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8 HYPERTOUCHE, INC.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 HYPERTOUCHE, INC., a California
12 corporation,

13 Plaintiff,

14 vs.

15 KENNEDY-WESTERN UNIVERSITY, a
16 Wyoming corporation, and DOES 1 through
17 100, inclusive,

18 Defendants.

) Case No.

) **COMPLAINT FOR DAMAGES AND**
) **INJUNCTIVE RELIEF – VIOLATION**
) **OF CAN-SPAM ACT OF 2003**
) **[15 U.S.C. §7701, et seq.] and California**
) **Business & Professions Code §17529.5**

) **DEMAND FOR JURY TRIAL**
)
)
)
)

19 Plaintiff Hypertouch, Inc. alleges as follows:

20 **JURISDICTION, VENUE, AND PARTIES**

21 1. This Court has original jurisdiction of the causes of action herein which are brought under the
22 CAN-SPAM Act of 2003 (15 U.S.C. §7701 et seq.), the Computer Fraud and Abuse Act.

23 2. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331, which
24 gives federal District Courts original jurisdiction over claims brought under the laws of the United States.
25 This Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367.

26 3. This Court has personal jurisdiction over Defendant Kennedy-Western University who has
27 purposefully engaged in business activities in California and availed themselves of the benefit of
28 conducting commercially-related activities within California.

1 10. From January 1, 2004 forward, Plaintiff received electronic mail from Defendant Kennedy-
2 Western University and/or the DOE Defendants advertising Kennedy-Western University to its mail
3 servers that violated the CAN-SPAM Act of 2003 as set forth below. Attached as Exhibits 1 and 2,
4 respectively, are true and correct samples of the electronic mail communications received by Plaintiff.

5 11. Plaintiff also alleges that the Defendant and/or the DOE Defendants sent the electronic mail in
6 willful and knowing violation of the CAN-SPAM Act of 2003.

7 12. Many of the relevant electronic mails sent by the Defendant and/or the DOE Defendants from
8 January 1, 2004 forward contained or were accompanied by or were transmitted with header information
9 that was materially false or materially misleading. For example, the identities provided by the Defendant
10 and/or the DOE Defendants of the machines delivering mail to Plaintiff's mail server on Exhibit 1 do not
11 match the IP addresses of the contacting machine. Please see attached Exhibits 3 and 4 which identify
12 Light Speed Vision as the domain registration for 05100.com and 06100.com. Plaintiff alleges Light Speed
13 Vision is not a legitimate business organization as it is not a registered corporation or limited liability
14 company in California, not registered as a fictitious business name in Los Angeles County, the street
15 address and zip code do not exist, and the telephone number is disconnected.

16 13. Plaintiff further alleges that the Defendant and/or the DOE Defendants sent electronic mail to
17 the Plaintiff that included domain names which were registered to false non-existent entities using false
18 addresses, e.g. "bargain-warrior.com" with a registration address of "7429 Nort C St, St. Paul, MI 20932"
19 (please see Exhibit 2). Attached as Exhibit 5 is a true and correct copy of the domain registration of
20 bargain-warrior.com. Plaintiff alleges the address listed on Exhibit 5 is false. Said conduct was in
21 violation of 15 U.S.C. § 7704(a)(1).

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

25 15. Plaintiff furthers allege that the Defendant and/or the DOE Defendants sent electronic mail to
26 the Plaintiff to an address harvested from domain name contact registration information. Said conduct was
27 in violation of 15 U.S.C. § 7704(b)(1)(A)(i).

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

4 17. As a proximate result of said unlawful conduct by said Defendant and/or the DOE Defendants,
5 Plaintiff is entitled to damages for the actual monetary loss incurred or statutory damages in the amount of
6 up to \$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
7 other subsections of Section 5 in the form of statutory damages as set forth in 15 U.S.C. § 7706(g)(1)(B)(ii)
8 and 7706(g)(3)(A) and (C).

9 18. Plaintiff furthermore seeks a preliminary and permanent injunction against the Defendant and/or
10 the DOE Defendants for its current and future violations of the CAN-SPAM Act of 2003 as it and members
11 of the general public will continue to incur damages as a result of the unlawful conduct of said Defendant
12 and/or the DOE Defendants. The seeking of injunctive relief by the Plaintiff is specifically authorized by
13 15 U.S.C. § 7706(g)(1)(A).

14 19. Plaintiff furthermore seeks its attorney fees and costs against the Defendant and/or the DOE
15 Defendants pursuant to 15 U.S.C. § 7706(g)(4).

16 20. Plaintiff furthermore seeks a preliminary and permanent injunction against the Defendant and/or
17 the DOE Defendants for its current and future violations of the CAN-SPAM Act of 2003 as it and members
18 of the general public will continue to incur damages as a result of the unlawful conduct of said Defendant
19 and/or the DOE Defendants. The seeking of injunctive relief by the Plaintiff is specifically authorized by
20 15 U.S.C. § 7706(g)(1)(A).

21 21. Plaintiff furthermore seeks its attorney fees and costs against the Defendant and/or the DOE
22 Defendants pursuant to 15 U.S.C. § 7706(g)(4).

23 22. Defendants' actions detailed above violated 15 U.S.C. § 7704 and entitle Plaintiff to injunctive
24 relief, statutory damages and aggravated damages because of Defendants' willful and knowing violation of
25 the CAN-SPAM Act.

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1 **SECOND CAUSE OF ACTION**

2 (Violation of California Business & Professions Code § 17529.5)

3 (Against All Defendants)

4 23. Plaintiff refers to the allegations of the preceding paragraphs of this Complaint and incorporate
5 the same herein by this reference as though set forth in full.

6 24. As set forth in the preceding paragraphs, Plaintiff alleges that the Defendant and/or the DOE
7 Defendants acting as its agents, sent electronic mail to the Plaintiff that contained falsified, misrepresented,
8 or forged header information.

9 25. As a proximate result of said unlawful conduct by said Defendant and/or the DOE Defendants,
10 Plaintiff is entitled to damages for the actual monetary loss incurred and liquidated damages of \$1,000.00
11 per each unsolicited electronic mail advertisement, and attorney fees and costs, pursuant to California
12 Business & Professions Code §17529.8.

13 WHEREFORE, Plaintiff prays judgment against the Defendants, and each of them, as follows:

14 1. For actual monetary damages according to proof, or in the alternative, statutory damages for up
15 to \$100.00 for each violation of said Section 7705(a)(1) and up to \$25.00 in the case of any other violation
16 of said Section 7706;

17 2. For aggravated damages under 15 U.S.C. § 7706(g)(3)(C)(i) and (ii) of up to three times the
18 amount above for these violations committed by the Defendant and/or the DOE Defendants willfully and
19 knowingly, and for Defendants' unlawful activity which includes aggravated violations of section 7004(b);

20 3. For actual monetary damages according to proof and liquidated damages of \$1,000.00 for each
21 violation of Business & Professions Code §17529.5;

22 4. For a preliminary and permanent injunction preventing the Defendants and all person acting in
23 concert with them from the violation of the CAN-SPAM Act of 2003;

24 5. For an award of reasonable attorneys' fees and costs according to proof pursuant to 15 U.S.C.
25 7706(g)(4) and Business & Professions Code §17529.8(b)(2);

26 6. For costs of suit; and

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