

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JOHN W. FERRON,	:	
	:	
Plaintiff,	:	Civil Action No. 2:06-cv-322
	:	
vs.	:	Judge Frost
	:	
MEDIA BREAKAWAY, LLC ¹ , <i>et al.</i> ,	:	Magistrate Judge Abel
	:	
Defendants.	:	

**SECOND AMENDED COMPLAINT FOR MONEY DAMAGES,
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

JURY DEMAND ENDORSED HEREON

NOW COMES PLAINTIFF JOHN W. FERRON, by and through his undersigned counsel, and makes the following allegations and claims against Defendants.

The Parties

1. PLAINTIFF JOHN W. FERRON (“Plaintiff”) is a person who resides at the address indicated in the above caption, which is located in Delaware County, Ohio. At all times relevant hereto, Plaintiff has been a “consumer” as defined in Ohio Revised Code Section 1345.01(D).

2. DEFENDANT MEDIA BREAKAWAY, LLC (“Defendant MBA”), formerly known as OptInRealBig.com LLC, is a Nevada corporation, reasonably believed to have its principal place of business located at 1490 W. 121st Avenue, Suite 201, Westminster, Colorado 80234. At all times relevant hereto, Defendant MBA has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

¹ Initially, the first named defendant was VC E-Commerce Solutions, Inc. However, Plaintiff’s claims against VC E-Commerce Solutions, Inc. have been dismissed and, therefore, it is no longer a party to this action.

3. Upon information and belief, DEFENDANT ADTERACTIVE, INC. (“Defendant Adteractive”), is a California corporation, has its principal place of business located at 303 Second St., Suite 375 South, San Francisco, California 94107, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

4. Upon information and belief, DEFENDANT 1800PATCHES, INC. (“Defendant 1800patches”) is an entity of unknown type, is reasonably believed to have its principal place of business located at 4505 Wsatch Blvd., Salt Lake City, Utah 84124, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

5. Upon information and belief, DEFENDANT A&A MARKETING, INC. (“Defendant A&A”) is an entity of unknown type, is reasonably believed to have its principal place of business located at 1360 Louise Court, Lake Zurich, Illinois 60047, and all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

6. Upon information and belief, DEFENDANT ARDIS MARKETING GROUP LLC (“Defendant Ardis”) is New York limited liability corporation, is reasonably believed to have its principal place of business located at 575 8th Ave., Suite 1914, New York, New York 10018, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

7. Upon information and belief, DEFENDANT AZOOGLE.COM, INC. (“Defendant Azoogle”), is a Canadian corporation, is reasonably believed to have its principal place of business located at 140 Allstate Parkway, Suite 505, Markham, Ontario L3R 5Y8, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

8. Upon information and belief, DEFENDANT CONSUMER BASE LLC (“Defendant Consumer Base”) is an Illinois corporation, is reasonably believed to have its principal place of business located at 1007 Church St., Suite 510, Evanston, Illinois 60201, and all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

9. Upon information and belief, DEFENDANT CONVERSEON, INC. (“Defendant Converseon”) is a Delaware corporation, is reasonably believed to have its principal place of business located at 1140 Broadway, Suite 501, New York, New York 10001, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

10. Upon information and belief, DEFENDANT CUTTING EDGE MEDIA, INC. (“Defendant Cutting Edge”) is a Pennsylvania corporation, is reasonably believed to have its principal place of business located at 1595 S. Mt. Joy St., Elizabethtown, Pennsylvania 17022, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

11. Upon information and belief, DEFENDANT DIAMOND MARKETING SOLUTIONS (“Defendant Diamond Marketing”) is an entity of unknown type, is reasonably believed to have its principal place of business located at 46 East Passaic Ave., Nutely, New Jersey 07110, and at all times relevant hereto, Defendant has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

12. Upon information and belief, DEFENDANT DIRECT ROI, LLC (“Defendant Direct ROI”) is an Arizona limited liability corporation, is reasonably believed to have its principal place of business located at 1640 S. Stapley Dr., Suite 211, Mesa, Arizona 85204, and

at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

13. Upon information and belief, DEFENDANT EDEBITPAY, LLC (“Defendant Edebit”) is a Nevada limited liability corporation, is reasonably believed to have its principal place of business located at 5301 Laurel Canyon Blvd, #132, Valley Village, California 91607, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

14. Upon information and belief, DEFENDANT EDUCATIONAL SUCCESS INC. (“Defendant Educational Success”) is a Utah corporation, is reasonably believed to have its principal place of business located at 5072 N. 300 W., #240, Provo, Utah 84604, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

15. Upon information and belief, DEFENDANT EFAMILYNETWORK, INC. (“Defendant EFamily”) is a Utah corporation, is reasonably believed to have its principal place of business located at 437 E. 1000 St., Pleasant Grove, Utah 84062, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

16. Upon information and belief, DEFENDANT EMAIL HELLO, INC. (“Defendant Email”) is a Nevada corporation, is reasonably believed to have its principal place of business located at 1100 Hammond Drive, Suite 410-A-158, Atlanta, Georgia 30328, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

17. Upon information and belief, DEFENDANT EMARKETMAKERS, INC. (“Defendant eMarket”) is a Delaware corporation, is reasonably believed to have its principal place of business located at 2101 Rosecrans Ave., #2000, El Segundo, California 90245, and at

all times relevant hereto, Defendant eMarket has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

18. Upon information and belief, DEFENDANT ENDAI WORLDWIDE, INC. (“Defendant Endai”) is a Delaware corporation, is reasonably believed to have its principal place of business located at 217 Water St., Suite 300, New York, New York 10038, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

19. Upon information and belief, DEFENDANT ETHOS INTERACTIVE, INC. (“Defendant Ethos”) is an entity of unknown type, is reasonably believed to have its principal place of business located at 21250 Hawthorne Blvd., Suite 500 Torrance, California 90503, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

20. Upon information and belief, DEFENDANT GLISPA LLC (“Defendant Glispa”) is a Minnesota limited liability corporation, is reasonably believed to have its principal place of business located at 2060 12th St. NW, St. Paul, Minnesota 55112, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

21. Upon information and belief, DEFENDANT GLOBAL RESOURCE SYSTEMS CORPORATION (“Defendant Global”) is a Florida corporation, is reasonably believed to have its principal place of business located at 150 South Pine Island Drive, Suite 520, Plantation, Florida 33324, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

22. Upon information and belief, DEFENDANT HIGH FALLS MEDIA, INC. (“Defendant High Falls”) is a New York limited liability corporation, is reasonably believed to have its principal place of business located at 4 Commercial St., 2nd Fl., Rochester, New York

14614, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

23. Upon information and belief, DEFENDANT HOT ROCKET ACQUISITION CORPORATION (“Defendant Hot Rocket”) is a Delaware corporation, is reasonably believed to have its principal place of business located at 76 North Broadway, Suite 3016, Hicksville, New York 11801, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

24. Upon information and belief, DEFENDANT ILEAD MEDIA INC. (“Defendant iLead”) is a Utah corporation, is reasonably believed to have its principal place of business located at 437 E. 1000 S., Pleasant Grove, Utah 84062, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

25. Upon information and belief, DEFENDANT INKLINE GLOBAL, INC. (“Defendant InKline”) is a Nevada corporation, is reasonably believed to have its principal place of business located at 711 S. Carson St., Suite 4, Carson City, Nevada 89701, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

26. Upon information and belief, DEFENDANT INTELA, LLC (“Defendant Intela”) is a Colorado limited liability corporation, is reasonably believed to have its principal place of business located at 1495 Yarmouth Ave., Suite A, Boulder, Colorado 80304, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

27. Upon information and belief, DEFENDANT JAB VENTURES, LLC (“Defendant Jab”) is a Utah limited liability corporation, is reasonably believed to have its principal place of business located at 13319 Apple Orchard Lane, Draper, Utah 84020, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

28. Upon information and belief, DEFENDANT LEADCLICK MEDIA, INC. (“Defendant LeadClick”) is an entity of unknown type, is reasonably believed to have its principal place of business located at 201 Spear St., 4th Fl., San Francisco, California 94105, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

29. Upon information and belief, DEFENDANT MAX BOUNTY INC. (“Defendant Max Bounty”) is a Canadian corporation, is reasonably believed to have its principal place of business located at 1500 Lisbon St., Ottawa, Ontario K4A 4L6, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

30. Upon information and belief, DEFENDANT MINGLE LLC (“Defendant Mingle”) is a California limited liability corporation, is reasonably believed to have its principal place of business located at 701 B. Street, Suite 540, San Diego, California 92101, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

31. Upon information and belief, DEFENDANT MODEMMAX (“Defendant ModemMax”) is an entity of unknown type, is reasonably believed to have its principal place of business located at P.O. Box 76070, Oklahoma City, Oklahoma 73147, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

32. Upon information and belief, DEFENDANT MOMENTUM DIRECT, INC. (“Defendant Momentum Direct”) is an entity of unknown type, is reasonably believed to have its principal place of business located at 1010 South Magnolia Blvd., Magnolia, Texas 77355, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

33. Upon information and belief, DEFENDANT MEDUCE ENTERPRISES, LLC (“Defendant Meduce”) is an entity of unknown type, is reasonably believed to have its principal place of business located at 160 W. Foothill Pkwy., Suite 105-191, Corona, California 92882, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

34. Upon information and belief, DEFENDANT NEW MOTION, INC. (“Defendant New Motion”) is a Delaware corporation, is reasonably believed to have its principal place of business located at 42 Corporate Park, Suite 250, Irvine, California 92606, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

35. Upon information and belief, DEFENDANT ONLINE MEDIA PROMOTIONS, LLC (“Defendant Online”) is a Georgia limited liability company, is reasonably believed to have its principal place of business located at 2880 Johnson Ferry Rd., Suite 100, Marietta, Georgia 30062, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

36. Upon information and belief, DEFENDANT OPERA TELECOM, INC. (“Defendant Opera”) is a Virginia corporation, is reasonably believed to have its principal place of business located at 12310 Pinecrest Road, Suite 304, Reston, Virginia 20191, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

37. Upon information and belief, DEFENDANT OPPORTUNITY LEADS INTERNATIONAL LLC (“Defendant Opportunity Leads”) is a Seattle corporation, is reasonably believed to have its principal place of business located at P.O. Box 15351, Seattle, Washington 98115, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

38. Upon information and belief, DEFENDANT PYTHON MEDIA (“Defendant Python”) is a Canadian corporation, is reasonably believed to have its principal place of business located at 107 Atlantic Ave., Suite 201, Toronto, Ontario M6K 1Y2, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

39. Upon information and belief, DEFENDANT RAPID RESPONSE MARKETING, LLC (“Defendant Rapid Response”) is a Nevada limited liability corporation, is reasonably believed to have its principal place of business located at 7500 W. Lake Mead Blvd., #9-463, Las Vegas, Nevada 89128, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

40. Upon information and belief, DEFENDANT REALLYGREATRATE, INC. (“Defendant ReallyGreatRate”) is a California corporation, is reasonably believed to have its principal place of business located at 423 S. Pacific Coast Highway, Redondo Beach, California 90277, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

41. Upon information and belief, DEFENDANT REVSHARE MEDIA, INC. (“Defendant RevShare”) is a Virginia corporation, is reasonably believed to have its principal place of business located at 620 Herndon Parkway, Suite 200, Herndon, Virginia 20170, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

42. Upon information and belief, DEFENDANT REX DIRECT NET, INC. (“Defendant Rex Direct Net”) is a New Jersey corporation, is reasonably believed to have its principal place of business located at 100 Springdale Rd., A3 #253, Cherry Hill, New Jersey

08003, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

43. Upon information and belief, DEFENDANT URBAN NUTRITION LLC (“Defendant Urban”) is an entity of unknown type, is reasonably believed to have its principal place of business located at 302A West 12th St., #276, New York, New York 10014, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

44. Upon information and belief, DEFENDANT SILVERCARROT, INC. (“Defendant SilverCarrot”) is a Delaware corporation, is reasonably believed to have its principal place of business located at 132 West 36th St., 9th Fl., New York, New York 10018, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

45. Upon information and belief, DEFENDANT SKYFISSION, LLC. (“Defendant SkyFission”) is a California limited liability corporation, is reasonably believed to have its principal place of business located at 2060 E. Francis St., Ontario, California 91761, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

46. Upon information and belief, DEFENDANT SRC TECHNOLOGIES, INC. (“Defendant SRC”) is an Ohio corporation, is reasonably believed to have its principal place of business located at 4641 Leap Ct., Hilliard, Ohio 43026, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

47. Upon information and belief, DEFENDANT SUBSCRIBERBASE, INC. (“Defendant SubscriberBase”) is a South Carolina corporation, is reasonably believed to have its

principal place of business located at 3830 Forest Dr., Suite 207, Columbia, South Carolina 29204, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

48. Upon information and belief, DEFENDANT THEUSEFUL.COM (“Defendant TheUseful”) is an entity of unknown type, is reasonably believed to have its principal place of business located at 6001 Broken Sound Parkway, Suite 200, Boca Raton, Florida 33487, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

49. Upon information and belief, DEFENDANT UNIQUELEADS.COM, INC. (“Defendant Unique”) is a Florida corporation, is reasonably believed to have its principal place of business located at 1128 Royal Palm Beach Blvd., #222, Royal Palm Beach, Florida 33411, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

50. Upon information and belief, DEFENDANT UNITED QUOTES, INC. (“Defendant United Quotes”) is a Wyoming corporation, is reasonably believed to have its principal place of business located at 1120 Washington Ave., Suite #230, Golden, Colorado 80401, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

51. Upon information and belief, DEFENDANT YFDIRECT, INC. (“Defendant YF Direct”) is a California corporation, is reasonably believed to have its principal place of business located at 303 Bryant St., 3rd Fl., Mountain View, CA 94041, and at all times relevant hereto, Defendant YF Direct has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

52. Upon information and belief, DEFENDANT METAREWARD, INC. (“Defendant MetaReward”) is a Delaware corporation, is reasonably believed to have its principal place of business located at 999 Skyway Landing, Suite 200, San Carlos, California 94070, and at all times relevant hereto, has been a “supplier” as defined in Ohio Revised Code Section 1345.01(C).

Jurisdiction and Venue

53. This Court has original diversity jurisdiction over the parties and the claims asserted herein pursuant to 28 U.S.C. §1332 because there is complete diversity between Plaintiff and all parties Defendant, and the amount in controversy well exceeds \$75,000.00 in the aggregate.

54. Venue is proper because all or a substantial part of the events giving rise to the claims herein occurred within the Southern District of Ohio, Eastern Division, including Defendants’ knowing transmittal of hundreds of email messages to Plaintiff, who resides within the Southern District of Ohio, Eastern Division.

The Claims

55. Prior to the date of the events giving rise to Plaintiff’s claims, the following court determinations were available for public inspection and on file in the office of the Ohio Attorney General in its Public Inspection File (hereafter “PIF”):

- (a) PIF #1288, *State, ex rel. Fisher v. Cheeseman*, October 25, 1991 (supplier’s failure to register fictitious name with Ohio Secretary of State is an unfair and deceptive act or practice);
- (b) PIF #499, *State, ex rel. Brown v. Gem Collectors International, Ltd.*, June 9, 1983 (out-of-state corporation’s failure to register to with the Ohio Secretary of State to do business in Ohio is an unfair or deceptive act or practice); and

- (c) PIF #1485, *Gravson v. Cadillac Builders*, September 14, 1995 (corporate officer may be held personally liable for his or her own actions in violation of the Consumer Sales Practices Act if the officer took part in the commission of the act, specifically directed the particular act to be done, or participated or cooperated therein).

56. Prior to the date of the events giving rise to Plaintiff's claims, Ohio Administrative Code §109:4-3-04 and §109:4-3-06 were adopted pursuant to Ohio Revised Code Section 1345.05(B)(2).

57. This Complaint and all of the claims asserted in it are subject to: (a) all court determinations that were on file in the Office of the Ohio Attorney General in its Public Inspection File as of the date of the acts of Defendants complained of herein, including the court determinations referenced above in Paragraph 55, above, and all rules adopted under Ohio Revised Code Section 1345.05(B)(2) prior to the date of the acts or practices of Defendants complained of herein, including Ohio Administrative Code §109:4-3-04 and §109:4-3-06.

58. Plaintiff has Internet email accounts that are maintained by and through Internet service providers located within the Southern District of Ohio, Eastern Division.

59. Upon information and belief, between January 1, 2006 and the present date, one or more Defendants, acting in concert, transmitted hundreds of email messages that passed through the servers of his Internet service providers and were forwarded to Plaintiff's Internet email accounts, as Defendants intended. Each of these email messages is a "consumer transaction" as defined in Ohio Revised Code Section 1345.01(A).

60. Upon information and belief, in regard to each of the email messages described in the foregoing paragraph, one or more Defendants, acting in concert, knowingly committed one or

more unfair and/or deceptive acts or practices in violation of Ohio Revised Code Section 1345.02 by:

- (a) using the word “free” in a consumer transaction and failing to set forth clearly and conspicuously at the outset of the offer all of the terms, conditions and obligations upon which receipt and retention of the “free” goods or services are contingent;
- (b) using the word “free” in a consumer transaction and failing to print all terms, conditions, and obligations of the offer in a type size half as large as the word “free;”
- (c) using the word “free” in a consumer transaction and failing to print all terms, conditions, and obligations of the offer in close proximity with the offer of “free” goods or services;
- (d) notifying a consumer that he has won a prize or will receive anything of value, where the receipt of the prize or thing of value is conditioned upon the consumer’s observing a sales promotional effort or entering into a consumer transaction, and failing to clearly and conspicuously disclose, at the time of notification of the prize, that an attempt will be made to induce the consumer to undertake a monetary obligation irrespective of whether that obligation constitutes a consumer transaction;
- (e) notifying a consumer that he has been selected, or is eligible, to win a prize or receive anything of value, where the receipt of the prize or thing of value is conditioned upon the consumer’s observing a sales promotional effort or entering into a consumer transaction, and failing to clearly and conspicuously disclose, at the time of notification of the prize, that an attempt will be made to induce the

consumer to undertake a monetary obligation irrespective of whether that obligation constitutes a consumer transaction;

- (f) notifying a consumer that he has won a prize or will receive anything of value, where such is not the case;
- (g) notifying a consumer that he has been selected, or is eligible, to win a prize or receive anything of value and failing to clearly and conspicuously disclose to the consumer any and all conditions necessary to win the prize or receive anything of value;
- (h) notifying a consumer that he has won a prize or is eligible to receive something of value and failing to disclose, in the same size and style of print found in the notification, that an attempt will be made to induce the consumer to undertake a monetary obligation, or that the consumer will be required to observe a sales presentation;
- (i) notifying a consumer that he has won a prize or is eligible to receive something of value and failing to disclose, in the same size and style of print found in the solicitation, the eligibility conditions that must be met in order to receive the prize;
- (j) notifying a consumer that he has won a prize or is eligible to receive something of value and failing to disclose the price reasonable consumers would pay for the prize if it were sold in the local market;
- (k) notifying the consumer that he has won a prize or is eligible to receive something of value and failing to disclose the name, address and telephone number of the

business that is actually conducting and/or sponsoring the contest or giveaway program;

- (l) notifying the consumer that he has won a prize or is eligible to receive something of value and failing to disclose the odds or chances of winning the listed prize;
- (m) notifying the consumer that he has won a prize or is eligible to receive something of value and failing to clearly and conspicuously state all material exclusions, reservations, limitations, modifications, or conditions to the consumer's receipt of the prize;
- (n) notifying the consumer that he has won a prize or is eligible to receive something of value where the supplier does not intend to deliver the listed prize;
- (o) failing to register with the Ohio Secretary of State prior to doing business in Ohio; and
- (p) failing to register a fictitious business name with the Ohio Secretary of State prior to doing business in Ohio under such fictitious name.

COUNT ONE

(KNOWING VIOLATIONS OF OHIO REVISED CODE SECTION 1345.02)

61. Plaintiff hereby incorporates, as if fully rewritten herein, all of the foregoing paragraphs.

62. Each of the email messages that Defendants transmitted to Plaintiff constitutes one or more unfair and/or deceptive sales acts and/or practices in violation of Ohio Revised Code Section 1345.02(A).

63. Defendants' violations were "knowingly" committed, as Defendants knew they were engaging in the acts and/or practices described in the preceding paragraphs.

64. The acts and practices of Defendants described in the preceding paragraphs are acts and practices that have previously been declared to be deceptive and/or unconscionable acts or practices in violation of the CSPA by Ohio courts in judgments that were file in Public Information File of the Office of the Ohio Attorney General prior to the acts and practices of Defendants complained of herein.

65. Because Defendants knowingly violated Ohio Revised Code Section §1345.02(A), Plaintiff is entitled to: (a) an award of statutory damages against each Defendant in the amount of three times Plaintiff's actual damages or \$200, whichever is greater, for each violation of Ohio Revised Code Section 1345.02(A); and (b) an award of Plaintiff's reasonable attorney's fees and costs against Defendant pursuant to Ohio Revised Code Section 1345.09(F).

COUNT TWO

(VIOLATIONS OF THE OHIO ELECTRONIC MAIL ADVERTISEMENTS ACT, OHIO REVISED CODE SECTION 2307.64)

66. Plaintiff hereby incorporates, as if fully rewritten herein, all of the foregoing paragraphs.

67. Many of the email messages that Defendants have sent or caused to be sent to Plaintiff fail to include in the body of the message a clear and conspicuous recitation of the sender's truthful name and complete residence or business address and the electronic mail address of the person transmitting the electronic mail advertisement. In fact, many of Defendants' email messages display a false or fictitious name of the sender. Each such email message transmitted to Plaintiff constitutes one or more violations by Defendants of Ohio Revised Code §2307.64(B)(1).

68. Because Defendants violated Ohio Revised Code §2307.64(B)(1), Plaintiff is entitled to: (a) an award of statutory damages against Defendants in the amount of \$100 for each

violation of Ohio Revised Code Section 2307.64(B)(1), pursuant to Ohio Revised Code Sections 2307.64(E)(1) and; (b) an award of Plaintiff's reasonable attorney's fees, court costs and other costs of bringing this action, pursuant to Ohio Revised Code Section 2307.64(E)(2).

COUNT THREE

(DECLARATORY JUDGMENT)

69. Plaintiff hereby incorporates, as if fully rewritten herein, all of the foregoing paragraphs.

70. Plaintiff respectfully submits that, under the circumstances presented in this case, he is entitled to the Court's entry of declaratory judgment in his favor, including this Court's declaration that it is an unfair and deceptive act and practice, and a violation of Ohio Revised Code Section 1345.02(A), for a "supplier" to transmit an email messages to a "consumer" in Ohio that constitutes a "consumer transaction" and:

- (a) uses the word "free" and fails to set forth clearly and conspicuously at the outset of the offer all of the terms, conditions and obligations upon which receipt and retention of the "free" goods or services are contingent;
- (b) uses the word "free" and fails to print all terms, conditions, and obligations of the offer in a type size half as large as the word "free;"
- (c) uses the word "free" and fails to print all terms, conditions, and obligations of the offer in close proximity with the offer of "free" goods or services;
- (d) notifies a consumer that he has won a prize or will receive anything of value, where the receipt of the prize or thing of value is conditioned upon the consumer's observing a sales promotional effort or entering into a consumer transaction, and fails to clearly and conspicuously disclose, at the time of

notification of the prize, that an attempt will be made to induce the consumer to undertake a monetary obligation irrespective of whether that obligation constitutes a consumer transaction;

- (e) notifies a consumer that he has been selected, or is eligible, to win a prize or receive anything of value, where the receipt of the prize or thing of value is conditioned upon the consumer's observing a sales promotional effort or entering into a consumer transaction, and fails to clearly and conspicuously disclose, at the time of notification of the prize, that an attempt will be made to induce the consumer to undertake a monetary obligation irrespective of whether that obligation constitutes a consumer transaction;
- (f) notifies a consumer that he has won a prize or will receive anything of value, where such is not the case;
- (g) notifies a consumer that he has been selected, or is eligible, to win a prize or receive anything of value and fails to clearly and conspicuously disclose to the consumer any and all conditions necessary to win the prize or receive anything of value;
- (h) notifies a consumer that he has won a prize or is eligible to receive something of value and fails to disclose, in the same size and style of print found in the notification, that an attempt will be made to induce the consumer to undertake a monetary obligation, or that the consumer will be required to observe a sales presentation;
- (i) notifies a consumer that he has won a prize or is eligible to receive something of value and fails to disclose, in the same size and style of print found in the

solicitation, the eligibility conditions that must be met in order to receive the prize;

- (j) notifies a consumer that he has won a prize or is eligible to receive something of value and fails to disclose the price reasonable consumers would pay for the prize if it were sold in the local market;
- (k) notifies the consumer that he has won a prize or is eligible to receive something of value and fails to disclose the name, address and telephone number of the business that is actually conducting and/or sponsoring the contest or giveaway program;
- (l) notifies the consumer that he has won a prize or is eligible to receive something of value and fails to disclose the odds or chances of winning the listed prize;
- (m) notifies the consumer that he has won a prize or is eligible to receive something of value and fails to clearly and conspicuously state all material exclusions, reservations, limitations, modifications, or conditions to the consumer's receipt of the prize;
- (q) notifies the consumer that he has won a prize or is eligible to receive something of value where the supplier does not intend to deliver the listed prize;
- (r) fails to register with the Ohio Secretary of State prior to doing business in Ohio; and/or
- (s) fails to register a fictitious business name with the Ohio Secretary of State prior to doing business in Ohio under such fictitious name.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff hereby prays for the following relief against Defendants as to his Causes of Action:

A. An award of statutory damages against Defendants in the amount of three times Plaintiff's actual damages or \$200, whichever is greater, for each of Defendants' violations of Ohio Revised Code Section 1345.02(A);

B. An award of statutory damages against Defendants pursuant to Ohio Revised Code Section 2307.64(E)(1) in the amount of \$100 for each of Defendants' violations of Ohio Revised Code Section 2307.64(B)(1);

C. An award of Plaintiff's reasonable attorney's fees, court costs and other costs of bringing this action, pursuant to Ohio Revised Code Section 2307.64(E)(2);

D. Declaratory judgment against Defendants in Plaintiff's favor, as requested hereinabove;

E. A permanent injunction prohibiting Defendants from transmitting any more email messages to any consumer in Ohio in violation of Ohio Revised Code Section 1345.02(A);

F. Pre- and post-judgment interest on all damages awarded;

G. An award of Plaintiff's reasonable attorneys' fees and costs, as allowed pursuant to Ohio Revised Code Section 1345.09(F); and

H. All such other relief, legal and equitable, as permitted by law.

Respectfully submitted,

/s/ Lisa A. Wafer

Lisa A. Wafer

Oh. Sup. Ct. Reg. No. 0074034

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JURY DEMAND

Plaintiff demands a trial by jury on all claims so triable.

/s/ Lisa A. Wafer
Lisa A. Wafer
Oh. Sup. Ct. Reg. No. 0074034

CERTIFICATE OF SERVICE

The undersigned certifies that on _____, 200_, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record having appeared in this matter.

/s/ Lisa A. Wafer
Lisa A. Wafer, Trial Attorney
Oh. Sup. Ct. Reg. No. 0074034