

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4
5 **UNITED STATES OF AMERICA,**

6 Plaintiff,

7 v.

8
9 **TJ WEB PRODUCTIONS, LLC**, a Nevada
10 limited liability company,

11
12 Defendant.

No. _____

**COMPLAINT FOR CIVIL
PENALTIES, PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

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17 Plaintiff, the United States of America, acting upon notification and authorization to the
18 Attorney General by the Federal Trade Commission (“FTC” or “Commission”), pursuant to
19 Section 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 56(a)(1), for its
20 complaint alleges:

21 1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a), and 19 of the
22 FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a), and 57b, and under Section 7(a) of the
23 Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-
24 SPAM” or the “CAN-SPAM Act”), 15 U.S.C. § 7706(a), to secure civil penalties, a permanent
25 injunction, and other equitable relief for Defendant’s violations of Section 5(a) and (d) of CAN-
26 SPAM, 15 U.S.C. § 7704(a) and (d), and the FTC’s Adult Labeling Rule (the “Adult Labeling
27 Rule” or the “Rule”), 16 C.F.R. Part 316.4.
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1 **JURISDICTION AND VENUE**

2 2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(m)(1)(A),
3 53(b), 56(a), 57b, and 7706(a), and 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355. This action
4 arises under 15 U.S.C. § 45(a).

5 3. Venue in the United States District Court for the District of Nevada is proper under 15
6 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b)-(c), and 1395(a).

7 **DEFENDANT**

8 4. Defendant TJ Web Productions, LLC (“TJ Web”) is a Nevada limited liability
9 company with its registered office located at 10624 S. Eastern Ave., Henderson, Nevada 89052.
10 Since May 19, 2004, TJ Web has formulated, directed, controlled, or participated in the acts or
11 practices set forth in this Complaint. TJ Web resides in the District of Nevada and transacts
12 business within the District of Nevada and throughout the United States.

13 **COMMERCE**

14 5. At all times relevant to this Complaint, Defendant has maintained a substantial course
15 of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15
16 U.S.C. § 44.

17 **DEFENDANT’S BUSINESS PRACTICES**

18 6. Since May 19, 2004, and continuing to the present, Defendant has owned and operated
19 dozens of commercial web sites that sell access to a vast collection of sexually oriented videos
20 and pictures. Defendant promotes these sites through an affiliate program that pays
21 “webmasters” to steer consumers to Defendant’s sites.

22 7. Many webmasters who participate in Defendant’s affiliate program advertise and
23 promote Defendant’s commercial web sites through widely distributed commercial email
24 messages. These email messages often contain sexually explicit pictures that hyperlink to
25 Defendant’s web sites. The hyperlinks in the email messages allow Defendant to identify a
26 particular webmaster as the entity deserving payment when a potential customer clicks through
27 an email to one of Defendant’s sites. Since May 19, 2004, numerous email messages that
28

1 advertise and promote Defendant's commercial web sites have been mailed to computers used in
2 interstate or foreign commerce and communication.

3 8. In connection with the marketing and promotion of Defendant's commercial web
4 sites, Defendant, through its affiliate program, has induced others, by monetary payments and
5 other consideration, to transmit commercial email messages on Defendant's behalf. In doing so,
6 Defendant has procured the transmission of such messages and is thereby an initiator, as that
7 term is defined under CAN-SPAM, of the email messages sent by its affiliates that promote and
8 market Defendant's web sites. In addition, because Defendant's web sites are being advertised
9 or promoted by such messages, Defendant is also a sender, as that term is defined under CAN-
10 SPAM, of the email messages that its affiliates are transmitting on Defendant's behalf.

11 9. In connection with the marketing and promotion of Defendant's commercial web
12 sites, Defendant's affiliates have transmitted email messages that fail to include clear and
13 conspicuous notice of a recipient's opportunity to decline to receive further commercial email
14 messages from Defendant at the recipient's email address. For example, in numerous instances,
15 the opt-out mechanism is displayed at the bottom of the email message after a depiction of
16 sexually explicit conduct.

17 10. In connection with the marketing and promotion of Defendant's commercial web
18 sites, Defendant's affiliates have transmitted email messages that fail to include a valid physical
19 postal address of Defendant.

20 11. In connection with the marketing and promotion of Defendant's commercial web
21 sites, Defendant's affiliates have transmitted email messages that contain depictions of sexually
22 explicit conduct and that fail to include the phrase "SEXUALLY-EXPLICIT: " in the subject
23 line of the message.

24 12. In connection with the marketing and promotion of Defendant's commercial web
25 sites, Defendant's affiliates have transmitted email messages that contain depictions of sexually
26 explicit conduct and that fail to include, in the initially viewable area of the message, the phrase
27 "SEXUALLY-EXPLICIT: ", a functioning opt-out mechanism, or a valid physical postal address
28 of Defendant.

1 13. In connection with the marketing and promotion of Defendant’s commercial web
2 sites, Defendant’s affiliates have transmitted email messages that include sexually oriented
3 materials in the initially viewable area of the message.

4 14. In numerous instances, recipients of the commercial email messages set forth in
5 paragraphs 11 through 13 have not given prior affirmative consent to receive such messages.

6 **THE CAN-SPAM ACT**

7 15. The CAN-SPAM Act, 15 U.S.C. § 7701 et seq., became effective on January 1,
8 2004, and has since remained in full force and effect.

9 16. Section 3(2) of the CAN-SPAM Act, 15 U.S.C. § 7702(2), defines “commercial
10 electronic mail message” to mean:

11 any electronic mail message the primary purpose of which is the commercial
12 advertisement or promotion of a commercial product or service (including
13 content on an Internet website operated for a commercial purpose).

14 17. Section 3(9) of the CAN-SPAM Act, 15 U.S.C. § 7702(9), defines “initiate,” when
15 used with respect to a commercial email message, to mean:

16 to originate or transmit such message or to procure the origination or
17 transmission of such message, but shall not include actions that constitute
18 routine conveyance of such message. For purposes of this paragraph, more than
19 one person may be considered to have initiated a message.

20 18. Section 3(12) of the CAN-SPAM Act, 15 U.S.C. § 7702(12), defines “procure,”
21 when used with respect to the initiation of a commercial email message, to mean:

22 intentionally to pay or provide other consideration to, or induce, another person
23 to initiate such a message on one’s behalf.

24 19. Section 3(13) of the CAN-SPAM Act, 15 U.S.C. § 7702(13), defines “protected
25 computer” by reference to 18 U.S.C. § 1030(e)(2)(B), which states that a protected computer is:

26 a computer which is used in interstate or foreign commerce or communication,
27 including a computer located outside the United States that is used in a manner that
28 affects interstate or foreign commerce or communication of the United States.

29 20. Section 3(16) of the CAN-SPAM Act, 15 U.S.C. § 7702(16), defines “sender,” when
used with respect to a commercial electronic mail message, as:

a person who initiates such a message and whose product, service, or Internet
web site is advertised or promoted by the message.

1 21. Section 5(a)(3) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(3), states:

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

6 (i) a recipient may use to submit, in a manner specified in the message, a reply
7 electronic mail message or other form of Internet-based communication
8 requesting not to receive future commercial electronic mail messages from that
9 sender at the electronic mail address where the message was received; and

10 (ii) remains capable of receiving such messages or communications for no less
11 than 30 days after the transmission of the original message.

12 22. Sections 5(a)(5)(A)(ii) and (iii) of the CAN-SPAM Act, 15 U.S.C. §§ 7704(a)(5)(A)
13 (ii) and (iii), state:

14 (A) It is unlawful for any person to initiate the transmission of any commercial
15 electronic mail message to a protected computer unless the message provides –

16 (i) clear and conspicuous notice of the opportunity under paragraph (3) to
17 decline to receive further commercial electronic mail messages from the sender;
18 and

19 (ii) a valid physical postal address of the sender.

20 23. The Commission promulgated the Adult Labeling Rule pursuant to Sections 5(d)(3)
21 and 13(a) of the CAN-SPAM Act, 15 U.S.C. §§ 7704(d)(3) and 7711(a). The Rule became
22 effective on May 19, 2004, and sets forth marks and notices to be included in commercial email
23 messages that contain sexually oriented material.

24 24. Section 5(d)(4) of the CAN-SPAM Act, 15 U.S.C. § 7704(d)(4), defines “sexually
25 oriented material” as:

26 any material that depicts sexually explicit conduct (as that term is defined in
27 section 2256 of title 18, United States Code), unless the depiction constitutes a
28 small and insignificant part of the whole, the remainder of which is not
primarily devoted to sexual matters.

29 25. The CAN-SPAM Act and the Adult Labeling Rule both prohibit any person from
30 initiating the transmission, to a protected computer, of any commercial email message that
31 includes sexually oriented material and fails to include the phrase “SEXUALLY-EXPLICIT: ”
32 as the first nineteen (19) characters at the beginning of the subject line. 15 U.S.C. §
33 7704(d)(1)(A); 16 C.F.R. § 316.4(a)(1).

1 26. The CAN-SPAM Act and the Adult Labeling Rule also require that any message that
2 includes sexually oriented material place only the following information within the content of
3 the message that is initially viewable by the recipient, when the message is opened by the
4 recipient and absent any further action by the recipient (“initially viewable content”):

- 5 A. the phrase “SEXUALLY-EXPLICIT: ” in a clear and conspicuous
6 manner, 15 U.S.C. § 7704(d)(1)(B)(i); 16 C.F.R. § 316.4(a)(2)(i);
7 B. clear and conspicuous identification that the message is an
8 advertisement or solicitation, 15 U.S.C. § 7704(d)(1)(B)(ii); 16 C.F.R.
9 § 316.4(a)(2)(ii);
10 C. clear and conspicuous notice of the opportunity of a recipient to
11 decline to receive further commercial email messages from the sender,
12 15 U.S.C. § 7704(d)(1)(B)(ii); 16 C.F.R. § 316.4(a)(2)(iii);
13 D. a functioning return email address or other Internet-based mechanism,
14 clearly and conspicuously displayed, that a recipient may use to
15 submit, in a manner specified in the message, a reply email message or
16 other form of Internet-based communication requesting not to receive
17 future commercial email messages from that sender at the email
18 address where the message was received; and that remains capable of
19 receiving such messages or communications for no less than 30 days
20 after the transmission of the original message, 16 C.F.R.
21 § 316.4(a)(2)(iv);
22 E. clear and conspicuous display of a valid physical postal address of the
23 sender, 15 U.S.C. § 7704(d)(1)(B)(ii); 16 C.F.R. § 316.4(a)(2)(v); and
24 F. any needed instructions on how to access, or activate a mechanism to
25 access, the sexually oriented material, 15 U.S.C. § 7704(d)(1)(B)(iii);
26 16 C.F.R. § 316.4(a)(2)(vi).

1 email messages that advertised or promoted Defendant’s Internet web sites and failed to include
2 clear and conspicuous notice of the recipient’s opportunity to decline to receive further
3 commercial email messages from Defendant at the recipient’s email address.

4 32. Therefore, Defendant’s acts or practices, as described in paragraph 31, violate
5 Section 5(a)(5)(A)(ii) or Section 5(a)(3) of the CAN-SPAM Act, 15 U.S.C. §§ 7704(a)(5)(A)(ii)
6 or 7704(a)(3).

7 **COUNT III**

8 33. In numerous instances, including but not limited to the practices set forth in this
9 Complaint, Defendant has initiated the transmission, to protected computers, of commercial
10 email messages that advertised or promoted Defendant’s Internet web sites and failed to include
11 Defendant’s valid physical postal address.

12 34. Therefore, Defendant’s acts or practices, as described in paragraph 33, violate
13 Section 5(a)(5)(A)(iii) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(5)(A)(iii).

14 **INDIVIDUAL AND BUSINESS INJURY**

15 35. Individuals and businesses throughout the United States have suffered, and continue
16 to suffer, substantial injury as a result of Defendant’s unlawful acts or practices. In addition,
17 Defendant has been unjustly enriched as a result of its unlawful practices. Absent injunctive
18 relief by this Court, Defendant is likely to continue to injure consumers, reap unjust enrichment,
19 and harm the public interest.

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

21 36. Section 7(a) of the CAN-SPAM Act, 15 U.S.C. § 7706(a), provides that “[CAN-
22 SPAM] shall be enforced by the [FTC] as if the violation of this Act were an unfair or deceptive
23 act or practice proscribed under section 18(a)(1)(B) of the [FTC Act] (15 U.S.C.
24 § 57a(a)(1)(B)).” Accordingly, violations of the CAN-SPAM Act, including those sections of
25 the CAN-SPAM Act that are interpreted by the Adult Labeling Rule, shall be enforced as if the
26 violation were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the
27 FTC Act (15 U.S.C. § 57a(a)(1)(B)), that is, these provisions shall be enforced as if the violation
28 had been a violation of a FTC trade regulation rule. Furthermore, Section 18(d)(3) of the FTC

1 Act provides that “[w]hen any rule under subsection (a)(1)(B) of [Section 18] takes effect a
2 subsequent violation thereof shall constitute an unfair or deceptive act or practice in violation of
3 section 45(a)(1) of this title[.]” 15 U.S.C. § 57a(d)(3).

4 37. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section
5 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended,
6 and as implemented by 16 C.F.R. § 1.98(d) (1997), authorizes this Court to award monetary civil
7 penalties of not more than \$11,000 for each violation of CAN-SPAM, including those sections of
8 the CAN-SPAM Act that are interpreted by the Adult Labeling Rule. Defendant’s violations of
9 CAN-SPAM and the Adult Labeling Rule were committed with the knowledge required by
10 Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

11 38. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
12 injunctive and other ancillary relief to prevent and remedy any violation of any provision of law
13 enforced by the FTC.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff requests that this Court, as authorized by Sections 5(a),
16 5(m)(1)(A), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b) and 57b, and
17 pursuant to its own equitable powers:

18 1. Enter judgment against Defendant and in favor of Plaintiff for each violation
19 alleged in this Complaint;

20 2. Award Plaintiff monetary civil penalties from Defendant for every violation of
21 the CAN-SPAM Act, including those sections of the CAN-SPAM Act that are interpreted by the
22 Adult Labeling Rule;

23 3. Permanently enjoin Defendant from violating CAN-SPAM and the Adult
24 Labeling Rule;

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- 1 4. Order Defendant to pay the costs of this action; and
2 5. Award Plaintiff such other preliminary and permanent equitable relief as the
3 Court may determine to be just and proper.

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5 Dated: _____, 2005

Respectfully submitted,

6 OF COUNSEL:

FOR THE UNITED STATES OF AMERICA
PETER D. KEISLER, JR.
Assistant Attorney General
Civil Division
U.S. DEPARTMENT OF JUSTICE

7 EILEEN HARRINGTON
Associate Director for Marketing Practices
8 FEDERAL TRADE COMMISSION

DANIEL G. BOGDEN
United States Attorney

9 Russell Deitch
Attorney
10 Federal Trade Commission
600 Pennsylvania Ave., N.W., Rm. 238
11 Washington, DC 20580
PHONE: 202-326-2585
12 FAX: 202-326-3395

[Name]
Assistant U.S. Attorney for the
District of Nevada
[Address]
[Phone]
[Fax]

EUGENE M. THIROLF
Director
Office of Consumer Litigation

13
14
15
16
17
18 _____
[Name]
Trial Attorney
Office of Consumer Litigation
U.S. Department of Justice
P.O. Box 386
Washington, D.C. 20044
PHONE: 202-[#####] _____
FAX: 202-[#####]
[email]@usdoj.gov