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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

BIGMAILBOX.COM, INC.,
a corporation, and

NOLAN QUAN,
individually and as an officer of the
corporation,

Defendants.

Civil Action No. 01-605-A

COMPLAINT FOR CIVIL
PENALTIES, INJUNCTIVE, AND
OTHER RELIEF

Plaintiff, the United States of America, acting upon notification and authorization to the

violations of the Commission's Children's Online Privacy Protection Rule (the "Rule"), 16 C.F.R. Part 312.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a). This action arises under 15 U.S.C. §§ 45(a)(1) and 6502(c).

3. Venue in this District is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b)-(c) and 1395(a).

DEFINITIONS

4. For purposes of this Complaint, the terms "child," "collects," "collection," "Commission," "delete," "disclosure," "Internet," "online contact information," "operator," "parent," "person," "personal information," "third party," "verifiable consent," and "website or online service directed to children," are defined as those terms are defined in Section 312.2 of the Rule, 16 C.F.R. § 312.2.

THE CHILDREN'S ONLINE PRIVACY PROTECTION RULE

5. Congress enacted the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. §§ 6501-6506, in 1998 to protect the safety and privacy of children online by prohibiting the unauthorized or unnecessary collection of children's personal information by Internet website operators. The Act directed the Federal Trade Commission to promulgate a rule implementing COPPA. The Commission promulgated the Children's Online Privacy Protection Rule, 16 C.F.R. Part 312, on November 3, 1999 under Section 1303(b) of COPPA, 15 U.S.C. §

6502(b), and Section 553 of the Administrative Procedures Act, 5 U.S.C. § 553. The Rule went into effect on April 21, 2000.

6. The Rule applies to any operator of a commercial website or online service directed to children that collects, uses, and/or discloses personal information from children, or any operator that has actual knowledge that it is collecting or maintaining a child's personal information.

7. The Rule requires a subject website operator to meet specific requirements prior to collecting online, using, or disclosing personal information from children, including but not limited to:

- a. Posting a privacy policy on its website providing clear, understandable, and complete notice of its information practices, including what information the website operator collects from children online, how it uses such information, its disclosure practices for such information, and other specifically required disclosures;
- b. Providing clear, understandable, and complete notice of its information practices directly to parents when required by the Rule;
- c. Obtaining verifiable parental consent prior to collecting, using, and/or disclosing personal information from children;
- d. Giving parents the option to consent to the collection and internal use of their children's personal information without consenting to the disclosure of that information to third parties;

- e. Providing a reasonable means for parents to review the personal information collected from their children and to refuse to permit its further use or maintenance;
- f. Not conditioning children's participation in an activity upon children disclosing more personal information than is reasonably necessary to participate in that activity; and
- g. Establishing and maintaining reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

8. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Rule constitutes an unfair or deceptive act or practice, in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1). *See also* COPPA, 15 U.S.C. § 6502(c).

DEFENDANTS

9. Defendant Bigmailbox.com, Inc. is a California corporation with its principal office or place of business located at 1200 West 7th Street, Suite L1-100, Los Angeles, California 90017.

10. Defendant Nolan Quan is an owner and officer of the corporate defendant.

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11. Since at least April 21, 2000, defendants have been operators of www.bigmailbox.com (“the website”). Defendants operate a free email service through their own website and through numerous other websites, including certain websites directed to children. Defendants use these email services to send advertising and direct marketing materials to email account holders. Defendants market their website and services throughout the United States through the Internet.

12. The acts and practices of defendants alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS’ COURSE OF CONDUCT

13. Defendants operate a free email service directed to children through one or more children’s websites. For example, defendants operate "Girl's Life Mail," which is an email service that defendants provide through the children’s website www.girlslife.com. Visitors to www.girlslife.com can receive a free “Girl’s Life Mail” email account by completing defendants’ email registration page at the www.girlslife.com website (*see* portal/email registration process from www.girlslife.com, Exhibit A, and portal/email registration process from www.smurfs.com, Exhibit B). Defendants include the domain name of the children’s website in the child’s email address (*i.e.*, yourchild@girlslife.com) (*see* example of welcome page for a Girls’ Life email account, Exhibit C).

14. Defendants collect and/or maintain personal information from children through their operation of email services such as “Girl’s Life Mail,” and thus are “operators” as defined in the Rule.

Defendants' Information Collection, Use, and Disclosure Practices

15. Defendants require children who wish to register for a free email account to select an online button marked "I Accept." This online button appears after the following statement: "You must be at least 13 years old or have your parent's permission to join this program." (Exhibit D, emphasis added.) However, despite actual knowledge that websites such as www.girlslife.com and www.smurfs.com are directed to children, defendants do not make reasonable efforts to determine whether registrants referred from such websites are children and to notify and obtain consent from their parents.

16. Defendants collect the following personal information from children online:
- a. Defendants require children who wish to open a free email account to provide their full name, an alternate email address, ZIP code, user name, password, a "password reminder" question and answer (in case the child forgets her password), gender, age, occupation (selected from a pull-down menu, *e.g.*, student), and interests. (Exhibits A and B.)
 - b. Defendants also ask children who wish to open a free email accounts to submit the city, state, and country where they reside. (*Id.*)
 - c. Defendants' free email accounts permit children to disclose their personal information to the public.

The personal information collected is more than what is reasonably necessary to provide email accounts to children.

associated with us or otherwise indicates their willingness to receive
unsolicited advertising, we may disclose individual registration as

25. In numerous instances, including the acts and practices described above, defendants have collected, used, or disclosed personal information from children in violation of the Rule, 16 C.F.R Part 312, including:

- a. Failing to provide sufficient notice on the website of what information they collect online from children, how they use such information, their disclosure practices, and all other required content, in violation of Section 312.4(b) of the Rule, 16 C.F.R. § 312.4(b);
- b. Failing to provide notice to parents of what information they collect online from children, how they use such information, their disclosure practices, and all other required content, in violation of Section 312.4(c) of the Rule, 16 C.F.R. § 312.4(c);
- c. Failing to obtain verifiable parental consent before any collection, use, and/or disclosure of personal information from children, in violation of Section 312.5 of the Rule, 16 C.F.R. § 312.5;
- d. Failing to provide a reasonable means for parents to review the personal information collected from their children and to refuse to permit its further use or maintenance, in violation of Section 312.6 of the Rule, 16 C.F.R. § 312.6; and
- e. Conditioning children's participation in an activity on their disclosing more personal information than is reasonably necessary to participate in such activity, in violation of Section 312.7 of the Rule, 16 C.F.R. § 312.7.

**DEFENDANTS' DECEPTIVE ACTS OR PRACTICES
IN VIOLATION OF THE FTC ACT**

26. 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 hereby declared unlawful.”

27. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Rule constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1). *See* COPPA, 15 U.S.C. § 6502(c).

28. By and through the acts and practices described in Paragraph 25 above, defendants have violated Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

29. Defendants have represented in their privacy policy that they: “do not structure any part of our consumer services to attract anyone under the age of 13;” “require anyone under the age of 13 to obtain their parent’s or legal guardian’s consent before allowing them to register for a BigMailBox account;” and “customers may automatically receive special offers from certain third parties unless they alter their settings from the options folder with their BigMailBox account. In cases where a customer opts to receive services from third parties associated with us or otherwise indicates their willingness to receive unsolicited advertising, we may disclose individual registration as appropriate in order to fulfill our customer’s requests.” (*See* Paragraph 20 and Exhibit F.)

30. In truth and in fact, defendants: do structure their free email accounts to attract children under 13; do not obtain parental consent prior to opening free email accounts for children under 13; do not give children the option to receive services from third parties but

instead require children under 13 to receive advertising from third parties at their email address; and automatically disclose children's personal information to third parties. Therefore, the representations set forth in Paragraphs 20 and 29 are false and misleading.

31. Defendants' false and misleading statements as set forth in Paragraphs 20 and 29 above constitute deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the FTC Act.

CIVIL PENALTIES, INJUNCTION AND OTHER RELIEF

32. Defendants have violated the Rule as described above with knowledge as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

33. Each collection, use, or disclosure of a child's personal information from April 21, 2000 through the filing of this Complaint, in which defendants have violated the Rule in one or more of the ways described above constitutes a separate violation for which plaintiff seeks monetary civil penalties.

34. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d), authorizes this Court to award monetary civil penalties of not more than \$11,000 for each such violation of the Rule, 16 C.F.R. Part 312.

35. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction against defendants' violation of the FTC Act, as well as such ancillary relief as may be just and proper.

PRAYER

WHEREFORE, plaintiff requests this Court, pursuant to 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b) and 57b, and the Court's own equitable powers to:

- (1) Enter judgment against defendants and in favor of plaintiff for each violation alleged in this Complaint;
- (2) Award plaintiff monetary civil penalties from defendants for each violation of the Rule, 16 C.F.R. Part 312;
- (3) Permanently enjoin defendants from violating the Rule, 16 C.F.R. Part 312;
- (4) Permanently enjoin defendants from violating the FTC Act, 15 U.S.C. § 45, in connection with the operation of any website or online service; and
- (5) Award plaintiff such additional relief as the Court may deem just, proper, or necessary to redress injury to consumers resulting from defendants' violations of the Rule, 16 C.F.R. Part 312.

DATED:

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