

Stephen Gurwitz (SG 7874)
Douglas V. Wolfe (DW 0043)
Eric A. Wenger (EW 5223)
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
(202) 326-3113

AUG 23 2000

Eliot Spitzer
Attorney General of the State of New York
Stephen Kline (SK 3395)
Internet Bureau
120 Broadway, 3rd Floor
New York, NY 10271
(212) 416-8433

Nicholas J. Franczyk (NF 7437)
John C. Hallerud (JH 7073)
Steven M. Wernikoff (SW 4945)
55 East Monroe, Suite 1860
Chicago, IL 60603
(312) 960-5634

Attorneys for Plaintiff
State of New York

COPIES 63 15

Attorneys for Plaintiff
Federal Trade Commission

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JUDGE KAPLAN

FEDERAL TRADE COMMISSION and
THE PEOPLE OF THE STATE OF NEW YORK,
Plaintiffs,

v.

THE CRESCENT PUBLISHING GROUP, INC.,
a New York corporation,

ARACHNE, INC., BACK BREAK, INC., BASE STEALER,
INC., BIRD N BEE, INC., BIRD OF PARADISE, INC.,
BLACK CROW, INC., BLAST HIGH, INC., BY COASTAL,
INC., CASEY BABY, INC., CHERI, INC., CRACK BACK,
INC., DAEDALUS, INC., DAPHNE, INC., DORIC, INC.,
FRAU, INC., GOLDFINCH, INC., GREEN PARROT, INC.,
GREY DOVE, INC., GRISSETTE, INC., HADES, INC., HOOT
OWL, INC., ICSE, INC., KICK OVER, INC., KICK TURN,
INC., KISHKUS, INC., KLEPT, INC., KNOCK KNEE, INC.,
LACKADAISICAL, INC., LEFT FIELDER, INC., LEMON
ZING, INC., LSTHYA, INC., MARIUS, INC., MAXMANN,

Civil Action No.

**COMPLAINT
FOR INJUNCTIVE AND
OTHER EQUITABLE
RELIEF**

INC., MENELAUS, INC., MUCK-A-MUCK, INC.,)
 MULTILINE MEDIA, INC., MULTIMEDIA FORUM, INC.,)
 MULTIPLE FACTOR, INC., NERVE WRACKING, INC.,)
 NETTV, INC., OFF YEAR, INC., ONLINE FORUM, INC.,)
 PALANTINE, INC., PERSEPHONE, INC., PGTV 1, INC.,)
 PGTV 2, INC., PHOCAS, INC., PINK FLAMINGO, INC.,)
 PLINY, INC., RIGHT FIELDER, INC., ROMULUS, INC.,)
 SCARECROW, INC., SENORA, INC., SISYPHUS, INC.,)
 SPECKLED SPARROW, INC., SPLIT BACK, INC., SPRUCE,)
 INC., STRAY BACK, INC., TRAJAN, INC., TXA, INC.,)
 VESPASIAN, INC., VESTALS, INC., WACKY BACK, INC.,)
 and WHITE CEDAR, INC.,)
 New York corporations,)
)
 BRUCE A. CHEW,)
 individually and as an officer of defendant corporations, and)
)
 DAVID BERNSTEIN,)
 individually and as an officer of defendant corporations,)
 Defendants.)
)
 _____)

Plaintiffs, the Federal Trade Commission ("FTC"), and the People of the State of New York, by their attorney Eliot Spitzer, Attorney General of the State of New York, for their complaint allege upon information and belief as follows:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure injunctive and other equitable relief, including appointment of a receiver, rescission of contracts, restitution, and disgorgement for defendants' deceptive and unfair acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in connection with the marketing and sale of adult entertainment programs via the Internet.

2. The People of the State of New York bring this action by their chief legal officer, the Attorney General of the State of New York, Eliot Spitzer. The Attorney General of the State of New York brings this action pursuant to his *parens patriae* authority and pursuant to New York's Executive Law (NY Executive Law) § 63(12) and General Business Law (NY GBL) Article 22-A, to secure injunctive relief, restitution, penalties, and costs for defendants' repeated and persistent fraudulent and illegal conduct.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 15 U.S.C. §§ 45(a) and 53(b), and 28 U.S.C. §§ 1331, 1337(a) and 1345. This Court has supplemental jurisdiction over the New York state law claims pursuant to 28 U.S.C. § 1367.

4. Venue in the United States District Court for the Southern District of New York is proper under 15 U.S.C. § 53(b), and 28 U.S.C. §§ 1391(b) and (c).

PLAINTIFFS

5. Plaintiff FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC is charged, *inter alia*, with enforcement of 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 is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers. 15 U.S.C. §§ 53(b).

6. Plaintiff Attorney General of the State of New York has *parens patriae* authority to bring this action to protect the citizens of New York State from harm resulting from the fraudulent and illegal business practices of the defendants and to safeguard the honesty and

integrity of New York's marketplace. Additionally, the Attorney General of the State of New York has authority under: (a) NY Executive Law §63(12) which authorizes the Attorney General of the State of New York to seek injunctive relief, restitution, damages, and costs against any person or business entity which has engaged in repeated fraudulent or illegal acts or otherwise engaged in persistent fraud or illegality in the conduct of business; and (b) NY GBL Article 22-A which authorizes the Attorney General of the State of New York to seek injunctive relief, restitution, and penalties when any person or business has engaged in deceptive business practices.

COMMERCE

7. At all times material to this Complaint, defendants have been engaged in the business of offering for sale and selling adult entertainment programs via the Internet, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFINITIONS

8. "World Wide Web" or "Web" means a system used on the Internet for cross-referencing and retrieving information. A "Web site" is a set of electronic documents, usually a home page and subordinate pages, readily viewable on a computer by anyone with access to the Web, standard software, and knowledge of the Web site's location or address.

9. "Internet" means a worldwide system of linked computer networks that use a common protocol (TCP/IP) to deliver and receive information. The "Internet" includes, but is not limited to, the following forms of electronic communication: electronic mail, the World Wide Web, newsgroups, Internet Relay Chat, and file transfer protocols.

DEFENDANTS

10. Defendants are sixty-five (65) affiliated New York corporations under common ownership and their two principal officers (“Defendants”). Defendants operate or have operated numerous adult entertainment Web sites that offer substantially similar “free” tours or previews of the adult materials available at the respective sites (“Free Tour Web Sites”). From 1997 through October 1999, Defendants’ Free Tour Web Sites have generated gross sales of approximately \$188 million worldwide, including \$141 million during the first ten months of 1999 alone. Each and every defendant transacts or has transacted business in the Southern District of New York.

11. Defendant The Crescent Publishing Group, Inc. (“Crescent”) is the successor company to Drake Publishers, Inc. (“Drake”). Drake was incorporated in 1968 and merged into Crescent in February 1993. Crescent is in the publishing business and publishes, among other things, *High Society Magazine*. Crescent is a New York corporation with its principal place of business located at 801 Second Avenue, New York, New York 10017.

12. Defendant Multimedia Forum, Inc. (“Multimedia”), formerly known as Swimsuit International, Inc., is affiliated with Crescent. Multimedia is a New York corporation with its principal place of business also located at 801 Second Avenue, New York, New York 10017.

13. In March 1995, Crescent began registering Web site domain names. In April 1996, Multimedia also began registering Web site domain names. In August 1996, Defendants began operating Web sites previously registered by Crescent and Multimedia, beginning with the Web site, www.playgirl.com.

14. The following defendants presently own or have owned Free Tour Web Sites registered by Crescent or Multimedia: Arachne, Inc., Back Break, Inc., Base Stealer, Inc., Bird N Bee, Inc., Bird of Paradise, Inc., Black Crow, Inc., Blast High, Inc., By Coastal, Inc., Casey Baby, Inc., Cheri, Inc., Crack Back, Inc., Daedalus, Inc., Daphne, Inc., Doric, Inc., Frau, Inc., Goldfinch, Inc., Green Parrot, Inc., Grey Dove, Inc., Grisette, Inc., Hades, Inc., Hoot Owl, Inc., Kick Over, Inc., Kick Turn, Inc., Kishkus, Inc., Klept, Inc., Knock Knee, Inc., Lackadaisical, Inc., Left Fielder, Inc., Lemon Zing, Inc., Lsthya, Inc., Marius, Inc., Maxmann, Inc., Menelaus, Inc., Muck-a-Muck, Inc., Multiline Media, Inc., Multimedia., Multiple Factor, Inc., Nerve Wracking, Inc., NetTV, Inc., Off Year, Inc., Online Forum, Inc., Palantine, Inc., Persephone, Inc., PGTV 1, Inc., PGTV 2, Inc., Phocas, Inc., Pink Flamingo, Inc., Pliny, Inc., Right Fielder, Inc., Romulus, Inc., Scarecrow, Inc., Senora, Inc., Sisyphus, Inc., Speckled Sparrow, Inc., Split Back, Inc., Spruce, Inc., Stray Back, Inc., Trajan, Inc., TXA, Inc., Vespasian, Inc., Vestals, Inc., Wacky Back, Inc., and White Cedar, Inc. These defendants (the "Web Site Owners") are all New York corporations and have their principal places of business located at 801 Second Avenue, New York, New York 10017.

15. Defendant ICSE, Inc. ("ICSE") is a New York corporation affiliated with Crescent. ICSE provides customer service inquiries for the Web Site Owners. ICSE's principal place of business is located at 801 Second Avenue, New York, New York 10017.

16. Crescent provides administrative services to the corporate defendants listed in ¶¶ 12, 14, and 15 including, but not limited to, payroll services, use of office space and office services and accounting services. Crescent also has, at times, assigned rights to selected materials to one or more of the Web Site Owners for use on their Free Tour Web Sites.

17. Defendant Bruce A. Chew (“Chew”) is the president, sole owner, and sole director of each of the corporate defendants listed in ¶¶ 11, 12, 14, and 15. At all times material to this Complaint, acting alone or in concert with others, Chew has formulated, directed, controlled or participated in the acts and practices set forth in this Complaint.

18. Defendant David Bernstein (“Bernstein”) is the secretary and chief financial officer of the corporate defendants listed in ¶¶ 11, 12, 14, and 15 and has held himself out as secretary of several of the corporate defendants. At all times material to this complaint, acting alone or in concert with others, Bernstein has formulated, directed, controlled or participated in the acts and practices set forth in this Complaint.

19. The foregoing Defendants operate together as part of a common business enterprise.

DEFENDANTS' BUSINESS ACTIVITIES

20. Since at least August 1996, and continuing thereafter, Defendants have operated and promoted one or more Free Tour Web Sites, including, but not necessarily limited to, the Web sites located at “www.bi-curious.tv.com,” “www.cheri.com,” “www.climaxmag.com,” “www.cun-tv.com,” “www.highsociety.com,” “www.highsocietydeutsch.com,” “www.highsocietytv.com,” “www.hotyoung hunks.com,” “www.lusthighway.com,” “www.planetflesh.com,” “www.playgirl.com,” “www.playgirldeutsch.com,” “www.playgirltv.com,” “www.xxxposure.com,” and “www.ygal.com.”

21. Defendants Chew and Bernstein obtained numerous merchant bank accounts necessary to charge and process credit card payments for the Free Tour Web Sites. Defendants Chew and Bernstein routinely submitted merchant bank account applications on behalf of the

defendant Web Site Owners, and defendant Chew frequently provided a personal guaranty for such merchant bank accounts.

22. Defendants' Free Tour Web Sites represent that they offer adult images for viewing for "FREE."

23. Defendants' Free Tour Web Sites represent that consumers provide a credit card number and expiration date solely to prove they are of legal age to view adult images.

24. Defendants' Free Tour Web Sites represent that consumers' credit cards will not be billed.

25. In numerous instances, Defendants charge recurring monthly membership fees, of approximately \$20 to \$90, to consumers who believe that they have provided credit or debit card information solely for age verification purposes and that their credit cards would not be billed.

26. In numerous other instances, Defendants charge recurring monthly membership fees, of approximately \$20 to \$90, to consumers who never visited Defendants' Free Tour Web Sites.

27. Consumers experience difficulty contacting Defendants to dispute the monthly membership charge or to cancel their memberships because, among other things:

- A. Defendants frequently post charges on consumers' credit card statements using various billing names that are different from the names of Defendants' Free Tour Web Sites. For example, Defendants have posted charges for the Climax Web site (www.climaxmag.com) on consumers' credit card statements as "Online Forum, Inc.," "Hoot Owl, Inc.," "Hades, Inc.," and "Knock Knee, Inc.;"

- B. Defendants often bill consumers without providing a current telephone contact number on consumers' credit card statements;
- C. Defendants have on many occasions provided a current telephone contact number on consumers' credit card statements that connects consumers to a line that is busy or rings without answer when consumers call;
- D. Defendants often fail to reply to consumers' e-mail messages on those occasions when Defendants have provided e-mail contact information.

28. In numerous instances, consumers have canceled their credit or debit card accounts in order to stop future monthly charges from Defendants.

29. Defendants routinely change corporate billing names and merchant banks to avoid the fraud detection systems of credit card organizations such as Visa U.S.A., Inc.

30. In or about October 1999, Defendants began processing their credit transactions in Guatemala, thereby avoiding Visa USA, Inc. monitoring entirely.

31. Effective April 2000, Visa U.S.A., Inc., revoked the Defendants' Visa card acceptance privileges because of Defendants' high chargeback rates (*i.e.*, the rates at which transactions are charged back to a merchant), Defendants' repeated refusal to implement procedures to reduce those their high chargeback rates, and Defendants' attempts to avoid Visa U.S.A. Inc.'s fraud detection systems.

32. During the period January 1997 through October 1999, approximately 35% of Defendants' sales were returned to consumers as either chargebacks or credits.

//

//

VIOLATIONS OF SECTION 5 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. As set forth below, Defendants, individually or in concert with others, have violated Section 5(a) of the FTC Act in connection with the advertising, offering for sale, or selling of material on their Free Tour Web Sites.

COUNT I – MISREPRESENTATION

35. Defendants represent, expressly or by implication, that:

- A. they will not bill consumers who visit Defendants' Free Tour Web Sites; and/or
- B. they will use consumers' credit or debit card information solely for age verification purposes.

36. In truth and in fact, in numerous instances, Defendants:

- A. bill consumers who visit Defendants' Free Tour Web Sites; and/or
- B. use consumers' credit or debit card information for purposes other than age verification.

37. Therefore, Defendants' representations, as set forth in paragraph 34, above, are false and deceptive, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

COUNT II – FAILURE TO DISCLOSE

38. Defendants represent, expressly or by implication, that they will not bill consumers who visit Defendants' Free Tour Web Sites.

39. Defendants' Free Tour Web Sites have failed to disclose, clearly and conspicuously, material information, including, but not limited to:
- A. the conditions under which the free tour or preview ends;
 - B. the conditions under which Defendants will enroll consumers as paying members in Defendants' Free Tour Web Sites, subject to recurring monthly fees;
 - C. the conditions under which Defendants will treat consumers as having authorized Defendants to bill consumers' credit accounts;
 - D. the conditions under which Defendants will bill consumers' credit card accounts; and
 - E. the conditions under which, and mechanisms by which, consumers may cancel memberships.
40. In light of Defendants' representations that they will not bill consumers who visit Defendants' Free Tour Web Sites, Defendants' failure to disclose clearly and conspicuously material information, as set forth in paragraph 38 above, is deceptive, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

COUNT III – UNFAIR PRACTICES

41. In numerous instances, Defendants charge, debit or bill the accounts of consumers.
42. Often, consumers have not contacted, been contacted by, purchased from, agreed to purchase from, or agreed to be billed by Defendants.
43. Defendants' acts or practices of charging, debiting or billing consumers' accounts without authorization causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.

44. Therefore, Defendants' practice, as outlined in ¶¶ 40-42 above, is unfair and violates Sections 5(a) and 5(n) of the FTC Act, 15 U.S.C. §§ 45(a) and 45(n).

VIOLATIONS OF NEW YORK STATE LAW

COUNT IV – DECEPTIVE ACTS OR PRACTICES

45. Section 349 of NY GBL Article 22-A prohibits deceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any services in New York.

46. By engaging in the acts and practices alleged above, Defendants repeatedly and persistently engaged in deceptive business practices in violation of NY GBL § 349.

47. The Attorney General of the State of New York has found that service of pre-litigation notice upon the Defendants would not be in the public interest.

48. Defendants' violations of NY GBL § 349 constitute repeated and persistent illegal conduct in violation of NY Executive Law § 63(12).

COUNT V – FALSE ADVERTISING

49. Section 350 of NY GBL Article 22-A prohibits false advertising in the conduct of any business, trade, or commerce or in the furnishing of any services in New York.

50. By engaging in the acts and practices alleged above, Defendants repeatedly and persistently engaged in deceptive business practices in violation of NY GBL § 350.

51. The Attorney General of the State of New York has found that service of pre-litigation notice upon the Defendants would not be in the public interest.

52. Defendants' violations of NY GBL § 350 constitute repeated and persistent illegal conduct in violation of NY Executive Law § 63(12).

CONSUMER INJURY

53. Defendants' violations of Section 5(a) of the FTC Act, NY GBL Article 22-A, and NY Executive Law §63(12) have injured, and will continue to injure consumers. As a result of Defendants' unfair or deceptive acts or practices, consumers throughout the United States have suffered substantial monetary loss. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm public interest.

THIS COURT'S POWER TO GRANT RELIEF

54. Section 13(b) of the FTC Act, 15 U.S.C. §§ 53(b), and 28 U.S.C. § 1367, empower this Court to grant injunctive and other relief to prevent and remedy any violations of the FTC Act and NY GBL Article 22-A and NY Executive Law §63(12); and in the exercise of its equitable jurisdiction this Court may award redress to remedy the injury to consumers, order disgorgement of monies resulting from Defendants' unlawful acts or practices, and order other ancillary equitable relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and 28 U.S.C. § 1367, and pursuant to its own equitable powers:

1. Enjoin Defendants preliminarily and permanently from violating Section 5(a) of the FTC Act, NY GBL Article 22-A, and NY Executive Law § 63(12) in connection with the advertising, offering for sale, and selling of adult entertainment programs via the Internet;
2. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, NY GBL Article 22-A, and NY Executive

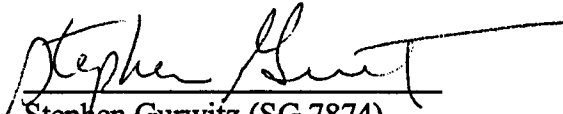
Law § 63(12), including, but not limited to, the refund of monies paid, and the disgorgement of ill-gotten gains; and

3. Award Plaintiffs 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,

Debra A. Valentine
General Counsel
Federal Trade Commission

Eliot Spitzer
Attorney General of the State of New York



Stephen Gurwitz (SG 7874)
Douglas V. Wolfe (DW 0043)
Eric A. Wenger (EW 5223)
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
(202) 326-3113
(202) 326-2310

Stephen L. Kline (SK 3395)
Internet Bureau
120 Broadway, 3rd Floor
New York, NY 10271
(212) 416-8433

Attorneys for Plaintiff
State of New York

Nicholas J. Franczyk (NF 7437)
John C. Hallerud (JH 7073)
Steven M. Wernikoff (SW 4945)
55 East Monroe, Suite 1860
Chicago, IL 60603
(312) 960-5634

Attorneys for Plaintiff
Federal Trade Commission

Dated: August 21, 2000

Law § 63(12), including, but not limited to, the refund of monies paid, and the disgorgement of ill-gotten gains; and

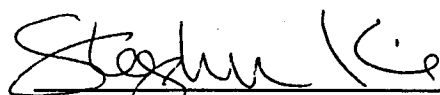
3. Award Plaintiffs the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

Debra A. Valentine
General Counsel
Federal Trade Commission

Eliot Spitzer
Attorney General of the State of New York

Stephen Gurwitz (SG 7874)
Douglas V. Wolfe (DW 0043)
Eric A. Wenger (EW 5223)
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
(202) 326-3113
(202) 326-2310



Stephen L. Kline (SK 3395)
Internet Bureau
120 Broadway, 3rd Floor
New York, NY 10271
(212) 416-8433

Attorneys for Plaintiff
State of New York

Nicholas J. Franczyk (NF 7437)
John C. Hallerud (JH 7073)
Steven M. Wernikoff (SW 4945)
55 East Monroe, Suite 1860
Chicago, IL 60603
(312) 960-5634

Attorneys for Plaintiff
Federal Trade Commission

Dated: August 21, 2000