

Complaint

IN THE MATTER OF

**DIRECTREVENUE LLC,
DIRECTREVENUE HOLDINGS LLC,
JOSHUA ABRAM, DANIEL KAUFMAN,
ALAN MURRAY AND RODNEY HOOK**

CONSENT ORDER, ETC. , IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-4194; File No. 052 3131
Complaint, June 26, 2007 — Decision, June 26, 2007*

This consent order addresses respondents' advertising software programs (adware) that monitor consumers' Internet use in order to display targeted pop-up ads. The order, among other things, prohibits the respondents from communicating with any consumer's computer on which the adware was installed prior to October 1, 2005, except to notify such users that they will no longer receive any advertising or communication from the respondents unless they so choose, and telling them how they can fully remove the respondents' adware from their computers. The order prohibits the respondents from downloading or installing any software program or application without consumers' express consent. The respondents are required to establish and maintain a user-friendly mechanism through which consumers can report and the respondents can timely address complaints. In addition, the respondents are required to identify advertisements served via the respondents' adware so that consumers can easily locate the source of the advertisement, the respondents' complaint mechanism, and instructions on how to uninstall such adware; and the respondents must provide reasonable and effective means to uninstall the adware. The order also requires the respondents to pay \$1.5 million to the Commission, which may be used to provide appropriate relief, including the rescission of contracts, payment of damages, and/or public notification respecting unfair or deceptive acts or practices. If the Commission determines that such relief is wholly or partially impracticable, any or all such funds shall be paid to the United States Treasury.

Participants

For the Commission: *Alysa S. Bernstein, Stacey Ferguson,
and Mamie Kresses.*

Complaint

For the *Respondents*: *Stuart L. Friedel* and *Neal H. Klausner, Davis & Gilbert LLP*; *Andrew G. Celli, Jr., Emery Celli Brinckerhoff & Abady LLP*; and *David J. Goldstone, Goodwin Proctor LLP*.

COMPLAINT

The Federal Trade Commission, having reason to believe that DirectRevenue LLC, a limited liability company, DirectRevenue Holdings LLC, a limited liability company, and Joshua Abram, Daniel Kaufman, Alan Murray, and Rodney Hook, individually and as officers and owners of the companies (“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 DirectRevenue LLC, is a Delaware limited liability company with its principal office or place of business at 107 Grand Street, New York, New York 10013.
2. Respondent DirectRevenue Holdings LLC, is a Delaware limited liability company with its principal office or place of business at 107 Grand Street, New York, New York 10013. DirectRevenue Holdings LLC is the 100% owner of DirectRevenue LLC.
3. Respondent Joshua Abram is an officer and owner of the corporate respondents. Individually or in concert with others, he formulates, directs, controls, or participates in the policies, acts, or practices of the companies, including the acts or practices alleged in this complaint.
4. Respondent Daniel Kaufman is an officer and owner of the corporate respondents. Individually or in concert with others, he formulates, directs, controls, or participates in the policies, acts, or practices of the companies, including the acts or practices alleged in this complaint.

Complaint

5. Respondent Alan Murray is an officer and owner of the corporate respondents. Individually or in concert with others, he formulates, directs, controls, or participates in the policies, acts, or practices of the companies, including the acts or practices alleged in this complaint.

6. Respondent Rodney Hook is an officer and owner of the corporate respondents. Individually or in concert with others, he formulates, directs, controls, or participates in the policies, acts, or practices of the companies, including the acts or practices alleged in this complaint.

7. 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.

8. Respondents have developed advertising software programs (“adware”) that are or were distributed to consumers’ computers under several names including Aurora, Ceres, A Better Internet, OfferOptimizer, Twaintec, and Best Offers.

9. When downloaded to and installed on consumers’ computers, respondents’ adware tracks and stores information regarding consumers’ Internet use and displays pop-up, pop-under, and other forms of advertisements on consumers’ computers based on such Internet use.

10. Respondents distribute their adware directly to consumers over the Internet on websites they own or control. Respondents also distribute their adware over the Internet through a network of third parties, known as affiliates. Respondents know or have known that their affiliates, in turn, retained a myriad of third party sub-affiliates to install respondents’ adware on consumers’ computers.

Complaint

11. In numerous instances, respondents, either directly or through their affiliates and sub-affiliates, have distributed their adware to consumers over the Internet by causing it to be bundled with other free or paid software programs, including games, screen-savers, and various computer utility programs (hereinafter “lureware”).

12. Often, the web pages offering the lureware did not disclose that, by installing the lureware, respondents’ adware would also be installed on consumers’ computers. In many instances, the only way for consumers to learn about the existence and effects of respondents’ adware was to click through one or more hyperlinks to reach multi-page user agreements containing such information. These inconspicuous hyperlinks were located in a corner of the home pages offering the lureware and or in a modal box provided by the computer’s operating system. Consumers were not required to click on any such hyperlink, or otherwise view the user agreement, in order to install the programs. Examples of this tactic include, but are not limited to, the following:

- a. Bundling adware, without adequate notice, with lureware distributed directly to consumers over respondents’ websites such as *www.mypanicbutton.com* (program purporting to enable consumers to mask their computer activity with a mouse click or a keystroke); *www.abetterinternet.com* (offering a program known as Atomic Clock that purports to synchronize consumers’ computers with the U.S. Government Atomic Clock); *www.stop-popup-ads-now.com* (program purporting to AGET RID OF POPUP ADS NOW! FREE!”); and *www.freephone.cc* (program purporting to allow consumers to Atalk for FREE” worldwide without receiving “annoying ads or pop-ups”). See Exhibits A-D.

Complaint

- b. Bundling adware, without adequate notice, with their own lureware distributed to consumers via an Active-X box entitled “Security Warning,” which appears on third-party web sites such as *www.iowrestling.com*. See Exhibit E.
- c. Bundling adware, without adequate notice, with lureware distributed to consumers by affiliates and sub-affiliates over the Internet, such as through affiliate-operated websites including *www.kazanon.com* (offering a purported file-share anonymizer) and *www.fasterxp.com* (promoting, as “100% spyware free,” a program to block pop-ups and improve computer performance). See Exhibits F, G.

These installations forced consumers to receive numerous unwanted pop-up and other advertisements and usurped computer memory and other resources.

13. In numerous instances, respondents, through affiliates and sub-affiliates acting on behalf of and for the benefit of respondents, installed respondents’ adware on consumers’ computers entirely without notice or authorization. These installations forced consumers to receive numerous unwanted pop-up and other advertisements and usurped computer memory and other resources. For example, respondents’ affiliate Standard Internet, through its sub-affiliate Seismic Entertainment Productions, Inc., installed respondents’ adware through an executable file that exploited a vulnerability in Windows Media Player when consumers visited certain web sites. In addition to serving a substantial number of unwanted ads and usurping computer memory, this exploit caused serious failures to consumers’ Windows Media Player application.

14. Respondents did not employ reasonable, appropriate measures to ensure that their affiliates and sub-affiliates obtained consumers’ consent to install respondents’ adware even after it

Complaint

should have been apparent that there was widespread failure among affiliates to obtain consumers' consent to installation. Respondents also failed to promptly discontinue relationships with those affiliates and sub-affiliates whom respondents learned had installed such adware without first obtaining consumers' consent.

15. Respondents made identifying, locating, and removing their adware extremely difficult for consumers by, in numerous instances, among other practices:

- a. Failing to identify adequately the name or source of the adware in pop-up ads or other ads so as to enable consumers to locate the adware on their computers;
- b. Storing the adware files in locations on consumers' hard drives that are rarely accessed by consumers, such as in the Windows operating systems folder that principally contains core systems software;
- c. Writing the adware code in a manner ensuring that it will *not* be listed in the Windows Add/Remove utility in conjunction with the software with which it was originally bundled at installation;
- d. Failing to list the adware in the Windows Add/Remove utility, which is a customary location for user-initiated uninstall of software programs;
- e. Where the adware was listed in the Windows Add/Remove utility, listing it under names resembling core systems software or applications;
- f. Contractually requiring that affiliates write their software code in a manner ensuring that it does *not* uninstall respondents' adware when consumers uninstall the software with which it was bundled at installation;

Complaint

- g. Installing technology on consumers' computers to re-install the adware where it has been uninstalled by consumers through the Windows Add/Remove utility or deleted by consumers' anti-spyware or anti-adware programs; and/or
- h. Where respondents provided an uninstall tool at separate web sites including *www.mypctuneup.com* and *www.bestoffersnetwork.com\uninstall*, requiring consumers to follow a ten-step procedure, including downloading additional software and deactivating all third-party firewalls, thereby exposing consumers' computers to security risks.

FTC ACT VIOLATIONS

Deceptive Failure to Disclose Adware

16. As described in Paragraphs 11 and 12, respondents, directly and through affiliates and sub-affiliates acting on behalf of and for the benefit of respondents, represented to consumers, expressly or by implication, that they would receive software programs either at no cost, or at the advertised cost. Respondents failed to disclose, or failed to disclose adequately, that such software is bundled with respondents' adware, which tracks and stores information regarding consumers' Internet use and displays pop-up and other forms of advertisements on consumers' computers based on such use. The installation of such adware would be material to consumers in their decision whether to install software offered by respondents or their affiliates or sub-affiliates. The failure to disclose or adequately disclose this fact, in light of the representations made, was, and is, a deceptive act or practice.

Complaint

Unfair Installation of Adware

17. As described in Paragraph 13, respondents, through affiliates and sub-affiliates acting on behalf of and for the benefit of respondents, installed respondents' adware on consumers' computers entirely without notice or authorization. These practices caused consumers to receive unwanted pop-up and other advertisements and usurped their computers' memory and other resources. Consumers could not reasonably avoid this injury because respondents, through their affiliates and sub-affiliates, installed the adware on consumers' computers without their knowledge or authorization. Thus, respondents' practices have caused, or are likely to cause, substantial injury to consumers that is not reasonably avoidable by consumers themselves and not outweighed by benefits to consumers or competition. These acts and practices were, and are, unfair.

Unfair Uninstall Practices

18. As described in Paragraph 15, respondents failed to provide consumers with a reasonable and effective means to identify, locate, and remove respondents' adware from their computers. Consumers thus have had to spend substantial time and/or money to locate and remove this adware from their computers. Consumers also were forced to disable various security software to uninstall respondents' adware, thereby exposing these computers to unnecessary security risks. Respondents' failure to provide a reasonable means to locate and remove their adware has caused, or is likely to cause, substantial injury to consumers that is not reasonably avoidable by consumers themselves and not outweighed by benefits to consumers or competition. These acts and practices were, and are, unfair.

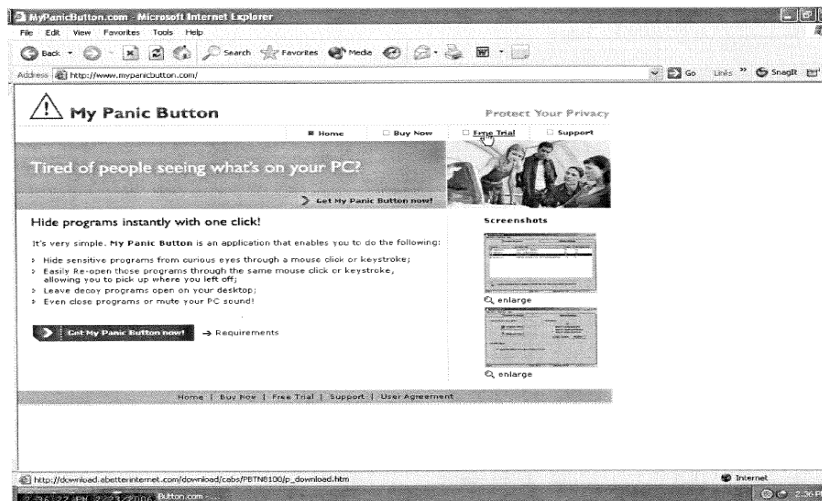
19. The acts and practices alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Complaint

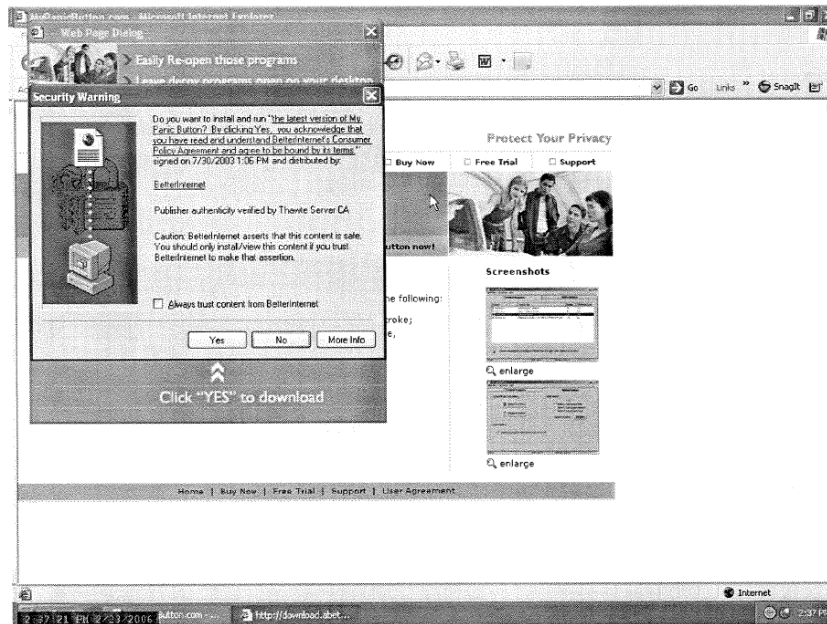
THEREFORE, the Federal Trade Commission this twenty-sixth day of June, 2007, has issued this complaint against respondents.

By the Commission, Commissioner Leibowitz dissenting.

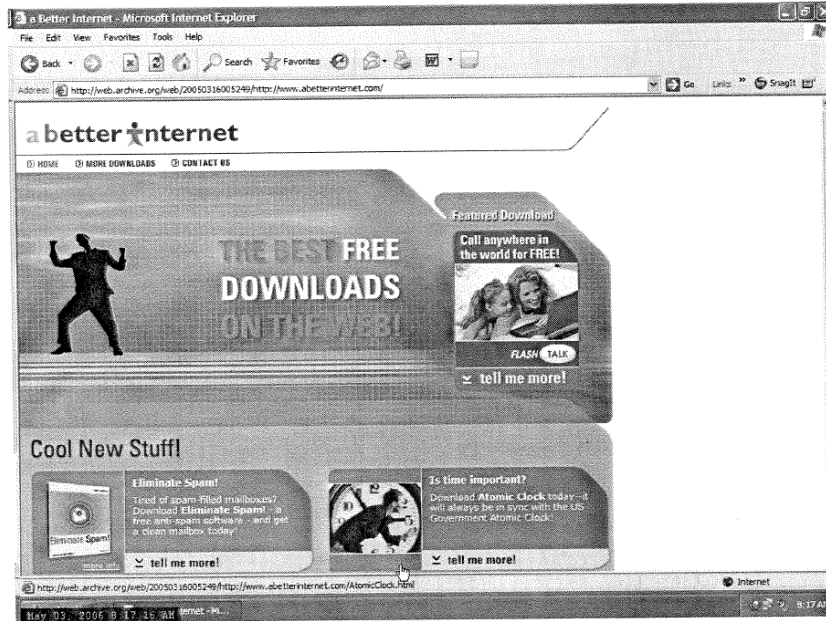
Complaint Exhibits



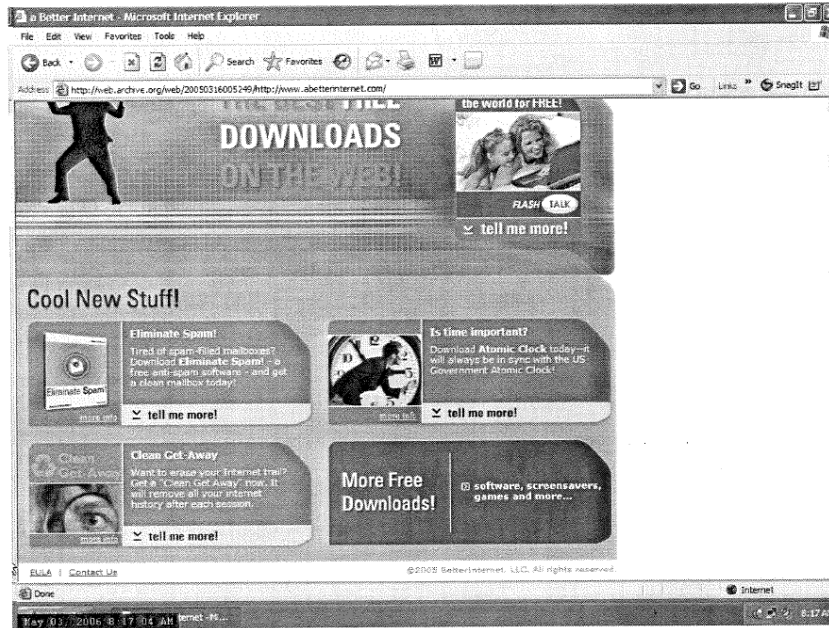
Complaint



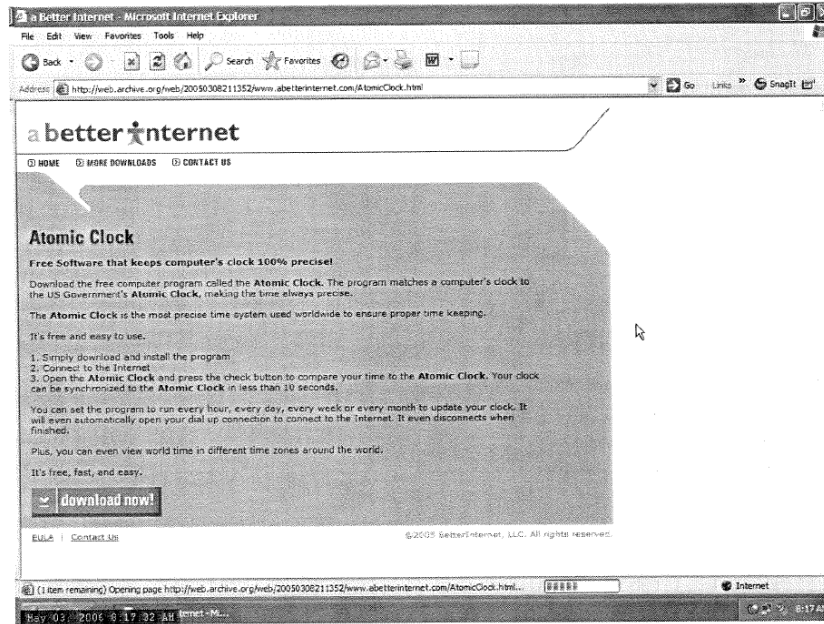
Complaint



Complaint



Complaint



Complaint

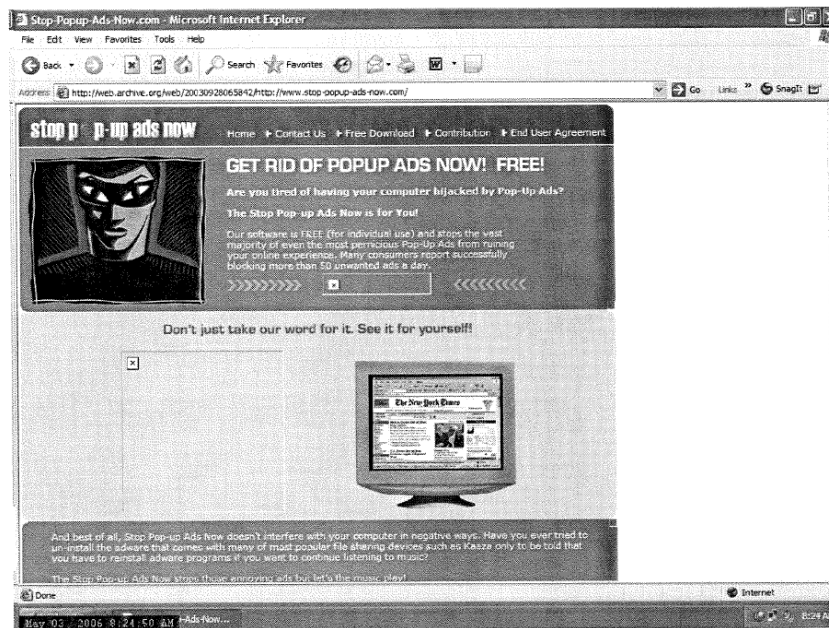
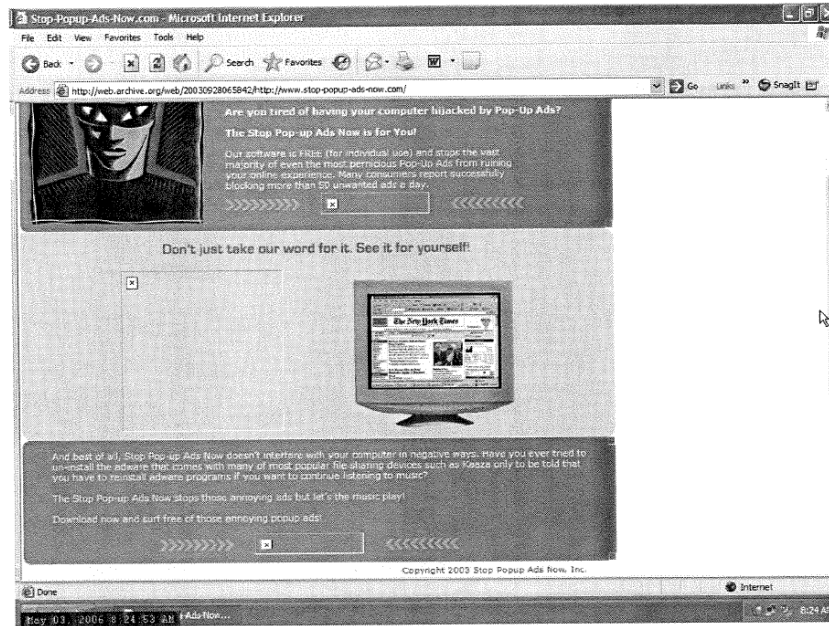


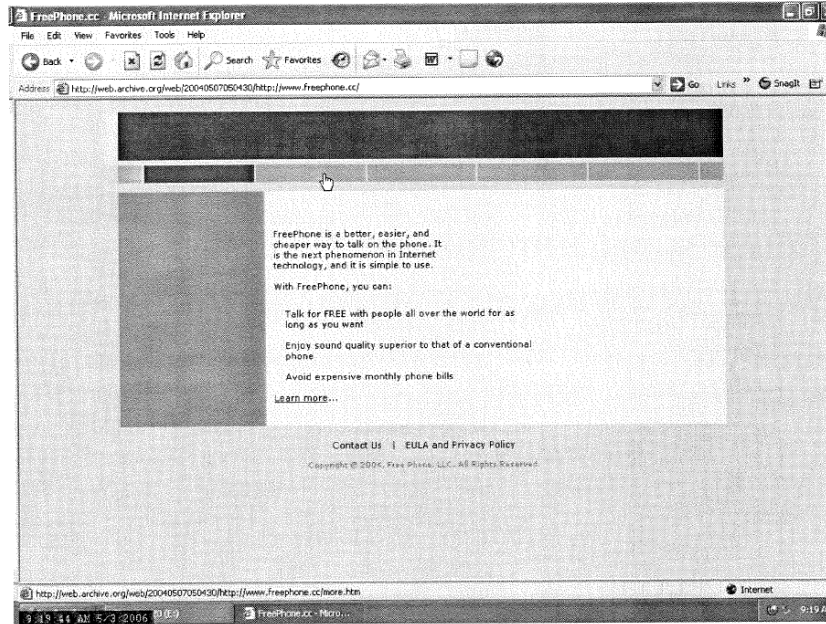
EXHIBIT C

Page 1

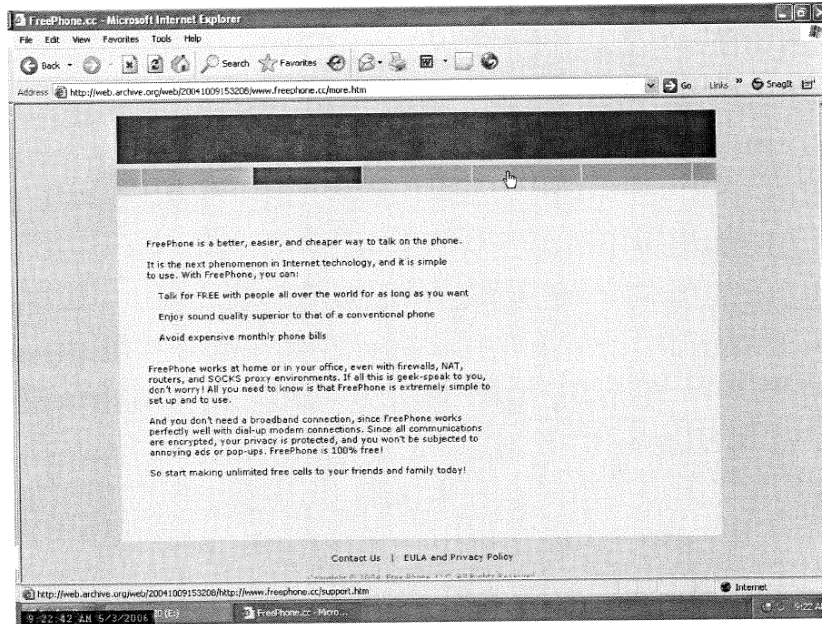
Complaint



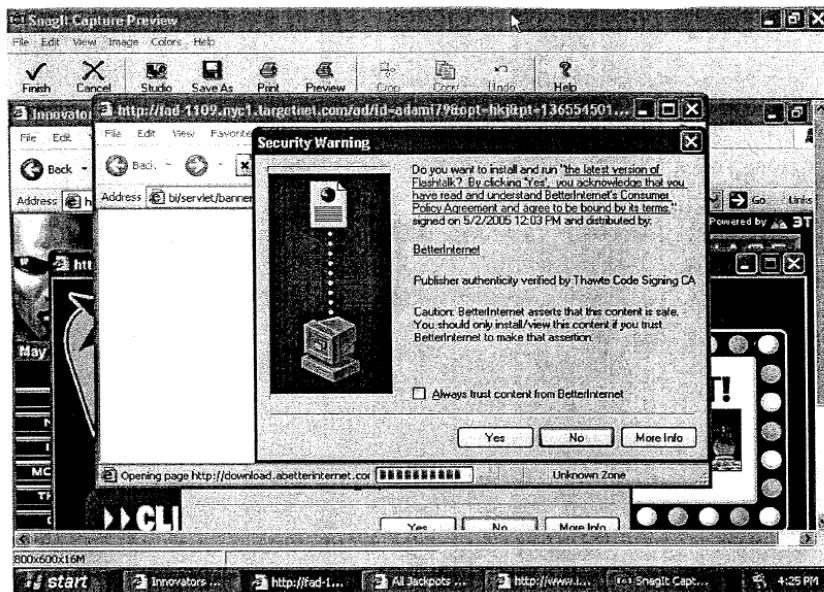
Complaint



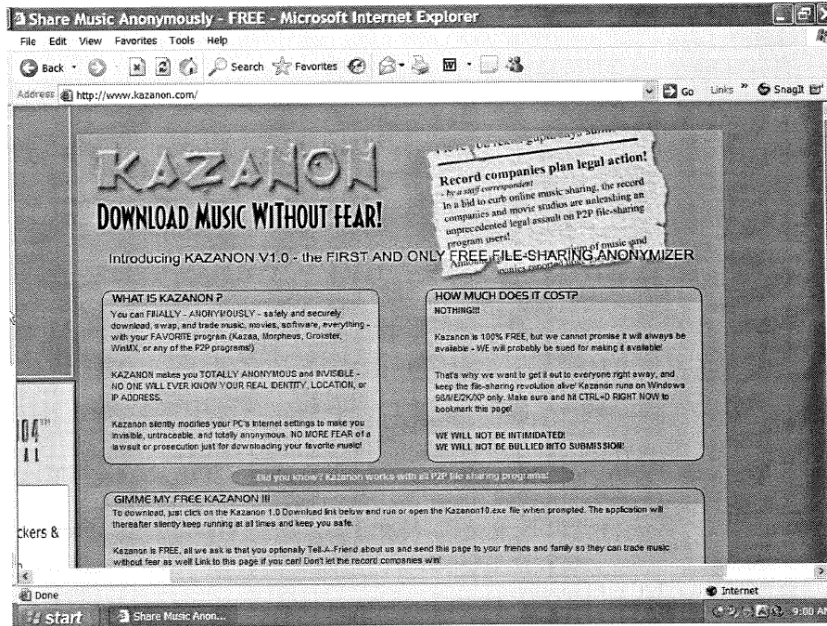
Complaint



Complaint



Complaint



Complaint

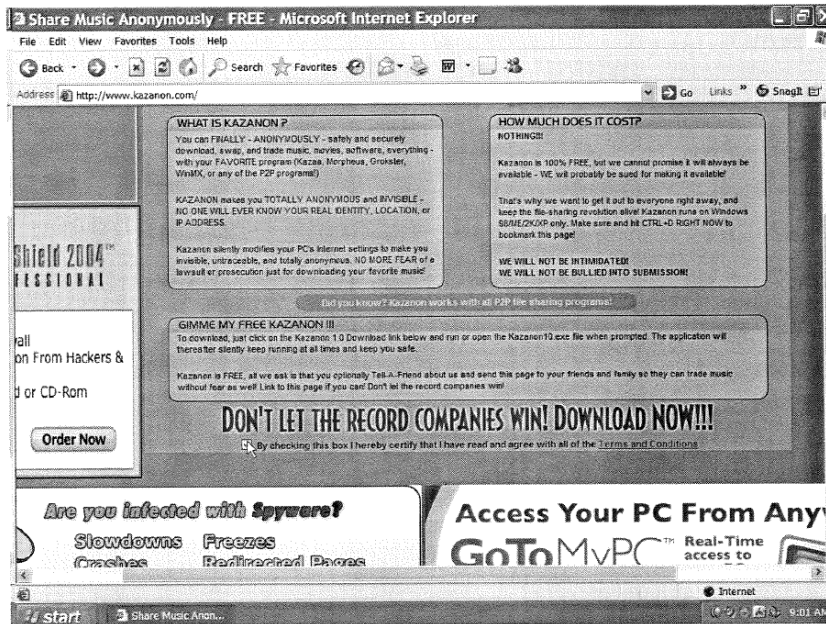
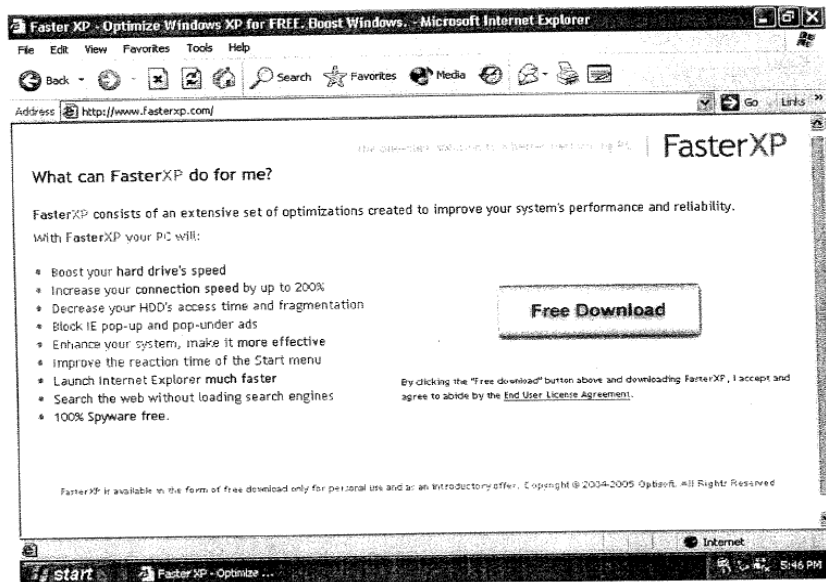


EXHIBIT F

Page 2

Complaint



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 any of 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 a 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 for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to section 2.34 of its Rules, 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 DirectRevenue LLC, is a Delaware limited liability company with its principal office or place of business at 107 Grand Street, New York, New York 10013.

Decision and Order

2. Respondent DirectRevenue Holdings LLC, is a Delaware limited liability company with its principal office or place of business at 107 Grand Street, New York, New York 10013. DirectRevenue Holdings LLC is the 100% owner of DirectRevenue LLC.
3. Respondent Joshua Abram is an officer and owner of the corporate respondents.
4. Respondent Daniel Kaufman is an officer and owner of the corporate respondents.
5. Respondent Alan Murray is an officer and owner of the corporate respondents.
6. Respondent Rodney Hook is an officer and owner of the corporate respondents.
7. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, 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” means DirectRevenue Holdings LLC, and DirectRevenue LLC, and each of their successors and assigns, and their officers; Joshua Abram, individually and as an officer of the companies; Daniel Kaufman, individually and as an officer of the companies; Alan Murray, individually and as an officer of the companies; and Rodney Hook, individually and as an officer of the companies; and each

Decision and Order

of the above's agents, representatives, and employees, or other persons directly or indirectly under the control of any respondent.

2. "Affiliate program" means any program whereby any person or entity agrees to advertise, market, promote, disseminate, distribute, download, or install any program, product, or service, on behalf of respondents including, but not limited to, any software program or application.

3. "Affiliate" means any person or entity who participates in an affiliate program.

4. "Assist others" means knowingly providing any of the following services to any person or entity: (a) developing, supplying, distributing, or publishing any software program, product, or service; or (b) formulating, developing, or providing, or arranging for the formulation, development, or provision of, any Internet advertising or marketing content for any person or entity; or (c) performing advertising or marketing services of any kind for any person or entity.

5. "Clear(ly) and prominent(ly)" shall mean that, in an electronic medium, the material terms shall be: (a) unavoidable; (b) of a size and shade, and appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it; (c) in understandable language and syntax; and (d) additionally, in connection with each advertisement or promotion for the download or installation of any software program or application, shall be presented on the principal screen or landing page of each advertisement or promotion and prior to the consumer downloading or installing such software program or application. Nothing contrary to, inconsistent with, or in mitigation of the material terms shall be used in any advertisement or promotion.

6. "Commerce" means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

Decision and Order

7. “Express consent” shall mean that, prior to downloading or installing any software program or application to consumers’ computers: (a) respondents clearly and prominently disclose the material terms of such software program or application, including the nature and purpose of the program and the effects it will have on consumers’ computers, prior to the display of, and separate from, any final End User License Agreement; and (b) consumers indicate assent to download or install such software program or application by clicking on a button that is clearly labeled to convey that it will activate the download or installation, or by taking a substantially similar action.
8. “Legacy program” shall mean any software program or application that: (a) is owned or controlled by respondents; and (b) was installed on a consumer’s computer prior to October 1, 2005.
9. A “security vulnerability” is a weakness, flaw, or bug in a software program or application that can be used to increase access privileges to a computer system, compromise data stored on it, or control its operation.
10. “Uninstall” shall mean: (a) removing a software program or application from a computer; (b) removing all files, registry keys, and components that were added to the computer when such software program or application was initially installed; (c) removing all files, registry keys, and components that were subsequently generated by such software program or application; (d) restoring all files, registry keys, and components that such software program or application caused to be altered; and (e) preventing the reinstallation of such software program or application or any of its files, registry keys, or components without notice to, and consent from, consumers.
11. The “World Wide Web” or the “Web” is a system used on the Internet for cross-referencing and retrieving information. Documents (“pages” or Asites”) on the World Wide Web are most

Decision and Order

frequently formatted in a language called HTML or HyperText Markup Language, that supports links to other documents on the World Wide Web.

12. A “website” 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.

13. A “web browser” is a software application used to view, download, upload, surf, or otherwise access documents (“pages” or Asites”) 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 webpage or website. A user may retrieve and view a webpage or website by entering the Uniform Resource Locator (“URL”) or domain name of the webpage in the address bar of the web browser.

I.

IT IS ORDERED that respondents, directly or through any person, corporation, subsidiary, division, affiliate, or other device, shall not use any legacy program to display any advertisement to, or otherwise communicate with, a consumer’s computer. Notwithstanding the foregoing, within thirty (30) days of this order becoming final, respondents may send a maximum of three notices to consumers’ computers on which a legacy program is installed advising consumers: (a) that, pursuant to this order, consumers will no longer receive any advertising or communication from respondents; (b) how consumers may affirmatively authorize respondents to continue serving advertisements if consumers so choose; and (c) how consumers may remove all vestiges of the legacy program from their computers. For purposes of sub-part (b) of this Part I, respondents’ mechanism for obtaining authorization shall comply with the requirements for express consent as defined in this order.

Decision and Order

This notice shall be in the language and format of Attachment A hereto or other language approved by the Federal Trade Commission staff in its sole discretion.

II.

IT IS FURTHER ORDERED that respondents, directly or through any person, corporation, subsidiary, division, affiliate, or other device, shall not publish, disseminate, or distribute, or assist others in publishing, disseminating, or distributing, on or through the Internet, the World Wide Web, any bulletin board system, File Transfer Protocol (“FTP”), electronic-mail, instant message, webpage, or website, in or affecting commerce, any software script, code, program or other content that exploits a security vulnerability of any computer operating system, web browser, or other application to download or install onto any computer any software script, code, program or content.

III.

IT IS FURTHER ORDERED that respondents, directly or through any person, corporation, subsidiary, division, affiliate, or other device, in connection with the advertising, promotion, marketing, offering for sale, sale, or provision of any goods or services on or through the Internet, the World Wide Web, or any webpage or website, in or affecting commerce, shall not download or install, or assist others in downloading or installing, any software program or application without express consent.

IV.

IT IS FURTHER ORDERED that respondents, directly or through any person, corporation, subsidiary, division, affiliate, or other device, in connection with the advertising, promotion, marketing, offering for sale, sale, or provision of any goods or services on or through the Internet, the World Wide Web, or any webpage or website, in or affecting commerce, shall: (1) establish,

Decision and Order

implement, and maintain a functioning email address or other Internet-based mechanism for consumers to report complaints regarding respondents' practices; (2) clearly and prominently disclose the existence of such reporting mechanism on respondents' websites; (3) make reasonable efforts to associate each such complaint with the software, application, website, or good or service that is the subject of the complaint; and (4) receive and respond to such complaints, whether received directly or indirectly, in a timely manner via email or other Internet-based mechanism.

V.

IT IS FURTHER ORDERED that respondents, directly or through any person, corporation, subsidiary, division, affiliate, or other device, in connection with the advertising, promotion, marketing, offering for sale, sale, or provision of any goods or services on or through the Internet, the World Wide Web, or any webpage or website, in or affecting commerce, shall establish, implement, and thereafter maintain, a comprehensive program that is reasonably designed to ensure that affiliates obtain express consent before installing respondents' software program or application onto consumers' computers. Such measures shall include, at a minimum and without limitation, the following:

- A. Obtain contact information from any prospective participant in any affiliate program. In the case of a natural person, respondents shall obtain the prospective participant's first and last name, physical address, country, telephone number, email address, and complete bank account information as to where payments are to be made. In the case of corporations, partnerships, proprietorships, limited liability companies, organizations, associations, cooperatives, agencies, or other legal entities, respondents shall obtain the first and last name, physical address, country, telephone number, and email address for the natural person who owns, manages, or controls the

Decision and Order

prospective participant, and complete bank account information as to where payments are to be made;

- B. Prior to any such prospective participant's acceptance into any affiliate program, (1) provide each such person a copy of this order; (2) obtain from each such person a signed and dated statement acknowledging receipt of this order and expressly agreeing to comply with this order; and (3) provide written notice that engaging in acts or practices prohibited by this order will result in immediate termination of any affiliate program account and forfeiture of all monies earned or owed. Any electronic signature that respondents obtain pursuant to this Part must comply with the signature requirements of the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"), 15 U.S.C. § 7001 *et seq.*;
- C. Require each affiliate to: (1) provide identifying information to respondents, including the same types of information as required by Subpart A of this Part, concerning that affiliate's sub-affiliates, employees, agents, or subcontractors who download or install any software program or application onto consumers' computers on respondents' behalf; (2) provide each such person with a copy of this order; and (3) obtain from each such person a signed and dated statement acknowledging receipt of this order and expressly agreeing to comply with this order. The identifying information referred to herein shall be required prior to that affiliate's participation in respondents' affiliate program or immediately after any change to that affiliate's sub-affiliates, employees, agents or sub-contractors;
- D. In accord with Part IV above: (1) establish, implement, and maintain a functioning email address or other Internet-based mechanism for consumers to report complaints to respondents regarding the practices of any affiliate

Decision and Order

program participant; (2) clearly and prominently disclose the existence of such reporting mechanism on respondents' websites; (3) make best efforts to associate each such complaint with the affiliate that is the subject of the complaint; and (4) receive and respond to such complaints, whether received directly or indirectly, in a timely manner via email or other Internet-based mechanism;

- E. Promptly and completely investigate any complaints that the respondents receive through Subpart D of this Part or any other source to determine whether any such participant is engaging in acts or practices prohibited by this order; and
- F. Following completion of the investigation required by Paragraph V(E) above: (1) immediately terminate any affiliate that respondents reasonably conclude has engaged or is engaging, directly or indirectly, in acts or practices prohibited by this order and cease payments to any such affiliate, and (2) immediately cease displaying any advertisements to, or otherwise communicating with, any consumers' computer that received respondents' software program or application through the prohibited acts or practices of such affiliate.

Provided, however, that this Part does not authorize or require respondents to take any action that violates any federal, state, or local law.

VI.

IT IS FURTHER ORDERED that respondents, directly or through any person, corporation, subsidiary, division, affiliate, or other device, in connection with the service of any advertisement displayed or caused to be displayed by respondents' software program or application on consumers' computers, in or affecting commerce, shall in each such advertisement clearly and

Decision and Order

prominently: (1) identify the program causing the display of such advertisement, together with language specifying that the advertisement is served by such program; (2) provide a hyperlink or other similar technology directly linking to a webpage that provides clear and prominent instructions for (a) uninstalling respondents' software or other application through which consumers received such advertisement; and (b) accessing respondents' complaint mechanism as required by Paragraph IV above. Such hyperlink shall be clearly worded to indicate these functions.

VII.

IT IS FURTHER ORDERED that respondents, directly or through any person, corporation, subsidiary, division, affiliate, or other device, in connection with the advertising, promotion, marketing, offering for sale, sale, or provision of any goods or services on or through the Internet, the World Wide Web, or any webpage or website, in or affecting commerce, shall not install or cause to be installed on consumers' computers any software program or application unless respondents provide a reasonable and effective means for consumers to uninstall the software or application, either through the computers' operating system Add/Remove utility, or other uninstall tool that can be readily located on consumers' computers. Respondents shall not require consumers to: access any website or download or install any additional software program or application; close or deactivate third-party firewalls, operating system firewalls, anti-spyware or anti-adware software, or virus protection software; or provide personally identifiable information in order to complete the uninstall.

VIII.

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of issuance of this order, respondents shall maintain, and upon request make available to the Federal Trade

Decision and Order

Commission for inspection and copying, a print or electronic copy of each document relating to compliance with the terms and provisions of this order, including but not limited to: all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, whether prepared by or on behalf of respondents, relating to such compliance; and all documents, whether prepared by or on behalf of respondents, that contradict, qualify, or call into question respondents' compliance with this order.

IX.

IT IS FURTHER ORDERED that respondents shall pay the sum of One Million Five Hundred Thousand Dollars (\$1,500,000) for payment to the Federal Trade Commission. This payment shall be made in the following manner:

- A. The payment shall be made by wire transfer or certified or cashier's check made payable to the Federal Trade Commission, no later than ten (10) days after the date this Order becomes final.
- B. In the event of any default in payment, which default continues for ten (10) days beyond the due date of payment, the amount due, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable to the Commission.
- C. All funds paid pursuant to this Part, together with any accrued interest, shall be used by the Commission in its sole discretion to provide such relief as it determines to be reasonably related to respondents' practices alleged in the complaint, and to pay any attendant costs of administration. Such relief may include, but shall not be limited to, the rescission of contracts, payment of damages, and/or public notification respecting such unfair or deceptive acts or practices. If the Commission determines,

Decision and Order

in its sole discretion, that such relief is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein provided shall be deemed a payment of any fine, penalty, or punitive assessment.

- D. Respondents shall make no claim to or demand for the return of the funds, directly or indirectly, through counsel or otherwise; and in the event of any respondent's bankruptcy, respondents acknowledge that the funds are not part of the debtor's estate, nor does the estate have any claim or interest therein.

X.

IT IS FURTHER ORDERED that respondents shall, in connection with this action or any subsequent investigations related to or associated with the transactions or occurrences that are the subject of the Complaint, cooperate in good faith with the Commission and appear, or cause their officers, employees, representatives, or agents to appear, at such places and times as the Commission shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the Commission. If requested in writing by the Commission, respondents shall appear, or cause their officers, employees, representatives, or agents to appear, and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or occurrences that are the subject of the Complaint, without the service of a subpoena.

Decision and Order

XI.

IT IS FURTHER ORDERED that respondents DirectRevenue LLC and DirectRevenue Holdings LLC, their successors and assigns, and respondents Joshua Abram, Daniel Kaufman, Alan Murray, and Rodney Hook 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 the order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

XII.

IT IS FURTHER ORDERED that respondents DirectRevenue LLC and DirectRevenue Holdings LLC, their successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in either corporation 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 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 either corporation about which respondents learns less than thirty (30) days prior to the date such action is to take place, respondents 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 Ave., N.W., Washington, D.C. 20580.

Decision and Order

XIII.

IT IS FURTHER ORDERED that respondents Joshua Abram, Daniel Kaufman, Alan Murray, and Rodney Hook, for a period of five (5) years after the date of issuance of this order, each shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment conducted through the Internet, the World Wide Web, or any webpage or website. 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, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580.

XIV.

IT IS FURTHER ORDERED that respondents DirectRevenue LLC and DirectRevenue Holdings LLC, their successors and assigns, and respondents Joshua Abram, Daniel Kaufman, Alan Murray, and Rodney Hook 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 the manner and form in which they have complied with this order.

XV.

This order will terminate on June 26, 2027, 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:

Decision and Order

- 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 this 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.

By the Commission, Commissioner Leibowitz dissenting.

Decision and Order

Attachment A

NOTICE: The Federal Trade Commission (“FTC”) recently alleged that DirectRevenue, LLC installed The Best Offers Network (“TBON”) advertising software on consumers’ computers without consumers’ consent. The TBON software sent you pop-up ads based on the websites you visited.

To settle this matter, DirectRevenue has stopped sending you ads and the TBON software on your computer is inactive. If you wish to completely uninstall the TBON software, click for [Removal Instructions](#). If you wish to receive TBON’s ads again, click [Receive Ads](#).

Click here for more information about the [FTC Settlement Order](#).

Dissenting Statement

STATEMENT OF COMMISSIONER JON LEIBOWITZ

The consent order in this matter, to which the Commission has now accorded final approval, includes strong injunctive relief that will put an end to practices that allowed DirectRevenue to foist unwanted software on untold millions of consumers. The injunctive provisions, like those in *Zango, Inc., f/k/a 180 Solutions, Inc.*, will serve as a model to adware companies in future. But the \$1.5 million in monetary relief that the Commission obtained as part of the consent order is a disappointment because it apparently leaves DirectRevenue's owners lining their pockets with more than \$20 million from a business model based on deceit. Ben Elgin with Brian Grow, *The Plot To Hijack Your Computer*, Business Week Online, available at www.businessweek.com/magazine/content/06_29/b3993001.htm?chan=search (July 17, 2006).

According to the Commission's complaint, DirectRevenue downloaded adware on consumers' computers — in many cases without notice and consent. In other instances, to entice consumers into downloading its nuisance adware that plagued consumers' computers with pop-ups, it even bundled the adware with software that was supposed to *block* pop-ups. The height of cynicism and disingenuousness. Moreover, the respondents went to great lengths to ensure that consumers could not uninstall this unwanted software, even employing ingenious (and malicious) technologies such as code that would reinstall it if the consumer attempted to remove it.

Even apart from the hundreds of thousands of hours people spent closing all of these pop-up ads, how many people lost important data because respondents' malware crashed their computer? How many people fruitlessly spent time trying to uninstall it? How many people junked perfectly good computers that were so burdened with unwanted adware that they were useless? One consumer captured the frustration and anger that consumers no doubt felt as they tried to deal with DirectRevenue's malware: "You people are EVIL personified,"

Dissenting Statement

Kevin Horton wrote... ‘I would like the four hours of my life back I have wasted trying to get your stupid uninvited software off my now crippled system.’ “ *The Plot To Hijack Your Computer*, *supra*. Given the number of unwitting DirectRevenue “customers” — according to the New York Attorney General’s complaint there were more than 150 million software installs, which likely served up literally billions of pop-ups¹ — Mr. Horton’s experience could not have been unusual. Some of the troubles came home to roost: the software made the computer of one of DirectRevenue’s own employees crash four times in one day, and the company had to send someone to fix a computer belonging to one of the company’s venture capital investors. *Id.*

I recognize that staff was able to negotiate comprehensive injunctive relief that will halt these illegal practices once and for all. The consent order, among other things, requires DirectRevenue to co-brand advertisements it serves and provide an effective method to uninstall their software — steps that should allow consumers unhappy with the pop-ups to identify their source and remove the software that generates them. Other provisions ensure that consumers get to choose whether they want the software in the first place. I also recognize that, in litigating this matter, staff would have been presented with novel issues that could pose risks.

¹ On a separate note, I want to commend the New York Attorney General’s office for its recent ground-breaking settlements — which included monetary relief — with Priceline, Travelocity, and Cingular Wireless in the context of its litigation against DirectRevenue. Among other things, the settlements require the companies to do due diligence before advertising via adware, and periodically follow up to see how their online ads are being delivered. These settlements are important because advertising dollars fuel the demand side of the nuisance adware problem by giving companies like DirectRevenue and their affiliates and sub-affiliates the incentive to expand their installed base, with or without consumers’ consent.

Dissenting Statement

That said, I cannot support a consent order that requires the respondents — particularly Joshua Abram, Daniel Kaufman, Alan Murray, and Rodney Hook, the officers and owners of DirectRevenue — to pay a total of only \$1.5 million. Venture capitalists poured more than \$20 million into DirectRevenue,² and between the companies' ad revenues and the venture capital money, millions of dollars flowed into the owners' pockets — \$23 million, according to Business Week. *See The Plot To Hijack Your Computer, supra*. Settlement always involves compromise, and staff must weigh the advantages of a settlement with the risks and costs of litigation. But in cases like this, I would rather go to trial and risk losing than settle for a compromise that makes an FTC action just a cost of doing business.

² See, e.g., Brad Stone, *Invasion of the PC Snatchers*, Newsweek (Dec. 13, 2006), available at <http://www.msnbc.msn.com/id/6653413/site/newsweek/>.

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from proposed respondents DirectRevenue LLC, DirectRevenue Holdings LLC, Joshua Abram, Daniel Kaufman, Alan Murray, and Rodney Hook, individually and as officers of DirectRevenue LLC (together, the 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.

General Allegations

The respondents develop, market, and distribute via Internet downloads advertising software programs ("adware") — including programs with the names Aurora, Ceres, A Better Internet, OfferOptimizer, Twaintec, and Best Offers — that monitor consumers' Internet use in order to display targeted pop-up ads. This matter concerns allegations that the respondents: (1) directly, and through a network of numerous affiliates and sub-affiliates, installed their adware on consumers' computers without adequate notice or consent; (2) through affiliates and sub-affiliates, installed their adware on consumers' computers entirely without notice or authorization; and (3) made their adware difficult for consumers to identify, locate, and remove.

The Commission's complaint alleges that in numerous instances the respondents, either directly or through their affiliates and sub-affiliates, purported to offer content to the public, such as games, screen-savers, peer-to-peer file sharing software, and/or computer utility programs ("lureware") and bundled the respondents' adware with that content. The complaint further

Analysis to Aid Public Comment

alleges that consumers often have been unaware that the respondents' adware would be installed on their computers because it was not adequately disclosed to them that downloading the lureware would result in installation of the respondents' adware. Often, no reference to the adware was made on websites offering the lureware or in the install windows. In other instances, information about the effects of the respondents' adware could only be ascertained, if at all, by clicking on one or more inconspicuous hyperlinks to reach multi-page user agreements containing such information. These inconspicuous hyperlinks were located in the corner of website homepages or in modal boxes provided by the computer's operating system.

The Commission's complaint also alleges that in numerous instances, the respondents, through affiliates and sub-affiliates, installed the respondents' adware on consumers' computers entirely without notice or authorization. The complaint cites as an example unauthorized installations conducted by the respondents' sub-affiliate, Seismic Entertainment Productions, Inc., via an executable file that exploited a vulnerability in Windows Media Player.

The Commission's complaint further alleges that the respondents made identifying, locating, and removing their adware extremely difficult for consumers. Among other practices, the respondents: failed to identify the name or source of the adware in pop-up ads to enable consumers to locate the adware on their computers; stored adware files in locations on consumers' hard drives that are rarely accessed by consumers, such as in the core systems software folders; failed to list the adware in the Windows Add/Remove utility ("customary location for user-initiated uninstall of software programs); where the adware was listed in the Windows Add/Remove utility, listed it under names resembling core systems software or applications; installed technology on consumers' computers to reinstall the adware when it had been uninstalled by consumers through the Windows Add/Remove utility or deleted by anti-spyware or anti-adware programs; and when a separate uninstall tool was provided,

Analysis to Aid Public Comment

required consumers to follow a ten-step procedure including downloading additional software and deactivating firewalls, thereby exposing computers to security risks.

Deception Allegation

The Commission's complaint alleges that by offering content over the Internet such as browser upgrades, utilities, games, screensavers, peer-to-peer file sharing software and/or entertainment content, without disclosing adequately that this content was bundled with the respondents' adware, the respondents committed a deceptive practice. The bundling of the respondents' adware, which monitors consumers' Internet use and causes them to receive pop-up advertisements, would be material to consumers in their decision whether to download the other software programs and/or content.

Unfairness Allegations

The Commission's complaint also alleges that it was an unfair practice for the respondents to install on consumers' computers, entirely without their knowledge or authorization, adware that could not be reasonably identified, located, or removed by consumers. In addition, the complaint alleges that it was an unfair practice, in and of itself, for the respondents not to provide consumers with a reasonable means to identify, locate, and remove the respondents' adware from their computers. The complaint further alleges that these practices have caused or are likely to cause substantial consumer injury that is not reasonably avoidable by consumers themselves and not outweighed by benefits to consumers or competition.

The Proposed Consent Order

The proposed consent order contains provisions designed to prevent the respondents from engaging in similar acts and

Analysis to Aid Public Comment

practices in the future and to halt continuing harm caused by the respondents' prior unlawful practices.

Part I of the proposed order prohibits the respondents from displaying any advertisement to, or otherwise communicating with, any consumer's computer on which the respondents' adware was installed prior to October 1, 2005 ("legacy program"). Part I permits the respondents, within thirty days of entry of the final order, to send a maximum of three notices to legacy program users informing them: that, pursuant to the FTC settlement, they will no longer receive any advertising or communication from the respondents; how they may affirmatively authorize the respondents to continue serving advertisements if consumers so choose; and how they may fully remove the respondents' adware from their computers. If consumers fail to respond to the notice, the adware will remain inactive.

Parts II and III prohibit the respondents from, or assisting others in, installing software onto any computer by exploiting security vulnerabilities or downloading or installing any software program or application without consumers' express consent. "Express consent" is defined in the proposed order to require clear and prominent disclosure of material terms prior to and separate from any end user license agreement, and to require consumer activation of the download or installation by clicking a button or a substantially similar action.

Part IV requires the respondents to establish, implement, and maintain a clearly disclosed, user-friendly mechanism through which consumers can report and the respondents can timely address complaints regarding the respondents' practices.

Part V requires the respondents to establish, implement, and maintain a comprehensive program that is reasonably designed to require affiliates to obtain express consent before installing the respondents' software onto consumers' computers. Part V also contains sub-parts mandating certain measures the respondents must take to monitor their distribution network.

Analysis to Aid Public Comment

Part VI requires the respondents to identify advertisements served via the respondents' adware in order for consumers to easily locate the source of the advertisement, easily access the respondents' complaint mechanism, and access directions on how to uninstall such adware.

Part VII requires the respondents to provide reasonable and effective means for consumers to uninstall the respondents' adware.

Part IX requires the respondents to pay \$1.5 million to the Commission. This payment may be used in the Commission's sole discretion to provide appropriate relief, which may include, but is not limited to, the rescission of contracts, payment of damages, and/or public notification respecting such unfair or deceptive acts or practices. If the Commission determines that such relief is wholly or partially impracticable, any or all such funds shall be paid to the United States Treasury.

Part X requires the respondents to cooperate with the Commission in this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the Complaint.

The remaining order provisions govern record retention (Part VIII), order distribution (Part XI), ongoing reporting requirements (Parts XII and XIII), filing a compliance report (Part XIV). Part XV 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

SONY BMG MUSIC ENTERTAINMENT

CONSENT ORDER, ETC. , IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-4195; File No. 062 3019
Complaint, June 28, 2007 — Decision, June 28, 2007*

This consent order addresses software that Sony BMG Music Entertainment embedded on its music CDs that restricted use of the audio files and also caused security vulnerabilities on computers. The order, among other things, requires Sony BMG to clearly disclose on its packaging that a CD will install software, has copying limits, and can only be used on certain playback devices. The order bars the respondent from installing content protection software from a CD without consumers' authorization, and requires clear disclosure on the packaging if a CD can be used only by the installation of such software. The order prohibits the respondent from using any information it had collected through enhanced connectivity CDs prior to this order for any marketing purpose. After the date of the order, the respondent is prohibited from collecting any information using its enhanced connectivity CDs unless it obtains consumers' consent to do so, and must disclose this condition on the product packaging. The order also prohibits Sony BMG from preventing consumers from readily locating or removing the software from the computer and requires the respondent to provide a reasonable means to uninstall such software. The respondent must provide free uninstall tools and patches for XCP and MediaMax 5.0 on its website, and must notify consumers of the XCP and MediaMax 5.0 vulnerabilities and tell them how to fix their computers. In the case of MediaMax 5.0 CDs, Sony BMG must disclose on the packaging that, if used on a computer, these CDs will create security vulnerabilities that consumers can eliminate with a free patch from the respondent's website, and that these CDs will establish an Internet connection through which Sony BMG will collect information from, and send back advertising to, the computer. In addition, the order requires that Sony BMG extend the time during which consumers may exchange CDs, and reimburse consumers up to \$150 of their costs to repair computer damage resulting from their attempts to remove the XCP content protection software before an uninstall tool was readily available.