

FILED RECEIVED  
ENTERED SERVED ON  
COUNCIL/PARTIES OF RECORD

2005 JAN -3 P 3:13

U.S. DISTRICT COURT  
DISTRICT OF NEVADA

BY \_\_\_\_\_ DEPUTY

1 LAWRENCE HODAPP  
STEPHEN L. COHEN  
2 Federal Trade Commission  
600 Pennsylvania Avenue, NW H-238  
3 Washington, DC 20580  
(202) 326-3105; 326-3222; 326-3395(fax)

4 BLAINE T. WELSH  
5 Assistant United States Attorney  
Bar No. 4790  
6 333 Las Vegas Blvd, South, Suite 5000  
Las Vegas, NV 89101  
7 Phone (702)388-6336/fax(702)388-6787  
8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

10 **Federal Trade Commission,**  
11 Plaintiff,  
12  
13 v.  
14 **Global Net Solutions, Inc.,** a Nevada corporation;  
15 **Global Net Ventures, Ltd.,** a United Kingdom company;  
16 **Wedlake, Ltd.,** a corporation;  
17 **Open Space Enterprises, Inc.,** a Nevada corporation;  
18 **Southlake Group, Inc.,** a Nevada corporation;  
19 **WTFRC, Inc.,** a Nevada corporation doing business as  
20 **Reflected Networks, Inc.;**  
21 **Dustin Hamilton,** individually and as an officer or director  
22 of **Global Net Solutions, Inc., Global Net Ventures, Ltd.,**  
and **WTFRC, Inc.;**  
23 **Tobin Banks,** individually and as director of **Open Space**  
24 **Enterprises, Inc.;**  
25 **Gregory Hamilton,** individually and as an officer and  
26 director of **Southlake Group, Inc.;**  
27 **Philip Doroff,** individually and as an officer of **Reflected**  
**Networks, Inc.,** now renamed **WFTRC, Inc.;** and  
28 **Paul Rose,** individually;  
Defendants.

CV-S-05-0002-PMP-LRL

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

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



1 **DEFENDANTS**

2 5. Defendant Global Net Solutions, Inc. ("GNS") is a Nevada corporation with its  
3 registered office located at 3960 Howard Hughes Parkway, Fifth Floor, Las Vegas, NV 89109.  
4 Since January 1, 2004, GNS has formulated, directed, controlled, or participated in the acts or  
5 practices set forth in this complaint. GNS resides in the District of Nevada and transacts business  
6 within the District of Nevada and throughout the United States.

7 6. Defendant Global Net Ventures, Ltd. ("GNV") is a United Kingdom company with its  
8 registered office located at Almeda House, 90-100 Sydney Street, London SW3 6NJ England.  
9 Since January 1, 2004, GNV has formulated, directed, controlled, or participated in the acts or  
10 practices set forth in this complaint. GNV transacts business within the District of Nevada and  
11 throughout the United States.

12 7. Defendant Wedlake, Ltd. ("Wedlake") purports to be a limited liability company  
13 allegedly located in Riga, Latvia. Since January 1, 2004, Wedlake has formulated, directed,  
14 controlled, or participated in the acts or practices set forth in this complaint. Wedlake transacts  
15 business within the District of Nevada and throughout the United States.

16 8. Defendant Open Space Enterprises, Inc. ("Open Space") is a Nevada corporation with its  
17 registered office located at 7311 S. Eastern Avenue, #281, Las Vegas, NV 89119. Since June 24,  
18 2004, Open Space has formulated, directed, controlled, or participated in the acts or practices set  
19 forth in this complaint. Open Space resides in the District of Nevada and transacts business within  
20 the District of Nevada and throughout the United States.

21 9. Defendant Southlake Group, Inc. ("Southlake") is a Nevada corporation with its  
22 registered office at 6330 South Pecos Road, Suite 100, Las Vegas, NV 89120. Since January 1,  
23 2004, Southlake has formulated, directed, controlled, or participated in the acts or practices set  
24 forth in this complaint. Southlake resides in the District of Nevada and transacts business within  
25 the District of Nevada and throughout the United States.

26 10. Defendant WTFRC, Inc., doing business as Reflected Networks, Inc. ("Reflected  
27 Networks"), is a Nevada corporation with its registered office located at 3960 Howard Hughes  
28 Parkway, Fifth Floor, Las Vegas, NV 89109, and a business address of 6363 South Pecos Road,

1 Las Vegas, NV 89120. On November 12, 2004, the corporation Reflected Networks, Inc. changed  
2 its name to WFTRC, Inc. Since January 1, 2004, Reflected Networks has formulated, directed,  
3 controlled, or participated in the acts or practices set forth in this complaint. Reflected Networks  
4 resides in the District of Nevada and transacts business within the District of Nevada and  
5 throughout the United States.

6 11. Defendant Dustin Hamilton ("D. Hamilton") is an officer of GNS, a director of GNV,  
7 and an officer of Reflected Networks. He also uses the name "Donnie Gangsta" and the email  
8 address "donnie@signup4cash.com." Since January 1, 2004, he has formulated, directed,  
9 controlled, or participated in the acts or practices set forth in this complaint. He resides in the  
10 District of Nevada and transacts business within the District of Nevada and throughout the United  
11 States.

12 12. Defendant Tobin Banks ("Banks") is a director of Open Space. Since January 1, 2004,  
13 he has formulated, directed, controlled, or participated in the acts or practices set forth in this  
14 complaint. He resides in the District of Nevada and transacts business within the District of  
15 Nevada and throughout the United States.

16 13. Defendant Gregory Hamilton ("G. Hamilton") is an officer and director of Southlake.  
17 Since January 1, 2004, G. Hamilton has formulated, directed, controlled, or participated in the acts  
18 or practices set forth in this complaint. G. Hamilton resides in Tennessee and transacts business  
19 within the District of Nevada and throughout the United States.

20 14. Defendant Philip Doroff ("Doroff") was an officer of Reflected Networks, Inc., now  
21 renamed WTFRC, Inc., during 2004. Since January 1, 2004, he has formulated, directed,  
22 controlled, or participated in the acts or practices set forth in this complaint. He resides in  
23 Minnesota and transacts business within the District of Nevada and throughout the United States.

24 15. Defendant Paul Rose ("Rose") is an individual residing in Arizona. He also uses the  
25 name "john baker" and the email address "idbud@epimp.com." Since January 1, 2004, he has  
26 formulated, directed, controlled, or participated in the acts or practices set forth in this complaint.  
27 Rose transacts business within the District of Nevada and throughout the United States.

28

1 COMMON ENTERPRISE

2 16. Defendants GNS, GNV, Wedlake, Open Space, Reflected Networks, Southlake, D.  
3 Hamilton, Banks, Doroff, G. Hamilton, and other persons not named herein have operated and  
4 functioned as a single business enterprise in commission of the violations of the FTC Act, the  
5 CAN-SPAM Act, and the Adult Labeling Rule described below. They are referred to jointly in this  
6 Complaint as the "GNS Defendants."

7 17. Because each of the GNS Defendants functioned as a single business enterprise with  
8 the other Defendants in the commission of the law violations alleged above, they have each  
9 violated the CAN-SPAM Act, 15 U.S.C. §§ 7701 *et seq.*, the Adult Labeling Rule, 16 C.F.R.  
10 § 316.1(a)(1), and the FTC Act, 15 U.S.C. § 45(a).

11  
12 COMMERCE

13 18. At all times relevant to this complaint, Defendants have maintained a substantial course  
14 of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15  
15 U.S.C. § 44.

16 DEFINITIONS

17 19. "**Electronic mail message**" (or "**email**") means a message sent to a unique electronic  
18 mail address. 15 U.S.C. § 7702(6).

19 20. "**Electronic mail address**" means a destination, commonly expressed as a string of  
20 characters, consisting of a unique user name or mailbox (commonly referred to as the "local part")  
21 and a reference to an Internet domain (commonly referred to as the "domain part"), whether or not  
22 displayed, to which an electronic mail message can be sent or delivered. 15 U.S.C. § 7702(5).

23 21. "**Commercial electronic mail message**" means any electronic mail message the  
24 primary purpose of which is the commercial advertisement or promotion of a commercial product  
25 or service (including the content on an Internet website operated for commercial purposes). 15  
26 U.S.C. § 7702(2).

27 22. "**Affirmative consent**" to receipt of a commercial email message means that:  
28

1 (A) the recipient expressly consented to receive the message, either in response to a  
2 clear and conspicuous request for such consent or at the recipient's own initiative, and  
3 (B) if the message is from a party other than the party to which the recipient  
4 communicated such consent, the recipient was given clear and conspicuous notice at  
5 the time the consent was communicated that the recipient's electronic mail address  
6 could be transferred to such other party for the purpose of initiating commercial  
7 electronic mail messages. 15 U.S.C. § 7702(1).

8 23. **"Header information"** means the source, destination, and routing information  
9 attached to an electronic mail message, including the originating domain name and originating  
10 electronic mail address, and any other information that appears in the line identifying, or purporting  
11 to identify, a person initiating the message. 15 U.S.C. § 7702(8).

12 24. **"Initiate,"** when used with respect to a commercial email message, means to originate  
13 or transmit such message or to procure the origination or transmission of such message. 15 U.S.C.  
14 § 7702(9).

15 25. **"Procure,"** when used with respect to the initiation of a commercial email message,  
16 means intentionally to pay or provide other consideration to, or induce, another person to initiate  
17 such a message on one's behalf. 15 U.S.C. § 7702(12).

18 26. **"Protected computer"** means a computer which is used in interstate or foreign  
19 commerce or communication, including a computer located outside the United States that is used in  
20 a manner that affects interstate or foreign commerce or communication of the United States. 15  
21 U.S.C. § 7702(13); 18 U.S.C. § 1030(e)(2)(B).

22 27. **"Sender"** means a person who initiates a commercial electronic mail message and  
23 whose product, service, or Internet website is advertised or promoted by the message.  
24 15 U.S.C. § 7702(16).

25 28. **"Sexually oriented material"** means any material that depicts sexually-explicit  
26 conduct as that term is defined in 18 U.S.C. § 2256, unless the depiction constitutes a small and  
27 insignificant part of the whole, the remainder of which is not primarily devoted to sexual matters.  
28

1 15 U.S.C. § 7704(d)(4). Sexually-explicit conduct is defined by 18 U.S.C. § 2256 to mean actual  
2 or simulated:

- 3 A. sexual intercourse, including genital-genital, oral-genital, anal-genital, or  
4 oral-anal, whether between persons of the same or opposite sex;
- 5 B. bestiality;
- 6 C. masturbation;
- 7 D. sadistic or masochistic abuse; or
- 8 E. lascivious exhibition of the genitals or pubic area of any person.

9  
10 **DEFENDANTS' BUSINESS PRACTICES**

11 29. Since January 1, 2004, and continuing to the present, Defendants have initiated the  
12 transmission of commercial email messages to protected computers. The primary purpose of these  
13 commercial email messages has been the commercial advertisement or promotion of Internet  
14 websites operated for a commercial purpose by the GNS Defendants.

15 30. Among the Internet websites operated for a commercial purpose by the GNS  
16 Defendants are at least a dozen content websites offering sexually oriented material. The GNS  
17 Defendants collect payment for viewing or access to this sexually oriented material through a  
18 payment site, which they also control: [onlinecharges.com](http://onlinecharges.com).

19 31. The GNS Defendants promote their websites through several methods, including an  
20 affiliate program offered on their website [signup4cash.com](http://signup4cash.com). The GNS Defendants' affiliate  
21 program offers payments to third parties who steer consumers to the GNS Defendants' paid-content  
22 websites, including the websites, [livewebfriends.com](http://livewebfriends.com) and [livenetfriends.com](http://livenetfriends.com). These third-party  
23 affiliates sometimes operate their own Internet websites that in turn link to the GNS Defendants'  
24 websites. The affiliates' websites most often are identified by hyperlinks in their email messages  
25 which also serve the purpose of identifying the affiliate deserving payment when a potential  
26 customer clicks through to Defendants' payment or content websites. Defendant Rose is an  
27 affiliate of the GNS Defendants, and his emails promoting the GNS Defendants' websites contain  
28 hyperlinks to websites registered by Rose, including [bjkandy.com](http://bjkandy.com), [jgjenny.com](http://jgjenny.com), [fritzwebcam.com](http://fritzwebcam.com),

1 heheamber.com, hijenny.com, jnpage.com livejen.com, loljen.com, lolkandy.com, pkjen.com,  
2 profilejen.com, rrrjen.com, seetheprofile.com, starjen.com, tiffhuh.com, vgjen.com, wowjen.com,  
3 wtfjen.com, and xowebcam.com.

4 32. Defendants are "initiators" with respect to an email message when they have  
5 either originated or transmitted a message themselves or have procured the origination or  
6 transmission of a message through payments or other consideration, or inducements, to their  
7 affiliates.

8 33. The GNS Defendants are "senders" with respect to an email message when they have  
9 initiated a message and it is the GNS Defendants' websites that are being advertised or promoted by  
10 such message.

11 34. In numerous instances, the GNS Defendants have barraged consumers with emails  
12 containing sexually-explicit content. Defendants have initiated commercial email messages that  
13 include sexually oriented material to consumers who did not give prior affirmative consent to  
14 receipt of the messages. In numerous instances, these email messages fail to include the mark  
15 "SEXUALLY-EXPLICIT:" in the subject line of the messages, fail to include the mark  
16 "SEXUALLY-EXPLICIT:" and all required notices in the initially-viewable content of the  
17 messages, or fail to exclude sexually oriented material from the initially-viewable content of the  
18 messages.

19 35. In numerous instances, to induce consumers to open and read their commercial emails,  
20 Defendants have initiated commercial email messages containing materially false or misleading  
21 header information. In many instances, the email contains an originating email address that was  
22 not assigned by the email service provider. In other instances, the originating email address either  
23 was obtained through false representations to the email service provider that the email address  
24 would not be used to disseminate commercial emails or was used without the authorization of the  
25 subscriber who obtained the email address from the email service provider.

26 36. In numerous instances, to induce consumers to open and read their commercial  
27 emails, Defendants have initiated commercial email messages that contain subject headers that  
28 misrepresent the content or subject matter of the message. These emails include subject headers



1 that falsely represent that the email is a message from an internet service provider or a personal  
2 acquaintance of the recipient.

3 37. In numerous instances, consumers have been unable to stop the unwanted receipt of  
4 Defendants' commercial email because Defendants have sent the email messages without an "opt-  
5 out" mechanism; *i.e.*, the commercial emails have failed to contain a clear and conspicuous notice  
6 of the recipient's opportunity to decline to receive further email messages from Defendants and a  
7 functioning return email address or other Internet-based mechanism to accomplish such  
8 declination.

9 38. In numerous instances, Defendants have initiated commercial email messages to  
10 consumers who did not give prior affirmative consent to receipt of such messages and in those  
11 instances, failed to clearly and conspicuously identify the messages as advertisements or  
12 solicitations. Rather, Defendants routinely disguise their commercial emails by representing that  
13 their services are free.

14 39. In numerous instances, Defendants have initiated commercial email messages that  
15 failed to include a valid physical postal address of the sender.

16  
17 **VIOLATIONS OF THE ADULT LABELING RULE AND CAN-SPAM IN THE**  
18 **TRANSMISSION OF EMAIL THAT CONTAINS SEXUALLY ORIENTED MATERIAL**

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

23 41. The CAN-SPAM Act and the Adult Labeling Rule both prohibit any person from  
24 initiating the transmission, to a protected computer, of any commercial email message that includes  
25 sexually oriented material and fails to include the phrase "SEXUALLY-EXPLICIT:" as the first  
26 nineteen (19) characters at the beginning of the subject line. 15 U.S.C. § 7704(d)(1)(A); 16 C.F.R.  
27 § 316.1(a)(1).

28

1 42. 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 the  
3 message that is initially viewable by the recipient, when the message is opened by the recipient and  
4 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. § 316.1(a)(2)(i);
- 7 B. clear and conspicuous notice that the message is an advertisement or  
8 solicitation, 15 U.S.C. § 7704(d)(1)(B)(ii); 16 C.F.R. § 316.1(a)(2)(ii);
- 9 C. clear and conspicuous notice of the opportunity of a recipient to decline  
10 to receive further commercial email messages from the sender,  
11 15 U.S.C. § 7704(d)(1)(B)(ii); 16 C.F.R. § 316.1(a)(2)(iii);
- 12 D. a functioning return email address or other Internet-based mechanism,  
13 clearly and conspicuously displayed, that a recipient may use to submit,  
14 in a manner specified in the message, a reply email message or other  
15 form of Internet-based communication requesting not to receive future  
16 commercial email messages from that sender at the email address where  
17 the message was received; and that remains capable of receiving such  
18 messages or communications for no less than 30 days after the  
19 transmission of the original message, 15 U.S.C. § 7704(d)(1)(B)(ii); 16  
20 C.F.R. § 316.1(a)(2)(iv);
- 21 E. clear and conspicuous display of a valid physical postal address of the  
22 sender, 15 U.S.C. § 7704(d)(1)(B)(ii); 16 C.F.R. § 316.1(a)(2)(v); and
- 23 F. any needed instructions on how to access, or activate a mechanism to  
24 access, the sexually oriented material, preceded by a clear and  
25 conspicuous statement that to avoid viewing the sexually oriented  
26 material, a recipient should delete the email message without following  
27 such instructions, 15 U.S.C. § 7704(d)(1)(B)(iii); 16 C.F.R.  
28 § 316.1(a)(2)(vi).

1 43. The labeling and placement requirements of the CAN-SPAM Act and the Adult  
2 Labeling Rule do not apply if the recipient has given prior affirmative consent to receipt of the  
3 message. 15 U.S.C. § 7704(d)(2); 16 C.F.R. § 316.1(b).

4 44. Pursuant to Section 7711(a) of the CAN-SPAM Act, which allows the Commission to  
5 issue regulations to “implement the provisions of [CAN-SPAM],” and Section 7706(a), which  
6 provides that “[CAN-SPAM] shall be enforced by the [FTC] as if the violation of this Act were an  
7 unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the [FTC Act] (15  
8 U.S.C. 57a(a)(1)(B)),” violations of the Adult Labeling Rule and Section 7704(d) of CAN-SPAM  
9 shall be enforced as if the violation were an unfair or deceptive act or practice proscribed under  
10 Section 18(a)(1)(B) of the FTC Act.

11  
12 **COUNT I**

13 45. In numerous instances, the GNS Defendants have initiated the transmission, to  
14 protected computers, of commercial email messages that include sexually oriented material and  
15 that:

- 16 A. fail to include the phrase “SEXUALLY-EXPLICIT: ” as the first  
17 nineteen (19) characters at the beginning of the subject line;
- 18 B. fail to include, within the initially viewable content of the message, a  
19 second instance of the phrase “SEXUALLY-EXPLICIT: ”;
- 20 C. fail to include, within the initially viewable content of the message, clear  
21 and conspicuous notice of the opportunity of a recipient to decline to  
22 receive further commercial email messages from the GNS Defendants, or  
23 a functioning Internet-based mechanism that remains capable of  
24 receiving such requests for thirty (30) days;
- 25 D. fail to include, within the initially viewable content of the message, clear  
26 and conspicuous display of a valid physical postal address of the GNS  
27 Defendants; or  
28

1 E. include sexually oriented material within the the subject line and/or the  
2 initially viewable content of the message.

3 46. In numerous instances, recipients of commercial email messages initiated by the GNS  
4 Defendants that include sexually oriented material have not given prior affirmative consent to  
5 receipt of such messages. In many cases, the messages say that they are from a party identified as a  
6 nonexistent electronic mail addresses, nonsense strings of characters, or random strings of names.  
7 Few, if any, recipients ever gave consent to receipt of messages from such parties or were given  
8 clear and conspicuous notice that any consent they gave to a different party could be transferred to  
9 the party identified as the source of the messages.

10 47. Therefore, the GNS Defendants' acts or practices violate Section 5(d) of the CAN-  
11 SPAM Act, 15 U.S.C. § 7704(d), and the Adult Labeling Rule, 16 C.F.R. § 316.1(a)(1).

12  
13 **VIOLATIONS OF THE CAN-SPAM ACT**

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

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

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

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

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

51. 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

1 such person has actual knowledge, or knowledge fairly implied  
2 on the basis of objective circumstances, that a subject heading of  
3 the message would be likely to mislead a recipient, acting  
4 reasonably under the circumstances, about a material fact  
5 regarding the content or subject matter of the message (consistent  
6 with the criteria used in enforcement of section 5 of the Federal  
7 Trade Commission Act (15 U.S.C. 45)).

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

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

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

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

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

25 54. Sections 5(a)(5)(A) and (B) of the CAN-SPAM Act, 15 U.S.C. §§ 7704(a)(5)(A) and  
26 (B), state:

27 (A) It is unlawful for any person to initiate the transmission of any  
28 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  
paragraph (3) to decline to receive further commercial  
electronic mail messages from the sender; and

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

(B) Subpart (A)(i) does not apply to the transmission of a  
commercial electronic mail message if the recipient has  
given prior affirmative consent to receipt of the  
message.

1 55. Section 3(13) of the CAN-SPAM Act, 15 U.S.C. § 7702(13), defines “protected  
2 computer” by reference to 18 U.S.C. § 1030(e)(2)(B), which states that a protected computer is:  
3 a computer which is used in interstate or foreign commerce or  
4 communication, including a computer located outside the United  
5 States that is used in a manner that affects interstate or foreign  
6 commerce or communication of the United States.

6 56. Section 3(16) of the CAN-SPAM Act, 15 U.S.C. § 7702(16), defines “sender,” when  
7 used with respect to a commercial electronic mail message, as:  
8 a person who initiates such a message and whose product,  
9 service, or Internet website is advertised or promoted by the  
10 message.

10 57. Section 7(a) of the CAN-SPAM Act states:  
11 [T]his Act shall be enforced by the [FTC] as if the violation of  
12 this Act were an unfair or deceptive act or practice proscribed  
13 under section 18(a)(1)(B) of the [FTC Act] (15 U.S.C.  
14 57a(a)(1)(B)).

## 14 COUNT II

15 58. In numerous instances, Defendants have initiated the transmission, to protected  
16 computers, of commercial email messages that contained, or were accompanied by, materially  
17 misleading header information, including but not limited to messages that included an originating  
18 electronic mail address, domain name, or Internet Protocol address the access to which for  
19 purposes of initiating the message was obtained by means of false or fraudulent pretenses or  
20 representations;

21 59. Therefore, Defendants’ acts or practices violate Section 5(a)(1) of CAN-SPAM,  
22 15 U.S.C. § 7704(a)(1).

## 24 COUNT III

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



1 that any consent they gave to a different party could be transferred to the party identified as the  
2 source of the messages set forth in paragraph 64.

3 66. Therefore, Defendants' acts or practices violate Section 5(a)(5)(A)(i) of the CAN-  
4 SPAM Act, 15 U.S.C. § 7704(a)(5)(A)(i).

5  
6 **COUNT VI**

7 67. In numerous instances, Defendants have initiated the transmission, to protected  
8 computers, of commercial email messages that advertised or promoted Defendants' Internet  
9 websites and failed to include Defendants' valid physical postal address.

10 68. Therefore, Defendants' acts or practices violate Section 5(a)(5)(A)(iii) of the CAN-  
11 SPAM Act, 15 U.S.C. § 7704(a)(5)(A)(iii).

12  
13 **VIOLATION OF THE FTC ACT**

14 69. As set forth below, Defendants, individually and in concert with others, have violated  
15 Section 5(a) of the FTC Act in connection with the marketing, promotion, offer, and sale of  
16 memberships in sexually-explicit Internet websites.

17  
18 **COUNT VII**

19 70. In numerous instances, Defendants have represented, expressly or by implication, that  
20 Defendants will not charge consumers for memberships in their sexually-explicit Internet websites.

21 71. In truth and in fact, in numerous instances, Defendants charge consumers for  
22 memberships in their sexually-explicit Internet websites.

23 72. Therefore, Defendants' representation, as alleged in paragraph 70, is false and  
24 deceptive, and violates Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

25  
26 **INDIVIDUAL AND BUSINESS INJURY**

27 73. Individuals and businesses throughout the United States have suffered, and continue to  
28 suffer, substantial injury as a result of Defendants' unlawful acts or practices. In addition,



1 Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive  
2 relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment,  
3 and harm the public interest.  
4

5 **THIS COURT'S POWER TO GRANT RELIEF**

6 74. Sections 13(b) and 19(b) of the FTC Act, 15 U.S.C. §§ 53(b) and 57b(b), empowers  
7 this Court to grant injunctive and other relief to prevent and remedy Defendants' violations of the  
8 FTC Act, and in the exercise of its equitable jurisdiction, to award redress to remedy the injury to  
9 individuals and businesses, to order the disgorgement of monies resulting from Defendants'  
10 unlawful acts or practices, and to order other ancillary equitable relief. A violation of CAN-SPAM  
11 and the Adult Labeling Rule may be remedied in the same manner as a violation of the FTC Act.  
12 15 U.S.C. § 7706.  
13

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C.  
16 §§ 53(b) and 57b, Section 7(a) of CAN-SPAM, 15 U.S.C. § 7706(a), and the Court's own equitable  
17 powers, requests that the Court:

18 1. Enter an order enjoining Defendants preliminarily and permanently from violating  
19 Section 5 of the FTC Act, the CAN-SPAM Act, and the Adult Labeling Rule, and freezing  
20 Defendants' assets;

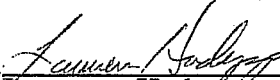
21 2. Award Plaintiff such relief as the Court finds necessary to redress injury to any  
22 person and remove the benefits to Defendants resulting from Defendants' violations of the FTC  
23 Act, the CAN-SPAM Act, and the Adult Labeling Rule, including, but not limited to, rescission of  
24 contracts, restitution, redress, disgorgement of ill-gotten gains, and the refund of monies paid; and  
25  
26  
27  
28

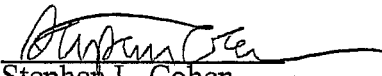
1           3.           Award Plaintiff the costs of bringing this action, as well as such other and  
2 additional relief as the Court may deem just and proper.

3  
4           Dated: January 3, 2005

Respectfully submitted,

5           JOHN D. GRAUBERT  
6           Acting General Counsel

7             
8           Lawrence Hodapp

9             
10          Stephen L. Cohen  
11          Attorneys for Plaintiff  
12          Federal Trade Commission