

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Civil No. 04-377-JD

~~SEISMIC CORPORATION~~

PRODUCTIONS, INC., et al.

Defendants.

**ORDER OF DEFAULT JUDGMENT, PERMANENT INJUNCTION, AND OTHER
EQUITABLE RELIEF AGAINST SANFORD WALLACE AND SMARTBOT.NET, INC.**

Plaintiff, Federal Trade Commission ("FTC" or "Commission"), filed a Complaint and

~~Amended Complaint for Permanent Injunction and Other Equitable Relief ("Amended~~

Commission's Memorandum in Support of Motion for Default Judgment, Permanent Injunction, and Other Monetary Relief against Sanford Wallace and SmartBot.Net, Inc. ("S. Schools Dec. Default.")

16. Collectively, Wallace, SmartBot, and Co-Defendant Seismic operated a common enterprise while engaging in the unfair acts and practices that are the basis of the Amended Complaint, and therefore are jointly and severally liable for said acts and practices.

17. Since at least September 2003, Defendants downloaded software to consumers' computers and marketed products, including purported "anti-spyware" software named "Spy Wiper" and "Spy Deleter" on behalf of others. See Wallace Answer ¶ 24 (Dk. No. 44); S. Schools Dec. TRO ¶ 6; Declaration of Sallie S. Schools at ¶ 8, Atts. 7-15, Filed In Connection With Federal Trade Commission's Memorandum in Support of Motion for an Order of Judgment Against John Robert Martinson, Mailwiper, Inc., and Spy Deleter, Inc. ("S. Schools Dec. Proposed Judgment Order") (Dk. Nos. 96-97 #7-15); and S. Schools Dec. Default ¶ 34 Atts. 51-

58.

18. At all times material to the acts and practices that are the basis of the Commission's Amended Complaint, Defendants controlled and operated a network of Internet web sites, including, but not limited to, www.default-homepage-network.com,

[downloads default-homenage-network.com](http://downloads.default-homenage-network.com), www.nassthison.com, and www.smartbotno.net

consumers were compelled to exit the IE web browser, return the IE setting to their original home pages, and reinitiate their Internet connections. Consumers often had to repeat this process

multiple times. *See* Dr. Gribble Rep. ¶¶ 6, 14, 33-36, Atts.C-F and S. Schools Dec. TRO ¶¶ 3-32, Att. A (Dk. No. 3, #21); *See also* Declaration of James Alexander Beuhring at ¶¶ 3-7, attached as Exhibit 5 to the Federal Trade Commission's Memorandum in Support of Its Motion for a Temporary Restraining Order (J. Beuhring Dec.) (Dk. No. 3, #60); Declaration of Paul

No. 44); S. Schools Dec. Mot. For Leave ¶¶ 16(a), 18, Att. R (Dk. No. 35, #2); Dr. Gribble Rep.

¶¶ 13, 34(a), 37(a)-(b) Att. D-G; and S. Schools Dec. Proposed Judgment Order ¶ 8 Att. 7-15

(Dk. Nos. 96-97, #7-15).

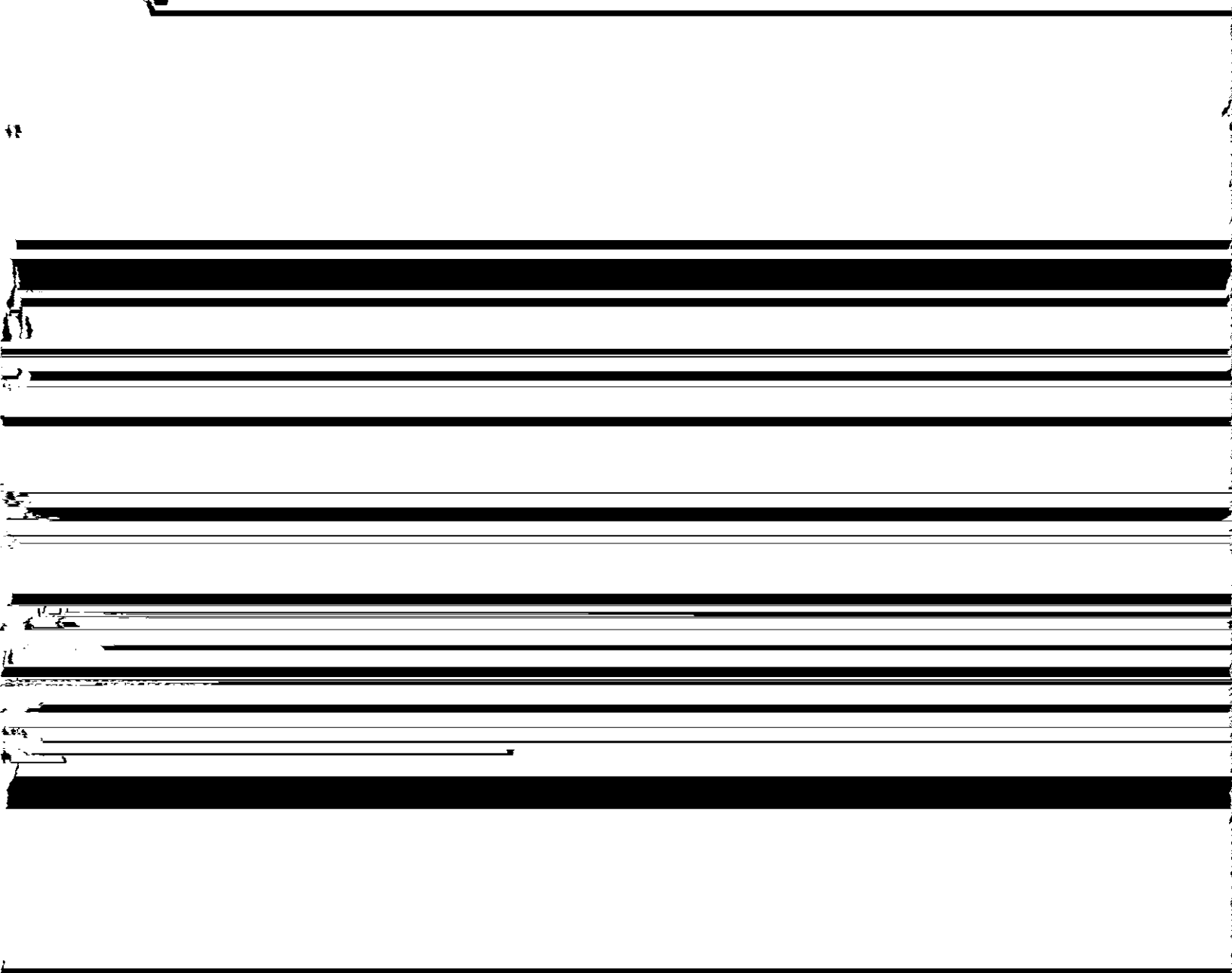
33. To induce the purchase of Spy Wiper and Spy Deleter, Defendants disseminated advertisements marketing Spy Wiper and Spy Deleter to consumers whose computers they exploited. *See* Wallace Answer ¶ 24 (Dk. No. 44); S. Schools Dec. Proposed Judgment Order ¶ 8, Atts. 7-15 (Dk. Nos. 96-97, #7-15); and S. Schools Dec. Default ¶¶ 33-35, Atts.49-57. *See also, e.g.*, Dr. Gribble Rep. ¶ 37(a)-(b), Att. G; P. Mancine Dec. ¶¶ 3 and 8, Att. A (Dk. No. 3, #71).

34. These advertisements warned consumers that they must purchase the advertised

37. Consumers could not reasonably avoid this substantial injury because Defendants exploited vulnerabilities in their computers' IE web browsers to download and install without their knowledge and authorization software that negatively affected their computers' functionality.

38. Defendants' course of conduct in marketing Spy Wiper and Spy Deleter has no benefits to consumers or competition.

39. Therefore, Defendants' practices in marketing Spy Wiper and Spy Deleter described above are unfair and violate Section 5 of the FTC Act, 15 U.S.C. § 45(a).



person or entity; or (c) performing advertising or marketing services of any kind for any person or entity.

B. "Commerce" means as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

C. The "World Wide Web" or the "Web" is a system used on the Internet for cross-referencing and retrieving information. Documents ("pages" or "sites") on the World Wide Web are most frequently formatted in a language called HTML or HyperText Markup Language, that supports links to other documents on the World Wide Web.

D. A "web site" is a set of electronic files or documents, usually a home page and subordinate pages, readily viewable on a computer by anyone with access to the Web and standard Internet browser software.

E. A "web browser" is a software application used to view, download, upload, surf or otherwise access documents ("pages" or "sites") on the World Wide Web. Web browsers read

coded documents that reside on servers, and interpret the coding into what users see rendered as a

III.

IT IS FURTHER ORDERED that

A. Judgment for disgorgement is hereby entered in favor of the Commission and against the Defendants, jointly and severally, in the amount of four million eight-nine thousand five hundred fifty dollars and forty-eight cents (\$4,089,550.48.) Defendant shall disgorge funds

in full within thirty (30) days of entry of this Order. Defendant shall

B. All payments shall be made by certified check or other guaranteed funds payable to and delivered to the Commission, or by wire transfer in accord with instructions provided by the Commission.

C. All funds paid pursuant to this Order shall be deposited into a fund established

acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1))

[REDACTED]

VI.

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

- A. Defendant Wallace, within ten (10) business days of service of this Order, shall

[REDACTED]

(c) Any changes in Defendant Wallace's name or use of any aliases or fictitious names.

(2) Defendant SmartBot.Net, Inc. shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts

or practices subject to this Order; the filing of a bankruptcy petition; or a change

D. For purposes of the compliance reporting required by this Decree, the

[REDACTED]

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prepared to the extent such information is obtained in the ordinary course of business.

D. Complaints and refund requests (whether received directly, indirectly or through any third party), and any response to those complaints or requests; and

E. Copies of advertisements, promotional materials, or other marketing materials

prepared or distributed in connection with any affiliate program.

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including, but not limited to, copies of acknowledgments of receipt of this Order, required by Part V(D), and all reports submitted to the FTC pursuant to Part VII.

IX.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED, this 22nd day of March, 2006.

/s/ Joseph A. DiClerico, Jr.

UNITED STATES DISTRICT JUDGE
JOSEPH A. DICLERICO, JR.

Presented by:

WILLIAM BLUMENTHAL
General Counsel

/s/ Laura Sullivan

LAURA M. SULLIVAN (New York Bar No. 2919660)

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