

1 Timothy J. Walton (State Bar No. 184292)
WALTON & ROESS LLP
2 407 South California
Suite 8
3 Palo Alto, CA 94306
4 Phone (650) 566-8500
Fax: (650) 618-8687

5 Attorneys for Plaintiff Daniel L. Balsam

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Superior Court of California
County of San Francisco

MAR 17 2008

GORDON PARK LI, Clerk
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CASE MANAGEMENT CONFERENCE SET

AUG 15 2008 - 9 AM

DEPARTMENT 212

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)

11 DANIEL L. BALSAM, an individual,
12)
Plaintiff,)

13 vs.)

14 AMANDA GREINER, an individual;)
15 and)
16 DOES 1-100,)
17 Defendants.)

) Case No.:

08- 473383

) **VERIFIED COMPLAINT FOR**
) **DAMAGES, INJUNCTIVE RELIEF, AND**
) **DECLARATORY RELIEF**

-) **1. VIOLATIONS OF CALIFORNIA**
) **RESTRICTIONS ON UNSOLICITED**
) **COMMERCIAL E-MAIL**
) **ADVERTISERS (Cal. Bus. & Prof.**
) **Code § 17529.5)**
) **2. VIOLATIONS OF CONSUMERS**
) **LEGAL REMEDIES ACT (Cal. Civ.**
) **Code § 1750 et seq.)**
) **3. DECLARATORY RELIEF**

20 COMES NOW PLAINTIFF DANIEL L. BALSAM and files this Verified Complaint for causes
21 of action against Defendant AMANDA GREINER and DOES 1 through 100, inclusive, and
22 alleges as follows:
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1 **I. SUMMARY OF THE COMPLAINT**

2 1. Plaintiff DANIEL L. BALSAM (“BALSAM”) brings this action against Defendant
3 AMANDA GREINER (“GREINER”) for sending and advertising in twenty (20) unlawful
4 Unsolicited Commercial Email (UCE or “spam”) messages to BALSAM between November 22
5 and December 17, 2007, inclusive.

6 2. The headers of the spams contain or are accompanied by numerous elements of falsified,
7 misrepresented, or forged header information, in violation of Cal. Bus. & Prof. Code § 17529.5.
8 The spams also contain various types of deceptive information prohibited by Cal. Civ. Code
9 § 1750 *et seq.* (the Consumers Legal Remedies Act).

10 3. This Court should award statutory damages of \$1,000 per spam, as provided by Cal. Bus.
11 & Prof. Code § 17529.5(b)(1)(B)(ii), and not consider any reduction, because GREINER failed
12 to implement reasonably effective systems designed to prevent the sending of unlawful spam in
13 violation of the statute. BALSAM is informed and believes and thereon alleges that GREINER’s
14 actions were knowing, willful, and blatant, and *not* “clerical” mistakes.

15 4. This Court should grant injunctive relief to prohibit GREINER from engaging in
16 deceptive marketing practices, as authorized by Civ. Code § 1780(a)(2), because GREINER has
17 not identified all consumers similarly situated to BALSAM and informed them that she would no
18 longer be engaging in deceptive marketing practices.

19
20 **II. PARTIES**

21 **A. Plaintiff Daniel L. Balsam**

22 5. BALSAM is now, and at all times relevant herein has been, an individual residing in the
23 State of California, in the City and County of San Francisco.

1 6. BALSAM is a consumer because BALSAM seeks and acquires, by purchase or lease,
2 goods and services for personal, family, or household purposes.

3 7. BALSAM owns and at all relevant times herein owned a computer with an Internet
4 connection. BALSAM ordinarily uses this computer to access his email accounts. This
5 computer is located in the State of California, in the City and County of San Francisco.

6 BALSAM received all of the spams over his Internet Service Provider's and email service
7 provider's equipment, located in the State of California, in the City and County of San Francisco.
8 Regardless of the location(s) from which the commercial emails were sent, a substantial portion
9 of each advertising transaction – the *receipt* of the emails – occurred in San Francisco County.

10 **B. Defendant Amanda Greiner**

11 8. BALSAM is informed and believes and thereon alleges that GREINER is an individual
12 residing in Center Moriches, New York.

13 9. BALSAM is informed and believes and thereon alleges that GREINER signed up as a
14 “publisher” on the [REDACTED NETWORK] online advertising network in order to find
15 advertisers for whom she could send unlawful spams and receive compensation for sending
16 spams or for any resulting transactions.

17 10. BALSAM is informed and believes and thereon alleges that GREINER took significant
18 steps to hide her true identity. Specifically, BALSAM is informed and believes and thereon
19 alleges that GREINER does business as “Madd Roi LLC,” using a P.O. Box in East Moriches,
20 New York. BALSAM is informed and believes and thereon alleges that there is no such entity
21 “Madd Roi LLC” registered with the New York Secretary of State, or the Secretary of State of
22 any of the United States of America.

1 11. BALSAM was only able to identify GREINER with the assistance of [REDACTED
2 NETWORK]. Attachment A is a true and correct copy of an email from [REDACTED
3 NETWORK] to BALSAM identifying GREINER as the source of the spams.

4 12. BALSAM is informed and believes and thereon alleges that GREINER registered
5 Internet domain names she used to send spam using the following names, business entities, and
6 addresses, none of which exist:

- 7 • Brittany Marks, Love Business Inc., 65 Long Drive, Old Field, NY 11733
- 8 • Cynthia Ryan, Compliment mktg, 291 Park Drive, West Hampton, NY 11977
- 9 • Corinne Michaels, Buyers Marketing, 21 Main Street, Philadelphia, PA 19019
- 10 • Davin Mitchell, Barnes Vehicles, 21 Barnes Road, Manorville, NY 11949

11 BALSAM is informed and believes and thereon alleges that GREINER has also claimed to do
12 business using the following name and business entity, which do not exist:

- 13 • Jennie Smith, Smith Antiques, 17 Flintlock Drive, Shirley, NY 11967

14 Attachment B shows true and correct copies of three of the domain name registrations.

15 16 **III. TWENTY UNLAWFUL SPAMS**

17 13. From November through December 2007, GREINER advertised in and/or sent twenty
18 (20) Unsolicited Commercial Email advertisements (“spams”) to BALSAM.

19 “Commercial e-mail advertisement” means any electronic mail message initiated
20 for the purpose of advertising or promoting the lease, sale, rental, gift offer, or
other disposition of any property, goods, services, or extension of credit.

21 Cal. Bus. & Prof. Code § 17529.1(c).

22 14. GREINER sent these spams on behalf of eight different advertisers.
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24

1 15. True and correct copies of three sample spams are included in Attachment C, redacted
2 only to remove BALSAM's email address(es) and uniquely identifying information.

3 **A. Spam Advertising Beverage Solutions Inc. (1)**

4 16. GREINER advertised in and sent a spam to BALSAM on November 22, 2007, also
5 advertising Beverage Solutions Inc. dba "4 Seasons Wine." GREINER identified the sender
6 name as "Complimentary International Wines." GREINER sent the spam from the domain name
7 *coolfunhairstyles.com*, which is registered to a Brittany Marks and "Love Business Inc." at 65
8 Long Drive in Old Field, New York. Balsam is informed and believes and thereon alleges that
9 there is no such person and no such business entity, and according to the U.S. Postal Service, the
10 address does not exist. The subject line of the spam read: "6 Bottles of *Free Holiday Wine,
11 Happy Thanksgiving-22 Nov 2007 22:26:01 +0000." The body of the spam included two
12 mailing addresses, neither of which were GREINER's. BALSAM is informed and believes and
13 thereon alleges that the first address in Beverly Hills, California is operated by [REDACTED
14 NETWORK] (another online advertising network). BALSAM is informed and believes and
15 thereon alleges that the second address, in Brooklyn, New York, has nothing to do with either
16 GREINER or Beverage Solutions Inc.

17 **B. Spam Advertising Intermark Communications Inc. (2)**

18 17. GREINER advertised in and sent a spam to BALSAM on December 11, 2007, also
19 advertising Intermark Communications Inc. dba *800ccdebtonline.com*. GREINER identified the
20 sender name as "D*ebtEliminator." GREINER sent the spam from the domain name
21 *bennyandsonscarpetcleaning.com*, which is registered to a Cynthia Ryan and "Compliment
22 mktg" at 291 Park Drive, West Hampton, New York. Balsam is informed and believes and
23 thereon alleges that there is no such person and no such business entity, and according to the
24 U.S. Postal Service, the address does not exist. The subject line of the spam read: "Reduce Your

1 Holiday Financial Stress Today-11 Dec 2007 06:23:46 -0500.” The body of the spam included
2 two mailing addresses, neither of which were GREINER’s. BALSAM is informed and believes
3 and thereon alleges that the first address in Woodbury, New York is operated by Intermark
4 Communications Inc. BALSAM is informed and believes and thereon alleges that the second
5 address, in Locust Grove, Georgia, has nothing to do with either GREINER or Intermark
6 Communications Inc.

7 18. GREINER advertised in and sent a spam to BALSAM on December 12, 2007, also
8 advertising Intermark Communications Inc. dba *800ccdebtonline.com*. GREINER identified the
9 sender name as “CredtStressRelief.” GREINER sent the spam from the domain name
10 *marlinaschristmasclothes.com*, which is registered to a Cynthia Ryan and “Compliment mktg” at
11 291 Park Drive, West Hampton, New York. Balsam is informed and believes and thereon
12 alleges that there is no such person and no such business entity, and according to the U.S. Postal
13 Service, the address does not exist. The subject line of the spam read: “Need Help with Holidays
14 Credt Stress? 12 Dec 2007 12:19:02 -0500.” The body of the spam included two mailing
15 addresses, neither of which were GREINER’s. BALSAM is informed and believes and thereon
16 alleges that the first address in Woodbury, New York is operated by Intermark Communications
17 Inc. BALSAM is informed and believes and thereon alleges that the second address, in Locust
18 Grove, Georgia, has nothing to do with either GREINER or Intermark Communications Inc.

19 **C. Spam Advertising Central Coast Nutraceuticals Inc. (1)**

20 19. GREINER advertised in and sent a spam to BALSAM on December 12, 2007, also
21 advertising Central Coast Nutraceuticals Inc. dba *colopure.com*. GREINER identified the sender
22 name as “Holidays Fat relief.” GREINER sent the spam from the domain name
23 *signuptodayforfreegifts.com*, which is registered to a Corrine Michaels and “Buyers Marketing”
24 at 21 Main Street, Philadelphia, Pennsylvania. Balsam is informed and believes and thereon

1 alleges that there is no such person and no such business entity, and according to the U.S. Postal
2 Service, the address does not exist. The subject line of the spam read: "Clean Your Insides for a
3 Dollar, Dont Gain Holiday Fat-12 Dec 2007 13:21:13 -0500." The body of the spam included
4 two mailing addresses, neither of which were GREINER's. BALSAM is informed and believes
5 and thereon alleges that the first address in Tempe, Arizona is operated by Central Coast
6 Nutraceuticals Inc. BALSAM is informed and believes and thereon alleges that the second
7 address, in Mastic Beach, New York, has nothing to do with either GREINER or Central Coast
8 Nutraceuticals Inc.

9 **D. Spam Advertising ConsumerTrack Inc. (5)**

10 20. GREINER advertised in and sent a spam to BALSAM on December 9, 2007, also
11 advertising ConsumerTrack Inc. dba *gofreecredit.com*. GREINER identified the sender name as
12 "F* reeCredtScores." GREINER sent the spam from the domain name
13 *dannysbaitandtackle.com*, which is registered to a Cynthia Ryan and "Compliment mktg" at 291
14 Park Drive, West Hampton, New York. Balsam is informed and believes and thereon alleges
15 that there is no such person and no such business entity, and according to the U.S. Postal Service,
16 the address does not exist. The subject line of the spam read: "Your Most Recent F ree Credt
17 Score Has Arrived-08 Dec 2007 23:43:24 -0500." The body of the spam included two mailing
18 addresses, neither of which were GREINER's. BALSAM is informed and believes and thereon
19 alleges that the first address in El Segundo, California is operated by ConsumerTrack Inc.
20 BALSAM is informed and believes and thereon alleges that the second address, in Locust Grove,
21 Georgia, has nothing to do with either GREINER or ConsumerTrack Inc.

22 21. GREINER advertised in and sent a spam to BALSAM on December 9, 2007, also
23 advertising ConsumerTrack Inc. dba *gofreecredit.com*. GREINER identified the sender name as
24 "F* reeCredtReports." GREINER sent the spam from the domain name

1 *frankiesconcerttickets.com*, which is registered to a Corrine Michaels and “Buyers Marketing” at
2 21 Main Street, Philadelphia, Pennsylvania. Balsam is informed and believes and thereon
3 alleges that there is no such person and no such business entity, and according to the U.S. Postal
4 Service, the address does not exist. The subject line of the spam read: “Re: Your Upgraded
5 Credit Score is waiting to Print-08 Dec 2007 12:11:19 -0500.” The body of the spam included
6 two mailing addresses, neither of which were GREINER’s. BALSAM is informed and believes
7 and thereon alleges that the first address in El Segundo, California is operated by
8 ConsumerTrack Inc. BALSAM is informed and believes and thereon alleges that the second
9 address, in Mastic Beach, New York, has nothing to do with either GREINER or
10 ConsumerTrack Inc.

11 22. GREINER advertised in and sent a spam to BALSAM on December 13, 2007, also
12 advertising ConsumerTrack Inc. dba *gofreecredit.com*. GREINER identified the sender name as
13 “CredtScoresHelp.” GREINER sent the spam from the domain name
14 *frankiestoymakingclasses.com*, which is registered to a Davin Mitchell and “Barnes Vehicles” at
15 21 Barns Road, Manorville, New York. Balsam is informed and believes and thereon alleges
16 that there is no such person and no such business entity, and according to the U.S. Postal Service,
17 the address does not exist. The subject line of the spam read: “Check Your Updated Credit Score
18 Instantly for F* ree-14 Dec 2007 12:55:56 -0500.” The body of the spam included two mailing
19 addresses, neither of which were GREINER’s. BALSAM is informed and believes and thereon
20 alleges that the first address in El Segundo, California is operated by ConsumerTrack Inc.
21 BALSAM is informed and believes and thereon alleges that the second address, in Center
22 Moriches, New York, has nothing to do with either GREINER or ConsumerTrack Inc.

1 23. GREINER advertised in and sent a spam to BALSAM on December 16, 2007, also
2 advertising ConsumerTrack Inc. dba *gofreecredit.com*. GREINER identified the sender name as
3 “F* reeCredtReports.” GREINER sent the spam from the domain name
4 *sexyblackdressesyoucanafford.com*, which is registered to a Corrine Michaels and “Buyers
5 Marketing” at 21 Main Street, Philadelphia, Pennsylvania. Balsam is informed and believes and
6 thereon alleges that there is no such person and no such business entity, and according to the
7 U.S. Postal Service, the address does not exist. The subject line of the spam read: “Re: Your
8 Upgraded Credit Score is waiting to Print-13 Dec 2007 12:27:15 -0500.” The body of the spam
9 included two mailing addresses, neither of which were GREINER’s. BALSAM is informed and
10 believes and thereon alleges that the first address in El Segundo, California is operated by
11 ConsumerTrack Inc. BALSAM is informed and believes and thereon alleges that the second
12 address, in Mastic Beach, New York, has nothing to do with either GREINER or
13 ConsumerTrack Inc.

14 24. GREINER advertised in and sent a spam to BALSAM on December 17, 2007, also
15 advertising ConsumerTrack Inc. dba *gofreecredit.com*. GREINER identified the sender name as
16 “C0mplimentryCredtScores.” GREINER sent the spam from the domain name
17 *pauliesonlinebusinesshelp.com*, which is registered to a Jennie Smith and “Smith Antiques” at 17
18 Flintlock Drive, Shirley, New York. Balsam is informed and believes and thereon alleges that
19 there is no such person and no such business entity. The subject line of the spam read: “Print
20 Your Recent F* ree Credit Score-17 Dec 2007 05:48:36 -0500.” The body of the spam included
21 two mailing addresses, neither of which were GREINER’s. BALSAM is informed and believes
22 and thereon alleges that the first address in El Segundo, California is operated by
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1 ConsumerTrack Inc. BALSAM is informed and believes and thereon alleges that the second
2 address, in St. Louis, Missouri, has nothing to do with either GREINER or ConsumerTrack Inc.

3 **E. Spam Advertising First National Gold (3)**

4 25. GREINER advertised in and sent a spam to BALSAM on December 7, 2007, also
5 advertising First National Gold. GREINER identified the sender name as “Holiday Approval
6 Dept.” GREINER sent the spam from the domain name *barbiescakeandcookies.com*, which is
7 registered to a Cynthia Ryan and “Compliment mktg” at 291 Park Drive, West Hampton, New
8 York. Balsam is informed and believes and thereon alleges that there is no such person and no
9 such business entity, and according to the U.S. Postal Service, the address does not exist. The
10 subject line of the spam read: “Re: Your Approved, Approval # 89136-05 Dec 2007 04:44:59 -
11 0500.” The body of the spam included two mailing addresses, neither of which were
12 GREINER’s. BALSAM is informed and believes and thereon alleges that the first address in
13 Las Vegas, Nevada is operated by First National Gold. BALSAM is informed and believes and
14 thereon alleges that the second address, in Locust Grove, Georgia, has nothing to do with either
15 GREINER or First National Gold.

16 26. GREINER advertised in and sent a spam to BALSAM on December 8, 2007, also
17 advertising First National Gold. GREINER identified the sender name as “Approvals
18 Confirmation#45687.” GREINER sent the spam from the domain name
19 *chिकासclothingoutlet.com*, which is registered to a Corrine Michaels and “Buyers Marketing” at
20 21 Main Street, Philadelphia, Pennsylvania. Balsam is informed and believes and thereon
21 alleges that there is no such person and no such business entity, and according to the U.S. Postal
22 Service, the address does not exist. The subject line of the spam read: “Your Approved In time
23 for Christmas-05 Dec 2007 05:34:18 -0500.” The body of the spam included two mailing
24 addresses, neither of which were GREINER’s. BALSAM is informed and believes and thereon

1 alleges that the first address in Las Vegas, Nevada is operated by First National Gold. BALSAM
2 is informed and believes and thereon alleges that the second address, in Mastic Beach, New
3 York, has nothing to do with either GREINER or First National Gold.

4 27. GREINER advertised in and sent a spam to BALSAM on December 11, 2007, also
5 advertising First National Gold. GREINER identified the sender name as "Holiday Approval
6 Dept." GREINER sent the spam from domain name *thepfectpromgowns.com*, which is
7 registered to a Cynthia Ryan and "Compliment mktg" at 291 Park Drive, West Hampton, New
8 York. Balsam is informed and believes and thereon alleges that there is no such person and no
9 such business entity, and according to the U.S. Postal Service, the address does not exist. The
10 subject line of the spam read: "Your Approved, Approval # 772507-12 Dec 2007 05:24:16 -
11 0500." The body of the spam included two mailing addresses, neither of which were
12 GREINER's. BALSAM is informed and believes and thereon alleges that the first address in
13 Las Vegas, Nevada is operated by First National Gold. BALSAM is informed and believes and
14 thereon alleges that the second address, in Locust Grove, Georgia, has nothing to do with either
15 GREINER or First National Gold.

16 **F. Spam Advertising Firewater Media Inc. (3)**

17 28. GREINER advertised in and sent a spam to BALSAM on November 26, 2007, also
18 advertising Firewater Media Inc. dba *bestchanceautowarranty.com* and
19 *freedomautowarranty.com*. GREINER identified the sender name as "Holiday Warranty
20 Programs." GREINER sent the spam from the domain name *professionalhairtips.com*, which is
21 registered to a Brittany Marks and "Love Business Inc." at 65 Long Drive in Old Field, New
22 York. Balsam is informed and believes and thereon alleges that there is no such person and no
23 such business entity, and according to the U.S. Postal Service, the address does not exist. The
24 subject line of the spam read: "Extended Warrantys, 60 Percent Sale-27 Nov 2007 05:26:59

1 +0000.” The body of the spam included two mailing addresses, neither of which were
2 GREINER’s. BALSAM is informed and believes and thereon alleges that the first address in
3 Acworth, Georgia and the second address in Brooklyn, New York, have nothing to do with either
4 GREINER or Firewater Media Inc.

5 29. GREINER advertised in and sent a spam to BALSAM on November 30, 2007, also
6 advertising Firewater Media Inc. dba *bestchanceautowarranty.com* and
7 *freedomautowarranty.com*. GREINER identified the sender name as “Holiday Warranty Help.”
8 GREINER sent the spam from the domain name *searchforyourperfectmatch.com*, which is
9 registered to a Cynthia Ryan and “Compliment mktg” at 291 Park Drive, West Hampton, New
10 York. Balsam is informed and believes and thereon alleges that there is no such person and no
11 such business entity, and according to the U.S. Postal Service, the address does not exist. The
12 subject line of the spam read: “60 Percent off Extended Warrantys Available-27 Nov 2007
13 03:44:45 -0500.” The body of the spam included two mailing addresses, neither of which were
14 GREINER’s. BALSAM is informed and believes and thereon alleges that the first address in
15 Acworth, Georgia and the second address in Locus Grove, Georgia, have nothing to do with
16 either GREINER or Firewater Media Inc.

17 30. GREINER advertised in and sent a spam to BALSAM on December 7, 2007, also
18 advertising Firewater Media Inc. dba *bestchanceautowarranty.com* and
19 *freedomautowarranty.com*. GREINER identified the sender name as “Holiday Warranty Help.”
20 GREINER sent the spam from the domain name *onedayshippingonyourdvdrental.com*, which is
21 registered to a Cynthia Ryan and “Compliment mktg” at 291 Park Drive, West Hampton, New
22 York. Balsam is informed and believes and thereon alleges that there is no such person and no
23 such business entity, and according to the U.S. Postal Service, the address does not exist. The
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1 subject line of the spam read: “60 Percent off This Week-02 Dec 2007 07:16:27 -0500.” The
2 body of the spam included two mailing addresses, neither of which were GREINER’s.
3 BALSAM is informed and believes and thereon alleges that the first address in Acworth,
4 Georgia and the second address in Locus Grove, Georgia, have nothing to do with either
5 GREINER or Firewater Media Inc.

6 **G. Spam Advertising Passive Profits Inc. and Michael Brooks (4)**

7 31. GREINER advertised in and sent a spam to BALSAM on November 27, 2007, also
8 advertising Passive Profits Inc. and Michael Brooks dba *passiveinternetprofit2.com*,
9 *passiveinternetprofit5.com*, and *passiveinternetprofit7.com*. GREINER identified the sender
10 name as “Help Wanted.” GREINER sent the spam from the domain name
11 *dauidscustomfishingrods.com*, which is registered to a Corrine Michaels and “Buyers Marketing”
12 at 21 Main Street, Philadelphia, Pennsylvania. Balsam is informed and believes and thereon
13 alleges that there is no such person and no such business entity, and according to the U.S. Postal
14 Service, the address does not exist. The subject line of the spam read: “Type and Form fill for
15 Google, Data Entry Positions Available-27 Nov 2007 04:34:21 -0500.” The body of the spam
16 included two mailing addresses, neither of which were GREINER’s. BALSAM is informed and
17 believes and thereon alleges that Michael Brooks abandoned the first address in Irvine,
18 California several months prior to the sending of this spam, and the second address, in Mastic
19 Beach, New York, has nothing to do with either GREINER or Michael Brooks.

20 32. GREINER advertised in and sent a spam to BALSAM on December 4, 2007, also
21 advertising Passive Profits Inc. and Michael Brooks dba *passiveinternetprofit2.com*,
22 *passiveinternetprofit5.com*, and *passiveinternetprofit7.com*. GREINER identified the sender
23 name as “Google Business Center.” GREINER sent the spam from the domain name
24 *barbiescakeandcookies.com*, which is registered to a Cynthia Ryan and “Compliment mktg” at

1 291 Park Drive, West Hampton, New York. Balsam is informed and believes and thereon
2 alleges that there is no such person and no such business entity, and according to the U.S. Postal
3 Service, the address does not exist. The subject line of the spam read: "Type and Form fill with
4 google Today-04 Dec 2007 00:35:08 -0500." The body of the spam included two mailing
5 addresses, neither of which were GREINER's. BALSAM is informed and believes and thereon
6 alleges that Michael Brooks abandoned the first address in Irvine, California several months
7 prior to the sending of this spam, and the second address, in Locust Grove, Georgia, has nothing
8 to do with either GREINER or Michael Brooks.

9 33. GREINER advertised in and sent a spam to BALSAM on December 11, 2007, also
10 advertising Passive Profits Inc. and Michael Brooks dba *passiveinternetprofit2.com*,
11 *passiveinternetprofit5.com*, and *passiveinternetprofit7.com*. GREINER identified the sender
12 name as "AmazonCareerCenter." GREINER sent the spam from the domain name
13 *fancychristmasornaments.com*, which is registered to a Corrine Michaels and "Buyers
14 Marketing" at 21 Main Street, Philadelphia, Pennsylvania. Balsam is informed and believes and
15 thereon alleges that there is no such person and no such business entity, and according to the
16 U.S. Postal Service, the address does not exist. The subject line of the spam read: "Have You
17 Started Working With Amazon Yet?11 Dec 2007 07:05:37 -0500." The body of the spam
18 included two mailing addresses, neither of which were GREINER's. BALSAM is informed and
19 believes and thereon alleges that Michael Brooks abandoned the first address in Irvine,
20 California several months prior to the sending of this spam, and the second address, in Mastic
21 Beach, New York, has nothing to do with either GREINER or Michael Brooks.

22 34. GREINER advertised in and sent a spam to BALSAM on December 12, 2007, also
23 advertising Passive Profits Inc. and Michael Brooks dba *passiveinternetprofit2.com*,
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1 *passiveinternetprofit5.com*, and *passiveinternetprofit7.com*. GREINER identified the sender
2 name as “Google Online Careers.” GREINER sent the spam from the domain name
3 *juliesantiquechina.com*, which is registered to a Davin Mitchell and “Barnes Vehicles” at 21
4 Barns Road, Manorville, New York. Balsam is informed and believes and thereon alleges that
5 there is no such person and no such business entity, and according to the U.S. Postal Service, the
6 address does not exist. The subject line of the spam read: “Google Typeists and Form Fillers
7 Needed ASAP-13 Dec 2007 11:51:03 -0500.” The body of the spam included two mailing
8 addresses, neither of which were GREINER’s. BALSAM is informed and believes and thereon
9 alleges that Michael Brooks abandoned the first address in Irvine, California several months
10 prior to the sending of this spam, and the second address, in Center Moriches, New York, has
11 nothing to do with either GREINER or Michael Brooks.

12 **H. Spam Advertising PersonalizationMall.com Inc. (1)**

13 35. GREINER advertised in and sent a spam to BALSAM on December 10, 2007, also
14 advertising PersonalizationMall.com Inc. dba *personalizationmall.com*. GREINER identified the
15 sender name as “HolidaySales.” GREINER sent the spam from the domain name
16 *marlinaschristmasclothes.com*, which is registered to a Cynthia Ryan and “Compliment mktg” at
17 291 Park Drive, West Hampton, New York. Balsam is informed and believes and thereon
18 alleges that there is no such person and no such business entity, and according to the U.S. Postal
19 Service, the address does not exist. The subject line of the spam read: “Write on These Holiday
20 Ornaments, anything you want to say-.” The body of the spam included two mailing addresses;
21 BALSAM is informed and believes and thereon alleges that neither of the mailing addresses was
22 GREINER’s. BALSAM is informed and believes and thereon alleges that the first address in
23 Woodridge, Illinois is operated by PersonalizationMall.com Inc. BALSAM is informed and
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1 believes and thereon alleges that the second address, in Locust Grove, Georgia, has nothing to do
2 with either GREINER or PersonalizationMall.com Inc.

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4 **III. SPECIFIC ALLEGATIONS**

5 **A. BALSAM's Email Usage**

6 36. BALSAM's email addresses at which BALSAM received the spams at issue in this
7 action are "California email addresses."

8 "California e-mail address" means 1) An e-mail address furnished by an
9 electronic mail service provider that sends bills for furnishing and maintaining
10 that e-mail address to a mailing address in this state; 2) An e-mail address
11 ordinarily accessed from a computer located in this state; 3) An e-mail address
12 furnished to a resident of this state.

13 Cal. Bus. & Prof. Code § 17529.1(b). All three conditions apply: The email addresses at which
14 BALSAM received the commercial email is furnished by Yahoo! Inc. and Yahoo! Inc. sends
15 bills for furnishing and maintaining those e-email addresses to a mailing address in California;
16 BALSAM ordinarily accesses those email addresses from a computer located in California; and
17 BALSAM is a resident of California.

18 37. BALSAM's email addresses play no part in determining whether or not GREINER
19 included falsified, misrepresentative, forged, or otherwise deceptive information in the email
20 headers or bodies.

21 38. BALSAM's email addresses are confidential for numerous reasons, including, but not
22 limited to, avoiding the risk of retaliation by "mail bombing" (sending massive amounts of email
23 to BALSAM's email addresses), "joe jobbing" (sending unlawful email as if it were coming
24 from BALSAM's email addresses as a means of harassment), or sharing of BALSAM's email
addresses with other unknown parties who might in turn send spam or mail bombs to BALSAM
or as if from BALSAM.

1 39. BALSAM uses filters to attempt to block spam. These filters identify spam by the
2 sender's domain name, among other criteria.

3 **B. GREINER's Computer and Email Usage**

4 40. BALSAM is informed and believes and thereon alleges that GREINER intended to
5 deceive recipients of her spam messages through the extensive use of falsified, misrepresented,
6 and/or forged information contained in or accompanying the email headers, as described herein.

7 BALSAM is informed and believes and thereon alleges that GREINER went to great lengths to
8 falsify the email headers in order to deceive recipients and spam filters, and to mask her identity.

9 41. BALSAM is informed and believes and thereon alleges that for every spam he received
10 sent or caused to be sent by or advertising GREINER, thousands or even millions of other
11 California residents received the same spams.

12 42. GREINER advertised in each and every spam because domain names that she registered
13 appear in each and every spam.

14 43. BALSAM is informed and believes and thereon alleges that GREINER actually profited
15 and continue to profit and was unjustly enriched by her wrongful conduct.

16 44. Punitive damages are appropriate to deter GREINER's malicious, oppressive, and/or
17 fraudulent conduct, and to deter others from engaging in such conduct.

18 45. BALSAM is informed and believes and thereon alleges that GREINER will continue to
19 advertise in this wrongful and unlawful fashion unless otherwise enjoined by this Court. This
20 Court has jurisdiction to issue a permanent injunction because restraint is necessary to prevent a
21 multiplicity of judicial proceedings.

1 **C. BALSAM Never Gave GREINER or Any Advertiser Direct Consent to Send Him**
2 **Commercial Email**

3 46. The *commercial email advertisements* at issue are all *unsolicited* because BALSAM did
4 not provide *direct consent* to receive advertisements from GREINER or from any *advertiser*, nor
5 did BALSAM have a *preexisting or current business relationship* with GREINER or any
6 *advertiser*. Cal. Bus. & Prof. Code § 17529.1(c), (o), (d), (a), (l).

7 47. BALSAM could not have given direct consent because BALSAM had never even *heard*
8 of GREINER or any of GREINER's advertisers, other than Beverage Solutions Inc., before
9 GREINER began sending spams to BALSAM, and BALSAM never gave Beverage Solutions
10 Inc. direct consent to send him commercial email.

11 **D. Damages**

12 48. The California Legislature defined liquidated damages to be \$1,000 per spam.
13 § 17529.5(b)(1)(B)(ii). This figure is comparable with damages in other areas of consumer
14 protection law, e.g., \$500-\$1,500 statutory damages per junk fax, 47 U.S.C. § 227(b)(3).
15 BALSAM's rightful and lawful assertion of the California Legislature's liquidated damages
16 amount of \$1,000 per email is necessary to further the Legislature's objective of protecting
17 California residents from unlawful spam.

18 49. BALSAM was also injured by GREINER's violation of BALSAM's right to *not* receive
19 deceptive advertising that violates the Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et*
20 *seq.*

21 50. BALSAM suffered damages as a result of GREINER's wrongful conduct. BALSAM
22 was damaged by each unlawful spam when BALSAM received each unlawful spam, in the State
23 of California, in the City and County of San Francisco.

1 **E. Unlawful Content Contained In or Accompanying Email Headers**

2 51. BALSAM is informed and believes and thereon alleges that an email “header” includes
3 the sender email address and domain name (and any other information purporting to identify the
4 person initiating the message), subject line, recipient name and email address, sending Internet
5 Protocol address, and date/time stamp, as well as other routing information.

6 52. BALSAM is informed and believes and thereon alleges that GREINER’s spams include
7 multiple elements of falsified, misrepresented, and forged information contained in or
8 accompanying the email headers:

- 9 • Misleading subject lines
- 10 • Misrepresented sender names
- 11 • Deceptive sending domain names
- 12 • Multiple sending domain names
- 13 • Falsely registered sending domain names

14 53. A commercial email advertisement is unlawful if it “contains or is accompanied by
15 falsified, misrepresented, or forged header information.” Cal. Bus. & Prof. Code
16 § 17529.5(a)(2).

17 54. BALSAM is informed and believes and thereon alleges that the falsified, misrepresented,
18 and forged content in the spams at issue constitutes *material* falsity and deception, and represents
19 *willful* and *deliberate* acts, *not* mere “clerical” mistakes.

20 **1. Misleading Subject Lines**

21 55. More than half of the spams at issue – 11 of 20 – have subject lines that are likely to
22 mislead a recipient, acting reasonably under the circumstances, about a material fact regarding
23 the contents or subject matter of the message. Cal. Bus. & Prof. Code § 17529.5(a)(3).

24 56. GREINER’s spam advertising Beverage Solutions Inc. had a subject line: “6 Bottles of
*F ree Holiday Wine, Happy Thanksgiving-22 Nov 2007 22:26:01 +0000.” This subject line is

1 misleading because “free,” with no other conditions *in the subject line* as required by 16 C.F.R.
2 § 251.1(c), indicates that the six bottles of wine are actually *free* to the consumer. To learn the
3 truth, the recipient has to actually open and read the spam; the body of the spam contradicts the
4 subject line by stating that the recipient can get 6 bottles “*F ree” with the purchase of 6 bottles.
5 *See also Balsam v. DSG Direct Inc.*, No. CGC-05-441630, slip op. at 1 (Cal. Super. Ct. Cty. of
6 San Francisco Feb. 27, 2008) (“The Court finds that commercial email subject lines that
7 advertise goods/services as being free without clearly disclosing in the subject lines that there are
8 conditions attached are deceptive and violate Cal. Bus. & Prof. Code § 17529.5(a)(3) and the
9 Consumers Legal Remedies Act (Civil Code § 1750 *et seq.*”). Attachment D shows a true and
10 correct copy of the slip opinion from *Balsam v. DSG Direct Inc.* BALSAM is informed and
11 believes and thereon alleges that the Florida Attorney General recently settled disputes with
12 World Avenue USA LLC and AzoogLeAds U.S. Inc. for \$1 million each for deceptive use of the
13 word “free” in spam advertising, *McCollum v. World Avenue U.S.A. LLC*, No. L06-3-1089 (Fla.
14 filed Aug. 23, 2007); *In the Matter of AzoogLeAds US Inc.*, No. L07-3-1044 (Fla. Nov. 7, 2007).
15 BALSAM is informed and believes and thereon alleges that Adteractive Inc., located in San
16 Francisco, recently agreed to a stipulated judgment for \$650,000 for its deceptive use of “free” in
17 spam advertising. *U.S.A. v. Adteractive Inc.*, No. CV-07-5940 SI (N.D. Cal. Nov. 27, 2007)
18 (stipulated final judgment for civil penalties and permanent injunctive relief).

19 57. GREINER’s first spam advertising ConsumerTrack Inc. had a subject line: “Your Most
20 Recent F ree Credit Score Has Arrived-08 Dec 2007 23:43:24 -0500.” This subject line is
21 deceptive because the credit score is *not* free (the consumer is required to sign up for a fee-based
22 service) and because it implies that the recipient has already requested a credit report.
23
24

1 58. GREINER's third spam advertising ConsumerTrack Inc. had a subject line: "Check Your
2 Updated Credit Score Instantly for F* ree-14 Dec 2007 12:55:56 -0500." This subject line is
3 deceptive because the credit score is *not* free (the consumer is required to sign up for a fee-based
4 service).

5 59. GREINER's fourth spam advertising ConsumerTrack Inc. had a subject line: "Re: Your
6 Upgraded Credit Score is waiting to Print-13 Dec 2007 12:27:15 -0500." This subject line is
7 deceptive because "Re:" at the beginning falsely indicates that the recipient had previously
8 contacted GREINER or ConsumerTrack, and this spam email is the response from GREINER
9 and ConsumerTrack.

10 60. GREINER's fifth spam advertising ConsumerTrack Inc. had a subject line: "Print Your
11 Recent F* ree Credit Score-17 Dec 2007 05:48:36 -0500." This subject line is deceptive because
12 the credit score is *not* free (the consumer is required to sign up for a fee-based service).

13 61. GREINER's use of "F* ree" instead of "Free" in subject lines is additionally deceptive
14 because it is a deceptive means of evading spam filters that have learned to look for the word
15 "Free" in the subject line as a likely indicator of spam.

16 62. GREINER's first spam advertising First National Gold had a subject line: "Re: Your
17 Approved, Approval # 89136-05 Dec 2007 04:44:59 -0500." This subject line is deceptive
18 because "Re:" at the beginning and the (purported) approval number falsely indicate that
19 BALSAM had previously contacted GREINER or First National Gold and applied for a First
20 National Gold card, and GREINER/First National Gold is responding via email with an approval
21 number, when that is not the case.

22 63. GREINER's third spam advertising First National Gold had a subject line: "Your
23 Approved, Approval # 772507-12 Dec 2007 05:24:16 -0500." This subject line is deceptive
24

1 because the (purported) approval number falsely indicates that BALSAM had previously
2 contacted GREINER or First National Gold and applied for a First National Gold card, and
3 GREINER/First National Gold is responding via email with an approval number, when that is
4 not the case.

5 64. GREINER's first spam advertising Passive Profits Inc. and Michael Brooks had a subject
6 line: "Type and Form fill for Google, Data Entry Positions Available-27 Nov 2007 04:34:21 -
7 0500." This subject line is deceptive because, on information and belief, Google has nothing to
8 do with this vaguely defined "make money at home on the Internet" scheme.

9 65. GREINER's second spam advertising Passive Profits Inc. and Michael Brooks had a
10 subject line: "Type and Form fill with google Today-04 Dec 2007 00:35:08 -0500." This subject
11 line is deceptive because, on information and belief, Google has nothing to do with this vaguely
12 defined "make money at home on the Internet" scheme.

13 66. GREINER's third spam advertising Passive Profits Inc. and Michael Brooks had a
14 subject line: "Have You Started Working With Amazon Yet?11 Dec 2007 07:05:37 -0500."
15 This subject line is deceptive because, on information and belief, Amazon has nothing to do with
16 this vaguely defined "make money at home on the Internet" scheme.

17 67. GREINER's fourth spam advertising Passive Profits Inc. and Michael Brooks had a
18 subject line: "Google Typeists and Form Fillers Needed ASAP-13 Dec 2007 11:51:03 -0500."
19 This subject line is deceptive because, on information and belief, Google has nothing to do with
20 this vaguely defined "make money at home on the Internet" scheme.

21 **2. Misrepresented Sender Names**

22 68. Internet Protocol RFC 1312 requires that the Sender Name field identify the sender of the
23 email. Russell Nelson and Geoff Arnold, RFC 1312 – Message Send Protocol 2, *available at*
24 <http://www.faqs.org/rfcs/rfc1312.html>. The 20 spams at issue were all sent by GREINER on

1 behalf of various advertisers, but not *one* of the spams actually identifies GREINER or the
2 advertiser in the Sender Name field.

3 69. The Sender Names were: “Complimentary International Wines,” “D*ebtEliminator,”
4 “CredtStressRelief,” “Holidays Fat relief,” “F* reeCredtScores,” “F* reeCredtReports,”
5 “CredtScoresHelp,” “F* reeCredtReports,” “C0mplimentryCredtScores,” “Holiday Approval
6 Dept.,” “Approvals Confirmation#45687,” “Holiday Approval Dept,” “Holiday Warranty
7 Programs,” “Holiday Warranty Help,” “Holiday Warranty Help,” “Help Wanted,” “Google
8 Business Center,” “AmazonCareerCenter,” “Google Online Careers,” and “HolidaySales.”

9 70. Some of the Sender Names are further deceptive because of their use of the word “Free,”
10 or more accurately, “F* ree,” when the advertised goods and services are not in fact free.

11 71. Some of the Sender Names are also deceptive because they incorporate company names
12 and trademarks of Amazon Inc. and Google Inc. even though, on information and belief,
13 Amazon Inc. and Google Inc. have nothing to do with the sending of these spams.

14 **3. Deceptive Sending Domain Names**

15 72. GREINER sent spam from domain names that have no logical connection to the
16 goods/services advertised in the spams. E.g., GREINER sent a spam advertising *wine* from
17 *coolfunhairstyles.com*, GREINER sent a spam advertising *debt consolidation* from
18 *bennyandsonscarpetcleaning.com*, GREINER sent a spam advertising *credit reports* from
19 *sexyblackdressesyoucanafford.com*, GREINER sent a spam advertising *auto warranties* from
20 *onedayshippingonyourdvdrental.com*.

21 **4. Multiple Sending Domain Names**

22 73. BALSAM is informed and believes and thereon alleges that hundreds of thousands of
23 individuals, corporations, and other organizations use Internet services and successfully pursue a
24 wide variety of business, pleasure, non-profit, and academic pursuits on a daily basis while never

1 availing themselves of a second, third, or fourth domain name, let alone the 18 domain names
2 that GREINER created to send 20 spams to BALSAM: *barbiescakeandcookies.com*,
3 *bennyandsonscarpetcleaning.com*, *chिकासclothingoutlet.com*, *coolfunhairstyles.com*,
4 *dannysbaitandtackle.com*, *dauidscustomfishingrods*, *fancychristmasornaments.com*,
5 *frankiesconcertickets.com*, *frankiestoymakingclasses.com*, *juliesantiquechina.com*,
6 *marlinaschristmasclothes.com*, *onedayshippingonyourdvdrental.com*,
7 *pauliesonlinebusinesshelp.com*, *professionalhairtips.com*, *searchforyourperfectmatch.com*,
8 *sexyblackdressesyoucanafford.com*, *signuptodayforfreegifts.com*, *theprecfectpromgowns.com*.

9 Sending Spam from Multiple Domain Names Makes it
10 Harder for ISPs to Identify a Spammer and Block its Spam

11 74. BALSAM is informed and believes and thereon alleges that if GREINER sent all of her
12 spam from a single domain name and represented herself as the single entity that she really is,
13 then an ISP would be more likely to identify GREINER as a spammer and block all of her spam
14 before it even reached consumers' computers. BALSAM is informed and believes and thereon
15 alleges that GREINER incurred the expense and effort of purchasing and using multiple domains
16 to send her spam for the sole reason of deceptively misrepresenting the actual (single) source of
17 all her spam in order to trick the ISPs; in other words, GREINER created multiple identities, as
18 represented by the multiple domain names, in order to "spread out" the total volume of spam and
19 reduce the volume sent via *each* domain name, a strategy deliberately calculated to deceive the
20 ISPs into *not* blocking her spam.

21 75. The California Legislature must have known the true importance of accurate header
22 information. With accurate header information, ISPs can quickly and easily compile a global list
23 of all spammers and summarily block their email transmissions, delivering spam-free service to
24 their business and consumer customers. But, so long as inaccurate, misleading and

1 misrepresentative headers remain, ISPs are forced to try to decipher truth from fact, fiction and
2 subterfuge at great expense.

3 76. BALSAM is informed and believes and thereon alleges that the Federal Trade
4 Commission, various courts, and Internet security experts have all found the use of multiple
5 domain names to be deceptive.

6 77. “An ISP [Internet Service Provider] may block a message because... a[] domain name is
7 associated with the sending of high volumes of spam.” FEDERAL TRADE COMMISSION,
8 EFFECTIVENESS AND ENFORCEMENT OF THE CAN-SPAM ACT: A REPORT TO CONGRESS 12 (Dec.
9 2005).

10 78. After identifying spammers’ domain names, “ISPs have responded to spam by attempting
11 to filter out the domain names that are the apparent source of the [spam].” *Verizon Online*
12 *Services Inc. v. Ralsky*, 203 F. Supp. 2d 601, 606 (E.D. Va. 2002). More specifically:

13 ISPs employ a number of tactics to block spam from reaching users. One major
14 tactic is to identify domain names or IP addresses that have sent unwanted e-mail
15 in the past and to automatically prevent the delivery of any messages coming
16 from those senders People sending spam (“spammers”), then, respond by
17 masking their true identities to evade the protective measures. They create false
18 routing information or transmission information, making messages appear as if
19 they come from hundreds or thousands of different domain names and IP
20 addresses. Thus, spammers can ensure that the ISP cannot detect and block every
21 e-mail they send and can evade detection because the thousands of messages
22 appear to come from hundreds of different sources.

18 *Jaynes v. Commonwealth of Virginia*, 48 Va. App. 673, 681-82 (2006).

19 79. This deceptive technique is simple, inexpensive, and – unfortunately – effective. A spam
20 email survives a filter so long as the filter does not recognize it as a spam. Since ISPs rely, in
21 part, on the sending domain name to identify spam, once the ISPs learn to identify a spamming
22 domain name, the ISP can block all incoming spam from that domain name. All a spammer has
23

1 to do to work around the filter-block is to create a new identity – i.e., a new domain name – and
2 keep sending spam.

3 Spammers chew through domain names very quickly; large spammers have
4 thousands of names registered at any given time. Spammers promote from these
5 domains until every filter knows them as a prolific spamming domain, at which
6 time spammers discard the domain and register a new one. Each DNS name costs
7 only a few dollars so registering 1,000 to 2,000 is not a big deal considering the
8 potential returns you’ll earn.

9 SPAMMER-X, INSIDE THE SPAM CARTEL 173 (Jeffrey Posluns ed., Syngress Publishing 2004).

10 80. BALSAM is informed and believes and thereon alleges that according to Barracuda
11 Networks, in 2007 90-95% of all email was spam, and

12 the majority of spam emails in 2007 utilized identify obfuscation techniques, in
13 which spammers send email from diverse sources throughout the Internet, thus
14 hiding their own identity . . . Further, by registering new domains . . . spammers
15 can effectively hide their identities from traditional reputation checks that profile
16 spam Web domains.

17 BARRACUDA NETWORKS, BARRACUDA NETWORKS SPAM REPORT at 4 (2007), *available at*
18 http://www.barracudanetworks.com/ns/news_and_events/index.php?nid=232.

19 81. Even *if* the domain names were properly registered, which they are *not* (discussed *infra*),
20 the use of *multiple* domain names to send spam is still a *misrepresentation* and violates
21 California law, because it indicates that there are multiple senders and it is a deceptive means of
22 evading spam filters. *See, e.g., Balsam v. DSG Direct Inc.*, No. CGC-05-441630, slip op. at 2
23 (Cal. Super. Ct. Cty. of San Francisco Feb. 27, 2008) (“The Court finds that a domain name is
24 analogous to an identity on the Internet. The Court finds that sending commercial emails from
multiple domain names, when there is no justifiable business rationale for doing so: 1) is a
deceptive means for the sender to portray itself as if it were actually multiple entities, and 2) is a
deceptive means of evading spam filters, and therefore 3) violates Cal. Bus. & Prof. Code
§ 17529.5(a)(2)”). Attachment D. *See also Balsam v. TLM Enterprises Group Inc.*, No. 1-06-

1 CV-066259 slip op. at 2 (Cal. Super. Ct. Cty. of Santa Clara Feb. 11, 2008) (“Defendant TLM
2 Enterprises Group intentionally created multiple domain names and sent unsolicited commercial
3 emails from these multiple domain names with the express intent of avoiding spam filters, many
4 of which use the sending domain name as an indicator of unsolicited commercial email
5 Defendant knew sending unsolicited commercial email would result in misrepresented and
6 misleading headers in those email messages...”). Attachment E shows a true and correct copy of
7 the stipulated judgment in *Balsam v. TLM Enterprises Group Inc.* See also *U.S.A. v. Kilbride*,
8 507 F. Supp. 2d 1051, 1064, 1067 (D. Ariz. 2007) (“The email software enabled Clason
9 frequently to change the domain names from which the emails were sent. . . . The goal was to
10 develop several hundred domain names that could be rotated frequently in the sending of the
11 pornographic emails.”)

12 82. A lawful, legitimate business should want to use a *consistent* domain name in its
13 marketing efforts for “branding” purposes and so that customers can more easily recognize the
14 sender and “whitelist” the domain name, if necessary, to ensure that emails are *not* caught by
15 spam filters and deleted. There are no *lawful* reasons why GREINER would want to create *so*
16 *many* domain names.

17 83. However, there are *fraudulent and deceptive* reasons why GREINER would use so many
18 domain names – to make it appear as though many *different* entities were sending the spam when
19 in fact GREINER was sending *all* of the spam. And, of course, GREINER actually registered
20 the sending domain names under false names, business names, and addresses.

21 84. Because GREINER created 18 domain names to send the spam at issue in this lawsuit,
22 every single spam sent by GREINER contains misrepresented header information.
23
24

1 Sending Spam from Multiple Domain Names Makes it
2 Harder for Recipients to Identify a Spammer and Block its Spam

3 85. Similarly, if the *ISPs* did not catch and delete GREINER’s spam and the spam reached
4 the email account of a recipient (like BALSAM), GREINER’s use of multiple domain names
5 also makes it more difficult for *recipients* to block GREINER’s spam using their own spam
6 filters.

7 86. For example, a recipient could block spam originating from the domain name
8 *barbiescakeandcookies.com*, but that filter would not stop spam originating from the domain
9 name *bennyandsonscarpetcleaning.com*. The recipient could block
10 *bennyandsonscarpetcleaning.com* too, but that would not stop spam originating from the domain
11 name *chिकासclothingoutlet.com...* or from any of the other domain names that GREINER used to
12 send spam.

13 87. BALSAM is informed and believes and thereon alleges that if GREINER used a single
14 domain name, recipients could easily block *all* of GREINER’s spam with only a few clicks of
15 the mouse, which is precisely what GREINER was trying to avoid by using multiple domain
16 names.

17 88. The California Legislature considered the effect of spammers’ actions as to deceiving
18 spam filters, as well as to individuals, by noting that “spam filters have not proven effective.”
19 Cal. Bus. & Prof. Code § 17529(f). Spam filters have not proven effective mainly due to
20 spammers’ deliberate attempts to evade and deceive the filters, as demonstrated here by the use
21 of multiple domain names.

22 Sending Spam from Multiple Domain Names is Analogous to a
23 Telemarketer Who Calls from Multiple Telephone Numbers

24 89. As an analogy, consider a telemarketer who calls one night during dinner from, e.g., 415-
563-1284. Caller ID can identify the originating telephone number. Suppose the recipient had

1 the ability to block or ignore all calls from that number, but the same telemarketer calls the next
2 day – selling the same product(s) – from 617-398-2449. The recipient could block that number
3 too, but the same telemarketer calls the next day from 312-691-2929, and then from dozens of
4 other telephone numbers.

5 90. All calls are from the same telemarketer, but the use of multiple originating numbers to
6 defeat the recipient’s ability to block the telemarketer’s calls is deceptive and misrepresentative
7 in that it suggests that the caller from each telephone number is a different entity... which makes
8 it harder for the consumer to block the unwanted commercial intrusions.

9 91. BALSAM is informed and believes and thereon alleges that many spammers
10 purposefully create multiple sender email address/domain names in a similar manner to evade
11 filters. A spammer can create a domain name for relatively little money (less than \$8), and
12 sometimes can even “taste” domain names (i.e., use them for an extremely short period of time)
13 for no cost at all.

14 No Systematic Matching of Domain Name to Advertiser

15 92. GREINER used multiple domain names to send spam for a given advertiser. E.g.,
16 GREINER sent spam advertising ConsumerTrack Inc. from domain names
17 *dannysbaitandtackle.com, frankiesconcertickets.com, frankiestoymakingclasses.com,*
18 *sexyblackdressesyoucanafford.com, and pauliesonlinebusinesshelp.com.*

19 93. At the same time, GREINER sent spam for multiple advertisers using the same domain
20 name. E.g., GREINER sent spam for First National Gold and Passive Profits Inc./Michael
21 Brooks from *barbiescakeandcookies.com.*

22 5. Falsely Registered Sending Domain Names

23 94. A commercial email advertisement is unlawful if it “contains *or is accompanied by*
24 *falsified, misrepresented, or forged header information.*” Cal. Bus. & Prof. Code § 17529.5(a)(2)

1 (emphasis added). The California Legislature must have intended “accompanied by” to mean
2 information that is *not* directly contained within the email headers. If “accompanied by” were
3 the same as “contained” then the inclusion of the “accompanied by” term would be superfluous.
4 Therefore, this Court must conclude that a spam can violate the prohibition against
5 misrepresented header information through information *not directly contained* within the
6 headers.

7 95. Email headers typically include a sending domain name, so registration information for
8 the sending domain name is information *accompanying* the email headers.

9 96. GREINER registered 17 domain names she used to send the spams to people, business
10 entities, and addresses that do not exist:

- 11 • Brittany Marks, Love Business Inc., 65 Long Drive, Old Field, NY 11733
12 (domain names *coolfunhairstyles.com, professionalhairtips.com*)
- 13 • Cynthia Ryan, Compliment mktg, 291 Park Drive, West Hampton, NY 11977
14 (domain names *barbiescakeandcookies.com, bennyandsonscarpetcleaning.com, dannysbaitandtackle.com,*
15 *marlinaschristmasclothes.com, onedayshippingonyourdvdrental.com, searchforyourperfectmatch.com, theperfectpromgowns.com*)
- 16 • Corinne Michaels, Buyers Marketing, 21 Main Street, Philadelphia, PA 19019
17 (domain names *chicasclothingoutlet.com, davidscustomfishingrods.com, fancychristmasornaments.com, frankiesconcerttickets.com,*
18 *sexyblackdressesyoucanafford.com, signuptodayforfreegifts.com*)
- 19 • Davin Mitchell, Barnes Vehicles, 21 Barnes Road, Manorville, NY 11949
20 (domain names *frankiestoymakingclasses.com, juliesantiquechina.com*)

21 GREINER registered one domain name she used to send the spams to a person and business
22 entity that does not exist:

- 23 • Jennie Smith, Smith Antiques, 17 Flintlock Drive, Shirley, NY 11967
24 (domain name *pauliesonlinebusinesshelp.com*)

1 97. *Not one* of the domain names was properly registered to GREINER; *every single one*
2 contained materially false information.

3 98. GREINER used still more addresses in the body of the spams that have no connection
4 either to her or to the advertisers:

- 5 • 19 Parkway Court, Brooklyn, NY 11223 (spam advertising Beverage
6 Solutions Inc., Firewater Media Inc.)
- 7 • 121 Arapaho Drive, Locust Grove, GA 30248 (spam advertising Intermark
8 Media Communications Inc., Consumer Track Inc., First National Gold,
9 Firewater Media Inc., Passive Profits Inc./Michael Brooks,
10 PersonalizationMall.com Inc.)
- 11 • 107 Daisy Drive, Mastic Beach, NY 11951 (spam advertising Central Coast
12 Nutraceuticals Inc., ConsumerTrack Inc., First National Gold, Passive Profits
13 Inc./Michael Brooks)
- 14 • 134 Union Ave., Center Moriches, NY 11934 (spam advertising
15 ConsumerTrack Inc., Passive Profits Inc./Michael Brooks)
- 16 • 9051 Watson Rd. #102, Saint Louis, MO 63126 (spam advertising
17 ConsumerTrack Inc.)

18 As with the multiple domain names, there is no consistency between the addresses in the spams
19 and the advertiser. E.g., spams advertising ConsumerTrack Inc. cite addresses in Georgia, New
20 York, and Missouri. GREINER is in New York, and ConsumerTrack is in California.

21 99. GREINER's pattern and practice of registering domain names so as to conceal her true
22 identity is exacerbated by the fact that she includes the advertiser's address, and another fake
23 address, in the body of the spams, instead of identifying herself. GREINER thus makes it
24 difficult for the recipient of a spam to identify her as the actual spammer, and in fact BALSAM
would not have been able to identify her if not for the assistance of the advertisers for whom she
sent the spams. The California Legislature expressly identified this sort of fake registration
information as materially false: "... the actual spammers can be difficult to track down due to

1 some return addresses that show up on the display as “unknown” *and many others being obvious*
2 *fakes* and they are often located offshore.” Cal. Bus. & Prof. Code § 17529(j) (emphasis added).

3 100. Although BALSAM is suing under California law, BALSAM points out sending spam
4 from two or more domain names that were registered so as to conceal the registrant’s true
5 identity is an *express* violation of the federal CAN-SPAM Act. 18 U.S.C. § 1037(a)(4), (d)(2).

6
7 **FIRST CAUSE OF ACTION**

8 **[Violations of California Restrictions on Unsolicited Commercial Email Advertisers,**
9 **California Business and Professions Code § 17529.5]**
10 **(Against All Defendants)**

11 101. BALSAM hereby incorporates by reference Paragraphs 1 to 100, inclusive, as if the same
12 were fully set forth herein.

13 102. The statute of limitations for a Cal. Bus. & Prof. Code cause of action is four years. Cal.
14 Bus. & Prof. Code § 17208. BALSAM brings this action within the statute of limitations.

15 103. GREINER sent or caused to be sent and advertised in unsolicited commercial emails to
16 California electronic mail addresses, including 20 to BALSAM, containing or accompanied by
17 falsified, misrepresentative, or forged header information, including:

- 18 • Misleading subject lines
- 19 • Misrepresented sender names
- 20 • Deceptive domain names
- 21 • Multiple sending domain names
- 22 • Falsely registered sending domain names

23 104. BALSAM is informed and believes and thereon alleges that GREINER profited from her
24 wrongful conduct.

105. BALSAM suffered damages as a result of GREINER’s wrongful conduct. The
California Legislature has set liquidated damages at One Thousand Dollars (\$1,000) per email.

1 106. BALSAM seeks reimbursement of attorneys' fees and costs as authorized by statute.
2 WHEREFORE, BALSAM prays for judgment against Defendants, and each of them, as
3 hereinafter set forth.
4

5 **SECOND CAUSE OF ACTION**

6 **[Violations of Consumers Legal Remedies Act, California Civil Code § 1750 *et seq.*]**
7 **(Against GREINER)**

8 107. BALSAM hereby incorporates by reference Paragraphs 1 to 100, inclusive, as if the same
9 were fully set forth herein.

10 108. The statute of limitations for a Consumers Legal Remedies Act ("CLRA") cause of
11 action is three years. Cal. Civ. Code § 1783. BALSAM brings this action within the statute of
12 limitations.

13 109. The CLRA is a *general* consumer protection statute that is not specific to email. In fact,
14 the CLRA does not even mention the word "email" or "Internet." The CAN-SPAM Act, by its
15 own plain language, does *not* preempt state laws that are *not* specific to commercial email. 15
16 U.S.C. § 7707(b)(2).

17 110. Venue is proper in San Francisco County because, regardless of the location(s) from
18 which the commercial emails were sent, a substantial portion of each advertising transaction –
19 the *receipt* of the emails – occurred in San Francisco County.

20 **A. Liberal Construction to Protect Consumers**

21 111. The California Legislature enacted the CLRA, Cal. Civ. Code § 1750 *et seq.*, in order to
22 protect consumers against unfair and deceptive business practices and to provide efficient and
23 economical procedures to secure such protection. To that end, the CLRA "shall be liberally
24 construed." Cal. Civ. Code § 1760.

1 **B. The CLRA Applies to Transactions, Such as Spam Advertisements, Intended to Result**
2 **in a Purchase**

3 112. The CLRA applies to deceptive acts *intended* to result in the sale or lease of goods or
4 services as well as acts that actually result in the sale or lease of goods or services. Cal. Civ.
5 Code § 1770(a) (emphasis added).

6 113. Here, GREINER’s wrongful conduct occurred in the context of transactions which
7 BALSAM is informed and believes and thereon alleges that GREINER intended would result in
8 the sale or lease of goods or services.

9 114. Nothing in the CLRA states that a plaintiff/consumer bringing a suit under the CLRA
10 must have purchased and be a consumer *of the items advertised via the allegedly false and*
11 *deceptive means*. Cal. Civ. Code § 1761(d) merely differentiates consumers from, for example,
12 businesses. The former can bring actions under the CLRA, the latter cannot.

13 115. A consumer who receives false and deceptive advertising is *per se* damaged, even if the
14 consumer does not make a purchase as the result of that advertising. *Kagan v. Gibraltar Savings*
15 *and Loan Assoc.*, 35 Cal. 3d 582, 593 (1984).

16 **C. GREINER Never Responded to Balsam’s CLRA Letter**

17 116. BALSAM sent a letter by certified mail, return-receipt requested, to GREINER on
18 December 27, 2007, alleging specific violations of the CLRA, as required by Cal. Civ. Code
19 § 1782(a).

20 117. BALSAM received the green return-receipt postcard back, signed on December 29 by a
21 signature that appears to read “Amanda Greiner.”

22 118. GREINER never responded in any manner whatsoever. Specifically, GREINER has not
23 identified all consumers similarly situated as BALSAM and notified those consumers that
24 GREINER would remedy her marketing practices, as required by Cal. Civ. Code § 1782(c).

1 119. BALSAM seeks equitable relief, pursuant to Cal. Civ. Code § 1782(a)(2), in the form of
2 an injunction prohibiting GREINER, either directly or through agents, servants, and employees,
3 and all persons acting under, in concert with, or for her, from sending unlawful commercial
4 email advertising.

5 **D. Specific Violations of the CLRA**

6 120. The CLRA is explicitly cumulative – each unlawful spam is a separate violation.

7 121. GREINER violated the CLRA, Civ. Code § 1770(a)(2), (a)(3), and (a)(5) by
8 misrepresenting the source of the goods and services. Specifically, GREINER misrepresented
9 that other parties were the actual source of the spams; she misrepresented the connection
10 between herself and the nonexistent names and business entities to whom the 18 domain names
11 were registered, and she misrepresented the connection between herself and the nonexistent
12 entity “Madd Roi LLC.”

13 122. GREINER violated the CLRA, Civ. Code § 1770(a)(4), by making deceptive
14 representations of geographic origin in connection with goods and services. The purported
15 addresses where the domain names were registered do not exist, and the second address in each
16 spam (Brooklyn, NY, Locust Grove, GA, Mastic Beach, NY, Center Moriches, NY, and Saint
17 Louis, MO.) have no connection to the goods and services advertised.

18 123. GREINER violated the CLRA, Civ. Code § 1770(a)(5) and (a)(9), by representing that
19 goods have a characteristic – that goods and services are free – that is not true, and by
20 advertising goods and services within intent not to sell them free as advertised.

21
22 WHEREFORE, BALSAM prays for judgment against Defendants, and each of them, as
23 hereinafter set forth.

1 **THIRD CAUSE OF ACTION**

2 **[Declaratory Relief]**
3 **(Against All Defendants)**

4 124. BALSAM hereby incorporates by reference Paragraphs 1 to 100, inclusive, as if the same
5 were fully set forth herein.

6 125. An actual controversy has arisen between BALSAM and Defendants as to the nature of
7 their email advertising. BALSAM respectfully requests this Court to make a judicial declaration
8 and determination that Defendants sent and/or advertised in false and deceptive spam, in
9 violation of Cal. Bus. & Prof. Code § 17529.5 and the CLRA.

10 WHEREFORE, BALSAM prays for judgment against Defendants, and each of them, as
11 hereinafter set forth.

12 **PRAYER FOR RELIEF**

- 13
- 14 A. Equitable relief in the form of an injunction prohibiting GREINER, either directly or through
15 agents, servants, and employees, and all persons acting under, in concert with, or for her,
16 from sending unlawful commercial email advertising;
- 17 B. Liquidated damages in the amount of One Thousand Dollars (\$1,000) for each of 20 spams,
18 as authorized by Cal. Bus. & Prof. Code § 17529.5(b)(1)(B)(ii), less One Thousand Dollars
19 (\$1,000) credit from a settlement with other involved entities, for a total of Nineteen
20 Thousand Dollars (\$19,000);
- 21 C. Punitive damages as to GREINER in an amount determined by the Court;
- 22 D. Attorneys' fees as allowed by law (Cal. Bus. & Prof. Code § 17529.5(b)(1)(C) and Cal. Civ.
23 Code § 1780(d));
- 24

- 1 E. Costs of suit; and
- 2 F. Such other and further relief as the Court deems proper.

3
4 WALTON & ROESS LLP

5 Date: _____ BY: _____
6 TIMOTHY J. WALTON
7 Attorneys for DANIEL L. BALSAM

8 **VERIFICATION**

9 The undersigned for himself declares:

10 I am the plaintiff in the above-entitled action. I have read the forgoing Complaint and
11 know the contents thereof. With respect to the causes of action alleged by me, the same is true
12 by my own knowledge, except as to those matters which are therein stated on information and
13 belief, and, as to those matters, I believe them to be true. I declare under penalty of perjury
14 under the laws of the State of California that the forgoing is true and correct.

15
16 Date: _____ DANIEL L. BALSAM

ATTACHMENT A

Email from [REDACTED NETWORK] To Balsam

Identifying Greiner as the Sender of the Spams

Dan Balsam

From: [REDACTED ATTORNEY]
Sent: Tuesday, December 18, 2007 8:07 AM
To: Dan Balsam
Cc: [REDACTED ATTORNEY]
Subject: Re: New spam from a [REDACTED NETWORK] affiliate

Dan,

From [REDACTED NETWORK]:

...

The affiliate has been terminated here is the contact info:

Madd Roi LLC
Amanda Greiner
PO Box 528
East Moriches, NY 11940

[snip]

ATTACHMENT B

Sample Domain Name Registrations

WHOIS Search Results



Available **coolfunhairstyles** extensions:

.net	.org	.us	.mobi	.info	.biz	.de	.tv	.co.uk	.eu	.bz
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[Order Selected Domain\(s\)](#) >>

25% OFF Web Site Hosting

Just \$9.96 \$7.47/mo

+ free domain Limited Time Online Only Offer

Our Lowest Price Ever!

[Get 25% OFF](#)

Your WHOIS Search Results



coolfunhairstyles.com

Services from Network Solutions:

- [Certified Offer Service](#) - Let us help you get this domain name!
- [Backorder](#) - Try to get this name when it becomes available.
- [SSL Certificates](#) - Get peace of mind with a secure certificate.
- [Enhanced Business Listing](#) - Promote your business to millions of viewers for only \$1 a month!

====

Visit [AboutUs.org](#) for more information about COOLFUNHAIRSTYLES.COM
[AboutUs: COOLFUNHAIRSTYLES.COM](#)

Registration Service Provided By: NameCheap.com
Contact: support@NameCheap.com
Visit: www.NameCheap.com

Domain name: COOLFUNHAIRSTYLES.COM

Registrant Contact:
Love Business Inc.
Brittany Marks (sweetnsexy017@yahoo.com)
+1.6312816459
Fax: +1.5555555555
65 Long Drive
Old Field, NY 11733
US

Administrative Contact:
Love Business Inc.
Brittany Marks (sweetnsexy017@yahoo.com)

When you register a domain name, current policies require that the contact information for your domain name registration be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information visit www.internetprivacyadvocate.org.

NOTICE AND TERMS OF USE: You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes or for the purpose or purposes of using the data in any manner that violates these terms of use. The Data in Network Solutions' WHOIS database is provided by Network Solutions for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. Network Solutions does not guarantee its accuracy. By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use

DOMAIN OPTIONS

Premium Names

- coole.net
\$2,488
- hairstyleshair.com
\$1,150
- bike-fun.com
\$300
- coolwill.com
\$2,288
- tiarahairstyles.com
\$850
- fundgrp.com
\$300
- coolsan.com
\$2,588

Misspellings

- coolfunhairstyl3s.com
- coolfunhairstylas.com
- coolfunhairstylos.com

Similar Names

- cool-fun-hairstyles.com
- coolrecreationhairstyles.com

WHOIS Search Results



Available **dannysbaitandtackle** extensions:

<input type="checkbox"/> .net	<input type="checkbox"/> .org	<input type="checkbox"/> .us	<input type="checkbox"/> .mobi	<input type="checkbox"/> .info	<input type="checkbox"/> .biz	<input type="checkbox"/> .de	<input type="checkbox"/> .tv	<input type="checkbox"/> .co.uk	<input type="checkbox"/> .eu	<input type="checkbox"/> .bz
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[Order Selected Domain\(s\) >>](#)

25% OFF Web Site Hosting

Just \$9.96 ~~\$7.47~~/mo

+ free domain Limited Time Online Only Offer

Our Lowest Price Ever! [Get 25% OFF >>](#)

Your WHOIS Search Results



dannysbaitandtackle.com

Services from Network Solutions:

- [Certified Offer Service](#) - Let us help you get this domain name!
- [Backorder](#) - Try to get this name when it becomes available.
- [SSL Certificates](#) - Get peace of mind with a secure certificate.
- [Enhanced Business Listing](#) - Promote your business to millions of viewers for only \$1 a month!

====

Visit AboutUs.org for more information about DANNYSBAITANDTACKLE.COM
[AboutUs:](#)
DANNYSBAITANDTACKLE.COM

Registration Service Provided By: NameCheap.com
 Contact: support@NameCheap.com
 Visit: www.NameCheap.com

Domain name: DANNYSBAITANDTACKLE.COM

Registrant Contact:
 Compliment mktg
 Cynthia Ryan (cynthiajane17@yahoo.com)
 +1.6312954692
 Fax: +1.5555555555
 291 Park Drive
 west hampton, ny 11977
 US

Administrative Contact:
 Compliment mktg
 Cynthia Ryan (cynthiajane17@yahoo.com)

When you register a domain name, current policies require that the contact information for your domain name registration be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information visit www.internetprivacyadvocate.org.

NOTICE AND TERMS OF USE: You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes or for the purpose or purposes of using the data in any manner that violates these terms of use. The Data in Network Solutions' WHOIS database is provided by Network Solutions for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. Network Solutions does not guarantee its accuracy. By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use

DOMAIN OPTIONS

Premium Names

- tackleit.com
\$1,888
- fishingtacklesuppliers.com
\$1,200
- tedsbaitandtackle.com
\$300
- petrieislandbaitandtackle.com
\$388
- fishingtacklecompany.com
\$950
- tedstackleandbait.com
\$300
- bonniesbaitandtackle.com
\$600

Misspellings

- dannysbaitandtackl3.com
- dannysbaitandtack1e.com
- danysbaitandtackle.com
- dannnysbaitandtackle.com
- dennysbaitandtackle.com
- donnysbaitandtackle.com
- dannysbaitendtackle.com

WHOIS Search Results



Available **davidscustomfishingrods** extensions:

<input type="checkbox"/> .net	<input type="checkbox"/> .org	<input type="checkbox"/> .us	<input type="checkbox"/> .mobi	<input type="checkbox"/> .info	<input type="checkbox"/> .biz	<input type="checkbox"/> .de	<input type="checkbox"/> .tv	<input type="checkbox"/> .co.uk	<input type="checkbox"/> .eu	<input type="checkbox"/> .bz
-------------------------------	-------------------------------	------------------------------	--------------------------------	--------------------------------	-------------------------------	------------------------------	------------------------------	---------------------------------	------------------------------	------------------------------

Order Selected Domain(s) >>

SAVE over 70%
when you **TRANSFER**
your domains to
Network Solutions — your
trusted domain name provider!

Go >>

Your WHOIS Search Results



davidscustomfishingrods.com

Services from Network Solutions:

[Certified Offer Service](#) - Let us help you get this domain name!

[Backorder](#) - Try to get this name when it becomes available.

[SSL Certificates](#) - Get peace of mind with a secure certificate.

[Enhanced Business Listing](#) - Promote your business to millions of viewers for only \$1 a month!

DOMAIN OPTIONS

Premium Names

- customfishingrods.com
\$1,800
- fishingfish.com
\$1,000
- sierracustomrods.com
\$300
- customrods.net
\$888
- swingrods.com
\$1,800
- wolfffishing.com
\$630
- customhotrods.com
\$3,888

Misspellings

- davidscustomfishingrodz.com
- davidscustomfishingr0ds.com
- davidscustomphishingrods.com
- davidscust0mfishingrods.com
- devidscustomfishingrods.com
- dovidscustomfishingrods.com
- davidscustemfishingrods.com
- davidscustamfishingrods.com

=====
Visit AboutUs.org for more information about DAVIDSCUSTOMFISHINGRODS.COM

[AboutUs:](#)
[DAVIDSCUSTOMFISHINGRODS.COM](#)

Registration Service Provided By: NameCheap.com
Contact: support@NameCheap.com
Visit: www.NameCheap.com

Domain name: DAVIDSCUSTOMFISHINGRODS.COM

Registrant Contact:
Buyers Marketing
Corrine Michaels (corriebabe21@yahoo.com)
+1.7249518746
Fax: +1.5555555555
21 Main Street
Philadelphia, PA 19019
US

Administrative Contact:
Buyers Marketing
Corrine Michaels (corriebabe21@yahoo.com)
+1.7249518746
Fax: +1.5555555555
21 Main Street

When you register a domain name, current policies require that the contact information for your domain name registration be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information visit www.internetprivacyadvocate.org.

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ATTACHMENT C

Sample Spams


[Print - Close Window](#)

From Complimentry International Wines Thu Nov 22 04:03:38 2007

X-Apparently-To: XXXX@yahoo.com via 68.142.207.106; Thu, 22 Nov 2007 14:24:53 -0800

X-YahooFilteredBulk: 83.98.177.53

X-Originating-IP: [83.98.177.53]

Return-Path: <1-294283-yahoo.com?XXXX@mx53.coolfunhairstyles.com>

Authentication-Results: mta372.mail.mud.yahoo.com from=coolfunhairstyles.com; domainkeys=pass (ok)

Received: from 83.98.177.53 (HELO mx53.coolfunhairstyles.com) (83.98.177.53) by mta372.mail.mud.yahoo.com with SMTP; Thu, 22 Nov 2007 14:24:53 -0800

DKIM-Signature: v=1; a=rsa-sha1; c=simple; d=coolfunhairstyles.com; h=message-id:from:to:subject:date:content-type;q=dns/txt; s=s512; bh=dP+KxnKIey5b3DLOd+7Gy200gz4=; b=kvPcTVRFDP9LrjqFgWf/+QE2iH5dajduPN4Ds4wPn8cGfWoGEP/xLGpt9X67+RiiwuhfOaeBmpr7/EruleVwNA=;

Comment: DomainKeys? See <http://antispam.yahoo.com/domainkeys>

DomainKey-Signature: a=rsa-sha1; q=dns; c=simple; s=s512; d=coolfunhairstyles.com; b=ssH5bGlvZb8rUvv1TfBLZ6Oy6gHKFDQJmu8igcEayZShOCbXb1Hn2B1BOKIA8DkiiYR3Wep5XZIUJWoZIFkNsA=;

Received: from mx53.coolfunhairstyles.com [83.98.177.53] by coolfunhairstyles.com [83.98.177.53]; Thu, 22 Nov 2007 12:03:38 UTC

Message-ID: <1-294283-XXXX@mx53.coolfunhairstyles.com>

MIME-Version: 1.0

X-Originating-IP: [83.98.177.53]

X-Originating-Email: [support@coolfunhairstyles.com]

X-Sender: support@coolfunhairstyles.com

From: "Complimentry International Wines" <wine@coolfunhairstyles.com>

Reply-to: Complimentry International Wines<wine@coolfunhairstyles.com>

To: XXXX@yahoo.com

CC: XXXX@coolfunhairstyles.com

Subject: 6 Bottles of *F ree Holiday Wine, Happy Thanksgiving-22 Nov 2007 22:26:01 +0000

Date: Thu, 22 Nov 2007 12:03:38 UTC

Errors-To: Complimentry International Wines<wine@coolfunhairstyles.com>

Thread-Index: XXXX

Routing-path: XXXX

X-Mailer: XXXX [Nov 17 2007, 03:57:54]

Content-Type: text/plain; charset="ISO-8859-1"

Content-Transfer-Encoding: 7bit

Content-Length: 1438

Your Special 4 Seasons Holiday Introductory Wine Sale Has Arrived:

<http://coolfunhairstyles.com/sorys?e=XXXX&m=294283&l=0>

Get 6 bottles *F ree with the purchase of 6 bottles!
That is 12 Bottles of Premium Wine
For \$4.99 per Bottle!

Go here for your F ree Wine:

<http://coolfunhairstyles.com/sorys?e=XXXX&m=294283&l=0>

If the above link is not active, please cut and paste the entire address into your browser

With your first order you will receive
our Vintner's Reserve Tabletop Wine Opener...
a \$139.95 value -- Absolutely F ree!
Thursday the 22th,

- The preferred opener for professionals and beginners alike
- Will pull a cork in 3 seconds flat
- No more mangled or broken corks
- No more straining and tugging on unopened bottles
- Works on all sizes and types of wine bottles

Go here for your Free Wine!

<http://coolfunhairstyles.com/soryst?e=XXXX&m=294283&l=0>

If the above link is not active, please cut and paste the entire address into your browser

Your satisfaction is 100%!

*Plus Shipping and tax

To Leave please go here:

<http://coolfunhairstyles.com/anigea?m=294283&l=1>

or send mail to:

Merchant_Direct
269_S_Beverly_Drive_#346
Beverly_Hills_CA_90212

If you are not interested anymore:

<http://coolfunhairstyles.com/unsub.php?e=XXXX@yahoo.com&m=294283>

18 Parkway Ct
Brooklyn, NY 11223

<1;XXXX;294283>


[Print - Close Window](#)

From F* reeCredtScores Sun Dec 9 14:36:27 2007

X-Apparently-To:	XXXX@yahoo.com via 68.142.207.111; Sun, 09 Dec 2007 03:28:24 -0800
X-YahooFilteredBulk:	66.248.151.82
X-Originating-IP:	[66.248.151.82]
Return-Path:	<5-687238-yahoo.com?XXXX@mx82.dannysbaitandtackle.com>
Authentication-Results:	mta160.mail.re2.yahoo.com from=dannysbaitandtackle.com; domainkeys=neutral (no sig)
Received:	from 66.248.151.82 (HELO mx82.dannysbaitandtackle.com) (66.248.151.82) by mta160.mail.re2.yahoo.com with SMTP; Sun, 09 Dec 2007 03:28:22 -0800
Received:	from mx82.dannysbaitandtackle.com [66.248.151.82] by dannysbaitandtackle.com [66.248.151.82]; Sun, 9 Dec 2007 17:36:27 EST
Message-ID:	<5-687238-XXXX@mx82.dannysbaitandtackle.com>
MIME-Version:	1.0
X-Originating-IP:	[66.248.151.82]
X-Originating-Email:	[sampledept@dannysbaitandtackle.com]
X-Sender:	sampledept@dannysbaitandtackle.com
From:	"F* reeCredtScores" <creditscores@dannysbaitandtackle.com>
Reply-to:	F* reeCredtScores<creditscores@dannysbaitandtackle.com>
To:	XXXX@yahoo.com
CC:	XXXX@dannysbaitandtackle.com
Subject:	Your Most Recent F ree Credit Score Has Arrived-08 Dec 2007 23:43:24 -0500
Date:	Sun, 9 Dec 2007 17:36:27 EST
Errors-To:	F* reeCredtScores<creditscores@dannysbaitandtackle.com>
Thread-Index:	XXXX
Routing-path:	XXXX
X-Mailer:	XXXX [Aug 21 2007, 19:41:34]
Content-Type:	text/plain; charset="ISO-8859-1"
Content-Transfer-Encoding:	7bit
Content-Length:	1453

Your upgraded Credit Score is available for review,
Check it here:

<http://dannysbaitandtackle.com/sorap?e=XXXX&m=687238&l=0>

Complimentr y Credit Score & Credit Analysis to Be Printed Immediatly

<http://dannysbaitandtackle.com/sorap?e=XXXX&m=687238&l=0>

The results you will receive:

- Automatic notifications of changes
- Credit Score Future Estimate
- Credit Score (350-850)

- Detailed personal analysis

Visit us below to get your complete complimentary tools.

Your upgraded Credit Score is available for review,

Check it here:

<http://dannysbaitandtackle.com/sorap?e=XXXX&m=687238&l=0>

Complimentary Credit Score & Credit Analysis to Be Printed Immediately

<http://dannysbaitandtackle.com/sorap?e=XXXX&m=687238&l=0>

The results you will receive:

- Automatic notifications of changes

- Credit Score Future Estimate

- Credit Score (350-850)

- Detailed personal analysis

Visit us below to get your complete complimentary tools.

<http://dannysbaitandtackle.com/sorap?e=XXXX&m=687238&l=0>

Saturday the 8th,

To Exit Communications please go here:

<http://dannysbaitandtackle.com/solim?m=687238&l=1>

or send communications to:

2381_Rosecrans_Avenue

El_Segundo_CA_90245

Change your preferences:

<http://dannysbaitandtackle.com/unsub.php?e=XXXX&m=687238>

121_Arapaho_Drive

Locust_Grove_GA_30248

<5;XXXX;687238>


[Print - Close Window](#)

From Help Wanted Tue Nov 27 12:09:03 2007

X-Apparently-To: XXXX@yahoo.com via 68.142.207.102; Tue, 27 Nov 2007 00:05:32 -0800

X-YahooFilteredBulk: 66.248.144.114

X-Originating-IP: [66.248.144.114]

Return-Path: <3-660176-yahoo.com?XXXX@mx114.davidscustomfishingrods.com>

Authentication-Results: mta238.mail.re4.yahoo.com from=davidscustomfishingrods.com; domainkeys=pass (ok)

Received: from 66.248.144.114 (HELO mx114.davidscustomfishingrods.com) (66.248.144.114) by mta238.mail.re4.yahoo.com with SMTP; Tue, 27 Nov 2007 00:05:30 -0800

Comment: DomainKeys? See <http://antispam.yahoo.com/domainkeys>

DomainKey-Signature: a=rsa-sha1; q=dns; c=simple; s=s512; d=davidscustomfishingrods.com; b=IirsEIOIo5rP5fowlavgXAfsO2+ubKCOwcaGsVKe26gTI73/H/VloK1WJXSmxPDKQiipgtgoFRSSCujvOuTWOA==;

Received: from mx114.davidscustomfishingrods.com [66.248.144.114] by davidscustomfishingrods.com [66.248.144.114]; Tue, 27 Nov 2007 15:09:03 EST

Message-ID: <3-660176-XXXX@mx114.davidscustomfishingrods.com>

MIME-Version: 1.0

X-Originating-IP: [66.248.144.114]

X-Originating-Email: [noticesdesk@davidscustomfishingrods.com]

X-Sender: noticesdesk@davidscustomfishingrods.com

From: "Help Wanted" <holidays@davidscustomfishingrods.com>

Reply-to: Help Wanted<holidays@davidscustomfishingrods.com>

To: XXXX@yahoo.com

CC: XXXX@davidscustomfishingrods.com

Subject: Type and Form fill for Google, Data Entry Positions Available-27 Nov 2007 04:34:21 -0500

Date: Tue, 27 Nov 2007 15:09:03 EST

Errors-To: Help Wanted<holidays@davidscustomfishingrods.com>

Thread-Index: XXXX

Routing-path: XXXX

X-Mailer: 3.2.14-57 [May 31 2007, 16:32:10]

Content-Type: text/plain; charset="ISO-8859-1"

Content-Transfer-Encoding: 7bit

Content-Length: 725

Now anyone can learn how to Get \$200 - \$943 per day or More !
 If you can type (hunt and peck is ok to start) and fill in forms,
 you can score big!
 Dont't wait for the next Chance...it
 is before your eyes, Monday the 26th.
<http://davidscustomfishingrods.com/yefas?e=XXXX&m=660176&l=0>

No longer want EGP promos? Eliminate your address from this:
 To leave please go to:
<http://davidscustomfishingrods.com/yefas?m=660176&l=1>

or send mail to:
 Passive Google Profits

2030_Main St_Suite_1300

Irvine_CA_92614

Visit to change your options:

<http://davidscustomfishingrods.com/unsub.php?e=XXXX@yahoo.com&m=660176>

107_Daisy_Drive

Mastic_Beach_NY_11951

<3;XXXX;660176>

ATTACHMENT D

Balsam v. DSG Direct Inc. (slip opinion)

1 Timothy J. Walton (State Bar No. 184292)
2 WALTON & ROESS LLP
3 407 South California
4 Suite 8
5 Palo Alto, CA 94306

6 Phone (650) 566-8500
7 Fax: (650) 618-8687

8 Attorneys for Plaintiff
9 DANIEL L. BALSAM

FILED
San Francisco County Superior Court

FEB 28 2008

GORDON PARK-LI, Clerk

BY: [Signature]
Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN FRANCISCO (UNLIMITED JURISDICTION)**

12 DANIEL L. BALSAM,) Case No.: 441630
13)
14 Plaintiff,) **JUDGMENT OF COURT**
15 vs.)
16 DSG DIRECT, INC., et al.,)
17 Defendants.)

- 18 1. Defendants DSG DIRECT, INC., YOUR-INFO, INC. and DIABETIC PLUS, INC. were
19 each properly served with a copy of the summons and complaint.
20 2. Defendants DSG DIRECT, INC., YOUR-INFO, INC. and DIABETIC PLUS, INC., filed
21 an answer but failed to appear at trial call.
22 3. The Court considered Plaintiff's oral testimony, heard on February 25, 2008.
23 4. The Court finds that commercial email subject lines that advertise goods/services as
24 being free without clearly disclosing in the subject lines that there are conditions attached
25 are deceptive and violate Cal. Bus. & Prof. Code § 17529.5(a)(3) and the Consumers
26 Legal Remedies Act (Civil Code § 1750 *et seq.*)
27

1 5. The Court finds that a domain name is analogous to an identity on the Internet. The
2 Court finds that sending commercial emails from multiple domain names, when there is
3 no justifiable business rationale for doing so: 1) is a deceptive means for the sender to
4 portray itself as if it were actually multiple entities, and 2) is a deceptive means of
5 evading spam filters, and therefore 3) violates Cal. Bus. & Prof. Code § 17529.5(a)(2).

6
7 6. Judgment is entered as follows by the Court:

8 7. Judgment is for Plaintiff DANIEL L. BALSAM and against Defendants DSG DIRECT,
9 INC., YOUR-INFO, INC. and DIABETIC PLUS, INC.

10 8. Defendants DSG DIRECT, INC. and YOUR-INFO, INC. are jointly and severally liable
11 to Plaintiff on the complaint: \$169,167.00 in damages, \$26,000.00 in attorneys' fees, and
12 \$4,000.00 in costs, for a total ~~money judgment of \$200,167.00.~~
JLB of \$199,167

13 *In addition, JLB.*
14 ~~9.~~ Defendant DIABETIC PLUS, INC. is liable to Plaintiff on the complaint: \$1,000.00 in
15 *JLB.* damages, for a total money judgment of ~~\$1,000.00.~~
JLB. \$200,167.00

16 ~~10.~~ Defendants DSG DIRECT, INC., YOUR-INFO, INC. and DIABETIC PLUS, INC. and
17 each of them, are prohibited from sending unlawful commercial email advertising either
18 directly or through agents, servants, and employees. All persons acting under, in concert
19 with, or for Defendants DSG DIRECT, INC., YOUR-INFO, INC. and DIABETIC PLUS,
20 INC. are similarly prohibited from sending unlawful commercial email advertising.
21

22
23 IT IS SO ORDERED:

24 Date: *2-27-08*

William R. Gargano

Judge of the Superior Court

25 **WILLIAM R. GARGANO**
26 **Commissioner**
27

ATTACHMENT E

***Balsam v. TLM Enterprises Group Inc. (stipulated
judgment)***

1 Timothy J. Walton, Esq. (State Bar No. 184292)
2 WALTON & ROESS LLP
3 407 South California
4 Suite 8
5 Palo Alto, CA 94306
6
7 Phone (650) 566-8500
8 Fax: (650) 618-8687

6 Attorneys for Plaintiff
7 DANIEL L. BALSAM

ENDORSED Santa Clara
02/11/06 12:23pm
Nici Torre
Chief Executive Officer
By: Judith D. DECIVOC
RECORDED 1455
TL \$320.00
Case: 1-06-CV-066259

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SANTA CLARA (UNLIMITED JURISDICTION)**

11 DANIEL L. BALSAM,) Case No.: 1-06-CV-066259
12)
13 Plaintiff,) **STIPULATED JUDGMENT OF COURT**
14 v.) **NUNC PRO TUNC**
15 TLM ENTERPRISES GROUP, INC., *et al.*,)
16 Defendants.)

- 17 1. Defendant TLM ENTERPRISES GROUP, INC. was properly served with a copy of the
18 summons and complaint.
- 19 2. Defendant TLM ENTERPRISES GROUP, INC. failed to appear and defend the action
20 within the time allowed by law.
- 21 3. Judgment was entered by the Court upon plaintiff's application.
- 22 4. The parties stipulate to amend the judgment as follows:
- 23 5. Judgment is for Plaintiff DANIEL L. BALSAM and against Defendant TLM
24 ENTERPRISES GROUP, INC.
25

1 6. Defendant TLM ENTERPRISES GROUP, INC named in item 5 above may satisfy the
2 judgment by paying \$ 2,500.00 (US) before October 31, 2007, with 10% interest per
3 annum accruing from the original date of entry of judgment.

4 7. Defendant TLM ENTERPRISES GROUP, INC. sent unsolicited commercial email
5 advertising.

6
7 8. Defendant TLM ENTERPRISES GROUP, INC. intentionally created multiple domain
8 and sent unsolicited commercial emails from these multiple domain names with the
9 express intent of avoiding spam filters, many of which use the sending domain name as
10 an indicator of unsolicited commercial email. Defendant TLM ENTERPRISES GROUP,
11 INC. understood that sending unsolicited commercial email from multiple domain names
12 signals to recipients and Internet Service Providers, and their spam filters, that multiple
13 entities sent the unsolicited commercial email messages, when in fact all unsolicited
14 commercial emails were sent by the singular entity, Defendant TLM ENTERPRISES
15 GROUP, INC. Defendant knew sending unsolicited commercial email from multiple
16 domain names would result in misrepresented and misleading headers in those email
17 messages in violation of California Business & Professions Code §§ 17529 and 17529.5.
18

19 9. Defendant TLM ENTERPRISES GROUP, INC. is hereby enjoined for purposes the
20 Unfair Business Practices Act and the Unfair Advertising Practices Act and required to
21 henceforth use only a single domain name and a single Internet Protocol address when
22 sending email advertising.
23

24 //

25 //

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WALTON & ROESS LLP

Date: 1-7-08

By: Timothy Walton
Timothy Walton
Attorneys for Plaintiff DANIEL L. BALSAM

TLM ENTERPRISES GROUP, INC.

Date: 1/2/08

By: Scott Carrabis
Scott Carrabis
President

IT IS SO ORDERED, ADJUDGED AND DECREED.

JAMES C. EMERSON

Date: JAN 15 2008

Judge of the Superior Court