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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION
13

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 BONZI SOFTWARE, INC., a
Delaware corporation,

18 Defendant.
19

CIVIL NO. CV-04-1048 RJK (Ex)

COMPLAINT FOR CIVIL
PENALTIES, INJUNCTIVE,
AND OTHER RELIEF

20 Plaintiff, the United States of America, acting upon notification and
21 authorization to the Attorney General by the Federal Trade Commission (“FTC”
22 or “Commission”), for its Complaint alleges that:

23 1. Plaintiff brings this action under Sections 1303(c) and 1306(d) of the
24 Children’s Online Privacy Protection Act of 1998 (“COPPA”), 15 U.S.C.
25 §§ 6501-6506, 6502(c), and 6505(d), and Sections 5(a)(1), 5(m)(1)(A), 13(b), and
26 16(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 41-58,
27 45(a)(1), 45(m)(1)(A), 53(b), and 56(a), to obtain monetary civil penalties, a
28

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 This action arises under 15 U.S.C. §§ 45(a)(1) and 6502(c).

8 3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28
9 U.S.C. §§ 1391(b)-(c) and 1395(a).

10 **DEFINITIONS**

11 4. For purposes of this Complaint, the terms “child,” “collects,”
12 “collection,” “Commission,” “delete,” “disclosure,” “Internet,” “online contact
13 information,” “operator,” “parent,” “person,” “personal information,” “third
14 party,” and “verifiable consent,” are defined as those terms are defined in Section
15 312.2 of the Rule, 16 C.F.R. § 312.2.

16 **THE CHILDREN’S ONLINE PRIVACY PROTECTION RULE**

17 5. Congress enacted the Children’s Online Privacy Protection Act,
18 15 U.S.C. §§ 6501-6506, in 1998 to protect the safety and privacy of children
19 online by prohibiting the unauthorized or unnecessary collection of children’s
20 personal information by Internet Web site operators. The Act directed the Federal
21 Trade Commission to promulgate a rule implementing COPPA. The Commission
22 promulgated the Children’s Online Privacy Protection Rule, 16 C.F.R. Part 312,
23 on November 3, 1999, under Section 1303(b) of COPPA, 15 U.S.C. § 6502(b),
24 and Section 553 of the Administrative Procedures Act, 5 U.S.C. § 553. The Rule
25 went into effect on April 21, 2000.

26 6. The Rule applies to any operator of a commercial Web site or online
27 service directed to children that collects, uses, and/or discloses personal

1 information from children, or to any operator that has actual knowledge that it is
2 collecting or maintaining a child's personal information.

3 7. The Rule requires a subject Web site operator to meet specific
4 requirements prior to collecting online, using, or disclosing personal information
5 from children, including, but not limited to:

- 6 a. Posting a privacy policy on its Web site providing clear,
7 understandable, and complete notice of its information practices,
8 including what information the Web site operator collects from
9 children online, how it uses such information, its disclosure practices
10 for such information, and other specifically required disclosures;
- 11 b. Providing clear, understandable, and complete notice of its
12 information practices directly to parents when required by the Rule;
- 13 c. Obtaining verifiable parental consent prior to collecting, using,
14 and/or disclosing personal information from children;
- 15 d. Giving parents the option to consent to the collection and internal use
16 of their children's personal information without consenting to the
17 disclosure of that information to third parties;
- 18 e. Providing a reasonable means for parents to review the personal
19 information collected from their children and to refuse to permit its
20 further use or maintenance;
- 21 f. Not conditioning children's participation in an activity upon children
22 disclosing more personal information than is reasonably necessary to
23 participate in that activity; and
- 24 g. Establishing and maintaining reasonable procedures to protect the
25 confidentiality, security, and integrity of personal information
26 collected from children.

27 8. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a

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. (*See Exhibit B*). In this manner, defendant
5 collected personal information from thousands of children. Defendant
6 maintained such personal information on its server and did not disclose it to any
7 third party.

8 14. Defendant failed to notify or obtain verifiable consent from any
9 parent or guardian prior to collecting children's personal information, as required
10 by the Rule. Furthermore, defendant provided no mechanism for parents to
11 review or delete the information collected from their children, as required by the
12 Rule.

13 **Defendant's Privacy Policy**

14 15. Defendant posted a privacy policy on its Web site and also disclosed
15 some of its information practices in its End User License Agreement (EULA) for
16 the BonziBUDDY online service; but, neither document clearly, understandably,
17 and completely disclosed its information practices, as required by the Rule (*See*
18 *Exhibit C and D, respectively*). Further, the children's section of the privacy
19 policy posted by the defendant applied to the information practices of its Web site
20 www.Bonzi.com, but not the information practices of the BonziBUDDY online
21 service, which is the subject of this Complaint (*See Exhibit C*).

22 **DEFENDANT'S VIOLATIONS OF THE CHILDREN'S ONLINE** 23 **PRIVACY PROTECTION RULE**

24 16. At various times since April 21, 2000, defendant has operated an
25 online service and has collected personal information from children with actual
26 knowledge of their age.

27 17. In numerous instances, including the acts and practices described

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

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

Dated:

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