Spyware Enforcement - FTC

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Tags: Array

Federal Trade Commission Spyware Case Summary

Case	Company behaviors deemed unfair and/or deceptive by the FTC	Status
FTC v. Seismic Entertainment Productions, Inc., Smart Bot.Net, Inc., and Sanford Wallace Additional defendants: Jared Lansky, John Robert Martinson, Optin Trade, Inc., Mailwi	• Installing software onto users' computers that makes substantial modifications to the Internet Explorer Web browser (including the home page and default search engine) without users' knowledge or authorization. • Installing software onto users' computers that in turn creates security holes through which more advertising software and other software is downloaded, all without users' knowledge or authorization.	Default judgment issued against Wallace and Smart Bot.Net: • Ordered to give up over $4 million in ill-gotten gains. • Barred from downloading spyware onto consumers' computers; from downloading any software without consumers' consent; from redirecting consumers' computers to sites other than those the consumers selected to

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per, Inc., Spy Deleter, Inc. Docket #042-3142	• Inducing users to purchase anti-spyware software products that purport to fix computer problems that the anti-spyware product company itself caused by previously installing software on users' computers without their knowledge or authorization.	visit; from changing any Web browser's default home page; and from modifying or replacing the search features of any search engine. Settlement reached with Lansky and OptinTrade: • Ordered to give up $227,000 in ill-gotten gains. • Barred from the same practices as Wallace and Smartbot.Net. Seismic Entertainment filed for bankruptcy. Settlement reached

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		with John Robert Martinson and Mailwiper: • Ordered to give up $40,000 in ill-gotten gains with a suspended judgment of $1.86 million. • Barred from the same practices as Wallace and Smart bot.Net [1]More information[1]
FTC v. MaxTheater, Inc., and Thomas L. Delanoy Docket #042-321	• Expressly representing or implying that local or remote scans or other examinations of users' computers for spyware had been performed and that spyware had been detected when no such scans or examinations took place	Settlement reached ordering defendants to give up $76,000 in ill-gotten gains (the full amount of consumer injury). Defendants barred from selling or marketing any anti-spyware

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3	and no spyware was detected. • Expressly representing or implying that an anti-spyware product removes all or substantially all spyware on a user's computer when it does not do so.	product or service in the future; from down loading or installing spyware on consumers' computers, or from assisting others in d ownloadin g or installing it; and from making marketing misrepresentations. More information [2]
FTC v. Trust Soft, Inc. d/b/a Swanksoft and SpyKiller, and Danilo Ladendorf	• Expressly representing or implying that remote scans or other examinations of users' computers for spyware had been performed and that spyware had been detected when no such scans or examinations took place and no spyware was	Settlement reached ordering defendants to give up $1.9 million in ill-gotten gains. Settlement bars defendants from making deceptive claims in the sale, marketing, advertising, or promotion of any

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Docket #052-3059	detected. • Expressly representing or implying that certain software on a user's computer is spyware (when it is not) after the user downloads and activates an anti-spyware product. • Expressly representing or implying that a spyware removal product removes all, substantially all, or all traces of spyware on a user's computer when it does not do so.	goods or services and prohibits them from making the specific misrepresentations used in promoting SpyKiller. Defendants barred from using the spyware their "anti-spyware" software supposedly detects and destroys to deliver ads. More information [2]
In the matter of Advertising.com, Inc. a/k/a/d/b/a Teknosurf.com, and	• Disclosing only within a EULA that software to be downloaded by a user includes adware that collects information about the user (including URLs of	Final consent order issued prohibiting respondents from making any representations about the performance, benefits, efficacy, or

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John Ferber Docket #042-3196	visited pages and the user's IP address) and serves a substantial number of pop-up ads to the user.	features of its programs promoted as security or privacy software, unless they clearly and conspicuously disclose that consumers who install the program will receive advertisements, if that is the case. [3]More information[3]
FTC v. Odysseus Marketing, Inc, and Walter Rines Docke	• Disclosing only within a EULA that software to be downloaded by a user will also cause the installation of additional software that may replace search engine results, collect and transmit	Settlement reached ordering defendants to give up $10,000 in ill-gotten gains, with a suspended judgment of $1.75 million. Defendants are also prohibited

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t #042-3205	information to third parties, deliver pop-up ads, and download more software. • Failing to provide an effective means for users to locate and remove software after it has been downloaded.	from producing or distributing software that exploits a security vulnerability, installs without user consent, is overly difficult to uninstall, changes browser settings such as home page, or alters the System32 folder in the Windows operating system. Defendants are further prohibited from gathering personally identifiable information without consumer's consent, selling, or using such information. Finally, defendants are prohibited from making any representation as

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		to the efficacy or performance of software. More information [4]
FTC v. Enternet Media, Inc., Conspy & Co., Inc., Lida Rohbani, Nima Hakimi, Babak (Babak) Hakimi, and Nicholas C. Albert Docket #052-313	• Expressly representing or implying that software functions as an innocuous free program or file (including as a browser upgrade or other security software, or as a music file, song lyric, or ring tone) when the software instead causes a stream of ads to appear on users' computers and/or tracks users' Internet activity. • Providing software that does the following when it is installed [2] [5]: (1) tracks users'	Settlement reached ordering defendants to give up $2.045 million in ill-gotten gains, with a suspended judgment of $8.5 million. Defendants are also enjoined from making false or misleading representations about the nature, performance, features or cost of software code, publishing software that interferes with a consumer's computer

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5	Internet activity, (2) changes users' Internet homepage settings, (3) inserts a toolbar onto users' Internet browsers, (4) inserts a large side advertising frame or window onto users' browsers, and (5) displays numerous pop-up ads even when users' browsers are closed. • Furnishing others, including affiliate marketers, with software that substantially interferes with consumers' use of their computers and with marketing media that contains false representations regarding that software. • Failing to	use, or helping others to do so. . [6]More information [6]

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	disclose that music files users can download and incorporate on their own Web sites contain additional code that delivers ads to users' computers. • Failing to disclose that music files downloaded and incorporated on users' Web sites will display ads that prompt site visitors to download other software represented as browser upgrades or other security software.	
FTC v. Digital Enterprises, Inc, d/b/a Movieland.com; Triump	• Expressly representing or implying that the computer owner or user knowingly consented to the installation of software that would repeatedly	Settlement reached requiring defendants to pay over $500,000 in consumer redress. Settlement terms prohibit

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hant Video s, Inc., d/b/a Popcorn.net; Pacificon International, Inc., d/b/a Vitalix; Alchemy Communications, Inc.; AccessMedia Networks, Inc.; Film Web, Inc.; Binary Source, Inc., d/b/a Moviepass.tv; Medicaster, Inc., d/b/a Medicaster.net; CS Hotline, Inc.; Easton Herd; and Andrew Garro	launch lengthy pop-up payment demands, when neither the owner nor any user consented to the installation. • Expressly representing or implying that the computer owner is responsible to satisfy any contract that any other person entered into while using the computer, when this is not the case. • Causing software to be installed on consumers' computers that repeatedly launches textual and audiovisual pop-up payment windows that: o remain open for 40 seconds and cannot be closed or	defendants from: • Offering "anonymous" free trials with a negative option billing feature. • Misrepresenting that consumers have agreed to pop-up payment demands and therefore owe defendants payments. • Downloading software onto consumers' computers without their consent. • Displaying pop-up payment windows more than five times per day, more than once per

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ni Docket #062-3008	minimized through reasonable means, o reappear more and more often as time passes, and o demand that consumers pay at least $29.95 to stop the pop-ups from happening. • Causing software to be installed on consumers' computers such that it cannot be located or removed through the use of reasonable efforts. • Causing software to be installed on consumers' computers that makes changes to consumers' computers that actively prevent consumers from using the Windows Control Panel	hour, without a clearly labeled button to close the window and silence associated audio, and without a toll-free phone number and email address consumers can use to contact defendants. • Concealing their software by cloaking files or folders, using random or misleading files names, misrepresenting the purpose of files or folders, or causing files to be automatically reinstalled after the user has removed them.

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	to uninstall the software.	Settlement terms require defendants to: • Provide a mechanism for consumers to uninstall their software. • Post uninstall instruction on all their affiliated web sites. • Stop billing and send uninstall instructions to who have not accessed defendants' content within the past 60 days. More information [7]
In the Matter of Zango, Inc., f/k/a 180solution	• Using third-party affiliates and sub-affiliates to bundle and install advertising software with	Proposed settlement reached, ordering respondents to pay $3 million to the FTC.

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s, Inc., Keith Smith and Daniel Todd Docket #052-3130	other programs without adequately disclosing the existence of the advertising software. • Installing advertising software programs, through affiliates and sub-affiliates, without consumers' knowledge or authorization. • Failing to provide a means for consumers to identify, locate, and remove advertising software.	Respondents are forbidden from: • Displaying advertisements to any customer who obtained advertising software prior to January 1, 2006. • Exploiting security vulnerabilities in Internet browsers to install software. • Installing software without obtaining express consent from users. Respondents are obligated to: • Establish and publicize a

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		consumer complaint mechanism that allows consumers to receive timely responses to their complaints about the advertising software. • Maintain a program to ensure that affiliates obtain proper consent from consumers before installing software. • Identify the software program that causes advertisements to be shown to consumers on the advertisements themselves. • Provide links to the consumer complaint mechanism on the advertisem

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		ents thems elves. • Provide consumers with a reasonable means of u ninstalling the advertising software. [8]More information[8]
FTC v. ERG Ventures, LLC and d/b/a ERG Ventures, LLC2, Media Motor, Joystick savers.com, and Private inPublic.com; Elliot S. Camero n; Robert A. Davidson, II; Gary E.	• Representing that software operates as a standalone innocuous free program, such as a screensaver or icon, when that is not the case. • Failing to disclose that software or content being offered contains additional code and files that cause advertisements, track Internet usage and alter browser settings and existing software products.	Settlement reached, ordering defendant to pay $330,000 to the FTC and the IRS. Defendant is required to: Clearly disclose the name and full functionality of all software prior to installation Obtain consent from consumers prior to installing

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Hill; Timothy P. Taylor Docket #062-3192	• Proceeding with installation of software packages despite the fact that a user has declined the terms of the software's End User License Agreement. • Installing software on users' computers that changes browser home pages, adds a menu bar to Internet browsers, tracks consumer's Internet usage, generates pop-ups (occasionally pornographic), degrades computer performance and attacks and degrades anti-spyware software.	software Maintain records of their business associates, customers, and marketing materials Defendant is forbidden to: Distribute software which may interfere with consumer computer use [9]More information[9]
In the matter of Sony BMG Music Entertainme	Failing to adequately disclose that audio CDs will install software on consumers' computers that limits	Settlement reached. Defendant is required to: Clearly and prominently

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nt, a general partnership Docket # 062-3019	the number of possible copies and file formats of the audio files. Failing to adequately disclose that the bundled media player on an audio CD will transmit the consumer's Internet Protocol (IP) address and an album identifier to remote Internet servers for the purposes of displaying images and promotional messages on the consumer's computer. Causing content protection software which may expose consumers' computers to security risks to be installed on consumers' computers without adequate notification and consent.	disclose on product packaging that: software to limit the number of copies and file formats of audio files will be installed on consumers' computers, and consumers who decline to install content protection software from an audio CD will not be able to listen to the CD on a computer. Obtain consent from consumers prior to installing software. Destroy information collected about consumers through the use of

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	Failing to provide a way for consumers to locate and/or remove content protection software through reasonable efforts, and thereby causing consumers to incur substantial costs.	audio CDs within three days of its receipt. Clearly and prominently disclose on consumers' computer screens that: information about consumers, their computers, or their use of audio CDs will be transmitted over the Internet, and consumers who decline to permit transmission of information about them, their computers, or their use of their audio CDs will not be able to listen to the CDs on a computer. Obtain consent

Case	Company behaviors deemed unfair and/or deceptive by the FTC	Status
		from consumers prior to transmitting information about them, their computers, or their use of audio CDs. Continue to provide consumer redress and assistance by posting information on the Web, buying advertising to explain the content protection software's security vulnerability, offering software patches, and compensating consumers monetarily and with additional audio CDs or music downloads. Defendant is prohibited from:

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		Using information collected about consumers through the use of audio CDs for any marketing purposes. Installing software that cannot be readily located and removed by a consumer. [10]More information [10]
In the matter of Direct Revenue LLC, Direct Revenue Holdings LLC, Joshua Abram, Daniel Kauf	Failing to adequately disclose that adware which tracks and stores information regarding consumers' Internet use and displays advertisements based on that information is bundled with other software. Installing adware,	Proposed settlement reached, ordering respondents to pay $1.5 million to the FTC. Respondents are forbidden from: Displaying advertisements to any

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man, Alan Murray, and Rodney Hook Docket #052-3131	directly or through affiliates, on consumers' computers entirely without notice or authorization. Failing to provide a reasonable or effective means for consumers to identify, locate, and remove adware from their computers.	customer who obtained advertising software prior to October 1, 2005. Exploiting security vulnerabilities in Internet browsers or other applications to install software. Installing software without obtaining express consent from users. Respondents are obligated to: Establish and publicize a consumer complaint mechanism that allows consumers to receive timely responses to their complaints about the

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		advertising software. Maintain a program to ensure that affiliates obtain proper consent from consumers before installing software. Identify the software program that causes advertisements to be shown to consumers on the advertisements themselves. Provide links to the consumer complaint mechanism on the advertisements themselves. Provide consumers with a reasonable means of uninstalling the advertising software.

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		[11]More information [11]

Notes

[1] [12] For the settlements listed in the Status column, defendants admitted no wrong-doing unless otherwise noted.

[2] [13] In CDT's reading of the FTC complaint against Enternet Media, this set of behaviors on its own does not constitute an unfair practice. Rather, the unfair practice was marketing the software without telling consumers it behaved in all those ways and without giving consumers choice about them.

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- spyware
- FTC

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