

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA**

STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,  
OFFICE OF THE ATTORNEY GENERAL,

Plaintiff,

CASE NO. \_\_\_\_\_

vs.

DIVISION: \_\_\_\_\_

SCOTT J. FILARY, an individual, and  
DONALD E. TOWNSEND, an individual,

Defendants.

\_\_\_\_\_ /

**COMPLAINT FOR INJUNCTION, DAMAGES,  
CIVIL PENALTIES AND OTHER STATUTORY RELIEF**

Plaintiff, STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, OFFICE OF THE ATTORNEY GENERAL (the “Attorney General”), sues Defendants, SCOTT J. FILARY, an individual, and DONALD E. TOWNSEND, an individual, and alleges:

**JURISDICTION AND VENUE**

1. This is an action for damages, declaratory relief, injunctive relief, and other statutory relief pursuant to the Electronic Mail Communications Act, Part III, Florida Statutes (2004), and the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2004).

2. This Court has jurisdiction pursuant to the provisions of the Electronic Mail Communications Act, Part III, Florida Statutes, and the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes.

3. The acts or practices complained of herein occurred in the conduct of a trade or commerce within Florida as defined in Sections 668.602(13) and 501.203(8), Florida Statutes,

including Hillsborough and Broward counties and affecting multiple judicial circuits.

### **THE PARTIES**

4. The Department of Legal Affairs is an enforcing authority pursuant to Sections 668.606(1) and 501.203(2), Florida Statutes, and is authorized to seek damages and injunctive and other statutory relief.

5. The Office of the Attorney General conducted an investigation and Attorney General, Charles J. Crist, Jr., reviewed this matter and determined that this enforcement action is in the public interest.

6. At all times material hereto, Defendant SCOTT J. FILARY (“FILARY”), an individual, also known as J. Scott or James Scott, and doing business as Dotcomboiz<sup>1</sup>, L.C., Dotcomboiz, LTD., Dotcomboiz, Inc., a Florida corporation, Apollo Industries, L.L.C., and J. Scott or James Scott doing business as Mango Direct, Riverside News Network, Download It Now, Riverside News, Internet News, Net News, Internet News Notification, Internet News Service, One Click Sales, Notification Service, Internet News Inc., Notification Service Inc, and unknown other assumed names, conducted business in and resided in Florida. Filary is currently residing at 5102 N. Branch Avenue, Tampa, Hillsborough County, Florida 33603.

7. At all times material hereto, Defendant DONALD E. TOWNSEND (“TOWNSEND”), an individual, conducted business in and resided in Florida and is currently residing at 5102 N. Branch Avenue, Tampa, Hillsborough County, Florida 33603.

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<sup>1</sup> At various times material hereto, Dotcomboiz has been held out as Dotcomboiz, LTD, Dotcomboiz, LLC, or Dotcomboiz, Inc., a Florida corporation.

## **DEFENDANTS' COURSE OF CONDUCT**

### *Overview*

8. Since at least January 2003, Defendants have sent and continue to send unsolicited commercial electronic mail (e-mail) to consumers in Florida and throughout the United States. Defendants also solicit others to send on their behalf unsolicited commercial e-mail to consumers. In violation of Florida and federal law, the unsolicited e-mails sent by Defendants and others on their behalf contain misleading and false information that misrepresents the sender of the e-mail and the content of the e-mail. Furthermore, the text of the e-mail and the internet websites to which the recipient is directed by the e-mail are also misleading and deceptive. Although the exact number of e-mails sent by Defendants is unknown, the Attorney General estimates, based on information and belief, that Defendants have sent hundreds of thousands of unsolicited e-mails from January 1, 2004 to the present through their Florida-controlled operations.

9. The products and services promoted by Defendants through unsolicited e-mails are various and currently include pharmaceutical drugs, cigarettes, downloads, e-books, and cash advances. These products are offered through numerous internet domains that support the Defendants' websites. Any given website may be active for only a short period of time before the Defendants switch to a new domain. Since May 2004, Defendants have registered over 350 internet domains, many of which were registered using false and misleading information in attempt to disguise the Defendants' identity. By frequently moving the advertisements and product offers from domain to domain, Defendants also are attempting to avoid detection.

E-mailing Activities

10. Defendants primarily use unsolicited e-mail to advertise their websites and related products. Between January 1, 2004 and December 31, 2004, Defendants, through their Florida-based operations, sent, initiated, or assisted in the transmission of more than 65,000 commercial e-mails, and for the period July 1, 2004 through December 31, 2004, more than 48,000 e-mails to MSN Hotmail “spam traps.”<sup>2</sup> Spam traps are e-mail accounts that are maintained solely for investigative purposes. No activity is generated through these e-mail accounts, and therefore all e-mails received are unsolicited.

11. Misleading subject lines are used in an attempt to trick consumers into opening e-mails which they otherwise would delete or would not open. Examples of the types of misleading subject lines or headings used by the Defendants include, but are not limited to, the following:

Date	Subject line from e-mail message	ID#
2004/07/15 13:08	Urgent Sales Verification!	64160905
2004/07/15 17:58	ATTN: Urgent Sales Verification!	64170913
2004/08/04 19:33	I'll call later.	67462416
2004/08/05 05:06	what are you up to tommorow	67474844
2004/09/25 14:16	Prescription Re-Order Notification	72532002
2004/08/28 14:31	Prescription Re-Order Notification	69648682
2004/07/15 23:16	voiceband durrell	64641996
2004/07/15 23:16	bootlegging pyrolyse	64642022
2004/07/15 23:15	aroma craven	64642035
2004/07/15 23:25	toxin ducat	64642413

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<sup>2</sup> These traps are e-mail accounts owned and maintained by Microsoft. Microsoft examines the e-mails received by these accounts as one of the methods it uses to determine whether incoming mail complies with the Terms of Use and Anti-Spam Policy for its MSN and MSN Hotmail services. The identity of these accounts is confidential, and the account names must remain confidential, so that spammers cannot avoid detection by removing the accounts' e-mail addresses from their lists.

2004/07/15 23:33	trout svelte	64642528
2004/07/15 23:43	rotogravure halcyon	64642745
2004/07/15 23:47	transfusion zagreb	64642923
2004/07/15 23:50	yale horace	64642931
2004/07/16 00:07	assailant occipital	64643327
2004/12/06 19:18	Fw: democracy	78915873
2004/12/07 02:28	Fw: demigod	78916791
2004/12/07 02:29	Fw: schoolgirlish	78916820

12. Contrary to the impression created by the false and misleading subject lines, the text of the e-mails do not contain the information suggested and often merely direct the consumer to a website of Defendants. For example, the e-mail with the subject line “Urgent Sales Verification” was not a verification at all, but rather was an offer to purchase drugs. In many instances the subject lines are nonsensical and consist of random words, indicating that the subject lines are computer generated and do not reflect the content of the e-mail.

13. In addition to false subject lines, the defendants also use various methods to disguise the “header” of the e-mail which identifies the sender of the e-mail and the origin of the e-mail. The methods of falsifying the header information include, but are not limited to the following:

A. Defendants insert e-mail addresses belonging to innocent persons in the “from” section of the e-mail in an effort to disguise the true sender. As e-mails are “returned to sender” as undeliverable, the innocent person may receive hundreds or thousands of unwanted e-mails. For example, in one known instance, a Florida resident’s e-mail address was hijacked by Defendants without his consent and, as a result, he received a barrage of over 800 undeliverable e-mails being returned to his account. These e-mails appear to promote at least 8 different websites traceable to Defendants.

B. Defendants use other computers or servers (including, but not limited to, open relays or open proxies), without the owner's authorization or consent, to send e-mails.

C. Defendants use what is or what appears to be a genuine e-mail provider's address or third party's domain name (for example, samplecompany.com or yahoo.com) without consent and insert a false user name to appear as the sender. The following example<sup>3</sup> illustrates the random insertion of names.

68295413	From: "Frances Sawyer" <ssmyeitknyzxmr@yahoo.com>	Thu, 12 Aug 2004
68295968	From: "Robt Sanders" <eqdzljtpktmel@yahoo.com>	Thu, 12 Aug 2004
68296519	From: "Elizabeth Hutchinson" <igznce@yahoo.com>	Thu, 12 Aug 2004
68297262	From: "Albert Crowder" <qszoommcpwa@yahoo.com>	Thu, 12 Aug 2004
68297392	From: "Terri Goff" <xwjxv@yahoo.com>	Thu, 12 Aug 2004
68298110	From: "Iris Finch" <spiimc@yahoo.com>	Thu, 12 Aug 2004
68303967	From: "Jacques Davila" <fcttdrgyxgs@yahoo.com>	Thu, 12 Aug 2004

14. As indicated in the example above, in the course of preparing to send numerous unsolicited e-mails, Defendants obtained, provided, or selected addresses to which e-mails will be transmitted by automated means capable of generating possible e-mail addresses by combining names, letters, or numbers into numerous permutations (sometimes referred to as "dictionary attacks").

#### Affiliate Programs

15. Defendants also use e-mail and website promotions to recruit others to become "affiliates" of Defendants' programs. Affiliates receive payment for disseminating e-mails to promote Defendants' products, and Defendants provide services for affiliates such as hosting,

<sup>3</sup> The example also illustrates falsified "from" addresses.

website design and instructions for promoting Defendants' websites in affiliates' e-mails to enable them to operate on Defendants' behalf. Defendants represent that affiliates can make significant earnings, implying that the more e-mails sent, the more earned. To track the business generated by an affiliate, Defendants assign a code or identifier to each affiliate. In each e-mail disseminated by the affiliate, the affiliate's code is added to the address that links to the Defendants' webpage. Therefore, if a consumer responds to an affiliate's e-mail, Defendants are able to determine which affiliate generated the sale and make a commission payment to the appropriate affiliate.

16. Defendants' affiliate programs include six types of products: 1) stateside pharmacy products; 2) Canadian pharmacy products; 3) cigarettes; 4) cash advances; 5) internet downloads; and 6) e-books. These affiliate programs are promoted through at least three separate websites operated by Defendants: [www.dotcomboiz.com](http://www.dotcomboiz.com), [www.downloaditall.com](http://www.downloaditall.com), and [www.getebooksnow.com](http://www.getebooksnow.com). Many websites offering products also offer affiliate opportunities. Affiliates send unsolicited e-mails, in violation of Florida and federal law, to promote the products being offered on Defendants' websites. In violation of Florida and federal law, Defendants either know of the affiliates' illegal e-mails and permit and facilitate their transmission, or do nothing to prevent them from being transmitted.

#### *Deceptive Website Advertising Practices*

17. Defendants' websites deceptively market their online pharmacy products, cigarettes, and internet downloads, as well as other products. Defendants' deceptive marketing practices include material misrepresentations regarding the cost of the product, the safety of the product, and the legality of the online sale and purchase of the product.

A. *Online Pharmacy Sales*

18. In Defendants' online pharmacy websites, Defendants' deceptive practices include, but are not limited to: 1) failure to disclose the total cost of the product prior to purchase; 2) misrepresentation of the amount of savings the customer will receive; 3) misrepresentation of the extent of the "medical" consultation the customer will receive; and 4) failure to ensure that the drugs are safely dispensed.

19. For example, on Defendants' websites captioned "Prescription today, Online Pharmacy,"<sup>4</sup> the Defendants falsely state: "If your order is approved, **you will only be billed the cost of your prescription plus shipping. No other fees will be applied.** (Emphasis added). Contrary to this statement, however, additional fees are added to the purchase price. Once a customer completes the entry of billing and shipping information, the customer is unexpectedly charged an additional \$34.95 dispensing fee, which represents an increase in their cost of over 25% on some of the medications offered. This fee is not disclosed prior to purchase, but rather is added to the purchase charge without prior notice to the customer and subsequent to the customer's opportunity to cancel the order.

20. Defendants also misrepresent the savings that the customer will realize. For example, Defendants' website captioned "Prescription today, Online Pharmacy" includes the following statement:

Q: How much can I save using Pharmacy Today?

A: It depends on which medication you buy. **Most of our prescriptions are**

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<sup>4</sup> Consumers would associate the websites as captioned "Prescription today, Online Pharmacy"; the website names are numerous, including [www.everydaysearch.com](http://www.everydaysearch.com), [www.bettergetitnow.com](http://www.bettergetitnow.com), and [www.oaklandorders.com](http://www.oaklandorders.com).



**priced at 30% less** than normal online pharmacy prices (Emphasis added).

A review of a sampling of the drugs offered on Defendants' websites not only reflects no savings, but actually indicates that Defendants' products are more expensive than similar products offered on other online pharmacies. On average, several online pharmacies offer products at comparable dosages for prices approximately 35% less than Defendants' prices. In addition, in one known instance in which Defendants' advertised price of \$89 for phentermine appears to be a substantial savings, this price is not actually available for purchase. The lowest purchase price actually offered by Defendants on the website is \$159, almost double the advertised price.

21. Defendants also misrepresent the safety and quality of the medical consultation they will receive. For example, the website captioned "Prescription today, Online Pharmacy" includes the following statements:

Q: Are online doctor consultations safe?

A: Yes, very safe. All of the medical history questionnaires we use contain the same kinds of questions your doctor would as only they are much **more detailed**.

(Emphasis added)

and

Q: What is an online doctor consultation?

A: An online doctor consultation is **similar to an evaluation you get from your doctor** only you don't have to leave home to be evaluated. Everything is done online.

(Emphasis added.)

Prior to purchase, the customer is required to complete a medical questionnaire on Defendants' website; however, these questionnaires elicit only basic information and completion of material facts of the questionnaire is not required for fulfillment of the order. For example, in one known instance, a customer's order for Viagra was accepted, even though the customer did not respond to the question of whether the customer was currently taking medication that includes nitrates (primarily heart medication). Inasmuch as Viagra should not be taken by those with heart conditions, Defendants' failure to ascertain this material fact poses a great safety risk to consumers, particularly those vulnerable consumers who have preexisting medical conditions.

22. Despite the fact that Defendants advertise their service as an "Online Pharmacy," and advertise the sale of prescription drugs on their websites, Defendants have not applied for or obtained a permit for online pharmacy operations with the Florida Department of Health, Board of Pharmacy in contravention of Florida law. Defendants also fail to clearly and conspicuously disclose their compliance, and that of those with whom they associate, with Florida law, and make no effort to prohibit Florida residents from ordering from their pharmacy websites.

*B. Online Cigarette Sales*

23. Defendants fail to comply with laws applicable to the sale of cigarettes in the United States and fail to disclose to consumers that their online purchase of cigarettes may not be legal. For example, the cigarettes sold through Defendants' website in some instances do not contain the warnings required by federal statute. In one known instance, the cigarettes were labeled in a foreign language, possibly Ukraine, Russian or an Eastern European language, rendering the required warning, if it exists at all, essentially ineffective to the majority of Florida consumers.

### *C. Sale of Internet Downloads*

24. Defendants' sites that promote internet downloads of movies and music misrepresent downloads as safe and legal and fail to disclose that a download may violate copyright protections and subject the purchaser to liability to the copyright owner. In fact, Defendants' websites include statements such as "Stay Legal—Don't Get Sued" or "100% Safe and Legal" to induce purchases of memberships in their download programs. Downloads, however, accessed through filesharing networks pose dangers to consumers and their families, particularly impressionable children and teenagers, through seemingly harmless filenames revealing child porn and other offensive content and installing spyware. Many programs further include the download of movies that are still in theaters and do not provide for the appropriate compensation to the copyright owners. A preliminary search of the e-mails revealed that over 10,000 of Defendants' e-mail messages promoted downloading of movies still in theaters.

25. Defendants' downloads websites also misrepresent the material terms of the sale of downloads. For example, e-mails promoting the Defendants' offer of downloads of movies and music represent that the downloads are "free" when in fact the consumers must pay a \$34.95 fee to download the products. In addition, Defendants also falsely advertise that they provide "unlimited technical support" to customers purchasing download memberships, when in fact the customer's only means of contacting Defendants is through an online request form that is not functioning and is unavailable for use.

**COUNT I:  
ELECTRONIC MAIL COMMUNICATIONS ACT  
CHAPTER 668, PART III, FLORIDA STATUTES**

26. Paragraphs 1 to 25 are hereby realleged and incorporated herein by reference, as if fully set forth below.

27. Section 668.602(14), Florida Statutes, provides "Unsolicited commercial electronic mail message" means any commercial electronic mail message that is not a transactional or relationship message and is sent to a recipient without the recipient's affirmative or implied consent.

28. Section 668.602(3), Florida Statutes, provides "Commercial electronic mail message" means an electronic mail message sent to promote the sale or lease of, or investment in, property, goods, or services related to any trade or commerce. This includes any electronic mail message that may interfere with any trade or commerce, including messages that contain computer viruses.

29. Section 668.603, Florida Statutes (2004), provides:

668.603 Prohibited activity.--A person may not:

(1) Initiate or assist in the transmission of an unsolicited commercial electronic mail message from a computer located in this state or to an electronic mail address that is held by a resident of this state which:

(a) Uses a third party's Internet domain name without permission of the third party;

(b) Contains falsified or missing routing information or otherwise misrepresents, falsifies, or obscures any information in identifying the point of origin or the transmission path of the unsolicited commercial electronic mail message; [or]

(c) Contains false or misleading information in the subject line.

30. As alleged in paragraphs 8-10, Defendants' e-mails constitute unsolicited commercial e-mails.

31. As alleged in paragraphs 8, 9, 10, 13, 15, and 16, Defendants initiated, supported, substantially assisted, or assisted in the transmission of thousands of unsolicited commercial e-mails from one or more computers in the State of Florida or initiated or assisted in the transmission of unsolicited commercial e-mails to e-mail addresses held by Florida residents, in violation of Section 668.603(1), Florida Statutes.

32. As alleged in paragraphs 8, 9, 10, and 13, Defendants violated Section 668.603(1)(a), Florida Statutes, by initiating or assisting in the transmission of unsolicited commercial e-mails using a third party's internet domain name.

33. As alleged in paragraphs 8, 9, 10, and 13, Defendants violated 668.603(1)(b), Florida Statutes, by initiating or assisting in the transmission of unsolicited commercial e-mails that contain falsified or missing routing information or otherwise misrepresents, falsifies, or obscures any information in identifying the point of origin or the transmission path.

34. As alleged in paragraphs 8-12, Defendants violated Section 668.603(1)(c), Florida Statutes, by initiating or assisting in the transmission of unsolicited commercial e-mails that contain false or misleading information in the subject line.

35. To the extent Defendants assisted in the transmission of e-mails in violation of Section 668.603(1), subsections (a), (b), or (c), Defendants knew or had reason to know, that the initiator was engaged in or intended to engage in a practice that violates Chapter 668, Part III, Florida Statutes.

36. Pursuant to Section 668.6075, Florida Statutes, a violation of Section 668.603 is deemed an unfair and deceptive trade practice within the meaning of Chapter 501, Part II, Florida Statutes.

37. Unless Defendants are permanently enjoined from engaging further in the conduct alleged herein, the continued activities of Defendants will result in irreparable injury to the public, for which there is no adequate remedy at law.

**COUNT II**  
**DECEPTIVE AND UNFAIR TRADE PRACTICES**  
**CONDUCT VIOLATING 15 U.S.C. § 7701 ET SEQ “CAN-SPAM”**  
**VIOLATES CHAPTER 501, PART II, FLORIDA STATUTES**

38. Paragraphs 1 to 25 are hereby realleged and incorporated herein by reference, as if fully set forth below.

39. By engaging in a pattern or practice of initiating, to protected computers, numerous commercial e-mails to which recipients did not provide prior affirmative consent to receive, and which e-mail messages contain, or are accompanied by, header information that is materially false or materially misleading, as alleged in paragraphs 8, 9, 10, and 13, Defendants violated Title 15 U.S.C. § 7704(a)(1)<sup>5</sup>.

40. Defendants’ conduct of initiating unsolicited commercial e-mails with false subject heading information, as alleged in paragraphs 8-12, also violated Title 15 U.S.C. § 7704(a)(2) inasmuch as Defendants engaged in a pattern or practice of initiating, to protected computers, numerous commercial e-mail messages to which recipients did not provide prior affirmative consent to receive a message that contained subject headings that Defendants knew,

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<sup>5</sup> See, Title 15 U.S.C. §§ 7701, et seq. Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, “CAN-SPAM.”

or reasonably should have known, were likely to mislead recipients, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the messages.

41. Defendants' conduct violated Title 15 U.S.C. § 7704 (b)(1)(A)(ii), in that Defendants engaged in initiating e-mails in violation of Title 15 U.S.C. § 7704(a), and, in addition, with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, provided or selected addresses to which e-mails will be transmitted by automated means capable of generating possible e-mail addresses by combining names, letters, or numbers into numerous permutations, as alleged in paragraphs 8, 9, 10, 13, and 14.

42. Defendants' conduct violated Title 15 U.S.C. § 7704 (b)(3), in that Defendants knowingly relayed or transmitted e-mails in violation of Title 15 U.S.C. § 7704(a) through protected computers and that Defendants accessed without authorization, as alleged in paragraphs 8, 9, 10, and 13.

43. Defendants' conduct violated Title 15 U.S.C. § 7705 by promotion of their businesses through unlawful e-mail operations, and allowing business operations to be promoted in violation of Title 15 U.S.C. § 7704(a), as alleged in paragraphs 8-16. Defendants knew of the nature of promotion, received or expected to receive benefits from such a promotion, and took no action to prevent the transmission of unlawful e-mails in promotion of trade or business.

44. Pursuant to Section 501.203(3)(c), Florida Statutes, a violation of Chapter 501, Part II, may be based on a violation of any law which proscribes a deceptive act or practice. Title 15 U.S.C. §§ 7701, et seq., proscribes deceptive acts or practices<sup>6</sup>.

45. Defendants, acting individually or in concert with others, have engaged in

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<sup>6</sup> See generally, Title 15 U.S.C. § 7701. Congressional findings and policy

representations, acts, practices or omissions in trade or commerce which are material, and which are likely to mislead consumers acting reasonably under the circumstances; or Defendants have engaged in acts or practices in trade or commerce which offend established public policy and are unethical, oppressive, unscrupulous or substantially injurious to consumers.

46. By engaging in the foregoing violations of Title 15 U.S.C. §§ 7701, et seq., Defendants have engaged in deceptive and unfair trade practices in violation of Section 501.204, Florida Statutes.

47. Defendants knew or should have known that the methods, acts or practices alleged herein were deceptive or unfair.

48. Unless Defendants are permanently enjoined from engaging further in the acts and practices alleged herein, the continued activities of Defendants will result in irreparable injury to the public, for which there is no adequate remedy at law.

**COUNT III**  
**DECEPTIVE AND UNFAIR TRADE PRACTICES**  
**CHAPTER 501, PART II, FLORIDA STATUTES**

49. Paragraphs 1 to 25 are hereby realleged and incorporated herein by reference, as if fully set forth below.

50. Section 501.204(1), Florida Statutes, provides that “Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

51. As set forth herein, Defendants, acting individually or in concert with others, have engaged in representations, acts, practices or omissions in trade or commerce which are material, and which are likely to mislead consumers acting reasonably under the circumstances; or



Defendants have engaged in acts or practices in trade or commerce which offend established public policy and are unethical, oppressive, unscrupulous or substantially injurious to consumers.

52. By engaging in the foregoing, Defendants have engaged in deceptive and unfair trade practices in violation of Section 501.204, Florida Statutes.

53. Defendants knew or should have known that the methods, acts or practices alleged herein were deceptive or unfair.

54. Unless Defendants are permanently enjoined from engaging further in the acts and practices alleged herein, the continued activities of Defendants will result in irreparable injury to the public, for which there is no adequate remedy at law.

**COUNT IV**  
**DECEPTIVE AND UNFAIR TRADE PRACTICES**  
**CONDUCT VIOLATING CHAPTER 465, FLORIDA STATUTES**  
**VIOLATES CHAPTER 501, PART II, FLORIDA STATUTES**

55. Paragraphs 1 to 25 are hereby realleged and incorporated herein by reference, as if fully set forth below.

56. As alleged in paragraphs 8, 9, 10, and 15-22, Defendants, acting individually or in concert with others, have promoted and continue to promote Online Pharmacy websites, and have facilitated and continue to facilitate the sale and shipment of prescription (medicinal) drugs from outside of Florida, for distribution and delivery to Florida consumers for Defendants' financial benefit. Defendants failed to obtain an appropriate permit to engage in the providing of pharmacy services to Florida residents.

57. Certain of Defendants' websites have included and continue to include the caption "PRESCRIPTION today, Online Pharmacy" with a colorful banner at the top of the webpage.

Florida residents can and have ordered from these websites. The fact that Defendants' advertisements reach Florida Internet users, coupled with the ability of Florida consumers to order from these websites, implies that Defendants are licensed or registered to practice pharmacy in Florida.

58. Section 465.015(3)(c), Florida Statutes, provides that it is unlawful for a person, firm, or corporation that is not licensed or registered under Chapter 465, Florida Statutes, to use in an advertisement any term, including "drug," "pharmacy," "prescription drugs," "Rx," or "apothecary," which implies that the person, firm, or corporation is licensed or registered to practice pharmacy in this state.

59. Section 465.0197, Florida Statutes, sets forth the requirements for internet pharmacy permits, including, but not limited to, obtaining a permit to sell medicinal drugs to persons in this state, adhering to certain standards for performance of services at a high level of protection and competence, disclosures, record keeping, operational hours, and toll-free telephone service to facilitate communications between patient and pharmacy.

60. Furthermore, Section 465.0161, Florida Statutes, Distribution of medicinal drugs without a permit, provides that an Internet pharmacy that distributes a medicinal drug to any person in this state without being permitted as a pharmacy under this chapter commits a felony of the second degree.

61. Section 501.203(3)(c), Florida Statutes, states that a violation of Chapter 501, Part II, may be based on a violation of any law which proscribes a deceptive act or practice.

62. Defendants, acting individually or in concert with others, have engaged in representations, acts, practices or omissions in trade or commerce which are material, and which

are likely to mislead consumers acting reasonably under the circumstances; or Defendants have engaged in acts or practices in trade or commerce which offend established public policy and are unethical, oppressive, unscrupulous or substantially injurious to consumers.

63. By engaging in the foregoing activities in violation of Sections 465.015(3)(c), 465.0197, and 465.0161, Florida Statutes, Defendants have engaged in deceptive and unfair trade practices in violation of Section 501.204, Florida Statutes.

64. Defendants knew or should have known that the methods, acts or practices alleged herein were deceptive or unfair.

65. Unless Defendants are permanently enjoined from engaging further in the acts and practices alleged herein, the continued activities of Defendants will result in irreparable injury to the public, for which there is no adequate remedy at law.

**COUNT V**  
**DECEPTIVE AND UNFAIR TRADE PRACTICES**  
**CONDUCT VIOLATING SECTION 210.185, FLORIDA STATUTES**  
**VIOLATES CHAPTER 501, PART II, FLORIDA STATUTES**

66. Paragraphs 1 to 25 are hereby realleged and incorporated herein by reference, as if fully set forth below.

67. Section 210.185(1), Florida Statutes, prohibits the sale or distribution in this state; to acquire, hold, own, possess, or transport, for sale or distribution in this state; or to import, or cause to be imported, into this state for sale or distribution in this state: any cigarettes the package of which does not comply with all requirements imposed by or under federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the precise

warning labels specified in the Federal Cigarette labeling and Advertising Act, 15 U.S.C. § 1333 and all federal trademark and copyright laws.

68. As alleged in paragraphs 8, 9, 10, 17, and 23, Defendants, acting individually or in concert with others, promoted the sale of cigarettes on their websites, and facilitated the sale and shipment of cigarettes from outside of the United States, which do not contain the required warnings on the packaging, for distribution and delivery to Florida consumers for Defendants' financial benefit.

69. Pursuant to Section 210.185(5), Florida Statutes, a violation of Section 210.185(1) constitutes an "unlawful trade practice" under Chapter 501, Part II, Florida. Similarly, Section 501.203(3)(c), Florida Statutes, provides that a violation of Chapter 501, Part II, may be based on a violation of any law which proscribes a deceptive act or practice.

70. Defendants, acting individually or in concert with others, have engaged in representations, acts, practices or omissions in trade or commerce which are material, and which are likely to mislead consumers acting reasonably under the circumstances; or Defendants have engaged in acts or practices in trade or commerce which offend established public policy and are unethical, oppressive, unscrupulous or substantially injurious to consumers.

71. By engaging in the foregoing activities in violation of Section 210.185, Florida Statutes, Defendants have engaged in deceptive and unfair trade practices in violation of Section 501.204, Florida Statutes.

72. Defendants knew or should have known that the methods, acts or practices alleged herein were deceptive or unfair.

73. Unless Defendants are permanently enjoined from engaging further in the acts and

practices alleged herein, the continued activities of Defendants will result in irreparable injury to the public, for which there is no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, State of Florida, Department of Legal Affairs, Office of the Attorney General, asks for judgment:

A. Temporarily and permanently enjoining Defendants, their agents and those persons in active concert or participation with them who receive actual notice of the injunction, from engaging in the acts and practices in violation of provisions of Chapter 668, Part III, Florida Statutes (2004), as specifically alleged above, and any similar acts and practices;

B. Temporarily and permanently enjoining Defendants, their agents and those persons in active concert or participation with them who receive actual notice of the injunction, from engaging in the acts and practices in violation of provisions of Chapter 501, Part II, Florida Statutes (2004), as specifically alleged above, and any similar acts and practices;

C. Awarding the Attorney General compensatory damages equal to any actual damage proven to have resulted from the initiation of the unsolicited commercial electronic mail message or liquidated damages of Five Hundred (\$500) for each unsolicited commercial electronic mail message that violates Section 668.603, Florida Statutes;

D. Awarding the Attorney General attorney's fees and costs pursuant Sections 668.603(c), and 501.2105, Florida Statutes;

E. Assessing against Defendants, jointly and severally, civil penalties in the amount of Ten Thousand Dollars (\$10,000) for each violation of Chapter 501, Part II, Florida Statutes,

pursuant to Section 668.6075, Florida Statutes;

F. Assessing against Defendants, jointly and severally, civil penalties in the amount of Ten Thousand Dollars (\$10,000) for each violation of Chapter 501, Part II, Florida Statutes, in accordance with Section 501.2075, Florida Statutes; and Fifteen Thousand Dollars (\$15,000) for each such violation that victimizes, or attempts to victimize, a senior citizen or handicapped person, in accordance with Section 501.2077, Florida Statutes. (2004).

G. Awarding restitution for consumers injured by Defendants.

H. Requiring that Defendants disgorge all revenue, and all interest or proceeds derived therefrom, generated as a result of the unconscionable, unfair and deceptive practices set forth in this complaint;

J. In Granting Injunctive Relief, enjoining Defendants from forming a business or organizational identity as a method of avoiding the terms and conditions of the Injunction; requiring Defendants to disclose the terms and conditions of the Injunction to all officers, employees, representatives, agents, successors, assigns, or any other person who acts under or who will act under, by, through, or on behalf of Defendants engaged in any activity involving commercial e-mail, instant messaging, or internet promotion for a period of 2 years; and requiring Defendants to post a \$1,000,000 bond to secure compliance with the Injunction; and:

(1) Appointing a Receiver over each Defendant's assets and property, and providing for the liquidation of assets (a) procured through monies obtained through unlawful activities, or (b) procured through financing obtained in reliance on assets, revenues, draws, or income derived through unlawful means.

(2) Freezing Defendants' assets, except as provided by the Court; and

(3) Temporarily enjoining each Defendant from transferring an interest in or title to real estate located in Florida, unless Defendant provides 60 days notice to the Court and the parties of intent to transfer such an interest or title.

- K. Declaring the practices described in this complaint unlawful; and
- L. Granting such other relief as this court deems just and proper.

Respectfully submitted,

CHARLES J. CRIST, JR.  
ATTORNEY GENERAL

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