

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

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Civil No. 04-377-JD

SEISMIC ENTERTAINMENT
PRODUCTIONS, INC., et al.

Defendants.

**STIPULATED PRELIMINARY INJUNCTION ORDER AS TO DEFENDANTS
SMARTBOT.NET, INC., AND SANFORD WALLACE**

WHEREAS, on October 6, 2004, Plaintiff Federal Trade Commission (“Commission” or “Plaintiff”) filed a complaint against all defendants pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to secure preliminary and permanent injunctive relief, restitution, disgorgement, and other equitable relief against defendants for their alleged unfair acts or practices in connection with their Internet marketing and distribution of software programs to consumers, in alleged violation of Section 5(a) of the FTC Act, 15 U.S.C. §§ 45(a);

WHEREAS, Stipulating defendants deny the allegations made against them;

WHEREAS, there has been no determination of any wrongdoing;

WHEREAS, Plaintiff and Stipulating defendants, without any admission of any wrongdoing or violation of law, voluntarily have stipulated to the entry of the following stipulated order for preliminary injunction (“Order”);

WHEREAS, this Order replaces and supercedes the temporary injunction order issued by

Judge Joseph A. DiClerico on or about October 21, 2004.

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and over the Stipulating defendants.
2. The complaint states a claim upon which relief may be granted against Stipulating defendants under 15 U.S.C. §§ 45(a).
3. Venue as to the Stipulating defendants in the District of New Hampshire is proper.
4. The parties waive all rights to seek judicial review or otherwise challenge or contest the validity of this stipulation.

DEFINITIONS

For the purpose of this order, the following definitions shall apply:

1. “Seismic” means Seismic Entertainment Productions, Inc., a New Hampshire corporation with its principal place of business at 11 Farmington Road, Rochester, New Hampshire 03867.
2. “SmartBot” means SmartBot.Net, Inc., a Pennsylvania corporation with its corporate address at 3 Cobblestone Court, Richboro, Pennsylvania 18954, and its principal place of business at 495 Route 9, Barrington, New Hampshire 03825.
3. “Wallace” means Sanford Wallace, individually and as an officer and director of Seismic, and as an officer and director of SmartBot.
4. “Defendants” means Seismic, SmartBot, Wallace, and each of their successors, assigns, officers, agents, servants, employees, salespersons, subsidiaries or affiliates.
5. The “World Wide Web” or the “Web” is a system used on the Internet for cross-

referencing and retrieving information. Documents (“pages” or “sites”) on the World Wide Web are most frequently formatted in a language called HTML or HyperText Markup Language, that supports links to other documents on the World Wide Web.

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

7. A “web browser” is a software application used to view, download, upload, surf or otherwise access documents (“pages” or “sites”) on the World Wide Web. Web browsers read coded documents that reside on servers, and interpret the coding into what users see rendered as a web page or web site. A user may retrieve and view a web page or site by entering the Uniform Resource Locator (“URL”) or domain name of the web page in the address bar of the web browser.

8. “Assets” means any legal or equitable interest in, right to, or claim to, any real, personal, or intellectual property of any Defendant, any Defendant’s minor children, or any Defendant’s spouse, or held for the benefit of any Defendant, any Defendant’s minor children, or any Defendant’s spouse, wherever located, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, contracts, mail or other deliveries, shares of stock, inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the Uniform Commercial Code), cash, and trusts, including but not limited to any other trust held for the benefit of any Defendant, any Defendant’s minor children, or any Defendant’s spouse.

IT IS STIPULATED, AGREED AND ORDERED:

PROHIBITED BUSINESS ACTIVITIES

I.

That the defendants, and their officers, agents, directors, employees, salespersons, independent contractors, subsidiaries, affiliates, successors, assigns and all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, including by facsimile and electronic mail, whether acting directly or through any corporation, subsidiary, division or other device, are hereby (a) required to remove, within twenty-four (24) hours, from any website, bulletin board, or Internet server controlled by defendants; and (b) enjoined from, or assisting 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, web page, or web site, any software script, code, or other content that exploits the web browser security vulnerabilities referenced in Microsoft Bulletins MS03-032 and MS03-040, or any other web browser security vulnerabilities, to install, download, or deposit onto any computer any software code, program, or content, without the computer user’s authorization.

Provided that this Part shall not be construed to prohibit Defendants from loading software script, code, or other content into the computer’s Random Access Memory (“RAM”) for the sole purpose of displaying a pop-up advertisement.

MAINTENANCE OF RECORDS

II.

That the defendants, and their officers, agents, directors, employees, salespersons,

independent contractors, subsidiaries, affiliates, successors, assigns and all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, including by facsimile and electronic mail, whether acting directly or through any corporation, subsidiary, division or other device, are hereby enjoined from:

- A. failing to create and maintain books, records, accounts, bank statements, current accountants' reports, and any other data which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the defendants;
- B. destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any books, records, tapes, discs, accounting data, checks (fronts and backs), correspondence, forms, advertisements (including but not limited to advertisements placed on the World Wide Web or the Internet), brochures, manuals, electronically stored data (including but not limited to floppy disks and hard drives, CD-ROMS, zip disks, punch cards, magnetic tape, backup tapes, and computer chips) on which information has been saved, any and all equipment needed to read any such material, FTP logs, Service Access Logs, USENET Newsgroups postings, World Wide Web pages, contracts, accounting data, banking records, customer lists, customer files, invoices, telephone records, ledgers, payroll records, or other documents of any kind, including information stored in computer-maintained form (such as electronic mail), in their possession, and other documents or records of any kind that relate to the business practices or finances of the defendants;

- C. failing to maintain complete records of any consumer complaints and disputes, whether coming from the consumer or any intermediary, such as a government agency or Better Business Bureau, and any responses made to those complaints or disputes;
- D. creating, operating, or exercising any control over any Internet and/or Internet-related business entity, including, but not limited to, any partnership, limited partnership, joint venture, sole proprietorship, international business corporation, or any other corporation, without first providing the Commission with a written statement disclosing (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers, and employees; and (4) a detailed description of the business entity's intended activities;
- E. creating, operating, or exercising any control over any web site, FTP site, bulletin board, or Internet server without first providing the Commission a written statement disclosing: (1) its domain name; (2) its IP address; (3) its Host or Host Company, including contact information; and (3) the uniform resource locator ("URL") for each resource, page, or file contained in it;

EXPEDITED DISCOVERY

III.

That the Commission is granted leave at any time after providing notice of this Order by personal service or otherwise, including by facsimile, to depose or demand the production of documents from any person or entities, other than defendants, relating to defendants' business

activities and the nature, status, extent, location or other relevant information relating to any assets, income, personal or business financial records of any of the defendants, or to the location of any potential defendant. Five (5) business days notice shall be deemed sufficient for any such production of documents from or depositions of any other person or entity, including but not limited to any Internet service provider, Host or Host Company, sponsor of an affiliate program, bank, savings and loan, financial or brokerage institution, fund, escrow agent, or trustee. The production of documents submitted pursuant to this provision shall not in any way waive the Commission's rights to seek the production of additional documents.

FINANCIAL STATEMENTS

IV.

That, within fourteen (14) days after entry of this Order the defendants each:

- A. Shall provide the Commission with a list of all banks, financial institutions, brokerage firms, or similar business entities known or thought to have information regarding the nature, status, extent, location, or other relevant information relating to any of Defendants' assets, income, personal, or business financial records; and such entities' role(s) with respect to Defendants' assets, income, personal or financial records.
- B. Shall provide the Commission with access to records and documents pertaining to assets of each Defendant that are held by financial institutions outside the United States, by signing a document entitled "Consent to Release of Financial Records" in the form attached to this Order as Attachment A.

CONSUMER REPORTS

V.

That the Commission may obtain consumer reports concerning any Defendant pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), and that, upon written request, any credit reporting agency from which such reports are requested shall provide them to the Commission.

SERVICE OF THIS ORDER BY PLAINTIFF

VI.

That copies of this Order may be served by facsimile transmission, personal or overnight delivery, electronic or U.S. Mail, by agents and employees of the Commission or any state or federal law enforcement agency, on (1) any Defendant in this action; (2) any financial or brokerage institution, entity or person that holds, controls, or maintains custody of any account or asset of the defendants; (3) any Internet service provider, Host, Host Company, or other entity that provides Internet related services to defendants; or (3) any other person or entity that may be subject to any provision of this Order. Service upon any branch or office of any entity shall effect service upon the entire entity.

RIGHT TO INVESTIGATE AND ADD ADDITIONAL PARTIES AND CLAIMS

VII.

Nothing in this Order should be construed as limiting or restricting the Commission's right or ability to investigate, take discovery from, add to this action or bring further actions against any persons or entities not specifically named herein as a defendant who may be in active concert or participation with any of the defendants.

RETENTION OF JURISDICTION

VIII.

That this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED, this ___ day of _____, 2004, at ___ .m.

UNITED STATES DISTRICT JUDGE
JOSEPH A. DICLERICO, JR.

SO STIPULATED:

/s/ Laura Sullivan

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Individually, and as the officer of SMARTBOT.NET,
INC. and SEISMIC ENTERTAINMENT
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By their attorney,

/s/ Ralph Jacobs

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