

In re Adteractive, Inc.

Staff deserves credit for bringing this case and for negotiating a settlement that includes useful injunctive relief. I am concerned, however, that the civil penalty that Adteractive must pay is a downward departure from our other CAN-SPAM Act cases and is not adequate to deter violations in the future. Therefore, I respectfully dissent.

Adteractive, Inc. is a corporation with annual revenues reportedly exceeding \$115 million.¹ According to the Commission's complaint, which alleged violations of both the CAN-SPAM Act and Section 5 of the FTC Act for unfair or deceptive acts or practices, the company offered "free" gifts such as a laptop or flat-screen television through spam emails and banner advertising. A consumer who responded to the email or banner ad would be taken to a website where, after providing personal information, he or she could then sign up for certain offers. Initial offers were optional, but three subsequent tiers of offers were mandatory – one could not get a free gift

¹Leibowitz, Kristen Bole, *Adteractive: A Dot-Com that Learned Its Lessons*, San Francisco Business Times (October 14, 2005) (citing revenue of \$118 million).

² According to the Commission's complaint, Jumpstart offered consumers two "free" movie tickets in exchange for the email addresses of five friends – without properly disclosing that the consumer also had to sign up for iDon0 0.0000 T000 00.000mm0 0.e6disclpaseo77x1.8tm6 m