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1 permanent injunction, and other equitable relief for defendant’s violations of the  
2 Commission’s Children’s Online Privacy Protection Rule (the “Rule”), 16 C.F.R.  
3 Part 312 (2002).

4 **JURISDICTION AND VENUE**

5 2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331,  
6 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), 53(b) and 56(a).

7 . §§ 45a()(1) and 65002(c2).)Tj12.7571 -1.7082 TD0.0008 Tc-0.0019 Twβ2.)-182.2(Venuet ir th

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1 violation of the Rule constitutes an unfair or deceptive act or practice, in violation  
2 of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1). *See also* COPPA, 15  
3 U.S.C. § 6502(c).

#### 4 **DEFENDANT**

5 9. Defendant Bonzi Software, Inc., a Delaware corporation, is a  
6 privately owned company with its principal office and place of business located at  
7 3000 Broad Street, Suite 115, San Luis Obispo, California 93401.

8 10. Defendant develops, markets, sells, and distributes several software  
9 products, including the BonziBUDDY software product. The BonziBUDDY is  
10 intelligent agent software that displays an interactive, animated purple gorilla on  
11 the desk-top of users' computers. The basic version of the BonziBUDDY  
12 software product is free. Since at least April 21, 2000, defendant has distributed  
13 the BonziBUDDY and its other software products by means of online downloads.  
14 Defendant transacts and has transacted business in the Central District of  
15 California.

16 11. The acts and practices of defendant alleged in this complaint have  
17 been in or are affecting commerce, as "commerce" is defined in Section 4 of the  
18 FTC Act, 15 U.S.C. § 44.

#### 19 **DEFENDANT'S COURSE OF CONDUCT**

20 12. Through its online registration process, defendant has collected  
21 personal information from or about persons who use the BonziBUDDY software  
22 product. Further, defendant had actual knowledge that it collected and  
23 maintained personal information from children who registered the BonziBUDDY  
24 software product, and thus is an operator of an online service subject to the Rule.

#### 25 **Defendant's Information Collection Practices**

26 13. Defendant directed persons who wanted to download the  
27 BonziBUDDY online service to complete an online registration form. The form

1 requested that persons provide personal information, including their first and last  
2 name, street address, e-mail address, and age. (See Exhibit A). In addition, the  
3 form asked that persons who register the BonziBUDDY online service also submit  
4 a list of their personal interests. (

5 ~~the name~~

6 ~~of the personal information of the~~

7 ~~server to any~~

8  
9 ~~available on the~~

10 ~~list of personal interests~~

11 ~~and this information~~

12 ~~is available~~

13 ~~on the server also to any other person who is using the service, and the study was also~~

1 above, defendant has collected and used personal information from children in  
2 violation of the Rule, 16 C.F.R. Part 312, including:

- 3 a. Failing to provide sufficient notice on its online service of  
4 what information it collects online from children, and all other  
5 required content, in violation of Section 312.4(b) of the Rule,  
6 16 C.F.R. § 312.4(b);
- 7 b. Failing to provide notice to parents of what information it  
8 collects online from children, and all other required content, in  
9 violation of Section 312.4(c) of the Rule, 16 C.F.R. § 312.4(c);
- 10 c. Failing to obtain verifiable parental consent before any  
11 collection, use, and/or disclosure of personal information from  
12 children, in violation of Section 312.5 of the Rule, 16 C.F.R.  
13 § 312.5; and
- 14 d. Failing provide a reasonable means for parents to review the  
15 personal information collected from their children and to  
16 refuse to permit its further use or maintenance, in violation of  
17 Section 312.6 of the Rule, 16 C.F.R. § 312.6

18 **DEFENDANT’S UNFAIR OR DECEPTIVE ACTS OR**  
19 **PRACTICES IN VIOLATION OF THE FTC ACT**

20 18. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that “unfair  
21 or deceptive acts or practices in or affecting commerce are hereby declared  
22 unlawful.”

23 19. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a  
24 violation of the Rule constitutes an unfair or deceptive act or practice in violation  
25 of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1). *See* COPPA, 15 U.S.C.  
26 § 6502(c).

27 20. By and through the acts and practices described in Paragraph 16

1 above, defendant has violated Section 5(a)(1) of the FTC Act, 15 U.S.C.  
2 § 45(a)(1).

3 **CIVIL PENALTIES, INJUNCTION, AND OTHER RELIEF**

4 21. Defendant has violated the Rule as described above with knowledge  
5 as set forth in Section 5(m)(1) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

6 22. Each collection or use of a child's personal information from April  
7 21, 2000, through the filing of this Complaint, in which defendant has violated the  
8 Rule in one or more of the ways described above, constitutes a separate violation  
9 for which plaintiff seeks monetary civil penalties.

10 23. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as  
11 modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of  
12 1990, 28 U.S.C. § 2461, and Section 1.98(d) of the FTC's Rules of Practice, 16  
13 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties of not  
14 more than \$11,000 for each such violation of the Rule.

15 24. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is  
16 authorized to issue a permanent injunction against defendant's violation of the  
17 FTC Act, as well as such ancillary relief as may be just and proper.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, plaintiff requests this Court, pursuant to 15 U.S.C. § § 45(a)(1),  
20 45(m)(1)(A), 53(b) and 57(b) and the Court's own equitable power to:

- 21 (1) Enter judgment against the defendant and in favor of the plaintiff for  
22 each violation alleged in this Complaint;
- 23 (2) Award plaintiff monetary civil penalties from defendant for each  
24 violation of the Rule;
- 25 (3) Permanently enjoin defendant from violating the Rule; and
- 26 (4) Award plaintiff such additional relief as the Court may deem just,  
27 proper, or necessary to redress injury to consumers resulting from

1 defendant's violations of the Rule, 16 C.F.R. Part 312.

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3 Dated:

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5 OF COUNSEL:

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