

DISTRICT OF NEW HAMPSHIRE

FEDERAL TRADE COMMISSION,
Plaintiff,

v.

ODYSSEUS MARKETING, INC., and
WALTER RINES,

Defendants.

Civil No. 05-CV-330-SM

**STIPULATED FINAL ORDER
FOR PERMANENT INJUNCTION AND
SETTLEMENT OF CLAIMS FOR MONETARY RELIEF**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission") filed a Complaint and Amended Complaint ("Complaint") for permanent injunction and other relief pursuant to

2. "Rines" means Walter Rines, individually and as an officer and director of Odysseus.
3. "Defendants" means Odysseus and Rines.
4. "Covered product" shall mean any desktop or laptop computer, handheld device, telephone, or other electronic product or device that has a platform on which to download, install, and run any software program, code, or other content.
5. "Kazanon" means the software program marketed under the name "Kazanon,"

including, but not limited to, all products and services identified in Exhibit A to the

- i. Causing the display of any advertisement, including but not limited to any pop-up or banner advertisement, any sponsored link or hyperlink to an advertisement placed on a web site, or any contextual response;
 - ii. Modifying any web browser or operating system software;
 - iii. Collecting personally identifiable information or passwords or codes that enable access to such information;
 - iv. Causing the download of any additional software program, code, script, or content;
 - v. Causing additional web browser windows to open a URL related to the URL a consumer is viewing; and
 - vi. Placing icons on a consumer's desktop or in the "Favorites" folder; and
2. The user of the covered product indicates assent to the installation or download of such software program, code, script, or other

3. That person indicates assent to the taking and use of such information by clicking on a button that is labeled to convey his or her specific consent to the specific taking and use of the information, or by taking substantially similar affirmative action authorizing the taking and use of the information.
8. “Clearly and conspicuously” means:
- a. The disclosure shall be unavoidable. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement;
 - b. In the case of any disclosure concerning the distribution or installation of any software program or other content, the disclosure shall be made prior to the consumer installing or downloading any software code, program, or content and prior to the consumer incurring any financial obligation;
 - c. In the case of any disclosure concerning the obtaining or use of personally identifiable information, the disclosure shall be made immediately prior to the person providing any such information;
 - d. In the case of any disclosure required for purposes of obtaining express consent as defined in this Order, a disclosure made in any End User License Agreement shall *not* constitute a clear and conspicuous disclosure; and
 - e. In the case of advertisements communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portion of the advertisement. *Provided, however,* that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same

consumer to hear and comprehend it. The visual disclosure shall be of a

~~size and shall appear on the same page as the disclosure sufficient to~~

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11. "Assisting others" means knowingly providing any of the following services to any person or entity:

a. ~~Developing, supplying, distributing, or publishing any software program,~~

~~product, or service;~~

~~development, or provision of, any Internet advertising or marketing content for any person or entity; or~~

c. Performing advertising, or marketing services of any kind for any person or entity.

retrieve and view a web page or site by entering the Uniform Resource Locator

II.

IT IS FURTHER ORDERED that Defendants, whether acting directly or through any person, corporation, subsidiary, division, or other device, and their officers, agents, directors, employees, salespersons, independent contractors, affiliates, successors, assigns, and all other

persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, are hereby enjoined from, or assisting others in:

others in, deleting, modifying, altering, or replacing files contained in the System32 folder of any Microsoft Windows operating system.

Receipt and Use of Personally Identifiable Information

IV.

IT IS FURTHER ORDERED that Defendants, whether acting directly or through any person, corporation, subsidiary, division, or other device, and their officers, agents, directors, employees, independent contractors, affiliates, successors, assigns, and all other

persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, are hereby enjoined from, or assisting others in:

- A. Obtaining any personally identifiable information of any person *unless* that person provides express consent as defined in this Order prior to the taking and use of the information;

Defendants possess and rely upon competent and reliable evidence that substantiates the representation.

Removal of Software

VII.

~~**IT IS FURTHER ORDERED** that Defendants, whether acting directly or through any~~

~~person, corporation, subsidiary, division, or other device, and their officers, agents, directors, employees, salespersons, independent contractors, affiliates, successors, assigns, and all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, are hereby enjoined from, or assisting others in, distributing, installing, or downloading, or causing any user of a covered product to download or~~

install, any software program, code, script, or any other content without providing a reasonable and effective means to uninstall such software program, code, script, and any other content from any covered product on which it is installed, either through the use of the default uninstall utility

- A. Hiding or cloaking files, folders, or directories;
- B. Using random or misleading names or dates; or
- C. Misrepresenting the purpose or effect of files, directory folders, formats, or registry entries.

BOND REQUIREMENT FOR DEFENDANT RINES

IX.

IT IS FURTHER ORDERED that:

- A. Defendant Rines, whether directly, or in concert with others, or through any business, entity, corporation, subsidiary, division, or other device, in which he has a direct or indirect ownership interest or controlling interest, or for which he holds a managerial post or serves as an officer, director, consultant, or employee is hereby permanently enjoined and restrained from participating or assisting

Subparagraph A, and for at least three (3) years after he has ceased to engage in any such Bond Covered Activity.

3. The bond shall cite this Stipulated Final Order for Permanent Injunction and Settlement of Claims for Monetary Relief as the basis of the bond, and shall provide surety thereunder to consumers against financial loss resulting from any violation of the provisions of this Stipulated Final Order for Permanent Injunction and Settlement of Claims for Monetary Relief, or Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
4. The bond required by this section shall be issued by a surety company that:
 - a. Is admitted to do business in each of the states in which Defendant Rines conducts business; and
 - b. Holds a Federal Certificate of Authority as Acceptable Surety on Federal Bond and Reinsuring.
5. The bond shall be in favor of the Commission for the benefit of any consumer or consumers injured as a result of any violation of the provisions of this Stipulated Final Order for Permanent Injunction and Settlement of Claims for Monetary Relief or of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
6. The bond required is in addition to and not in lieu of any other bond

Paragraph to the Associate Director for Enforcement at the FTC by overnight courier.

8. Defendant Rines, directly or through any other persons acting in concert or participation with him or under his authority, supervision, or control shall not disclose the existence of any surety bond required by this Stipulated Final Order for Permanent Injunction and Settlement of Claims for Monetary Relief to any consumer or prospective customer without simultaneously making the following disclosure: **“This Bond Is Required by Order of the U.S. District Court in Settlement of Charges of Unfair and Deceptive Representations in the Promotion and Sale of Computer Software.”** Such disclosure shall be made clearly and conspicuously, and in close proximity to any statement disclosing the existence of the bond.

- C. In lieu of the bond required by Subparagraph A hereof, Defendant Rines may place the sum of the amount of the bond in cash or by an irrevocable letter of credit issued by an accredited United States bank, in an escrow account to be held by a suitable escrow agent to be selected by the Commission or its representative. Defendant Rines shall pay the costs associated with the creation, ~~funding, operation, and administration of the escrow account. The letter of credit~~

shall be subject to the terms and conditions of the bond required by Subparagraph B.1 through B.3, and B.5 through B.8 hereof. The escrow agreement shall

the provisions of the FTC Act, and determining the amount of consumer redress or disgorgement to be paid, shall pay to the Commission so much of the funds of the escrow account as does not exceed the amount of consumer redress or disgorgement ordered, and which remains unsatisfied at the time notice is provided to the escrow agent, *provided that*, if Defendant Rines has agreed to the entry of a court order or an order of the Commission, a specific finding that Defendant Rines has violated the terms of this Stipulated Final Order for Permanent Injunction and Settlement of Claims for Monetary Relief or the

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C. All funds paid pursuant to this Order shall be deposited into a fund administered

by the Commission for the benefit of consumers, including but not

limited to consumer redress, and any attendant expenses for the administration of such equitable relief.

D. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information

1. The suspension of the judgment amount set forth in this Paragraph shall

Million Dollars (\$1,750,000), shall immediately become due, plus interest from the date of entry of this Final Judgment pursuant to 28 U.S.C. § 1961, less any payments already made; and

2. The Commission shall be entitled to immediately exercise any and all rights and remedies against the Defendant and his property, to collect the

Full amount of \$1,750,000 Dollars (\$1,750,000).

Right to Reopen

XI.

IT IS FURTHER ORDERED that:

- A. The Commission's agreement to this Order is expressly premised upon the truthfulness, accuracy, and completeness of Defendants' certified financial statements and supporting documents submitted to the Commission on or about 11/18/2006 as well as any and all subsequent addenda thereto and any and all

information contained in Defendants' general ledger which was provided to the Commission pursuant to discovery in this proceeding. Defendants stipulate that all of these materials are truthful, accurate and complete. These documents contain material information upon which the Commission relied in negotiating and agreeing to the terms of this Order.

- B. If, upon motion by the Commission, a Court should determine that the Stipulating Defendants made a material misrepresentation or omitted material information concerning their financial condition, then the Court shall enter judgment against the Stipulating Defendants, jointly and severally, in favor of the Commission, in the amount of One Million Seven Hundred and Fifty Thousand

Dollars (\$1,750,000) in U.S. currency.

proceedings that the Commission or the United States may initiate to enforce this Final Judgment. For purposes of this Paragraph, and any subsequent proceedings to enforce payment, including but not limited to a non-dischargeability complaint

filed in a bankruptcy proceeding, Defendants agree not to contest any of the allegations in the Commission's Complaint.

DISTRIBUTION OF ORDER

XII.

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

- A. Defendant Odysseus must deliver a copy of this Order to each of its principals, officers, directors, and managers. Defendant Odysseus must also deliver a copy

of the Order to all of its employees, agents, programmers, and representatives

Order, Defendant Rines shall deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

- D. Defendants Odysseus and Rines must secure a signed and dated statement acknowledging receipt of this Order, within thirty days of delivery, from each person receiving a copy of the Order pursuant to this Paragraph.

COMPLIANCE MONITORING

XIII.

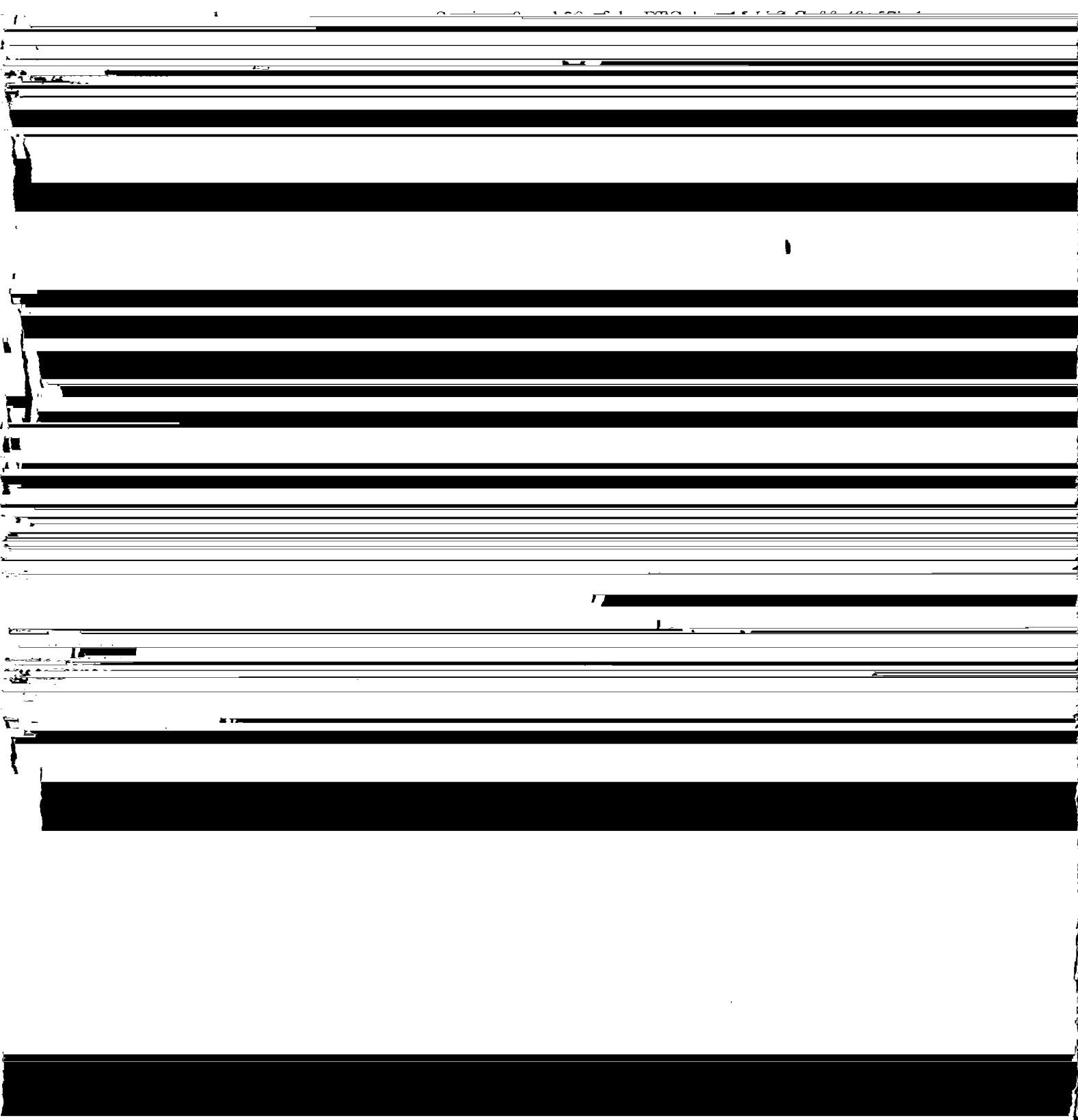
~~IT IS HEREBY ORDERED that~~

compliance with any provision of this Order:

- A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendants each shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in such defendant's possession or direct or indirect control to inspect the

this Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Order shall limit the Commission's lawful use of



2. Defendants Odysseus and Rines shall notify the Commission of any

business entity that Defendant Rines directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising

business. For purposes of this Paragraph, "employment" includes

the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom Defendant Rines performs services as an employee, consultant, or independent contractor;

- c. The full name, address, telephone number, and state of incorporation of each corporation for which the Defendant is an officer or director or in which he holds more than five (5) percent

of the shares of the corporation;

- d. The domain name, IP address, Host or Host Company (including contact information), and uniform resource locator ("URL") for web site, FTP site, bulletin board, or Internet server that

Defendant Rines has created, operates, or exercises any control over;

- e. A written statement identifying each software program Defendant Rines distributes through any Internet server or web site that he operates or exercises any control over, and disclosing the nature, purpose, and effect of such program and the methods by which he distributes the program; and
- f. Any other change required to be reported under subparagraph A of this Paragraph.

- c. Any other changes required to be reported under Subparagraph A of this Section.

~~For purposes of this Order, Defendants Odysseus and Pines each shall, unless~~

otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W.,
Washington, D.C. 20580

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- D. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate in writing directly with Defendants ~~Odysseus and Pines~~

RECORD KEEPING PROVISIONS

C. The full name, address, and telephone number, and the date upon which the work commenced and ended, of:

Each person—company or entity who has developed, created, modified, or

managed any software code, script, or content on any Defendant's behalf;

Each Internet Service Provider used by any Defendant;

H. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order and all reports submitted to the FTC pursuant to this Order.

ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANTS

XVI.

IT IS FURTHER ORDERED that each Defendant, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

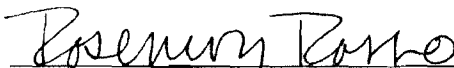
RETENTION OF JURISDICTION

XVII.

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

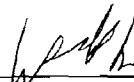
purposes of construction, modification and enforcement of this Order.

SO STIPULATED:

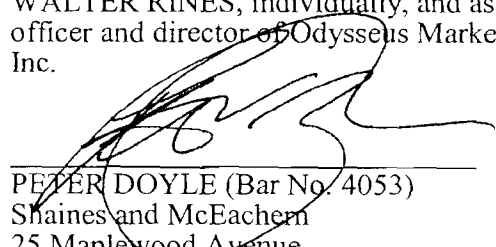


ROSEMARY ROSSO (NY Bar No. 1729730)
TRACY R. SHAPIRO (CA Bar No. 220811)
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601 New Jersey Avenue, N.W.
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ATTORNEYS FOR PLAINTIFF



WALTER RINES, individually, and as officer and director of Odysseus Marketing, Inc.


PETER DOYLE (Bar No. 4053)
Shaines and McEachern
25 Maplewood Avenue
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(603) 436-3110 (voice)
(603) 436-2993 (fax)

ATTORNEY FOR DEFENDANTS

SO ORDERED:

DATED: October 24, 2006

/s/ Steven J. McAuliffe
HON. STEVEN J. MCAULIFFE
Chief UNITED STATES DISTRICT JUDGE

I, Rosemary Rosso, certify that on October 20, 2006, I caused a copy of the Stipulated Final Order For Permanent Injunction and Settlement of Claims For Monetary Relief to be served electronically, by means of the Court's ECF system, upon the following counsel for Defendants Odysseus Marketing, Inc. and Walter Rines:

Peter V. Doyle, Esq.
Shaines & McEachern, PA
25 Maplewood Avenue
P.O. Box 360
Portsmouth, N.H. 03802

/s/ Rosemary Rosso

Rosemary Rosso (NY Bar No. 1729730)
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Dated: October 20, 2006