

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

FEDERAL TRADE COMMISSION,	)	
Plaintiff,	)	
v.	)	
CPATANK, INC., an Illinois corporation,	)	
VITO GLAZERS, individually and as an officer of CPA Tank, Inc.,	)	
EAGLE WEB ASSETS, INC., an Illinois Corporation, and	)	
RYAN EAGLE, individually and as an officer of Eagle Web Assets, Inc.,	)	
Defendants.	)	

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, restitution, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ 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 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. §§ 458. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),

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

COMMERCE

10. At all times material to this complaint, Defendants have 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.

### Text Message Spam

14. Many mobile telephony and wireless device service providers operating in the United States (hereinafter “wireless service providers”) provide their subscribers with text messaging services. Text messaging services permit the transmission of text messages to wireless handsets from other wireless handsets, electronic mail accounts, and various Internet applications.

15. To transmit a text message to wireless handsets, a sender transmits the message electronically, either directly or indirectly, through a wireless service provider’s text message router, which then transmits the message to the recipient through the wireless service provider’s interstate wireless network.

16. Text messaging is used by consumers in touch with business colleagues and associates, customers, family members, and friends. Text messaging is also used by numerous employers, schools, police departments, departments, and emergency medical services across the country.

17. Defendants’ affiliate marketers have promoted products, including offers for purportedly free merchandise, through unsolicited commercial electronic text messages. Many of the unsolicited text messages represent, expressly or by implication, that the consumer receiving the message has won a contest, or has been specially selected to receive a gift or prize. For example, the text messages contain statements such as:

- x Dear Walmart shopper, Congratulations, you have just won a \$1000 Walmart gift card. Click here to claim your gift [website address].
- x Dear Walmart shopper, your purchase last month won a \$1000 Gift Card, go to [website address] within 24 hours to claim.
- x You have been selected to receive FREE \$1000 Best Buy gift card. Go to [website address] to claim your gift.

18. The text messages contain a link to a website address. Consumers who click on the address link contained in the messages are taken to one of various websites operated by third-party merchants. The third-party websites create and expand upon the initial promised free merchandise offer.

19. Defendants receive a commission or other payment from the third-party merchants for causing consumers to visit, provide information to, or make a purchase on, the merchants' websites. Defendants pay a portion of these commissions or other payments to their affiliate marketers.

20. The third-party websites, however, require consumers to participate in multiple other offers to qualify for the promised free merchandise. The consumer usually must complete over ten offers. In most cases, completing an offer entails paying money or incurring some other detriment, such as qualifying and applying for credit cards. Some of the offers have free trial

23. Many, if not all, of the consumers who received the text message spam sent by or on behalf of Defendants never agreed to be contacted by Defendants or by those sending messages on their behalf.

24. Some of the recipients of text message spam have wireless service plans that require them to pay a fixed fee for each text message received by their wireless handsets. Accordingly, such recipients were required to pay a fee for the receipt of the text message spam.

25. Other recipients of text message spam have wireless service plans that allow them a fixed, limited number of text messages per month without charge beyond their monthly service charge, with text messages that exceed their monthly allowance billed on a per-message basis. Accordingly, many such recipients had their monthly allowance of text messages reduced upon receipt of each text message spam sent by or on behalf of Defendants.

26. The consumer injury caused by Defendants, or by third parties acting on Defendants' behalf, cannot be reasonably avoided by consumers. Text message spam is routinely foisted upon consumers without their advance knowledge or permission.

27. Text message spam sent by or on behalf of Defendants does not create countervailing benefits to consumers.

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

31. 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

32. Through the means described in Paragraphs 11-28, Defendants, through affiliates acting on their behalf and for their benefit, have represented, expressly or by implication, that

36. Therefore, Defendants' practice asserted in Paragraph 35 is unfair and violates Section 5 of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

#### CONSUMER INJURY

37. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment and harm the public interest.

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

38. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

1. Enter a permanent injunction to prevent future violations of the FTC Act by Defendants;
2. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and
3. 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.



Dated: February 19, 2014

Respectfully submitted,  
JONATHAN E. NUECHTERLEIN  
General Counsel

/s/ Steven Wernikoff\_\_\_\_\_

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