



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO  
Attorney General

JUSTIN BROOKMAN  
Chief, Internet Bureau

**NOTICE OF PROPOSED LITIGATION PURSUANT  
TO NEW YORK EXECUTIVE LAW § 63(12) AND  
NEW YORK GENERAL BUSINESS LAW §§ 349 AND 350-c**

July 8, 2009

*By Certified Mail*

Ashima Dayal, Esq.  
Davis & Gilbert LLP  
1740 Broadway  
New York, NY 10019

**Notice of Intention to Sue**

Dear Ms. Dayal:

You are hereby notified that it is the intention of the Attorney General to commence litigation against Tagged, Inc. (“Tagged”) pursuant to New York Executive Law § 63(12), General Business Law §§ 349 and 350, and Civil Rights Law § 50 to enjoin repeated unlawful and deceptive acts and practices and to obtain disgorgement, damages, civil penalties, costs, and/or such other relief as the Court may deem proper.

Over the past month, the Attorney General’s Office has been investigating Tagged’s use of potentially deceptive methods to induce individuals to join its service. As part of the investigation, the Attorney General’s Office interviewed individuals and enlisted undercover investigators to pose as Tagged users. The investigation revealed that Tagged, through its actions, has persistently violated a host of New York laws designed to protect consumers from deceptive business practices, false advertising, and the misappropriation of their identities.

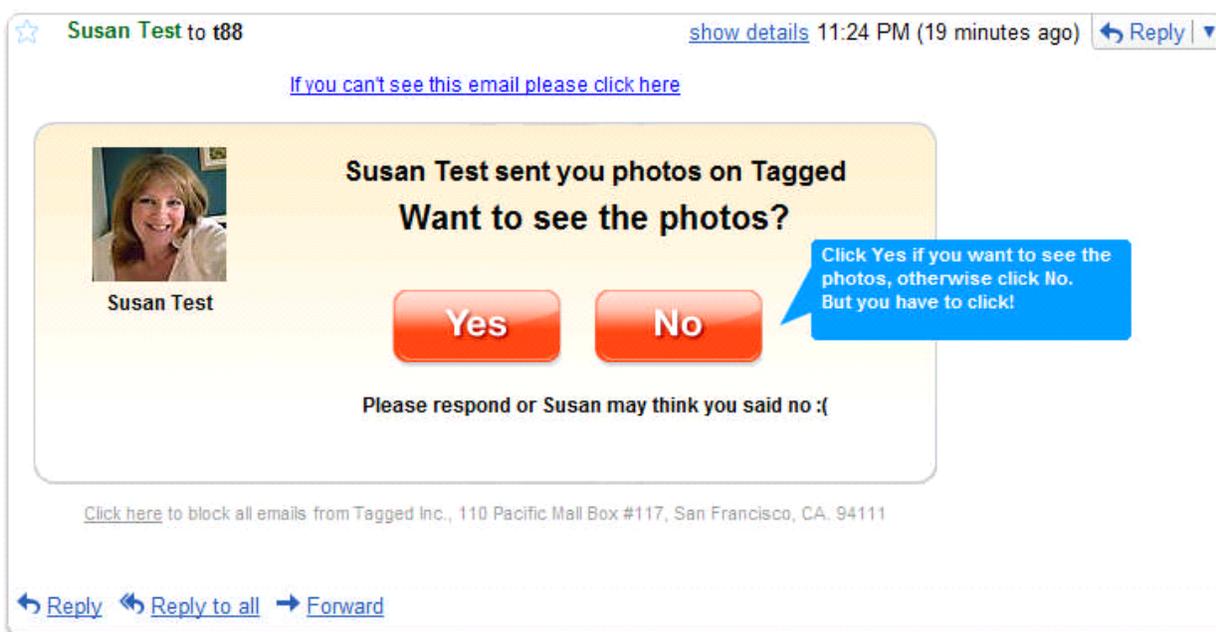
Beginning in April of 2009, Tagged, with the direct approval of its CEO, sent out tens of millions of misleading emails to individuals on its members’ contact lists. Tagged did not clearly and conspicuously disclose to these members that these email invitations would be sent on their behalf, and Tagged has since admitted that many of its members did not actually intend to send the invitations. Many users had no awareness at all that Tagged was accessing their

email contacts in order to send deceptive invitation emails; others intended to direct Tagged to *not* send the invitations, and only found out later that Tagged had nevertheless issued the invitations in their names.

Furthermore, these invitations were inherently deceptive in that (1) they claimed that a member had sent the recipients photos (which did not exist) and that the recipients needed to join Tagged.com to see them; (2) they informed the recipients that they must click yes or no on the invitation, both of which resulted in being redirected to Tagged; and (3) they fictitiously implied that the member would be informed if the recipients did not try to see the photos stating “Please respond or [name] may think you said no :(”

The emails, sent from Tagged.com, were also created to falsely appear as if they were sent from a member’s personal email account — e.g., [jane.doe@gmail.com](mailto:jane.doe@gmail.com). Thus, the “from” field of the recipient’s email only showed the member’s email without any reference to Tagged. Had they come from Tagged directly, it is likely many recipients would not have responded. Finally, where Tagged had a picture on file, it included a picture of the subscriber, without the member’s knowledge or consent, as further verification that the subscriber was in fact the author of the email.

**Susan sent you photos on Tagged :) Inbox | X**



Once the misled recipients responded and were directed to the Tagged site, they were prompted to sign up as Tagged members (to see the non-existent photos) and induced to give Tagged access to their contact lists, whereby the process repeated itself for the recipients’ contacts.

In short, in violation of General Business Law § 349 (prohibition on deceptive business practices), General Business Law § 350 (prohibition on false advertising), and Civil Rights Law § 50 (right to privacy), consumers were fraudulently induced to visit Tagged.com because they

thought friends had posted pictures to the site and then had their identities misused by Tagged to send more deceptive invitations. Every contact in their address books was spammed by Tagged — relatives, friends, colleagues, and business contacts — and led to believe that the consumers had posted pictures on Tagged.com for them to see. Many of these contacts in turn were tricked by Tagged into giving up access to their email accounts and had their identities assumed as well to send yet another round of fraudulent mail.

Please be advised that, pursuant to Sections 349(c) and 350-c of the General Business Law, respondent is hereby afforded the opportunity to show orally or in writing, within five business days after receipt of this notice, why such proceedings should not be instituted.

Sincerely,

Justin Brookman  
Chief, Internet Bureau