# UNITED STATES OF AMERICA
## FEDERAL TRADE COMMISSION

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| **In the Matter of** | ) | **FILE NO. 042 3016** |
|  | ) |  |
| **BONZI SOFTWARE, INC.,** | ) | **AGREEMENT CONTAINING** |
| a corporation, and | ) | **CONSENT ORDER** |
|  | ) |  |
| **JOE BONZI and JAY BONZI,** | ) |  |
| individually and as | ) |  |
| officers of said corporation. | ) |  |
| _____ | ) |  |

The Federal Trade Commission has conducted an investigation of certain acts and practices of Bonzi Software, Inc., a corporation, and Joe Bonzi and Jay Bonzi, individually and as officers of said corporation ("proposed respondents").  Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the attached draft complaint.  Therefore,

**IT IS HEREBY AGREED** by and between Bonzi Software, Inc., by its duly authorized officers, and Joe Bonzi and Jay Bonzi, and counsel for the Federal Trade Commission that:

1.      Proposed respondent Bonzi Software, Inc. is a privately held Delaware corporation with its principal office and place of business located at 3000 Broad Street, Suite 115, San Luis Obispo, California 93401.

Proposed respondents Joe Bonzi and Jay Bonzi are owners and officers of Bonzi Software, Inc., and formulate, direct, and control the acts and practices of the corporation.

2.      Proposed respondents admit all the jurisdictional facts set forth in the draft complaint.

3.      Proposed respondents waive:

(a)      Any further procedural steps;

(b)      The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c)      All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4.      This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission.  If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a

period of thirty (30) days and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5.      This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

6.      This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondents' address as stated in this agreement by any means specified in Section 4.4(a) of the Commission's Rules shall constitute service. Proposed respondents waive any right it may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7.      Proposed respondents have read the draft complaint and consent order. They understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1.      "Personally identifiable information" or "personal information" shall mean individually identifiable information from or about an individual consumer including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name that reveals an individual's email address; (d) a telephone number; (e) a social security number; (f) an Internet Protocol ("IP") address or host name that identifies an individual; (g) a persistent identifier, such as a customer number held in a "cookie" or processor serial number, that is combined with other available data that identifies an

individual; or (h) or any information that is combined with (a) through (g) above.

2.      Unless otherwise specified, "respondents" shall mean Bonzi Software, Inc., its successors and assigns and its officers, agents, representatives, and employees, and Joe Bonzi and Jay Bonzi.

3.      "Commerce" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

## I.

IT IS ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of InternetALERT or any other computer software product or service that is marketed as enhancing security, in or affecting commerce, shall not misrepresent:

> A.      the extent to which any such product or service will reduce the risk of unauthorized access into such computer, or any such similar system; or
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> B.      the extent to which any such product or service will maintain, protect, or provide security features that will enhance the security or privacy of any such computer (or any such similar system) or any data, that is stored in a computer, or any similar system, including personally identifiable information.

## II.

IT IS FURTHER ORDERED that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, packaging, labeling, advertising, promotion, offering for sale, sale, or distribution of any computer software product or service that is marketed as enhancing the security or privacy of any computer or similar system, in or affecting commerce, shall not misrepresent the performance, benefits, or efficacy of any such software product or service.

## III.

IT IS FURTHER ORDERED that respondents shall provide refunds as follows:

> A.      Respondent shall send, within seven (7) days from the date of service of this order, to the last known e-mail address of each current subscriber of the InternetALERT software product exact copies of the "Refund Notification Message," with the subject line "Important Refund Notice Concerning Your InternetALERT Subscription," attached hereto as Attachment A. Respondents shall not include with Attachment A any other information, nor shall any other

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material be transmitted with Attachment A.  Respondents shall give subscribers who receive Attachment A pursuant to this Part sixty (60) days to respond.

B.    Respondents shall use all reasonable commercially available means to obtain updated e-mail addresses for any returned e-mails within fifteen (15) days of receipt of such returned e-mail and shall resend Attachment A within seven (7) days of obtaining a new e-mail address for the recipient.  Respondents shall not include with Attachment A any other information, nor shall any other material be transmitted with Attachment A. Respondents shall give subscribers who receive a resent Attachment A pursuant to this Part sixty (60) days to respond.

C.    Respondents shall post within seven (7) days of service of the order and, continuing for sixty (60) days maintain, on the Bonzi Software homepage, www.bonzi.com, a hyperlink to a notice in the form and format as Attachment A.  Such hyperlink shall be clear and conspicuous, labeled "InternetALERT Refund Notice," and lead directly to the notice on the click-through electronic page or other display screen or panel.  Respondents shall give current subscribers who receive notice of the refund through the Bonzi Software homepage, www.bonzi.com, the opportunity to respond within sixty (60) days from the date of posting the notice required by this Part.

D.    Within seven (7) days of receiving a request for a refund, respondents shall provide current subscribers who cancel and uninstall the InternetALERT software product either (a) a check drawn on U.S. funds; or (b) a credit card refund for an amount representing the unused portion of their InternetALERT subscription calculated as of the date of acceptance of this order by the Commission for public comment.  For current subscribers who request a refund by check, respondents shall mail refunds by first class mail to the physical address provided by the subscriber or, if no address is provided, to the subscriber's last known physical address.

IV.

IT IS FURTHER ORDERED that respondents shall, within seven (7) days after the date of service of this order, send by e-mail exact copies of the order to any retailer, affiliate, or other third party that advertises, promotes, offers for sale, sells, or distributes the software product InternetALERT pursuant to an agreement with Respondents.

V.

IT IS FURTHER ORDERED that respondents shall, for a period of five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon

request make available to the Federal Trade Commission for inspection and copying:

A.      All advertisements and promotional materials containing the representation;

B.      All materials that were relied upon in disseminating the representation; and

C.      All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

## VI.

IT IS FURTHER ORDERED that respondents shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of this order.  Respondents shall deliver this order to such current personnel within thirty (30) days after the date of service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

## VII.

IT IS FURTHER ORDERED that respondent Bonzi Software, Inc., and its successors and assigns, shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address.  Provided, however, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge.  All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

## VIII.

IT IS FURTHER ORDERED that respondents Joe Bonzi and Jay Bonzi for a period of ten (10) years after the date of entry of this order shall notify the Commission of: (1) the discontinuance of their current business or employment; and, (2) their affiliation with any new

business or employment. The notice shall include respondents' new businesses names, addresses, and telephone numbers and a description of the nature of the business or employment and the respondents' duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

## IX.

IT IS FURTHER ORDERED that respondents shall within one hundred and twenty (120) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order. As part of this compliance report, respondents shall describe the consumer redress program conducted pursuant to Part III of this order. This description shall include sample copies of notifications provided to subscribers pursuant to Part III of this order and separate lists identifying (a) the name, e-mail, and physical address, and refund amount for each subscriber who was a current subscriber as of the date of service of this order; and (b) the total number of current subscribers to whom e-mail notices were sent pursuant to Part III of this order.

## X.

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A.    Any Part in this order that terminates in less than twenty (20) years;

B.    This order's application to any respondent that is not named as a defendant in such complaint; and

C.    This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondents did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Signed this _____ day of _____2004.

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**BONZI SOFTWARE, INC.**

By: _____

JOE BONZI
Individually and as President, Bonzi Software, Inc.

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JAY BONZI
Individually and as Vice President, Bonzi Software, Inc.

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SARO RIZZO
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Counsel for Respondents Bonzi Software, Inc. and Jay and Joe Bonzi

**FEDERAL TRADE COMMISSION**

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LAURA M. SULLIVAN
Counsel for the Federal Trade Commission

**APPROVED:**

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MARY KOELBEL ENGLE
Associate Director
Division of Advertising Practices

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J. HOWARD BEALES, III
Director
Bureau of Consumer Protection