

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
NORTHERN DIVISION

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FEDERAL TRADE COMMISSION,
600 Pennsylvania Ave. NW
Washington, DC 20580,

Plaintiff,

v.

D SQUARED SOLUTIONS, LLC, a
California limited liability company,
11286 Corte Belleza
San Diego, CA 92130

ANISH DHINGRA, individually and as an
officer of D Squared Solutions, LLC,
5240 Fiore Terrace #1317
San Diego, CA 92122

JEFFREY DAVIS, individually and as an
officer of D Squared Solutions, LLC,
5240 Fiore Terrace #1317
San Diego, CA 92122

Defendants.

CIVIL NO.

Complaint for Injunctive and
Other Equitable Relief

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

1. The Commission brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain preliminary and permanent injunctive relief against the defendants to prevent them from engaging in unfair acts or practices in violation of Section 5(a) of the

FTC Act, 15 U.S.C. § 45(a), and to obtain other equitable relief, including rescission, restitution, and disgorgement, as is necessary to redress injury to consumers and the public interest resulting from defendants' violations of the FTC Act.

JURISDICTION AND VENUE

2. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §§ 45(a), 53(b), and 28 U.S.C. §§ 1331, 1337(a), and 1345.

3. Venue in the United States District Court for the District of Maryland is proper under 15 U.S.C. § 53(b), as amended by the FTC Act Amendments of 1994, Pub. L. No. 103-312, 108 Stat. 1691, and 28 U.S.C. §§ 1391(b) and (c).

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 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. Defendant D Squared Solutions, LLC, ("D Squared") is a California limited liability company with its principal place of business located at 11286 Corte Belleza, San Diego, California 92130. D Squared does or has done business using the following Internet web sites which it controls, among others: blockmessenger.com, broadcastmarketer.com, broadcastblocker.com, defeatmessenger.com, fightpoppers.com, fightmessenger.com, killmessenger.com, messageaway.com, messengerbuster.com, messengerkiller.com, messengerstopper.com, and stopmessenger.com. D Squared transacts or has transacted business in this District. Many of these web sites have been or are currently being hosted by servers located in this District.

6. Defendant Anish Dhingra is or has been an officer and owner of defendant D Squared. He has identified himself as president of D Squared Solutions, LLC. Individually or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of D Squared, including the acts and practices set forth in this complaint, and has done so at all times pertinent to this action. Dhingra transacts or has transacted business in this District.

7. Defendant Jeffrey Davis is or has been an officer and owner of defendant D Squared. Individually or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of D Squared, including the acts and practices set forth in this complaint, and has done so at all times pertinent to this action. Davis transacts or has transacted business in this District.

COMMERCE

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

DEFENDANTS' BUSINESS PRACTICES

9. Since at least May 2003, defendants, utilizing a network administration feature of Microsoft Windows known as "Messenger Service," have caused a stream of repeated, unwanted "pop up" advertisements to pop up and appear on the computer screens of consumers throughout the United States, including consumers in this District. In numerous instances, defendants have caused a series of their pop ups (also known as "Messenger Service spam" and "pop up spam") to appear on computer screens, popping up at 10-minute to 30-minute intervals during a given computer session. In numerous instances, defendants have caused their repeated, unwanted Messenger Service spam to appear on a consumer's computer screen for several weeks and/or several months on end. These pop up advertisements appear on consumers' computer screens even when the consumers are not using their Internet browsers (for instance when consumers are using word processing software), so long as the consumers are logged onto the Internet. Consumers with always-on Internet connections, such as those with DSL lines or cable modems, are especially likely to receive the defendants' Messenger Service spam. Most of the pop up messages instruct consumers to visit one of the defendants' web sites where they can purchase software that will cause the pop ups to stop.

Defendants Improperly Use the Windows Messenger Service

10. The pop up spam sent by defendants utilize the Messenger Service feature of Microsoft Windows. The Messenger Service is designed to provide computer network administrators with the ability to provide instant information to network users, such as the need to log off of the network due to a system malfunction. Because of its intended purpose, Messenger Service pop up windows appear on a consumer's computer screen so long as the consumer is logged onto the network, no matter what application (e.g., word processing, spreadsheet, financial management) the consumer is using.

11. Defendants have coopted this network administration utility by sending advertisements in the guise of Windows Messenger Service messages to consumers' Internet Protocol addresses ("IP Addresses"). By utilizing Messenger Service-type pop ups, defendants cause a large, grey-colored "window," or "dialog box," to appear near the middle of the consumer's computer screen. The "window" has a banner at the top that reads: "Messenger Service." The body of the Messenger Service "window" contains the text advertisement pitching the defendants' software that purports to block Windows Messenger Service pop ups. The top right-hand corner of the "window" contains a "close dialogue" box with the letter "X," and the bottom contains a "push button" with the letters "OK" inside. Typically, the defendants' pop up remains on the consumer's computer screen until the consumer either clicks on the "X" box or the "OK" push button.

The Defendants' Pop Ups Offer Anti-Pop Up Software

12. In most of their Messenger Service spam, defendants instruct consumers to visit web sites where software can be purchased that purportedly blocks future Windows Messenger Service pop

ups from appearing on consumers' computer screens. For example, one of defendants' pop ups reads: "Messenger Service Message from SYSTEM ALERT to Unsafe User on [Date and Time inserted.] Did you know that there is a one-click easy way to stop these pop-ups FOREVER? For Free information, please visit <http://www.defeatmessenger.com>." Other pop ups direct consumers to defendants' alternate domains, which include, but are not limited to, the following: blockmessenger.com, broadcastblocker.com, defeatmessenger.com, fightpopups.com, fightmessenger.com, killmessenger.com, messageaway.com, messengerbuster.com, messengerkiller.com, messengerstopper.com, and stopmessenger.com.

13. Consumers who visit one of these web sites are confronted by an offer to purchase the defendants' Windows Messenger Service pop up-blocking software. On these web sites, the defendants state:

These types of spam messages are even worse than unwanted e-mail since you don't even need to have an e-mail account or web browser. . . With Messenger Killer, you can block these unwanted and illegal pop up messages forever with the click of a button! No longer do you have [to] sit and wait as your computer freezes or crashes due to one of these messages.

14. The defendants charge consumers between \$25 and \$30 for their Windows Messenger Service pop up-blocking software. In essence, defendants bombard an individual consumer with a stream of repeated, unwanted pop up spam in an attempt to induce the consumer to pay defendants to stop the bombardment.

15. Defendants attempt to generate demand for their pop up blocking software not only by bombarding consumers with a large number of pop ups, but also by utilizing Windows Messenger Service to ensure that their pop ups appear on consumers' computer screens at any time, even when the

consumers do not have their Internet browser in use or are not accessing their e-mail accounts.

16. For example, by utilizing Messenger Service-type pop ups, in numerous instances, defendants cause their pop ups to appear on consumers' screens when consumers have been working at their computer on word processing documents or spreadsheets, temporarily blocking access to the consumers' document or spreadsheet. In addition, in numerous instances, defendants cause their pop ups to appear on consumers' screens when consumers have been writing or reading e-mail messages, temporarily blocking consumers' access to their e-mail messages.

Defendants Generate Demand for their Pop Up-Blocking Software by Providing Others with Software that Sends Messenger Service Spam

17. In addition to sending Windows Messenger Service spam to consumers, the defendants sell or license software that will permit others to send such pop ups. On the defendants' web site <http://www.broadcastmarketer.com>, they offer software that permits purchasers to send messages to 135,000 IP addresses per hour. In addition to providing purchasers or licensees with the message-sending software, defendants provide them with a database containing over 2 billion unique IP addresses.

18. Defendants have licensed this software to, among others, Scintillant, Inc., which sends consumers Windows Messenger Service pop up messages that advertise the web sites "byebyeads.com" and "destroyads.com" where consumers can purchase software that purports to prevent Windows Messenger service spam from appearing on consumers' computer screens.

**Defendants' Practices Have Caused Substantial Injury that Cannot be Reasonably Avoided
and is Not Outweighed by Countervailing Benefits to Consumers or to Competition**

19. Consumers have suffered and continue to suffer injuries from defendants' pop up spam, including but not limited to, losing data, losing work productivity, having their computer screens freeze, suffering an increasing level of frustration, annoyance, and harassment at receiving the pop ups, and expending money to purchase pop up-blocking or "firewall" software. Consumers' level of frustration is compounded further by the fact that defendants' pop ups are advertising products to remove the very pop ups that defendants are foisting onto consumers' computers.

20. Typically, consumers do not have the technical expertise to, on their own, prevent defendants' future Messenger Service spam from appearing on their computer screens. On the web sites through which they market their pop up-blocking software, the defendants represent that blocking the pop ups without the defendants' software requires "extensive tweaking and configuring of [your] computer." Many consumers believe that they cannot put an end to receiving defendants' incessant pop ups without purchasing and installing defendants' software or purchasing and installing "firewall" software. Furthermore, the injury caused by defendants' practices is not outweighed by countervailing benefits to consumers or to competition.

COUNT ONE

Unfair Use of the Windows Message Service

21. In numerous instances, defendants interfere with consumers' use of their computers by causing a stream of multiple, unwanted Windows Messenger Service pop ups to appear on consumers'

computer screens even when consumers are not using their Internet browsers. Defendants' actions are likely to cause substantial injury that cannot be reasonably avoided and is not outweighed by countervailing benefits to consumers or competition.

22. Therefore, defendants' practices, as described in Paragraph 21 above, are unfair and violate Section 5 of the FTC Act, 15 U.S.C. § 45(a).

COUNT TWO

Unfair Attempt to Coerce Consumers into Purchasing Software

23. In numerous instances, by causing a stream of multiple, unwanted Windows Messenger Service pop ups to appear on consumers' computer screens, advertising software that will stop the delivery of the pop ups, defendants attempt to coerce consumers into purchasing or licensing their software. This practice is likely to cause substantial injury that cannot be reasonably avoided, and is not outweighed by countervailing benefits to consumers or competition.

24. Therefore, defendants' practices, as described in Paragraph 23 above, are unfair and violate Section 5 of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

25. 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

26. 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:

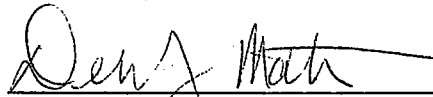
1. Award plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief.
2. Permanently enjoin the defendants from violating Section 5(a) of the FTC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

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

Dated: October 30, 2003

Respectfully submitted:

WILLIAM E. KOVACIC
General Counsel



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