

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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SEP 16 2003

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

BRIAN D. WESTBY, MARTIJN P.
BEVELANDER, MAPS HOLDING B.V.,
and PB PLANNING & SERVICES B.V.,

Defendants.

MICHAEL W. HOLDING
CLERK, U.S. DISTRICT COURT

Case No. 03 C 2540

Judge James B. Zagel

Magistrate Judge Arlander Key

AMENDED COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission ("FTC" or "the Commission"), for its Complaint alleges 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 temporary, preliminary, and permanent injunctive relief, restitution, rescission of contracts, disgorgement and other equitable relief for Defendant's deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. 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.
3. Venue in the United States District Court for the Northern District of Illinois is proper under 15 U.S.C. § 53(b), and 28 U.S.C. § 1391(b), (d).

PARTIES

4. 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).
5. At all times material to this Complaint, acting alone or in concert with others, Defendant Brian D. Westby (“Westby”) has formulated, directed, controlled or participated in the acts and practices set forth in this Complaint. Westby transacts or has transacted business in the Northern District of Illinois and throughout the United States.
6. Defendant Martijn P. Bevelander (“Bevelander”) is a Dutch citizen. Acting alone or in concert with others, Defendant Bevelander has formulated, directed, controlled or participated in the acts and practices set forth in this Complaint.
7. Maps Holding B.V. is a corporation organized under the laws of the Netherlands with its principal place of business at Gyroscopweg 2F, 1042 AB, Amsterdam NH, Netherlands.
8. PB Planning & Services B.V. is a corporation organized under the laws of the Netherlands with its principal place of business at Pascalstraat 17, 2014 KZ, Harlem NH, Netherlands.

COMMERCE

9. At all times material to this Complaint, Defendants have 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.

DEFINITIONS

10. “Spoofing” means the practice of disguising an e-mail to make the e-mail appear to come from an address from which it actually did not originate. Spoofing involves placing in the “From” or “Reply-to” lines in e-mails an e-mail address other than the actual sender’s address without the consent or authorization of the user of the e-mail address whose address is spoofed.

DEFENDANT’S BUSINESS ACTIVITIES

11. Since at least May 2002, Defendants, or agents acting on their behalf, have sent commercial bulk e-mail (“spam”) to consumers.
12. Defendants’ spam contains a “from” and “subject” line in the e-mail header (“header information”).
13. This header information appears in a consumer’s e-mail inbox upon receipt and purports to identify the sender and subject of the underlying message. The header information thus provides the basis for the consumer’s decision whether to open the e-mail.
14. To induce consumers to open the spam, Defendants have used subject lines that disguise the contents of the underlying message. For example, subject lines for Defendants’ spam have included: “Fwd: You may want to reboot your computer,” “Re: Please resend the email,”

“Re: your email address,” “I found your address,” “Fwd: Your software,” “Did you hear the news?” “What is wrong?” and “New movie info.”

15. In numerous instances, spam with the subject lines in Paragraph 14, and similar subject lines, are sexually explicit solicitations to visit Defendants’ adult-oriented Web sites. Sexually explicit images are immediately viewable upon opening the message.
16. Because of the deceptive subject line, consumers have no reason to expect to see such material. Some consumers may open these e-mails in their offices, in violation of company policies. In other cases, children may believe they are dealing with someone they know already, and be exposed to inappropriate adult-oriented materials upon opening the e-mail. In all cases, consumers suffer other injury including annoyance and lost time spent opening a message they might otherwise delete.
17. In numerous instances, Defendants’ spam contains removal representations, which state that consumers can click on a hyperlink or send a reply e-mail to a particular e-mail address if they wish to unsubscribe and stop receiving e-mail messages in the future. When consumers attempt to unsubscribe, they often receive an error message and/or are not unsubscribed.
18. Defendants also practice “spoofing” in their spam by using false “reply-to” or “from” information in these e-mails. The “reply-to” portion of the e-mail address information indicates the e-mail address to which an e-mail will be sent if the “reply” button is clicked. In numerous instances, Defendants, or an agent acting on their behalf, places or “spoofs,” the e-mail address of an unrelated third-party as the “reply-to” or “from” address in spam. Any replies sent by consumers, or any message stating that the e-mails are undeliverable, are then sent to the third-party listed in the “reply-to” portion of the spam. Third parties unrelated to

Defendants receive thousands of e-mail messages as a result of their e-mail addresses being placed in the “reply-to” portion of Defendants’ spam.

19. Innocent third parties whose e-mail addresses or domain names are spoofed may suffer injury and damage to their computer systems from the unexpected influx of e-mail messages to them. In addition, consumers often reply and complain about spam with “return” e-mails. As a result, third parties whose e-mail addresses or domain names are spoofed also often suffer injury to their reputations by having themselves wrongfully affiliated with the sending of bulk unsolicited e-mail.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

20. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce.
21. 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 services over the Internet.

COUNT I

22. In the course of advertising, offering for sale, and selling products or services through commercial bulk e-mail, in numerous instances, Defendants have represented, expressly or by implication, that the e-mail subject line relates to the contents of the underlying e-mail message.
23. In truth and in fact, in numerous instances, the e-mail subject line does not relate to the contents of the underlying e-mail message. Rather, in numerous instances, the contents of

the underlying e-mail message contain sexually explicit images or other material that is unrelated to the subject matter identified in the subject line.

24. Therefore, Defendants' representation, as set forth in Paragraph 22, is false and misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

25. Defendants or their agents engage in spoofing, as defined above in Paragraph 10. By engaging in spoofing, Defendants cause consumers' e-mail accounts to receive unwanted e-mail messages, without consumers' consent or authorization.
26. Defendants' practice set forth in Paragraph 25 causes or is likely to cause substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and that is not reasonably avoidable by consumers.
27. Defendants' practice as alleged in Paragraph 25 is an unfair practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

28. In numerous instances, Defendant Brian Westby, directly or indirectly, represent, expressly or by implication, that the e-mail addresses of spam recipients will, upon request, be removed from any list of addresses to which future such solicitations will be sent.
29. In truth and in fact, in numerous instances, the e-mail addresses of the spam recipients will not, upon request, be removed from any list of addresses to which future such solicitations will be sent.

30. Therefore, Defendant Brian Westby's representation, as set forth in Paragraph 28, is false and misleading and constitutes a deceptive act or practice in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

CONSUMER INJURY

31. Defendants' violations of Section 5(a) of the FTC Act have injured, and will continue to injure consumers throughout the United States. As a result of Defendants' unfair or deceptive acts or practices, consumers have suffered substantial consumer injury. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

32. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other relief to prevent and remedy Defendants' violations of the FTC Act, and in the exercise of its equitable jurisdiction, to award redress to remedy the injury to consumers, to order the disgorgement of monies resulting from Defendants' unlawful acts or practices, and to order other ancillary equitable relief.

PRAAYER FOR RELIEF

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

1. Enter an order enjoining Defendants preliminarily and permanently from violating Section 5(a) of the FTC Act;

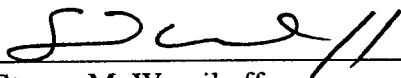
2. Award such relief as the Court finds necessary to redress the injury to consumers caused by Defendants' violations of the FTC Act, including, but not limited to, restitution, the refund of monies paid, and the disgorgement of ill-gotten gains; and

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

Dated:

Respectfully submitted,

William E. Kovacic
General Counsel



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