

COPY

1 DAVID C. SHONKA
2 Acting General Counsel
3 FAYE CHEN BARNOUW, CA Bar No. 168631
4 fbarnouw@ftc.gov
5 MARICELA SEGURA, CA Bar No. 225999
6 msegura@ftc.gov
7 Federal Trade Commission
8 10877 Wilshire Blvd., Ste. 700
9 Los Angeles, CA 90024
10 Tel: (310) 824-4343
11 Fax: (310) 824-4380

12 Attorneys for the Plaintiff
13 Federal Trade Commission

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 FEDERAL TRADE COMMISSION,
17
18 Plaintiff,

19 v.

20 MDK MEDIA INC., a California
21 corporation also doing business as SE
22 VENTURES, GMK COMMUNICATIONS,
23 and EMG;

24 MAKONNEN DEMESSOW KEBEDE,
25 individually and as an officer and owner of
26 MDK Media Inc.;

27 TENDENCI MEDIA LLC, a California
28 limited liability company;

SARAH ANN BREKKE, individually and
as a member of Tendenci Media LLC;

MINDKONTROL INDUSTRIES LLC, a
California limited liability company;

CHRISTOPHER THOMAS
DENOVELLIS, individually and as a
member of Mindkontrol Industries LLC;

ANACAPA MEDIA LLC, a California
limited liability company;

WAYNE CALVIN BYRD II, individually
and as a member of Anacapa Media LLC;



Case No. CV14-5099 JFW-SHx

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF



1 BEAR COMMUNICATIONS LLC, a
2 California limited liability company;

3 JAMES MATTHEW DAWSON,
4 individually and as a member of Bear
5 Communications LLC;

6 NETWORK ONE COMMERCE INC., a
7 Nevada corporation; and

8 CASEY LEE ADKISSON, individually and
9 as an officer and owner of Network One
10 Commerce Inc.,

11 Defendants.

12 Plaintiff, the **Federal Trade Commission** (“FTC”), for its Complaint
13 alleges:

14 1. The FTC brings this action under Section 13(b) of the Federal Trade
15 Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain temporary,
16 preliminary, and permanent injunctive relief, rescission or reformation of contracts,
17 restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other
18 equitable relief for Defendants’ acts or practices in violation of Section 5(a) of the
19 FTC Act, 15 U.S.C. § 45(a). As explained herein, Defendants have engaged in a
20 widespread scheme to place unauthorized third-party charges on consumers’
21 mobile phone bills, a harmful and illegal practice known as “cramming.”

22 **JURISDICTION AND VENUE**

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

25 3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2), (c)(1)
26 and (2), and (d), and 15 U.S.C. § 53(b).

27 **PLAINTIFF**

28 4. The FTC is an independent agency of the United States Government
created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC

1 Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
2 affecting commerce.

3 5. The FTC is authorized to initiate federal district court proceedings, by
4 its own attorneys, to enjoin violations of the FTC Act and to secure such equitable
5 relief as may be appropriate in each case, including rescission or reformation of
6 contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten
7 monies. 15 U.S.C. §§ 53(b) and 56(a)(2)(A).

8 **DEFENDANTS**

9 6. Defendant **MDK Media Inc.** (“MDK”) is a California corporation
10 with its principal place of business in Gardena, California. It also does business as
11 “SE Ventures,” “GMK Communications,” and “EMG.” MDK transacts or has
12 transacted business in this District and throughout the United States.

13 7. Defendant **Makonnen Demessow Kebede** (“Kebede”) is the sole
14 owner and officer of MDK. At all times material to this complaint, acting alone or
15 in concert with others, Kebede formulated, directed, controlled, had the authority
16 to control, or participated in the acts and practices of MDK, Tendenci,
17 Mindkontrol, Anacapa, Bear, and Network One. This includes incorporating
18 MDK; setting up and managing its bank accounts, domain names, and websites;
19 serving as sole signatory on and managing MDK’s bank accounts; recruiting the
20 other Defendants to operate as content providers; managing MDK’s short code
21 campaigns; participating in the management of the other Defendants’ short code
22 campaigns; and directing and/or participating in the other acts and practices set
23 forth in this Complaint. Kebede resides in this District and, in connection with the
24 matters alleged herein, transacts or has transacted business in this District and
25 throughout the United States.

26 8. Defendant **Tendenci Media LLC** (“Tendenci”) is a California limited
27 liability company with its principal place of business in Los Angeles, California.
28

1 Tendenci transacts or has transacted business in this District and throughout the
2 United States.

3 9. Defendant **Sarah Ann Brekke** (“Brekke”) is the owner and sole
4 member of Tendenci. At all times material to this complaint, acting alone or in
5 concert with others, Brekke formulated, directed, controlled, had the authority to
6 control, or participated in the acts and practices of Tendenci. This includes
7 forming Tendenci as a corporate entity; arranging for and managing its mail drop
8 addresses; serving as sole signatory on and managing Tendenci’s bank accounts;
9 registering and managing Tendenci’s domain names; managing Tendenci’s
10 websites, short codes, and short code campaigns; and directing and/or participating
11 in the other acts and practices set forth in this Complaint. Defendant Brekke
12 resides in this District and, in connection with the matters alleged herein, transacts
13 or has transacted business in this District and throughout the United States.

14 10. Defendant **Mindkontrol Industries LLC** (“Mindkontrol”) is a
15 California limited liability company with its principal place of business in San
16 Francisco, California. Mindkontrol transacts or has transacted business in this
17 District and throughout the United States.

18 11. Defendant **Christopher Thomas DeNovellis** (“DeNovellis”) is the
19 owner and sole member of Mindkontrol. At all times material to this complaint,
20 acting alone or in concert with others, DeNovellis formulated, directed, controlled,
21 had the authority to control, or participated in the acts and practices of
22 Mindkontrol. This includes forming Mindkontrol as a corporate entity; serving as
23 sole signatory on and managing its bank accounts; managing its short codes and
24 short code campaigns; and directing and/or participating in the other acts and
25 practices set forth in this Complaint. DeNovellis resides in the Northern District of
26 California, and, in connection with the matters alleged herein, transacts or has
27 transacted business in this District and throughout the United States.
28

1 12. Defendant **Anacapa Media LLC** (“Anacapa”) is a California limited
2 liability company with its principal place of business in Los Angeles, California.
3 Anacapa transacts or has transacted business in this District and throughout the
4 United States.

5 13. Defendant **Wayne Calvin Byrd II** (“Byrd”) is the owner and sole
6 member of Anacapa. At all times material to this complaint, acting alone or in
7 concert with others, Byrd formulated, directed, controlled, had the authority to
8 control, or participated in the acts and practices of Anacapa, Tendenci, and Bear.
9 This includes forming Anacapa as a corporate entity and participating in the
10 formation of Tendenci as a corporate entity; arranging for Anacapa’s mail drop
11 addresses; serving as sole signatory on and managing Anacapa’s bank accounts;
12 registering its domain names; managing its websites, short codes, and short code
13 campaigns; and directing and/or participating in the other acts and practices set
14 forth in this Complaint. Defendant Byrd resides in this District and, in connection
15 with the matters alleged herein, transacts or has transacted business in this District
16 and throughout the United States.

17 14. Defendant **Bear Communications LLC** (“Bear”) is a California
18 limited liability company with its principal place of business in Los Angeles,
19 California. Bear transacts or has transacted business in this District and throughout
20 the United States.

21 15. Defendant **James Matthew Dawson** (“Dawson”) is the owner and
22 sole member of Bear. At all times material to this complaint, acting alone or in
23 concert with others, Dawson formulated, directed, controlled, had the authority to
24 control, or participated in the acts and practices of Bear, Tendenci, and Anacapa.
25 This includes forming Bear as a corporate entity; participating in the formation of
26 Tendenci and Anacapa as corporate entities; arranging for Bear’s mailing
27 addresses; serving as sole signatory on and managing Bear’s bank accounts;
28 registering Bear’s domain names; managing Bear’s domain names and

1 participating in the management of Tendenci’s domain names; managing Bear’s
2 short codes and short code campaigns; and directing and/or participating in the
3 other acts and practices set forth in this Complaint. Dawson resides in this District
4 and, in connection with the matters alleged herein, transacts or has transacted
5 business in this District and throughout the United States.

6 16. Defendant **Network One Commerce Inc.** (“Network One”) is a
7 Nevada corporation with its principal place of business in San Diego, California.
8 Network One transacts or has transacted business in this District and throughout
9 the United States.

10 17. Defendant **Casey Lee Adkisson** (“Adkisson”) is the sole owner and
11 officer of Network One. At all times material to this complaint, acting alone or in
12 concert with others, Adkisson formulated, directed, controlled, had the authority to
13 control, or participated in the acts and practices of Network One and Tendenci.
14 This includes forming Network One as a corporate entity; arranging for its mail
15 drop address; serving as sole signatory on and managing its bank accounts;
16 managing its short codes and short code campaigns; participating in Tendenci’s
17 short code campaigns; and directing and/or participating in the other acts and
18 practices set forth in this Complaint. Adkisson resides in the Southern District of
19 California and, in connection with the matters alleged herein, transacts or has
20 transacted business in this District and throughout the United States.

21 **COMMERCE**

22 18. At all times material to this Complaint, Defendants have maintained a
23 substantial course of trade in or affecting commerce, as “commerce” is defined in
24 Section 4 of the FTC Act, 15 U.S.C. § 44.

25 **DEFENDANTS’ ACTIVITIES**

26 19. Since at least 2012, MDK, Tendenci, Mindkontrol, Anacapa, Bear,
27 Network One, and their principals Kebede, Brekke, DeNovellis, Byrd, Dawson,
28 and Adkisson (collectively, “Defendants”) have operated a scam in which they

1 have “crammed” unauthorized charges onto consumers’ mobile phone bills. Many
2 consumers have paid their mobile phone bills without ever noticing these charges;
3 others have paid and then unsuccessfully disputed the third-party charges without
4 obtaining a refund; still others have disputed the charges and succeeded in having
5 them removed only after substantial effort. Defendants have made millions of
6 dollars by engaging in these deceptive and unfair acts and practices.

7 **The Placement of Third-Party Charges on Mobile Phone Bills**

8 20. Text messages that are sent as “Premium SMS” texts are billed to the
9 recipient at a higher rate than the standard text message charge (also known as
10 “Short Message Service” or “SMS”) and/or are sent as part of a subscription to a
11 service for which there is a recurring monthly charge. A number of wireless phone
12 carriers have allowed third-party merchants, called “content providers,” to use the
13 carriers’ Premium SMS text message and billing infrastructures to deliver digital
14 goods or services (e.g., daily horoscopes or romance tips) to their customers’
15 mobile phones, and to collect payment for these goods and services through their
16 customers’ mobile phone bills.

17 21. To access a wireless phone carrier’s Premium SMS text message and
18 billing infrastructure, a content provider must first obtain authorization from the
19 wireless phone carrier to bill consumers for a specific good or service (often
20 referred to as a “program”) under a five- or six-digit number called a “short code.”
21 Taken together, the short code and program are referred to as the content
22 provider’s “short code campaign.” The wireless phone carrier allows content
23 providers to bill consumers on its Premium SMS billing platform through these
24 short code campaigns. This arrangement is facilitated through a third-party
25 intermediary known as an “aggregator.”

26 22. Under standard industry practice, a legitimate content provider
27 generally requires the consumer to take two affirmative steps to confirm the
28 consumer’s intention to purchase the content provider’s digital good or service, a

1 practice known as “double opt-in” verification. For example, a consumer who
2 visits a content provider’s web page advertisement and wants to subscribe to the
3 content provider’s program may initiate the subscription process by entering his or
4 her mobile phone number on that web page advertisement. The content provider
5 then sends to the consumer’s mobile phone a text message which includes a
6 description of the good or service, a four-digit personal identification number, and
7 instructions how to complete the opt-in process. The second opt-in step occurs
8 when the consumer enters the personal identification number back into the same
9 website to confirm his or her intent to subscribe to the content provider’s program.
10 This second opt-in step activates the consumer’s subscription. The content provider
11 then sends a text message to the consumer to confirm the subscription activation.

12 23. The content provider sends to the aggregator the mobile phone
13 numbers that it has authorization to bill. The aggregator then determines which
14 wireless carrier is associated with each consumer’s mobile phone number and
15 submits the Premium SMS charges to the appropriate wireless phone carrier for
16 placement on the consumer’s mobile phone bill. The consumer pays the wireless
17 phone carrier for the Premium SMS charges as part of his or her overall mobile
18 phone bill. The wireless phone carrier sends a portion of this money (net of its fees
19 and any refunds the carrier has made to consumers) to the aggregator. The
20 aggregator then transmits a portion of the money (net of its fees and any refunds
21 the aggregator has made to consumers) to the content provider.

22 **Defendants’ Cramming of Unauthorized Charges**
23 **onto Consumers’ Mobile Phone Bills**

24 24. The programs that Defendants purportedly sell to consumers consist
25 of subscriptions for periodic text messages sent to consumers’ mobile phones that
26 contain entertainment texts such as short celebrity gossip alerts, “fun facts,” and
27 horoscopes. Each of Defendants’ subscriptions typically costs \$9.99 or \$14.99 per
28 month and is set to renew automatically every month. Defendants have billed

1 consumers for these programs on the Premium SMS billing platforms of a number
2 of wireless phone carriers.

3 25. Unlike legitimate content providers, however, Defendants have placed
4 charges for these services on consumers' mobile phone bills without obtaining the
5 consumers' consent, whether through double opt-in verification or another
6 mechanism.

7 26. Defendants cram charges on consumers' mobile phone bills in at least
8 two ways. For some consumers, Defendants obtain consumers' mobile phone
9 numbers through deceptive website offers that lead consumers to believe they are
10 entering their mobile phone numbers and other personal information onto the
11 website in order to receive a "freebie" such as a gift card or discount coupon.
12 These "freebies" include a \$1,000 Walmart gift card from
13 <http://walmart.rewardhubzone.com> and a \$500 Target gift card from
14 <http://target4.net>, as well as coupons and other items from websites such as
15 <http://www.grandsavingscenter.com>, <http://free-coupons-everyday.com>,
16 <http://retailbrandprize.com>, <http://www.onlinegiftrewards.com>,
17 <http://www.consumergiftspot.com>, <http://bestbuyraffle.com>,
18 <http://www.freegasfairy.com>, and <http://iphone5.newrewardsdaily.com>.

19 27. Other consumers are billed by Defendants without having had any
20 prior contact with Defendants. In these instances, Defendants begin sending to the
21 consumers' mobile phones unsolicited text messages that many consumers assume
22 have been sent in error. Defendants begin cramming charges on consumers'
23 mobile phone bills contemporaneous with the sending of these unsolicited text
24 messages.

25 28. Regardless of the mechanism Defendants use to obtain consumers'
26 mobile phone numbers, Defendants misrepresent to wireless phone carriers that
27 consumers to whom they have sent unsolicited text messages have knowingly
28

1 subscribed to Defendants' text message subscription service and authorized the
2 placement of Premium SMS charges on their phone bills.

3 29. These billing practices have harmed consumers. The monthly charges
4 for these subscriptions are often difficult to find in the consumer's mobile phone
5 bill and listed in an abbreviated and confusing form. Many consumers do not
6 notice Defendants' charges included on their bills and pay their bills in full, thus
7 paying the unauthorized charge without realizing it. Further, the charges recur
8 unless and until the consumer takes action to unsubscribe.

9 30. Those consumers who notice and contest the unauthorized charges
10 have also been harmed. Consumers report that the process of disputing these
11 charges is frustrating and time-consuming. Some consumers have been crammed
12 for multiple months before noticing the charges and, even after significant effort,
13 are unable to obtain a full refund.

14 31. Wireless phone carriers have suspended or terminated a number of
15 Defendants' short codes because of these billing practices.

16 32. Despite these sanctions, Defendants have maintained their access to
17 these wireless phone carriers' Premium SMS billing platforms and have continued
18 to place charges on consumers' mobile phone bills. Defendants have
19 accomplished this by, among other things, providing false information to the
20 wireless phone carriers and operating under different names.

21 **Defendants' Participation and Control**

22 33. MDK began cramming charges in or around 2010. It ran numerous
23 short code campaigns under the names MDK, GMK Communications, and SE
24 Ventures, which have crammed charges on consumers' mobile phone bills. These
25 campaigns included "Quiz Alert" (on short code 60168), "Love Connection" and
26 "Destiny Horoscope" (both on short code 64651), "Special Secret Lover" (on short
27 code 68514), and "My Phone Beatz" and "The Stars Horoscopes" (both on short
28 code 79597). Kebede and MDK ran these campaigns on AT&T Mobility LLC

1 (“AT&T”); Sprint Spectrum, LP, also d/b/a Sprint PCS (“Sprint”); T-Mobile USA,
2 Inc. (“T-Mobile”); and Cellco Partnership also d/b/a Verizon Wireless (“Verizon”).
3 MDK’s billing privileges were terminated by Verizon in October 2011, and by
4 AT&T in July 2012. Despite these terminations, MDK continued to cram charges
5 using similar short code campaigns on other wireless phone carriers’ Premium
6 SMS billing platforms. MDK’s short code campaigns generated over \$19 million
7 in revenues for MDK.

8 34. Kebede and MDK also have recruited other content providers—
9 including Defendants Tendenci, Mindkontrol, Anacapa, Bear, and Network One,
10 and their principals Defendants Brekke, DeNovellis, Byrd, Dawson, and
11 Adkisson—to run short code campaigns and cram charges through the wireless
12 phone carriers’ Premium SMS billing platforms. Tendenci, Mindkontrol, Anacapa,
13 Bear, and Network One have generated substantial revenues from their cramming
14 activities and forwarded to MDK a substantial portion. Kebede and MDK have
15 made tens of millions of dollars from these deceptive and unfair business practices.
16 Brekke, Tendenci, DeNovellis, Mindkontrol, Byrd, Anacapa, Dawson, Bear,
17 Adkisson, and Network One retained the remainder as compensation for their role
18 in the scheme.

19 35. Defendant Tendenci began cramming charges in or around March
20 2012. Defendants Kebede, Brekke, Byrd, Dawson, and Adkisson directed and/or
21 participated in Tendenci’s fraudulent operations, which ran numerous short code
22 campaigns—including “My Phone Beatz” and “Text Groove” (both on short code
23 25260), “Smart Mobile Quiz” (on short code 70890), and “Texting Tips” (on short
24 code 83016) on T-Mobile, Sprint, and Verizon—and crammed charges onto
25 consumers’ mobile phone bills. Verizon terminated Tendenci’s billing privileges
26 in July 2012. Despite this termination, Tendenci continued to cram charges using
27 similar short code campaigns on other wireless phone carriers’ Premium SMS
28

1 billing platforms. Tendenci’s short code campaigns generated over \$5 million in
2 revenues for Tendenci.

3 36. Defendant Mindkontrol began cramming charges in or around July
4 2012. Defendants Kebede and DeNovellis directed and/or participated in
5 Mindkontrol’s fraudulent operations, which ran numerous short code campaigns—
6 including “My Eco Portal” and “Your True Fate Horoscopes” (both on short code
7 71573) on T-Mobile, Sprint, and AT&T—and crammed charges onto consumers’
8 mobile phone bills. These short code campaigns generated over \$11 million in
9 revenues for Mindkontrol.

10 37. Defendant Anacapa began cramming charges in or around July 2012.
11 Defendants Kebede, Byrd, and Dawson directed and participated in Anacapa’s
12 fraudulent operations, which ran numerous short code campaigns—including
13 “Mobile Tune Club” (on short code 65815), “Love Match Score” (on short code
14 54480), and “My Mobile Nine” and “My Cosmic Sign” (both on short code 84653)
15 on T-Mobile, AT&T, and Sprint—and crammed charges on consumers’ mobile
16 phone bills. These short code campaigns generated over \$22 million in revenues
17 for Anacapa.

18 38. Defendant Bear began cramming charges in or around October 2012.
19 Defendants Kebede, Dawson, and Byrd directed and participated in Bear’s
20 fraudulent operations, which ran numerous short code campaigns—including
21 “Tons of Mobile” (on short code 21446), “Horoscopes Now” and “Ur Astrology”
22 (both on short code 27460), and “Text Fun 4 Phone” (on short code 95899) on
23 Sprint and Verizon—and crammed charges on consumers’ mobile phone bills.
24 Verizon temporarily suspended Bear’s billing privileges in January 2013. Despite
25 this, Bear continued to cram charges using similar short code campaigns on
26 Sprint’s Premium SMS billing platform. Bear’s short code campaigns generated
27 over \$4 million in revenues for Bear.
28

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, § 53(b),
3 and the Court’s own equitable powers, requests that the Court:

4 A. Award such preliminary and ancillary relief as may be necessary to
5 avert the likelihood of consumer injury during the pendency of this action and to
6 preserve the possibility of effective final relief, including, but not limited to, a
7 temporary and preliminary injunction, asset freeze, appointment of a receiver, an
8 evidence preservation order, and expedited discovery;

9 B. Enter a permanent injunction to prevent future violations of the FTC
10 Act by Defendants;

11 C. Award such relief as the Court finds necessary to redress injury to
12 consumers resulting from Defendants’ violations of the FTC Act, including, but
13 not limited to, rescission and reformation of contracts, restitution, the refund of
14 monies paid, and the disgorgement of ill-gotten monies;

15 D. Award Plaintiff the costs of bringing this action, as well as such other
16 and additional relief as the Court may determine to be just and proper.

17
18 Dated: **JUL 1 2014**

Respectfully submitted,

19 David C. Shonka
20 Acting General Counsel

21 

22 Faye Chen Barnouw
23 Maricela Segura
24 Attorneys for Plaintiff
25 Federal Trade Commission
26
27
28