

Complaint

IN THE MATTER OF

**ADVERTISING.COM, INC. DOING BUSINESS AS,
TEKNOSURF.COM, AND JOHN FERBER**CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4147; File No. 0423196**Complaint, September 12, 2005--Decision, September 12, 2005*

This consent order, among other things, prohibits Respondents Advertising.com, Inc., and John Ferber – who advertised and distributed computer software products, including the SpyBlast computer software product, advertised as an Internet security program – from making any representation about the performance, benefits, efficacy, or features of SpyBlast or any of respondents’ other executable computer software programs whose principal function is to enhance security or privacy, unless respondents disclose clearly and conspicuously that consumers who install the program will receive advertisements, if that is the case.

Participants

For the Commission: *Shira D. Modell, Michael F. Ostheimer, Char Pagar, Thomas B. Pahl, Mary K. Engle and Hajime Hadeishi.*

For the Respondent: *Christine Varney, Hogan & Hartson*

COMPLAINT

The Federal Trade Commission, having reason to believe that Advertising.com, Inc., a corporation, also doing business as Teknosurf.com, and John Ferber, individually and as an officer of the corporation (“respondents”), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Advertising.com, Inc., also doing business as Teknosurf.com, is a Maryland corporation with its principal office or place of business at 1020 Hull Street, Baltimore, Maryland 21230.

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2. Respondent John Ferber is an officer of the corporate respondent. Individually or in concert with others, he formulates, directs, or controls the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of Advertising.com, Inc.
3. Respondents have developed, advertised, promoted, and distributed to the public computer software products, including the SpyBlast computer software product.
4. The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.
5. Respondents caused ads for SpyBlast to be served on consumers’ computers (including Exhibit A). These ads represented that because the consumer’s computer was broadcasting an Internet IP address, it was at risk from hackers. Consumers who clicked on this advertisement were shown an ActiveX “security warning” installation box with a hyperlink describing SpyBlast as “Personal Computer Security and Protection Software from unauthorized users” and telling them “once you agree to the License Terms and Privacy Policy – click YES to continue.” (Exhibit B).
6. If a consumer clicked “Yes,” the software was installed, even if the consumer had not clicked on the hyperlink. Only if a consumer clicked on the hyperlink describing SpyBlast as “Personal Computer Security and Protection Software from unauthorized users” before clicking “YES,” did SpyBlast’s End User Licensing Agreement (“EULA”) appear. (Exhibit C). The EULA contained a statement that consumers agreed to receive marketing messages, including pop-up ads, in exchange for getting SpyBlast. It also stated that respondent Advertising.com collected information about SpyBlast users, including “URLs of

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visited pages and [the user's] IP address,” and that this information allowed the company “to send [a user] advertisements that might be of interest to [the user].”

7. SpyBlast could also be downloaded directly from the www.SpyBlast.com website. (Exhibit D). At the very bottom of the www.SpyBlast.com home page, below several hyperlinks to download SpyBlast, a small disclosure appeared. This disclosure stated that “In exchange for usage of the SpyBlast software, user agrees to receive . . . offers on behalf of SpyBlast’s marketing partners.”

8. Respondents downloaded bundled adware onto the computers of consumers who installed SpyBlast. The adware collected information about SpyBlast users, including URLs of visited pages and the user’s IP address, and this information allowed respondents to send users advertisements that respondents believed might be of interest to them. Consumers received a substantial number of pop-up advertisements as result of respondents’ installation of this adware onto their computers.

9. Respondents represented to consumers that Spyblast is an Internet security program. Respondents failed to disclose adequately that SpyBlast includes adware that causes consumers to receive pop-up advertisements, as described in Paragraph 8. The installation of such adware would be material to consumers in their decision whether to install the SpyBlast program. The failure to adequately disclose this fact, in light of the representation made, was, and is, a deceptive act or practice.

10. The acts and practices alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this 12th day of September, 2005, has issued this complaint against respondent.



Advertisement



Your Computer Is
Currently
Broadcasting An
Internet IP Address.
With this Address,
Someone Can
Immediately Begin
Attacking Your
Computer!

OK

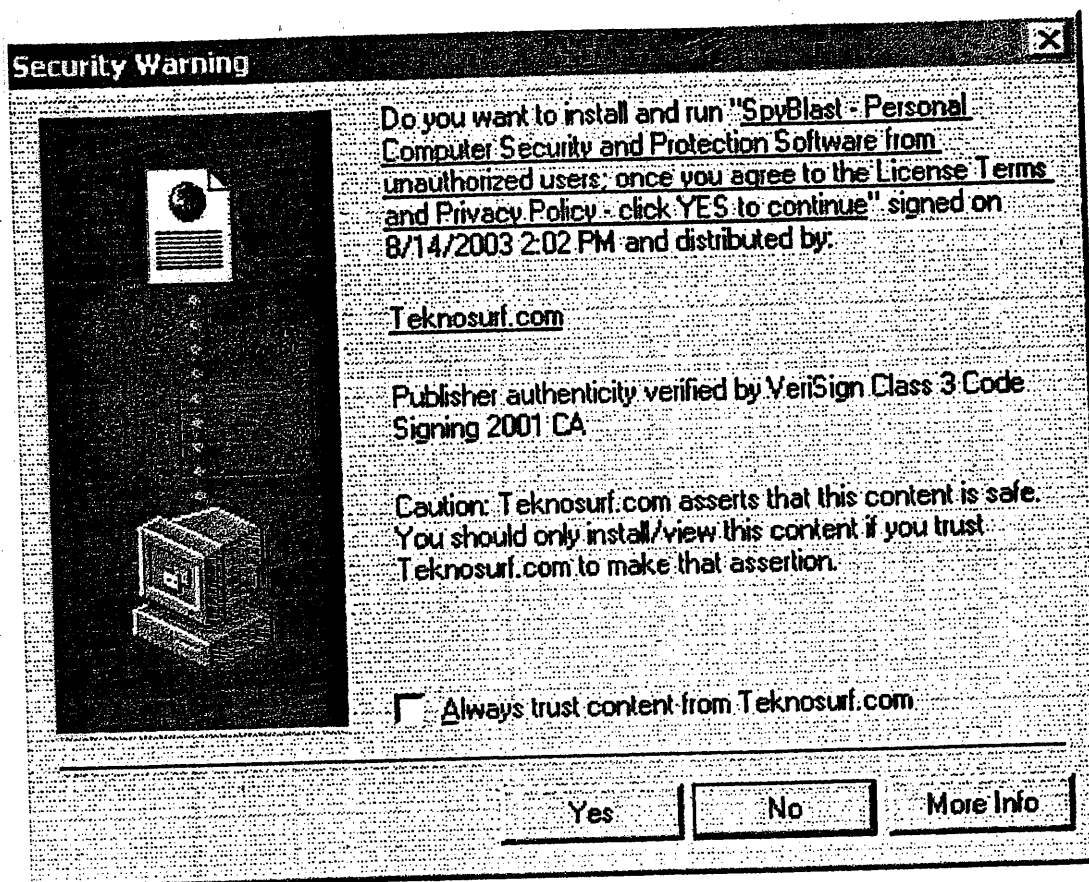


EXHIBIT B

**SpyBlast****INTERNET
SECURITY PROTECTION****[CLOSE]**

IMPORTANT: PLEASE READ THE FOLLOWING END USER LICENSE AGREEMENT AND REVIEW OUR PRIVACY POLICY CLOSELY BEFORE PROCEEDING WITH THE DOWNLOAD OR USE OF THE SPYBLAST SOFTWARE.

The following End User License Agreement (the "Agreement") between you (referred to herein sometimes as "You" and "End User") and Advertising.com d/b/a Teknosurf.com ("Teknosurf.com" or the "Company") sets out the terms of your use of the SpyBlast software (the "Program"), please read them carefully. By downloading the Program, you are agreeing to be bound by the terms of this Agreement. The Program is offered to you conditioned on your acceptance without modification of the terms, conditions, and notices contained herein and in our Privacy Policy set forth at <http://www.spyblast.com/privacy.html>. If you are unwilling to agree to the terms of this Agreement or our Privacy Policy, you will not be granted access to the Program. The terms of this Agreement comprises the entire agreement between you and Teknosurf.com with respect to the Program and supersede all prior agreements between the parties, regarding the subject matter contained herein.

USE OF THE PROGRAM

Teknosurf.com is providing you with free proprietary anti-snooping software that alerts you when there is an unauthorized attempt to access your computer. In consideration for the Program, you agree and covenant to receive from Teknosurf.com, from time to time relevant marketing messages based on Your web surfing habits, including pop-up advertisements, which may include opportunities to join and/or participate in services or programs that are offered by other, third-party companies that advertise through Teknosurf.com via the Program. Any dealings with advertisers who market via the Program, or participation in promotions, including the delivery of and the payment for goods and services, and any other terms, conditions, warranties or representations associated with such dealings or promotions, are solely between you and the advertiser or other third party. Teknosurf.com shall not be responsible or liable for any part of any such dealings or promotions. Teknosurf.com collects non-personally identifiable, online behavior statistical information about End Users. Examples of information that we collect include URLs of visited pages and your IP address. Upon termination of an online session, closing of the software application and/or removal of the Program from your computer this information will no longer be collected. We gather this information only to improve the administration of the Program and to provide End Users with a more personally relevant Internet experience. Summaries of such information will be made available to advertisers, so that they can better target their advertising campaigns. The summaries do not include End Users' names, addresses, email addresses, or other personally identifiable information. The gathered information will also allow us to send you advertisements that might be of interest to You. European Union Service users understand and consent to the processing of personal information in the United States. You agree to use the Program in a responsible manner and, should You download the Program to a computer, which is, used in the workplace, in compliance with any of your employer's policies, in addition to complying with any federal, state and local laws. End Users can use the Program on any number of computers as determined by the End User.

To be eligible to use the Program, You must agree to receive from Teknosurf.com, from time to time, marketing messages that are offered by other, third-party companies that advertise through Teknosurf.com via the Program. You may, at any time, opt-out of receiving such marketing messages by closing the Program or removing the Program from Your computer.

REPRESENTATIONS OF END USER

EXHIBIT C

You represent and warrant that you are the owner of this computer and that you have authorized the download and installation of the Program or that the owner of this computer has authorized you to do so. You agree, with respect to all other users of this computer that you have caused the Program to reside, to (i) provide a copy of the SpyBlast Privacy Statement and End User License Agreement; and (ii) to obtain their consent to same before allowing them to use this computer. Alternatively, if you have the legal right to accept this Agreement on behalf of one or more users of this computer that you have caused the Program to reside, then you hereby accept this Agreement on behalf of all such other users. Also, you agree not to use the Program, in a manner prohibited by law, or in violation of any contractual provision by which you are bound. You agree to comply with all applicable laws, rules and regulations in your use of the Program.

You further represent and warrant that you shall not (a) use, or encourage others to use, any robot, spider, other automatic or non-automatic manual device or process intended to interfere or attempt to interfere with the proper working of the Program, or (b) use any means to avoid the display of any third-party marketing messages via the Program while retaining the ability to use the Program, or (c) act against the business interests or reputation of Teknosurf.com or its affiliates or marketing partners.

TERMINATION

Use of the Program on any computer is completely voluntary. You may terminate this Agreement by removing the Program from Your computer at anytime for any reason.

SOFTWARE LICENSE

By entering into this Agreement you are receiving A NON-EXCLUSIVE, LIMITED, FREE BETA VERSION ONLY LICENSE TO USE THE PROGRAM which is provided on an "AS IS" basis, for your private personal use only. This Agreement, the SpyBlast Privacy Policy and any other applicable terms of use document available at <http://www.SpyBlast.com> shall apply to any use of the Program. You agree not to extract information from the Program, reverse engineer, decompile, disassemble, alter, duplicate, make copies (other than for backup purposes), create derivative works from, distribute or provide others with the Program. Your license to an existing version of Program may, at Teknosurf.com's discretion, expire when new versions of Program are released. Any and all such modifications or enhancements to the Program by you, Teknosurf.com, or Teknosurf.com's affiliates or partners, remain the sole property of Teknosurf.com. Notwithstanding the foregoing, Teknosurf.com has no obligation to make available to you any subsequent versions of Program.

By accepting the terms of this Agreement you agree that Teknosurf.com is permitted to limit, deny, create different priorities to different users, or cancel some or all of the functionality of the Program at any time, without prior notice. Teknosurf.com makes no warranties or guarantees as to the availability or reliability of the Program to you or to any other user. The Program functionality or any part thereof including without limitation, the availability and functionality of any feature and function of the Program may be changed, limited or terminated at any time, temporarily or permanently, without prior notice, for any reason or no reason by Teknosurf.com in its sole discretion ("Changes in Functionality"). You agree to bear the risks of and hold Teknosurf.com harmless for any and all effects that the Changes of Functionality may have on your ability to use the Program in whole or in part. Additionally,

Teknosurf.com may require the update or automatic distribution of the Program on your computer when a new version of the Program is released to the general public, when new features are available, to display promotional offers, and/or to add new applications to the applications that comprise Program. This update or new download may occur automatically or through other means.

The Program contains features that may link you or provide you with certain reference and functionality to third parties' Web sites, directories, servers or services ("Third Party Services"). These features are provided by Teknosurf.com only as a convenience to You. The Third Party Services are not reviewed, controlled or examined by Teknosurf.com in any way and Teknosurf.com is not responsible for the contents of any such Third Party Services, or any link contained therein. The offering of these features does not imply endorsement of the Third Party Services by Teknosurf.com. It is your sole responsibility to comply with the appropriate terms of services of these Third Party Services you chose to access using these features, as well as with any other obligation under copyright, trade secrets, defamation, decency, privacy, security and export laws and any other applicable laws. In no event shall Teknosurf.com be liable to anyone for any damage arising from or occasioned by the creation or use of the Third Party Services or the information or material accessed through these services. Teknosurf.com reserves the exclusive right and sole discretion to add, change, decline disable or remove, without notice, any feature, access or link to any of the Third Party Services from the Program and/or to introduce different features, access or links to different users. In addition, Teknosurf.com does not endorse any service or product that may be offered by any third party that is advertising through the Program.

Teknosurf.com reserves all rights in the Program not expressly granted to you in this Agreement.

OTHER RESTRICTIONS

You may not rent, lend, assign, or lease the Program, but you may transfer your rights under this Agreement on a permanent basis provided (i) you transfer all copies of the Program and this Agreement; and (ii) the recipient agrees to be bound to this Agreement. Any transfer must include the most recent product upgrade. Prior to transferring the Program you must remove the Program to be transferred from your machine.

PROPRIETARY RIGHTS

You agree that the Program is licensed, not sold to you. You agree that the Program belongs to Teknosurf.com, including all intellectual and proprietary rights, unless otherwise specified. Teknosurf.com retains all right, title and interest in and to the Program at all times, and regardless of the form or media in or on which the original or other copies may subsequently exist. Additionally, You acknowledge that content, including but not limited to text, software, music, sound, photographs, video, graphics; or other material contained in either the Program; or electronically distributed, commercially produced information presented to you via the Program, by Teknosurf.com, or Teknosurf.com's third party marketing partners or other content providers; is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. You may not modify, copy, reproduce, republish, resell, upload, post, transmit, or distribute in any way the Program or content available through the Program and its associated Web Sites, including code and software. This

Agreement gives you no rights to such content. Finally, any suggestions, ideas or inventions that you voluntarily and optionally disclose to us through any means will be used, or not used, by Teknosurf.com at Teknosurf.com's sole discretion; and, Teknosurf.com will have no obligation to you regarding any ideas or inventions that you disclose through such means.

DISCLAIMERS; LIMITATION OF LIABILITY

TEKNOSURF.COM AND/OR ITS RESPECTIVE SUPPLIERS MAKE NO REPRESENTATIONS ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, AND ACCURACY OF THE PROGRAM FOR ANY PURPOSE. THE PROGRAM IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. TEKNOSURF.COM AND/OR ITS RESPECTIVE SUPPLIERS HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH REGARD TO THE PROGRAM, INCLUDING ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. TEKNOSURF.COM MAKES NO WARRANTY REGARDING ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH THE PROGRAM OR TRANSACTIONS ENTERED INTO THROUGH THE PROGRAM.

TEKNOSURF.COM DOES NOT WARRANT OR GUARANTEE THAT THE PROGRAM WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT DEFECTS IN THE PROGRAM WILL BE CORRECTED. TEKNOSURF.COM DOES NOT WARRANT OR GUARANTEE THAT THE PROGRAM OR ANY INFORMATION WILL BE FREE FROM INFECTION BY VIRUSES, WORMS, TROJAN-HORSES OR ANYTHING ELSE MANIFESTING CONTAMINATING OR DESTRUCTIVE PROPERTIES.

IN NO EVENT SHALL TEKNOSURF.COM AND/OR ITS SUPPLIERS BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, DATA OR PROFITS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OR PERFORMANCE OF THE PROGRAM OR RELATED WEB SITES, WITH THE DELAY OR INABILITY TO USE THE PROGRAM OR RELATED WEB SITES, THE PROVISION OF OR FAILURE TO PROVIDE SERVICES, OR FOR ANY INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND RELATED GOODS, SERVICES OR GRAPHICS PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH THE PROGRAM, OR OTHERWISE ARISING OUT OF THE USE OF THE PROGRAM, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF TEKNOSURF.COM OR ANY OF ITS SUPPLIERS HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE PROGRAM, OR WITH ANY OF THESE TERMS OF USE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO IMMEDIATELY (1) DISCONTINUE USING THE PROGRAM, AND (2) TERMINATE THIS AGREEMENT.

INDEMNIFICATION

You agree to indemnify and hold Teknosurf.com, its subsidiaries, affiliates, officers and employees, harmless from any claim or demand, including reasonable attorneys fees, made by any third party due to or arising out of your use of the Program, the violation of these terms of this Agreement by you, or the infringement by you, or other user of the Program using your computer, of any intellectual property or other right of any person or entity.

MODIFICATIONS

Teknosurf.com reserves the right to change any of these terms and conditions at any

time. Upon any change in the terms of this Agreement, Teknosurf.com will notify all members through notice on the SpyBlast.com web site. Your continued use of the Program constitutes an affirmative: (1) acknowledgment by you of the terms of this Agreement and any modifications; and (2) agreement by you to abide and be bound by the terms of this Agreement and modifications. Teknosurf.com reserves the right to modify or discontinue the Program with or without notice. Teknosurf.com shall not be liable to your or any third party should Teknosurf.com exercise its right to modify or discontinue the Program.

GENERAL

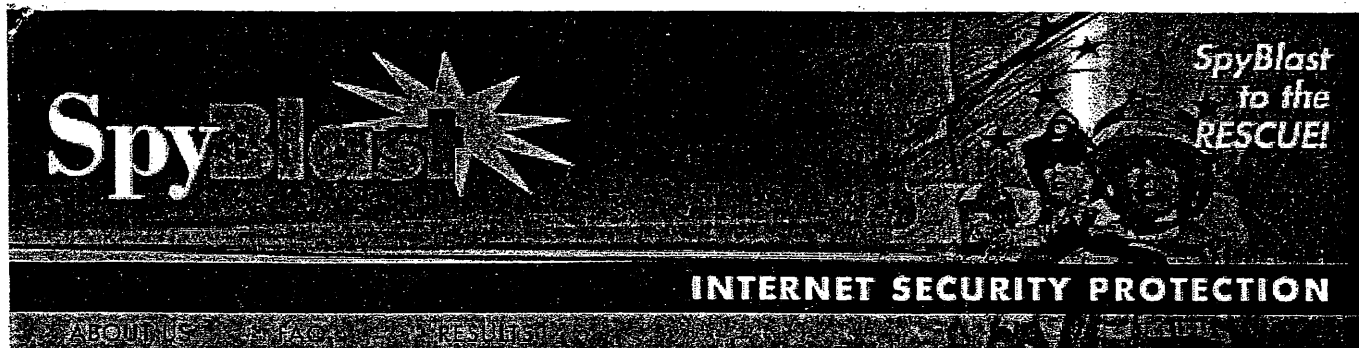
This agreement is governed by the laws of the State of Maryland, and the United States of America and, by accepting the terms of this agreement, You irrevocably consent to the exclusive jurisdiction of the courts of the State of Maryland and the federal courts situated in the State of Maryland in connection with any action arising between you and Teknosurf.com. Use of the Program is unauthorized in any jurisdiction that does not give effect to all provisions of these terms and conditions, including without limitation this paragraph. You agree that no joint venture, partnership, employment, or agency relationship exists between you and Teknosurf.com as a result of this Agreement or use of the Program. Teknosurf.com's performance of this agreement is subject to existing laws and legal process, and nothing contained in this agreement is in derogation of Teknosurf.com's right to comply with governmental, court and law enforcement requests or requirements relating to your use of the Program or information provided to or gathered by Teknosurf.com with respect to such use. If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the agreement shall continue in effect. Any waiver (express or implied) or delay by Teknosurf.com of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach. A printed version of this Agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. You and Teknosurf.com agree that any cause of action arising out of or related to this Agreement or the Program must commence within one (1) year after the cause of action arose; otherwise, such cause of action is permanently barred.

Date: 8/14/03

Revision: 3

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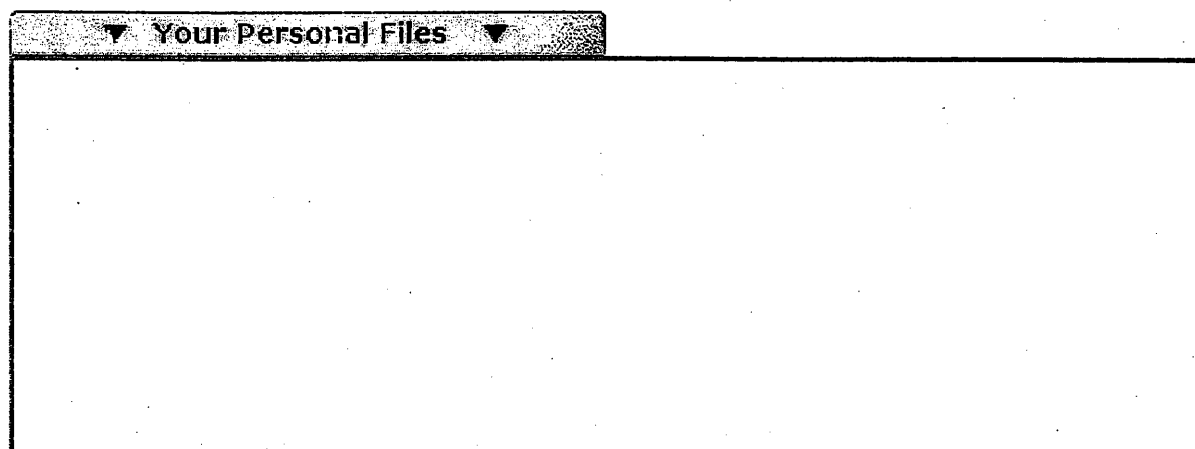
Detect Internet Intruders with this **FREE** Software!

Someone may be snooping around your computer at this very moment, deleting files, reformatting disks or even worse: stealing your identity.

Below is just some of what an intruder sees on YOUR COMPUTER!



SpyBlast Security Test Result:



If you can view the results in the box above:
Hackers may have the ability to view your private files and steal your passwords.

Rely on **SpyBlast**

If you don't want to share your computer with strangers, SpyBlast can help you detect intruders attempting to hijack your computer. SpyBlast is a TOTALLY FREE* software that can be downloaded instantly!

If someone tries to gain access to your computer, the SpyBlast icon will FLASH instantly.

EXHIBIT D

SpyBlast shows you the following information about someone's attempt to invade your privacy:

- **Date and time of the attempted violation**
- **IP address of the violator**
- **Number of attempts the violator has made**

See **SpyBlast Results** [click here!](#)

Instead of continuing to be a victim, become aware of who is attempting to access your computer with **SpyBlast**. Its simple, convenient, effective, and it just sits in your system tray.

[Click here to download your FREE SpyBlast spy software instantly.](#)

* In exchange for usage of the SpyBlast software, user agrees to receive, from time to time, special offers on behalf of SpyBlast's marketing partners. Please see the Spyblast Terms & Conditions.

Attention SpyBlast Software Users: The SpyBlast Terms & Conditions have been updated effective August 14, 2003.

[Terms & Conditions](#) | [Privacy Policy](#) | [Support](#)

Decision and Order

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by the respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Advertising.com, Inc., also doing business as Teknosurf.com, is a Maryland corporation with its principal office or place of business at 1020 Hull Street, Baltimore, Maryland 21230.
2. Respondent John Ferber is an officer of the corporate respondent. Individually or in concert with others, he formulates,

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directs, or controls the policies, acts, or practices of the corporation. His principal office or place of business is the same as that of Advertising.com, Inc.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

1. Unless otherwise specified, “respondents” shall mean Advertising.com, Inc., also doing business as Teknosurf.com, its successors and assigns, and their officers; John Ferber, individually and as an officer of the corporation; and each of the above’s agents, representatives, and employees.
2. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.
3. “Endorsement” shall mean as defined in 16 C.F.R. § 255.0(b).
4. “Clearly and prominently” shall mean as follows:
 - A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. Provided, however, that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the advertisement is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure

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shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media, the disclosure shall also be unavoidable and shall be presented prior to the consumer installing or downloading any software code, program, or content and prior to the consumer incurring any financial obligation.

B. In a print advertisement, promotional material, or instructional manual, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. In multipage documents, the disclosure shall appear on the cover or first page.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the labeling, advertising, promotion, offering for sale, sale, or distribution, in or affecting commerce, of SpyBlast or any of respondents' other executable computer software programs whose principal function is to enhance security or privacy shall not make any representation, in any manner, expressly or by implication, including through the use of endorsements or the product name, about the performance, benefits, efficacy, or features of such program, unless they disclose, clearly and prominently, that consumers who install the program will receive advertisements, if that is the case.

II.

IT IS FURTHER ORDERED that respondent Advertising.com, Inc., its successors and assigns, and respondent John Ferber shall,

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for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

- A. All advertisements and promotional materials containing the representation;
- B. All materials that were relied upon in disseminating the representation; and
- C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

III.

IT IS FURTHER ORDERED that respondent Advertising.com, Inc., its successors and assigns, and respondent John Ferber shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IV.

IT IS FURTHER ORDERED that respondent Advertising.com, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale,

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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 proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580.

V.

IT IS FURTHER ORDERED that respondent John Ferber, for a period of ten (10) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondent's new business address and telephone number and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VI.

IT IS FURTHER ORDERED that respondent Advertising.com, Inc., its successors and assigns, and respondent John Ferber shall, within sixty (60) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

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VII.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any Part in this order that terminates in less than twenty (20) years;
- B. This order's application to any respondent that is not named as a defendant in such complaint; and
- C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Analysis

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Advertising.com, Inc. and John Ferber, individually and as an officer of Advertising.com (together “respondents”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

Respondents advertised and distributed computer software products, including the SpyBlast computer software product, which was advertised as an Internet security program. This matter concerns the allegation that respondents failed to disclose adequately that SpyBlast included adware that caused consumers to receive pop-up advertisements.

The Commission’s complaint alleges that respondents disseminated ads for SpyBlast that represented that because a consumer’s computer was broadcasting an Internet IP address, the computer was at risk from hackers. According to the complaint, consumers who clicked on this advertisement were shown an ActiveX “security warning” installation box with a hyperlink describing SpyBlast as “Personal Computer Security and Protection Software from unauthorized users” and telling them “once you agree to the License Terms and Privacy Policy – click YES to continue.” If a consumer clicked “Yes,” the software was installed, even if the consumer had not clicked on the hyperlink. Only if a consumer clicked on the hyperlink describing SpyBlast as “Personal Computer Security and Protection Software from unauthorized users” before clicking “YES,” did SpyBlast’s End

Analysis

User Licensing Agreement (“EULA”) appear. The EULA contained a statement that consumers agreed to receive marketing messages, including pop-up ads, in exchange for getting SpyBlast.

The complaint further alleges that SpyBlast could also be downloaded directly from the www.SpyBlast.com website. At the very bottom of the www.SpyBlast.com home page, below several hyperlinks to download SpyBlast, a small disclosure stating that “In exchange for usage of the SpyBlast software, user agrees to receive . . . offers on behalf of SpyBlast’s marketing partners” appeared.

According to the Commission’s complaint, respondents downloaded bundled adware onto the computers of consumers who installed SpyBlast. The adware collected information about SpyBlast users, including URLs of visited pages and the user’s IP address, and this information allowed respondents to send users advertisements that they believed might be of interest to them. Consumers received a substantial number of pop-up advertisements as result of respondents’ installation of this adware onto their computers.

The complaint alleges that in representing that SpyBlast is an Internet security program, respondents failed to disclose adequately that SpyBlast included adware that caused consumers to receive pop-up advertisements. The complaint further alleges that the presence of the bundled adware would have been material to consumers in their decision whether to install SpyBlast, and, therefore, that the failure to disclose adequately this material fact was a deceptive practice. This allegation regarding the disclosure of bundled adware applies general Commission law on deception, as enunciated in the *Federal Trade Commission Policy Statement on Deception*, appended to *Cliffdale Assocs.*, 103 F.T.C. 110, 174-83 (1984). The application of this law in an online context was illustrated in a 2000 FTC Staff Guidance Document, *Dot Com Disclosures: Information about Online Advertising*, which is available at <http://www.ftc.gov/bcp/conline/pubs/buspubs/dotcom/index.pdf>.

Analysis

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future. The proposed order is designed specifically to address the facts of the case at hand. However, the limitation in the proposed order to respondents' software programs whose principal function is to enhance security or privacy should not be read more broadly to suggest that the requirement for clear and prominent disclosure is necessarily limited to those situations. Moreover, the problem here was not the security software that Advertising.com disseminated with its adware. Instead, it was the respondents' practice of downloading software onto users' computers, without adequate notice and consent, that generated repeated pop-up ads as the computer users surfed the Web.

Part I of the proposed order prohibits respondents from making any representation about the performance, benefits, efficacy, or features of SpyBlast or any of respondents' other executable computer software programs whose principal function is to enhance security or privacy, unless respondents disclose clearly and conspicuously that consumers who install the program will receive advertisements, if that is the case.

Parts II through VI require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure (for the corporate respondents) and changes in employment (for the individual respondent) that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part VII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Complaint

IN THE MATTER OF

PARTNERS HEALTH NETWORK, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4149; File No. 0410100**Complaint, September 19, 2005--Decision, September 19, 2005*

This consent order addresses practices used by Respondent Partners Health Network, Inc., a physician-hospital organization consisting of approximately 225 physicians; Palmetto Health Baptist Medical Center at Easley; and Cannon Memorial Hospital, in South Carolina. The order, among other things, prohibits the respondent from entering into or facilitating any agreement between or among any physicians (1) to negotiate with payors on behalf of any physician; (2) to deal, not to deal, or threaten not to deal with any payor; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through an arrangement involving the respondent. The order also prohibits the respondent from facilitating exchanges of information between physicians concerning whether, or on what terms, to contract with a payor, and from attempting to engage, or inducing anyone to engage in, any action prohibited by the order. In addition, the order requires the respondent to notify the Commission before entering into any arrangement to act as a messenger, or as an agent on behalf of any physicians, with payors regarding contracts, and before participating in contracting with health plans on behalf of a qualified risk-sharing joint arrangement, or a qualified clinically-integrated joint arrangement. The order also requires the respondent, at any payor's request and without penalty, to terminate its current contracts with respect to providing physician services; to distribute payor requests for contract termination to all physicians who participate in Partners Health; and to terminate all current contracts not otherwise terminated no later than one year from the date the order becomes final.

Participants

For the Commission: *Karan Singh, Anne R. Schenof, David R. Pender, Daniel P. Ducore, Louis Silvia, and Mark Frankena.*

For the Respondent: *F. Martin Dajani, DLA Piper Rudnick Gray Cary US LLP*