

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

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FEDERAL TRADE COMMISSION, )  
 )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 SPEAR SYSTEMS, INC., a Wyoming corporation; )  
 )  
 BRUCE PARKER, individually, and as an officer )  
 or director of Spear Systems, Inc.; )  
 )  
 LISA KIMSEY, individually, and as an officer )  
 of Spear Systems, Inc.; )  
 )  
 XAVIER RATELLE, individually, doing )  
 business as eHealthyLife.com, and as an officer )  
 or director of 9151-1154 Quebec, Inc., 9064- )  
 9252 Quebec, Inc., and HBE, Inc.; )  
 )  
 ABARAGIDAN GNANENDRAN, individually, )  
 and doing business as eHealthyLife.com; )  
 )  
 9151-1154 QUEBEC, INC. d/b/a Q WEB, )  
 a Quebec corporation; )  
 )  
 9064-9252 QUEBEC, INC., a Quebec corporation; )  
 and )  
 )  
 HBE, INC., a St. Kitts and Nevis corporation, )  
 )  
 Defendants. )  
 )  


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Case No. 07 C 5597

Judge Wayne R. Andersen

Magistrate Judge Michael T. Mason

**AMENDED COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF**

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

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and under Section 7(a) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM”), 15 U.S.C. § 7706(a), to obtain injunctive relief and other equitable relief for Defendants’ deceptive and unfair acts or practices and the making of false advertisements in violation of Sections 5 and 12 of the FTC Act, 15 U.S.C. §§ 45 and 52, and for violations of CAN-SPAM, 15 U.S.C. § 7701 *et seq.*

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a), 52, 53(b), 57b, 7706(a) and 28 U.S.C. §§ 1331, 1337(a) and 1345.
3. Venue in the United States District Court for the Northern District of Illinois is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391 (b), (c) and (d).

### **PLAINTIFF**

4. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The Commission enforces Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, which prohibit, respectively, deceptive or unfair acts or practices and false advertisements for food, drugs, devices, services, or cosmetics, in or affecting commerce. The FTC is also charged with enforcing CAN-SPAM as if statutory violations of CAN-SPAM “were an unfair or deceptive act or practice proscribed under Section 18(a)(1)(B) of the [FTC Act] (15 U.S.C. 57a(a)(1)(B)).” 15 U.S.C. § 7706(a).
5. Sections 13(b) and 19 of the FTC Act authorize the FTC to initiate federal district court proceedings, in its own name by its designated attorneys, to enjoin violations of any

provision of law enforced by the FTC, and to secure such equitable relief as may be appropriate in each case. 15 U.S.C. §§ 53(b), 57b.

**DEFENDANTS**

6. Defendant Spear Systems, Inc. (“Spear Systems”) is a Wyoming corporation with a registered agent located at 123 W. 1st St., Suite 675, Casper, Wyoming 82601 and a principal place of business at 4000 Eagle Point Corporate Drive, Birmingham, Alabama 35242.
7. Defendant Bruce Parker is the President of Spear Systems, Inc. Parker has formulated, directed, controlled, or participated in the acts or practices of Spear Systems, Inc., set forth in this Amended Complaint.
8. Defendant Lisa Kimsey is, or has held herself out as, an officer of Spear Systems, Inc., including, but not limited to, as the chief financial officer of Spear Systems, Inc. Kimsey has formulated, directed, controlled, or participated in the acts or practices of Spear Systems, Inc., set forth in this Amended Complaint.
9. Defendant Xavier Ratelle is the president and sole officer of 9151-1154 Quebec, Inc., and 9064-9252 Quebec, Inc. Ratelle also has held himself out as the sole owner of HBE, Inc. Ratelle also does business as eHealthyLife.com. Ratelle has formulated, directed, controlled, or participated in the acts or practices of 9151-1154 Quebec, Inc., 9064-9252 Quebec, Inc., and HBE, Inc. (hereinafter referred to as “the Quebec Companies”) as set forth in this Amended Complaint.
10. Defendant Abaragidan Gnanendran has formulated, directed, controlled, or participated in the acts or practices of the Quebec Companies as set forth in this Amended Complaint. Gnanendran also does business as eHealthyLife.com.

11. Defendant 9151-1154 Quebec, Inc., is a corporation formed under the laws of Quebec, Canada. Its registered business address is 2348, Chemin Lucerne, Bureau 513, Montreal, Quebec Canada H3R 2J8. 9151-1154 Quebec, Inc., does business as Q Web.
12. Defendant 9064-9252 Quebec, Inc., is a corporation formed under the laws of Quebec, Canada. Its registered business address is 2348, Chemin Lucerne, Bureau 513, Montreal, Quebec, Canada H3R 2J8.
13. Defendant HBE, Inc., is a corporation formed under the laws of St. Kitts and Nevis. Its registered business address is Suite #3785, Amory Building, Victoria Road, Basseterre, St. Kitts.
14. The Quebec Companies have operated as a common enterprise while engaging in the deceptive acts and practices and other violations of law alleged below. They have shared officers, employees, and office locations, have commingled funds, are commonly controlled, and have engaged in a common scheme.
15. "The Quebec Defendants" means Xavier Ratelle, Abaragidan Gnanendran, 9154-1154 Quebec, Inc., 9064-9252 Quebec, Inc., and HBE, Inc.
16. "The Spear Systems Defendants" means Spear Systems, Inc., Bruce Parker, and Lisa Kimsey.
17. "Defendants" means Spear Systems, Inc., Bruce Parker, Lisa Kimsey, Xavier Ratelle, Abaragidan Gnanendran, 9154-1154 Quebec, Inc., 9064-9252 Quebec, Inc., and HBE, Inc. Defendants have transacted business in the Northern District of Illinois within the meaning of 15 U.S.C. § 53(b).

**COMMERCE**

18. At all times material to this Amended 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**

19. **“Electronic mail message”** (or “email”) means a message sent to a unique electronic mail address. 15 U.S.C. § 7702(6).
20. **“Electronic mail address”** means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local part”) and a reference to an Internet domain (commonly referred to as the “domain part”), whether or not displayed, to which an electronic mail message can be sent or delivered. 15 U.S.C. § 7702(5).
21. **“Commercial electronic mail message”** means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including the content on an Internet website operated for commercial purposes). 15 U.S.C. § 7702(2).
22. **“Header information”** means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message. 15 U.S.C. § 7702(8).
23. **“HGH Products”** shall refer to any products that are advertised, marketed, promoted, offered for sale, distributed, or sold with express or implied representations that the

product contains human growth hormone and/or causes a clinically meaningful increase in a consumer's growth hormone levels.

24. **"Hoodia Products"** shall refer to any products that are advertised, marketed, promoted, offered for sale, distributed, or sold with express or implied representations that the product contains any form of Hoodia gordonii.
25. **"Initiate,"** when used with respect to a commercial email message, means to originate or transmit such message or to procure the origination or transmission of such message. 15 U.S.C. § 7702(9).
26. **"Procure,"** when used with respect to the initiation of a commercial email message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one's behalf. 15 U.S.C. § 7702(12).
27. **"Protected Computer"** means a computer which is used in interstate or foreign commerce or communication, including a computer located outside the United States that is used in a manner that affects interstate or foreign commerce or communication of the United States. 15 U.S.C. 7702(13).
28. **"Sender"** means a person who initiates a commercial email message and whose product, service, or Internet Web site is advertised or promoted by the message. 15 U.S.C. § 7702(16).

#### **DEFENDANTS' BUSINESS ACTIVITIES**

29. Beginning in March 2006, the Spear Systems Defendants marketed and sold a pill called Naturaslim that purported to contain hoodia gordonii and cause substantial weight loss by suppressing appetite. The Spear Systems Defendants marketed Naturaslim on the

Internet Web sites [www.naturaslim.com](http://www.naturaslim.com) and [www.naturaslim.net](http://www.naturaslim.net). The Spear Systems Defendants accepted consumer credit cards on their Internet Web sites.

30. To induce consumers to purchase Naturaslim, the Spear Systems Defendants' Web sites made the following statements:

#### **About Hoodia Gordonii Diet Pills**

Haven't heard of Hoodia Gordonii? Soon this weight loss miracle will be tripping your tongue, because Hoodia Gordonii is an all-natural plant that contains a compound (H57) that literally takes your hunger away.

\* \* \*

#### **What is Hoodia Gordonii?**

Hoodia Gordonii is a type of cactus. . . . Scientists have discovered specific compounds within this succulent that are responsible for weight los [sic], specifically known as the P-57 molecule.

\* \* \*

#### **How fast will I see results? How many pounds will I lose?**

As shown in tests conducted, upon shifting into the High Gear section of the program, Hoodia Gordonii Diet Pills can assist in weight loss by reducing a person's daily caloric intake by up to 1000 calories. Keeping in mind that individual results many [sic] vary, some users have reported weight loss of between 4-6 pond [sic] per week.

\* \* \*

#### **Have the benefits of Hoodia been scientifically proven?**

There have been many trials carried out on the Hoodia plant and the Hoodia diet pills. In these trials it was concluded that the volunteers that were using the Hoodia diet pills experienced a significant reduction in both average daily caloric intake and body fat content, after a two week period.

31. Beginning in at least June 2006, the Quebec Defendants marketed and sold a variety of dietary supplement products. One line of products marketed by the Quebec Defendants under a variety of different names such as HoodiaLife and HoodiaPlus is a pill that

purports to contain hoodia gordonii and cause substantial weight loss by suppressing appetite. The Quebec Defendants also marketed a pill they claim causes the body to produce human growth hormone, using a variety of different names such as HGHLife and HGHPlus (the "HGH Products"). The Quebec Defendants' Hoodia and HGH Products are each sold for \$55.95, plus \$9.99 shipping and handling. The Quebec Defendants also have marketed and sold replica watches and pharmaceutical products on numerous Internet Web sites.

32. The Quebec Defendants' products are marketed by commercial email messages. The primary purpose of these commercial email messages has been the commercial advertisement or promotion of Internet Web sites operated for a commercial purpose by the Quebec Defendants. Particularly, the text of the commercial email messages contains hyperlinks to Web sites at which consumers can order the Quebec Defendants' products.
33. The Quebec Defendants have advertised, offered for sale, sold, and/or distributed their products via dozens of Internet Web sites. Four of the Web sites the Quebec Defendants have used to market their products are [ehealthylife.com](http://ehealthylife.com), [formulaalxyz.com](http://formulaalxyz.com), [hppinequalsok.com](http://hppinequalsok.com), and [zckisyltiffiee.com](http://zckisyltiffiee.com). Consumers may purchase the Quebec Defendants' products by credit card from the Quebec Defendants' Web sites.
34. The Spear Systems Defendants worked with the Quebec Defendants by obtaining processing services for accepting credit cards on their Web sites and also handling many customer service issues. The Spear Systems Defendants additionally paid email affiliates marketing the Quebec Defendants' products.
35. To induce consumers to purchase HoodiaLife, the Quebec Defendants' Web sites make the following statements:



## **DIET PILL BREAKTHROUGH!**

What if you could actually shed 10, 15, or even 25 pounds quickly and safely in less than 30 days? Now you can...

\* \* \*

### **About HoodiaLife™**

If you haven't heard of HoodiaLife™ yet, you soon will because it is being touted as the new miracle supplement for safe, effective weight loss. Hoodia gordonii, (Hoodia) is the botanical name for a cactus like plant that grows in Southern Africa. Scientists have recently isolated several compounds in this amazing plant that are responsible for dramatic weight loss. This all-natural appetite suppressant is also being applauded for containing no dangerous stimulants that caused adverse side effects associated with weight loss products of the last decade.

### **Advantages**

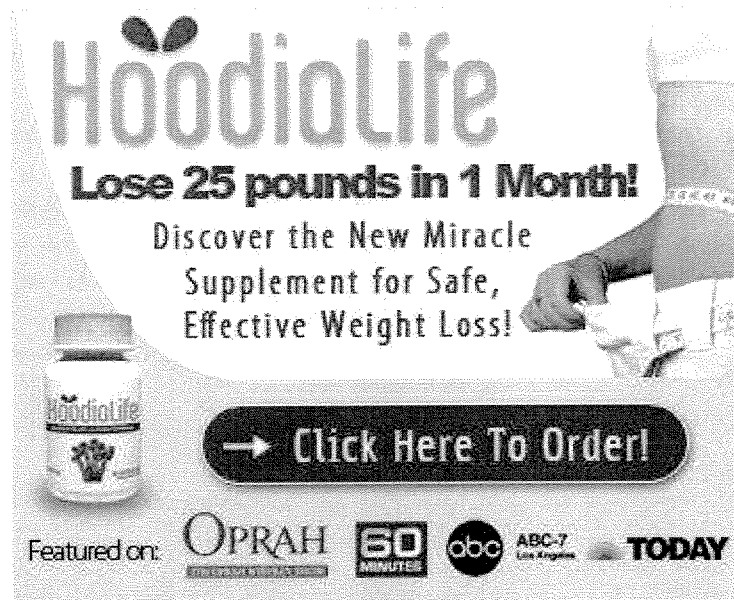
- Curbs your Appetite
- Fast weight loss
- Certified 100% Pure South African Hoodia
- Boosts Energy
- Completely Safe...NO Side Effects
- Goes to Work After First Dosage
- Supports Total Healthy Lifestyles
- Regulates Blood Sugar
- Doesn't Keep You Up At Night...Stimulant Free
- Improve self esteem and confidence

\* \* \*

Our sustained release formula helps you reach your optimal weight zone, the continued weight loss will pace itself to allow your body and metabolism to adjust to your new weight. The sustained release slowly releases the powerful Hoodia into your system so the effects last all day. This balance is crucial to maintaining your weight-loss and keeping those unwanted inches off...and HoodiaLife™ is proven to do exactly just that so you can **KEEP THE WEIGHT OFF PERMANENTLY**

36. To induce consumers to purchase HoodiaPlus, the Quebec Defendants' Web sites contain statements substantially identical to those in Paragraph 35 above.
37. To induce recipients to visit the Web sites and purchase the Quebec Defendants' Hoodia Products, commercial email messages promoting Web sites operated by the Quebec

Defendants or their agents contain the image below, claiming users will safely lose 25 pounds in a month:



38. To induce consumers to purchase HGHPlus, the Quebec Defendants' Web sites make the following statements:

**HGHPlus: Making you look and feel younger, naturally...**

\* \* \*

**Why Choose HGHPlus™**

- Grow new muscle mass
- Reduce fat stores in the body
- Metabolize fat faster
- Have more energy
- Increase memory & concentration
- Grow new hair and skin
- Feel revitalized and youthful
- Intensify romance and libido

\* \* \*

Researchers say the steady drop in our HGH level is what causes many health problems and diseases related to aging. These symptoms include weight gain, muscle loss, reduced energy, poor mental alertness, weak immune system, hearing/vision problems, wrinkles and cellulite, decreased libido and the list goes on. To put it simply, there is a direct relationship between your body's level of HGH production and the signs and symptoms of modern aging. So, it would be logical that all you need to do in order to reduce these symptoms or even reverse aging itself, is to give yourself a steady supply of HGH....

Dr. Robert Klaz, MD says, "You can boost your hGH levels by taking certain natural supplements. And you can do it safely, effectively, and economically," but don't be fooled into resorting to expensive and painful HGH injections as they do not boost your overall production. Only the amino acids used by the body to create its own HGH can do this, in powerful combination with other things, which is the beauty of HGH Plus™. It contains all the amino acids and trace minerals needed to restore your own HGH production, along with everything you need to be more vital, youthful and alive with vigorous energy than ever before. HGH Plus™ is such a powerful, ultra high-quality blend, the benefits are almost too many to list.

\* \* \*

HGH Plus™ will aid your body in almost every function that it performs, from regulating metabolism and burning fat to maintaining bone density, muscle mass, mental functions, digestive functions, immuno-defense activity and skin and organ repair. You will have a whole new body in only a few short months.

\* \* \*

HGH Plus™ can reduce stress and anxiety, improve emotional balance, and provide a great enhancement to one's self-confidence.

39. To induce consumers to purchase HGHLife, the Quebec Defendants' Web sites contain statements substantially identical to those in Paragraph 38 above.
40. Defendants "initiate" a commercial email message when they have either originated or transmitted a message themselves or have procured the origination or transmission of a message through payments or other consideration, or inducements.
41. Defendants are "senders" with respect to a commercial email message when they have initiated a message and it is Defendants' Web sites that are being advertised or promoted by such message.

42. Defendants have initiated commercial email messages containing materially false or misleading header information. In many instances, the email contains an originating email address that was not assigned by the email service provider or was used without the authorization of the subscriber who obtained the email address from the email service operator. In other instances, the email message fails to identify accurately the protected computer used to initiate the message because the email message was relayed or retransmitted through another protected computer for purposes of disguising its origin.
43. In order to induce consumers to open and read their commercial emails, Defendants have initiated commercial email messages that contain subject headers that misrepresent the content or subject matter of the message.
44. Defendants' commercial email messages fail to include any notification to recipients of their ability to decline receiving future email messages from Defendants, and they fail to include a reply email address or other mechanism that recipients can use to decline receiving future email messages from Defendants.
45. Defendants have initiated commercial email messages that failed to include a valid physical postal address of the sender.

**VIOLATIONS OF SECTION 5 OF THE FTC ACT**

46. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Section 12(a) of the FTC Act, 15 U.S.C. § 52(a), prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices, services or cosmetics. For the purpose of Section 12 of the FTC Act, the Hoodia

Products and the HGH Products are “foods” or “drugs” as defined in 15 U.S.C. §§ 55(b), (c).

47. As set forth below, Defendants have engaged in unlawful practices in violation of Sections 5(a) and 12 of the FTC Act in connection with the marketing and/or sale of the Hoodia and HGH Products.

### **COUNT I**

#### **Unlawful Claims Regarding the Naturaslim Hoodia Product**

48. Through the means described in Paragraphs 29-30 above, the Spear Systems Defendants have represented, expressly or by implication, that:
- a. Naturaslim causes rapid and substantial weight loss, including as much as four to six pounds per week;
  - b. Tests prove that the ingredient in Naturaslim reduces the users caloric intake by as much as 1000 calories per day; and
  - c. Naturaslim is scientifically proven to cause significant reduction in daily caloric intake and cause significant fat loss.
49. The representations set forth in Paragraph 48 are false or were not substantiated at the time they were made. Therefore, the making of the representations set forth in Paragraph 48 constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

**COUNT II**

**Unlawful Claims Regarding the Quebec Defendants' Hoodia Products**

50. Through the means described in Paragraphs 31-33 and 35-37 above, the Quebec Defendants have represented, expressly or by implication, that their Hoodia Products:
- a. cause rapid and substantial weight loss, including as much as twenty-five pounds in a month;
  - b. cause users to lose safely three or more pounds per week for multiple weeks; and
  - c. cause permanent weight loss.
51. The representations set forth in Paragraph 50 are false or were not substantiated at the time they were made. Therefore, the making of the representations set forth in Paragraph 50 constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

**COUNT III**

**Unlawful Claims Regarding the Quebec Defendants' HGH Products**

52. Through the means described in Paragraphs 31-33 and 38-39 above, the Quebec Defendants have represented, expressly or by implication, that their HGH Products:
- a. contain human growth hormone and/or cause a clinically meaningful increase in a consumer's growth hormone levels; and
  - b. will turn back or reverse the aging process, including, but not limited to, causing effects such as: (i) reducing cellulite, (ii) improving hearing and vision, (iii) causing new hair growth, (iv) improving emotional stability, (v) increasing muscle mass, and (vi) causing fat and weight loss.

53. The representations set forth in Paragraph 52 are false or were not substantiated at the time they were made. Therefore, the making of the representations set forth in Paragraph 52 constitutes a deceptive practice, and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

**VIOLATIONS OF THE CAN-SPAM ACT**

54. CAN-SPAM became effective on January 1, 2004, and has since remained in full force and effect.

55. Section 5(a)(1) of CAN-SPAM, 15 U.S.C. § 7704(a)(1), states:

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

56. Section 5(a)(6) of CAN-SPAM, 15 U.S.C. § 7704(a)(6), states:

For purposes of [section 5(a)(1)], the term “materially”, when used with respect to false or misleading header information, includes the alteration or concealment of header information in a manner that would impair the ability of an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who initiated the 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.

57. Section 5(a)(2) of CAN-SPAM, 15 U.S.C. § 7704(a)(2), states:

It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message if such person has actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that a subject heading of the message would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the content or subject matter of the message (consistent with the

criteria used in enforcement of Section 5 of the Federal Trade Commission Act (15 U.S.C. § 45)).

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

59. Section 5(a)(3) of CAN-SPAM, § 7704(a)(3) states:

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

(i) a recipient may use to submit, in a manner specified in the 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.

60. Section 5(a)(5)(A) of CAN-SPAM, § 7704(a)(5)(A) states:

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

(i) clear and conspicuous identification that the message is an advertisement or solicitation;

(ii) clear and conspicuous notice of the opportunity under [section 5(a)(3)] to decline to receive further commercial electronic mail messages from the sender; and

(iii) a valid physical postal address of the sender.



61. Section 7(a) of CAN-SPAM, 15 U.S.C. § 7706(a), states:

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

**COUNT IV**

62. In numerous instances, Defendants have initiated the transmission, to protected computers, of commercial email messages that contained, or were accompanied by, header information that is materially false or materially misleading.

63. Defendants' acts or practices, as described in Paragraph 62 above, violate 15 U.S.C. § 7704(a)(1).

**COUNT V**

64. In numerous instances, Defendants have initiated the transmission, to protected computers, of commercial email messages that contained subject headings that would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

65. Defendants' acts or practices, as described in Paragraph 64 above, violate 15 U.S.C. § 7704(a)(2).

**COUNT VI**

66. In numerous instances, Defendants have initiated the transmission, to protected computers, of commercial email messages that advertise or promote Defendants' Internet Web sites, products or services, and do not include:

- a. a clear and conspicuous notice of the recipient's opportunity to decline to receive further commercial electronic mail messages from Defendants at the recipient's electronic mail address; and/or

- b. a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that a recipient could use to submit a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from Defendants at the electronic mail address where the message was received, and that remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.
67. Defendants' acts or practices, as described in Paragraph 66 above, violate 15 U.S.C. § 7704(a)(5)(A)(ii) and/or § 7704(a)(3).

#### **COUNT VII**

68. In numerous instances, Defendants have initiated the transmission, to protected computers, of commercial email messages that advertise or promote Defendants' Internet Web sites, products, or services and do not include the senders' valid physical postal address.
69. Defendants' acts or practices, as described in Paragraph 68 above, violate 15 U.S.C. § 7704(a)(5)(A)(iii).

#### **CONSUMER INJURY**

70. Consumers throughout the United States and beyond have suffered, and continue to suffer, substantial monetary loss and other injury as a result of Defendants' unlawful acts or practices. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive and other equitable 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**

71. Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, empowers this Court to grant injunctive and other ancillary equitable relief to prevent and remedy Defendants' violations of the FTC Act, and in the exercise of its equitable jurisdiction, to award redress to remedy the injury to individuals and businesses, to order the disgorgement of monies resulting from Defendants' unlawful acts or practices, and to order other ancillary equitable relief. A violation of CAN-SPAM may be remedied in the same manner as a violation of the FTC Act. 15 U.S.C. § 7706.

**PRAYER FOR RELIEF**

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

1. Award Plaintiff such preliminary injunctive and 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, including, but not limited to, temporary and preliminary injunctions and an order freezing assets;
2. Enter a permanent injunction to prevent future violations of the FTC Act and the CAN-SPAM Act by Defendants;
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the CAN-SPAM 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

4. 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.

Respectfully submitted,

William Blumenthal  
General Counsel



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Dated: May 15, 2008