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8 Attorney for Plaintiff  
9 HYPERTOUCHE, INC.

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 Hypertouch, Inc., )  
13 ) Case No.  
14 Plaintiff, )  
15 vs. ) **COMPLAINT FOR DAMAGES AND**  
16 ) **INJUNCTIVE RELIEF – VIOLATION**  
17 ) **OF CAN-SPAM ACT OF 2003**  
18 ) **[15 U.S.C. §7701, et seq.]**  
19 BVWebTies, LLC, BlueStream Media, and )  
20 ) **DEMAND FOR JURY TRIAL**  
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18 Plaintiff Hypertouch, Inc. alleges as follows:

19 **JURISDICTION, VENUE, AND PARTIES**

- 20 1. This Court has original jurisdiction of the causes of action herein which are brought under the  
21 CAN-SPAM Act of 2003 – 15 U.S.C. §7701, et seq., 15 U.S.C. §7707(g)(1).  
22 2. The unlawful actions of the defendants were committed in the State of California and in the  
23 judicial district of this Court.  
24 3. Plaintiff Hypertouch, Inc. is a California corporation located in Foster City, California, and  
25 provides Internet access service within the meaning of 15 U.S.C. §7703(11).  
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1           10. Plaintiff further alleges that the defendants sent at least 41 separate items of electronic mail to  
2 the plaintiff includes a domain name, trackingclicks.com, which was registered to a false non-existent  
3 California Corporation “Clicks2Track Inc.” Exhibit 3 contains a copy of the domain registration of  
4 trackingclicks.com obtained by means of false representation. Said conduct was in violation of 15 U.S.C.  
5 §7705(a)(1).

6           11. Plaintiff further alleges that they received three (3) separate items of electronic mail from the  
7 defendants to three (3) separate email addresses that were submitted to mechanisms requesting not to receive  
8 future commercial electronic mail messages. Said conduct by the defendants violated 15 U.S.C.  
9 §7705(a)(4). Attached as Exhibit 4 is an example of one of the messages sent to an “opted-out” address.

10           12. Plaintiff further alleges that the defendants sent at least 14 separate items of electronic mail to  
11 the plaintiff that had no valid physical postal address of the sender. Said conduct was in violation of 15  
12 U.S.C. §7705(a)(5)(iii).

13           13. Plaintiff further alleges that the defendants sent at least one (1) separate item of electronic  
14 mail to the plaintiff to an address harvested from domain name contact registration information. Said  
15 conduct was in violation of 15 U.S.C. §7705(b)(1)(A)(i).

16           14. Plaintiff further alleges that the defendants sent at least 57 separate items of electronic mail to  
17 the plaintiff to addresses generated using automated means. Said conduct was in violation of 15 U.S.C.  
18 §7705(b)(1)(A)(ii).

19           15. As a proximate result of said unlawful conduct by said defendants, plaintiff is entitled to  
20 damages for the actual monetary loss incurred or statutory damages in the amount of up to \$100.00 in the  
21 case of violation of Section 5(a)(1) or up to \$25.00 in the case of each violation of the other subsections of  
22 Section 5 in the form of statutory damages as set forth in 15 U.S.C. §7707(g)(1) and (3)(A) .

23           16. Plaintiff furthermore seeks a preliminary and permanent injunction against the defendants for  
24 their current and future violations of the CAN-SPAM Act of 2003 as it and members of the general public  
25 will continue to incur damages as a result of the unlawful conduct of said defendants. The seeking of  
26 injunctive relief by the plaintiff is specifically authorized by 15 U.S.C. §7707(g)(1)(A).

27           17. Plaintiff furthermore seeks its attorney fees and costs against the defendants pursuant to  
28 15 U.S.C. §7707(g)(4).

1  
2 WHEREFORE, plaintiff prays judgment against the defendants and each of them as follows:

3 1. For actual monetary damages according to proof, or in the alternative, statutory damages for  
4 up to \$100.00 for each violation of said Section 7006(a)(1) and up to \$25.00 in the case of any other  
5 violation of said Section 7006;

6 2. For aggravated damages under 15 U.S.C. §7707(g)(3)(C) of up to three times the amount  
7 above for these violations committed by the defendants willfully and knowingly, and for defendants'  
8 unlawful activity which includes aggravated violations of section 7005(b);

9 3. For a preliminary and permanent injunction preventing the defendants and all person acting  
10 in concert with them from the violation of the Can-Spam Act of 2003;

11 4. For an award of reasonable attorneys' fees and costs according to proof;

12 5. For costs of suit; and

13 6. For such other and further relief as this Courts deems just and proper.  
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16 DATED:

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JOHN L. FALLAT  
Attorney for Plaintiff  
Hypertouch, Inc.  
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20 **DEMAND FOR JURY TRIAL**

21 Plaintiff Hypertouch, by and through its attorney hereby demands a jury trial in the above-  
22 entitled matter.  
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24 DATED:

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JOHN L. FALLAT  
Attorney for Plaintiff  
Hypertouch, Inc.  
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