

United States Courts  
Southern District of Texas  
ENTERED

JUN 14 2005

Michael N. Milby, Clerk of Court

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS

\_\_\_\_\_  
FEDERAL TRADE COMMISSION, )  
 )  
 )  
Plaintiff, )  
 )  
 )

Civ. No. H05-1905

PROPOSED

vs. )

STIPULATED PRELIMINARY  
INJUNCTION ORDER

TRUSTSOFT, INC. d/b/a )  
SWANKSOFT and SPYKILLER, )  
 )  
DANILO LADENDORF, individually and )  
as an officer of Trustsoft, Inc., )  
 )  
Defendants )  
 )

**IT IS THEREFORE STIPULATED, AGREED, AND ORDERED** as follows:

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to

5. Defendants dispute and deny the contentions of the FTC, but agree to this Stipulated Preliminary Injunction to expedite a resolution of this matter;

success on the merits, issuance of a preliminary injunction requiring an immediate freeze

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.

electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service and has the same meaning as defined in the CAN-SPAM Act, 15 U.S.C. § 7702(2)(A).

- D. **"Defendants"** means Trustsoft, Inc., also doing business as "Swanksoft," "SpyKiller," and "spykiller.com," and Danilo Ladendorf. Furthermore, any person insofar as he or she is acting in the capacity of an officer, agent, servant, employee or attorney of any defendant, and any person or entity in active concert or participation with any of the

foregoing who receives actual notice of this Order by personal service or otherwise is

F. **“Plaintiff”** means the Federal Trade Commission.

H. **“Spyware,”** which includes **“adware”** means (as defined by defendants in their

marketing media) programs that “hide on your computer and do a number of harmful and

annoying things without your knowledge.”

A. Misrepresenting, before a consumer has downloaded any of defendants' computer software, that: (1) a computer has been scanned or otherwise examined for the presence of spyware; or (2) spyware has been detected on a computer;

B. Misrepresenting that processes on a computer that are not spyware are "Live Spyware Processes";

C. Misrepresenting any material feature of a spyware removal product including, but not limited to, the number of definitions incorporated in a spyware removal product;

D. Misrepresenting the type of spyware detection mechanism used by a spyware removal product;

after receiving notice from a consumer, potential consumer, or other entity not affiliated with the

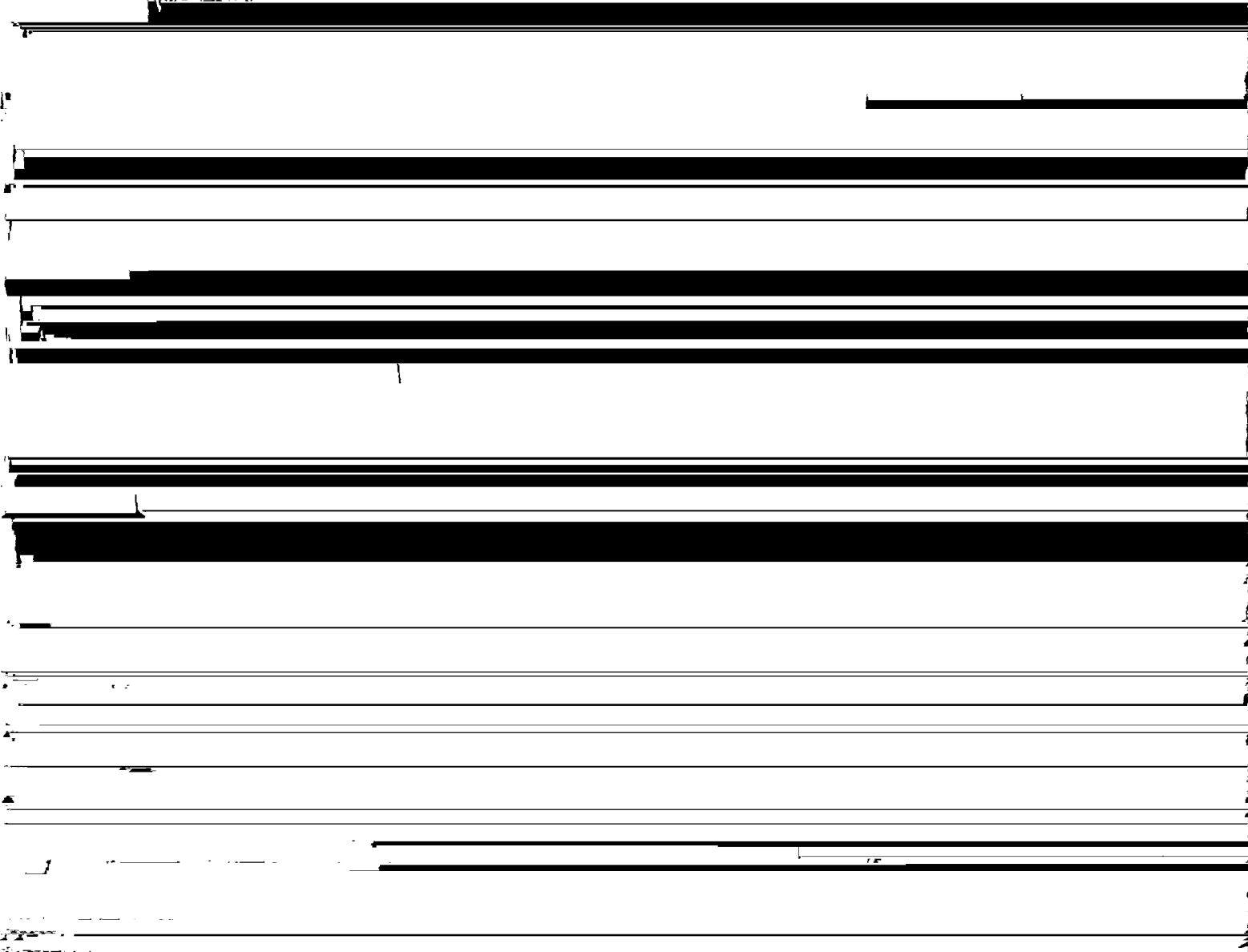
company at issue that the file or application is not spyware;

that:

A. Contain, or are accompanied by, materially false or materially misleading header information;

B. Do not include a clear and conspicuous notice of the recipient's opportunity to decline to receive further commercial email messages from the sender at the recipient's electronic mail address;

C. Do not include a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that a recipient can use to submit a reply electronic mail message or other form of Internet-based communication requesting not to receive



wherever located, that are: (1) owned or controlled by defendants, in whole or in part; (2) held for the benefit of defendants; (3) in the actual or constructive possession of defendants; or (4) owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by any defendant, including, but not limited to, any assets held by or for, or subject to access by, any of defendants, at any bank or ~~any other financial institution, or with any broker-dealer, escrow agent, title company, commodity~~

~~any other financial institution, or with any broker-dealer, escrow agent, title company, commodity~~

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additional funds to apply toward the tax payment for this quarter, if necessary. The FTC does not object to additional funds being released, if determined to be required to meet the defendants' quarterly tax obligation for the quarter ending June 15, 2005 by the Court or the FTC, so long as the amount does not exceed the "safe harbor" amount of \$175,000 proffered by defendants based on their 2004 revenue.

*Notwithstanding the above*, the defendants may, with the express written permission of the Commission and at the sole discretion of the Commission, make expenditures from assets frozen pursuant to this paragraph without further leave of the Court.

#### **FINANCIAL REPORTS AND ACCOUNTING**

#### **IV.**

**IT IS FURTHER ORDERED** that, to the extent that defendants have not complied with Section VI of the TRO, each defendant shall immediately:

A. Prepare and deliver to the Court and counsel for plaintiff Commission completed financial statements, verified under oath and accurate as of June 1, 2005, on the forms attached to

accountant, financial planner, investment advisor, stock broker, or other person who provided any defendant with financial, business, or tax advice or services since January 1, 2003; and

D. Provide the Commission access to all records of accounts or assets of defendants held by financial institutions located outside the territorial United States by signing the Consent to Release of Financial Records attached to the TRO as Attachment C.

*Provided further*, plaintiff is immediately authorized to issue subpoenas to demand the production of documents.

excepted from the asset freeze as described in Paragraph III of this Order including for funds

derived from sales of HistoryKill after June 1, 2005. *Provided further*, that defendants shall provide to the plaintiff the name and location of each such new account within forty-eight (48) hours of opening it.

B. Deny the defendants access to any safe deposit box that is:

1. titled in any defendants' name, alias, or fictitious "doing business as" name, individually or jointly; or
2. otherwise subject to access by any defendant;

C. To the extent not already done pursuant to Section VII of the TRO, within five (5) business days of receiving a copy of this Order, provide to the Commission's counsel a sworn statement setting forth:

or is otherwise subject to access by a defendant; and

D. Upon request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to each such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. Any such financial institution, account custodian, or other aforementioned entity may arrange for the Commission to obtain copies of any such records which the Commission seeks.

## **PRODUCTION OF RECORDS**

### **VI.**

**IT IS FURTHER ORDERED** that, to the extent that defendants have not complied with Section VIII of the TRO with respect to producing: (1) documents owned by or in the custody or control of the defendants concerning defendants' business practices or assets, or (2) computers owned by or in the custody or control of the defendants that are being used or have been used in connection with defendants' business practices or assets, which documents or computers were not located at the defendants' business premises at 1330 Post Oak Blvd., Suite 2300, Houston, Texas during the Immediate Access that took place on June 2, 2005, each defendant shall immediately identify and produce such documents and computers for copying and inspection to the Regional Office of the Attorney General at 808 Travis, Suite 300, Houston, Texas 77002, or at another location mutually agreed upon by plaintiff and defendants. In order to prevent the destruction of

shall not be used until produced for copying and inspection, along with any codes needed for access.

*Provided further*, that plaintiff shall return to defendants any documents or computers

produced within five (5) business days of the date of the order.

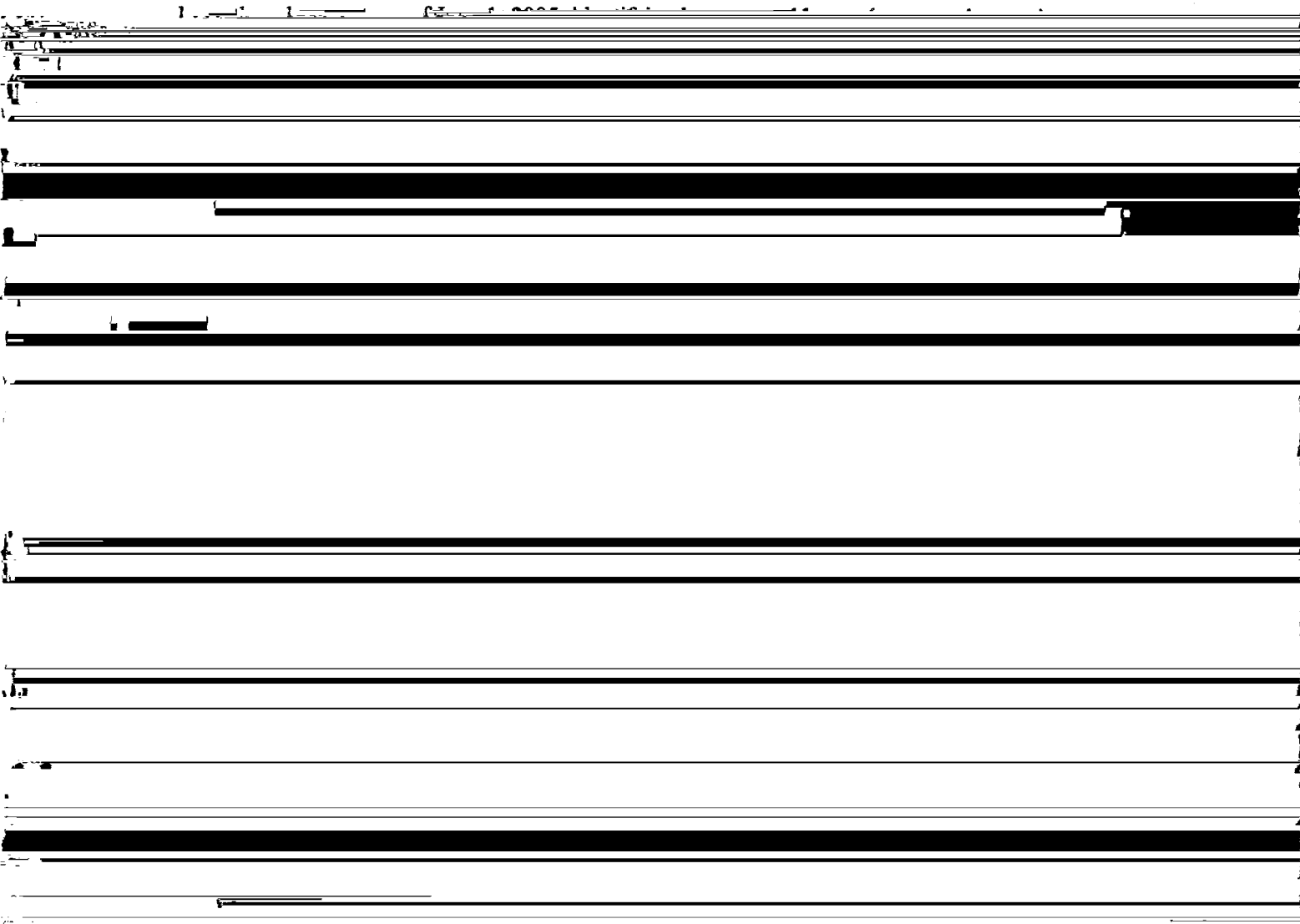
statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind that relate to the business practices or business or personal finances of defendants.

**IDENTIFICATION OF AFFILIATES AND CUSTOMERS**

**VIII.**

**IT IS FURTHER ORDERED** that, to the extent that defendants have not complied with Section X of the TRO, defendants shall:

- A. Immediately prepare and deliver to the plaintiff a completed statement, verified



**RECORD KEEPING/BUSINESS OPERATIONS**

**IX.**

**IT IS FURTHER ORDERED** that defendants are hereby restrained and enjoined from:

A. Failing to create and maintain documents that, in reasonable detail, accurately,

B. Creating, operating, or exercising any control over any business entity, including

**SERVICE OF ORDER**

**XI.**

**IT IS FURTHER ORDERED** that notice of this Order be given to \_\_\_\_\_

[REDACTED]




notifications or reporting related to this case or under this Order, service on the Commission shall be performed either by overnight mail delivery or facsimile to the attention of Robert Kaye at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room H-238, Washington, DC 20580, telephone number (202) 326-2215, facsimile number (202) 326-3395.

**RETENTION OF JURISDICTION**

**XV.**

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for all

**REASONS**



/s/Robert S. Kaye

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Attorney-in-Charge, Plaintiff:

Robert S. Kaye

Julie G. Bush

**FEDERAL TRADE COMMISSION**

600 Pennsylvania Avenue, N.W., Room 238,

Washington, D.C. 20580

202.326.2215

202.326.3395 (Facsimile)

s/Kent A. Rowald

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State Bar No. 17329300

**DUANE MORRIS, L.L.P.**

3200 Southwest Freeway, Suite 3150

Houston, TX 77027-7534

713.402.3937

713.402.3901 (Facsimile)