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ATTORNEYS FOR PLAINTIFF

UNITED STATES DISTRICT COURT CENT- DIESTRICT OF CALPFOm
WESTERN DIVISION . t:vT:i x 2t
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FEDERAL TRADE COMMISSION, ti,4 ~~05- 7013

Plaintiff,
Civ. No.
V.

Defendant. I

Plaintiff, the Federal Trade Comrnission ("FTC" or "Commission"), through its undersigned attorneys, hereby alleges as follows:

1. Plaintiff brings ths action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to secure preliminary and

permanent injunctive relief, restitution, disgorgemelit, and other equitable relief against Defendant for his deceptive acts or practices in connection with the advertising, marketing, and sale of a peer-to-peer ("P2P") file-sharing program tutorial and referral service, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
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2. Ths Court has subject matter jurisdiction over ths matter p~xsuant to
15 U.S.C. $5 45(a) and 53(b), and 28 U.S.C. 55 l331,1337(a), and 1345.
3. Venue in this district is proper under 15 U.S.C. § 53(b) and 28 U.S.C.
1391(b) and (c).
TEE PrnTI[ES
4. Plaintiff, the FTC, is an independent agency of tlie United States
Government created by statute. 15 U.S .C. 5 4 1 et seq. The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. 5 45(a), which prohibits unfair or deceptive acts or practices in or affecting cormnerce. 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. 5 53(b).
5. Defendant Cashier Myricks Jr. is an individual doing business as
MP3DownloadCity.com ("Download"). Defendant Myricks resides, and transacts or has transacted business in the Central District of California.
COMW%ERCE

6. The acts and practices of Defendant, as alleged herein, are or have
been in or affecting commerce, as "con~rnerce" is defined in Section 4 of the FTC Act, 15 U.S.C. 44.

DEFElVlIANT'S COURSE OF CONDUCT
7. Since at least January 2003, Defendant has engaged in the
advertising, promotion, offering for sale, and sale of a P2P file-sharing program tutorial and referral service promoting the use of software to download digital music, movies, and computer games to consumers throughout the United States, through his Internet website www.mv3downloadcity.com. Unlilte a licensed subscription service, Defendant's service does not provide its paying customers with a license to download and share copyrighted nlusic, movies, or games. Instead, Defendant's service simply directs users to, and instructs users how to use, free P2P file-sharing software provided by others, such as Kazaa and Blubster. The bulk of Defendant's website consists of instructions on how to use

these file sharing programs. Defendant charges consumers $24.95 for ths service.
8. P2P software programs are often used to download and share
copyrighted material. Users of these programs who download copyrighted material, or who make it available to others, without the copyright owner's permission are engaged in copyright infhngeinent that may result in significant monetary damages, fines, and even criminal penalties. Consumers purchase Defendant's P2P file-sharing program tutorial and referral service by ordering the service on Defendant's website.
9 To induce consumers to purchase his P2P file-sharing program
tutorial and referral service, Defendant disseminates Internet advertisements, including those found at www.rn~3downloadcity.comthat, inter alia, assure consumers that downloading music, movies, and games through Defendant's service is completely legal. These advertisements include but are not limited to the attached Exhibit A and contain, among other thgs, the following statements: A. Napster's Number One Replacement Software is Back!

"Now You Can Burn, Download NW3s, and Make CDs Free'' Free MP3 Music Downloads * * *

...We will show and share with you all the software and tools
you need to start downloading any type of songs and movies once you sign up. . . .
AND BEST OF ALL PEOPLE ARE NOT
GETTING SUED FOR USING OUR
SOFTWARE. YES! IT IS 100% LEGAL. * * *
FREE m3 MUSIC DOWNLOADS, MOVIES, AND GAMES! * * *
You will be able to download and search for unlimited music
and movie files for fiee * * *

Why Are We The #lFree IMP3 Music Download Site? * * *
d 100% Legal Guaranteed!
d Download and Watch DVDs and Movies Still in l%eaters!

BOWUS #I Si n Up Today and Get Access To Free Full Version

Games For P6 ,Playstion (sic) l & 2, BOX, Nintendo, Dreamcast and more For FREE.

' BONUS #2 Sign U Today and Get Access To Free Full Length Movie Downloads %hat are still in Theaters and on DW.
(Exh.lbit A, at www.mp3downloadcity.cons/)
B. * * * Is fie-sharing Legal - Yes!
Today over 220 million users on the internet are sharing music,
movies and game files le all . Your memberslvp with MP3DownloadCity is 10E%Yegal.
See News.com Article: Federal Judpe Rules: Pile-swapping tools
are lepal

MP3 is simply an audio fomat and as such has no legal standing. While rights owners have concerns about a format that is used to

make digtal copies of music, it's not the MP3 format itself that is at issue but rather the copying of music - regardless of the articular
format used in creating the file. In fact, whle the MP3 ?'ormat is the

main music format available on the file-sharing networks, there are a ~arietyof other audio and video formats in use.

Today, there are hundreds of millions of users trading MP3s & videos on these le a1 file-sharin networks. Rest assured that File-Sharing is
100% legaf MP3s are 10 %% le al, and your membershtp to Mp3downloadcity.com is 1008 legal. * * *

Mp3downloadci .corndoesnot condonepeac orbreakm
copyri ht laws. 9he MP3 sharing tools availab Y e on our we %site are

powera1 search tools & we recommend that you use your discretion
when downloading music and movie files.

(Exhibit A, at www.mp3downloadcity.comileal,linked from www.mp3 downloadcity. corn/ "affiliate ro am' and
www.mp3downloadcity.com/business"?00% Legal")

100% Legal Start Downloadin All

12. The representation set forth in Paragraph 11 is false and/or was not substantiated at the time the representation was made. In fact, using the file-sharing programs in conjunction with Defendant's service to download copyrighted materials is unlawfbl. Therefore, the mahg of the representation set forth in Paragraph 11 constitutes a deceptive practice, in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
CONSIJlVER PI\JmY

13. Consumers throughout the United States have suffered and continue
to suffer substantial monetary loss because of Defendant's violations of the FTC Act. In addition, Defendant has been unjustly enriched as a result of his unlawful acts and practices. Absent injunctive relief by ths Court, Defendant is likely to continue to inj we consumers, reap unjust enrichment, and harrn the public interest. TEES COURT'S POWER TO GRANT RELIEF

14. Section 13(b) of the FTC Act, 15 U.S.C. 9 53(b), empowers ths
Cowt 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 FTC requests that this Court, as authorized by
Section 13(b) of the FTC Act, 15 U.S.C. 5 53(b), and pursuant to its own equitable

powers:

(a) Permanently enjoin Defendant fiom violating Section 5(a) of the FTC Act, 15 U.S.C. 5 45(a), in connection with the offer, sale, advertising, or other promotion or distribution of P2P file-sharing program tutorial and referral services, FTC