

### Deception Allegation

The Commission's complaint alleges that by offering content over the Internet such as browser upgrades, utilities, games, screensavers, peer-to-peer file sharing software and/or entertainment content, without disclosing adequately that this content was bundled with Respondents' adware, Respondents committed a deceptive practice. The bundling of Respondents' adware, which monitors their Internet use and causes them to receive pop-up advertisements, would be material to consumers in their decision whether to download the other software programs and/or content.

### Unfairness Allegations

The Commission's complaint also alleges that it was an unfair practice for Respondents to install on consumers' computers, without their knowledge or authorization, adware that could not be reasonably identified, located, or removed by consumers. In addition, the complaint alleges that it was an unfair practice, in and of itself, for Respondents not to provide consumers with a reasonable means to identify, locate, and remove Respondents' adware from their computers. The complaint further alleges that these practices have caused or are likely to cause substantial consumer injury by requiring consumers to spend substantial time and/or money to locate and remove this adware from their computers. The injury to consumers was neither reasonably avoided by the consumers themselves, nor outweighed by countervailing benefits to consumers or competition.

### The Proposed Consent Order

The proposed consent order contains provisions designed to prevent Respondents from engaging in similar acts and practices in the future and to halt continuing harm caused by Respondents' prior unlawful practices. Part I of the proposed order prohibits Respondents from contacting any consumer's computer, to display ads or otherwise, if their adware was installed on that computer before January 1, 2006.

Parts II and III prohibit Respondents from, or assisting others in, installing software onto any computer by exploiting security vulnerabilities or failing to give adequate notice to consumers, or installing any software program or application without express consent. "Express consent" is defined in the proposed order to require clear and prominent disclosure of material terms prior to and separate from any end user license agreement, and consumer

activation of the download or installation via clicking a button or a substantially similar action.

Part IV requires Respondents to establish, implement, and maintain a clearly disclosed, user-friendly mechanism through which consumers can report and Respondents can timely address complaints regarding Respondents' practices.

Part V requires Respondents to establish, implement, and maintain a comprehensive program that is reasonably designed to require affiliates to obtain express consent before installing Respondents' software onto consumers' computers. Part V also contains sub-parts mandating certain measures Respondents must take to monitor their distribution network.

Part VI requires Respondents to identify advertisements served via Respondents' adware in order for consumers to easily locate the source of the advertisement, easily access Respondents' complaint mechanism, and access directions on how to uninstall such adware.

Part VII requires Respondents to provide reasonable and effective means for consumers to uninstall Respondents' adware.

Part IX requires Respondents to pay \$3 million to the Commission over the course of a year. In the discretion of the Commission, these funds may be used to provide such relief as it determines to be reasonably related to Respondents' practices alleged in the complaint, and to pay any attendant administrative costs. Such relief may include the rescission of contracts, payment of damages, and/or public notification respecting such unfair or deceptive practices. If the Commission determines, in its sole discretion, that such relief is wholly or partially impractical, any funds not used shall be paid to the U.S. Treasury.

Part X requires Respondents to cooperate with the Commission in this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the Complaint.

The remaining order provisions govern record retention (Part VIII), order distribution (Part XI), ongoing reporting requirements (Parts XII and XIII), and filing a compliance report (Part XIV). Part XV provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

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## FEDERAL TRADE COMMISSION

### No FEAR Act Notice

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Notice.

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**SUMMARY:** The Federal Trade Commission (FTC) is providing notice to its employees, former employees, and applicants for Federal employment about the rights and remedies available to them under the Federal antidiscrimination, whistleblower protection, and retaliation laws. This notice fulfills the FTC's initial notification obligation under the Notification and Federal Employees Antidiscrimination and Retaliation Act (No FEAR Act), as implemented by Office of Personnel Management (OPM) regulations at 5 CFR part 724.

**FOR FURTHER INFORMATION CONTACT:** Barbara Wiggs, Director, Office of Equal Employment Opportunity (EEO), by mail at Federal Trade Commission, Mail Drop H-413, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or by telephone at (202) 326-2197. Additional information can be found on the FTC's Web site at <http://www.ftc.gov>.

**SUPPLEMENTARY INFORMATION:** On May 15, 2002, Congress enacted the "Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002," which is now known as the No FEAR Act. See Pub. L. 107-174, codified at 5 U.S.C. 2301 note. As stated in the full title of the Act, the Act is intended to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws." In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination." Pub. L. 107-174, section 101(1).

The Act also requires this agency to provide this notice to its Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination, whistleblower protection, and retaliation laws.

### Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with

respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e-16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. *See, e.g.,* 29 CFR part 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

#### Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have

been the victim of whistleblower retaliation, you may file a written complaint (Form OSC-11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036-4505 or online through the OSC Web site at <http://www.osc.gov>.

#### Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

#### Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal antidiscrimination and whistleblower protection laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

#### Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within the FTC (*e.g.*, Office of EEO, Human Resources Management Office, or Office of the General Counsel). Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found on the EEOC Web site at <http://www.eeoc.gov> and on the OSC Web site at <http://www.osc.gov>.

#### Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States,

including the provisions of law specified in 5 U.S.C. 2302(d).

By direction of the Commission.

**Donald S. Clark,**  
*Secretary.*

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#### GENERAL SERVICES ADMINISTRATION

[BCA 2006-N01]

#### Board of Contract Appeals; The Establishment of The Civilian Board of Contract Appeals and the Termination of The Boards of Contract Appeals of the General Services Administration and the Departments of Agriculture, Energy, Housing and Urban Development, Interior, Labor, Transportation, and Veterans Affairs

**AGENCY:** General Services Administration (GSA), Board of Contract Appeals.

**ACTION:** Notice.

**SUMMARY:** In section 847 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. No. 109-163, Congress established the Civilian Board of Contract Appeals (CBCA) within GSA to hear and decide contract disputes involving executive agencies (other than the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the National Aeronautics and Space Administration, the United States Postal Service, the Postal Rate Commission, and the Tennessee Valley Authority) under the provisions of the Contract Disputes Act of 1978 and regulations and rules issued thereunder. Boards of contract appeals currently exist at the General Services Administration and the departments of Agriculture, Energy, Housing and Urban Development, Interior, Labor, Transportation, and Veterans Affairs. Effective January 6, 2007, all of those boards in existence on that date will terminate, and their cases, Board judges, and other personnel will transfer to the new Civilian Board.

**SUPPLEMENTARY INFORMATION:** The legislation establishing the Civilian Board provides that the CBCA will have jurisdiction to decide contract appeals from any executive agency (other than the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the National Aeronautics and Space Administration, the United States Postal Service, the Postal Rate Commission, and the