

**Before the
Federal Trade Commission
Washington, DC 20580**

In the Matter of)
)
FastMP3Search.com.ar)
)
_____)

**Complaint and Request for Investigation,
Injunction, and Other Relief**

I. INTRODUCTION

1. StopBadware.org and the Center for Democracy and Technology (hereinafter "CDT") jointly submit this Complaint and Request for Relief to the Federal Trade Commission (hereinafter "FTC" or "the Commission") seeking immediate action to prevent a wide range of harm to Internet users caused by a downloadable software plugin distributed on the web site FastMP3Search.com.ar, including surreptitious installation of adware and Trojan horse applications, disabling of Windows Firewall, sabotaging of valid web addresses for legitimate security companies, changing of homepage settings, and severe impairment of computer performance, among others, in each case without the knowledge or consent of users. These harmful behaviors are within the Commission's jurisdiction over unfair and deceptive trade practices.

2. Since at least November 2005, the owner(s) and/or operator(s) of FastMP3Search.com.ar have installed adware and Trojan horse applications and caused the various other harmful and damaging behaviors described herein on the computers of consumers who visited the FastMP3Search.com.ar site and downloaded an innocuous-sounding FastMP3Search Plugin. StopBadware.org became aware of this problem after the website FastMP3Search.com.ar was submitted to us for review. StopBadware.org carefully analyzed the site and the behaviors that it causes.

3. Based on this detailed analysis, StopBadware.org and CDT believe that FastMP3Search.com.ar's deceptive installation of software, modification of software without disclosure, and interference with computer use has resulted in substantial injury to Internet users which they could not have reasonably avoided, and which is not outweighed by any countervailing benefits to consumers or competition. These deceptive, unfair and harmful practices are likely to result in further injury to consumers unless the Commission acts in this case.

4. As described in detail below, injury suffered by consumers in this case is the result of a wide range of egregious practices by the owner(s) and/or operator(s) of FastMP3Search.com.ar, including, without informing or seeking consent from consumers:

- Installing additional software;
- Installing Trojan horse applications;
- Installing adware;
- Disabling Windows Firewall;
- Installing bundled software that cannot easily be closed;
- Redirecting valid web addresses;
- Installing bundled applications that automatically run on startup;
- Adding toolbars to Internet Explorer;
- Changing user's homepage;
- Adding an item to the task bar;
- Displaying pop-ups;
- Impairing computer performance;
- Causing intermittent shutdown; and
- Installing software that is difficult or impossible to uninstall.

5. In light of the harms suffered and likely to be suffered in the future by Internet users, StopBadware.org and CDT request that the Commission:

- (a) Investigate FastMP3Search.com.ar and its developers, owners, operators and/or their subsidiaries and affiliates to determine who is responsible for the deceptive and unfair installation of software;
- (b) Enjoin the developers, owners, and operators of FastMP3Search.com.ar and/or their subsidiaries and affiliates from engaging in future deceptive and unfair installation of software and use of other deceptive and unfair practices; and
- (c) Seek such other equitable relief as the Commission finds appropriate.

6. Based on our analysis, StopBadware.org and CDT believe that the widespread and malicious practices engaged in by the owner(s) and/or operator(s) of FastMP3Search.com.ar are as bad as, if not worse than, the deceptive and unfair practices used by the Team Taylor Made Jessica Simpson Screensaver, against which the FTC recently obtained an injunction in the United States District Court in Nevada. *See, F.T.C. v. ERG Ventures, LLC*, No. 3:06-CV-00578-LRH-VPC (D. Nev. Oct. 31, 2006) (Ex Parte Temporary Restraining Order and Order to Show Cause). StopBadware.org and CDT urge the Commission to take prompt action against the similarly deceptive and unfair practices used by the owner(s) and/or operator(s) of FastMP3Search.com.ar, practices that are substantially more pervasive and malicious even than those encountered with most spyware.

II. PARTIES

A. StopBadware.org

7. StopBadware.org is a joint initiative of the Berkman Center for Internet & Society at Harvard Law School and Oxford University's Oxford Internet Institute. StopBadware.org's sponsors include Google, Lenovo, and Sun Microsystems, and Consumer Reports WebWatch serves as an unpaid special advisor. StopBadware.org is an online neighborhood watch campaign aimed at fighting badware through a collaborative, community-minded approach. As such, it regularly solicits input from users and partners to assist in determining which applications and web sites to test for potential badware behaviors.

8. StopBadware.org's report on the Jessica Simpson Screensaver was included as an attachment in the FTC's application for a temporary restraining order against Team Taylor Made and ERG Ventures from the U.S. District Court in Nevada, which was granted on Oct. 31, 2006.

B. The Center for Democracy and Technology

9. The Center for Democracy and Technology (CDT) is a non-profit, public interest organization incorporated in the District of Columbia and operating as a tax-exempt organization. CDT is dedicated to preserving and promoting privacy and other democratic values and civil liberties on the Internet and other interactive communications media. CDT pursues its mission through public education, grass roots organization, litigation, and coalition building.

10. In November 2003, CDT released a report entitled "Ghosts in Our Machines: Background and Policy Proposals on the 'Spyware' Problem" (<http://www.cdt.org/privacy/031100spyware.pdf>). CDT has previously submitted complaints to the FTC regarding Mail Wiper, Inc. and Seismic Entertainment Productions, Inc., 180 Solutions and CJB.NET, and Integrated Search Technologies and its affiliates. Several of these complaints have contributed to ground-breaking FTC spyware enforcement actions.

C. FastMP3Search.com.ar

11. FastMP3Search.com.ar is a web site that was registered in Argentina on November 19, 2004. The website is in English and is easily accessed by U.S. users. It advertises itself as an MP3 search engine. It offers for download the FastMP3Search Plugin, which it claims must be installed in order to download music from the FastMP3Search.com.ar website. StopBadware.org thus far has been unable to discover who owns or operates FastMP3Search.com.ar or where such persons or entities are located.

III. STATEMENT OF FACTS

12. Many Internet users have complained on download review sites and other forums about the malware, adware, and Trojan horses that were installed on their system as a result of downloading the FastMP3Search Plugin. *See, e.g.*, <http://www.freedomcrowsnest.org/forum/viewtopic.php?t=1416> (search for FastMP3Search); <http://www.forospyware.com/t54927.html> (in Spanish); <http://www.amazon.com/fastmp3search-com-ar/dp/B000FSKSGS>; and http://www.download.com/3642-2196_4-2558684.html. Many complaining consumers note their surprise at the sheer quantity of badware that was installed, the difficulty of using their computer after installing FastMP3Search Plugin, and their inability to successfully eliminate all of the malicious software from their system. StopBadware.org was made aware of this site when FastMP3Search.com.ar was submitted to us for testing.

13. StopBadware.org reviewed the FastMP3Search.com.ar site and extensively researched and analyzed the performance of the executable code (the "FastMP3Search Plugin") that the site offered for download. Our review and analysis confirmed and then documented the existence and operation of numerous deceptive and harmful behaviors of the FastMP3Search Plugin. Below, we separately describe the facts regarding the following types of malicious behavior that result: the undisclosed installation of additional software, including Trojan horse applications and adware; the disabling of Windows Firewall; the redirection of valid web addresses; the installation of applications that run automatically and are difficult for the user to close; the modification of the user's homepage and addition of toolbars to Internet Explorer and items on the user's taskbar; the display of numerous pop-up advertisements; the impairment of computer performance; and the installation of software that is difficult or impossible to uninstall.

14. In our tests, we were unable to identify anything on our computer resembling the advertised Plugin after we installed the FastMP3Search bundle. Nor were we able to download MP3s from the FastMP3Search.com.ar site — instead it asked us to install the Plugin again each time we attempted to download something. However, as indicated by some of the links in paragraph 12, it appears that some users were able to use the Plugin at some point in time (possibly before it became merely a vehicle for badware).

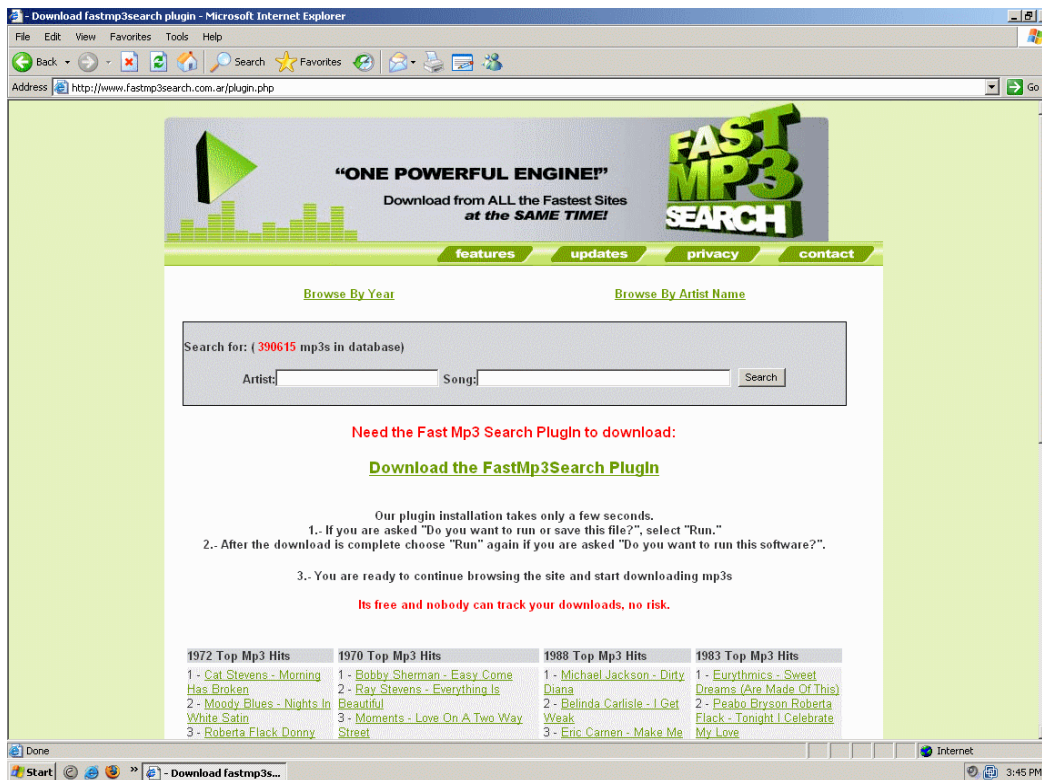
A. StopBadware.org's Research Methods

15. After FastMP3Search.com.ar was submitted to StopBadware.org as a site to be studied for its possible badware content, we conducted technical research to identify and record the various badware behaviors that resulted from the FastMP3Search Plugin.

16. StopBadware.org used personal computers running a virtual machine environment of Microsoft Windows XP to replicate the experience of an ordinary user interacting with the FastMP3Search.com.ar website and downloading the FastMP3Search Plugin. These activities were recorded using standard screenshot software to capture the actual images present on the monitors of the computers used, as they were being used. All images

included in this complaint were independently recorded by StopBadware.org in October and November, 2006.

17. Our first step was to visit the site FastMP3Search.com.ar. We, like any consumer visiting the site, were first presented with a number of links to what appear to be MP3 files. Clicking any one of these links leads the user to a page that says that the user "Need[s] the Fast Mp3 Search Plugin" in order to download the MP3. This page also contains a link to download the FastMP3Search Plugin, as well as the assurance that "[FastMP3Search Plugin is] free and nobody can track your downloads, no risk."



Screenshot 1: Download Page for FastMP3Search.com.ar Plugin

18. Following the instructions on the FastMP3Search.com.ar web site, we downloaded the Plugin, clicking "Run" when asked whether to run or save the file. There was no End User License Agreement ("EULA") or any other form of notice other than what was provided on the download page. See Screenshot 1, *supra*. During the next few minutes, the anti-virus and anti-badware tools that we had installed on our machine registered several known badware components attempting to install themselves on our system. Windows Firewall was also disabled by one or more of these badware components during this period of time. After the Plugin completed its installation, numerous pop-up advertisements began to appear. Additional badware applications and components continued to install after the installation of the main plugin was completed. Six or seven minutes after initiating the install, StopBadware.org's computer restarted itself. This rebooting was preceded by a blue flash or by the system freezing for a few minutes. The restarting and blue flash and/or system freeze occurred in repeated tests of the installation.

B. Specific FastMP3Search Plugin Badware Behaviors

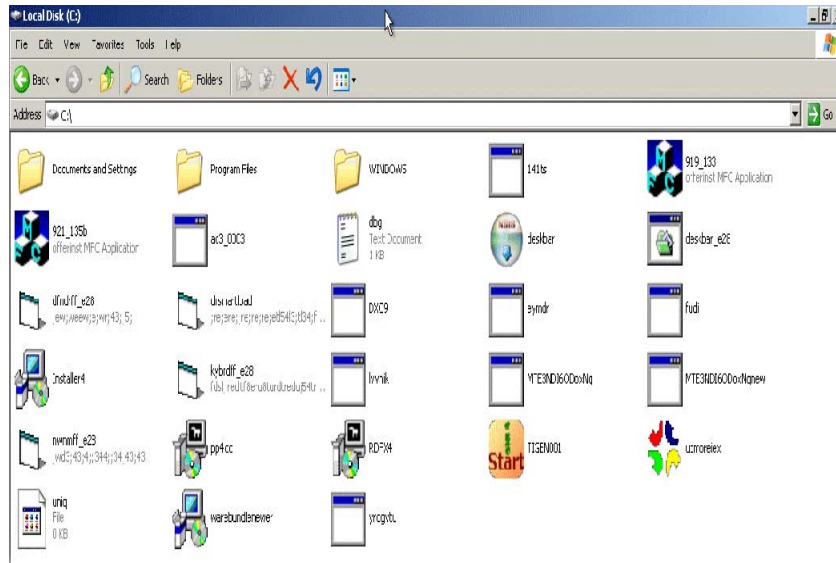
19. The specific badware behaviors that StopBadware.org's researchers discovered during their investigation of the FastMP3Search Plugin are detailed below. These are our findings as of our complete analysis on October 13, 2006, and we have not re-verified each and every behavior since that time; it is possible that some specific behaviors of the Plugin may have changed since then.

Installs additional software

20. FastMP3Search Plugin downloads an array of additional components that behave as badware. Although the producers of the Plugin claim that installation "takes only a few seconds" (see Screenshot 1), the process actually takes much longer because of all the additional components the Plugin downloads. First, the Plugin disables Windows Firewall. In the minutes that follow, four different toolbars install themselves onto Internet Explorer (Toolbar 888, Search, Related Page, and UCMore). Search toolbar also installs itself on the user's taskbar. The Plugin then continues to download other badware onto the system after the installation completes, including TagASaurus, Mirar toolbar, UCmore Search Accelerator, Command Service, DyFuca.Internet Optimizer, Look2Me, CoolWWWSearch, DollarRevenue, Smitfraud-C, SystemDoctor, and Windows Overlay Components. Installation of these additional applications is done without the user's prior knowledge or consent.

21. A number of these additional components behave as Trojan horse applications (including DyFuca, Mirar, and SystemDoctor), allowing additional badware applications to be installed without the user's knowledge or consent. Many of these are remote access Trojans, which means that they run without the user's knowledge and allow attackers unrestricted access to the infected system. Most of these Trojan horses are also added to the Startup folder, so they run as soon as Windows starts.

22. Other components installed by the FastMP3Search Plugin bundle behave as adware — these include Look2Me, CoolWWWSearch and DollarRevenue. The amount of pop-ups we observed on our infected system after installation confirmed that some of FastMP3Search Plugin's bundled software is adware. The installation of these adware components is not disclosed to the user, nor is there an opportunity to consent to or decline their installation.



Screenshot 2: Additional components installed on C Drive



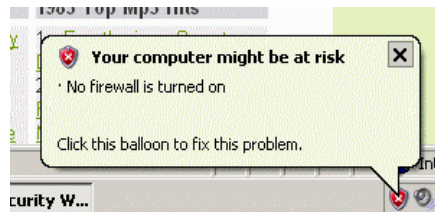
Screenshot 3: Pop-up informing the user Mirar Toolbar has been installed (without consent)



Screenshot 4: Installed TagASaurus / Downloading another component (seen on taskbar)

Disables Windows Firewall

23. During the installation of the FastMP3Search Plugin, Windows Firewall is disabled. Without this firewall protection, the user's computer is left completely unprotected and open, allowing additional software to secretly install itself without the user's knowledge or consent.



Screenshot 5: Notification of Windows Firewall being disabled

Redirects valid web addresses

24. The installation of the FastMP3Search Plugin also results in the addition of several entries to the user's host file. These entries change thirty-two web addresses belonging to several major anti-virus, anti-spyware, and other badware detection tools, including Symantec, McAfee, Computer Associates, and Sophos. As a result of these modifications, any attempt by the user to reach these websites through a web browser results in an error page. In addition, any application that attempts to connect to these sites in order to install updates would also suffer a connection error. This behavior is especially egregious since it may effectively prevent the user from getting the advice or applications she needs to alert her to or allow her to remove the badware that FastMP3Search Plugin has installed. The redirecting of these valid web addresses is not disclosed to the user.

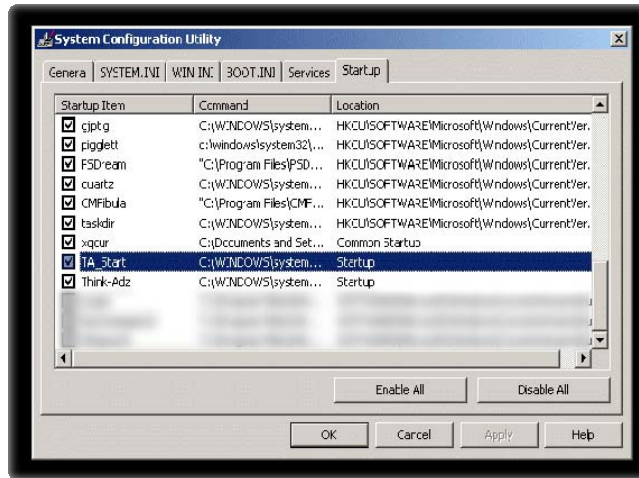

```
hosts - Notepad
File Edit Format View Help
# Copyright (C) 1993-1999 Microsoft Corp.
# This is a sample HOSTS file used by Microsoft TCP/IP for Windows.
#
# This file contains the mappings of IP addresses to host names. Each
# entry should be kept on an individual line. The IP address should
# be placed in the first column followed by the corresponding host name.
# The IP address and the host name should be separated by at least one
# space.
#
# Additionally, comments (such as these) may be inserted on individual
# lines or following the machine name denoted by a '#' symbol.
#
# For example:
#
#       102.54.94.97       rhino.acme.com          # source server
#       38.25.63.10      x.acme.com            # x client host

127.0.0.1 localhost
127.0.0.1 www.trendmicro.com
127.0.0.1 rads.mcafee.com
127.0.0.1 customer.symantec.com
127.0.0.1 liveupdate.symantec.com
127.0.0.1 us.mcafee.com
127.0.0.1 updates.symantec.com
127.0.0.1 www.nai.com
127.0.0.1 secure.nai.com
127.0.0.1 dispatch.mcafee.com
127.0.0.1 download.mcafee.com
127.0.0.1 www.my-etrust.com
127.0.0.1 mast.mcafee.com
127.0.0.1 ca.com
127.0.0.1 www.ca.com
127.0.0.1 networkassociates.com
127.0.0.1 www.networkassociates.com
127.0.0.1 avp.com
127.0.0.1 www.kaspersky.com
127.0.0.1 www.avp.com
127.0.0.1 downloads4.kaspersky-labs.com
127.0.0.1 downloads3.kaspersky-labs.com
127.0.0.1 downloads2.kaspersky-labs.com
127.0.0.1 downloads1.kaspersky-labs.com
127.0.0.1 www.f-secure.com
127.0.0.1 viruslist.com
127.0.0.1 www.viruslist.com
127.0.0.1 liveupdate.symantecliveupdate.com
127.0.0.1 www.mcafee.com
127.0.0.1 sophos.com
127.0.0.1 www.sophos.com
127.0.0.1 securityresponse.symantec.com
127.0.0.1 www.symantec.com
```

Screenshot 6: List of entries added to Host Files

Bundled software runs on startup and cannot easily be closed

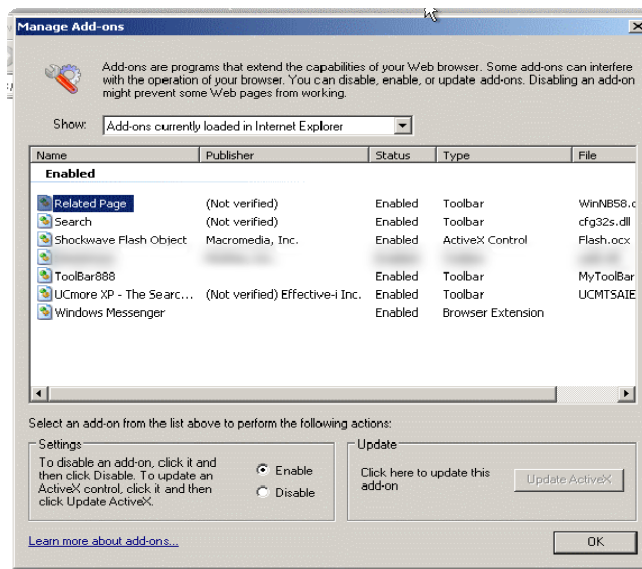
25. In addition to installing additional badware applications without disclosure or user consent, FastMP3Search Plugin also adds these badware components to startup, thereby causing them to run in the background of the user's computer as soon as Windows starts. This is particularly worrisome since many of these processes appear to connect to the Internet and are capable of downloading additional badware to the user's system. As a result of running in the background, the average user would not be aware that these processes are running on the user's computer, and would not be able to close them even if she was aware of them (the only way of closing these programs is to kill specific processes). Furthermore, a subset of these components appear to have the ability to restart themselves after the user ends them using Windows Task Manager. These behaviors are not disclosed to the user.



Screenshot 7: List of entries added to run on Startup

Modifies other software

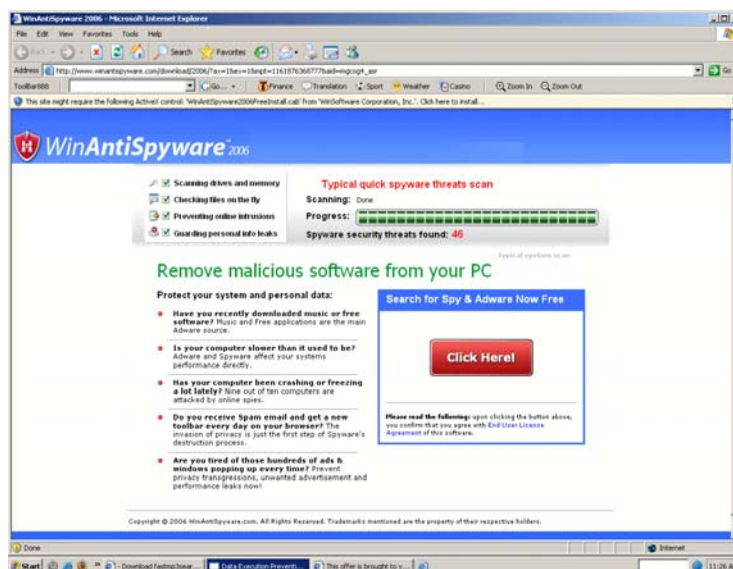
26. Some of the applications installed by the FastMP3Search Plugin alter Internet Explorer without seeking the user's consent. For example, four different toolbars are installed on Internet Explorer by FastMP3Search Plugin (Toolbar 888, Search, Related Page, and UCMore). Also, one of the applications installed by FastMP3Search Plugin — CoolWWWSearch — behaves as a browser hijacker, changing the homepage on our infected system to <http://www.findthewebsiteyouneed.com>. Finally, the Search Toolbar adds a search box to the user's taskbar. These modifications are not disclosed to the user during installation, nor is the user's consent to making these modifications sought at any point.



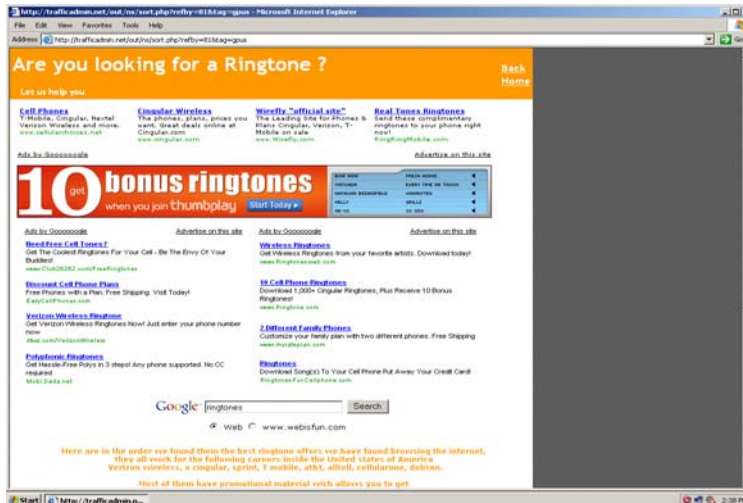
Screenshot 8: List of add-ons added to Internet Explorer

Displays pop-ups

27. Any web browsing using a computer system infected by the FastMP3Search Plugin results in a plethora of pop-up advertisements. Even worse, these pop-ups are for applications that portray themselves as anti-badware applications, but are in fact badware applications themselves. The text of these pop-ups ask "Is your computer slower than it used to be?", "Has your computer been crashing or freezing a lot lately?", and "Are you tired of those hundreds of ads & windows popping up...?", and suggests the user conduct a "free scan" of their system with the purported anti-badware application they advertise. Causing so many pop-ups that web browsing is difficult is, in itself, bad behavior, but this behavior is made dramatically worse by the fact that the pop-ups attempt to deceive the user into "fixing" the performance problems by downloading even more applications that behave as badware. The cause for the pop-ups is the adware programs that are installed by the FastMP3Search Plugin on the user's computer without disclosure or consent.



Screenshot 9: Pop-up for WinAntiSpyware: a rogue security application



Screenshot 10: Another pop-up caused by adware bundled with the Plugin

Results in impaired computer performance and intermittent shutdown

28. The infected StopBadware.org test system suffered severe impairment in performance following installation of the FastMP3Search Plugin and all of the badware components that accompany or follow its installation. This major slowdown was exacerbated during web browsing, due to the constant bombardment of pop-ups. During our tests, the infected system froze multiple times and we were compelled to shut down the computer manually using the power button. The system also restarted intermittently without any warning or notification to the user. This latter behavior may be due to Smitfraud-C, one of the applications bundled with the FastMP3Search Plugin, which is known to display a "blue screen of death" in order to persuade users to purchase fake security products.

Difficult or impossible to uninstall

29. The FastMP3Search Plugin failed to provide any uninstallation tools to allow us to remove the Plugin. The Plugin also is not listed in the Windows Add/Remove Programs utility. As such, it would be very difficult or impossible for the average user to remove this application. Furthermore, the application is not identifiable from the list of add-ons on Internet Explorer, which is where Internet Explorer lists any add-ons to IE that are currently installed — including toolbars, plugins, etc. Therefore, there is no readily available way of disabling the Plugin to stop the badware behavior it demonstrates.

30. Most of the bundled components that come with FastMP3Search Plugin also lack proper uninstallation tools and do not appear in the Add/Remove Programs utility. A few of the badware components that were downloaded after installation of FastMP3Search Plugin do offer such tools; however, given the fact that the user was never notified of nor agreed to the installation of these additional components, it is unclear that the user would know to uninstall them.

IV. GROUNDS FOR RELIEF

31. Section 5 of the FTC Act gives the Commission the authority to challenge acts and practices in or affecting commerce that are "deceptive" or "unfair." 15 U.S.C. § 45(a)(1) (2000).

32. StopBadware.org and CDT believe that the following practices of the FastMP3Search Plugin are deceptive as defined by the FTC for the purposes of enforcement of the FTC Act:

- Installing additional software;
- Installing Trojan horse applications;
- Installing adware;
- Disabling Windows Firewall;
- Installing bundled software that cannot easily be closed;
- Redirecting valid web addresses;
- Installing bundled applications that automatically run on startup;
- Adding toolbars to Internet Explorer;
- Changing user's homepage;
- Adding an item to the task bar;
- Displaying pop-ups;
- Impairing computer performance;
- Causing intermittent shutdown; and
- Installing software with difficult or impossible uninstallation.

33. In addition, we believe that all of the practices listed above are unfair practices as defined by the FTC for the purposes of enforcement of the FTC Act.

A. Deceptiveness

34. The Commission will find deception in cases where (1) there is a representation, omission or practice that is (2) likely to mislead the consumer acting reasonably in the circumstances and is (3) "material," i.e. likely to affect the consumer's conduct or decision with regard to a product or service. FTC Policy Statement on Deception, 103 F.T.C. 174, 175 (1984), appended to, *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984); *see also*, *Novartis Corp. v. F.T.C.*, 223 F.3d 783, 786 (D.C. Cir. 2000); *Stouffer Foods Corp.*, 118 F.T.C. 746, 798 (1994); *Kraft, Inc.*, 114 F.T.C. 40, 120 (1989). As we explain below, FastMP3Search.com.ar's representations, omissions and practices are likely to mislead consumers acting reasonably in the circumstances, and they are material.

35. Consumers who visit FastMP3Search.com.ar see a website with a list of MP3s from different artists. If the user clicks on a particular song title, a new page pops up that lists all the available MP3s of that song. If the user then clicks on the link for one of those MP3s, another page pops up that informs the user that she needs the FastMP3Search Plugin to download MP3s from the site. This page also represents that installation of the Plugin takes only a few seconds. See Screenshot 1, *supra*. This download page provides an added

incentive for users to download the Plugin by displaying the following representation: "It's free and nobody can track your downloads, *no risk*." *Id.* (emphasis added)

36. The FastMP3Search.com.ar site and the Plugin download page do not provide users with any further information or disclosures about the existence or nature of the numerous software applications other than the Plugin that will be downloaded onto the user's computer once the user clicks the download link. Nor does the site or the download page in any way seek or obtain the user's consent to the installation of any software other than the Plugin or to any of the behaviors described in this Complaint.

37. FastMP3Search.com.ar's various deceptive and material representations, omissions and practices, and the likely reasonable effects of those representations, omissions, and practices on consumers, are analyzed separately below for each of the categories of behaviors revealed by our investigation.

Installs additional software, including Trojan horses

38. The FastMP3Search Plugin download page claims that installation "takes only a few seconds," but the process actually takes much longer because the Plugin disables Windows Firewall — the primary method for keeping a computer secure from intruders — to ensure a completely unprotected network. In the minutes that follow, four different toolbars install themselves on Internet Explorer. Search toolbar also installs itself on the user's taskbar. The Plugin then continues to download other malicious software onto the system after the installation completes, including adware — software that delivers pop-ups and other advertising content in a manner or context that may be unexpected or unwanted by users. The additional software also includes Trojan horse applications, programs that, most simply stated, appear to do one thing but actually do another. Downloading the Plugin installs Trojan horses that run without the user's knowledge and can allow attackers unrestricted access to the infected system.

39. The surreptitious download and installation of these numerous additional applications is done by FastMP3Search.com.ar without in any way disclosing the installation or otherwise informing the user, and without giving the user any opportunity to consent to or decline the installation.

40. Users downloading the FastMP3Search Plugin are actively deceived into believing that there will be no risk of harm to their computers. Not only does the download page represent to consumers that the Plugin installation takes only a few seconds, a claim that implies that only a small piece of software will be downloaded onto the user's computer, but the download page also explicitly assures that there is "no risk."

41. These representations and omissions are material because they would affect the user's decision to download the Plugin. A reasonable user, if given proper information and warning, would not choose to have her computer riddled with numerous additional applications, frequent pop-ups, and other software that could severely impact its performance, particularly Trojan horse applications that could permit an intruder complete

access to her computer. The offer of access to the MP3s on the FastMP3Search.com.ar web site would not be sufficient for a reasonable user to incur the risk and harm, particularly the risk of exposing her computer to the serious harm from Trojan horses.

Disables Windows Firewall, redirects web addresses, and makes other changes

42. Installing the FastMP3Search Plugin disables Windows Firewall, which on many Windows computers is the primary method of keeping a computer secure from intruders. Disabling the firewall leaves such consumers' computers completely unprotected and open, allowing additional software to secretly install itself without the users' knowledge or consent. Installing the Plugin also changes thirty-two web addresses belonging to several major anti-virus, anti-spyware, and other badware detection tools. As a result of these modifications, any attempt by the user to reach these websites through a web browser would result in an error page. In addition, any application that attempts to connect to these sites in order to install updates also would suffer a connection error. This behavior is especially egregious since it effectively prevents the user from receiving the advice or applications she needs to remove the badware that the FastMP3Search Plugin has installed. Moreover, one of the applications installed by the FastMP3Search Plugin behaves as a browser hijacker that changes the user's homepage.

43. This disabling of consumers' Firewall, redirecting of web addresses for anti-badware sites and tools, and browser hijacking are all caused by FastMP3Search.com.ar without in any way disclosing their existence or nature or otherwise informing the user, and without giving the user any opportunity to consent to or decline them.

44. These representations, omissions and practices are likely to mislead a user acting reasonably in the circumstances because the user is explicitly reassured that there is "no risk" in downloading the Plugin, and no information or warning is offered to suggest that the firewall protection will be compromised, the ability to reach anti-badware sites will be blocked or the browser homepage will be hijacked. In particular, redirecting web addresses for security sites is a highly unusual practice which, in the absence of any warning or information, is extremely unlikely to be anticipated by an average computer user.

45. These representations, omissions and practices are material because they plainly would affect the user's decision to download the Plugin. A reasonable user, if given accurate information in advance, would be very unlikely to choose to disable the Firewall protection on her computer and thereby leave it completely unprotected, or to redirect anti-badware URLs to leave her cut off from anti-virus, anti-spyware, and other badware detection tools and significantly more exposed and at risk from the badware downloaded by the FastMP3Search Plugin, or to permit an application to change her browser homepage. The offer of access to the MP3s on the FastMP3Search.com.ar web site would not be sufficient for a reasonable user to expose herself to the serious risk of an unprotected computer or these other risks.

Applications cannot easily be closed, automatically run, and are difficult or impossible to uninstall

46. Most of the bundled components installed along with the FastMP3Search Plugin run in the background of the user's system and cannot be easily closed. Some automatically run on startup, thereby causing them to run in the background as soon as Windows starts. This is particularly worrisome since many of these processes connect to the Internet and are capable of downloading additional badware to the user's computer.

47. FastMP3Search.com.ar also does not provide uninstallation tools to the user to remove the Plugin, and the Plugin does not register itself in the Add/Remove Programs utility. Consequently, it is very difficult or impossible for the average user to remove the Plugin and thereby disable it or stop the numerous ill effects it causes. The Plugin also does not add itself to the list of add-ons to Internet Explorer, the location where Internet Explorer typically lists any add-ons or plugins that are currently installed. Similarly, most of the bundled components that come with the FastMP3Search Plugin also lack proper uninstallation tools and do not appear in the Windows Add/Remove Programs utility or Internet Explorer's add-on listing.

48. These behaviors are all caused by FastMP3Search.com.ar without in any way disclosing their existence or nature or otherwise informing the user, and without giving the user any opportunity to consent to or decline them. The average consumer would not be aware that these processes are running on her computer, and would not be able to close them even if she was aware. Furthermore, a subset of these components have the ability to restart themselves even after the user ends them using Windows Task Manager. The average consumer also would be unable remove or uninstall the Plugin or most of the components that are bundled with it or that follow its installation. Even for the few installed badware components that offer removal tools, a reasonable user would be unlikely to look for them in the utility and attempt to uninstall them given that the user was never notified of, and never consented to, their installation.

49. A consumer acting reasonably in the circumstances is very likely to be unaware of these types of threat. The complete lack of any warning or disclosure by FastMP3Search.com.ar about these behaviors, the lack of any opportunity to consent to or decline the behaviors, and FastMP3Search.com.ar's explicit reassurance that the download poses "no risk," all create a significant likelihood that reasonable consumers will be misled.

50. FastMP3Search.com.ar's representations, omissions, and installation and operation practices are material because they would affect the user's decision to download the Plugin. A reasonable user, if given accurate information in advance, would be unlikely to permit these automatic startup, difficult-exit and difficult-removal behaviors. The offer of access to the MP3s on the FastMP3Search.com.ar web site plainly would not be sufficient for a reasonable user to subject her computer to these practices.

Causes impaired computer performance and intermittent shutdown

51. The installation of the FastMP3Search Plugin leads to severe impairment in performance of users' computers, including frequent freezing and intermittent shutdowns. FastMP3Search.com.ar does not in any way warn users of these crippling problems prior to download or installation of the Plugin, nor does it provide consumers any opportunity to consent to or reject the harm to their computers that will result.

52. A user acting reasonably in the circumstances is likely to be misled by the false claims of fast download time and "no risk" on the Plugin download page, as well as by the complete lack of disclosure or warning by FastMP3Search.com.ar of any likely impairment, into believing that downloading the Plugin will not result in unusual performance degradation or other harm to the user's computer.

53. Moreover, many of the pop-up advertisements that are caused by downloading the Plugin take deliberate advantage of this slowdown and freezing behavior to induce the user into clicking on phony anti-badware pop-ups that portray themselves as anti-badware applications, but in fact are badware themselves. For example, they ask the user, "Is your computer slower than it used to be?", "Has your computer been crashing or freezing a lot lately?", and "Are you tired of those hundreds of ads & windows popping up...?", and then suggest that the user conduct a "free scan" of her system using the purported anti-badware application they advertise. These pop-ups are especially egregious in their attempts to deceive the user into "fixing" the Plugin-caused performance problems by downloading even more applications that behave as badware or possibly by purchasing fake security products.

54. These applications are represented to users as legitimate anti-badware applications, and FastMP3Search.com.ar does not in any way inform or warn users of their true nature, provide any information that would give an ordinary user any reason to doubt their authenticity, or provide users any opportunity to consent to or reject their delivery in the first instance.

55. These representations, omissions and practices are material because they would affect the user's decision to download the Plugin. A reasonable user would be extremely unlikely to choose to subject her computer to greatly diminished performance, frequent freezes, and intermittent shutdowns for any reason; would not expect the delivery of numerous pop-ups from downloading the Plugin as represented; and would be likely to believe that the computer-triggered advertisements were from legitimate anti-badware providers offering real products that might assist with their new performance problems and therefore to click on the phony "anti-badware" pop-ups as a way to try to deal with those problems.

B. Unfairness

56. The FTC Act defines an unfair practice as a practice that (1) causes or is likely to cause substantial injury to consumers that (2) cannot be reasonably avoided by consumers and (3) is not outweighed by any countervailing benefits to consumers or competition that the

practice produces. 15 U.S.C. § 45(n) (2000). *See also, Orkin Exterminating Co.*, 108 F.T.C. 263 (1986); *International Harvester Co.*, 104 F.T.C. 949, 1061 (1984); *Amrep Corp.*, 102 F.T.C. 1362, 1669 (1983); *Horizon Corp.*, 97 F.T.C. 464, 849 (1981); FTC Policy Statement on Unfairness, 104 F.T.C. 1070 (1984), appended to, *International Harvester Co.*, 104 F.T.C. 949, 1064 (1984). The deceptive practices described in this Complaint satisfy all three criteria.

Installs additional software, including Trojan horses

57. The deceptive installation of additional software causes substantial injury to computer users. The installation of Trojan horses can allow unrestricted access to consumers' computers, creating a dangerous risk that attackers can gain access to users' data, take control of or damage their computers, or otherwise greatly interfere with their computers' performance. Consumers may face financial and/or privacy losses and the loss or impaired use of their computers. The installation of adware causes numerous pop-ups that interfere with computer use and slow down computer performance. Similarly, the presence of the added toolbars is disruptive and distracting and makes Internet Explorer less efficient to use, and the unsolicited search box in the consumer's taskbar makes the desktop more cluttered and confusing.

58. Consumers may have to spend considerable time, effort and possibly money attempting to remove the adware and unwanted toolbars and search box. The costs of attempting to repair the damage done by the Trojan horses and the attacks they facilitate, in particular, may be substantial, including among other damages the possible costs to professionally repair the computer.

59. Consumers cannot reasonably avoid these injuries because the installation of the additional software by the FastMP3Search Plugin is not disclosed to them and they have no opportunity to consent or object to the installation before it occurs. Indeed, FastMP3Search.com.ar actively misleads consumers by representing that the Plugin carries "no risk," and by deliberately hiding the installation of the Trojan horses and other applications along with the Plugin.

60. The deceptive installation of additional software, especially Trojan horses, provides no benefits to consumers or competition. Certainly the consumers' access, if any, to certain MP3 files on the FastMP3Search.com.ar web site is not a benefit that should be seen as appropriately conditioned on the undisclosed, deceptive installation of additional, malicious software or any of the other harmful consequences that result from installing the FastMP3Search Plugin. The owner(s) and/or operator(s) of FastMP3Search.com.ar presumably receive some benefit as a result of successfully deceiving consumers into downloading the variety of badware that accompanies its Plugin. Neither of these so-called "benefits" outweighs the substantial injury inflicted on users as a result of downloading the Plugin.

Disables Windows Firewall, redirects web addresses, and makes other changes

61. Disabling Windows Firewall causes substantial injury to consumers by leaving their computers completely unprotected and allowing even more badware to be secretly installed without their knowledge or consent. The loss of firewall protection and the likely resulting addition of more badware, including damaging viruses or Trojan horses, risks users' data security and privacy, interferes with their use and operation of their computer, and impairs their computers' performance. Users may be plagued by even more disruptive pop-ups, may lose data, and will have greater difficulty or require more time in performing tasks with their computers, all as a result of downloading the Plugin.

62. Thwarting consumers' attempts to reach major anti-virus, anti-spyware, and other badware detection tools by redirecting the web addresses for those tools also causes substantial injury. It directly prevents the user from getting the advice or applications she needs to detect and remove the badware that FastMP3Search.com.ar has installed, and prevents existing anti-badware applications from updating themselves. This leaves the user with significantly fewer protections against the onslaught of badware, which can further exacerbate the various harms described above.

63. Changing the user's homepage causes substantial injury to consumers. Affected users may suffer disruption and confusion and will have to devote time and effort to changing their homepages back to their original settings. Many users may not know how to do this and may have to obtain additional assistance, forcing them to spend even more time, and possibly money, fixing the problem.

64. Consumers cannot reasonably avoid these injuries because FastMP3Search.com.ar provides no notice or warning of, and no opportunity to consent to or reject, the disabling of the Windows Firewall, the redirection of the anti-badware web addresses, or the browser hijacking.

65. The substantial injury to users caused by these practices is not outweighed by any small benefit they might receive in the form of access to the MP3s on the website.

Applications cannot easily be closed, automatically run, and are difficult or impossible to uninstall

66. Bundled software that cannot easily be closed or that automatically runs on startup, and that cannot easily, if at all, be uninstalled, causes substantial injury to users. The constantly running software itself significantly impairs the performance of the computer and results in the downloading of even more badware onto the system, thus further impairing performance. Consumers will suffer from inoperable or inefficient systems and are likely to spend a significant amount of time and money searching for ways to remove the offending software. Moreover, the longer the programs remain on the user's computer the more badware is downloaded, which further frustrates the user and interferes with the computer's performance. The various harms described above are exacerbated by consumers' inability to readily rid their computers of the Plugin and related badware.

In each case, consumers likely will have to expend a significant amount of effort and money in order to resolve these problems, including possible costs to professionally repair their computers.

67. Because the owner(s) and/or operator(s) FastMP3Search.com.ar provide no advance notification or disclosure of and no opportunity to consent to or reject these startup and uninstall features and omissions, but instead falsely assure consumers on the Plugin download page that there is "no risk," a reasonable user has no way to anticipate or reasonably avoid these risks.

68. The substantial injury to users caused by software that cannot easily be closed or that automatically runs on startup and that cannot readily, if at all, be uninstalled is not outweighed by any small benefit users might receive in the form of access to the MP3s on the website.

Causes impaired computer performance and intermittent shutdown

69. The severe impairment in performance of consumers' machines, including frequent freezing and intermittent shutdowns, caused by the installation of the FastMP3Search Plugin causes substantial injury to users. Consumers' ability to efficiently use their computers and applications is hampered, basic tasks will take significantly longer, and the frequent freezes and intermittent shutdowns are likely to cause considerable user frustration and the possible loss of work and data. Moreover, the pop-up ads for bogus anti-badware products compound the injury to the computer's performance by encouraging users to download even more badware under the false promise of "fixing" the very problems caused by the Plugin itself. Users likely will be forced to spend a significant amount of time, effort and money to undo this damage and repair their computers.

70. Consumers cannot reasonably avoid these injuries. FastMP3Search.com.ar does not in any way inform consumers that downloading the Plugin will result in seriously impaired computer performance and intermittent shutdown. Rather, users are told that download of the Plugin will only take a few seconds and that there is "no risk." Worse, FastMP3Search.com.ar's phony pop-up "fix-it" scam shamelessly exploits the situation it has created; after slowing down computer performance, FastMP3Search.com.ar entices vulnerable and frustrated computer users into clicking on anti-badware ads which in reality lead to downloading more badware, further exacerbating an already inconvenient and harmful problem. FastMP3Search.com.ar provides no information or disclosure of, and no opportunity to consent to or reject, this highly unusual and underhanded practice, and consumers thus cannot reasonably be expected to avoid the injury. Under these circumstances, a reasonable user would not have any basis on which to anticipate that the Plugin would download a large amount of unwanted and undisclosed software and then cripple the operation of the user's computer.

71. The injuries to consumers caused by impaired computer performance and intermittent shutdown are substantial, and dramatically outweigh any slight benefit users may receive in the form of access to MP3s on the website.

V. LIABILITY

72. StopBadware.org and CDT believe that the developers, owners and operators of FastMP3Search.com.ar should be held liable for the illegal practices described above because:

- A. The objective circumstances surrounding the design and operation of the FastMP3Search.com.ar web site and the characteristics and behavior of the FastMP3Search Plugin leave little room for doubt that the developers, owners and operators of FastMP3Search.com.ar have actual knowledge that the numerous behaviors of, and those caused by, their software detailed above are deceptive and unfair practices. There can be no doubt that they should have known that their actions were deceptive and unfair;
- B. It is readily apparent from downloading the Plugin that FastMP3Search.com.ar intentionally changes thirty-two addresses to badware detection tools in order to foil anti-virus and anti-badware tools and thereby continue to download even more badware onto users' computers. The specific targeting of this behavior demonstrates that the owners and operators of FastMP3Search.com.ar knew or must have known that their practices were deceptive and unfair;
- C. Similarly apparent is FastMP3Search.com.ar's knowledge of and intent regarding the targeted delivery of pop-ups to phony anti-badware companies in order to take advantage of the frustration users felt due to the impaired computer performance caused by the FastMP3Search Plugin. This conduct, too, is sufficiently specific and pernicious as to leave no doubt that the owners and operators of FastMP3Search.com.ar knew or must have known the extent to which their actions were deceptive and unfair; and
- D. The unwanted, disruptive and misleading nature of the remaining behaviors described in this Complaint also is straightforward. Given their plainly deceptive nature, any company producing or distributing the FastMP3Search.com.ar web site or Plugin, including the site's owners and operators, would have known and undoubtedly should have known that their actions constituted deceptive and unfair practices. At a bare minimum, there is no reason that the owners or operators of FastMP3Search.com.ar could not have identified and recognized each of the harmful behaviors and practices described above as easily as StopBadware.org's analysis identified and revealed them.

VI. CONCLUSIONS AND REQUEST FOR RELIEF

73. Because of the deceptive and unfair nature of the practices employed by the owner(s) and/or operator(s) of FastMP3Search.com.ar described above, and because of the substantial injury suffered by Internet users as a result of these practices, StopBadware.org and CDT request that the Commission:

- (a) Investigate FastMP3Search.com.ar and its developers, owners, operators and/or their subsidiaries and affiliates to determine who is responsible for the deceptive and unfair downloading and installation of software on consumers' computers;
- (b) Enjoin the developers, owners, and operators of FastMP3Search.com.ar and/or their subsidiaries and affiliates from engaging in future deceptive and unfair installation of software and use of other deceptive and unfair practices; and
- (c) Seek such other equitable relief as the Commission finds appropriate.

74. The value and ongoing potential of the Internet will be substantially harmed if users come to believe that they cannot use it without risk of surreptitious "infection" by Trojan horses, malicious software applications, harmful adware and other forms of badware of the sort delivered by the FastMP3Search Plugin. The spread of such damaging software by FastMP3Search.com.ar and its downloadable Plugin is particularly broad and pernicious, even as compared to most other sources and types of badware. It is imperative that the Commission act in cases such as this one where invasive software is distributed in ways that are so plainly deceptive and unfair, and that cause such direct injury to Internet users. In light of the ongoing and widespread nature of the practices addressed in this complaint, we request that the Commission utilize all of the tools at its disposal and work with other law enforcement bodies as appropriate to ensure that consumers receive prompt and necessary relief.

Respectfully submitted,

Jonathan Zittrain, Co-Director
John Palfrey, Co-Director
Christina Olson, Project Manager
Phillip R. Malone, Counsel

StopBadware.org
Berkman Center for Internet & Society
Harvard Law School
23 Everett Street
Cambridge, MA 02138
617-495-7547
<http://stopbadware.org>

Ari Schwartz, Deputy Director
Alissa Cooper, Policy Analyst

Center for Democracy and Technology
1634 Eye Street NW #1100
Washington, DC 20006
202-637-9800
<http://www.cdt.org>