Analysis of Proposed Consent Orders to Aid Public Comment
In the Matter of DesignerWare, LLC, et al., File No. 1123151

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The Federal Trade Commission ("Commi

DesignerWare sent the information captured by Detective Mode to an email account designated by each RTO store. Although DesignerWare's employees did not themselves view Detective Mode data, without DesignerWare licensing PC Rental Agent and making Detective Mode available to the RTO stores, as well as providing them with access to its web portal and providing services to support both PC Rental Agent and Detective Mode, this collection and disclosure of consumers' private information would not be possible.

RTO stores also used Detective Mode to send fake "software registration" forms to consumers to deceive them into providing their contact and location information. DesignerWare created several different fake registration forms that its servers displayed on consumers' computers. An RTO store could use this feature of Detective Mode by requesting that DesignerWare activate it. No actual software was registered as a result of a consumer providing the requested information. Rather, Detective Mode captured the information entered in the prompt boxes and sent it to DesignerWare, who then emailed the data to the RTO store, all unbeknownst to the consumer. DesignerWare discontinued use of Detective Mode in January 2012.

In September 2011, DesignerWare added another feature to PC Rental Agent: the capacity to track the physical location of rented computers via WiFi hotspot locations. The information derived from WiFi hotspot contacts can frequently pinpoint a computer's location to a single building and, when aggregated, can track the movements and patterns of individual computer users over time. DesignerWare makes this information easily available to the RTO store by cross-referencing a list of publicly available WiFi hotspots with the street address for the particular hotspots viewed or accessed by rented computers. DesignerWare applied its location tracking upgrade of PC Rental Agent to every computer on which PC Rental Agent was installed, without obtaining consent from, or providing notice to, the computer renters. DesignerWare recommends that RTO stores only use this tracking data in connection with recovering stolen property, but it does not monitor or limit the RTO stores' access to such location information.

Aspen Way Enterprises, Watershed Development, Showplace, J.A.G. Rents, Red Zone, B. Stamper Enterprises, and C.A.L.M. Ventures are RTO stores that have licensed PC Rental Agent from DesignerWare. These RTO stores have used information transmitted by DesignerWare when attempting to collect from computer renters who are late in paying or have otherwise breached their rental contracts. Using Detective Mode, these RTO stores have received from DesignerWare webcam photos of consumers and screenshots of their private activities.

the DesignerWare Respondents provided the means and instrumentalities to RTO stores to engage in unfair collection practices by providing them with the data gathered via PC Rental Agent and Detective Mode. Our focus is on actions taken by DesignerWare that were integral to the harm to consumers caused or likely to be caused by the RTO stores. Here, without PC Rental Agent and Detective Mode and without access to DesignerWare's servers to execute their commands to rented computers, collect consumers' confidential information and transmit it to them, the RTO stores could not unfairly monitor their computer renters or use improperly gathered information in connection with collections.

Count III of the complaint charges the DesignerWare Respondents with deceptively gathering – and disclosing – consumers' personal information collected from the fake software registration forms that Detective Mode caused to appear on consumers' rented computers.

Each of the Commission's complaints against the seven RTO stores contains substantially similar allegations regarding the stores' violations of the FTC Act. The complaints charge that the RTO stores unfairly gathered consumers' personal information by installing monitoring software on rented computers and engaged in unfair collection practices by using the improperly gathered information to collect on consumer rental contracts. The complaints further allege that the RTO stores deceptively gathered consumers' personal information by activating the Detective Mode feature that sends the fake software registration forms to consumers' rented computers.

The proposed orders contain strong injunctive relief designed to remedy the unlawful conduct by DesignerWare, its principals and the RTO stores. The orders define "monitoring technology and geophysical location tracking technology" so that the technological applications covered by the order are clearly described. "Monitoring technology" means any hardware, software, or application utilized in conjunction with a computer that can cause the computer to (1) capture, monitor, or record, and (2) report information about user activities by recording keystrokes, clicks, or other user-generated actions; capturing screenshots of the information displayed on a computer monitor or screen; or activating the camera or microphone function of a computer to take photographs or record audio or visual content through the computer's webcam or microphone. The definition of "geophysical location tracking" includes the reporting of GPS coordinates, WiFi hotspots, or telecommunications towers – all technologies that allow for a relatively precise location of the item tracked. In addition, a "covered rent-to-own transaction" is defined as one in which a consumer agrees to purchase or rent a computer, where the rental agreement provides for payments over time and an option to purchase the computer.

The proposed orders with DesignerWare and its principals, Kelly and Koller, are separate, but contain identical injunctive provisions. Section I of the proposed orders with DesignerWare and its principals bans them from using – as well as licensing, selling, or otherwise providing third parties with – monitoring technology in connection with any covered RTO transaction. Section II prohibits them from using geophysical location

tracking technology to gather information from any computer without providing clear and prominent notice to and obtaining affirmative express consent from the computer's renter at the time the computer is rented. This section also requires clear and prominent notice to computer users immediately prior to each time tracking technology is activated. In addition, Section II mandates that DesignerWare and its principals require their licensees to obtain consent and provide notice prior to initiating any location tracking. However, DesignerWare and its principals do not need to provide notice to a computer user prior to activating geophysical location tracking technology if 1) there is a reasonable basis to believe that the computer has been stolen and 2) a police report has been filed.

Section III of the proposed orders with DesignerWare and its principals prohibits the deceptive collection of consumer information via fake software registration notices. Section IV requires that any data that was collected through any monitoring or tracking software without the requisite notice and consent be destroyed and that any properly collected data be encrypted when transmitted. Section V bars DesignerWare and its principals from making misrepresentations about the privacy or security of any personal information gathered from or about consumers.

Sections VI through IX of both orders contain reporting and compliance provisions. Section VI of the proposed DesignerWare order requires the company to disseminate the order now and in the future to all current and future principals, officers, directors, and managers, and other persons with responsibilities relating to the subject matter of the order. This section also requires DesignerWare to secure a signed and dated statement acknowledging receipt of the order from all persons who receive a copy. Section VII requires DesignerWare to submit compliance reports to the Commission within sixty (60) days, and periodically thereafter as requested. It also requires the company to notify the Commission of changes in DesignerWare's corporate status.

Section VI of the proposed order with the DesignerWare principals requires

The proposed orders against the RTO stores (which are identical to each other) contain similar injunctive provisions to those in the proposed orders with DesignerWare and its principals. Section I of each of the proposed orders bans the RTO stores from using monitoring technology in connection with any covered RTO transaction. Section II prohibits the stores from using geophysical location tracking technology to gather information from any computer without providing clear and prominent notice to the computer's renter and obtaining affirmative express consent from the computer's renter at the time the computer is rented. This section also requires clear and prominent notice to a computer user immediately prior to the time such technology is activated. The proposed RTO store orders also suspend the notice requirement if 1) there is a reasonable basis to believe that the computer has been stolen and 2) a police report has been filed. Section III of each of the proposed orders prohibits the deceptive collection of consumer information via fake software registration notices.

Section IV bars the stores from collecting or attempting to collect a debt, money, or property pursuant to a consumer rental contract by using any information or data that was improperly obtained from a computer by monitoring technology. Section V requires that any data collected through any monitoring or tracking software without the requisite notice and consent be destroyed, and that any properly collected data be encrypted when transmitted. As fencing in, Section VI bars misrepresentations about the privacy or security of any personal information gathered from or about consumers.

Sections VII through X of the proposed RTO store orders contain reporting and compliance provisions. Section VII requires distribution of the order now and in the future to all current and future principals, officers, directors, and managers, and to persons with responsibilities relating to the subject matter of the order. It also requires the RTO stores to secure signed and dated statements acknowledging receipt of the order from all persons who receive a copy of the order. Section VIII requires the RTO stores to submit compliance reports to the Commission within sixty (60) days, and periodically thereafter as requested, and ensures notification to the Commission of changes in corporate status. Under Section IX, the RTO stores must retain documents relating to order compliance for a five (5) year period. Finally, Section X is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed orders. It is not intended to constitute an official interpretation of the proposed complaints or orders or to modify the terms of the orders in any way.