

FILED  
U.S. DISTRICT COURT  
DISTRICT OF MARYLAND

UNITED STATES DISTRICT COURT  
OCT 30 A 10:18

FEDERAL TRADE COMMISSION,  
600 Pennsylvania Ave. NW  
Washington, DC 20580,

BY \_\_\_\_\_

03 CV 31 08

FTC Act, 15 U.S.C. § 45(a), and to obtain other equitable relief, including rescission, restitution, and disgorgement, as is necessary to redress injury to consumers and the public interest resulting from defendants' violations of the FTC Act.

### JURISDICTION AND VENUE

2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a), 50(a),

28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in the United States District Court for the District of Maryland is proper under 15 U.S.C. § 53(b), as amended by the FTC Act Amendments of 1994, Pub. L. No. 103-312, 108 Stat. 1691,

**DEFENDANTS**

5. Defendant D Squared Solutions, LLC, ("D Squared") is a California limited liability

company with its principal place of business located at 11086 Costa Del Mar, San Diego, California

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

03/20 D Squared does or has done business using the following Internet web sites which it controls:

[REDACTED]

[REDACTED]

**COMMERCE**

8. At all times relevant 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.

**DEFENDANTS' BUSINESS PRACTICES**

9. Since at least May 2003, defendants utilizing a network administration feature of

Microsoft Windows Internet as "Messenger Service" have caused a stream of repeated unwanted 16...

**Defendants Improperly Use the Windows Messenger Service**

10. The pop up spam sent by defendants utilize the Messenger Service feature of Microsoft Windows. The Messenger Service is designed to provide computer network administrators with the ability to provide instant information to network users, such as the need to log off of the network due to a system malfunction. Because of its intended purpose, Messenger Service pop up windows appear on a consumer's computer screen so long as the consumer is logged onto the network, no matter what application (e.g., word processing, spreadsheet, financial management) the consumer is using.

13 Defendants have asserted this network administration utility has the ability to

[REDACTED]

[REDACTED]

[REDACTED]

ups from appearing on consumers' computer screens. For example, one of defendants' pop ups reads:

"Messenger Service . . . . Message from SYSTEM ALERT to Unsafe User on [Date and Time inserted.]

Did you know that there is a one click easy way to stop these pop ups FOREVER? For Free

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

consumers do not have their Internet browser in use or are not accessing their e-mail accounts.

16. For example, by utilizing Messenger Service-type pop ups, in numerous instances, defendants cause their pop ups to appear on consumers' screens when consumers have been working at their computer on word processing documents or spreadsheets, temporarily blocking access to the consumers' document or spreadsheet. In addition, in numerous instances, defendants cause their pop ups to appear on consumers' screens when consumers have been writing or reading e-mail messages, temporarily blocking consumers' access to their e-mail messages.

**Defendants Generate Demand for their Pop Up-Blocking Software by Providing Others with Software that Sends Messenger Service Spam**

17. In addition to sending Windows Messenger Service spam to consumers, the defendants sell or license software that will permit others to send such non uns. On the defendants' web site

<http://www.broadcastmarketer.com>, they offer software that permits purchasers to send messages to

**Defendants' Practices Have Caused Substantial Injury that Cannot be Reasonably Avoided  
and is Not Outweighed by Countervailing Benefits to Consumers or to Competition**

19. Consumers have suffered and continue to suffer injuries from defendants' non-in spam

including but not limited to, losing data, losing work productivity, having their computer screens freeze, suffering an increasing level of frustration, annoyance, and harassment at receiving the pop ups, and expending money to purchase pop up-blocking or "firewall" software. Consumers' level of frustration is



computer screens even when consumers are not using their Internet browsers. Defendants' actions are

countervailing benefits to consumers or competition.

22. Therefore, defendants' practices, as described in Paragraph 21 above, are unfair and violate Section 5 of the FTC Act, 15 U.S.C. § 45(a).

**COUNT TWO**

**Unfair Attempt to Coerce Consumers into Purchasing Software**

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

26. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement and restitution, to prevent and


**PRAYER FOR RELIEF**

4. Award the Commission the costs of bringing this action, as well as any other equitable relief that the Court may determine to be just and proper.

Dated: October 30, 2003

Respectfully submitted:

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General Counsel



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