

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil No.

MARK RICHMAN, individually, and as an officer

FILED. APRIL 24 2008

1-1-2008 11:56 AM D:\C:\Program Files\Microsoft Office\Office11\SCAN\SPAM_15

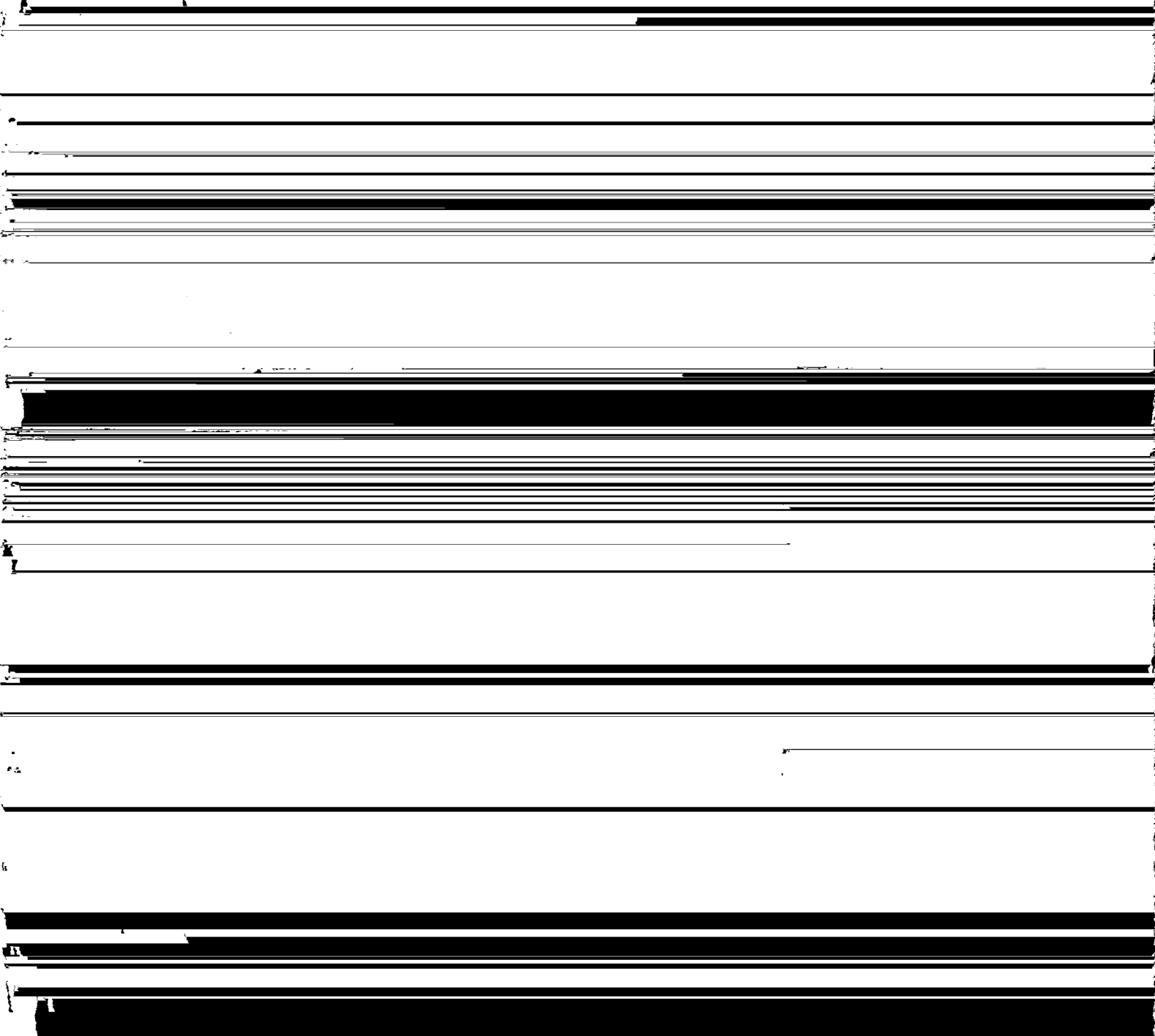
COMMERCE

of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act,
15 U.S.C. § 44.

15. **“Procure,”** when used with respect to the initiation of a commercial email message,

initiate such a message on one’s behalf. 15 U.S.C. § 7702(12).

20. Defendants' Web sites are promoted by commercial email messages. The commercial email messages direct consumers to Defendants' paid-content Web sites by containing



THE CAN-SPAM ACT

26. CAN-SPAM, 15 U.S.C. § 7701 *et seq.*, became effective on January 1, 2004, and has since remained in full force and effect.

It is unlawful for any person to initiate the transmission, to a
protected computer, of a commercial electronic mail message

It is unlawful for any person to initiate the transmission of any commercial electronic mail message to a protected computer unless the message provides:

- (i) clear and conspicuous identification that the message is an advertisement or solicitation;
- (ii) clear and conspicuous notice of the opportunity under [section 5(a)(3)] to decline to receive further commercial electronic mail messages from the sender; and
- (iii) a valid physical postal address of the sender.

31. Section 7(a) of CAN-SPAM, 15 U.S.C. § 7706(a), states:

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

COUNT I

32. In numerous instances, Defendants have initiated the transmission, to protected computers, of commercial email messages that contained, or were accompanied by, header information that is materially false or materially misleading.

33. Therefore, Defendants' acts or practices, as described in paragraph 32 above, violate Section 5(a)(1) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(1).

COUNT II

34. In numerous instances, Defendants have initiated the transmission, to protected

practices. Absent injunctive relief by this Court, Defendants are likely to continue to
injure consumers, reap unjust enrichment, and harm the public interest

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

~~PRAYER FOR RELIEF~~

WHEREFORE, Plaintiff requests that this Court, as authorized by Sections 5(a), 5(m)(1)(A), 13(b), 16(a), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a), and 57b, and pursuant to its own equitable powers:

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

Dated: 4/22/08

OF COUNSEL:
STEVEN M. WERNIKOFF
MARISSA I REICH

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA
Jeffrey S. Bucholtz
Acting Assistant Attorney General