

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR INDIAN RIVER COUNTY, FLORIDA**

STATE OF FLORIDA,
DEPARTMENT OF LEGAL AFFAIRS,
OFFICE OF THE ATTORNEY GENERAL,

Plaintiff,

CASE NO. _____

vs.

DIVISION: _____

RIK RODRIGUEZ, an individual,

Defendant.

_____ /

**COMPLAINT FOR INJUNCTIVE RELIEF, DAMAGES,
CIVIL PENALTIES AND OTHER STATUTORY RELIEF**

Plaintiff, STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, OFFICE OF THE ATTORNEY GENERAL (the “Attorney General”), sues Defendant, RIK RODRIGUEZ, an individual, and alleges:

JURISDICTION AND VENUE

1. This is an action for damages, civil penalties, injunctive relief, and other statutory relief pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2005).
2. This Court has jurisdiction pursuant to the provisions of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes.
3. The acts or practices complained of herein occurred in the conduct of a trade or commerce within Florida as defined in Section 501.203(8), Florida Statutes, including Indian River and Lake counties and affecting multiple judicial circuits.

THE PARTIES

4. The Department of Legal Affairs is an enforcing authority pursuant to Section 501.203(2), Florida Statutes, and is authorized to seek damages and injunctive and other statutory relief.

5. The Office of the Attorney General conducted an investigation and Attorney General, Charles J. Crist, Jr., reviewed this matter and determined that this enforcement action is in the public interest.

6. At all times material hereto, Defendant Rodriguez, an individual, also known as Dr. Rik, and doing business as Wavemaster Consultants, resides at 135 Crawford Drive, Sebastian, Florida.

DEFENDANT'S OPERATIONS

7. Since at least May 2003 through approximately March 2004, Defendant Rik Rodriguez was responsible for sending thousands of unlawful electronic mail ("e-mail") messages to consumers nationwide to promote a product marketed under the name Fuel Saver Pro. This product is marketed as a magnetic device designed to be affixed to an automobile fuel line, which purportedly increases automobile gas mileage and decreases harmful pollutants and emissions but, in fact, the product does not work.

8. Fuel Saver Pro was marketed through numerous websites promoting the purported benefits of Fuel Saver Pro and by voluminous commercial e-mails that directed e-mail recipients to numerous web sites offering Fuel Saver Pro for sale, including:

www.realgaspower.com__ www.puresfuel.com www.plentyofgas.com

www.bacug.com
www.magnifeye.biz
www.vbuf.biz

www.djdf.biz
www.mrev.biz

www.fhjd.biz
www.tlna.biz

9. In 2003, Defendant became associated with Mark Ayoub "Ayoub." Ayoub was in the business of selling Fuel Saver Pro through several websites listed above and engaged third parties to use commercial e-mail to promote the product and direct consumers to websites Ayoub maintained. During the relevant period, Ayoub resided in Lake County, Florida and was an owner and principal of Diverse Marketing Group, LLC and Diverse Marketing Group, Inc. Ayoub also conducted business as Epro2000, Inc., a Florida corporation administratively dissolved on October 4, 2002.

_____ 10. Defendant was invited by Ayoub to promote websites selling Fuel Saver Pro in exchange for commission payments on the sales of Fuel Saver Pro products. Defendant became one of Ayoub's "affiliates" and was responsible for sending e-mails to generate sales of Fuel Saver Pro. The affiliates were instructed to include a hyperlink in the email that, if clicked, would direct consumers to one of Ayoub's websites. In order for sales of Fuel Saver Pro to be credited to the affiliate who initiated the e-mail, each affiliate was assigned a unique identification number. This identification tag was added to the link contained in Defendant's e-mails. For example, Ayoub assigned Defendant the identification tag "axel=53." The identification tag "axel=3D53" also applied to Defendant. The affiliates were instructed to append the affiliate identification number at the end of the hyperlink in the email message.

11. The text of Defendant's e-mails, some with a pop-up window hyping Fuel Saver Pro, contain hyperlinks to one of several Fuel Saver Pro web sites maintained by Ayoub. In one example, referenced in the e-mail as being "sent: Sunday, March 28, 2004," the text states:

“Fuel Costs are reaching all time highs.

OPEC is planning further cuts in production. We have the answer.

Fuel-Saver-Pro

This revolutionary device Boosts Gas Mileage 27%+ by helping fuel burn better using three patented processes from General Motors.

PROVEN TECHNOLOGY

A certified U.S. Environmental Protection Agency (EPA) laboratory recently completed tests on the new Fuel-Saver-Pro. The

results were astounding. Master Service, a subsidiary of Ford Motor Company, also conducted extensive emissions testing and

obtained similar, unheard of results. The achievements of the Fuel Saver is so noteworthy to the environmental community,

that Commercial News has featured it as their cover story in their June, 2000 edition.

Take a test drive Today - **<http://www.plentyofgas.com?axel=53>**

No more advertisements, thanks - [www.owepa.com/nomailsjgyddxnartgperk q](http://www.owepa.com/nomailsjgyddxnartgperkq)
(Emphasis added.)

In the example above, Defendant’s e-mails contain the link

“<http://www.plentyofgas.com?axel=53>,” which, if clicked, would lead to Ayoub’s website www.plentyofgas.com. Once a consumer purchased Fuel Saver Pro through that site, Ayoub obtained consumer order information and the affiliate identifier “axel=53” to pay Defendant a commission. Ayoub, in fact, paid Defendant commissions to Defendant’s paypal account.

Unlawful E-mailing Activities

12. Defendant sent thousands of unlawful commercial e-mails, the exact number of

which is unknown. For the period January 1, 2004 through March 31, 2004, Defendant initiated the transmission of more than 1100 e-mails to MSN Hotmail “spam traps.”¹ Spam traps are e-mail accounts that are maintained solely for investigative purposes. No activity is generated through these e-mail accounts, and therefore all e-mails received are unsolicited.

13. In many instances, the e-mail message was sent to multiple recipients, with upwards of ten additional e-mail addresses targeted on several of the messages, effectively increasing the number of e-mails sent to over 2500 e-mail addresses.

14. Many of Defendant’s e-mails contain the content of the following example, which represents one of over 145 e-mails initiated by Defendant and received on February 23, 2004 promoting a Fuel Saver Pro website:

“the price of gas too high?

This amazing, revolutionary device Increases Gas Mileage 27%+ by helping fuel burn better using three patented processes from General Motors. Just snap this amazing Fuel saving device over your fuel supply line and it will begin working immediately!

<http://www.bacug.com?axel=53> ”

(Emphasis Added.)

E-mails with virtually identical content as the above example were transmitted to 486 e-mail

² These traps are e-mail accounts owned and maintained by Microsoft. Microsoft examines the e-mails received by these accounts as one of the methods it uses to determine whether incoming mail complies with the Terms of Use and Anti-Spam Policy for its MSN and MSN Hotmail services. The identity of these accounts is confidential, and the account names must remain confidential, so that spammers cannot avoid detection by removing the accounts’ e-mail addresses from their lists.

addresses, once multiple recipients are considered. Notably absent is any mechanism to permit consumers to remove their e-mail addresses from any future mailings from Defendant or otherwise decline further messages.

15. Most of Defendant's e-mails are virtually identical to the example above, except that the hyperlink directs the consumer to a different Fuel Saver Pro website. The following is a sampling of similar e-mails sent in voluminous quantities, as evidenced by the number of e-mails by date that directed consumers to specific websites.

<u># of e-mails</u>	<u>Date</u>	<u>Web Site with Affiliate Identifier</u>
60	Feb. 21	http://www.magnifeye.biz?axel=53
147	Feb. 23	http://www.bacug.com?axel=53
61	Feb. 24	http://www.bacug.com?axel=53
99	Feb. 26	http://www.mrev.biz?axel=53
65	Feb. 27	http://www.mrev.biz?axel=53
208	Feb. 29	http://www.tlna.biz?axel=53
51	March 12	http://www.realgaspower.com?axel=53

False or Misleading Header Information

16. In numerous instances, Defendant initiated commercial e-mail messages which contain header information that is materially false and/or materially misleading. Commercial e-mail messages contain header information, including "from" address and "reply-to" fields. The "from" address purports to identify the sender of the e-mail and the "reply-to" section the address that a return e-mail will be sent if the e-mail recipient clicks the "reply" button.

17. Defendant used various methods to disguise the "header" information in the e-mails. The methods of falsifying the header information include, but are not limited to the following:

A. Defendant inserted fictitious e-mail addresses in the "from" and "reply-to"

sections or e-mail addresses belonging to innocent persons in an effort to disguise the true sender.

B. Defendant used what is or what appears to be a genuine e-mail provider's address or third party's domain name (for example, samplecompany.com or yahoo.com) without consent or authorization from the owner of the domain name, a practice referred to as ("spoofing").

<u>Message Number</u>	<u>Date</u>	<u>Time</u>	<u>E-mail "from" address</u>
0050312671.eml	21-Feb-04 Sat	14:40:18	Booker Pierson" <wnxrdvxhhi@yahoo.com>"
0050312738.eml	21-Feb-04 Sat	14:43:13	Reyna Major" <mwbyallchj@yahoo.com>"
0050343305.eml	21-Feb-04 Sat	14:31:11	Jarred Mcdowell" <bvagawppe@yahoo.com>"
0050343718.eml	21-Feb-04 Sat	14:51:01	Russ Beatty" <gfxwvfni@yahoo.com>"
0050374417.eml	21-Feb-04 Sat	14:44:03	Quinn Sexton" <ujhqvnhohkxytq@yahoo.com>"
0050375198.eml	21-Feb-04 Sat	15:21:22	Reed Marquez" <jpcmoa@yahoo.com>"

C. In the course of preparing to send numerous unsolicited commercial e-mails, Defendant obtained, provided, or selected addresses to which e-mails will be transmitted by automated means capable of generating possible e-mail addresses by combining names, letters, or numbers into numerous permutations (sometimes referred to as "dictionary attacks"). In many instances, the e-mail is sent to multiple recipients. Frequently, the names of the recipients at the domain samplecompany.com, yahoo.com, or hotmail.com appear automated, as exhibited in the examples above.

D. Defendant used other computers or servers (including, but not limited to, open relays or open proxies), without the owner's authorization or consent, to send e-mails. In many instances, several e-mails sent on the same day reflect drastically different locations for computers identified as the sending computer in the e-mail's header. For example, a review of a sampling of 147 messages sent by Defendant in one day reveals that the address locations for the computer identified as the sender were different in over 100 instances.

No Removal or Unsubscribe Mechanism

18. In numerous instances, Defendant initiated commercial e-mail messages to promote Fuel Saver Pro which fail to provide a notice and an opportunity for consumers to decline further messages from Defendant or any other type of mechanism that would permit consumers to remove their e-mail addresses from future e-mail mailings.

No physical postal address

19. In numerous instances, Defendant initiated commercial e-mail messages to promote Fuel Saver Pro which fail to provide a valid physical postal address of the sender or any address information at all.

**COUNT I
DECEPTIVE AND UNFAIR TRADE PRACTICES
CONDUCT VIOLATING 15 U.S.C. § 7701 ET SEQ “CAN-SPAM”
VIOLATES CHAPTER 501, PART II, FLORIDA STATUTES**

20. Paragraphs 1 to 19 are hereby realleged and incorporated herein by reference, as if fully set forth below.

21. By engaging in a pattern or practice of initiating, to protected computers, numerous commercial e-mails to which recipients did not provide prior affirmative consent to receive, and which e-mail messages contain, or are accompanied by, header information that is materially false or materially misleading, as alleged in paragraphs 12-17, Defendant violated Title 15 U.S.C. § 7704(a)(1)².

² See, Title 15 U.S.C. §§ 7701, et seq. Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, “CAN-SPAM.” Effective January 1, 2004, and has since remained in full force and effect.

22. Title 15 U.S.C. § 7704(a)(6), [Section 5(a)(6) of CAN-SPAM,] states:

For purposes of [7704(a)(1), section 5(a)(1) of CAN-SPAM], the term "materially," when used with respect to false or misleading header information, includes the alteration or concealment of header information in a manner that would impair the ability of an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who initiated the electronic mail message or to investigate the alleged violation, or the ability of a recipient of the message to respond to a person who initiated the electronic message.

23. Defendant's conduct violated Title 15 U.S.C. § 7704 (b)(1)(A)(ii), in that Defendant engaged in initiating e-mails in violation of Title 15 U.S.C. § 7704(a), and, in addition, with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, provided or selected addresses to which e-mails will be transmitted by automated means capable of generating possible e-mail addresses by combining names, letters, or numbers into numerous permutations, as alleged in paragraphs 12-17.

24. Defendant's conduct violated Title 15 U.S.C. § 7704 (b)(3), in that Defendant knowingly relayed or transmitted e-mails in violation of Title 15 U.S.C. § 7704(a) through protected computers and that Defendant accessed without authorization, as alleged in paragraphs 12-17.

25. Defendant's conduct violated Title 15 U.S.C. Sections 7704(a)(3) and 7704(a)(5)(A), in that Defendant engaged in initiating e-mails to protected computers that fail to provide a mechanism, clearly and conspicuously displayed, for requesting not to receive future commercial e-mail messages from the sender at the e-mail address where the message was received in violation of Title 15 U.S.C. Sections 7704(a)(3) and (a) (5)A)(ii) [Sections 5(a)(3) and 5(a)(5)(A)(ii)of CAN-SPAM], as alleged in paragraph 18.

26. Defendant's conduct violated Title 15 U.S.C. Section 7704(a)(5)(A), in that Defendant engaged in initiating e-mails to protected computers that fail to provide a valid physical postal address of the sender in violation of Title 15 U.S.C. Section 7704(a)(5)(A)(iii) [Section 5(a)(5)(A)(iii) of CAN-SPAM], as alleged in paragraph 19.

27. Pursuant to Section 501.203(3)(c), Florida Statutes, a violation of Chapter 501, Part II, may be based on a violation of any law which proscribes a deceptive act or practice. Title 15 U.S.C. §§ 7701, et seq., proscribes deceptive acts or practices³.

28. Defendant, acting individually or in concert with others, has engaged in representations, acts, practices or omissions in trade or commerce which are material, and which are likely to mislead consumers acting reasonably under the circumstances; or Defendant has engaged in acts or practices in trade or commerce which offend established public policy and are unethical, oppressive, unscrupulous or substantially injurious to consumers.

29. By engaging in the foregoing conduct in violation of Title 15 U.S.C. §§ 7701, et seq. (CAN-SPAM), Defendant has engaged in deceptive and unfair trade practices in violation of Section 501.204, Florida Statutes.

30. Defendant willfully engaged in deceptive and unfair acts and practices in that Defendant knew or should have known that the methods, acts or practices alleged herein were deceptive or unfair or prohibited by law.

31. Unless Defendant is permanently enjoined from engaging further in the acts and practices alleged herein, the continued activities of Defendant will result in irreparable injury to the public, for which there is no adequate remedy at law.

³ See generally, Title 15 U.S.C. § 7701. Congressional findings and policy

COUNT II
DECEPTIVE AND UNFAIR TRADE PRACTICES
CHAPTER 501, PART II, FLORIDA STATUTES

32. Paragraphs 1 to 19 are hereby realleged and incorporated herein by reference, as if fully set forth below.

33. Section 501.204(1), Florida Statutes, provides that “Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

34. As set forth herein, Defendant, acting individually or in concert with others, has engaged in representations, acts, practices or omissions in trade or commerce which are material, and which are likely to mislead consumers acting reasonably under the circumstances; or Defendant has engaged in acts or practices in trade or commerce which offend established public policy and are unethical, oppressive, unscrupulous or substantially injurious to consumers.

35. By engaging in the foregoing, Defendant has engaged in deceptive and unfair trade practices in violation of Section 501.204, Florida Statutes.

36. Defendant willfully engaged in deceptive or unfair acts or practices in that Defendant knew or should have known that the methods, acts or practices alleged herein were deceptive or unfair or prohibited by law.

37. Unless Defendant is permanently enjoined from engaging further in the acts and practices alleged herein, the continued activities of Defendant will result in irreparable injury to the public, for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, State of Florida, Department of Legal Affairs, Office of the Attorney General, asks for judgment:

A. Temporarily and permanently enjoining Defendant, his agents and those persons in active concert or participation with him who receive actual notice of the injunction, from engaging in the acts and practices in violation of provisions of Title 15 U.S.C. §§ 7701, et seq. Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, “CAN-SPAM” as specifically alleged above, and any similar acts and practices;

B. Temporarily and permanently enjoining Defendant, his agents and those persons in active concert or participation with him who receive actual notice of the injunction, from engaging in the acts and practices in violation of provisions of Chapter 501, Part II, Florida Statutes (2004), as specifically alleged above, and any similar acts and practices;

C. Awarding the Attorney General attorney’s fees and costs pursuant Section 501.2105, Florida Statutes (2004);

D. Assessing against Defendant civil penalties in the amount of Ten Thousand Dollars (\$10,000) for each violation of Chapter 501, Part II, Florida Statutes, in accordance with Section 501.2075, Florida Statutes; and Fifteen Thousand Dollars (\$15,000) for each such violation that victimizes, or attempts to victimize, a senior citizen or handicapped person, in accordance with Section 501.2077, Florida Statutes. (2005)

E. Awarding restitution for consumers injured by Defendant;

F. Requiring that Defendant disgorge all revenue, and all interest or proceeds

derived therefrom, generated as a result of the unconscionable, unfair and deceptive practices set forth in this complaint;

G. In Granting Injunctive Relief, enjoining Defendant from forming a business or organizational identity as a method of avoiding the terms and conditions of the Injunction; requiring Defendant to disclose the terms and conditions of the Injunction to all officers, employees, representatives, agents, successors, assigns, or any other person who acts under or who will act under, by, through, or on behalf of Defendant engaged in any activity involving commercial e-mail, instant messaging, or internet promotion for a period of 2 years; and requiring Defendant to post a \$1,000,000 bond to secure compliance with the Injunction; and:

(1) Appointing a Receiver over Defendant's assets and property, and providing for the liquidation of assets (a) procured through monies obtained through unlawful activities, or (b) procured through financing obtained in reliance on assets, revenues, draws, or income derived through unlawful means.

(2) Freezing Defendant's assets, except as provided by the Court; and

(3) Temporarily enjoining Defendant from transferring an interest in or title to non-homestead real estate located in Florida, unless Defendant provides 60 days notice to the Court and the parties of intent to transfer such an interest or title, and the date that any such sale will be transacted.

H. Declaring the practices described in this complaint unlawful; and

I. Granting such other relief as this court deems just and proper.

Respectfully submitted,

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

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