

1 **JURISDICTION AND VENUE**

2 2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(m)(1)(A),
3 53(b), 56(a), 57b, and 7706(a), and 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355. This action
4 arises under 15 U.S.C. § 45(a).

5 3. Venue in the United States District Court for the District of Nevada is proper under 15
6 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b)-(c), and 1395(a).

7 **DEFENDANT**

8 4. Defendant TJ Web Productions, LLC (“TJ Web”) is a Nevada limited liability
9 company with its registered office located at 10624 S. Eastern Ave., Henderson, Nevada 89052.
10 Since May 19, 2004, TJ Web has formulated, directed, controlled, or participated in the acts or
11 practices set forth in this Complaint. TJ Web resides in the District of Nevada and transacts
12 business within the District of Nevada and throughout the United States.

13 **COMMERCE**

14 5. At all times relevant to this Complaint, Defendant has maintained a substantial course
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1 advertise and promote Defendant's commercial web sites have been mailed to computers used in
2 interstate or foreign commerce and communication.

3 8. In connection with the marketing and promotion of Defendant's commercial web
4 sites, Defendant, through its affiliate program, has induced others, by monetary payments and
5 other consideration, to transmit commercial email messages on Defendant's behalf. In doing so,
6 Defendant has procured the transmission of such messages and is thereby an initiator, as that
7 term is defined under CAN-SPAM, of the email messages sent by its affiliates that promote and
8 market Defendant's web sites. In addition, because Defendant's web sites are being advertised
9 or promoted by such messages, Defendant is also a sender, as that term is defined under CAN-
10 SPAM, of the email messages that its affiliates are transmitting on Defendant's behalf.

11 9. In connection with the marketing and promotion of Defendant's commercial web
12 sites, Defendant's affiliates have transmitted email messages that fail to include clear and
13 conspicuous notice of a recipient's opportunity to decline to receive further commercial email
14 messages from Defendant at the recipient's email address. For example, in numerous instances,
15 the opt-out mechanism is displayed at the bottom of the email message after a depiction of
16 sexually explicit conduct.

17 10. In connection with the marketing and promotion of Defendant's commercial web
18 sites, Defendant's affiliates have transmitted email messages that fail to include a valid physical
19 postal address of Defendant.

20 11. In connection with the marketing and promotion of Defendant's commercial web
21 sites, Defendant's affiliates have transmitted email messages that contain depictions of sexually
22 explicit conduct and that fail to include the phrase "SEXUALLY-EXPLICIT: " in the subject
23 line of the message.

24 12. In connection with the marketing and promotion of Defendant's commercial web
25 sites, Defendant's affiliates have transmitted email messages that contain depictions of sexually
26 explicit conduct and that fail to include, in the initially viewable area of the message, the phrase
27 "SEXUALLY-EXPLICIT: ", a functioning opt-out mechanism, or a valid physical postal address
28 of Defendant.

1 13. In connection with the marketing and promotion of Defendant’s commercial web
2 sites, Defendant’s affiliates have transmitted email messages that include sexually oriented
3 materials in the initially viewable area of the message.

4 14. In numerous instances, recipients of the commercial email messages set forth in
5 paragraphs 11 through 13 have not given prior affirmative consent to receive such messages.

6 **THE CAN-SPAM ACT**

7 15. The CAN-SPAM Act, 15 U.S.C. § 7701 et seq., became effective on January 1,
8 2004, and has since remained in full force and effect.

9 16. Section 3(2) of the CAN-SPAM Act, 15 U.S.C. § 7702(2), defines “commercial
10 electronic mail message” to mean:

11 any electronic mail message the primary purpose of which is the commercial
12 advertisement or promotion of a commercial product or service (including
13 content on an Internet website operated for a commercial purpose).

14 17. Section 3(9) of the CAN-SPAM Act, 15 U.S.C. § 7702(9), defines “initiate,” when
15 used with respect to a commercial email message, to mean:

16 to originate or transmit such message or to procure the origination or
17 transmission of such message, but shall not include actions that constitute
18 routine conveyance of such message. For purposes of this paragraph, more than
19 one person may be considered to have initiated a message.

20 18. Section 3(12) of the CAN-SPAM Act, 15 U.S.C. § 7702(12), defines “procure,”
21 when used with respect to the initiation of a commercial email message, to mean:

22 intentionally to pay or provide other consideration to, or induce, another person
23 to initiate such a message on one’s behalf.

24 19. Section 3(13) of the CAN-SPAM Act, 15 U.S.C. § 7702(13), defines “protected
25 computer” by reference to 18 U.S.C. § 1030(e)(2)(B), which states that a protected computer is:

26 a computer which is used in interstate or foreign commerce or communication,
27 including a computer located outside the United States that is used in a manner that
28 affects interstate or foreign commerce or communication of the United States.

1 20. Section 3(16) of the CAN-SPAM Act, 15 U.S.C. § 7702(16), defines “sender,” when
2 used with respect to a commercial electronic mail message, as:

3 a person who initiates such a message and whose product, service, or Internet
4 web site is advertised or promoted by the message.

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1 27. The labeling and placement requirements of the CAN-SPAM Act and the Adult
2 Labeling Rule set forth in paragraphs 25 and 26 do not apply if the recipient has given prior
3 affirmative consent to receipt of the message. 15 U.S.C. § 7704(d)(2); 16 C.F.R. § 316.4(b).

4 28. Section 7(a) of the CAN-SPAM Act, 15 U.S.C. § 7706(a), states:

5 [T]his Act shall be enforced by the [FTC] as if the violation of this Act were an
6 unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the
7 [FTC Act] (15 U.S.C. § 57a(a)(1)(B)).

7 **COUNT I**

8 29. In numerous instances, including but not limited to the practices set forth in this
9 Complaint, Defendant has initiated the transmission, to protected computers, of commercial
10 email messages that include sexually oriented material and that:

- 11 A. fail to include the phrase “SEXUALLY-EXPLICIT: ” as the first
12 nineteen (19) characters at the beginning of the subject line;
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1 email messages that advertised or promoted Defendant's Internet web sites and failed to include
2 clear and conspicuous notice of the recipient's opportunity to decline to receive further
3 commercial email messages from Defendant at the recipient's email address.

4 32. Therefore, Defendant's acts or practices, as described in paragraph 31, violate
5 Section 5(a)(5)(A)(ii) or Section 5(a)(3) of the CAN-SPAM Act, 15 U.S.C. §§ 7704(a)(5)(A)(ii)
6 or 7704(a)(3).

7 **COUNT III**

8 33. In numerous instances, including but not limited to the practices set forth in this
9 Complaint, Defendant has initiated the transmission, to protected computers, of commercial
10 email messages that advertised or promoted Defendant's Internet web sites and failed to include
11 Defendant's valid physical postal address.

12 34. Therefore, Defendant's acts or practices, as described in paragraph 33, violate
13 Section 5(a)(5)(A)(iii) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(5)(A)(iii).

14 **INDIVIDUAL AND BUSINESS INJURY**

15 35. Individuals and businesses throughout the United States have suffered, and continue
16 to suffer, substantial injury as a result of Defendant's unlawful acts or practices. In addition,
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1 Act provides that “[w]hen any rule under subsection (a)(1)(B) of [Section 18] takes effect a
2 subsequent violation thereof shall constitute an unfair or deceptive act or practice in violation of
3 section 45(a)(1) of this title[.]” 15 U.S.C. § 57a(d)(3).

4 37. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section
5 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended,
6 and as implemented by 16 C.F.R. § 1.98(d) (1997), authorizes this Court to award monetary civil
7 penalties of not more than \$11,000 for each violation of CAN-SPAM, including those sections of
8 the CAN-SPAM Act that are interpreted by the Adult Labeling Rule. Defendant’s violations of
9 CAN-SPAM and the Adult Labeling Rule were committed with the knowledge required by
10 Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

11 38. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant
12 injunctive and other ancillary relief to prevent and remedy any violation of any provision of law
13 enforced by the FTC.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff requests that this Court, as authorized by Sections 5(a),
16 5(m)(1)(A), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b) and 57b, and
17 pursuant to its own equitable powers:

18 1. Enter judgment against Defendant and in favor of Plaintiff for each violation
19 alleged in this Complaint;

20 2. Award Plaintiff monetary civil penalties from Defendant for every violation of
21 the CAN-SPAM Act, including those sections of the CAN-SPAM Act that are interpreted by the
22 Adult Labeling Rule;

23 3. Permanently enjoin Defendant from violating CAN-SPAM and the Adult
24 Labeling Rule;

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- 1 4. Order Defendant to pay the costs of this action; and
2 5. Award Plaintiff such other preliminary and permanent equitable relief as the
3 Court may determine to be just and proper.

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5 Dated: _____, 2005

Respectfully submitted,

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