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1 THOMAS P O'BRYEN

15 U.S.C. § 7706(a), to obtain monetary civil penalties, a permanent injunction, and other equitable relief for defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and Section 5(a) of CAN-SPAM, 15 U.S.C. § 7704(a).

**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355 and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a) and 57b. This action arises under 15 U.S.C. §§ 45(a) and 7706(a).

3. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c), 1395(a), and 15 U.S.C. § 53(b).

**DEFENDANTS**

4. Defendant ValueClick, Inc. ("ValueClick") is a Delaware corporation with its principal office or place of business at 30699 Russell Ranch Road, Suite 250, Westlake Village, CA 91361. ValueClick resides in the Central District of California and transacts business within this District and throughout the United States. ValueClick directs, formulates and controls the practices of, and shares common officership with, the other named Defendants, which are wholly-owned subsidiaries of ValueClick.

5. Defendant Hi-Speed Media, Inc. ("Hi-Speed Media") is a California corporation with its principal office or place of business at 30699 Russell Ranch Road, Suite 250, Westlake Village, CA 91361. Hi-Speed Media resides in the Central District of California and transacts business within this District and throughout the United States.

6. Defendant E-Babylon, Inc. ("E-Babylon") is a d transact 5d Media,



1 message, means to originate or transmit such message or to procure  
2 the origination or transmission of such message. 15 U.S.C.  
3 § 7702(9).

4 13. "**Landing page**" means, in online marketing, a specific web  
5 page that a visitor reaches after clicking a link or advertisement.  
6 This page usually showcases content that is an extension of the link  
7 or ad.

8 14. "**Procure**," when used with respect to the initiation of a  
9 commercial email message, means intentionally to pay or provide  
10 other consideration to, or induce, another person to initiate such  
11 a message on one's behalf. 15 U.S.C. § 7702(12).

12 15. "**Protected computer**" means a computer which is used in  
13 interstate or foreign commerce or communication, including a  
14 computer located outside the United States that is used in a manner  
15 that affects interstate or foreign commerce or communication of the  
16 United States. 15 U.S.C. § 7702(13); 18 U.S.C. § 1030(e)(2)(B).

17 16. "**Sender**" means a person who initiates a commercial email  
18 message and whose product, service, or Internet website is  
19 advertised or promoted by the message. 15 U.S.C. § 7702(16).

20 **DEFENDANTS VALUECLICK'S AND HI-SPEED MEDIA'S**

21 **MARKETING PRACTICES**

22 17. Since January 2005, and continuing to the present,  
23 Defendants ValueClick and Hi-Speed Media (hereinafter, "the lead  
24 generation Defendants"), in connection with promotions and  
25 advertisements on their websites, have offered consumers  
26 purportedly free merchandise, such as iPods, laptop computers, and  
27 Visa gift cards.

28 18. The lead generation Defendants advertise and market  
their offers through email and Web-based ads. The lead generation

1 Defendants' emails contain subject lines such as: "Free PS3 for  
2 survey"; "let us buy you a 42 inch plasma tv! Just type in your  
3 zip code"; "we're giving away a Visa gift card pending  
4 participation in our presidential survey"; and "Free Apple iPhone  
5 for Daniel." The lead generation Defendants' Web-based ads  
6 contain similar representations: "CONGRATULATIONS! Select your  
7 FREE Plasma TV." (Such products and items are referred to herein  
8 as "promised free merchandise.")

9 19. Many of the lead generation Defendants' emails and Web-  
10 based ads represent, expressly or by implication, that the  
11 consumer viewing the message has won a contest, or has been  
12 specially selected to receive a gift or prize.

13 20. The lead generation Defendants' emails and Web-based ads  
14 contain links that, when clicked on, take one to a "landing page"  
15 operated by the lead generation Defendants or their affiliates.  
16 Each landing page recapitulates and expands upon the lead  
17 generation Defendants' initial promised free merchandise offer.

18 21. The lead generation Defendants do not clearly and  
19 conspicuously disclose that to obtain the promised free  
20 merchandise one must incur expenses or other obligations. A  
21 consumer must accept (and often pay for) - in the lead generation  
22 Defendants' parlance, "complete" or "participate in" - a certain  
23 number of goods or services promoted by third-parties to qualify  
24 for the promised free merchandise that the lead generation  
25 Defendants promote in their emails and Web-based ads. Moreover,  
26 the lead generation Defendants do not clearly and conspicuously  
27 disclose the costs and obligations associated with participating  
28 in third-party promotions, such as applying and qualifying for  
credit cards or automobile loans.



1 generation Defendants require the consumer to participate in  
2 multiple offers before he or she can progress to the next tier of  
3 offers.

4 26. Some of the offers have free-trial periods, but require  
5 the consumer to participate for a minimum period of time to  
6 qualify for the lead generation Defendants' promised free  
7 merchandise thereby causing consumers to incur costs they cannot  
8 recover. In some instances, the minimum period is longer than the  
9 free-trial period. Moreover, many such offers contain negative  
10 option components in which the consumer who does not cancel within  
11 the free trial period will be billed automatically.

12 27. In some instances, the lead generation Defendants  
13 require the consumer to solicit up to five friends to participate  
14 in the lead generation Defendants' program as a condition to  
15 awarding the consumer with the promised free merchandise. If all  
16 the friends do not complete all of their required offers, the lead  
17 generation Defendants do not award the consumer with the promised  
18 free merchandise.

19 28. In many instances, the consumer stops trying to qualify  
20 for the lead generation Defendants' promised free merchandise,  
21 either because of the cost involved or the time and effort  
22 required. Although the consumer has expended money or incurred  
23 other obligations in pursuit of the lead generation Defendants'  
24 promised free merchandise, because he or she has not completed all  
25 of the lead generation Defendants' required third-party  
26 promotions, the consumer does not receive the promised free  
27 merchandise.

28 29. In most instances, it is impossible for the consumer to  
qualify for the lead generation Defendants' promised free

merchandise without spending money.

**DEFENDANTS VALUECLICK'S AND HI-SPEED MEDIA'S**

**EMAIL PRACTICES**

30. Since at least January 1, 2005, and continuing to the present, the lead generation Defendants have initiated the transmission of commercial email messages to protected computers. The primary purpose of these commercial email messages has been the commercial advertisement or promotion of Internet websites operated for a commercial purpose by the lead generation Defendants.

31. The lead generation Defendants are "initiators" with respect to an email message when they have either originated or transmitted a message themselves or have procured the origination or transmission of a message through payments or other consideration, or inducements, to others.

32. The lead generation Defendants are "senders" with respect to an email message when they have initiated a message and it is the lead generation Defendants' websites that are being advertised or promoted by such message.

33. In numerous instances, to induce consumers to open and read their commercial emails, the lead generation Defendants have initiated commercial email messages that contain subject headers that misrepresent the content or subject matter of the message, including, but not limited to, false representations that consumers have been specially selected to receive free products or services.

**DEFENDANTS VALUECLICK'S, HI-SPEED MEDIA'S, AND E-BABYLON'S**

**PRACTICES REGARDING INFORMATION SECURITY AND SENSITIVE CUSTOMER**

**FINANCIAL INFORMATION**



34. Since at least 2004, Defendant ValueClick, and its wholly-owned subsidiary, Defendant Hi-Speed Media, have marketed and sold consumer products through the Internet at the following sites ("HSM sites"), which together form the ValueClick E-Commerce Network: HotProductOutlet.com, InkBlvd.com, Jevene.com (now known as Oasiderm.com), Life-visage.com, and Yourinkstation.com.

35. In June 2005, in order to expand its online business, Defendant ValueClick acquired as a wholly-owned subsidiary Defendant E-Babylon, an e-commerce company that marketed and sold

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1 until July 26, 2006, Defendants ValueClick, Hi-Speed Media, and E-  
2 Babylon disseminated or caused to be disseminated a privacy policy  
3 on the E-Babylon sites, including but not necessarily limited to  
4 the attached Exhibit B, containing the following statements:

5 At our site you can be assured that your Personally  
6 Identifiable Information is secure, consistent with  
7 current industry standards. ... In addition, your  
8 Personally Identifiable Information resides on a secure  
9 server that only selected key personnel and contractors  
10 have access to via password. We encrypt your  
11 Personally Identifiable Information and thereby prevent  
12 unauthorized parties from viewing such information when  
13 it is transmitted to us. (Exhibit B,  
14 www.123inkjets.com Privacy Policy)

15 40. On July 26, 2006, Defendants ValueClick, Hi-Speed Media,  
16 and E-Babylon amended the privacy policies on the E-Babylon sites  
17 to make them identical to the privacy policies on the HSM sites,  
18 with the same statements regarding security and encryption as are  
19 described in Paragraph 39.

20 41. From at least July 2004 to November 2006 for the HSM  
21 sites, and from the acquisition of E-Babylon to November 2006 for  
22 the E-Babylon sites, Defendants ValueClick, Hi-Speed Media, and E-  
23 Babylon did not encrypt sensitive information consistent with  
24 industry standards. Instead, Defendants stored sensitive customer  
25 information collected through the HSM sites in a database without  
26 any encryption, and Defendants stored sensitive customer  
27 information collected through the E-Babylon sites in a database  
28 using a nonstandard, proprietary form of encryption. This latter  
form of encryption did not use the type of extensively-tested  
algorithms found in industry-standard systems, but instead  
utilized a simple alphabetic substitution system that was subject  
to significant vulnerabilities.

42. Between at least June 2005 and late 2006, the E-Babylon

1 sites were vulnerable to commonly known or reasonably foreseeable  
2 attacks from third parties attempting to obtain access to customer  
3 information stored in Defendants' databases, including but not  
4 limited to, web-based application attacks such as "Structured  
5 Query Language" (SQL) injection attacks. Such attacks occur when  
6 an attacker enters certain characters or commands in the address  
7 (or URL) bar of a standard web browser in order to manipulate a  
8 web application and thereby gain access to information contained  
9 in databases supporting the application. Here, the vulnerability  
10 affected databases containing consumer credit card information  
11 submitted to E-Babylon sites, which was maintained in a nonsecure  
12 form. During the relevant period, SQL injection attacks were a  
13 well-known and well-publicized form of hacking attack, and  
14 solutions to prevent such attacks were readily-available and  
15 inexpensive.

#### 16 VIOLATIONS OF THE FTC ACT

17 43. As set forth below, Defendants have violated Section  
18 5(a) of the FTC Act in connection with advertising, offering,  
19 marketing, and promoting of advertised offers.

#### 20 COUNT I

21 44. Through the means described in Paragraphs 17-29,  
22 Defendants ValueClick and Hi-Speed Media have represented,  
23 expressly or by implication, that Defendants ValueClick's and Hi-  
24 Speed Media's advertised offers are without cost or obligation.

25 45. Defendants ValueClick and Hi-Speed Media have failed to  
26 disclose or to disclose adequately to consumers the material terms  
27 and conditions of their program, including:

- 28 a. that consumers must pay money or other  
consideration to participate in Defendants



1 49. Through the means described in Paragraphs 38-40,  
2 Defendants ValueClick, Hi-Speed Media, and E-Babylon have  
3 represented, expressly or by implication, that they implemented  
4 reasonable and appropriate measures to protect against  
5 unauthorized access to the sensitive personal information they  
6 obtained from customers.

7 50. In truth and in fact, these Defendants did not implement  
8 reasonable and appropriate measures to protect against  
9 unauthorized access to the sensitive personal information they  
10 obtained from customers. In particular, the E-Babylon sites of  
11 Defendants ValueClick, Hi-Speed Media, and E-Babylon and the  
12 associated databases were vulnerable to a commonly known TD (associated d  
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1 circumstances, that a subject heading of the  
2 message would be likely to mislead a  
3 recipient, acting reasonably under the  
4 circumstances, about a material fact regarding  
5 the contents or subject matter of the message  
6 (consistent with the criteria used in  
7 enforcement of section 5 of the Federal Trade  
8 Commission Act (15 U.S.C. 45)).

9 53. Section 7(e) of CAN-SPAM, 15 U.S.C. § 7706(e), states  
10 that in any action to enforce compliance through an injunction  
11 with Section 5(a)(2) and other specified sections of CAN-SPAM, the  
12 FTC need not allege or prove the state of mind required by such  
13 sections.

14 54. Section 7(a) of the CAN-SPAM Act states:

15 [T]his Act shall be enforced by the [FTC] as  
16 if the violation of this Act were an unfair or  
17 deceptive act or practice proscribed under  
18 section 18(a)(1)(B) of the [FTC Act] (15  
19 U.S.C. 57a(a)(1)(B)).

#### 20 COUNT IV

21 55. Through the means described in Paragraphs 30-33,  
22 Defendants ValueClick and Hi-Speed Media have initiated the  
23 transmission, to protected computers, of commercial email messages  
24 that contained subject headings that would be likely to mislead a  
25 recipient, acting reasonably under the circumstances, about a  
26 material fact regarding the contents or subject matter of the circumstances  
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to injure consumers and to harm the public interest.

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

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2 58. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),  
3 empowers this Court to grant injunctive and other ancillary relief  
4 to prevent and remedy any violation of any provision of law  
5 enforced by the FTC.

6 59. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C.  
7 § 45(m)(1)(A), as modified by Section 4 of the Federal Civil  
8 Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as  
9 amended, and as implemented by 16 C.F.R. § 1.98(d) (2007),  
10 authorizes this Court to award monetary civil penalties of not  
11 more than \$11,000 for each violation of CAN-SPAM. Defendants  
12 ValueClick's and Hi-Speed Media's violations of CAN-SPAM were  
13 committed with the knowledge required by Section 5(m)(1)(A) of the  
14 FTC Act, 15 U.S.C. § 45(m)(1)(A).

15 60. This Court, in the exercise of its equitable  
16 jurisdiction, may award ancillary relief to remedy injury caused  
17 by Defendants' violations of CAN-SPAM and the FTC Act.

**PRAYER FOR RELIEF**

18  
19 WHEREFORE, Plaintiff requests that this Court, as authorized  
20 by Sections 5(a), 5(m)(1)(A), 13(b) and 19 of the FTC Act,  
21 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), and 57b, and pursuant to  
22 its own equitable powers:

23 1. Enter judgment against Defendants and in favor of  
24 Plaintiff for each violation alleged in this complaint;

25 2. Award Plaintiff monetary civil penalties from Defendants  
26 ValueClick and Hi-Speed Media for every violation of CAN-SPAM;

27 3. Award Plaintiff such relief as the Court finds necessary  
28 to redress injury to consumers resulting from Defendants'



violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),  
1 including, but not limited to, rescission of contracts,  
2 restitution, the refund of monies paid, and the disgorgement of  
3 ill-gotten monies;

4 4. Enter a permanent injunction to prevent future  
5 violations of the FTC Act and CAN-SPAM by Defendants;

6 5. Order Defendants to pay the costs of this action; and

7 6. Award Plaintiff such other and additional relief as the  
8 Court may determine to be just and proper.

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Dated: \_\_\_\_\_, 2008

Respectfully submitted,

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