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**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK**

FEDERAL TRADE COMMISSION,)

Plaintiff,)

v.)

AUDIOTEX CONNECTION, INC., d/b/a Electronic Forms)
Management, www.sexygirls.com, www.beavisbutthead.com,)
www.1adult.com,)

PROMO LINE, INC., d/b/a Electronic Forms Management,)
www.sexygirls.com, www.beavisbutthead.com, www.1adult.com,)

ANNA M. GRELLA, individually, d/b/a Electronic Forms)
Management, www.sexygirls.com, www.beavisbutthead.com,)
www.1adult.com, and as officer of AUDIOTEX)
CONNECTION, INC.,)

WILLIAM GANNON, individually, d/b/a Electronic Forms)
Management, www.sexygirls.com, www.beavisbutthead.com,)
www.1adult.com, and as officer of PROMO LINE, INC., and)

DAVID ZENG, individually and d/b/a DaveZ, Electronic Forms)
Management, www.sexygirls.com, www.beavisbutthead.com,)
www.1adult.com,)

Defendants.)

Civil Action No.

**COMPLAINT
FOR PERMANENT
INJUNCTION
AND OTHER
EQUITABLE
RELIEF**

Plaintiff, the Federal Trade Commission ("FTC" or "the Commission"), for its complaint alleges as follows:

1. The Commission brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b), to secure preliminary and permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for defendants' deceptive acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

3. Venue in the United States District Court for the Eastern District of New York is proper under 28 U.S.C. § 1391(b) and (c), and 15 U.S.C. §§ 53(b).

PLAINTIFF

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 et seq. The Commission is charged, inter alia, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act in order to secure such equitable relief as may be appropriate in each case. 15 U.S.C. §§ 53(b), 56(a)(2).

DEFENDANTS

5. Defendant Audiotex Connection, Inc. ("Audiotex") is a New York corporation. Audiotex was incorporated in 1991. Its address is 220 Sunrise Highway, Suite 300, Rockville Centre, New York 11570, which is a mailbox at a commercial mail receiving company. Audiotex transacts business in the Eastern District of New York.

6. Defendant Promo Line, Inc. ("Promo Line") is a New York corporation. Promo Line was incorporated in 1990. Its address is 12 Maryland Street, Dix Hills, New York 11746. Promo Line transacts business in the Eastern District of New York.

7. Defendant Anna M. Grella is the president and sole owner of Audiotex. At all times material to this complaint, acting alone or in concert with others, she has formulated, directed, controlled, or participated in the acts and practices set forth in this complaint. She resides and has transacted business within the Eastern District of New York.

8. Defendant William Gannon is the president and sole shareholder of Promo Line. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices set forth in this complaint. He resides and has transacted business within the Eastern District of New York.

9. Defendant David Zeng is a manager, agent or employee of Audiotex or Promo Line and at all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices set forth in this complaint. He resides and has transacted business within the Eastern District of New York. Defendant Zeng does business as "DaveZ."

10. Collectively or individually defendants Audiotex, Promo Line, Grella, Gannon, and Zeng do business as: Electronic Forms Management (and on the Internet as “www.sexygirls.com”); “www.beavisbutthead.com” (on the Internet); and “www.1adult.com” (on the Internet).

COMMERCE

11. At all times relevant to this complaint, the defendants have maintained a substantial course of trade, advertising, offering for sale and selling computer-stored images via both the Internet and international and interstate telephone lines, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' COURSE OF BUSINESS

12. Since approximately July 1995, defendants have operated and promoted one or more World Wide Web sites offering certain computer-stored “adult” images located at sites on the Internet. Since at least 1996, defendants have operated and promoted one or more web sites, including the web sites located at “www.sexygirls.com,” “www.beavisbutthead.com,” and “www.1adult.com,” that promise consumers that for free they can view “adult” images at sites on the Internet. The World Wide Web or Web is a system used on the Internet for cross-referencing and retrieving information. A web site is a set of electronic documents, usually a home page and subordinate pages, readily viewable on computer by anyone with access to the Web, standard software, and knowledge of the web site’s location or address.

13. At one or more of the defendants' web sites, defendants state that they offer images for viewing at "FREE ADULT SITES." In addition, at one or more of the defendants' web sites, defendants state that the international sites they offer entail:

NO MEMBERSHIP FEES!

NO CREDIT CARDS NEEDED!

NO 900# CHARGES!

They further offer "MORE SEX for FREE" and "ALL NUDE ALL FREE PICTURES."

14. Defendants' web sites instruct consumers that to view the "adult" images defendants offer, the consumer must first "download a special image viewer." This "image viewer" is a software program, which is identified as "david.exe," or "david7.exe," or other similar names.

15. One or more of the defendants' web sites instruct consumers to contact Defendant Zeng at his E-mail account "DaveZ@aol.com" about any problems relating to the "image viewer."

16. Contrary to the clear implication of the term "image viewer" that defendants use on their web sites to describe this software program, the "david.exe" (or similarly named software) is not merely a means for reading computer data and converting such data into visual images. Instead, this software, if downloaded, installed, and activated, will, without any explanations or adequate disclosures: (a) automatically terminate the consumer's computer modem connection to the consumer's local Internet service provider while maintaining the appearance that the computer modem remains connected to such local Internet service provider; (b) automatically direct the consumer's computer modem to dial an international telephone number to re-connect to the Internet; (c) maintain the international long distance telephone connection thus established unless and until the consumer turns off the power switch to his computer or modem, or takes other

unusual action to terminate the telephone connection; and (d) cause the consumer to incur international long distance telephone charges on his telephone bill at rates in excess of \$2.00 per minute for as long as the international long distance telephone connection is maintained. One of the techniques that this software employs to maintain the appearance that the computer modem remains connected to the consumer's local Internet service provider is to automatically turn off the speaker on the consumer's modem before dialing, thus preventing the consumer from hearing the sound of the international number being automatically dialed.

17. Prior to about January 23, 1997, defendants, at one or more of their web sites, failed to disclose any of the events, described above in paragraph 16, that automatically follow if one downloads, installs and activates the purported "viewer" software.

18. Defendants changed one or more of their web sites on or about January 23, 1997. Nevertheless, since that date, defendants' web sites have continued to fail to disclose that once a consumer downloads, installs and activates the "viewer" software, it causes consumers to incur international long distance telephone charges at rates in excess of \$2.00 per minute. In addition, defendants' web sites continue to fail to disclose that the consumer's computer modem will maintain the international long distance telephone connection unless and until the consumer turns off the power switch to his computer or modem, or takes other unusual action to terminate the telephone connection.

19. Since about January 10, 1997, one or more of defendants' web sites have stated if consumers download the defendants' "viewer" software, the consumers' computer modems will be connected to a site in Moldova, a former constituent state of the now-defunct Soviet Union. However, the computer modems of consumers who download the software are not connected to a site located in Moldova, but rather are connected to a site located in Canada. Thus, even though

the automatic telephone call generated by defendant's "viewer" software goes to Canada, the consumer is charged at the comparatively much higher per-minute rates for a call to Moldova.

20. Once a consumer has downloaded, installed and activated defendants' purported "viewer" software, the consumer continues to incur international long distance telephone charges for as long as his computer modem is connected to the international long distance number, even after the consumer has exited defendants' "adult" sites.

21. Defendants' promises of "free" Internet viewing of computer-stored images have lured consumers into incurring hundreds of thousands of dollars in international long distance telephone charges.

22. The foreign telephone carrier pays defendants a portion of the revenues it receives from consumers for calls placed to defendants' international telephone lines. Defendants thus receive a portion of the amount of international telephone charges incurred by consumers.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

23. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that unfair or deceptive acts or practices in or affecting commerce are unlawful. Misrepresentations and omissions of material facts made to induce a reasonable consumer to purchase products or services, including the purchase of information, are deceptive acts or practices that are prohibited by Section 5(a) of the Act.

COUNT I

24. In numerous instances, in the course of advertising, offering, offering for sale, or selling certain computer-stored images located at Internet sites, defendants represent to consumers,

directly or by implication, that one may view the images without cost by downloading, installing and activating defendants' purported "viewer" software.

25. In truth and in fact, once a consumer downloads, installs and activates the purported "viewer" software to view defendants' computer-stored images located at Internet sites, the consumer incurs costs for an international long distance telephone call.

26. Therefore, defendants' representations, as set forth in paragraph 24, above, are false and deceptive, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

COUNT II

27. In numerous instances, in the course of advertising, offering, offering for sale, or selling certain computer-stored images located at Internet sites, defendants represent to consumers, directly or by implication, that one may view the images by downloading, installing and activating defendants' purported "viewer" software.

28. In numerous instances, defendants have failed to disclose or disclose adequately to consumers the material facts that, by downloading, installing, and activating defendants' purported "viewer" software, the following will result:

- a. The consumer's computer will terminate its modem connection to the consumer's usual local Internet service provider;
- b. The consumer's modem will dial an international long distance telephone number and establish a long-distance telephone connection with an Internet service provider at some remote location outside the United States;
- c. The consumer will incur international long distance telephone charges at rates in excess of \$2.00 per minute for as long as the long-distance

telephone connection with the remote Internet service provider is maintained; and

- d. The consumer's computer modem will not terminate the international long distance telephone connection to the remote Internet service provider unless and until the consumer turns off the power switch to his computer or modem, or takes other unusual action to terminate the telephone connection.

29. In view of defendants' representations that one may view certain images located at Internet sites by downloading, installing and activating defendants' purported "viewer" software, as set forth in paragraph 27, above, defendants' failure to disclose or disclose adequately the material information set forth in paragraph 28 is deceptive, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

COUNT III

30. In numerous instances, in the course of advertising, offering, offering for sale, or selling certain computer-stored images located at Internet sites, defendants directly or through an intermediary cause charges for long distance calls to Moldova to appear on the telephone billing statements of consumers who have downloaded, installed and activated defendants' purported "viewer" software.

31. In truth and in fact, the call that a consumer's computer modem dials when the consumer downloads, installs and activates defendants' purported "viewer" software does not go to Moldova, which has high per-minute long distance telephone rates for calls from the United States, but instead goes to Canada, which has comparatively much lower long distance rates for calls from the United States.

32. Therefore, the defendants' practice of causing charges for long distance calls to Moldova to appear on the telephone billing statements of consumers who have downloaded, installed and activated defendants' purported "viewer" software, as set forth in paragraph 30 above, is deceptive, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45.

CONSUMER INJURY

32. Consumers throughout the United States and in foreign countries have suffered monetary losses as a result of the defendants' unlawful acts or practices. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

33. Section 13(b) of the FTC Act, 15 U.S.C. §§ 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement and restitution, to prevent and remedy any violations of any provision of law enforced by the FTC.

34. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injury caused by defendants' law violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

1. Award plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;

2. Permanently enjoin the defendants from violating the FTC Act as alleged herein;
3. Award such relief as the Court finds necessary to redress injury to consumers resulting from defendants' violations of the FTC Act, including, but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten gains; and
4. Award plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: February __, 1997

Respectfully submitted,
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