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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Federal Trade Commission,  
  
Plaintiff,  
  
v.  
  
ERG Ventures, LLC, et. al.,  
Defendants.

3:06-CV-00578-HDM-VPC

**STIPULATED PRELIMINARY INJUNCTION  
AS TO THE ERG DEFENDANTS**

Plaintiff, the Federal Trade Commission ("FTC" or the "Commission"), pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), filed a Complaint for Injunctive and Other Equitable Relief, and applied *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. On October 31, 2006, Judge McKibben of the District Court of Nevada granted the FTC's application and entered a Temporary Restraining Order and Order to Show Cause against defendants ERG Ventures, LLC and d/b/a ERG Ventures, LLC2, Media Motor, Joysticksavers.com, and PrivateinPublic.com;

1 Elliott S. Cameron, individually and d/b/a ERG Ventures, LLC2, Media Motor,  
2 Joysticksavers.com, and PrivateinPublic.com; Robert A. Davidson, II, individually and d/b/a  
3 ERG Ventures, LLC2, Media Motor, Joysticksavers.com, and PrivateinPublic.com; Garry E.  
4 Hill, individually and d/b/a ERG Ventures, LLC2, Media Motor, Joysticksavers.com, and  
5 PrivateinPublic.com; and Timothy P. Taylor, individually and d/b/a Team Taylor Made. The  
6 Court has considered the pleadings, declarations, exhibits, and memoranda filed in connection  
7 with the Commission's motion for a preliminary injunction and finds that:

8 FINDINGS

- 9 1. This Court has jurisdiction over the subject matter of this case, and there is good cause to  
10 believe that it will have jurisdiction over all parties hereto;
- 11 2. There is good cause to believe that Defendants ERG Ventures LLC, a Nevada Limited  
12 Liability Company d/b/a ERG Ventures LLC2, Media Motor, Joysticksavers.com, and  
13 PrivateInPublic.com; Elliott S. Cameron, individually and as an officer of ERG Ventures  
14 LLC; Robert A. Davidson, II, individually and as an officer of ERG Ventures LLC; Garry  
15 E. Hill, individually and as an officer of ERG Ventures LLC, (collectively the "ERG  
16 Defendants") have engaged and are likely to engage in acts or practices that violate  
17 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and that the Commission is therefore  
18 likely to prevail on the merits of this action;
- 19 3. The evidence set forth in the Commission's Memorandum of Law in Support of *Ex Parte*  
20 Motion for Temporary Restraining Order and Order to Show Cause, supplemental  
21 memoranda, and the accompanying declarations and exhibits demonstrates that the  
22 Commission is likely to prove that the ERG Defendants have engaged in deceptive and  
23 unfair practices in violation of Section 5 of the FTC Act. The Commission is likely to  
24 prove that the ERG Defendants have deceived consumers into downloading exploitive  
25 software by hiding exploitive code within the free software they offer the public. The  
26 Commission is likely to prove that the exploitive code created by the ERG Defendants and  
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1 silently bundled by both the ERG Defendants and its affiliates causes significant harm to  
2 consumers by downloading programs that: a) change consumer's default homepage;  
3 b) add difficult-to-remove toolbars to the consumer's Internet browsers that display  
4 advertising; c) track the consumer's Internet activity; d) generate repeated and occasionally  
5 sexually-explicit pop up advertising; e) add advertising icons to the consumer's Windows  
6 desktop; f) alter the consumer's Internet browser settings; g) degrade computer  
7 performance; and h) attack and disable the consumer's anti-spyware software. The  
8 Commission is likely to prove that the harm caused by the ERG Defendants is not  
9 reasonably avoidable by consumers because the ERG Defendants fail to disclose to  
10 consumers the presence of the exploitive code, and because the exploitive software  
11 installed by the ERG Defendants is extremely difficult to uninstall or otherwise remove.  
12 The Commission is likely to prove that the harm caused by the ERG Defendants is not  
13 outweighed by any benefit to consumers or competition;

14 4. There is good cause to believe that the ERG Defendants will continue to engage in such  
15 unlawful actions if they are not immediately restrained from doing so by Order of this  
16 Court;

17 5. There is good cause to believe that immediate and irreparable damage to the Court's  
18 ability to grant effective final relief in the form of monetary restitution will occur from the  
19 sale, transfer, or other disposition or concealment by the ERG Defendants of their assets or  
20 business records, unless the ERG Defendants are immediately restrained and enjoined by  
21 Order of this Court. The evidence set forth in the Plaintiff's *Ex Parte* Motion for a  
22 Temporary Restraining Order and Order to Show Cause, supplemental memoranda, and in  
23 the accompanying declarations and exhibits, is likely to prove that the ERG Defendants  
24 have engaged in a concerted course of unlawful activity in connection with the deceptive  
25 bundling and distribution of exploitive software in violation of Section 5 of the FTC Act,  
26 15 U.S.C. § 45. Furthermore, the evidence is likely to prove that: (1) the ERG Defendants  
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1 utilize post office boxes, a mail forwarding service, and anonymous email addresses that  
2 may have been used to hide from law enforcement and defrauded consumers; (2) the ERG  
3 Defendants utilize an anonymous domain registration service that may have been used to  
4 shield their identity from law enforcement and defrauded consumers; and (3) the ERG  
5 Defendants have ignored calls from the anti-spyware community to cease their unlawful  
6 and injurious activity. Thus, there is good cause to believe that the ERG Defendants will  
7 continue to engage in attempts to conceal the scope of their unlawful actions to avoid  
8 returning their ill-gotten gains to consumers injured by their unlawful practices if not  
9 restrained from doing so by Order of this Court;

10 6. There is good cause for the Court to continue the asset freeze against the ERG Defendants.  
11 Emails authored by the ERG Defendants and produced to the Court by the Commission  
12 demonstrate that the ERG Defendants reported more than one million dollars in gross  
13 profits between April 2004 and April 2005. There is good cause to believe that these  
14 funds were derived from activity that violates Section 5 of the FTC Act, including  
15 deceiving consumers into downloading exploitive software to their computers. An asset  
16 freeze as to the ERG Defendants is reasonably necessary in order to preserve the  
17 possibility of complete and meaningful relief in the form of disgorgement and/or consumer  
18 redress at the conclusion of this litigation;

19 7. Weighing the equities and considering the Commission's likelihood of ultimate  
20 success, a preliminary injunction halting the ERG Defendants' unlawful conduct,  
21 continuing the asset freeze as to the ERG Defendants, preserving business records, and  
22 providing other equitable relief, is in the public interest; and

23 8. No security is required of any agency of the United States for issuance of a preliminary  
24 injunction. Fed. R. Civ. P. 65(c).

1 **DEFINITIONS**

2 For the purpose of this order, the following definitions shall apply:

- 3 1. **“Defendants”** means, individually, collectively or in any combination: ERG Ventures  
4 LLC d/b/a ERG Ventures LLC2, Giant Ventures, LLC, Media Motor, IMGiant,  
5 Joysticksavers.com, and PrivateInPublic.com; Elliott S. Cameron d/b/a ERG Ventures  
6 LLC2, Giant Ventures, LLC, Media Motor, IMGiant, Joysticksavers.com, and  
7 PrivateInPublic.com, individually and as an officer of ERG Ventures LLC; Robert A.  
8 Davidson, II d/b/a ERG Ventures LLC2, Giant Ventures, LLC, Media Motor, IMGiant,  
9 Joysticksavers.com, and PrivateInPublic.com, individually and as an officer of ERG  
10 Ventures LLC; and Garry E. Hill d/b/a ERG Ventures LLC2, Giant Ventures, LLC,  
11 Media Motor, IMGiant, Joysticksavers.com, and PrivateInPublic.com, individually and as  
12 an officer of ERG Ventures LLC; and all persons or entities in active concert or  
13 participation with any of the foregoing who receive notice of this Order by personal  
14 service or otherwise. (Fed. R. Civ. P. 65(d)).
- 15 2. **“ERG Defendants”** means ERG Ventures LLC d/b/a ERG Ventures LLC2, Giant  
16 Ventures, LLC, Media Motor, IMGiant, Joysticksavers.com, and PrivateInPublic.com;  
17 Elliot S. Cameron d/b/a ERG Ventures LLC2, Giant Ventures, LLC, Media Motor,  
18 IMGiant, Joysticksavers.com, and PrivateInPublic.com; Robert A. Davidson d/b/a ERG  
19 Ventures LLC2, Giant Ventures, LLC, Media Motor, IMGiant, Joysticksavers.com, and  
20 PrivateInPublic.com; and Garry E. Hill d/b/a ERG Ventures LLC2, Giant Ventures, LLC,  
21 Media Motor, IMGiant, Joysticksavers.com, and PrivateInPublic.com, as well as their  
22 successors, assigns, affiliates, or subsidiaries.
- 23 3. **“Individual Defendants”** means Elliott S. Cameron d/b/a ERG Ventures LLC2, Giant  
24 Ventures, LLC, Media Motor, IMGiant, Joysticksavers.com, and PrivateInPublic.com;  
25 Robert A. Davidson, II d/b/a ERG Ventures LLC2, Giant Ventures, LLC, Media Motor,  
26 IMGiant, Joysticksavers.com, and PrivateInPublic.com; and Garry E. Hill d/b/a ERG  
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1 Ventures LLC2, Giant Ventures, LLC, Media Motor, IMGiant, Joysticksavers.com, and  
2 PrivateInPublic.com.

3 4. **“Corporate Defendants”** means ERG Ventures LLC d/b/a ERG Ventures LLC2, Giant  
4 Ventures, LLC, Media Motor, IMGiant, Joysticksavers.com, and PrivateInPublic.com.

5 5. **“Assets”** means any legal or equitable interest in, right to, or claim to, any real, personal,  
6 or intellectual property of any of the Corporate Defendants or Individual Defendants, or  
7 held for the benefit of any Corporate Defendants or Individual Defendants, wherever  
8 located, including, but not limited to, chattel, goods, instruments, equipment, fixtures,  
9 general intangibles, effects, leaseholds, contracts, mail or other deliveries, shares of stock,  
10 inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the  
11 Uniform Commercial Code), cash, and trusts, including but not limited to any other trust  
12 held for the benefit of any Corporate Defendant or Individual Defendant, or any of the  
13 Individual Defendants’ minor children, or spouse.

14 6. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in  
15 the Federal Rules of Civil Procedure 34(a), and includes writing, drawings, graphs,  
16 charts, Internet sites, Web pages, Web sites, electronic correspondence, including e-mail  
17 and instant messages, photographs, audio and video recordings, contracts, accounting  
18 data, advertisements (including, but not limited to, advertisements placed on the World  
19 Wide Web), FTP Logs, Server Access Logs, USENET Newsgroup postings, World Wide  
20 Web pages, books, written or printed records, handwritten notes, telephone logs,  
21 telephone scripts, receipt books, ledgers, personal and business canceled checks and  
22 check registers, bank statements, appointment books, computer records, and other data  
23 compilations from which information can be obtained and translated. A draft or non-  
24 identical copy is a separate document within the meaning of the term.

25 7. A **“Host”** or **“Hosting Company”** is the party that provides the infrastructure for a  
26 computer service. With respect to web pages and web sites, a Host or Hosting Company  
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1 maintains "Internet servers" -- the computers on which web sites, web pages, Internet  
2 files, or resources reside. The Host or Hosting Company also maintains the  
3 communication lines required to link the server to the Internet. Often, the content on the  
4 servers (*i.e.*, content of the web pages) is controlled by someone other than the Host or  
5 Hosting Company.

6 8. "Affiliate marketer" or "sub-affiliate marketer" means any person who provides or  
7 has provided the ERG Defendants with assistance in marketing, advertising, distributing,  
8 downloading, or installing software code or other goods or services.

9 9. "Affiliate program(s)" is an arrangement under which any or all of the ERG Defendants  
10 pay or offer to pay another ("the affiliate") to market, advertise, distribute, download or  
11 install software or other goods or services on behalf of the ERG Defendants, with the  
12 affiliate being paid based on performance measures, including but not limited to the  
13 number of software installations or downloads.

14 10. "Software" means any file, program, application, content, code or set of instructions that  
15 controls, directs, or assists in the operation of a computer.

16 I

17 **INJUNCTION AGAINST MISREPRESENTATION OF SOFTWARE**  
18 **AS TO THE ERG DEFENDANTS**

19 **IT IS THEREFORE ORDERED** that in connection with marketing, distributing, and  
20 installing of Software via the Internet, and assisting others in marketing, distributing, and  
21 installing of Software via the Internet, the ERG Defendants, and those persons in active concert or  
22 participation with them who receive actual notice of this Order by personal service or otherwise,  
23 are preliminarily restrained and enjoined from, prior to the installation of any Software directly or  
24 indirectly installed on consumers' computers by the ERG Defendants: 1) failing to clearly and  
25 conspicuously disclose the name and function of all such Software (the "Required Disclosure");  
26 and 2) failing to provide, immediately after the Required Disclosure is made, a clearly and  
27 conspicuously disclosed option to prevent the installation of all such Software, which when  
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1 exercised by the consumer, prevents the installation of all such Software.

2 **II**

3 **INJUNCTION AGAINST UNFAIR INSTALLATION OF**  
4 **EXPLOITIVE SOFTWARE AS TO THE ERG DEFENDANTS**

5 **IT IS FURTHER ORDERED** that, in connection with marketing and distributing of  
6 Software via the Internet, the ERG Defendants, and those persons in active concert or  
7 participation with them who receive actual notice of this Order by personal service or otherwise,  
8 are preliminarily restrained and enjoined from publishing, disseminating, distributing, installing or  
9 downloading Software that interferes with consumers' computer use, including, but not limited to,  
10 software that:

- 11 A. tracks consumers' Internet activity;
- 12 B. changes consumers' preferred Internet homepage settings;
- 13 C. inserts an advertising toolbar onto consumers' Internet browsers;
- 14 D. generates numerous "pop up" advertisements on consumers' computer  
15 screens even when consumers' Internet browsers are closed;
- 16 E. adds advertising icons to the computer's desktop;
- 17 F. tampers with, disables or otherwise alters the performance of other  
18 programs, including anti-spyware and anti-virus programs; or
- 19 G. alters Internet browser security settings, including the list of safe or trusted  
20 websites.

21 **III**

22 **ASSET FREEZE AS TO THE ERG DEFENDANTS**

23 **IT IS FURTHER ORDERED** that the ERG Defendants, any person insofar as he or she  
24 is acting in the capacity of an officer, agent, representative, servant, employee or attorney of the  
25 ERG Defendants, and all persons or entities in active concert or participation with any of the  
26 foregoing who receive notice of this Order by personal service or otherwise are hereby  
27 preliminarily restrained and enjoined from:  
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1 A. Transferring, liquidating, converting, encumbering, pledging, loaning, selling,  
2 concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or security  
3 interest or other interest in, or otherwise disposing of any funds, real or personal property,  
4 accounts, contracts, consumer lists, shares of stock, or other assets, or any interest therein,  
5 wherever located, that are: (1) owned or controlled by any of the ERG Defendants, in whole or in  
6 part, for the benefit of any of the ERG Defendants; (2) in the actual or constructive possession of  
7 any of the ERG Defendants; or (3) owned, controlled by, or in the actual or constructive  
8 possession of any corporation, partnership, or other entity directly or indirectly owned, managed,  
9 or controlled by any of the ERG Defendants, including, but not limited to, any assets held by or  
10 for, or subject to access by, any of the ERG Defendants, at any bank or savings and loan  
11 institution, or with any broker-dealer, escrow agent, title company, commodity trading company,  
12 precious metals dealer, or other financial institution or depository of any kind;

13 B. Opening or causing to be opened any safe deposit boxes titled in the name of any  
14 of the ERG Defendants, or subject to access by any of them, except to the extent that the ERG  
15 Defendants, through their counsel, request and obtain written permission from Commission  
16 counsel which sets forth the personal documents they may retrieve;

17 C. Incurring charges or cash advances on any credit card issued in the name, singly or  
18 jointly, of any of the ERG Defendants;

19 D. Obtaining a personal or secured loan titled in the name of any of the ERG  
20 Defendants, or subject to access by any of them; and

21 E. Incurring liens or other encumbrances on real property, personal property, or other  
22 assets in the name, singly or jointly, of any of the ERG Defendants.

23 F. Both the Commission and the ERG Defendants acknowledge that, upon  
24 completion of the financial statements (Attachments B and C) and upon an adequate factual  
25 showing of need, the Commission's counsel will consider consenting to a motion requesting  
26 unfreezing a limited amount of assets for reasonable living expenses. To the extent that  
27 Commission's counsel does not consent, this Paragraph does not limit the ERG Defendants'

