

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

FILED
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GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

DAN CHEYFITZ
1783 Coventry Road
Cleveland Heights, OH 44118

Plaintiff,

-vs-

VALUECLICK, INC.,
d.b.a ConsumerPromotionCenter
d.b.a. MemberRewardCenter.com
30699 Russell Ranch Rd Ste 250
Westlake Village, CA 91362

and

VC E-COMMERCE SOLUTIONS, INC.
d.b.a ConsumerPromotionCenter
d.b.a. MemberRewardCenter.com
30699 Russell Ranch Rd Ste 250
Westlake Village, CA 91362

and

HI-SPEED MEDIA, INC.
d.b.a ConsumerPromotionCenter
d.b.a. MemberRewardCenter.com
30699 Russell Ranch Rd Ste 250
Westlake Village, CA 91362

and

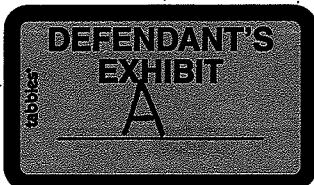
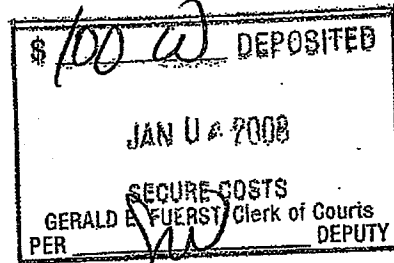
JOHN DOES I-X (Real Names Unknown)
(Addresses Unknown)

Defendants.

CASE NO.:

JOHN J RUSSO
CV 08 646237
Complaint

COMPLAINT FOR MONEY
DAMAGES AND INJUNCTIVE
RELIEF
(Jury Demand Endorsed Hereon)



CV08646237 49359576
A barcode is located below the text.

Please also serve:

ValueClick, Inc.
c/o National Registered Agents, Inc.,
Statutory Agent
2030 Main Street Ste 1030
Irvine, CA 92614

and

VC E-Commerce Solutions, Inc.
c/o National Registered Agents, Inc.,
Statutory Agent
2030 Main Street Ste 1030
Irvine, CA 92614

and

Hi-Speed Media, Inc.
c/o National Registered Agents, Inc.,
Statutory Agent
2030 Main Street Ste 1030
Irvine, CA 92614

Now comes Plaintiff, by and through his undersigned attorney, and for his
Complaint against Defendants, alleges and states as follows:

FACTUAL OVERVIEW

1. At all times relevant hereto, Plaintiff resided in the City of Cleveland Heights, County of Cuyahoga, State of Ohio, and within this Court's jurisdiction.
2. At all times relevant hereto, Defendants were corporations operating in Westlake Village, CA.

3. John Does I-X, whose real names and addresses are unknown to Plaintiff and currently unascertainable, are the advertisers on whose behalf the subject emails were sent.

4. In the alternative, John Does I-X are the publishers of the subject emails.

5. At all times relevant hereto, Plaintiff maintained a computer, upon which he received email.

6. At all times relevant hereto, Plaintiff was a "consumer", as defined by Ohio Revised Code Section 1345.01(D).

7. At all times relevant hereto, Defendants were a "supplier", as defined by Ohio Revised Code Section 1345.01(C), in that it engaged in the business of effecting or soliciting a consumer transaction.

8. The within transactions were "consumer transactions", as defined by Ohio Revised Code Section 1345.01(A), in that Defendants solicited or provided a service to Plaintiff for purposes that were primarily for personal, family or household use.

9. Starting in or about December 2006 Plaintiff received unsolicited email messages from Defendants (SPAM).

10. Said email offered "free" goods to Plaintiff by using the word "free" or other words of similar import or meaning.

11. A sample of these email are attached hereto and incorporated herein by reference as Exhibit "A". All of the unsolicited email at issue herein are too voluminous to attach, but will be produced in the course of Discovery.

12. None of the email received by Plaintiff and from Defendants clearly and conspicuously set out the "Terms and Conditions" of receiving the "free" items at the outset of the offer.

13. To view the Terms and Conditions, Plaintiff had to click through to other web pages.

14. Said Terms and Conditions neither appeared in a type size half as large as the word "free" nor were they in close conjunction with the word "free" as required by Ohio Administrative Code §109:4-3-04(C).

15. Despite conducting business and soliciting business in Ohio, as detailed above, Defendant is not registered with Ohio's Secretary of State, as required by Ohio Revised Code §1703.03.

COUNT ONE
(Consumer Sales Practices Act Violations)

16. Plaintiff realleges and reavers each of the previous paragraphs as though fully restated herein.

17. Pursuant to the CSPA (O.R.C. §1345.01, et seq.), Defendants committed various unfair and deceptive acts in connection with the above described transactions.

18. Defendants violated the CSPA by offering "free" items which were, in fact, not free.

19. Defendants violated the CSPA by offering "free" items when, in fact, the cost of the "free" item is passed on to the consumer. (OAC 109:4-3-04(A)).

20. Defendants violated the CSPA by using the word "free" in an advertisement and not setting forth all terms and conditions of said offer clearly and conspicuously at the outset of the offer. (OAC 109:4-3-04(C)).

21. Defendants violated the CSPA by using the word "free" in an advertisement and not including all terms and conditions in close conjunction therewith in a type size half as large as the word "free". (OAC 109:4-3-04(C)).
22. Defendants violated the CSPA by disclosing the terms and conditions of an offer in a footnote or "link" page. (OAC 109:4-3-04(C)).
23. Defendants violated the CSPA by stating the limitations and exclusions of their offer in a footnote or "link" page. (OAC 109:4-3-02(A)).
24. Defendants violated the CSPA by not clearly and conspicuously, in close proximity to the offer, stating the limitations and exclusions of said offer. (OAC 109:4-3-02(A)).
25. Defendants committed an unfair and deceptive act by sending unsolicited email (SPAM) to Plaintiff.
26. Defendants committed unfair and deceptive acts in violation of the CSPA by failing to clearly disclose the name, address and telephone number of the business making the subject offers.
27. Defendants committed unfair and deceptive acts in violation of the CSPA by failing to register with Ohio's Secretary of State.
28. As a result of Defendants' various violations of Ohio's CSPA, Plaintiff is entitled to damages in the amount of \$200.00 per violation or treble his actual damages, plus attorney's fees.

COUNT TWO

29. Plaintiff re-alleges paragraphs One (1) through Twenty-Eight (28) of this Complaint, as if fully rewritten herein.

30. Plaintiff herein sues individually, and also as a member and representative of a class, pursuant to Ohio Civil Rule 23.

31. The aforesaid class is hereby defined as:

All recipients of the emails, spam or computer transmissions located in the state of Ohio.

32. The aforesaid class includes at least *forty-one (41) or more* persons and entities.

33. The class is so numerous that joinder of all members is impracticable.

34. Questions of law and fact are common to the class.

35. The claims of the representative plaintiff are typical of the claims of the class.

36. A class action is superior to all other methods of adjudication of the potential claims of the members of the class.

37. Plaintiff will fairly and adequately protect the interests of the class.

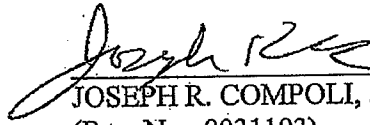
38. This claim is filed, in this court, pursuant to Ohio Revised Code Section 1345.01 (A), Ohio Revised Code Section 1345.01(C) and Ohio Revised Code Section 1345.01 (D), Ohio Administrative Code §109:4-3-04(A), CSPA (O.R.C. § 1345.01), OAC 109:4-3-04(C), OAC 109:4-3-02(A), and also for the class plaintiffs to be awarded Five Hundred Dollars (\$500) for each separate violation, or Trebled Damages (\$1,500) if the Defendant's emails, spam or computer transmissions were sent willfully.

39. Defendant *knew*, or had the means to know, that it was sending, or causing to be sent, emails, spam or computer transmissions, and therefore *knowingly* sent, or caused to be sent, emails, spam or computer transmissions.

40. Defendant, acted in a conscious and deliberate manner, and thus *willfully* sent, or caused to be sent, emails, spam or computer transmissions.

41. Defendant is therefore liable for the sum of \$1,500 in damages, for each separate emails, spam or computer transmissions, pursuant to Ohio Revised Code Section 1345.01 (A), Ohio Revised Code Section 1345.01(C) and Ohio Revised Code Section 1345.01 (D), Ohio Administrative Code §109:4-3-04(A), CSPA (O.R.C. § 1345.01), OAC 109:4-3-04(C), OAC 109:4-3-02(A)

WHEREFORE, Plaintiff prays for judgment against Defendants, jointly and severally, for all damages specifically alleged in this Complaint, for himself, in an amount in excess of \$25,000.00, not to exceed \$75,000 for his individual claims and for Class Claims in an amount not to exceed \$4.9 million, plus interest, attorney's fees and the costs of this action.


JOSEPH R. COMPOLI, JR.
(Reg. No.: 0031193)
612 East 185th Street
Cleveland, OH 44119
Phone: (216) 481-6700
Fax: (216) 481-1047
Attorney for Plaintiff

JURY DEMAND

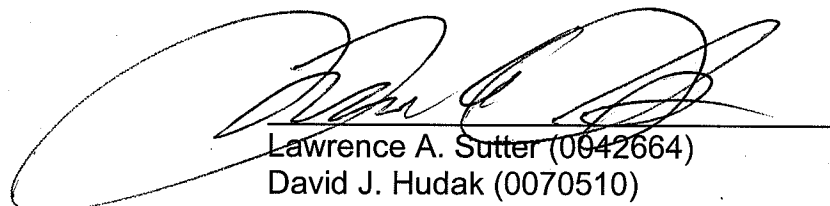
Plaintiff herein requests a trial by jury in the highest number allowed by law.


JOSEPH R. COMPOLI, JR.
Attorney for Plaintiff.

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January, 2008 a copy of Notice of Removal was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

Joseph R. Compoli, Jr., Esq. Attorney for Plaintiff
612 East 185th Street
Cleveland, Ohio 44119



Lawrence A. Sutter (0042664)
David J. Hudak (0070510)
Adam C. Stacy (0079684)