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U.S. DISTRICT COURT
 DISTRICT OF NEVADA

BY DEPUTY

**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

CHRISTOPHER BAITH,
COSME MONARREZ, JR, **and**
SORABH VERMA,
Defendants.

CV-S-03-1306-LRH-RJJ

**COMPLAINT FOR PERMANENT INJUNCTION
 AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its Complaint alleges as follows: the Commission brings this action under Section 13(b) of the Federal Trade

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Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain permanent injunctive relief against Defendants to prevent them from engaging in deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and to obtain other equitable relief, including but not limited to, rescission, restitution, and disgorgement, as is necessary in order to redress injury to consumers and the public interest from Defendants’ violations of the FTC Act.

JURISDICTION AND VENUE

1. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 53(b), 57b, 5711, and 6105, and 28 U.S.C. §§1331, 1337(a), and 1345.

2. Venue in the United States District Court for the District of Nevada is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

PLAINTIFF

3. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. § 41 *et seq.* The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits deceptive acts or practices in or affecting commerce. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such other equitable relief as may be appropriate in each case, including redress for injured consumers and disgorgement of ill-gotten gains. 15 U.S.C. § 53(b).

DEFENDANTS

4. Defendant Cosme Monarrez, Jr., (“Monarrez”) resides at 3611 Elegant Saint, Apt. 15, Las Vegas, Nevada and at all times material to this complaint, acting alone or in joint participation with others, has formulated, directed, controlled, or participated in the acts and

practices alleged in this complaint. He transacts or has transacted business in the District of Nevada and throughout the United States.

5. Defendant Christopher Baith (“Baith”) resides at 236 S. Norwinden Drive, Springfield, Pennsylvania and at all times material to this complaint, acting alone or in joint participation with others, has formulated, directed, controlled, or participated in the acts and practices alleged in this complaint. He transacts or has transacted business in the District of Nevada and throughout the United States.

6. Defendant Sorabh Verma (“Verma”) resides at 175-27 Wexford Terrace, Apt. 7G, Jamaica, New York and at all times material to this complaint, acting alone or in joint participation with others, has formulated, directed, controlled, or participated in the acts and practices alleged in this complaint. He transacts or has transacted business in the District of Nevada and throughout the United States.

7. As more fully described in paragraphs 19-27, Defendants jointly participate in the conduct alleged in this complaint.

COMMERCE

8. At all times relevant 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.

DEFINITIONS

9. A “dialer program” is an executable computer program that can be sent from one computer to another via the Internet and, that, when downloaded onto the recipient’s computer,

is stored in one or several locations on the recipient's hard drive, and when activated calls a programmed telephone number.

10. An "icon" is a small picture associated with a computer program that, if clicked on with the mouse, will launch that program on the user's computer.

11. "Internet" means a worldwide system of linked computer networks that use a common protocol (TCP/IP) to deliver and receive information. The "Internet" includes, but is not limited to, the following forms of electronic communication: electronic mail, the World Wide Web, newsgroups, Internet Relay Chat, and file transfer protocols.

12. "Line subscriber" means an individual or entity who has arranged with a Local Exchange Carrier ("LEC") to obtain local telephone service provided through an assigned telephone number and billed for such number on a monthly (or other periodic) basis.

13. "Local Exchange Carrier" or "LEC" means the local telephone company from which a line subscriber receives his or her telephone bill.

14. A "modem" is computer hardware, attached to or found inside a computer, which allows the computer to connect to the Internet or directly to another properly configured computer, sometimes referred to as a Bulletin Board System ("BBS"), via a standard analog telephone line. The modem translates the digital signals from a computer to analog signals so that they may be transmitted through the telephone network, and translates analog signals received through the telephone network to digital signals.

15. "Videotext services" means visual (and possibly audio) information and entertainment services offered over the Internet through individual websites.

16. "Webpage" is a single electronic document on the World Wide Web, readily viewable on a computer by anyone with access to the Internet and standard Internet browser software. Every Webpage on the World Wide Web is identified by a globally unique address.

17. "Website" is a set of electronic documents, usually a home page and subordinate pages, readily viewable using a computer by anyone with access to the Internet, standard Internet browser software, and knowledge of the website's location or address.

18. "World Wide Web" or "Web" means a system used on the Internet for cross-referencing and retrieving information.

DEFENDANTS' BUSINESS PRACTICES

Defendants' Email Campaign

19. Defendants engage in the business of soliciting consumers over the Internet to view pornographic material. Defendants lure consumers into visiting a pornographic website through the dissemination of unsolicited commercial email, commonly known as spam. Defendants' spam typically contains a subject heading that indicates that the consumer receiving the message has won a thing of value. In numerous instances, the spam contains subject headings that state "Yahoo Sweepstakes Winner" and "You have just won a gift from Yahoo."

20. When the consumer opens the spam, the text of the spam states that the consumer has won a thing of value. For example, in numerous instances, Defendants' spam states that the consumer has won a Sony Playstation 2, a popular video game console. Defendants' spam further represents that the consumer must click on a hyperlink provided in the spam to collect the promised Playstation 2 or other thing of value.

21. When the consumer clicks on the hyperlink in an effort to claim the valuable item, the consumer is taken to a webpage that prominently features the “Yahoo!” logo at the top of the page and the Yahoo format and graphics. The website contains what purports to be a hyperlink to Yahoo’s privacy policy and terms of service. The bottom of the webpage states “Copyright (c) 2001 Yahoo, Inc. All rights reserved.” Despite the appearance of this webpage, it does not belong to or have any connection with Yahoo, Inc.

22. The Yahoo look-alike page tells the consumer to press “yes” when a box indicating that the consumer is about to download software, commonly known as a dialog box, appears so that the software will be downloaded onto the consumer’s computer. The webpage also states that the consumer can connect toll-free and claim the valuable item. The look-alike page clearly states that the consumer had to connect and fill in his or her name and address in order to receive the valuable item.

23. When the consumer clicks “OK” in the dialog box, the consumer’s computer downloads a dialer program. The dialer program places an icon on the consumer’s computer desktop while, in numerous instances, also storing itself in several less visible files on the computer. The program instructs the consumer’s computer to terminate the consumer’s existing ISP modem telephone connection and to re-establish a modem telephone connection to the Internet by dialing a specific 900-number. In numerous instances, the dialer program is called Yahoo_Connection_Starter.exe.

24. Upon completion of the download, a box containing a pre-set telephone number, commonly known as a dialer box, appears on the consumer’s computer screen. The pre-set

telephone number is a 900-number. The consumer's computer will dial this number if the consumer clicks "CONNECT." There is no cost information anywhere in the dialer box.

25. When the consumer clicks "Connect" on the dialer box, another window, commonly known as a disclosure box, appears. In numerous instances, the initial window of the disclosure box contains extensive text and does not provide cost information that is visible to the consumer.

26. If the consumer clicks "Connect" again, the consumer's computer is disconnected from his or her current Internet connection, which is typically not billed on a per minute basis, and reconnected to a website through a 900-number for which there is a substantial per minute charge – as much as \$3.99 per minute. Contrary to the initial representations, at no point does the consumer see a name and address form or receive any instructions on how he or she can receive the promised valuable item. Instead, the consumer is connected to a pornographic website.

27. Defendants receive a portion of the revenue collected from line subscribers by the local exchange carrier.

VIOLATIONS OF THE FTC ACT

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

COUNT ONE

29. In numerous instances, Defendants have represented in the subject heading and in the text of the spam, expressly or by implication, that a consumer has won a Sony Playstation 2, or some other valuable item.

30. In truth and in fact, the consumer has not won a Sony Playstation 2, or some other valuable item. In fact, consumers who have clicked on the hyperlink and followed the accompanying instructions in an attempt to claim their Sony Playstation 2, or valuable item, did not receive a valuable item, but rather were directed to a pornographic website via a 900-number that costs as much as \$3.99 per minute.

31. Therefore, the representation set forth in paragraph 29 is false and deceptive and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

32. In numerous instances, Defendants have represented, expressly or by implication, that the sender of the spam is Yahoo, Inc. or a company affiliated with Yahoo, Inc. and is authorized to display Yahoo's marks.

33. In truth and in fact, the sender of the spam is not Yahoo, Inc. or any company affiliated with Yahoo, Inc. and is not authorized to display Yahoo's marks.

34. Therefore, the representation set forth in paragraph 32 is false and deceptive and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT THREE

35. In numerous instances, Defendants have represented, expressly or by implication, that the spam recipient can be connected toll-free to a website to claim a free Sony Playstation 2, or other valuable item.

36. In truth and in fact, the spam recipients cannot be connected toll-free to a website to claim a free Sony Playstation 2, or other valuable item. Instead, in numerous instances, the recipients of the spam are connected to a sexually explicit website by means of a 900-number costing as much as \$3.99 per minute.

37. Therefore, the representation set forth in paragraph 35 is false and deceptive and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

38. Defendants' violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a), as set forth above, have caused and continue to cause substantial injury to consumers across the United States. Absent injunctive relief by this Court, the Defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

39. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement, and restitution to prevent and remedy any violations of any provision of law enforced by the Commission.

40. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction against Defendants for violating the FTC Act, as well as such ancillary relief as rescission of contracts, restitution, disgorgement of ill-gotten gains, and the refund of monies paid to redress the injury to consumers or others resulting from Defendants' violations of Section 5 of the FTC Act.

41. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by Defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the Federal Trade Commission, requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

1. Award the Commission all temporary and preliminary injunctive and other ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;
2. *Permanently enjoin Defendants from violating Section 5 of the FTC Act as alleged in this complaint;*
3. Enter judgment against Defendants and in favor of the Commission for each violation alleged in this complaint;

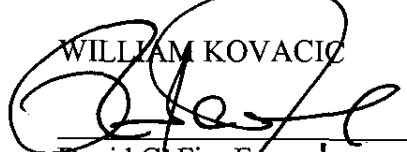
4. Award other equitable relief, including rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten monies, as is necessary in order to redress injury to consumers and the public interest resulting from Defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); and

5. Award the Commission the costs of bringing this action, as well as any other equitable relief that the Court may deem just and proper.

Dated: *15 October 2003*

Respectfully Submitted,

WILLIAM KOVACIC



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