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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 FEDERAL TRADE COMMISSION,

10 Plaintiff,

11 v.

12 MATTHEW OLSON and JENNIFER LeROY

13 Defendants.

Case No.

**COMPLAINT FOR INJUNCTION
AND OTHER EQUITABLE RELIEF**

14 Plaintiff, the Federal Trade Commission (“FTC” or “the Commission”), for its Complaint
15 alleges as follows:

16 1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade
17 Commission Act (“FTC Act”), 15 U.S.C. § 53(b) and 57b, and under Section 7(a) of the Controlling
18 the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM"), 15 U.S.C.
19 § 7706(a), to obtain preliminary and permanent injunctive relief, rescission of contracts, restitution,
20 redress, disgorgement of ill-gotten gains, and other equitable relief for defendants’ deceptive and unfair
21 acts or practices in violation of CAN-SPAM, 15 U.S.C. § 7701 *et seq.*

22 **JURISDICTION AND VENUE**

23 2. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 45(a), 53(b), 57b,
24 7706(a) and 28 U.S.C. §§ 1331, 1337(a), and 1345.

25 3. Venue in the United States District Court for the Western District of Washington is
26 proper under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(a)(1).
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1 **PLAINTIFF**

2 4. Plaintiff FTC is an independent agency of the United States Government created by
3 statute. 15 U.S.C. §§ 41-58. The Commission is charged with, *inter alia*, enforcement of Section 5(a)
4 of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting
5 commerce. The Commission is also charged with enforcing CAN-SPAM as if a statutory violation of
6 CAN-SPAM "were an unfair or deceptive act or practice proscribed under Section 18(a)(1)(B) of the
7 [FTC Act] (15 U.S.C. 57a(a)(1)(B))." See 15 U.S.C. § 7706(a). The Commission is authorized to
8 initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act, and
9 to secure such equitable relief, including restitution for injured consumers, as may be appropriate in
10 each case. 15 U.S.C. §§ 53(b), 57b.

11 **DEFENDANTS**

12 5. Defendant Matthew Olson at all times material to this Complaint, acting alone or in
13 concert with others, formulated, directed, controlled or participated in the acts and practices set forth in
14 this Complaint. Defendant Olson transacts or has transacted business and resides in the Western
15 District of Washington.

16 6. Defendant Jennifer LeRoy at all times material to the Complaint, acting alone or in
17 concert with others, formulated, directed, controlled or participated in the acts and practices set forth in
18 this Complaint. Defendant LeRoy transacts or has transacted business and resides in the Western
19 District of Washington.

20 **COMMERCE**

21 7. At all times relevant to this Complaint, defendants have maintained a substantial course
22 of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C.
23 § 44.

24 **DEFINITIONS**

25 8. "Electronic mail message" (or "email") means a message sent to a unique electronic
26 mail address. 15 U.S.C. § 7702(6).

27 9. "Electronic mail address" means a destination, commonly expressed as a string of
28 characters, consisting of a unique user name or mailbox (commonly referred to as the "local part") and

1 a reference to an Internet domain (commonly referred to as the "domain part"), whether or not
2 displayed, to which an electronic mail message can be sent or delivered. 15 U.S.C. § 7702(5).

3 10. "Commercial electronic mail message" means any electronic mail message the primary
4 purpose of which is the commercial advertisement or promotion of a commercial product or service
5 (including the content of an Internet website operated for commercial purposes). 15 U.S.C. § 7702(2).

6 11. "Header information" means the source, destination, and routing information attached to
7 an electronic mail message, including the originating domain name and originating electronic mail
8 address, and any other information that appears in the line identifying, or purporting to identify, a
9 person initiating the message. 15 U.S.C. § 7702(8).

10 12. "Initiate," when used with respect to a commercial email message, means to originate or
11 transmit such message or to procure the origination or transmission of such message. 15 U.S.C.
12 § 7702(9).

13 13. "Procure," when used with respect to the initiation of a commercial email message,
14 means intentionally to pay or provide other consideration to, or induce, another person to initiate such a
15 message on one's behalf. 15 U.S.C. § 7702(12).

16 14. "Protected Computer" means a computer that is used in interstate or foreign commerce
17 or communication, including a computer located outside the United States that is used in a manner that
18 affects interstate or foreign commerce or communication of the United States. 15 U.S.C. § 7702(13).

19 15. "Sender" means a person who initiates a commercial email message and whose product,
20 service, or Internet Web site is advertised or promoted by the message. 15 U.S.C. § 7702(16).

21 **DEFENDANTS' BUSINESS PRACTICES**

22 16. Since at least March 2004, defendants have initiated the transmission of commercial
23 email messages to protected computers. The primary purpose of these commercial email messages has
24 been the commercial advertisement or promotion of Internet Web sites. These Web sites market
25 multiple goods or services, including a device that increases a car's gas mileage, and mortgage
26 opportunities.

27 17. In numerous instances, defendants have initiated commercial email messages containing
28 materially false or misleading header information. In many instances, the email contains an originating

1 email address that was not assigned by the email service provider. In other instances, the email
2 message fails to identify accurately the protected computer used to initiate the message because the
3 email message was relayed or retransmitted through another protected computer for purposes of
4 disguising its origin.

5 18. In numerous instances, in order to induce consumers to open and read their commercial
6 emails, defendants have initiated commercial email messages that contain subject headers that
7 misrepresent the content or subject matter of the message.

8 19. In numerous instances, the defendants have initiated commercial email messages that
9 fail to include any notification to recipients of their ability to decline receiving future email messages
10 from the defendants, and the email messages fail to include a reply email address or other mechanism
11 that recipients can use to decline receiving future email messages from the defendants.

12 20. In numerous instances, the defendants have initiated commercial email messages that
13 fail to include a valid physical postal address of the sender.

14 **VIOLATIONS OF THE CONTROLLING THE ASSAULT OF**
15 **NON-SOLICITED PORNOGRAPHIC AND MARKETING ACT OF 2003**

16 21. The Controlling The Assault of Non-Solicited Pornography and Marketing Act of 2003,
17 15 U.S.C. § 7701 *et seq.*, became effective on January 1, 2004, and has since remained in full force and
18 effect.

19 22. Section 5(a)(1) of CAN-SPAM states:

20 It is unlawful for any person to initiate the transmission,
21 to a protected computer, of a commercial electronic mail
22 message . . . that contains, or is accompanied by, header
information that is materially false or materially
misleading.

23 15 U.S.C. § 7704(a)(1).

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25 23. Section 5(a)(6) of CAN-SPAM states:

26 For purposes of [section 5(a)(1)], the term "materially,"
27 when used with respect to false or misleading header
28 information, includes the alteration or concealment of
header information in a manner that would impair the
ability of an Internet access service processing the

1 message on behalf of a recipient, a person alleging a
2 violation of this section, or a law enforcement agency to
3 identify, locate, or respond to a person who initiated the
4 electronic mail message or to investigate the alleged
violation, or the ability of a recipient of the message to
respond to a person who initiated the electronic message.

5 15 U.S.C. § 7704(a)(6).

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7 24. Section (5)(a)(2) of CAN-SPAM states:

8 It is unlawful for any person to initiate the transmission to
9 a protected computer of a commercial electronic mail
10 message if such person has actual knowledge, or
11 knowledge fairly implied on the basis of objective
12 circumstances, that a subject heading of the message
13 would be likely to mislead a recipient, acting reasonably
14 under the circumstances, about a material fact regarding
15 the content or subject matter of the message (consistent
16 with the criteria used in enforcement of Section 5 of the
17 FTC Act (15 U.S.C. § 45)).

18 15 U.S.C. § 7704(a)(2).

19 25. Section 7(e) of CAN-SPAM states that, in any action to enforce compliance through an
20 injunction with Section 5(a)(2) and other specified sections of CAN-SPAM, the FTC need not allege or
21 prove the state of mind required by such sections. 15 U.S.C. § 7706(e).

22 26. Section 5(a)(3) of CAN-SPAM states:

23 It is unlawful for any person to initiate the transmission to a protected
24 computer of a commercial electronic mail message that does not contain
25 a functioning return electronic mail address or other Internet-based
26 mechanism, clearly and conspicuously displayed that:

- 27 (i) a recipient may use to submit, in a manner specified in the
28 message, a reply electronic mail message or other form of
Internet-based communication requesting not to receive future
commercial electronic mail messages from that sender at the
electronic mail address where the message was received; and
(ii) remains capable of receiving such messages or communications
for no less than 30 days after the transmission of the original
message.

15 U.S.C. § 7704(a)(3).

1 27. Section 5(a)(5)(A) of CAN-SPAM states:

2 It is unlawful for any person to initiate the transmission of
3 any commercial electronic mail message to a protected
4 computer unless the message provides:

- 5 (i) clear and conspicuous identification that
6 the message is an advertisement or
7 solicitation;
- 8 (ii) clear and conspicuous notice of the
9 opportunity under [section 5(a)(3)] to
10 decline to receive further commercial
11 electronic mail messages from the sender;
12 and
- 13 (iii) a valid physical postal address of the
14 sender.

15 U.S.C. § 7704(a)(5)(A).

16 28. Section 7(a) of CAN-SPAM states:

17 [T]his Act shall be enforced by the [FTC] as if the
18 violation of this Act were an unfair or deceptive act or
19 practice proscribed under section 18(a)(1)(B) of the [FTC
20 Act] (15 U.S.C. 57a(a)(1)(B)).

21 U.S.C. § 7706(a).

COUNT ONE

22 29. In numerous instances, the defendants have initiated the transmission, to protected
23 computers, of commercial email messages that contained or are accompanied by, header information
24 that is materially false or materially misleading.

25 30. The defendants' acts or practices as described in Paragraph 29 violate 15 U.S.C.
26 § 7704(a)(1).

COUNT TWO

27 31. In numerous instances, the defendants have initiated the transmission, to protected
28 computers, of commercial email messages that contain subject headings that would be likely to mislead
29 a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or
30 subject matter of the message.

31 32. The defendants' acts or practices, as described in Paragraph 31 violate 15 U.S.C.
32 § 7704(a)(2).

1 **COUNT THREE**

2 33. In numerous instances, the defendants have initiated the transmission, to protected
3 computers, of commercial email messages that advertise or promote Internet Web sites, products or
4 services, and do not include:

- 5 a. a clear and conspicuous notice of the recipient’s opportunity to decline to receive further
6 commercial electronic mail messages from the defendants at the recipient’s email
7 address; and/or
8 b. a functioning return email address or other Internet-based mechanism, clearly and
9 conspicuously displayed, that a recipient could use to submit a reply email message or
10 other form of Internet-based communication requesting not to receive future commercial
11 email messages from the defendants at the electronic mail address where the message
12 was received, and that remains capable of receiving such messages or communications
13 for no less than 30 days after the transmission of the original message.

14 34. The defendants’ acts or practices, as described in paragraph 32 violate 15 U.S.C.
15 § 7704(a)(5)(A) and/or § 7704(a)(3).

16 **COUNT FOUR**

17 35. In numerous instances, the defendants have initiated the transmission of commercial
18 email messages to protected computers that fail to provide a valid physical postal address of the sender.

19 36. The defendants acts or practices as described in Paragraph 35 violate 15 U.S.C.
20 § 7704(a)(5)(A).

21 **CONSUMER INJURY**

22 37. Consumers throughout the United States have suffered and continue to suffer substantial
23 monetary loss as a result of the defendants’ unlawful acts or practices. Absent injunctive relief from
24 this Court, the defendants are likely to continue to injure consumers and harm the public interest.

25 **THIS COURT’S POWER TO GRANT RELIEF**

26 38. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
27 injunctive and such other relief as the Court may deem appropriate to halt and redress violations of the
28 FTC Act.

1 39. Section 19 of the FTC Act, 15 U.S.C. § 57b, and Section 7(a) of CAN-SPAM, 15
2 U.S.C. § 7706(a), empower the Court to grant the FTC such relief as the Court finds necessary to
3 redress injury to consumers and other persons resulting from the defendants’ violations of CAN-
4 SPAM, including rescission or reformation of contracts and the refund of monies. The Court, in the
5 exercise of its equitable jurisdiction, may award other ancillary relief including, but not limited to,
6 rescission of contracts and restitution, and the disgorgement of ill-gotten gains, to prevent and remedy
7 injury caused by defendants’ law violations.

8 **PRAYER FOR RELIEF**

9 Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. § 53(b)
10 and 57b, Section 7(a) of CAN-SPAM, 15 U.S.C. § 7706(a), and the Court’s own equitable powers,
11 requests that the Court:

- 12 1. Award plaintiff such temporary and preliminary injunctive and ancillary relief as may be
13 necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve
14 the possibility of effective final relief;
 - 15 2. Permanently enjoin the defendants from violating the FTC Act, as alleged herein;
 - 16 3. Award such equitable relief as the Court finds necessary to redress injury to consumers
17 resulting from the defendants’ violations of the FTC Act and CAN-SPAM, including, but not limited
18 to, rescission of contracts and restitution, and the disgorgement of ill-gotten gains by the defendants;
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1 4. Award plaintiff the costs of bringing this action, as well as such other and additional
2 equitable relief as the Court may determine to be just and proper.

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4 Dated: November 28, 2005

Respectfully Submitted,

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6 General Counsel

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