

Dissenting Statement of Commissioner Jon Leibowitz  
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.<sup>1</sup> 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

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

<sup>2</sup> 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 a promotion to qualify for the tickets – and the friends were then repeatedly emailed to join as well.