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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FEDERAL TRADE COMMISSION, : Plaintiff, : v. : JOHN ZUCCARINI, individually and : d/b/a : Cupcake Party, Cupcake-Party, : Cupcake Parties, Cupcake-Parties, : Cupcake City, Cupcake Patrol, : Cupcake-Patrol, Cupcake First-Patrol, : Cupcake Show, Cupcake-Show, : Cupcake Shows, Cupcake-Shows, : Cupcake Parade, Cupcake-Parade, : Cupcakes, Cupcake Confidential, : Cupcake-Movies, Cupcake : Real Video, The Cupcake Incident, : The Cupcake Secret, Cupcake Message, : Cupcake Messenger, The Country Walk, : JZ Design, and RaveClub Berlin, : Defendant. :	Civil Action No. 01-CV-4854

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER EQUITABLE RELIEF

Plaintiff, the Federal Trade Commission, for its Complaint alleges as follows:

JURISDICTION AND VENUE

1. 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).

2. Venue in the United States District Court for the Eastern District of Pennsylvania is proper under 28 U.S.C. § 1391(b) and 15 U.S.C. § 53(b).

PLAINTIFF

3. Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), is an independent agency of the United States government created by statute. 15 U.S.C. § 41 *et seq.* The Commission, among other things, enforces Section 5(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission has the authority 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).

4. The Commission brings this action under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to secure preliminary and permanent injunctive relief, rescission of contracts, disgorgement, and other equitable relief, as is necessary to redress injury to consumers and the public interest from Defendant's deceptive and unfair acts and practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

DEFENDANT

5. Defendant John Zuccarini ("Zuccarini"), doing business as Cupcake Party, Cupcake-Party, Cupcake Parties, Cupcake-Parties, Cupcake City, Cupcake Patrol, Cupcake-Patrol, Cupcake First-Patrol, Cupcake Show, Cupcake-Show, Cupcake Shows, Cupcake-Shows, Cupcake Parade, Cupcake-Parade, Cupcakes, Cupcake Confidential, Cupcake-Movies, Cupcake Real Video, The Cupcake Incident, The Cupcake Secret, Cupcake Message, Cupcake Messenger, The Country Walk, JZ Design, and RaveClub Berlin, is an individual whose last known residence is 957 Bristol Pike, Suite D-6, Andalusia, Pennsylvania, 19020. Zuccarini transacts or has transacted business in this District, and throughout the United States.

6. At all times relevant to this Complaint, Defendant has maintained a substantial course of trade, advertising, offering for sale, and/or selling of goods and services through the Internet, in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFINITIONS

7. "Internet" is an umbrella term used to describe the decentralized system that links computers around the world using a standardized set of communication protocols. The Internet includes, among other systems, the World Wide Web, electronic mail, newsgroups, telnet, file transfer protocol (FTP), Internet Relay Chat, and instant messaging.

8. The "World Wide Web" or the "Web" is a system used on the Internet for cross-referencing and retrieving information. Documents on the World Wide Web are most frequently formatted in a language called HTML, or HyperText Markup Language, that supports links to

other documents on the World Wide Web.

9.   A "Web site" is a set of electronic files or documents, usually a home page and subordinate pages, readily viewable on a computer by anyone with access to the Web and standard Internet browser software.

10.   A "Web page" is a single electronic document on the World Wide Web, readily viewable on a computer by anyone with access to the Internet and standard Internet browser software. Every Web page on the World Wide Web is identified by a globally unique address.

11.   A "Uniform Resource Locator" or "URL" is the globally unique address of a resource, file, or page on the World Wide Web. Each Web page has a distinct URL, such as *www.mp3123.com* or *www.cupcakeparty.com/celebrities-gone-wild.htm,* that serves as a unique Internet address for that Web page.

12.   A "domain name" is a unique alpha-numeric name used to locate a particular organization or other entity on the Internet. Domain names allow users connected to the Internet to find Web sites with familiar names without having to memorize the complex numerical addresses that computers read. In the URL *www.cupcakeparty.com/celebrities-gone-wild.htm,* "cupcakeparty.com" is the domain name. Simply registering a domain name does not link the domain name with a Web site, particular location, or computer on the Internet. The registrant must find a host computer (or "server") for the Web site and have the domain name indexed to the server so that a user can locate the Web site.

13.   A "browser" is a software application used to view, download, upload, surf or otherwise access documents (pages or sites) on the World Wide Web. Browsers read coded documents that reside on servers, and interpret the coding into what users see rendered as a Web

page or site. A user may retrieve and view a Web page by entering the URL or domain name of the Web page in the address bar of the browser.

14.   A "window" is an enclosed area on a computer's display screen, usually rectangular in shape. Most computers allow a user to divide a screen into several windows. Within each window, a user can run a different program or different copies of the same program. A user can minimize a window by replacing the entire window with an "icon," a small picture that represents the program running in the window. Separate functions within a given program can also use windows, e.g. multiple documents within WordPerfect.

DEFENDANT'S COURSE OF BUSINESS

15.   Defendant's practices giving rise to this action involve his use of the World Wide Web and the Internet. Defendant redirects unsuspecting consumers to his Web sites and then traps them in a barrage of Web pages and pop-up browser windows. Defendant places Web pages on the World Wide Web with domain names that are misspellings of other domain names; transpose or invert words, terms, or phrases in other domain names; or are confusingly similar to others' famous trademarks, service marks, or names. When consumers type one of Defendant's domain names into their browser's address bar, they are immediately redirected to Defendant's Web sites.

16.   Once Defendant redirects consumers to his Web sites, he traps them there using a variety of tactics that obstruct consumers' ability to exit Defendant's sites. These practices force consumers, including children, to navigate through multiple windows displaying solicitations for online gambling and casinos, sweepstakes, lotteries, psychics, instant credit, or pornography.

17.   Defendant has registered thousands of domain names which are similar to others' domain names, famous trademarks, service marks, business names, or personal names.

18.   For example, Defendant has registered 15 spelling variations of the domain name cartoonnetwork.com, an entertainment Web site designed to provide children information and images about cartoon characters on the cable television channel Cartoon Network. Defendant's variations on the Cartoon Network domain name include: cartoonnetwok.com; cartoonnetwrok.com; catoonnetwork.com; cartoonnetwerk.com; cartoonnetwor.com; cartoonnework.com; and carttonnetwork.com.

19.   Additional examples of domain names registered by Defendant that are misspellings of other domain names are:

a. playstaion.com and plystation.com, both spelling variations of playstation.com, the domain name for a Web site about the Sony Play Station home video game console;

b. powerpuffgrils.com, a spelling variation of powerpuffgirls.com, the domain name for a Web site about a children's cartoon, The Powerpuff Girls;

c. harypoter.com and harrypottor.com, both spelling variations of a Web site operated by Warner Brothers about the children's book character Harry Potter; and

d.   collegebord.com and collegebord.org, both spelling variations of collegeboard.com, the domain name for a Web site designed for high school students to obtain information about college.

20.   Defendant has also registered domain names that, although not typographical errors, incorporate famous trademarks, service marks, company names, or celebrity names (such as disneywallpaper.com, wwfphotos.com, and jenniferlovehewitt.com) or transpose or invert

words, terms, or phrases in other domain names (such as joecartoon.com, an inversion of the words in the domain name cartoonjoe.com).

21. Defendant registers his domain names in anticipation of consumers mistakenly entering his domain names in a browser address bar, usually as a typographical error or a spelling error.

22. Nearly all of Defendant's domain names are associated with Web pages that contain no content. Rather, these Web pages are simply blank "bridge" pages that instantaneously and invisibly redirect consumers to Defendant's commercial Web sites, which display advertisements for various goods and services, including online gambling and casinos, sweepstakes, lotteries, psychics, instant credit, or pornography.

23. The domain name or URL actually entered by consumers, e.g., *www.cartoonnetwok.com,* does not appear in any of the browser windows that display Defendant's commercial Web sites.

24. After Defendant directs consumers to his Web sites, Defendant traps them in a series of advertising Web pages. Defendant obstructs consumers' efforts to extricate themselves from his advertising Web pages by employing a variety of tactics.

25. For example, Defendant uses an intervening bridge page, *www.cupcakeparty.com/html/celebrities-gone-wild.html,* as the launch pad for many of Defendant's Web sites. Once consumers are directed to Defendant's "launch pad" Web page, Defendant, without the users' knowledge or consent, launches a rapid series of new and separate browser windows, each containing advertisements.

26. On many of Defendant's Web sites, simply clicking on the "Close" or "X" button

in the top right hand corner of the screen, a common way to close a browser window, will not allow consumers to exit. Rather, when consumers attempt this standard function, they find themselves in yet another new window and viewing yet another of Defendant's advertisements - a practice commonly referred to as "mousetrapping."

27.   On at least one of Defendant's Web pages, if consumers click on the "Back" button, at least five new browser windows are launched, each displaying yet another one of Defendant's advertisements.

28.   One of Defendant's "windows," which appears on consumers' task bars as an icon, is hidden from view. This "stealth Web page" in fact contains no viewable content, but is set to periodically launch several additional browser windows that contain additional advertisements.

29.   Defendant obstructs consumers' ability to view this "stealth Web page" on the computer's display screen by using commands inserted in the page's source code. For example, consumers cannot maximize this window.

30.   If consumers should extricate themselves from all of Defendant's browser windows but fail to close the "stealth Web page," that Web page may continue to launch new browser windows without any action on the part of consumers, even after consumers have moved on to new Web sites.

31.   Defendant's use of these tactics can force consumers to navigate through dozens of unwanted advertising windows.

32.   In many instances, Defendant launches the authentic Web site his domain name mimics in addition to his advertising Web sites, thereby leading consumers to believe that the products and services advertised on his Web sites are affiliated with the authentic Web site. For

example, when consumers type the URL *www.collegebord.com* in the address bar of their browsers, numerous browser windows are launched on consumers' display screens, one of which displays *www.collegeboard.com*, the official College Board Web site.

33. In many instances, the Web pages and advertisements that are automatically launched include sexually-explicit material. For example, the domain names vidio.com and drewberrymore.com redirect consumers to Defendant's pornographic Web site, *www.sexyblondes.net/html/[...]htm*, which immediately launches another pornographic site. Instantly redirected to these sexually-explicit Web pages, consumers are trapped in a series of browser windows displaying graphic advertisements. In some cases, consumers who stumble upon these sexually-explicit Web pages have to click through 30 or more separate windows or shut off the computer to escape from these pornographic pages.

34. Defendant earns substantial advertising revenue from his practices of redirecting consumers to his Web sites and subjecting them to window after window of advertisements.

35. It is highly likely that Defendant's practices cause unsuspecting consumers to incur substantial injury in the form of transaction costs, including Internet connection fees, lost time, and lost data. These practices also expose children to successive solicitations for gambling, casinos, psychic services, or pornography.

36. Defendant's practices also are likely to cause hardship to employees who unintentionally violate company policies against visiting sexually explicit sites and/or gambling sites on the job. More generally, these practices prevent consumers from locating the Web sites they desire to visit, and impair the growth of the Internet as a commercial medium.

VIOLATIONS OF THE FTC ACT

COUNT I

37.   In numerous instances, Defendant's practice of diverting consumers to his Web

sites, as described in paragraphs 17 through 20 above, in combination with his practice of

obstructing consumers from exiting his Web sites, as described in paragraphs 24 through 31

above, is likely to cause substantial injury that cannot be reasonably avoided, and is not

outweighed by countervailing benefits to consumers or competition.

38.   Therefore, Defendant's combination of practices, as alleged in paragraph 37 above,

is unfair and violates Section 5(a) of the FTC Act. 15 U.S.C. § 45(a).

COUNT II

39.   In numerous instances, Defendant's practice of obstructing consumers from

exiting his Web sites, as described in paragraphs 24 through 31 above, is likely to cause

substantial injury that cannot be reasonably avoided, and is not outweighed by countervailing

benefits to consumers or competition.

40.   Therefore, Defendant's practice, as alleged in paragraph 39 above, is unfair and

violates Section 5(a) of the FTC Act. 15 U.S.C. § 45(a).

COUNT III

41.   In numerous instances, when consumers are directed to Defendant's Web sites,

Defendant launches multiple browser windows displaying not only Defendant's Web pages, but

also the Web site Defendant's domain name mimics.

42.   By doing so, Defendant represents, expressly or by implication, that his Web pages

are associated with the Web site Defendant's domain name mimics.

43. In truth and in fact, Defendant's Web pages are not associated with the Web site Defendant's domain name mimics.

44. Therefore, Defendant's representations and practices, as set forth in paragraph 41 above, are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

45. Consumers throughout the United States, including in the Eastern District of Pennsylvania, have been injured as a result of Defendant's unlawful acts or practices. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers and harm the public interest.

THE COURT'S POWER TO GRANT RELIEF

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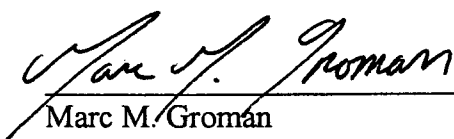
PRAYER FOR RELIEF

WHEREFORE, plaintiff, the Federal Trade Commission, 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 Defendant from violating the FTC Act, as alleged herein;

3.   Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendant's violations of the FTC Act, including, but not limited to, disgorgement of ill-gotten money; 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.

Respectfully submitted,

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