

## FTC Hits Fla. Firm With Agency's 1st Suit Over ACA Fraud

By **Nathan Hale**

*Law360, Miami (January 30, 2014, 8:06 PM ET)* -- The Federal Trade Commission sued Hollywood, Fla.-based Kobeni Inc. and its president last week over allegedly misleading spam emails, in what the agency says is its first legal action claiming fraud related to the rollout of the Affordable Care Act.

Defendant Yair Shalev, who has been described as a high-volume spammer, is accused in the Jan. 21 complaint of violating the FTC Act and the CAN-SPAM Act. The FTC said Kobeni sent unsolicited commercial emails aimed at taking advantage of the new federal health insurance law to trick recipients into clicking on links that would take them to websites with advertisements for insurance companies.

“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,” the complaint says.

The emails, which the FTC says were sent from at least May 2013 through August 2013, included statements such as “Final warning — your [sic] breaking a federal law if you don't have coverage,” “Activate here before it's too late” and “You must select one of these 5 options.”

Clicking on the links in the emails took consumers to websites featuring advertisements for various products and services including insurance. The defendants were paid by the operators of those websites when consumers clicked on the advertisements; however, insurance companies whose advertisements appeared on the websites had not authorized the emails, according to the complaint.

The suit claims that the false statements in the emails — that consumers will be breaking federal law if they do not purchase health insurance by the date listed in the messages — constitute “unfair or deceptive acts or practices in or affecting commerce” that are prohibited by the FTC Act.

As commercial email, the messages also allegedly violate the 2004 CAN-SPAM Act because they do not contain a functioning return email address or other means for recipients to send a reply to request not to receive future email messages from the sender and do not include a valid physical postal address, either, the FTC said.

“Defendants have been unjustly enriched as a result of their unlawful acts or practices,” the FTC said in the suit. “Absent injunctive relief by this court, defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.”

The complaint also notes that in addition to the injunction sought by the FTC, the court may award relief including restitution, refund of monies paid and disgorgement of ill-gotten monies.

Reports say that Shalev is an experienced spammer. A Jan. 23 post on a consumer information blog run by the FTC describes him as “one of the world's reputedly biggest spammers,” although it provides only a link to the complaint to support that claim.

The Spamhaus Project, an international nonprofit organization based in Geneva and London that says it tracks Internet spam operations and sources, has a profile page on Shalev that describes him as a high-volume spammer, detailing various aliases and techniques he has used and connections to other known spammers.

David S. Almeida of Sheppard Mullin Richter & Hampton LLP, who confirmed Thursday that he is representing Shalev and Kobeni in the FTC action, told Law360, “We have no comment on the lawsuit other than to note that we are investigating the allegations in the FTC’s complaint and will respond at the appropriate time.”

The defendants are represented by David S. Almeida of Sheppard Mullin Richter & Hampton LLP.

The case is Federal Trade Commission v. Kobeni Inc. et al., case number 0:14-cv-60143, in the U.S. District Court for the Southern District of Florida.

--Editing by Rebecca Flanagan.

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