

1 WILLIAM BLUMENTHAL
General Counsel

2 Mona Sedky Spivack, DC #447968
3 Colleen Robbins, NY #2882710
4 J. Ronald Brooke, Jr., MD #0202280002
5 Federal Trade Commission
600 Pennsylvania Ave., NW, Room 238
5 Washington, D.C. 20580
(202) 326-3795 (Spivack)
6 (202) 326-2548 (Robbins)
(202) 326-3484 (Brooke)
7 (202) 326-3395 *facsimile*
mspivack@ftc.gov
8 crobbins@ftc.gov
jbrooke@ftc.gov

9 Local Counsel
10 Jennifer Brennan, Cal. Bar # 225473
11 Federal Trade Commission, Western Region
10877 Wilshire Blvd., Suite 700
12 Los Angeles, CA 90024
(310) 824-4343
13 (310) 824-4380 *facsimile*
jmbrennan@ftc.gov

14 *Attorneys for Plaintiff Federal Trade Commission*

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 FEDERAL TRADE COMMISSION,

18 Plaintiff,

19 v.

20 Enternet Media, Inc., a California
21 corporation; Conspy & Co., Inc., a
22 California corporation; Lida Rohbani,
23 individually and as an officer of
24 Enternet Media, Inc. and Conspy &
25 Co., Inc.; Nima Hakimi, individually
26 and as an officer of Enternet Media,
27 Inc. And Conspy & Co., Inc.; Baback
(Babak) Hakim, individually, doing
28 business as Network One, and as an
officer of Enternet Media, Inc. and
Conspy & Co., Inc.; and Nicholas C.
Albert, individually and doing
business as Iwebtunes and
www.iwebtunes.com,

Defendants.

CIVIL NO.

CV05-7777 CAS AJWx

First Amended
Complaint for Injunctive
and Other Equitable
Relief

2005 NOV -4 PM 1:05
U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

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COPY

1 Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), for its
2 complaint alleges as follows:

- 3 1. The Commission brings this action under Section 13(b) of the Federal Trade
4 Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain preliminary and
5 permanent injunctive relief against the defendants to prevent them from
6 engaging in deceptive and unfair acts or practices in violation of Section
7 5(a) of the FTC Act, 15 U.S.C. § 45(a), and to obtain other equitable relief,
8 including rescission, restitution, and disgorgement, as is necessary to
9 redress injury to consumers and the public interest resulting from the
10 defendants' violations of the FTC Act.

11 JURISDICTION AND VENUE

- 12 2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§
13 45(a), 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.
- 14 3. Venue in the United States District Court for the Central District of
15 California is proper under 15 U.S.C. § 53(b), as amended by the FTC Act
16 Amendments of 1994, Pub. L. No. 103-312, 108 Stat. 1691, and 28 U.S.C.
17 §§ 1391(b) and (c).

18 PLAINTIFF

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

DEFENDANTS

1
2 5. Defendant Enternet Media, Inc. ("Enternet Media") is a California
3 corporation with its principal place of business located at 20316 Angelina
4 Place, Woodland Hills, CA, 91364 and 7334 Topanga Canyon Blvd., Suite
5 106, Canoga Park, CA, 91303. Defendant Enternet Media does or has done
6 business as "Enternet," "Conspy & Co.," "www.conspy.com," "Search
7 Miracle," "Miracle Search," "www.searchmiracle.com," "EM Toolbar,"
8 "EliteBar," "Elite toolbar," "www.c4tdownload.com," and
9 "www.cash4toolbar.com." Defendant Enternet Media transacts or has
10 transacted business in this District.

11 6. Defendant Conspy & Co., Inc. ("Conspy") is a California corporation with
12 its principal place of business located at 20316 Angelina Place, Woodland
13 Hills, CA, 91364. Defendant Conspy does or has done business as
14 "Enternet," "Enternet Media," "www.conspy.com," "Search Miracle,"
15 "www.searchmiracle.com," "EM Toolbar," "EliteBar," "Elite toolbar,"
16 "www.c4tdownload.com," and "www.cash4toolbar.com." Defendant
17 Conspy transacts or has transacted business in this District.

18 7. Defendant Lida Rohbani, also known as Linda Rohhani and Lida Hakimi, is
19 or has been an officer and director of corporate defendants Enternet Media
20 and Conspy. Individually or in concert with others, she has formulated,
21 directed, controlled, or participated in the acts and practices of Enternet
22 Media and Conspy, including the acts and practices set forth in this
23 complaint, and has done so at all times pertinent to this action. Defendant
24 Lida Rohbani does or has done business as "Enternet," "Enternet Media,"
25 "Conspy & Co.," "www.conspy.com," "Search Miracle,"
26 "www.searchmiracle.com," "EM Toolbar," "EliteBar," "Elite toolbar,"
27 "www.c4tdownload.com," and "www.cash4toolbar.com." Defendant Lida
28

1 Rohbani resides or has resided and transacts or has transacted business in
2 this District.

3 8. Defendant Nima Hakimi is or has been an officer and director of corporate
4 defendants Enternet Media and Conspy. Individually or in concert with
5 others, he has formulated, directed, controlled, or participated in the acts
6 and practices of Enternet Media and Conspy, including the acts and
7 practices set forth in this complaint, and has done so at all times pertinent to
8 this action. Defendant Nima Hakimi does or has done business as
9 "Enternet," "Enternet Media," "Conspy & Co.," "www.conspy.com,"
10 "Search Miracle," "www.searchmiracle.com," "EM Toolbar," "EliteBar,"
11 "Elite toolbar," "www.c4tdownload.com," and "www.cash4toolbar.com."
12 Defendant Nima Hakimi resides or has resided and transacts or has
13 transacted business in this District.

14 9. Defendant Baback (Babak) Hakimi, also known as Bobby Rohbani and
15 Bobby Hakimi, is or has been an officer and director of corporate
16 defendants Enternet Media and Conspy. Individually or in concert with
17 others, he has formulated, directed, controlled, or participated in the acts
18 and practices of Enternet Media and Conspy, including the acts and
19 practices as set forth in this complaint, and has done so at all times pertinent
20 to this action. Defendant Hakimi does or has done business as "Networld
21 One," "www.c4tdownload.com," "www.cash4toolbar.com," "Enternet,"
22 "Enternet Media," "Conspy & Co.," "www.conspy.com," "Search Miracle,"
23 "www.searchmiracle.com," "EM Toolbar," "EliteBar," and "Elite toolbar."
24 Defendant Hakimi resides or has resided and transacts or has transacted
25 business in this District.

26 10. Defendant Nicholas C. Albert, individually or in concert with others, has
27 formulated, directed, controlled, or participated in the acts and practices as
28

1 set forth in this complaint, and has done so at all times pertinent to this
2 action. Defendant Albert does or has done business as "Iwebtunes," and
3 "www.iwebtunes.com." Defendant Albert resides or has resided in Ohio
4 and transacts or has transacted business in this District.

5 **COMMERCE**

- 6 11. At all times relevant to this complaint, the defendants have maintained a
7 substantial course of trade in or affecting commerce, as "commerce" is
8 defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

9 **DEFENDANTS' BUSINESS PRACTICES**

10 **Overview**

- 11 12. Since at least May 2005, defendants Enternet Media, Conspy, Lida Rohbani,
12 Nima Hakimi, and Baback Hakimi (collectively the "Enternet Media
13 defendants" or the "EM defendants"), working in tandem with their affiliate
14 marketers, who are primarily webmasters and who include defendant
15 Nicholas Albert, have deceptively distributed via the Internet exploitive
16 advertising software code onto the computers of consumers. The EM
17 defendants' exploitive advertising software code (the "EM code") bears
18 several monikers, including but not limited to the following:
19 "Searchmiracle," "EliteBar," "EMtoolbar," "Elitesidebar," and "Elitium."
20 Although the exact parameters of the EM code have changed over time,
21 once the EM code is installed on consumers' computers, it has enabled the
22 EM defendants to: (1) track consumers' Internet activity; (2) change
23 consumers' preferred Internet homepage settings; (3) insert a new toolbar
24 onto consumers' Internet browsers; (4) insert a large side "frame" or
25 "window" onto consumers' browser windows that in turn displays
26 advertisements; and (5) display numerous "pop up" advertisements on
27 consumers' computer screens, even when consumers' Internet browsers are
28

1 not activated. Once installed on a consumer's computer, the EM code
2 substantially interferes with the functionality of that computer, and it is very
3 difficult for a consumer to uninstall or otherwise remove the EM code.

4 13. In order to lure consumers into downloading and installing the EM code
5 onto their computers, the EM defendants and their affiliates, including
6 defendant Albert, have made numerous material deceptive representations
7 and omissions in their marketing media.

8 14. First, on their affiliates' websites and other locations, the EM defendants
9 have displayed several different software "installation boxes" that "pop up"
10 and appear on consumers' computer screens. They purport to describe the
11 corresponding software code and prompt consumers to commence the
12 installation process. In these installation boxes, the EM defendants have
13 represented that the EM code is innocuous, free software or "freeware," or
14 other files. For example, in their software installation boxes, the EM
15 defendants have represented, alternatively, that the EM code consists of
16 music files, cell phone ring tones, photographs, and song lyrics. In one
17 particular series of installation boxes, the EM defendants have attempted to
18 exploit consumers' growing alarm over Internet security by disguising the
19 installation boxes as security warning messages, representing that the
20 consumers' Internet browsers are defective, and urging consumers to
21 download, at no cost, a purported browser upgrade or other security patch.
22 The EM defendants do not disclose the true nature and effect of the EM
23 code in their installation boxes or in their other related marketing media.

24 15. Second, the EM defendants have assisted their affiliates in surreptitiously
25 bundling the EM code with various types of "freeware" and other files,
26 including free music files. In one particular bundling scheme, the EM
27 defendants, along with their affiliate, defendant Albert, have capitalized on
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1 the growing popularity of “web logs,” or “blogs,” which are shared online
2 personal journals that are published on the Internet.

3 16. Defendant Albert has operated a website that offers free music files to
4 unsuspecting blog authors (or “bloggers”), as well as to other website
5 operators, ostensibly to play as background music on their blogs or other
6 websites. On his music website, defendant Albert has instructed bloggers
7 and other website operators to select and then copy the purported music
8 files and corresponding software code from his website and “paste” them
9 into the source code for their blogs or other websites. On his music website
10 or in his other related marketing media, defendant Albert does not disclose
11 the existence of the EM code. As a result, unbeknownst to the bloggers,
12 when a consumer later visits the co-opted blogs, the EM code displays the
13 series of the EM defendants’ “security warning” installation boxes that
14 prompt the visiting consumer to download a purported free browser upgrade
15 or other security patch.

16 17. Contrary to the defendants’ representations, the EM code is not a free
17 browser upgrade or other security software. Nor is it any other type of
18 innocuous freeware or files, such as free music files, ring tones and the like.
19 Rather, it is code that enables the EM defendants to track online activity,
20 change Internet homepages, insert new toolbars and side frames onto
21 consumers’ browser windows, and display pop-up advertisements onto
22 consumers’ computers.

23 18. In the course of marketing and distributing the EM code to consumers, both
24 the EM defendants and defendant Albert have made material false and
25 misleading representations and omissions in their marketing media, and
26 accordingly, they have engaged in deceptive acts or practices in violation of
27 Section 5 of the FTC Act. In the course of marketing and distributing the
28

1 EM code to consumers, the EM defendants have caused substantial
2 consumer injury that is not reasonably avoidably by consumers and is not
3 outweighed by countervailing benefits, and, accordingly, they have engaged
4 in unfair acts or practices in violation of Section 5 of the FTC Act.

5 **The EM Defendants' Affiliate Marketing Program**

- 6 19. Since at least the end of 2004, the Enternet Media ("EM") defendants have
7 created and distributed code that tracks online activity, changes Internet
8 homepages, inserts new toolbars and side frames onto consumers' browser
9 windows, and displays "pop up" advertisements on consumers' computer
10 screens. The EM defendants have also created corresponding marketing
11 media that lure consumers into downloading and installing the EM code.
- 12 20. The EM defendants distribute their code and marketing media to consumers
13 primarily through their affiliate marketers, which include defendant Albert.
14 The EM defendants' affiliate marketers are often webmasters who operate
15 websites that purport to offer free software, or "freeware," to consumers.
- 16 21. The EM defendants operate their affiliate program primarily through their
17 affiliate recruiting and support websites, including
18 "www.cash4toolbars.com" and "www.c4tdownload.com." On those
19 websites, the EM defendants provide their affiliates with the EM code, as
20 well as with the marketing media for the affiliates to display on the
21 affiliates' websites in order to induce consumers to download and install the
22 EM code. The EM defendants also assist their affiliates in "bundling" the
23 EM code with other "freeware."

24 **Deceptive Software Installation Practices**

- 25 22. The EM defendants provide marketing media to their affiliates, including a
26 variety of different "pop up" "installation boxes," that the affiliates then
27 display on consumers' computers to prompt consumers to download the EM
28

1 code. These installation boxes contain text that purports to describe the
2 software and prompts the consumer to install it by clicking on a “Yes” or
3 “OK” button contained within the boxes. For example, the EM defendants
4 display a series of three installation boxes that disguise the EM code as an
5 Internet Explorer browser upgrade or security patch. In the first of their
6 three “pop up” installation boxes, which is labeled “Security Warning,” the
7 EM defendants state: “YOU have an OUT OF DATE browser which can
8 cause you to get infected with viruses, spam and spyware. To prevent this
9 press YES now.” (Emphasis in original).

10 23. If a consumer clicks on the “No” or “X” buttons, the EM defendants then
11 display a second and third installation box on the consumer’s computer. In
12 their second installation box, the EM defendants, who have no affiliation
13 with Microsoft, label their “pop up” as “Microsoft Internet Explorer,” and
14 state: “Click YES to upgrade your Microsoft Internet Explorer Now!”

15 24. In their third installation box, the EM defendants again label their
16 installation box as “Microsoft Internet Explorer” and state that “We
17 STRONGLY recommend you upgrade your Microsoft Internet Explorer
18 Browser . . . Click YES Now!”

19 25. In other installation boxes, the EM defendants represent that a consumer can
20 “click Yes” in order to download a variety of other types of free software or
21 files, including “clicking Yes” to: “download todays [sic] 1423 free icons,”
22 “start [Jennys Live Webcam and Nikki’s Live Webcam] session,”
23 “download our whole collection of Screan [sic] Savers,” “installs [sic]
24 hundrets [sic] of free smilies,” “download our complete database of lyrics,”
25 “download this [computer game] crack,” to “view [computer game] cheat
26 codes,” “see my picture,” “download all 1318 free ringtones avaiable [sic],”
27 “download the FREE CD covers,” and “download windows wallpapers.”
28

- 1 26. In connection with these installation boxes, if a consumer clicks on the
2 designated "Yes" or "OK" button, the EM defendants then immediately
3 cause the EM code to be downloaded and installed onto the consumer's
4 computer. The EM defendants do not disclose the nature of the EM code in
5 their installation boxes or in their other related marketing media.
- 6 27. The EM defendants not only provide their affiliates with the EM code and
7 the installation boxes, but they also assist them in bundling the EM code
8 with other software. Defendant Albert provides an example of such affiliate
9 bundling.
- 10 28. Defendant Albert operates a website, www.iwebtunes.com, that ostensibly
11 offers free music files to "bloggers" and other website operators. But
12 unbeknownst to the bloggers, defendant Albert has surreptitiously bundled
13 those music files with the EM code. Defendant Albert has, in turn, co-opted
14 the blogs once bloggers insert the music file codes onto their blogs.
15 Defendant Albert does not disclose the existence of the EM code on his
16 music website or in his other related marketing media.
- 17 29. As a result, when a consumer visits the co-opted blogs, the EM defendants
18 display the EM installation boxes that, as described above in Paragraphs 22-
19 24, are disguised as security warnings that prompt the consumer to
20 download and install a purported browser upgrade or other security
21 software.
- 22 30. The defendants' representations that the software code is a free music file,
23 browser upgrade, or other innocuous "freeware" or files are false and
24 misleading. In fact, it is the EM code that, as described in more detail
25 below, tracks online activity, changes Internet homepages, inserts new
26 toolbars and side frames onto consumers' browser windows, and serves up

1 “pop up” advertisements onto consumers’ computers. Consumers do not
2 have knowledge of and have not consented to the installation of the EM
3 code.

4 **The EM Defendants’ Software Code’s**
5 **Internet Tracking, New Homepages, Toolbars,**
6 **Side Windows, and Pop Ups**

7 31. The software code that EM and its affiliates distribute to consumers has
8 several pertinent features that interfere with the functionality of consumers’
9 computers. Furthermore, consumers have no reason to suspect that
10 following defendants’ prompts will result in installing the code. Nor can
11 consumers reasonably uninstall or otherwise remove the code once it is
12 installed on their computers. The exact parameters of the EM code change
13 somewhat over time. However, the cumulative effects of the code remain
14 essentially unchanged.

15 32. First, the EM defendants track consumers’ Internet activity. They track
16 consumers’ Internet browsing behavior and then display advertisements on
17 consumers’ computers that correspond to that behavior. In some cases, the
18 EM defendants displayed advertisements corresponding to search terms
19 typed into a search bar.

20 33. Second, the EM defendants change consumers’ preferred or default
21 homepage settings, often to their own website, www.searchmiracle.com.

22 34. Third, the EM defendants insert a new toolbar onto consumers’ Internet
23 browser windows. Over time, they have inserted several variations of
24 toolbars, which bear various different monikers, including the “EliteBar,”
25 the “Enternet Media” or “EM” toolbar, and the “searchmiracle bar.” The
26 toolbars contain buttons labeled “Premium sites,” “Online dating,” “Online
27 casinos,” “Online drugs,” and “Virus Scan.” If a consumer clicks on any of
28

1 these buttons, the EM defendants cause the consumer's browser to be
2 directed to various websites. Typically, the toolbars apparently also purport
3 to function as a "search bar" and contain a window labeled "Search."

4 35. Fourth, the EM defendants insert an obtrusive, large-scale side "window" or
5 "frame" onto consumers' browser windows that displays various
6 advertisements. It appears as a vertical window that is positioned along the
7 left-hand side of the consumers' browser windows and fills approximately
8 one-third of their computer screens. The side window sometimes displays a
9 purported search-engine results page. The window is entitled "Recent
10 Searches," and it contains a list of approximately two dozen items.

11 36. Consistent with the EM defendants' Internet tracking behavior, the content
12 of these purported "search results" is often cued to the search terms that are
13 entered into a legitimate search engine search bar. The side window
14 sometimes displays "pop up"-like advertisements rather than purported
15 search results.

16 37. Fifth, the EM defendants display "pop up" advertisements on consumers'
17 computers that advertise various products, including botox treatments, auto
18 insurance, and the like. These "pop ups" appear on consumers' computers
19 even when their Internet browsers are not activated.

20 38. The effects of the EM code substantially interfere with consumers' use of
21 their computers. Furthermore, consumers cannot reasonably avoid this
22 interference. They cannot reasonably avoid it, before the fact, by relying on
23 disclosures made in an End User License Agreement ("EULA") or in other
24 relevant marketing media. Nor can they reasonably avoid it, after the fact,
25 having installed it, by then uninstalling or otherwise removing the code.

26 39. Although the EM defendants do have a EULA, they do not require, let alone
27 encourage, consumers to review it prior to downloading and installing the
28

1 EM code. The EM defendants' installation boxes, when clicked on,
2 automatically install the EM code, with no requirement that a consumer
3 agree to terms and conditions. There is nothing labeled "EULA," "Terms
4 and Conditions," "More Information" or the like that then links to the
5 EULA page. In any case, the EM EULA, even if it were readily available,
6 by its terms is so broad and over-reaching that it does not convey adequate
7 information to consumers.

8 40. Nor can a consumer, having installed the EM code, reasonably avoid its
9 effects by uninstalling or removing it. In most cases, the EM defendants'
10 own instructions do not remove all of the EM code, and the EM code does
11 not appear in the Add/Remove feature of the Windows operating system.
12 Often, all or some of the EM code remains on consumers' computers even
13 after repeated attempts to uninstall the code.

14 VIOLATIONS OF THE FTC ACT

15 COUNT ONE

16 AS TO THE ENTERNET MEDIA DEFENDANTS

17 (Defendants Rohbani, Nima Hakimi, Baback Hakimi, Enternet Media, Inc.,
18 and Conspy & Co., Inc.)

19 Deceptive Representations Regarding Software Code

20 41. In numerous instances, in connection with marketing and distributing
21 software code to consumers, the Enternet Media defendants have
22 represented in their marketing media, expressly or by implication, that the
23 software code functions as an innocuous free software code or file,
24 including but not limited to, an Internet browser upgrade or other computer
25 security software, or a music file, a song lyric, or a cell phone ring tone.

26 42. In truth and in fact, in numerous instances, the software code does not
27 function as an innocuous free software code or file, including but not
28

1 limited to, an Internet browser upgrade or other computer security software,
2 or a music file, a song lyric, or a cell phone ring tone. Rather, the software
3 code causes a stream of multiple advertisements to appear on consumers'
4 computers and, in some cases, also tracks consumers' Internet activity.

5 43. Therefore, the EM defendants' representations, as described in Paragraph 41
6 above, are false and misleading, and the making of those representations
7 constitutes a deceptive act or practice in violation of Section 5 of the FTC
8 Act, 15 U.S.C. § 45(a).

9 **COUNT TWO**

10 **AS TO THE ENTERNET MEDIA DEFENDANTS**

11 **(Defendants Rohbani, Nima Hakimi, Baback Hakimi, Enternet Media, Inc.,**
12 **Conspy & Co., Inc.)**

13 **Unfair Installation of Software Code**

14 44. In numerous instances, in connection with marketing and distributing
15 software code to consumers, the Enternet Media defendants have
16 downloaded and installed, or cause to be downloaded and installed,
17 software code that causes a stream of multiple advertisements to appear on
18 consumers' computers and, in some cases, also tracks consumers' Internet
19 activity. When the software code is installed on consumers' computers, in
20 some cases, it will: (1) track consumers' Internet activity; (2) change
21 consumers' preferred Internet homepage settings; (3) insert a new toolbar
22 onto consumers' Internet browsers; (4) insert a large side "frame" or
23 "window" onto consumers' browser windows that in turn displays
24 advertisements; and (5) display numerous "pop up" advertisements on
25 consumers' computer screens, even when consumers' Internet browsers are
26 closed.

27 45. The Enternet Media defendants' actions are likely to cause substantial injury
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1 to consumers that cannot be reasonably avoided and is not outweighed by
2 countervailing benefits to consumers or competition.

3 46. Therefore, the Enternet Media defendants' engaging in the practices, as
4 described in Paragraph 44 above, constitutes an unfair act or practice in
5 violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

6 **COUNT THREE**

7 **AS TO THE ENTERNET MEDIA DEFENDANTS**

8 **(Defendants Rohbani, Nima Hakimi, Baback Hakimi, Enternet Media, Inc.,**
9 **Conspy & Co., Inc.)**

10 **Means and Instrumentalities Count**

11 47. In numerous instances, the Enternet Media defendants have furnished
12 others, including but not limited to their affiliate marketers, with software
13 code that substantially interferes with consumers' use of their computers, as
14 well as with corresponding marketing media that contains false and
15 misleading representations regarding that software code. By furnishing
16 others with the materials to engage in the deceptive and unfair practices
17 described in Paragraphs 41 and 44 above, the Enternet Media defendants
18 have provided the means and instrumentalities for the commission of
19 deceptive and unfair acts and practices.

20 48. Therefore, the Enternet Media defendants' conduct, as described in
21 Paragraph 47, constitutes a deceptive and unfair act or practice in violation
22 of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

23 **COUNT FOUR**

24 **AS TO DEFENDANT ALBERT**

25 **Failure to Disclose the Presence and Nature of Bundled Software Code**

26 49. In numerous instances, in connection with marketing and distributing
27 software code to consumers, defendant Albert has represented, expressly or
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1 by implication, that the software code functions as a music file that, when
2 incorporated into consumers' web logs or other websites, will enable
3 consumers to play music on their web logs or other websites.

4 50. In numerous instances, defendant Albert has failed to disclose that the
5 software code contains additional code that delivers advertisements to
6 consumers' computers. He has failed to disclose that, when the software
7 code is incorporated into consumers' web logs or other websites, it will
8 display on those web logs or other websites advertisements from the
9 Internet Media defendants that represent, expressly or by implication, that
10 their software code functions as an Internet browser upgrade or other
11 computer security software and prompts consumers to download it.

12 51. This additional information, described in Paragraph 50, would be material to
13 consumers in deciding to download and install the software code that
14 defendant Albert distributes.

15 52. Defendant Albert's failure to disclose the material information described in
16 Paragraph 50, above, in light of the representations described in Paragraph
17 49 above, constitutes a deceptive act or practice in violation of Section 5 of
18 the FTC Act, 15 U.S.C. § 45(a).

19 CONSUMER INJURY

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

24 THIS COURT'S POWER TO GRANT RELIEF

25 54. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to
26 grant injunctive and other ancillary relief, including consumer redress,
27 disgorgement and restitution, to prevent and remedy any violations of any
28

1 provision of law enforced by the Federal Trade Commission.

2 **PRAYER FOR RELIEF**

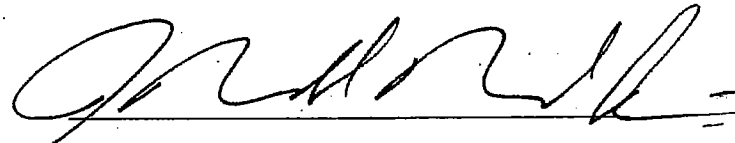
3 WHEREFORE, plaintiff, the Federal Trade Commission, requests that this Court,
4 as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and pursuant to
5 its own equitable powers:

- 6 1. Award plaintiff such preliminary injunctive and ancillary relief as may be
7 necessary to avert the likelihood of consumer injury during the pendency of
8 this action and to preserve the possibility of effective final relief.
- 9 2. Permanently enjoin the defendants from violating Section 5(a) of the FTC
10 Act, 15 U.S.C. § 45(a), as alleged in this complaint.
- 11 3. Award such relief as the Court finds necessary to redress injury to
12 consumers resulting from the defendants' violations of Section 5(a) of the
13 FTC Act, 15 U.S.C. § 45(a), including, but not limited to, rescission of
14 contracts, restitution, the refund of monies paid, and the disgorgement of ill-
15 gotten monies.

1 4. Award the Commission the costs of bringing this action, as well as any
2 other equitable relief that the Court may determine to be just and proper.
3

4 Dated: November 4, 2005
5

6 Respectfully submitted:
7 WILLIAM BLUMENTHAL
8 General Counsel

9 
10

11 Mona Sedky Spivack, DC #447968
12 Colleen Robbins, NY #2882710
13 J. Ronald Brooke, Jr., MD #0202280002
14 Federal Trade Commission
15 600 Pennsylvania Ave., NW, Room 238
16 Washington, D.C. 20580
17 (202) 326-3795 (Spivack)
18 (202) 326-2548 (Robbins)
19 (202) 326-3484 (Brooke)
20 (202) 326-3395 *facsimile*
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