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600 Pennsylvania Ave. N.W.
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equitable relief for Defendant's acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

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

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. § 53(b).

DEFENDANT

6. Defendant Jesta Digital, LLC ("Jesta"), also doing business as Jamster, is a Delaware limited liability company with its principal place of business at 6420 Wilshire Blvd., Los Angeles, California 90048. Jesta transacts or has transacted business in this district and throughout the United States.

COMMERCE

7. At all times material to this Complaint, Defendant has maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANT'S BUSINESS ACTIVITIES

Jesta's Bogus Anti-virus Scans

8. Since on or about August, 2011, Jesta has designed and caused to be disseminated banner ads that are seen by consumers playing the free version of the Angry Birds app on mobile

devices using the Android operating system, or are found elsewhere on the internet. Jesta designed these ads to look like warning messages generated by the Android operating system, alerting consumers that a virus has been detected on their mobile devices.

9. The Android operating system is commonly denoted by the following robot logo:



10. The banner ads contain a robot image that looks similar to the robot logo for the Android operating system, state “virus detected” or identify a number of viruses found on the mobile device, and include a “remove” button. For instance, Jesta ran the following two such banner ads:



11. In reality, these warning messages are not generated by the Android operating system; they are advertisements designed and disseminated by Jesta.

12. Furthermore, Jesta has not scanned the mobile devices before placing these ads. Nor has Jesta actually detected any viruses on the mobile devices.

13. Moreover, clicking on the “remove” button does not actually remove any viruses from the mobile devices.

14. Jesta uses the bogus anti-virus scans to dupe consumers into clicking on the banner ads.

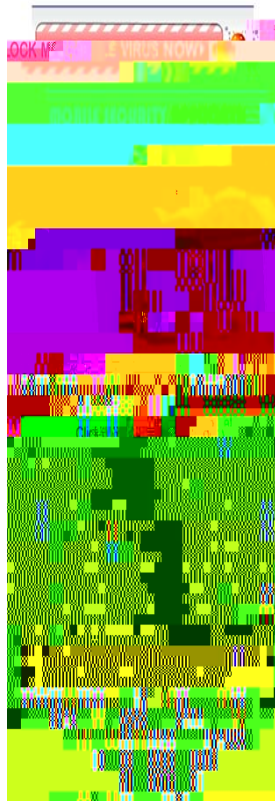
15. When consumers have clicked on the “remove” button to rid the non-existent viruses from their mobile devices, Jesta has proceeded to present them with a series of screens.

16. First, Jesta has presented a screen touting a virus protection program:

19. The below the fold information includes “click to get 20 downloads for \$9.99/month,” yet the screen fails to disclose the nature or purpose of the 20 downloads or whether they have anything to do with removing viruses from the mobile device.

20. When consumers click on any of the colorful and prominent language in the initially viewable area of the screen relating to virus removal, Jesta presents them with another screen almost identical to the prior screen. On this screen, however, the “get now” button is replaced with a “subscribe” button.

21. Like the initially viewable area of the first screen, the above the fold information on this second screen includes banners labeled “stop mobile virus now” and “protect your Android today.” The screen also again includes three icons similar to the Android robot logo. And,

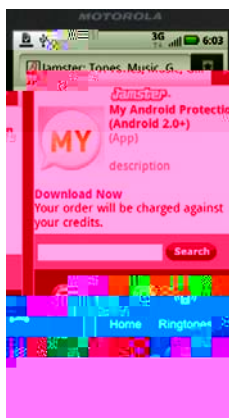


23. This disclosure concerning ringtones, which is in the smallest print appearing on the screen, is preceded by text and graphics that suggest the offer concerns a mobile anti-virus program.

24. When consumers click on the subscribe button or elsewhere on the screen such as the “Block Mobile Virus Now” or “Protect Your Android Today” buttons, Jesta charges the consumer \$9.99 per month using a billing technology or process called Wireless Application Protocol or “WAP” billing. This technology captures a consumer’s phone number from the subscriber identity module or “SIM” card in a consumer’s mobile device. Using WAP billing, Jesta arranges for its charges to be included on consumers’ mobile device bills or deducted from consumers’ prepaid mobile device accounts.

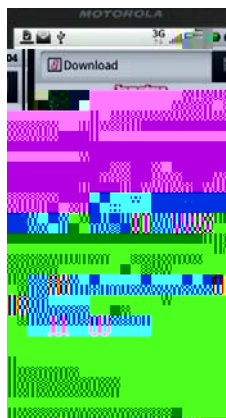
25. In many instances, Jesta charged consumers for ringtones or other goods or services without their authorization or agreement. Among other things, Jesta charged consumers who did not click on the subscribe button and charged consumers for products they did not order.

26. Also, when consumers click the “Block Mobile Virus Now,” “Protect Your Android Today,” or “subscribe” buttons, Jesta presents them with either the landing page depicted below or the landing page depicted in paragraph 27:



The screen above includes language concerning “My Android Protection” and icons labeled “home,” “ringtones,” and other items. It also includes a search box, although the purpose of this box is unclear. The screen does not inform consumers that Jesta is charging them \$9.99 a month for ringtones and other items unrelated to virus protection.

27. The other screen presented to consumers after clicking on the buttons “Block Mobile Virus Now,” “Protect Your Android Today,” or “subscribe” buttons is depicted below:



This screen includes language concerning the ~~download~~ of software and a prominent graphic labeled "Artist of the Week."

28. Consumers who attempt to download and install Jesta's anti-virus software are typically unsuccessful. According to an internal Jesta email, only 372 people out of 100,000 subscribers received a download link they could use to get the software. Moreover, in a January 20, 2012 email from the Vice President of Global Marketing Operations to the Director of Global Marketing, the Vice President explains that the download quota – the percentage of subscribers who downloaded the anti-virus app – had improved to two percent and that Jesta's business was presently a scam:

I mentioned to you the work on the SIP flow for the security app that we were marketing in the US. Although the download quota has improved since the handset config was done, it still is only 2%. We wanted to see if we could optimize the download experience after the user subscribes. We are anticipating if more customers are able to get the content that they signed up for that this will lower refunds and churn, and increase lifetimes. I put the attached project overview together for you to see what we are thinking. This is something that is important to ... [Chief Marketing Officer of Jesta] ~~since~~ is anxious to move our business out of being a scam and more into a valued service.

29. Jesta's marketing of its goods or services generated a high level of consumer refund requests. Because of the large number of ~~consumers~~ requesting refunds, T-Mobile threatened to fine Jesta or suspend or cut off billing. ~~Jesta's~~ action was to consider asking T-Mobile to raise its threshold for taking action against Jesta to the level where refunds reached 18.5 percent of charges, the same maximum rate as AT&T, rather than change its marketing practices. One email of February 8, 2012 from the Director of Global Marketing to the Executive Vice President of Global Marketing states the following:

If I got a bill for \$9.99/mo and don't even remember downloading a shitty ringtone then I'd be more inclined to make sure I got my money back. Not just that, but they have a stronger case to plead ignorance if the ~~end~~ did download anything. Maybe not direct the Wreqad ig0r au

30. Jesta caused consumers to be billed a substantial amount of money on their phone bills. Additionally, Jesta received substantial revenue from the marketing practices and advertising described in the complaint.

VIOLATIONS OF THE FTC ACT

31. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

32. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

33. Acts or practices are unfair under Section 5 of the FTC Act if they cause substantial injury to consumers that consumers cannot reasonably avoid themselves, and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n).

Count I

Misrepresentation that Virus Detected on Mobile Device

34. In numerous instances, Defendant has represented, expressly or by implication, that it has detected a virus on a consumer’s mobile device.

35. In truth, and in fact, in numerous instances, Defendant has not detected a virus on a consumer’s mobile device.

36. Therefore, Defendant’s representation~~for~~ in Paragraph 34, is false or misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count II

Misrepresentation that Anti-virus Program Will Be Provided to Purchasers

37. In numerous instances, Defendant has represented, expressly or by implication, that it will provide purchasers of its service with software to protect their mobile devices from viruses.

38. In truth, and in fact, in numerous instances, Defendant has not provided purchasers with software to protect their mobile devices from viruses.

39. Therefore, Defendant’s representation~~for~~ in Paragraph 37, is false or misleading

and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count III

Failure to Disclose the True Nature and Cost of its Service

40. In numerous instances, Defendant has ~~repted~~, directly or indirectly, expressly or by implication, that when consumers touch or click on the “subscribe” button displayed on their mobile device’s screen, Defendant will subscribe them to receive a good or service.

41. In numerous instances in which Defendant has made the representation set forth in Paragraph 40 of this Complaint, Defendant has failed to disclose, or disclose adequately, material terms and conditions of the offer, including that consumers will be charged \$9.99 per month for ringtones and other items unrelated to virus removal.

42. Defendant’s failure to disclose, or disclose adequately, the material information described in Paragraph 41 in light of the representation described in Paragraph 40 constitutes a deceptive act or practice in violation of ~~Sec~~ 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count IV

Unfair Billing Practices

43. In numerous instances, Defendant has caused consumers’ mobile device accounts to be billed without having previously obtained the ~~comers~~ consumers’ express authorization or agreement.

44. Defendant’s actions cause or are likely to cause substantial injury to consumers that consumers themselves cannot reasonably ~~avoid~~ avoid that is not outweighed by countervailing benefits to consumers or competition.

45. Therefore, Defendant’s practices, as set forth in Paragraph 43 constitute unfair acts or practices in violation of Section 5 ~~the~~ FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

Count V

Deceptive Representations that Consumers Are Obligated to Pay

46. In numerous instances, Defendant has ~~repted~~, directly or indirectly, expressly or by implication, that consumers are obligated to pay for goods or services charged to their telephone accounts.

47. In truth and in fact, in numerous instances in which the Defendant has made the representations set forth in Paragraph 46, consumers were not obligated to pay the charges because consumers did not order, or knowingly order goods or services. Defendant's representations are material and have caused consumers to pay for unauthorized charges.

48. Therefore, Defendant's representations set forth in Paragraph 46 are false or misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C § 45 (a).

CONSUMER INJURY

49. Consumers have suffered and will continue to suffer substantial injury as a result of Defendant's violations of the FTC Act. In addition, Defendant has been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendant is

C. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

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