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U.S. DISTRICT COURT
DISTRICT OF MARYLAND

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UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
NORTHERN DIVISION

BY _____ DEPUTY

AND 03 CV 3108

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

D SQUARED SOLUTIONS, LLC, et al.,

Defendants.

CIVIL NO.

~~(Proposed)~~ Temporary
Restraining Order and Order to
Show Cause

Plaintiff, the Federal Trade Commission (“FTC” or the “Commission”), having filed its complaint for injunctive and other equitable relief in this matter pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and having moved ex parte for a temporary restraining order and for an order to show cause why a preliminary injunction should not be granted pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, and the Court, having considered the complaint, declarations, exhibits, and memorandum of law filed in support thereof, finds that:

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe that it will have jurisdiction of all parties hereto;
2. There is good cause to believe that defendants D Squared Solutions, LLC, Anish Dhingra, and Jeffrey Davis have engaged and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that the plaintiff is therefore likely to prevail on the merits of this action;

3. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief will result from the sale, transfer, or other disposition or concealment by defendants of their assets or business records, unless the defendants are immediately restrained and enjoined by Order of this Court. The evidence set forth in the Commission's Memorandum of Points and Authorities in Support of its Ex Parte Motion for TRO ("Memorandum"), and in the accompanying declarations and exhibits, demonstrates that the defendants have engaged in a concerted course of unlawful activity by interfering with consumers' use of their computers by causing a stream of multiple, unwanted Windows Messenger Service "pop up" advertisements to appear on consumers' computers even when consumers are not using their Internet browsers, and by attempting to coerce consumers into purchasing or licensing the defendants' "pop up"-blocking software, in violation of Section 5 of the FTC Act. The evidence in the Memorandum further shows that the defendants previously have engaged in efforts to conceal their identities. Thus, there is good cause to believe that the defendants will continue with these deliberate illegal actions and concealment if not restrained from doing so by Order of this Court;

4. The Commission has not provided notice to the defendants due to the likelihood that advance notice of this action will cause the defendants to evade service of process and abscond with or destroy evidence. The Commission's request for this emergency ex parte relief is not the result of any lack of diligence on the Commission's part, but instead is based upon the nature of the defendants' unlawful conduct;

5. Weighing the equities and considering plaintiff's likelihood of ultimate success, a temporary restraining order requiring an immediate accounting of assets and providing other equitable relief is in the public interest; and

6. Fed. R. Civ. P. 65(c) does not require security of the United States or an officer or agency thereof for the issuance of a restraining order.

DEFINITIONS

For the purpose of this temporary restraining order ("Order"), the following definitions shall apply:

A. "Defendants" means Anish Dhingra, Jeffrey Davis, D Squared Solutions, LLC (including but not limited to the following d/b/as for D Squared Solutions:

www.blockmessenger.com, www.broadcastblocker.com, www.broadcastmarketer.com,

www.bustpopups.com, www.defeatmessenger.com, www.defeatpopupspam.com,

www.fightmessenger.com, www.fightpopups.com, [www.kill-](http://www.killmessenger.com)

messenger.com, www.messageaway.com, www.messengerbegone.com,

www.messengerblocker.com, www.messengerbuster.com,

www.messengerdestroyer.com, www.messengerkiller.com,

www.messengerspamcop.com, www.messenger-stomper.com,

www.messengerstopper.com, www.messenger-stopper.com,

www.onlineamericanpaymentprocessing.com, www.saveyourprivacy.com,

www.squaredbilling.com, www.stopmessenger.com, and www.stop-messenger.com), and

each of their successors, assigns, officers, agents, servants, employees, salespersons, subsidiaries or affiliates.

- B. "Assets" means any legal or equitable interest in, right to, or claim to any real or personal property of any defendant, or held for the benefit of any defendant, wherever located, including, but not limited to, "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as these terms are defined in the Uniform Commercial Code), chattels, leaseholds, contracts, mails, other deliveries, shares of stock, lists of participants, intellectual property, accounts, credits, receivables, cash, and trusts, including, but not limited to any other trust held for the benefit of any defendant, any defendant's minor children, or any defendant's spouse.
- C. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writing, drawings, graphs, charts, Internet sites, Web pages, Web sites, electronic correspondence, photographs, audio and video recordings, computer records, and another data complications from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term.
- D. "Window" or "dialog box" means an enclosed area on a computer's display screen, usually rectangular in shape.
- E. "Windows Messenger Service" means a feature of numerous versions of the Microsoft Windows operating system that causes messages to be displayed on a message recipient's

computer screen in the form of a window or dialog box containing a banner at the top entitled "Messenger Service."

- F. "Windows Messenger Service message" (also called "Messenger Service spam," "pop up spam" and "Messenger Service pop up") means a message displayed on a message recipient's computer screen via the Windows Messenger Service.
- G. "Windows Messenger Service message-blocking product or service" means any product or service, however denominated, that does or purports to block, remove, or otherwise prevent the appearance of Windows Messenger Service messages on a user's computer screen, including but not limited to the software offered for sale or license on the websites www.blockmessenger.com, www.broadcastblocker.com, www.broadcastmarketer.com, www.bustpopups.com, www.defeatmessenger.com, www.defeatpopupspam.com, www.fightmessenger.com, www.fightpopups.com, www.killmessenger.com, www.kill-messenger.com, www.messageaway.com, www.messengerbegone.com, www.messengerblocker.com, www.messengerbuster.com, www.messengerdestroyer.com, www.messengerkiller.com, www.messengerspamcop.com, ww.messenger-stomper.com, www.messengerstopper.com, www.messenger-stopper.com, www.onlineamericanpaymentprocessing.com, www.saveyourprivacy.com, www.squaredbilling.com, www.stopmessenger.com, and www.stop-messenger.com.

CONDUCT PROHIBITIONS

I.

IT IS THEREFORE ORDERED that the defendants, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are temporarily restrained and enjoined from directly or indirectly causing a Windows Messenger Service message, which advertises, promotes, markets, offers for sale or license, or sells or licenses any product or service, to appear on a computer user's computer screen.

II.

IT IS FURTHER ORDERED that the defendants, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are temporarily restrained and enjoined from advertising, promoting, marketing, offering for sale or license, or selling or licensing any product or service that directly or indirectly causes a Windows Messenger Service message to appear on a computer user's computer screen.

PRESERVATION OF RECORDS

III.

IT IS FURTHER ORDERED that the defendants, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents or records of any kind that relate to the business practices or business or personal finances of defendants D Squared

Solutions, LLC, Anish Dhingra, or Jeffrey Davis, including but not limited to, computerized files, storage media (including but not limited to floppy disks, hard drives, cd-ROMS, zip disks, punch cards, magnetic tape, backup tapes, and computer chips) on which information has been saved, any and all equipment needed to read any such material, contracts, accounting data, correspondence, advertisements (including, but not limited to, advertisements placed on the World Wide Web or the Internet), FTP logs, Service Access Logs, USENET Newsgroups postings, World Wide Web pages, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind that relate to the business practices or business or personal finances of the defendants.

MAINTENANCE OF CURRENT BUSINESS RECORDS

IV.

IT IS FURTHER ORDERED that the defendants, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby temporarily restrained and enjoined from:

- A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect defendants D Squared Solutions, LLC, Anish Dhingra, and Jeffrey Davis incomes, disbursements, transactions, and use of money; and
- B. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without

first providing the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers and employees; and (4) a detailed description of the business entity's intended activities.

FINANCIAL STATEMENTS AND ACCOUNTING PROVISIONS

V.

IT IS FURTHER ORDERED that within seven (7) days after service of this Order, defendants D Squared Solutions, LLC, Anish Dhingra, and Jeffrey Davis shall prepare and deliver to counsel for the Commission:

- A. A completed copy of the financial statements contained in ~~Attachment A~~ for the ~~individual defendants Anish Dhingra and Jeffrey Davis~~ and Attachment B for the corporate defendant D Squared Solutions, LLC, verified under oath and accurate as of the date of service of this Order upon such defendant;
- B. A completed statement, verified under oath and accurate, of all payments, transfers, or assignment of assets, as defined in this Order, made by defendants D Squared Solutions, LLC, ~~Anish Dhingra, and Jeffrey Davis~~, in the amount of \$1,000 or more since August 1, 2002. Such statement shall include (a) the amount transferred or assigned; (b) the name, address and telephone number of the transferor or assignor; (c) the name, address and telephone number of each transferee or assignee; (d) the date of the assignment or transfer; and (e) the type and amount of consideration for any payment.

- C. A completed statement, verified under oath and accurate, detailing the number of members of the public who purchased or licensed from the defendants any Windows Messenger Service message-blocking product or service and the aggregate total (gross) of funds received from such purchasers or licensees.

DISTRIBUTION OF ORDER BY DEFENDANTS

VI.

IT IS FURTHER ORDERED that defendants D Squared Solutions, LLC, Anish Dhingra, and Jeffrey Davis shall: (A) immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, independent contractor, salesperson, agent, attorney, and representative of any defendant; and (B) within seven (7) days from the date of entry of this Order, provide the Commission with a sworn statement detailing the manner in which defendants have complied with this provision of the Order, which shall include the names and addresses of each such person or entity who received a copy of the Order.

VII.

IT IS FURTHER ORDERED that defendants D Squared Solutions, LLC, Anish Dhingra, and Jeffrey Davis shall: (A) immediately provide a copy of this Order to each person and entity to whom the defendants sold or licensed a product or service that causes a Windows Messenger Service message to appear on computer users' computer screens; and (B) within seven (7) days from the date of entry of this Order, provide the Commission with a sworn statement detailing the manner in which defendants have complied with this provision of the Order, which shall include the names and addresses of each former

and current purchaser or licensee, the time and date on which a copy of this Order was provided to such purchaser or licensee, and the identity of the person who provided such purchaser or licensee with a copy of this Order.

SERVICE OF ORDER

VIII.

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may have possession, custody, or control of any documents or assets, as defined in this Order, of defendants D Squared Solutions, LLC, Anish Dhingra, and Jeffrey Davis, or that may be subject to any provision of this Order. Pursuant to Fed. R. Civ. P. 4(c)(2), this Order and the initial papers filed in this matter may be served by agents of plaintiff, and by agents of any process service retained by the plaintiff.

CONSUMER CREDIT REPORTS

IX.

IT IS FURTHER ORDERED that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning defendants D Squared Solutions, LLC, Anish Dhingra, and Jeffrey Davis to the Commission.

NOTIFICATION

X.

IT IS FURTHER ORDERED that for purposes of this Order, all correspondence and notification shall be sent to Mona Sedky Spivack or Deborah Matties at:

Federal Trade Commission - HQ-238
600 Pennsylvania Avenue, NW
Washington, DC 20580
Tel: (202) 326-3795 (Spivack)
(202) 326-2047 (Matties)
FAX: (202) 326-3395

ORDER TO SHOW CAUSE

XI.

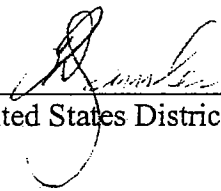
IT IS FURTHER ORDERED that defendants D Squared Solutions, LLC, Anish Dhingra, and Jeffrey Davis shall appear before this Court on the 10th day of November, 2003, at 9:30 o'clock am.m. in Courtroom 5B at the Garmatz Federal Courthouse, 101 W. Lombard Street, Baltimore, MD 21201, to show cause, if any there be, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint, against the defendants enjoining them from further violations of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and imposing such additional relief as may be appropriate.

RETENTION OF JURISDICTION

XII.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

SO ORDERED, this 30th day of October, 2003, at Baltimore, Maryland. at 3:52 p.m.



United States District Judge