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8  
9 UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 \_\_\_\_\_ )  
11 UNITED STATES OF AMERICA, )  
12 Plaintiff, ) Civil Action No. \_\_\_\_\_  
13 v. )  
14 JUMPSTART TECHNOLOGIES, LLC, ) COMPLAINT FOR CIVIL  
a limited liability company, ) PENALTIES AND INJUNCTIVE  
15 ) AND OTHER RELIEF  
16 Defendant. )  
17 \_\_\_\_\_ )

18 Plaintiff, the United States of America, acting upon  
19 notification and authorization to the Attorney General by the  
20 Federal Trade Commission ("FTC" or "Commission"), for its  
21 complaint alleges that:

22 1. Plaintiff brings this action under Sections 5(a)(1),  
5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act

1 ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and  
2 56(a), and the Controlling the Assault of Non-Solicited  
3 Pornography and Marketing Act of 2003 ("CAN-SPAM"), 15  
4 U.S.C. § 7706(a), to obtain monetary civil penalties, and  
5 injunctive and other relief for Defendant's violations of CAN-  
6 SPAM, 15 U.S.C. § 7701 et seq., and injunctive relief for  
7 Defendant's deceptive practices in violation of Section 5(a)(1)  
8 of the FTC Act, 15 U.S.C. § 45(a)(1).

9 JURISDICTION AND VENUE

10 2. This Court has jurisdiction over this matter under 28  
11 U.S.C. §§ 1331, 1337(a), 1345, and 1355 and under 15 U.S.C. §§  
12 45(m)(1)(A), 53(b), 56(a), and § 7706(a). This action arises  
13 under 15 U.S.C. § 45(a)(1).

14 3. Venue in the Northern District of California is proper  
15 under 15 U.S.C. § 53(b) and under 28 U.S.C. §§ 1391(b)-(c) and  
16 1395(a).

17 INTRADISTRICT ASSIGNMENT

18 4. The events giving rise to the United States' claims  
19 occurred in substantial part in San Francisco County.

20 THE DEFENDANT

21 5. Defendant Jumpstart Technologies, LLC ("Jumpstart") is  
22 a limited liability company registered in Delaware. Jumpstart's  
principal office or place of business is located at One Market  
Plaza, 39<sup>th</sup> Floor, San Francisco, California 94105. Jumpstart  
transacts business in the Northern District of California.

1 COMMERCE

2 6. At all times material to this complaint, Defendant's  
3 course of business, including the acts and practices alleged  
4 herein, has been and is in or affecting commerce, as "commerce"  
5 is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

6 DEFENDANT'S BUSINESS PRACTICES

7 7. Since July 2000, Defendant has advertised, offered for  
8 sale, sold, and distributed marketing information and advertising  
9 services to buyers throughout the United States. Defendant  
10 transacts business on the Internet through a number of business  
11 lines or subsidiaries, including but not limited to, FreeFlixTix,  
12 Bonus Bonez, Harding Innovations LLC, Infinity Brands LLC, and  
13 Launchpad Services LLC.

14 8. In the course of conducting its business, Defendant  
15 initiates commercial email messages to consumers, the primary  
16 purpose of which is the commercial advertisement or promotion of  
17 websites, such as FreeFlixTix.com. The FreeFlixTix.com website  
18 serves as a vehicle to provide direct marketing opportunities for  
19 Defendant's advertising partners and to collect marketing  
20 information for the Defendant to sell to third parties.

21 9. Through the FreeFlixTix website, Defendant collects  
22 personal information by offering to send free movie tickets to

1 consumers who, among other things, submit the email addresses of  
2 five or more of their friends. The website advertises in large  
3 black print: "Get 5 friends to sign up. Get a free movie  
4 ticket." Consumers are asked, in large black print: "Where  
5 should we send your free tickets?" and are asked to provide their  
6 full names, street addresses, birth dates, and email addresses.  
7 Beneath this form, another black bolded link appears, which is  
8 labeled, "Get Free Tickets." Directly above this link, in small  
9 white print, is the statement, "By signing up, I certify that I  
10 have read and accept your Terms of Service." Consumers who click  
11 on the Terms of Service link are taken to another web page which  
12 describes, among other things, the additional steps consumers  
13 must take before getting their free tickets. When consumers  
14 click on the "Get Free Tickets" link, they are taken to an online  
15 form where they are instructed to list the email addresses of ten  
16 of their friends. According to this page, if five of the friends  
17 sign up to become members of FreeFlixTix: "We'll send you free  
18 movie tickets!"

19 10. Once a consumer signs up for the promotion and submits  
20 the email addresses of ten friends, the Defendant initiates an  
21 email, to each of these friends. The "from" line of these emails  
22 contains the consumer's actual email address and make no

1 reference to the Defendant. Consequently, the emails appear to  
2 have been transmitted directly from the consumer to each of  
3 his/her friends ("recipients"). The Defendant includes personal  
4 greetings in the subject lines of these email messages such as:  
5 "hey," "Happy New Year," "Happy Valentine's Day," "Movie time.  
6 Let's go.," or "Invite."

7 11. When recipients of these emails open the messages, they  
8 contain a note purportedly from the referring friend. For  
9 example, email messages transmitted to addresses referred by a  
10 consumer named "John" would appear as: "Hey there! Go here and  
11 we'll both get free movie tickets! - John" A link to the  
12 FreeFlixTix site follows this note. If the recipients click on  
13 this link, they will be asked to sign-up as a member of  
14 FreeFlixTix.

15 12. After transmitting these initial email messages, the  
16 Defendant initiates at least six more "reminder" emails to the  
17 referred email addresses, using the referring consumer's email  
18 address in the "from" line. These emails exhort the recipients  
19 to become members of FreeFlixTix. In addition, some of these  
20 emails contain advertisements for other products or services  
21 offered by Defendant's advertising partners.

1           13. In many instances, subsequent email messages  
2 transmitted to referred email addresses bear subject headings  
3 which indicate that the referring consumer has procured free  
4 tickets for the recipient. For example, one such email message  
5 transmitted by the Defendant reads as follows: "Subject: [John]  
6 has sent you complimentary movie tickets - Certificate #29936."  
7 In fact, no tickets have been sent, and the certificate number  
8 has no meaning. This email simply directs the recipient to the  
9 FreeFlixTix website as described above.

10           14. At the bottom of the email messages transmitted by the  
11 Defendant, a statement in small type reads: "This invitation was  
12 sent on behalf of your friend by FreeFlixTix, 110 Pacific Avenue  
13 Mall #172, San Francisco, CA 94111. Go here to Manage your  
14 Mailing Preferences." If consumers click on the "Mailing  
15 Preferences" link, they are directed to a web page describing the  
16 procedure for opting out of receiving further email solicitations  
17 from the Defendant. For weeks after having attempted to use this  
18 opt-out procedure, however, many consumers continued to receive  
19 email messages from the Defendant.

20           15. If five recipients sign up as new members of  
21 FreeFlixTix.com, the referring consumer is asked to complete an  
22 offer from one of the Defendant's advertising partners. The

1 consumer must sign up for a promotion by submitting his/her  
2 credit card information to one of the Defendant's advertising  
3 partners. Certain advertising partners require that the consumer  
4 pay for the promotion being offered, while others make "free"  
5 offers that must be cancelled at a later date to avoid a charge.  
6 Approximately twelve weeks after the Defendant receives  
7 confirmation from one of its partners that the consumer has  
8 completed an offer and submitted a valid credit card number, the  
9 consumer receives two certificates that are redeemable in movie  
10 theaters.

11 THE CAN-SPAM ACT

12 16. The Controlling the Assault of Non-Solicited  
13 Pornography and Marketing Act of 2003, ("CAN-SPAM") 15 U.S.C.  
14 § 7701, et seq., became effective on January 1, 2004, and has  
15 since remained in full force and effect.

16 17. Section 3(2) of the CAN-SPAM Act, 15 U.S.C. § 7702(2),  
17 defines "commercial electronic mail message" to mean, "any  
18 electronic mail message the primary purpose of which is the  
19 commercial advertisement or promotion of a commercial product or  
20 service (including content on an Internet website operated for a  
21 commercial purpose)."

22 18. Section 3(8) of the CAN-SPAM Act, 15 U.S.C. § 7702(8),

1 defines "header information" to mean, "the source, destination,  
2 and routing information attached to an electronic mail message,  
3 including the originating domain name and originating electronic  
4 mail address, and any other information that appears in the line  
5 identifying, or purporting to identify, a person initiating the  
6 message."

7 19. Section 3(9) of the CAN-SPAM Act, 15 U.S.C. § 7702(9),  
8 defines "initiate," when used with respect to a commercial email  
9 message, to mean, "to originate or transmit such message or to  
10 procure the origination or transmission of such message, but  
11 shall not include actions that constitute routine conveyance of  
12 such message. For the purposes of this paragraph, more than one  
13 person may be considered to have initiated a message."

14 20. Section 3(12) of the CAN-SPAM Act, 15 U.S.C. §  
15 7702(12), defines "procure," when used with respect to the  
16 initiation of a commercial email message, to mean, "intentionally  
17 to pay or provide other consideration to, or induce, another  
18 person to initiate such a message on one's behalf."

19 21. Section 3(13) of the CAN-SPAM Act, 15 U.S.C.  
20 § 7702(13), defines "protected computer" by reference to 18  
21 U.S.C. § 1030(e)(2)(B), which states that a protected computer is  
22 "a computer which is used in interstate or foreign commerce or

1 communication, including a computer located outside the United  
2 States that is used in a manner that affects interstate or  
3 foreign commerce or communication of the United States."

4 22. Section 3(14) of the CAN-SPAM Act, 15 U.S.C. § 7702(14)  
5 defines "recipient," when used with respect to a commercial email  
6 message, to mean, "an authorized user of the electronic mail  
7 address to which the message was sent or delivered."

8 23. Section 3(16) of the CAN-SPAM Act, 15 U.S.C.  
9 § 7702(16), defines "sender," when used with respect to a  
10 commercial email message, to mean, "a person who initiates such a  
11 message and whose product, service, or Internet web site is  
12 advertised or promoted by the message."

13 24. Section 5(a)(1) of CAN-SPAM states: "It is unlawful for  
14 any person to initiate the transmission, to a protected computer,  
15 of a commercial electronic mail message . . . that contains, or  
16 is accompanied by, header information that is materially false or  
17 materially misleading." 15 U.S.C. § 7704(a)(1).

18 25. Section 5(a)(2) of CAN-SPAM states: "It is unlawful for  
19 any person to initiate the transmission to a protected computer  
20 of a commercial electronic mail message if such person has actual  
21 knowledge, or knowledge fairly implied on the basis of objective  
22 circumstances, that a subject heading of the message would be

1 likely to mislead a recipient, acting reasonably under the  
2 circumstances, about a material fact regarding the contents or  
3 subject matter of the message (consistent with the criteria used  
4 in enforcement of section 5 of the Federal Trade Commission Act  
5 (15 U.S.C. 45))." 15 U.S.C. § 7704(a)(2).

6 26. Section 5(a)(4) of CAN-SPAM states: "If a recipient  
7 makes a request using a mechanism provided pursuant to paragraph  
8 (3) not to receive some or any commercial electronic mail  
9 messages from such sender, then it is unlawful . . . for the  
10 sender to initiate the transmission to the recipient, more than  
11 10 business days after the receipt of such request, of a  
12 commercial electronic mail message that falls within the scope of  
13 the request . . . ." 15 U.S.C. § 7704(a)(4).

14 27. Section 5(a)(5)(A) of CAN-SPAM states: "It is unlawful  
15 for any person to initiate the transmission of any commercial  
16 electronic mail message to a protected computer unless the  
17 message provides - (i) clear and conspicuous identification that  
18 the message is an advertisement or solicitation; (ii) clear and  
19 conspicuous notice of the opportunity under [Section 5(a)(3)] to  
20 decline to receive further commercial electronic mail messages  
21 from the sender . . . ." 15 U.S.C. § 7704(a)(5)(A).



1 address book could evade software programs used to screen out  
2 unsolicited commercial email.

3 31. The Defendant's acts or practices, as described in  
4 paragraph 29, violate 15 U.S.C. § 7704(a) (1).

5 COUNT II

6 32. In numerous instances, the Defendant has initiated the  
7 transmission, to protected computers, of commercial email  
8 messages that contained, or were accompanied by, a subject  
9 heading that the Defendant knew, or had reason to know, would be  
10 likely to mislead a recipient, acting reasonably under the  
11 circumstances, about a material fact regarding the contents or  
12 subject matter of the message. According to Section 2(a)(8) of  
13 CAN-SPAM: "Many senders of unsolicited commercial electronic mail  
14 purposefully include misleading information in the messages'  
15 subject lines in order to induce the recipients to view the  
16 messages." 15 U.S.C. § 7701(a)(8). A recipient of one of  
17 Defendant's emails containing subject lines such as "Hiya,"  
18 "Happy Valentine's Day," "Invite," or "[John] has sent you  
19 complimentary movie tickets - Certificate #29936," would be  
20 misled into opening it under the reasonable belief that the email  
21 was personal rather than commercial in nature. CAN-SPAM  
22 prohibits using the subject line as an initial contact with

1 consumers to get their attention by misrepresenting the purpose  
2 of the contact.

3 333. Defendant's acts or practices, as described in  
4 paragraph 31, violate 15 U.S.C. §§ 7704(a)(2).

5  
6 COUNT III

7 34. In numerous instances, Defendant has initiated the  
8 transmission of commercial email messages to recipients more than  
9 ten (10) business days after Defendant had received an opt-out  
10 request from such recipients indicating that they decline to  
11 receive further email messages from the Defendant.

12 35. Defendant's acts or practices, as described in  
13 paragraph 33, violate 15 U.S.C. § 7704(a)(4).

14 COUNT IV

15 36. In numerous instances, Defendant has initiated the  
16 transmission of commercial email messages to protected computers  
17 that fail to provide clear and conspicuous identification that  
18 the message is an advertisement or solicitation. Defendant's  
19 email messages have contained text which appeared to be personal  
20 in nature.

21 37. Defendant's acts or practices, as described in  
22 paragraph 35, violate 15 U.S.C. § 7704(a)(5).

1 COUNT V

2 38. In numerous instances, Defendant has initiated the  
3 transmission of commercial email messages to protected computers  
4 that fail to provide clear and conspicuous notice of the  
5 opportunity to decline to receive further email messages from the  
6 Defendant. The links labeled, "Mailing Preferences," "Visit the  
7 BonusBonz Mailings Manager" and "Why wait? You can stop getting  
8 mail at any time," did not clearly inform consumers that they  
9 provided them with an opportunity to opt out of receiving further  
10 solicitation from the Defendant.

11 39. Defendant's acts or practices, as described in  
12 paragraph 37, violate 15 U.S.C. § 7704(a) (5).

13 SECTION 5 OF THE FTC ACT

14 40. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),  
15 provides that "unfair or deceptive acts or practices in or  
16 affecting commerce are hereby declared unlawful."

17 VIOLATIONS OF SECTION 5 OF THE FTC ACT

18 COUNT VI

19 41. In numerous advertisements, including email messages  
20 sent to consumers, such as Exhibits A and B, and on its  
21 FreeFlixTix website pages, such as Exhibits C and D, Defendant  
22 has represented, expressly or by implication, that:

1 A. The recipient of the email is receiving a personal  
2 message sent directly from the consumer identified  
3 in the "from" line of the email.

4 B. The subject of the message is a personal  
5 invitation from the consumer identified in the  
6 "from" line.

7 C. The consumer whose first name appears at the end  
8 of the message wrote the text of the message.

9 D. The consumer identified in the "from" line of the  
10 email has sent the recipient of the email  
11 complimentary movie tickets redeemable using the  
12 given certificate number.

13 E. The promotion works as follows: "1) Sign up. 2)  
14 Tell Friends. 3) Get FREE tickets."

15 F. The promotion works as follows: "Get 5 friends to  
16 sign up, GET A FREE MOVIE TICKET!"

17 G. Defendant will, "send an email and reminder" to  
18 each of the consumer's friends.

19 42. In truth and in fact:

20 A. The recipient of the email is not receiving a  
21 personal message sent directly from the consumer  
22 identified in the "from" line of the email.

1           Instead, the consumer is receiving an unsolicited  
2           advertisement from the Defendant.

3           B.    The subject of the message is not a personal  
4           invitation from the consumer identified in the  
5           "from" line.  Instead, the subject of the email is  
6           an unsolicited advertisement.

7           C.    The consumer whose first name appears at the end  
8           of the message did not write the text of the  
9           message.  The Defendant wrote the message.

10          D.    The consumer identified in the "from" line of the  
11          email has not sent the recipient of the email  
12          complimentary movie tickets redeemable using the  
13          given certificate number.  The certificate number  
14          is a meaningless fiction.

15          E.    The promotion does not work as follows: 1) Sign  
16          up. 2) Tell Friends. 3) Get FREE tickets.  To  
17          qualify for movie tickets: 1) Consumers must  
18          submit the email addresses of ten of their  
19          friends. 2) Defendant initiates six or more  
20          commercial emails to each of these friends which  
21          appear to have been sent and authored by the  
22          consumers. 3) At least five of these friends must

1 sign up as members on the site. 4) The consumers  
2 must sign up for a promotion offered by one of the  
3 Defendant's advertising partners, which requires  
4 the submission of credit card information, and in  
5 some instances, payment.

6 F. The promotion does not work as follows: "Get 5  
7 friends to sign up, GET A FREE MOVIE TICKET!" As  
8 described in part E of this paragraph, a consumer  
9 must do more than get 5 friends to sign up in  
10 order to receive a free movie ticket from the  
11 Defendant.

12 G. The Defendant does not send an email and a  
13 reminder to each of the consumer's friends.  
14 Instead, the Defendant initiates six or more  
15 commercial email messages to each of the  
16 consumer's friends.

17 43. Therefore, Defendant's representations as set forth in  
18 paragraph 40 above are false or misleading and constitute a  
19 deceptive practice, and the making of false advertisements, in or  
20 affecting commerce, in violation of Section 5(a) of the FTC Act,  
21 15 U.S.C. § 45(a).

22 CONSUMER INJURY

1           44. Consumers in the United States have suffered and will  
2 suffer injury as a result of Defendant's violations of CAN-SPAM  
3 and the FTC Act. Absent injunctive relief by this Court, the  
4 Defendant is likely to continue to injure consumers and harm the  
5 public interest.

6                           CIVIL PENALTIES AND INJUNCTIVE RELIEF

7           45. The Defendant has violated CAN-SPAM as described above  
8 with knowledge as set forth in Section 5(m)(1)(A) of the FTC Act,  
9 15 U.S.C. § 45(m)(1)(A).

10           46. Each commercial email message initiated by the  
11 Defendant in which the Defendant has violated CAN-SPAM in one or  
12 more of the ways described above constitutes a separate violation  
13 for which plaintiff seeks monetary civil penalties.

14           47. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. §  
15 45(m)(1)(A), as modified by Section 4 of the Federal Civil  
16 Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and  
17 Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R.  
18 § 1.98(d), authorizes this Court to award monetary civil  
19 penalties of not more than \$11,000 for each such violation of  
20 CAN-SPAM.

21           48. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),  
22 this Court is authorized to issue a permanent injunction against

1 the Defendant's violating the FTC Act.

2 PRAYER

3 WHEREFORE, plaintiff requests this Court, pursuant to 15  
4 U.S.C. §§ 45(a)(1), 45(m)(1)(A), and 53(b), and to the Court's  
5 own equitable powers to:

- 6 (1) Enter judgment against the Defendant and in favor of  
7 plaintiff for each violation alleged in this complaint;  
8 (2) Award plaintiff monetary civil penalties from the  
9 Defendant for each violation of CAN-SPAM;  
10 (3) Permanently enjoin the Defendant from violating the FTC  
11 Act and CAN-SPAM;  
12 (4) Award plaintiff such additional relief as the Court may  
13 deem just and proper.

14  
15 Dated: \_\_\_\_\_

Respectfully submitted,

16  
17  
18 OF COUNSEL:

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