

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

FEDERAL TRADE COMMISSION,

Plaintiff,

Civil No.

v.

SEISMIC ENTERTAINMENT

and 28 U.S.C. §§ 1391(b) and (c).

PLAINTIFF

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States government created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission 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 Commission is authorized to initiate federal district court proceedings by its own attorneys to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers, consumer redress, and disgorgement. 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant Seismic Entertainment Productions, Inc. (“Seismic”) is a New Hampshire corporation with its principal place of business located at 11 Farmington Road, Rochester, New Hampshire 03867. Since at least December 2003, and continuing thereafter, Seismic has marketed various products, including purported “anti-spyware” software called “Spy Wiper” and “Spy Deleter,” on behalf of others. Seismic advertises these products through “pop-up” advertisements displayed to consumers using various Internet web sites that it controls, including the web sites at www.default-homepage-network.com and downloads.default-homepage-network.com. Seismic also downloads to and installs on consumers’ computers various advertising and other software programs, including Favoriteman, TrojanDownloader and Clearsearch. Seismic transacts or has transacted business in the District of New Hampshire.

6. Defendant SmartBot.Net, Inc. (“SmartBot”) is a Pennsylvania corporation with its corporate

address at 3 Cobblestone Court, Richboro, Pennsylvania 18954, and its principal place of business at 495 Route 9, Barrington, New Hampshire 03825. Since at least December 2003, and continuing thereafter, SmartBot has marketed various products, including purported “anti-spyware” software called “Spy Wiper” and “Spy Deleter,” on behalf of others. SmartBot advertises these products through pop-up advertisements displayed to consumers using various Internet web sites that it controls, including the web sites at www.passthison.com, object.passthison.com, and www.smartbotpro.net. In addition, the pop-up advertisements served by SmartBot also are displayed when a computer user visits various Internet web sites controlled by Seismic, including, but not limited to, [3](http://www.default-homepage-</p></div><div data-bbox=)

COMMERCE

9. The acts and practices of Seismic, SmartBot, and Wallace (collectively, “Defendants”) alleged in this Complaint are or have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. §§ 44.

DEFENDANTS’ BUSINESS PRACTICES

Introduction

10. Since at least November 2003, Defendants, in numerous instances, have exploited particular vulnerabilities in certain versions of the Microsoft Internet Explorer web browser (“IE web browser”) to reconfigure consumers’ computers by installing software code onto their computers without their knowledge or authorization. The software code, among other things, (a) changes the IE web browser’s home page; (b) modifies the IE web browser’s search engine; and (c) downloads and installs various advertising and other software programs, including, but not limited to, Favoriteman, TrojanDownloader, Clearsearch, WinFetcher, 7Search.com, and VX2; and (d) causes an incessant stream of pop-up advertisements to be displayed.

11. A web browser, which is used by a computer to locate and view Internet web pages, serves as a liaison between a computer and the information delivered to the computer through the Internet. Most web browsers, including the IE web browser, generate a notification message to the user whenever software code is being downloaded to the user’s computer from the Internet. The notification message gives the user the option to authorize or not authorize the download. By exploiting certain vulnerabilities in the IE web browsers, however, Defendants have been able to download and install software code without triggering the display of the IE web browser notification message. In the absence

download and install or have downloaded and installed, without consumers' knowledge or authorization,

Unauthorized Downloads of Software programs

16. Defendants, through the use of the web sites and pop-up advertisements referred to above, download and install or have downloaded to and installed on, without consumers' knowledge or authorization, various advertising and other software programs to consumers' computers. Defendants download or have downloaded some of these software programs, including TrojanDownloader, WinFetcher and Clearsearch, from the web site downloads.default-homepage-network.com. This web site is or has been controlled by Seismic and Wallace. The software code that Defendants use to exploit a vulnerability in the IE web browser, which triggers the download and installation of these programs to consumers' computers, is or has been downloaded from the web site object.passthison.com. This web site is or has been controlled by SmartBot and Wallace. Among other things, the TrojanDownloader, WinFetcher, and Clearsearch software programs disseminate pop-up advertisements, hijack Internet searches, and create security holes that are used to download and install more advertising and other software programs without consumers' knowledge or authorization, including the software program known as VX2. The security holes establish a connection between consumers' computers and an Internet server, through which information can be downloaded to the computer from the server and uploaded from the computer to the server, without consumers' knowledge or authorization.

17. Defendants also download or have downloaded to consumers' computers additional software programs residing on the web sites and Internet servers of others. For example, Defendants download or have downloaded the software program Favoriteman to computers from the third-party web site www.addictivetechologies.net. The software code that Defendants use to exploit a vulnerability in the IE web browser, which triggers the download and installation of Favoriteman, also is or has been

downloaded from the www.addictivetechologies.net web site. Favoriteman creates a security hole on consumers' computers that is used to download and install more software programs, including, but not

receive fees from software vendors based on the numbe

consumers or competition.

23. Therefore, Defendants' practices, as described in Paragraphs 20 through 22 above, are unfair and violate Section 5 of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

Unfairly Installing Advertising and Other Software Programs

24. In numerous instances, through the means described in Paragraphs 10 through 17, including making significant modifications to computers' IE web browsers, Defendants download and install or have downloaded and installed software code onto consumers' computers without their knowledge or authorization. In turn, this software code downloads and installs advertising and other software programs.

25. These software programs display a stream of pop-advertisements, create security holes through which other software programs and malicious code can be downloaded, hijack Internet searches for information, and deplete the computers' memory and other resources. For many consumers, Defendants' practices have caused their computers to malfunction, lose important information, operate more slowly, and in some cases, cease working completely.

26. Consumers are required to spend substantial time and money to resolve these problems with their computers. Consumers can not reasonably avoid this substantial injury because Defendants have exploited a vulnerability in their computers' IE web browsers to download and install without their knowledge or authorization the software code that leads to the injury. Defendants' practices do not

consumers or competition.

27. Therefore, Defendants' practices, as describe

reasonably avoid this substantial injury because Defendants have exploited a vulnerability in their computers' IE web browsers to download and install without their knowledge and authorization the software code that negatively affects their computers' functionality. Defendants' course of conduct has no benefits to consumers or competition. Thus, Defendants practices cause or are likely to cause substantial injury that cannot be reasonably avoided, and this injury is not outweighed by countervailing benefits to consumers or competition.

30. Therefore, defendants' practices, as described in Paragraphs 28 through 29 above, are unfair and violate Section 5 of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

31. Defendants' violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a), as set forth above, have caused and continue to cause substantial injury to consumers. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

32. 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 remedy any violations of any provision of law enforced by the Federal Trade Commission.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the Federal Trade Commission, requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

1. Award plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of

effective final relief.

2. Permanently enjoin the Defendants from violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), as alleged in this Complaint.

3. Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including, but not limited to, rescission of contracts and restitution, and the disgorgement of ill-gotten gains;

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

Dated: October 6, 2004

Respectfully submitted:

/s/ T. David Plourde

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