

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

FEDERAL TRADE COMMISSION,

Plaintiff,

Civil No. 05-CV-330-SM

v.

ODYSSEUS MARKETING, INC.,
and WALTER RINES.

FIRST AMENDED COMPLAINT
FOR INJUNCTION AND OTHER
EQUITABLE RELIEF

PLAINTIFF

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States government created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The Commission is authorized to initiate federal district court proceedings by its own attorneys to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including restitution for injured consumers, consumer redress, and disgorgement. 15 U.S.C. § 53(b).

DEFENDANTS

5.

concert with others, Rines has formulated, directed, controlled, or participated in the acts and practices of OMI, including the acts and practices complained of below. Rines resides and transacts or has transacted business in the District of New Hampshire.

COMMERCE

7. The acts and practices of OMI and Rines (collectively, “Defendants”) alleged in this Complaint are or have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. §§ 44.

DEFENDANTS’ BUSINESS PRACTICES

Introduction

8. Since at least September 2003, through a variety of means, Defendants have distributed to consumers’ computers a software program, known as “Clientman,” that disseminates pop-up and other Internet advertisements, collects personal information, and installs a number of third-party advertising and other programs without notice to consumers. Clientman and the additional programs that it installs interfere with consumers’ normal use of the Internet and degrade their computers’ performance. In some cases, Defendants distribute Clientman by exploiting computer security vulnerabilities to download the program to consumers’ computers without authorization. In other cases, Defendants induce consumers to download Clientman by including it with software products for which Defendants make false perform

computers is exploiting particular computer security vulnerabilities in the Microsoft Internet Explorer web browser (“IE web browser”) and other applications in order to install Clientman and other software onto consumers’ computers without their knowledge or authorization.

10. A web browser, which is used by a com

be disseminated advertisements for the software, including the web site www.kazanon.com (the “Kazanon web site”), which is attached as Exhibit A. The Kazanon web site contains the following statements and depictions:

KAZANON

*[Depiction of news article
with headline*

DOWNLOAD MUSIC WITHOUT FEAR

*“Record companies plan
legal action!”]*

Introducing KAZANON V1.0 - the FIRST AND ONLY FREE FILE-SHARING ANONYMIZER

WHAT IS KAZANON?

You can FINALLY - ANONYMOUSLY - safely and securely download and, swap, and trade music, movies, software, everything - with your FAVORITE program (Kazaa, Morpheus, Grokster, WinMX, or any of the P2P programs!)

KAZANON makes you TOTALLY ANONYMOUS and INVISIBLE - NO ONE WILL EVER KNOW YOUR REAL IDENTITY, LOCATION, or IP ADDRESS.

Kazanon silently modifies your PC’s Internet settings to make you invisible, untracable, and totally anonymous. NO MORE FEAR of a lawsuit or prosecution just for downloading your favorite music!

HOW MUCH DOES IT COST?

NOTHING!!!

Kazanon is 100% FREE, but we cannot promise it will always be available - WE will probably be sued for making it available!

That’s why we want to get it out to everyone right away, and keep the file-sharing revolution alivf12 0 0 1yA4file-shupTf12 0 fW12 0 0 1e8a kTmW

keep running at all times and keep you safe.

Kazanon is FREE, all we ask is that you optionally Tell-A-Friend about us and send this page to your friends and family so they can trade music without fear as well! Link to this page if you can! Don't let the record companies win!

DON'T LET THE RECORD COMPANIES WIN! DOWNLOAD NOW!!!

By checking this box I hereby certify that I have read and agreed with all of the Terms and Conditions

[Exhibit A, www.kazanon.com web page, as of July 11, 2005]

Effects on Computers That Have Clientman Installed

13. Once installed, Clientman disseminates advertisements, collects personal information, and downloads a number of advertising software programs (“adware”) and other software programs, including, but not limited to, VX2, Blazefind, Ncase, DealHelper, Surfsidekick, InternetOptimizer, BargainBuddy, WebRebates, Avenue A, and eZula. Several of these programs are downloaded from the Internet servers abetterinternet.com, speedera.net, skoobidoo.com, and flingstone.com, which are respectively controlled by the companies Direct Revenue, Inc., Speedera, Inc., and CDT, Inc.

14. Clientman and these additional software programs, among other things, intercept search results that are provided to users who query popular Internet search engines, including the Google and Yahoo web sites, and replace them with results that differ in content. *See, e.g.*, Exhibits B(1) and B(2) and C(1) and C(2). Defendants insert these “fake” search results, including hyperlinks and banner ads, in web pages that have the “look and feel” of the search engines’ web pages. Defendants distribute these hyperlinks and banner ads on behalf of third parties. There is no notice to users that their search results are being manipulated at the time they query these search engine web sites.

15. Clientman and these additional software programs also collect and use information

20. Part III of the Kazanon EULA states that the “user understands and agrees that the application may or may not render them anonymous, untraceable, or invisible at any given time. . . .” *See* Exhibit D.

21. Parts V and VI also state that Kazanon and “associated components” may: (1) “communicate from time to time with Odysseus Marketing, Inc. server systems and/or that of its partners” and engage in “communications and data transmissions of any and all types;” and (2) “alter Internet browsing and/or computer user experiences in a manner acceptable to [OMI], in its sole discretion, including but not limited to, search engine query results, display of pop-up window messages, highlighting and hyperlinking words on web pages, redirection of error message pages, changing user home page, addition of bookmarks to user’s browser, and/or other alterations/modifications.” *See* Exhibit D.

22. Parts VII through XII also state that the user provides Defendants with “express permission” to: (1) collect “personal information including, but not limited to, name, demographic data, interests, profession, education, marital status, age, income, and any other information [OMI] decides to collect” and “information and data regarding Internet activity, including web sites visited, search queries conducted, applications installed and used, files present on the users hard drive or system, transactions conducted, and any other behavioral data deemed necessary by [OMI]”; (2) use such information and data “as [OMI] sees fit, including the sharing, rental, or sale of any of said data or any portion thereof to any entity at the sole discretion of [OMI] and that the “permission granted for collection and use of data is irrevocable and survives any removal of [Kazanon] and associated components;” (3) “alter applications, files, and/or data . . . , including but not limited to file sharing applications, media viewers, and/or player

applications;” (4) “disable or delete applications and/or files deemed unfriendly or harmful to [OMI] or any of its partners in OMI’s sole discretion without notice to the user, and may auto-reinstall application and/or any associated components, unless approved auto-uninstall application is used.” *See* Exhibit D.

23. Parts XV and XVI state that in accepting Kazanon’s terms and conditions, the user also agrees to accept the terms and conditions of 180search Assistant and DealHelper, two other applications that may be installed in conjunction with Kazanon. *See* Exhibit D.

24. Since at least November 2004, the final paragraph of the Kazanon EULA has instructed consumers to visit the web page www.odysseusmarketing.com/uninstall to uninstall Kazanon. *See* Exhibit D.

Installation of Clientman to Consumers’ Computers

25. Clientm

files that comprise Clientma

downloading and installing advertising and other software programs on behalf of others.

Defendants receive or have received fees from advertisers to disseminate their Internet ads and from software vendors based on the number of software downloads and installs that they have caused.

COUNT ONE

Unfairly Installing Advertising, Data Collection and Other Software Programs

31. In numerous instances, through the means described in Paragraphs 9 through 10, the Defendants download and install or have downloaded and installed Clientman onto consumers' computers without their knowledge or authorization by exploiting vulnerabilities in the IE web browser.

32. Clientman downloads and installs advertising and other software programs. Clientman and these software programs replace search results provided by search engine web sites and send pop-up advertisements and other Internet ads. In addition, Clientman collects and stores consumers' personal information without their knowledge and contrary to their expectations.

33. Consumers are required to spend substantial time and money to resolve these problems with their computers and to prevent the future collection of personal information from their computers. Further, consumers have no recourse to reclaim the personal information that Defendants have collected or to prevent Defendants' disclosure of that information. Consumers cannot reasonably avoid this substantial injury because the Defendants have exploited vulnerabilities in their computers' IE web browsers to download and install without their knowledge or authorization the software program that leads to the injury. The Defendants' practices do not benefit consumers or competition. Thus, their practices cause or are likely to

cause substantial injury that cannot be reasonably avoided, and this injury is not outweighed by countervailing benefits to consumers or competition.

34. Therefore, the Defendants' practices, as described in Paragraph 31 through 33 above, are unfair and violate Section 5 of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

False Representation About File Sharing Anonymity

35. Through the means described in Paragraph 12, Defendants have represented, expressly or by implication, that Kazanon makes users of P2P file-sharing programs anonymous, and that therefore no one will discover their identity, or their computers' IP address or location, when they download or trade music, movies, software, or any other data, sound, or video file through the Internet.

36.

Clientman and these software programs replace search results provided by search engine web sites and send pop-up advertisements and other Internet ads.

and stored or to prevent Defendants' disclosure of that information. Consumers cannot reasonably avoid this injury because Defendants do not provide an effective means for them to locate the software and remove it from their computers. The Defendants' practices do not benefit consumers or competition. Thus, Defendants' practices cause or are likely to cause substantial injury that consumers cannot reasonably avoid, and this injury is not outweighed by countervailing benefits to consumers or competition.

43. Therefore, Defendants' practices, as described in Paragraphs 41 and 42 above, constitute an unfair practice in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

44. Defendants' violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a), as set forth above, have caused and continue to cause substantial injury to consumers. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

45. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement and restitution, to prevent and remedy any violations of any provision of law enforced by the Federal Trade Commission.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, the Federal Trade Commission, requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to its own equitable powers:

1. Award plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to

preserve the possibility of effective final relief.

2. Permanently enjoin the Defendants from violating Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), as alleged in this Complaint.

3. Award such equitable relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, including, but not limited to, rescission of contracts and restitution, and the disgorgement of ill-gotten gains;

4.
