

1 13. Plaintiff also alleges that the Defendants and/or their agents sent the electronic mail in willful
2 and knowing violation of the CAN-SPAM Act of 2003.

3 14. Many of the relevant electronic mails sent by the Defendants and/or their agents from January
4 1, 2004 forward contained or were accompanied by or were transmitted with header information that was
5 materially false or materially misleading. For example, the identities, provided by the Defendants and/or
6 their agents, of the machines delivering mail to Plaintiff's mail servers do not match the IP addresses of the
7 contacting machine. In Exhibit 1, the sender used a machine at IP address 204.9.23.161 but that machine
8 identified itself as "breedingcoverage.com" which the spammer's own DNS server confirmed resided at a
9 completely different IP address: 66.63.174.191. In addition, the Defendants and/or their agents attempt to
10 mislead the recipients of their messages by using different fictitious people's names in the "From:" lines of
11 the message headers. For example, on March 26, 2005 the Defendants and/or their agents sent 761
12 electronic messages purporting to be from 761 different people, with each message's "From:" line
13 containing a unique full first and last name. Said conduct was in violation of 15 U.S.C. § 7704(a)(1).

14 15. Plaintiff further alleges that the Defendants and/or their agents sent electronic mail to the
15 Plaintiff that included domain names which were registered to false, non-existent entities, used false
16 addresses and/or used false telephone numbers. For example, the domain name "perfection.com" was
17 registered to "Perl Fiction" with a registration address of "12785 Stage Coach Dr., Orlando, FL 31223";
18 attached as Exhibit 3 is a true and correct copy of the domain registration of perlfiction.com. Plaintiff
19 alleges the name and address listed on Exhibit 3 is false. Said conduct was in violation of 15 U.S.C.
20 § 7704(a)(1).

21 16. Plaintiff further alleges that the Defendants and/or their agents sent electronic mail to the
22 Plaintiff that had no valid physical postal address of the sender. Said conduct was in violation of 15 U.S.C.
23 § 7704(a)(5)(iii).

24 17. Plaintiff further alleges that the Defendants and/or their agents sent electronic mail to the
25 Plaintiff to an address harvested from domain name contact registration information. Said conduct was in
26 violation of 15 U.S.C. § 7704(b)(1)(A)(i).

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1 18. Plaintiff further alleges that the Defendants and/or their agents sent electronic mail to the
2 Plaintiff to addresses generated using automated means. Said conduct was in violation of 15 U.S.C.
3 § 7704(b)(1)(A)(ii).

4 19. Plaintiff further alleges that it received electronic mail from the Defendants and/or their agents
5 sent to a newly created email address that was submitted, as a test on November 8, 2004, to Gevalia's
6 mechanism for requesting not to receive future commercial electronic mail messages, i.e. to
7 "http://www.joingevalia.com/optout/spam_unsubscribe.aspx." Said test email address had never before nor
8 has not since been provided to any entity, yet that address now regularly receives other unsolicited
9 electronic mail advertisements. Said conduct was in violation of 15 U.S.C. § 7704(a)(4)(A)(iv).

10 20. Plaintiff further alleges that the Defendants and/or their agents sent electronic mail to the
11 Plaintiff with a reply address that did not and could not have a functioning from or return electronic mail
12 address because the domain name was not valid. For example, on March 12, 2005, 677 messages were sent
13 with email addresses in the "From:" and "Reply-To:" header lines that used the expired domain name of
14 "figurespade.com." Said conduct was in violation of 15 U.S.C. § 7704(a)(1) and 15 U.S.C.
15 § 7704(a)(3)(A).

16 21. As a proximate result of said unlawful conduct by said Defendants and/or their agents, Plaintiff
17 is entitled to damages for the actual monetary loss incurred or statutory damages in the amount of up to
18 \$100.00 in the case of violation of Section 5(a)(1) or up to \$25.00 in the case of each violation of the other
19 subsections of Section 5 in the form of statutory damages as set forth in 15 U.S.C. § 7706(g)(1)(B)(ii) and
20 7706(g)(3)(A) and (C).

21 22. Plaintiff furthermore seeks a preliminary and permanent injunction against the Defendants
22 and/or their agents for its current and future violations of the CAN-SPAM Act of 2003 as it and members
23 of the general public will continue to incur damages as a result of the unlawful conduct of said Defendants
24 and/or their agents. The seeking of injunctive relief by the Plaintiff is specifically authorized by 15 U.S.C.
25 § 7706(g)(1)(A).

26 23. Plaintiff furthermore seeks its attorney fees and costs against the Defendants and/or their agents
27 pursuant to 15 U.S.C. § 7706(g)(4).

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