

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DANIEL L. CROFT,

an individual doing business as PC Guru
Tech Support and Elite Tech Support,

Defendant.

Case No. _____

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

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

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b), and Section 7(a) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM Act”), 15 U.S.C. § 7706(a), to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendant’s acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and CAN-SPAM Act, 15 U.S.C. § 7701-7713.

JURISDICTION AND VENUE

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

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

PLAINTIFF

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 Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the CAN-SPAM Act, 15 U.S.C. §§ 7701-7713, as if statutory violations of the CAN-SPAM Act “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. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the CAN-SPAM Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A), and 7706(a).

DEFENDANT

6. Defendant Daniel Croft operates the scheme described below using various business names including Elite Tech Support and PC Guru Tech Support, abbreviated frequently to PC Guru. The various business names used by Defendant Croft are all unregistered, fictitious businesses purporting to offer technical support services. Defendant Croft resides in Lake Worth, Florida and in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint.

THE CAN-SPAM ACT

7. The CAN-SPAM Act became effective on January 1, 2004 after Congress found that the receipt of unsolicited emails containing advertisements, promotional messages, or vulgar or pornographic content cost consumers, businesses, and educational and nonprofit institutions, among other entities, increasing amounts of money and time to store, access, review, discard, or otherwise manage. *See* 15 U.S.C. § 7701(a).

8. Under the CAN-SPAM Act, “electronic mail message” or “email” means a message sent to a unique electronic mail address. 15 U.S.C. § 7702(6).

9. “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).

10. A “commercial electronic mail message” or “commercial email,” as defined by the CAN-SPAM Act, is any email the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including the content of an Internet website operated for commercial purposes). 15 U.S.C. § 7702(5).

11. “Initiate,” with regard to commercial emails, means to originate or transmit such message or procure the origination or transmission of such message. 15 U.S.C. § 7702(9).

12. “Procure,” with respect to a commercial email, 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).

13. “Protected computer” means a computer which is used in or affecting 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).

14. “Sender” means a person who initiates a commercial electronic mail message and whose product, service, or Internet Web site is advertised or promoted by the message. 15 U.S.C. § 7702(16).

15. Among other things, the CAN-SPAM Act makes it 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 email is an advertisement or solicitation, (ii) clear and conspicuous notice that the recipient of the message can decline to receive further commercial emails from the sender, and (iii) a valid physical postal address of the sender. 15 U.S.C. § 7704(a)(5)(A).

16. Under Section 7(a) of the CAN-SPAM Act, 15 U.S.C. § 7706(a), violations of the CAN-SPAM Act are enforced by the FTC as if the violation 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).

COMMERCE

17. At all times material to this Complaint, Defendant Croft has 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.

DEFENDANT’S BUSINESS ACTIVITIES

18. Since at least July 2016, Defendant Croft, who purports to run a technical support company called PC Guru Tech Support or PC Guru, has been deceptively marketing, advertising, promoting, and offering for sale technical support services by falsely representing to consumers that he is affiliated with the FTC and that he has been appointed by the FTC to contact consumers to provide technical support services.

19. The Defendant contacts consumers and markets his services by initiating unsolicited commercial electronic mail messages to consumers’ protected computers. The Defendant initiates these unsolicited emails from several electronic mail addresses, including support@pcgurutechsupport.com and support@pcgurutech.onmicrosoft.com.

20. The Defendant is a “sender” with respect to these unsolicited commercial emails because the emails advertise or promote the Defendant’s products or services.

21. To lure consumers into opening the unsolicited emails, the Defendant states in the subject line of the emails that “spyware was put on your computer” by one of two purported technical support companies whose services the consumer had previously used: Fast Fix 123 LLC (“Fast Fix 123”) or One Bit IT Co. (“One Bit IT”).

22. The body of the emails, which consumers would see upon opening the emails, contains several false representations, which lead consumers to believe that the Defendant is affiliated with the FTC.

23. Those representations include that Fast Fix 123 or One Bit IT has been “shut down by the FEDERAL TRADE COMMISSION for putting a small program” on the consumer’s computer.

24. The Defendant also falsely states that he was “given the job to call each and every customer” to inform them of the lawsuit and to remove the program from the consumer’s computer.

25. In an attempt to further deceive consumers and reinforce the belief that Defendant is affiliated with the FTC and has been appointed to contact consumers on the FTC’s behalf, the Defendant states that he has included in the emails the “Federal Trade Commission Report,” which names his company, PC Guru, to perform this work on behalf of the FTC.

26. The so-called “Federal Trade Commission Report” is designed to look like a press release issued by the FTC and includes the FTC’s seal and motto, and even lists two FTC attorneys who work in the FTC’s Bureau of Consumer Protection. The following is the supposed “Federal Trade Commission Report” sent by the Defendant in connection with a purported lawsuit filed by the FTC against Fast Fix 123:



PROTECTING AMERICA'S CONSUMERS

Operators of Tech Support Scam Settles FTC Charges

Defendants Will Be Required to Surrender Assets

May 20, 2016

The defendants behind Fastfix123 Tech Support have agreed to settle Federal Trade Commission and State of Florida charges that they scammed thousands of consumers out of millions of dollars by installing tracking software on their computer after repairing their computers

Under the settlement, FastFix123 LLC and their chief operating officer, Mark Donohue are prohibited from misleading consumers about the nature of the products they sell or market, as well as from deceptive telemarketing. In addition, the owners of Fastfix123 are prohibited from advertising, promoting or selling any tech support products or services.

The FTC's complaint against the defendants was filed in 2014 as part of a group of actions against Florida-based tech support schemes. It alleges that the defendants were part of the Microsoft Pinpoint Network thus obtaining access to the customer's computer through legal channels, but installed tracking software that continued to send out the customer's personal information to advertisers. The FTC and State of Florida charged that the defendants violated the Telemarketing Sales Rule and the FTC Act, along with the Florida Deceptive and Unfair Trade Practices Act.

Under the terms of the stipulated final orders, Donohue is subject to a monetary judgment of \$9,177,000, which is suspended based on his financial condition. Fastfix123 is subject to a monetary judgment of more than \$27.2 million, which is partially suspended; the companies are required to surrender all of their assets to a court receiver. 3 other tech support company, PC GURU, Verindan Tech Support and OmniCare were selected to notify the customers and remove any residual software. The full judgments will become due immediately if the defendants are found to have misrepresented their financial condition. The Commission vote approving the stipulated orders was 3-0. The FTC filed the proposed orders in the U.S. District Court for the Southern District of Florida.

NOTE: Stipulated final orders have the force of law when approved and signed by the District Court judge.


Bureau of Consumer Protection


Bureau of Consumer Protection

27. In reality, however, the bogus press releases sent by the Defendant to consumers are not real press releases issued by the FTC. The FTC has neither filed a case nor settled any action against Fast Fix 123 or One Bit IT. Nor has the FTC appointed, authorized, hired, or otherwise selected the Defendant or his fictitious company, PC Guru Tech Support, to call or contact consumers or otherwise perform any work on the FTC's behalf.

28. To further entice consumers to respond, the Defendant exploits consumers' legitimate concerns about computer security by stating in the emails that the consumers' computers are sending "information out to hackers" or "seriously infected" with malware. To remedy these "problems," the Defendant urges consumers to contact him to schedule an appointment and provides a phone number for consumers to call.

29. Consumers who call the phone number included in the emails reach the Defendant, who again falsely represents that he has been hired by the FTC to assist consumers in removing any software downloaded on their computers by Fast Fix 123 or One Bit IT.

30. In numerous instances, the emails do not include a valid physical postal address and are not identified as advertisements or solicitations.

31. Additionally, consumers have not provided the Defendant permission to send commercial emails to them.

32. Based, in part, on the Defendant's representations that he is affiliated with the FTC, consumers allow the Defendant to use remote log-in technology to access their computers to provide purported technical support. Once he has gained access to consumers' computers, the Defendant purports to remove software downloaded onto the consumer's computer by Fast Fix 123 or One Bit IT. The Defendant then attempts to sell to consumers additional technical support services, asserting that the consumer's computer is "infected."

VIOLATIONS OF THE FTC ACT

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

34. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

Count I Misrepresentations Regarding Affiliation with the Federal Trade Commission

35. In numerous instances, in connection with the advertising, marketing, offering for sale, or selling of computer technical support services, Defendant represents or has represented, directly or indirectly, expressly or by implication, through a variety of means, including

unsolicited commercial electronic mail messages, that he is affiliated with, appointed by or otherwise authorized by the FTC to contact consumers or to provide technical support services.

36. In truth and in fact, Defendant is not and has never been affiliated with, appointed by or otherwise authorized by the FTC to contact consumers or to provide technical support services.

37. Therefore, Defendant's representations as set forth in Paragraph 35 of this Complaint are false or misleading and constitute a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF THE CAN-SPAM ACT

Count II

Failure to Provide a Valid Physical Postal Address

38. In numerous instances, as described in Paragraphs 18-32, the Defendant has initiated the transmission, to protected computers, of commercial email messages that advertise or promote the Defendant's products or services and do not include the sender's valid physical postal address.

39. The Defendant's acts or practices, as described in paragraph 38, violate Section 5(a)(5)(A) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(5)(A)(iii).

Count III

Failure to Identify the Email Message as an Advertisement or Solicitation

40. In numerous instances, as described in Paragraphs 18-32, the Defendant has initiated the transmission, to protected computers, of commercial email messages that advertise or promote the Defendant's products or services and do not provide clear and conspicuous identification that the message is an advertisement or solicitation.

41. The Defendant's acts or practices, as described in paragraph 40, violate Section 5(a)(5)(A) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(5)(A)(i).

CONSUMER INJURY

42. Consumers likely have suffered and will likely continue to suffer substantial injury as a result of the Defendant's violations of the FTC Act and the CAN-SPAM Act. In addition, the Defendant has likely been unjustly enriched as a result of his unlawful acts or practices. Absent injunctive relief by this Court, the Defendant is likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

43. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

44. The CAN-SPAM Act, 15 U.S.C. § 7706, authorizes this Court to grant such other relief as the Court finds necessary to redress injury to consumers resulting from Defendant's violations of the CAN-SPAM Act, including the refund of money.

PRAYER FOR RELIEF

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

A. 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, the turnover of business records, and the disruption of domain and telephone services;

B. Enter a permanent injunction to prevent future violations of the FTC Act and the CAN-SPAM Act by the Defendant;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from the Defendant's 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

D. Award Plaintiff FTC 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,

DAVID C. SHONKA
Acting General Counsel

Dated: 4/3/17



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