

Zuber Lawler & Del Duca

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February 28, 2014

BY FACSIMILE AND CERTIFIED U.S. MAIL

Public Inquiry Unit
P.O. Box 944255
Sacramento, CA 94244-2550
Attention:
Kimberly Christophersen
Lupe Zinzun
J. Bryan

**Re: HashFast Technologies LLC's Response to Consumer Complaint ID
Number 561098**

Dear Public Inquiry Unit:

The following shall serve as HashFast Technologies LLC's (hereinafter "HashFast") response to Complaint ID Number 561098 filed by Mr. [REDACTED] (hereinafter "Complainant").

Background Information***Bitcoin and Bitcoin "Mining"***

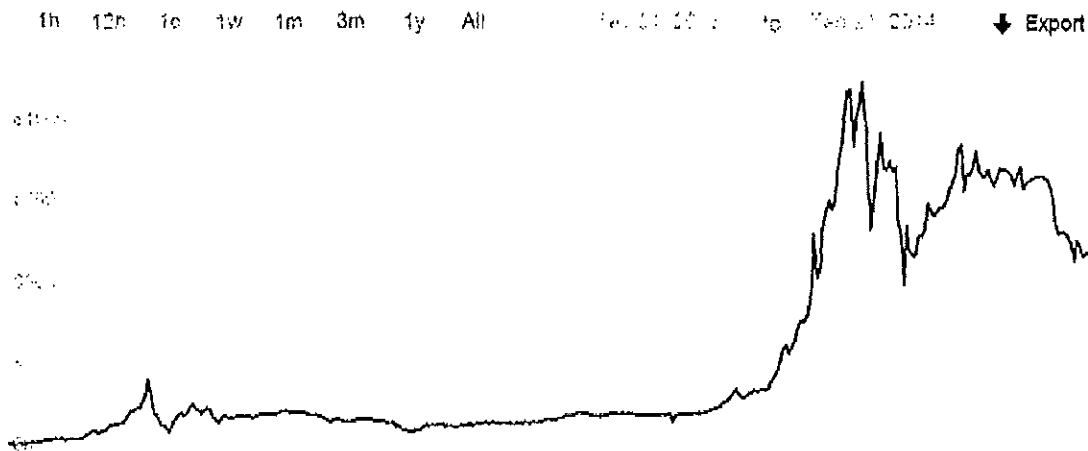
Bitcoin is a decentralized virtual currency that enables anyone with a computer to send Bitcoin to anyone else with a computer. Unlike ordinary currencies, there is no central government or bank that controls the issuance of Bitcoin or corrects price fluctuations. Instead, the management of Bitcoin transactions are carried out collectively by the network. Accordingly, Bitcoin is sent easily through the Internet.

Computers are required to audit transaction data. Companies buy such computers, sometimes referred to as "mining rigs", and operate them in order to be rewarded by the Bitcoin networks, which distributes Bitcoin to these "miners" depending on the amount of work performed by their computers. HashFast manufactures such computers. HashFast sought to build the highest-performing computers in the world for this purpose. Because of the complexity in developing an Application Specific Integrated Circuit ("ASIC") semiconductor that could make the necessary calculations at a speed 70,000 times faster than the fastest Intel CPU, HashFast promised its customers a full refund if it failed to deliver the machines by December 31st.

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In the months after Complainant purchased his mining rig, the price of Bitcoin fluctuated wildly, but ultimately rose beyond expectations. As depicted in the graph below, the Bitcoin price was relatively flat from May 1, 2013 to August 1, 2013, from \$116 to \$96. However, beginning in October, it rose dramatically to over \$1,000, then fell to \$542 as of today.



Link: <http://www.coindesk.com/price/#2013-02-20,2014-02-20,close,bpi>

HashFast Technologies LLC

Far from being “fraudsters”, HashFast’s co-founders are recognized entrepreneurs and technology authorities. Eduardo de Castro and Simon Barber previously founded Devicescape Technologies, Inc., a venture-backed computer networking company and served as CEO and CTO, the same positions they hold with HashFast. Mr. Barber was previously an engineer and researcher at Palo Alto Research Center, a highly-influential technology think tank behind technologies such as Ethernet, Windows and the mouse. He also served as a technical editor of the IEEE 802.11 standard. He is recognized in the virtual currency community for a seminal paper entitled, “Bitter to Better — How to Make Bitcoin a Better Currency”.¹

The Equipment at Issue and Complainant’s Pre-Orders

Complainant *pre-ordered* a “Baby Jet” unit, which is a desktop machine that incorporates HashFast’s advanced ASIC semiconductor mentioned previously, which as of today is the most powerful ASIC semiconductor for “mining rigs” – computers that perform

¹ <http://crypto.stanford.edu/~xb/12/bitcoin.pdf>

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transaction verification for the Bitcoin network. Most, if not all, of the competing companies offering Bitcoin mining equipment also take pre-order sales before building their equipment. Here, Complainant pre-ordered his Baby Jet unit in order to secure his status as a "Batch 1" customer, meaning that he would receive a unit from HashFast's first batch of production. All HashFast Batch 1 customers were offered a final shipment deadline of December 31, 2013.

The Equipment at Issue Was Always Priced in United States Dollars

HashFast sets the price of its equipment in United States Dollars (hereinafter "USD"). In fact, the Baby Jet units were *always* priced in USD, as reflected on the Baby Jet product webpage that Complainant perused prior to placing his pre-order. Moreover, it was not until online purchasers made it all the way to the "checkout" page that they were offered the additional option of paying in Bitcoin, in addition to payment in USD. Once they selected the Bitcoin option, they would be given a number of Bitcoin based on the exchange rate given to HashFast by its payment processor. Most Batch 1 customers that paid in Bitcoin did so through the payment processor. A fraction of Batch 1 customers transferred Bitcoin to HashFast directly. Far more customers paid in USD.

An Unavoidable Delay in Shipping

Unfortunately, HashFast was unable to make the December 31, 2013 delivery date but for a few of its customers. In fact, HashFast was open and honest with its customers about the reasons for the delay. On December 29, 2013, HashFast sent an e-mail update to *all* Batch 1 customers - including Complainant - explaining that:

Although HashFast has enough of Golden Nonce ASICS for all Batch 1 orders, our initial modules (Rev 0) had reliability issues due to the PCB layout (Printed Circuit Boards). We received Rev 2 PCBs and they are currently being assembled and will then be tested. We hope that they will resolve the reliability issues so that we can begin bulk production and be on track to ship Batch 1 customer orders on December 31. However, we now know that it is very unlikely that we will ship your order(s) by December 31st.

Please know we are doing everything possible to get you your orders as soon as we can.

In addition to this straightforward explanation for the shipping delay, the December 29, 2013 email also provided all Batch 1 customers – including Complainant - one of three options: (1) to cancel all orders and request a prompt refund in USD; (2) to cancel all orders and request a refund in Bitcoin at the exchange rate quoted by "Bitstamp" – a recognized Bitcoin exchange – on the day HashFast provides such Bitcoin; or (3) to wait

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up to an additional 30 days for HashFast to deliver the equipment.

As of February 20, 2014, HashFast has delivered hundreds of units to Batch 1 customers that did not want a refund. Further, over \$30,000 in checks have been sent to, and cashed by, Batch 1 customers that requested refunds. HashFast has offered Complainant the machine he ordered, or a full refund in USD. Complainant refused both.

Instead, he has asked for the original number of Bitcoin back instead of the original value of the Bitcoin. At the time of making his claims to you, such a maneuver would have provided Complainant with an approximate 800% windfall based on the price of Bitcoin when he made his purchase.

Complainant's Allegations

In his complaint, Mr. [REDACTED] alleges the following:

- That HashFast is "running a [Bitcoin] scam on customers";
- That the only option HashFast gave its customers to pay for its products was in Bitcoin;
- That two (2) days before the guaranteed delivery date of the hardware that Mr. [REDACTED] purchased from HashFast, HashFast "added another clause" in the "terms of sale" (hereinafter "ToS") that "refunds will happen in USD";
- That HashFast is a fraud; and
- That HashFast engages in "deceptive marketing."

Response

HashFast denies all of the above-referenced allegations. First, and as set forth above, HashFast was open and honest with its customers about the reasons for the delay in shipment. Additionally, HashFast immediately offered Batch 1 customers the option of receiving a prompt refund in USD, or a prompt refund in Bitcoin at the exchange rate quoted by Bitstamp on the day HashFast provided such Bitcoin.

Contrary to Complainant's allegations, there was no fraud related to HashFast's delay in shipping the equipment. On the contrary, HashFast was upfront with its customers about the technical difficulties being experienced with this revolutionary new product. The technical difficulties have since been resolved and the equipment is shipping to HashFast's customers. In fact, HashFast has delivered hundreds of units, and has refunded over \$30,000 to customers that did not want to wait for their equipment. In fact, as a token of its appreciation to the Batch 1 customers requesting a refund, HashFast actually *increased* each refund amount due by 5%.

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Second, this complaint stems from Complainant's contention that he was somehow "duped" by HashFast because HashFast is not offering its customers a 1:1 refund of Bitcoin for cancelled orders. For example, Mr. [REDACTED] alleges that the only option HashFast gave its customers to pay for its products was in Bitcoin. In reality, besides Bitcoin, HashFast accepted (and still accepts) most traditional methods of payment such as checks and wire-transfers, and Complainant was free to pay for his equipment by these means if he so chose. Although less than 1/10 of 1% of merchants accept Bitcoin as payment, HashFast accepted payment in Bitcoin as a convenience to its customers. In most cases, HashFast never received Bitcoin from its Batch 1 customers that paid in Bitcoin, but instead received USD from its payment processor, "Bitpay, Inc.", the largest and most reputable payment processor that accepts Bitcoin.

Similarly, Mr. [REDACTED] complaint suggests that HashFast said it would offer him a full 1:1 refund in Bitcoin. In reality, HashFast's order confirmations state that "If Buyer ordered one or more Baby Jet units, and HashFast does not deliver such units by that date, then Buyer may at his or her discretion, cancel the undelivered portion and HashFast will issue a full refund the payment for the units that Buyer purchased but did not receive and cancelled." Nowhere in the order confirmation, or the applicable ToS, does HashFast offer a 1:1 Bitcoin refund. Rather, HashFast offered a full refund of "the payment for the units." As reflected on the Baby Jet product page and in each and every HashFast order confirmation - including that of the Complainant - HashFast set the price of its equipment in USD. Bitcoin was not the currency used to set the price of the equipment ordered; the equipment were priced in USD. As a convenience to its customers however, HashFast offered Bitcoin as one of several different methods of payment. It is therefore undisputed that Complainant paid a USD denominated price for HashFast equipment via Bitcoin.

Accordingly, HashFast offered its customers, including Complainant, a full refund of their original purchase price in USD (or the currently equivalent amount of Bitcoin) and would have sent the check within days had Complainant been willing to accept the refund. HashFast's refund policy is not deceptive, a fraud, or a scam as Complainant alleges. In fact, HashFast's refund policy comports with the law.

First, United States Dollars is legal tender. Federal law mandates that it can be used to extinguish any public or private debts. Specifically, 31 U.S. Code § 5103 provides that:

United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts. (Emphasis added.)

Accordingly, creditors, such as the Complainant, are required to accept United States Dollars. California has followed this federal mandate, and itself is compelled to accept

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United States Dollars as legal tender. *Nixon v. Phillipoff* (1985) 615 F. Supp. 890, 893. Consequently, HashFast's refund policy is in accordance with the law.

Second, Federal statutes providing consumer protection with respect to consumer financial transactions, such as the Truth in Lending Act² and the Truth in Savings Act,³ do not include language specifically referencing digital currency transactions. Likewise, the United States Federal Trade Commission's regulations, which outline several refund scenarios, all involve payment by cash, check, money order or credit card, and not Bitcoin.

Finally, even the Electronic Fund Transfer Act⁴ (hereinafter the "EFTA"), which establishes a framework for transfers of money electronically, is limited in such a way that it does not apply to a digital currency in transactions involving no depository institution, for example, Bitcoin. Bitcoin is not covered under the EFTA because the EFTA specifically applies to transfers of funds initiated by electronic means from a consumer's account held at a financial institution. Specifically, the EFTA covers transfers "initiated through an electronic terminal, telephonic instrument, or computer,"⁵ and its application is limited to deposit accounts "established primarily for personal, family, or household purposes,"⁶ "held by a financial institution,"⁷ with "financial institution" limited to banks, thrifts, savings associations, and credit unions.⁸

Conclusion

HashFast never made any promises to Complainant that the Bitcoin he used to purchase equipment would be refunded 1:1, nor do the ToS state that a 1:1 Bitcoin refund would be given. In fact, the absence of any such promise is not coincidental as the price of Bitcoin has been volatile since its creation in 2009, subject to sharp appreciations and precipitous depreciations in value.⁹ As such, Bitcoin is a fluctuating *virtual* currency. It is not a standardized unit of value.

Complainant lodged the instant complaint when the value of Bitcoin grew 800% above what he originally paid. The price of Bitcoin now trades at over 500% of what it did

² 15 U.S.C. §§1601 et seq.

³ 12 U.S.C. §§4301-4313. (This applies to deposits held at depository institutions, i.e., banks, thrifts, savings associations, and credit unions.)

⁴ 15 U.S.C. §§1693 et seq.

⁵ 15 U.S.C. §1693a(6).

⁶ 15 U.S.C. §1693a(2).

⁷ 15 U.S.C. §1693a(2).

⁸ 15 U.S.C. §1693a(11).

⁹ As reported by the Los Angeles Times as recently as February 7, 2014. See <http://www.latimes.com/business/hiltzik/la-fi-mh-major-bitcoin-exchange-20140207,0,5823513.story#axzz2topwP8Uj>

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when Complainant placed his order. No doubt, Complainant would eagerly have accepted a USD refund and cried foul to a refund in Bitcoin if the price of Bitcoin had dropped to 20% from the date of his purchase.

For all of these reasons, HashFast denies all of Complainant's allegations and submits that its refund policy is not only forthright and aboveboard, but that it comports with the law.

Very truly yours,

ZUBER LAWLER & DEL DUCA LLP



Michael D. Resnick

MDR