

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. \_\_\_\_\_ – Civ**

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

Kobeni Inc., a Florida Corporation, and

Yair Shalev, individually, and as an officer  
or director of Kobeni Inc.,

Defendants.

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**COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

1. The FTC brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and Section 7(a) of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM Act”), 15 U.S.C. § 7706(a), to obtain preliminary and permanent injunctive relief, restitution, disgorgement of ill-gotten monies, and other equitable relief for Defendants’ unfair or deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the CAN-SPAM Act, 15 U.S.C. §§ 7701-7713.

**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §§ 45(a), 53(b), 57(b), and 7706(a), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

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

**PLAINTIFF**

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces the CAN-SPAM Act as if statutory violations of the CAN-SPAM Act “were an unfair or deceptive act or practice proscribed under Section 18(a)(1)(B) of the [FTC Act] (15 U.S.C. 57a (a)(1)(B)).” 15 U.S.C. § 7706(a).

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and the CAN-SPAM Act and to secure such equitable relief as may be appropriate in each case, including restitution, consumer redress, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(B), 57b, and 7706(a).

**DEFENDANTS**

6. Defendant Kobeni Inc. is a Florida corporation with its principal address at 2410 Hollywood Boulevard, Hollywood, Florida 33020. It transacts or has transacted business in this district and throughout the United States.

7. Defendant Yair Shalev is the president and registered agent of Kobeni Inc. He resides at 2410 Hollywood Boulevard, Hollywood, Florida 33020. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Kobeni Inc., including the acts and practices set forth in this Complaint. He transacts or has transacted business in this district and throughout the United States.

## COMMERCE

8. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

## DEFINITIONS

9. “**Electronic mail message**” (or “email”) means a message sent to a unique electronic mail address. 15 U.S.C. § 7702(6).

10. “**Electronic mail address**” means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local part”) and a reference to an Internet domain (commonly referred to as the “domain part”), whether or not displayed, to which an electronic mail message can be sent or delivered. 15 U.S.C. § 7702(5).

11. “**Commercial electronic mail message**” means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including the content on an Internet website operated for commercial purposes). 15 U.S.C. § 7702(2).

12. “**Initiate,**” when used with respect to a commercial email message, means to originate or transmit such message or to procure the origination or transmission of such message. 15 U.S.C. § 7702(9).

13. “**Procure,**” when used with respect to the initiation of a commercial email message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one’s behalf. 15 U.S.C. § 7702(12).

14. **“Protected Computer”** means a computer which is used in or affecting interstate or foreign commerce or communication, including a computer located outside the United States that is used in a manner that affects interstate or foreign commerce or communication of the United States. 15 U.S.C. § 7702(13).

15. **“Sender”** means a person who initiates a commercial email message and whose product, service, or Internet website is advertised or promoted by the message. 15 U.S.C. § 7702(16).

### **DEFENDANTS’ BUSINESS PRACTICES**

16. Defendants engage and have engaged in the initiating of unsolicited commercial email messages (“email spam”).

17. Since at least May 2013, Defendants have initiated unsolicited commercial email messages to trick consumers into clicking on links in the messages. In numerous instances, Defendants’ commercial email messages threaten that consumers will violate federal law if they do not immediately click on a link to enroll in health insurance.

18. The unsolicited commercial email messages initiated by Defendants include messages stating:

**Subject:** Today is the deadline to make your election or be in violation of federal law

Must Receive Your Election Or You Will Be In Violation of Federal Law.

Effective Monday (08-05-13) health coverage is **REQUIRED BY LAW**.

Why is this mandatory? New Federal Law signed by the President made it mandatory for all U.S. residents to have active coverage. You will be in violation and face penalties if you do not elect.

You Must Select One of These 5 Options

19. The unsolicited commercial email messages initiated by Defendants also include messages stating:

**Subject:** Final Warning – Your [*sic*] Breaking a Federal Law If You Don't Have Coverage

**Please Read This Carefully** [*name@example.com* (address omitted)]

I sent you several messages to let you know about this:

**NOW ACTIVE Thursday (08-08-13) health coverage is REQUIRED BY LAW**

Activate here before it's too late

The President made it mandatory for all U.S. residents to have active policies. Failure to comply will be in violation of Federal Law.

You Must Submit Your Information to Get Started

20. Among the unsolicited commercial email messages initiated by Defendants are also messages stating:

**Subject:** July 30th: Your [*sic*] required by law to have health-coverage (view available options)

New Law Active In Your Area.

Health coverage is now required by all U.S. residents.

These companies will help you now

The President made it official Tuesday morning and you must act now.

One of these (5) options should fit your needs

21. When clicked, the links in many of Defendants' commercial email messages, including the messages described in Paragraphs 17 through 20 above, lead to websites containing advertisements for products and services, including insurance. Defendants are paid by the operators of the websites when consumers click on links contained in the advertisements.

22. The insurance companies whose advertisements appear in the websites that are linked to Defendants' commercial email messages have not authorized those email messages.

23. In numerous instances, including in the commercial email messages described in paragraphs 17 through 20 above, Defendants have initiated commercial email messages that do not include any notification to recipients of their ability to decline receiving future email messages from Defendants, and do not include a reply email address or other mechanism that recipients can use to decline receiving future email messages from Defendants.

24. In numerous instances, including in the commercial email messages described in paragraphs 17 through 20 above, Defendants have initiated commercial email messages that do not include a valid physical postal address of the sender.

### **VIOLATIONS OF THE FTC ACT**

25. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

26. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

### **Count I**

#### **Deceptive Representations**

27. In numerous instances, as described in Paragraphs 17 through 20 above, Defendants have represented, directly or indirectly, expressly or by implication, that consumers will violate federal law if they do not select health insurance by the date appearing in Defendants’ commercial electronic email messages. Such representations are material to consumers who seek to comply with federal law.

28. In truth and in fact, consumers will not violate federal law if they do not select health insurance by the date appearing in Defendants’ commercial electronic email messages.

29. Therefore, Defendants' representations as set forth in Paragraph 27 are false and misleading and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

**VIOLATIONS OF THE CAN-SPAM ACT**

30. The CAN-SPAM Act became effective on January 1, 2004, and has since remained in full force and effect.

31. Section 5(a)(3)(A) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(3)(A), states:

It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message that does not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—

(i) a recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(ii) remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.

32. Section 5(a)(5)(A) of the CAN-SPAM Act, 15 U.S.C. § 7704(a)(5)(A), states:

It is unlawful for any person to initiate the transmission of any commercial electronic mail message to a protected computer unless the message provides:

(i) clear and conspicuous identification that the message is an advertisement or solicitation;

(ii) clear and conspicuous notice of the opportunity under [section 5(a)(3)] to decline to receive further commercial electronic mail messages from the sender; and

(iii) a valid physical postal address of the sender.

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

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

## **Count II**

### **Failure to Provide Notice of Opt-Out**

34. In numerous instances, as described in Paragraphs 16-23, Defendants have initiated the transmission, to protected computers, of commercial email messages that do not include a clear and conspicuous notice of the recipient's opportunity to decline to receive future commercial electronic mail messages from Defendants at the recipient's electronic mail address.

35. Defendants' acts or practices, as described in Paragraph 34 above, violate 15 U.S.C. § 7704(a)(3) and 15 U.S.C. § 7704(a)(5)(A)(ii).

## **Count III**

### **Failure to Include Valid Physical Postal Address**

36. In numerous instances, as described in Paragraphs 16-24, Defendants have initiated the transmission, to protected computers, of commercial email messages that do not include the sender's valid physical postal address.

37. Defendants' acts or practices, as described in Paragraph 36 above, violate 15 U.S.C. § 7704(a)(5)(A)(iii).

## **CONSUMER INJURY**

38. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the CAN-SPAM Act. In addition, Defendants have has been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive



relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

**THIS COURT’S POWER TO GRANT RELIEF**

39. Sections 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

40. Section 19 of the FTC Act, 15 U.S.C. § 57b, and the CAN-SPAM Act, 15 U.S.C. § 7706 authorize this Court to grant such relief as the Court finds necessary to redress injury to consumers resulting from Defendants’ violations of the CAN-SPAM Act, including the refund of money.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff FTC, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 7(a) of the CAN-SPAM Act, 15 U.S.C. § 7706 and the Court’s own equitable powers, requests that the Court:

A. Enter a permanent injunction to prevent future violations of the FTC Act and the CAN-SPAM Act by Defendants;

B. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants’ violations of the FTC Act and the CAN-SPAM Act, including, but not limited to, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

C. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully Submitted,

JONATHAN E. NUECHTERLEIN  
General Counsel

Dated: January 21, 2014

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