5 (3) the VIP Package for \$429.95 per year plus \$8 per month. More expensive
6 packages provide the participant with an increased ability to earn rewards through
7 the BurnLounge compensation program.

8 14. The first \$29.95 of each product package pays for a license to operate
9 an on-line store. Through the on-line stores, BurnLounge sells product packages
10 and digital music to consumers. Consumers who purchase music receive a digital
11 copy by downloading it through the Internet.

12 15. There are two basic classes of BurnLounge participants: “Retailers”
13 and “Moguls.” Participants who purchase a license to operate an on-line store
14 become a “Retailer.” Retailers who want to earn monetary rewards must pay an
15 additional monthly fee of \$6.95 to become a “Mogul.”

16 **Compensation Plan**

17 16. All participants in BurnLounge can earn reward points under the
18 BurnLounge compensation program for selling product packages and digital
19 music. Participants can redeem the points for purchases through their on-line
20 stores. Only participants who become Moguls can convert the points into dollars.
21 For Moguls, one point equals one dollar.

22 17. The BurnLounge compensation program has two parts: (1)
23 recruitment bonuses (described in Paragraphs 18 through 26), and (2) Concentric
24 Retail (described in Paragraphs 27 and 28).

25 18. BurnLounge pays two types of recruitment bonuses. These bonuses
26 are earned from selling BurnLounge product packages to new recruits.
27 BurnLounge calls these “Product Package Bonuses” and “Mogul Bonuses.”

28 19. Product Package Bonuses are earned by selling BurnLounge product

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1 26. In order to earn a Mogul Bonus, the Mogul must accumulate 300
2 points in each of the two teams. The amount of the Mogul Bonus varies from \$25
3 to \$50 depending upon the package the Mogul purchased and in some cases music
4 sales.

5 27. Concentric Retail, the other part of the compensation program,
6 provides rewards for product sales through on-line stores. BurnLounge defines
7 “product” to include digital music downloads, the first \$29.95 of each of the three
8 BurnLounge packages, and the \$8 monthly fee paid as part of the Exclusive and
9 VIP Packages.

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1 So, Scott, you know, seven people in the company have - - you
2 know, I've had a chance to work with that have generated well over
3 \$200,000 in the last six months. We've got residual checks in the
4 company right now today that are a six-figure income, well over
5 six figures. (John Taylor, live teleconference call, August 10, 2006)

6
7 Guys, we've made just under \$300,000. Todd Ellis' next door
8 neighbor has made \$280,000. We've got a dozen people that have
9 made over \$100,000. (Rob DeBoer, live in-person recruitment
10 presentation, Lawrenceville, Georgia, July 12, 2006)

11
12 Our professional BurnLounge team is then available to answer all
13 questions on your behalf until we drive your personal income to
14 \$1,000 per week. (Scott Elliott, Internet pre-recorded audio message,
15 August 11, 2006)

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17 34. In contrast to the claims of profitability, the compensation plan used
18 by BurnLounge mathematically dictates that at any particular time the majority of
19 Moguls will spend more money to participate in BurnLounge than they have earned
20 through their involvement with the company, and the majority of Moguls will not
21 have made the substantial incomes represented.

22 35. Defendants have failed to adequately disclose that the majority of
23 Moguls will not make the substantial incomes represented.

1 **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

2 **COUNT I**

3 36. As alleged in Paragraphs 12 through 35, the Defendants promote
4 participation in BurnLounge, which has a compensation program based primarily
5 on providing payments to participants for the recruitment of new participants, not
6 on the retail sale of products or services, thereby resulting in a substantial
7 percentage of participants losing money.

8 37. Defendants’ promotion of this type of scheme, often referred to as a
9 pyramid scheme, constitutes a deceptive act or practice in violation of Section 5(a)
10 of the FTC Act, 15 U.S.C. § 45(a).

11 **COUNT II**

12 38. In connection with the offering and sale of the right to participate in
13 the BurnLounge program, Defendants represent, expressly or by implication, that
14 consumers who become BurnLounge Moguls are likely to make substantial
15 income.

16 39. In truth and in fact, in numerous instances, consumers who become
17 BurnLounge Moguls are not likely to make substantial income.

18 40. Therefore, the representation set forth in Paragraph 38 is false and
19 misleading and constitutes a deceptive act or practice in violation of Section 5(a) of
20 the FTC Act, 15 U.S.C. § 45(a).

21 **COUNT III**

22 41. In connection with the offering and sale of the right to participate in
23 the BurnLounge program, Defendants represent, expressly or by implication, that
24 consumers who become Moguls are likely to make substantial income.

25 42. Defendants fail to disclose that most BurnLounge Moguls are not
26 likely to make substantial income.

27 43. This additional information would be material to customers in
28 deciding whether to participate in the BurnLounge program.

1 44. Defendants' failure to disclose the material information described in
2 paragraph 42, in light of the representations made in paragraph 41, therefore
3 constitutes a deceptive act and practice in violation of Section 5 of the FTC Act, 15
4 U.S.C. § 45(a).

5 **CONSUMER INJURY**

6 45. Consumers in many areas of the United States have suffered, and
7 continue to suffer, substantial monetary loss as a result of Defendants' unlawful
8 acts or practices. In addition, Defendants have been unjustly enriched as a result of
9 their unlawful acts and practices. Absent injunctive relief, Defendants are likely to
10 continue to injure consumers, reap unjust enrichment, and harm the public.

11 **THIS COURT'S POWER TO GRANT RELIEF**

12 46. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court
13 to grant injunctive and such other relief as the Court may deem appropriate to halt
14 and redress violations of the FTC Act. The Court, in the exercise of its equitable
15 jurisdiction, may award other ancillary relief, including but not limited to,
16 rescission of contracts and restitution, and the disgorgement of ill-gotten gains, to
17 prevent and remedy injury caused by Defendants' law violations.

18 **PRAYER FOR RELIEF**

19 WHEREFORE Plaintiff Federal Trade Commission, pursuant to Section
20 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers,
21 requests that the Court:

22 1. Award Plaintiff such preliminary injunctive and ancillary relief as may
23 be necessary to avert the likelihood of consumer injury during the pendency of this
24 action and to preserve the possibility of effective final relief, including, but not
25 limited to temporary and preliminary injunctions and an order freezing assets and
26 requiring an accounting;

27 2. Enter a permanent injunction to prevent future violations of the FTC
28 Act by Defendants;

