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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

13 FEDERAL TRADE COMMISSION,
14
15 Plaintiff,
v.

16 DIGITAL ENTERPRISES, INC., d/b/a
MOVIELAND.COM, a California
17 corporation; TRIUMPHANT VIDEOS,
INC., d/b/a POPCORN.NET, a
18 California corporation;
PACIFICON INTERNATIONAL, INC.,
19 d/b/a VITALIX, a California
corporation; ALCHEMY
20 COMMUNICATIONS, INC., a
California corporation;
21 ACCESSMEDIA NETWORKS, INC., a
Delaware corporation; INNOVATIVE
22 NETWORKS, INC., a California
corporation; FILM WEB, INC., a
23 Wyoming corporation; BINARY
SOURCE, INC., d/b/a
24 MOVIEPASS.TV, a California
corporation; MEDIACASTER, INC.,
25 d/b/a MEDIACASTER.NET, a
Delaware corporation; CS
26 HOTLINE, INC., a California
corporation; EASTON HERD; and
27 ANDREW GARRONI,

28 Defendants.

Case no.

CV06-4923 CAS AJWx

COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER EQUITABLE
RELIEF

1 Plaintiff Federal Trade Commission (hereinafter "FTC" or
2 "Commission") for its complaint alleges:

3 1. The FTC brings this action under Section 13(b) of the
4 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to
5 obtain preliminary and permanent injunctive relief, rescission of
6 contracts, restitution, disgorgement and other equitable relief
7 for Defendants' deceptive and unfair acts or practices in
8 violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

9 **JURISDICTION AND VENUE**

10 2. This Court has subject matter jurisdiction over the
11 FTC's claims pursuant to 15 U.S.C. §§ 45(a) and 53(b) and 28
12 U.S.C. §§ 1331, 1337(a) and 1345.

13 3. Venue in the Central District of California is proper
14 under 15 U.S.C. § 53(b), as amended by the FTC Act Amendments of
15 1994, Pub. L. No. 103-312, 108 Stat. 1691, and 28 U.S.C. §§
16 1391(b) and (c).

17 **PLAINTIFF**

18 4. Plaintiff **FTC** is an independent agency of the United
19 States government created by statute. 15 U.S.C. §§ 41 et seq.
20 The Commission is charged with, inter alia, enforcing Section 5(a)
21 of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or
22 deceptive acts or practices in or affecting commerce.

23 5. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
24 authorizes the FTC to initiate federal district court proceedings,
25 in its own name by its designated attorneys, to enjoin violations
26 of any provision of law enforced by the FTC, and to secure such
27 equitable relief as may be appropriate in each case, including
28 rescission of contracts, restitution and disgorgement, 15 U.S.C.

1 § 53(b).

2 **DEFENDANTS**

3 6. Defendant **Digital Enterprises, Inc.** (hereinafter
4 "Digital Enterprises") is a California corporation incorporated in
5 2004 that also does business as Movieland.com. Digital
6 Enterprises transacts or has transacted business within the
7 Central District of California. It transacts or has transacted
8 business through a mail drop address at 23705 Van Owen St., #119,
9 West Hills, CA 91307 that it has registered with the California
10 Secretary of State as its principal executive office. It has also
11 transacted business at 6300 Canoga Ave., 15th Floor, Woodland
12 Hills, CA, a business location also used by Defendant Alchemy
13 Communications, Inc. During some of the time period material to
14 this complaint, Digital Enterprises has been the registrant of the
15 movieland.com domain name.

16 7. Defendant **Triumphant Videos, Inc.** (hereinafter
17 "Triumphant Videos") is a California corporation incorporated in
18 2003 that also does business as Popcorn.net. Triumphant Videos
19 transacts or has transacted business within the Central District
20 of California. It transacts or has transacted business through a
21 mail drop address at 7095 Hollywood Blvd., #712, Hollywood, CA
22 90028. It also transacts or has transacted business through mail
23 drop addresses at 10200 Mason Avenue #144, Chatsworth, CA 91311
24 and 5482 Wilshire Blvd., #1545, Los Angeles, CA 90036. During
25 most or all of the time period material to this complaint,
26 Triumphant Videos has been the registrant of the moviepass.tv and
27 popcorn.net domain names.

28 8. Defendant **Pacificon International, Inc. d/b/a Vitalix**

1 (hereinafter "Pacificon"), is a California corporation
2 incorporated in 2000. Pacificon transacts or has transacted
3 business within the Central District of California. It transacts
4 or has transacted business through a mail drop address at 3940
5 Laurel Canyon #609, Studio City, CA 91604. It has also
6 transacted business at 2265 Westwood Blvd., Suite 197, Los
7 Angeles, CA 90064. During some of the time period material to
8 this complaint, Pacificon has controlled IP addresses used by the
9 movieland.com, moviepass.tv, and mediacaster.net websites.

10 9. Defendant **Alchemy Communications, Inc.** (hereinafter
11 "Alchemy") is a California corporation incorporated in 1995.
12 Alchemy Communications transacts or has transacted business within
13 the Central District of California. It transacts or has
14 transacted business at 1200 West 7th St., Ste. L1-100, Los
15 Angeles, CA 90017. It also transacts or has transacted business
16 at 6300 Canoga Ave., 15th Floor, Woodland Hills, CA, a business
17 location also used by Digital Enterprises. At all times material
18 to this complaint, Alchemy has provided customer service and other
19 management services for the other corporate defendants.

20 10. Defendant **AccessMedia Networks, Inc.** (hereinafter
21 "AccessMedia") is a Delaware corporation incorporated in 2002.
22 AccessMedia transacts or has transacted business within the
23 Central District of California. It has registered 8646 Edwin
24 Drive, Los Angeles, CA 90046 with the California Secretary of
25 State as its California address. During some of the time period
26 material to this complaint, AccessMedia has served both as the
27 registrant of the movieland.com domain name and the technical and
28 administrative contact for the movieland.com website and has

1 shared telephone numbers and customer service infrastructure with
2 Defendant Digital Enterprises.

3 11. Defendant **Innovative Networks, Inc.** (hereinafter
4 "Innovative Networks") is a California corporation incorporated in
5 2001. Innovative Networks transacts or has transacted business
6 within the Central District of California. Innovative Networks
7 transacts or has transacted business through a mail drop address
8 at 20841 Ventura Blvd., #357, Woodland Hills, CA 91634. During
9 some or all of the time period material to this complaint,
10 Innovative Networks has received the proceeds of consumers'
11 payments to Defendant Digital Enterprises for the consumers'
12 purported contractual obligations to movieland.com.

13 12. Defendant **Film Web, Inc.** (hereinafter "Film Web") is a
14 Wyoming corporation incorporated in 2002. Film Web transacts or
15 has transacted business within the Central District of California.
16 During some or all of the time period material to this complaint,
17 payments made by consumers via check on the movieland.com website
18 via the payment service "ChargeMeLater" have been transferred to
19 Film Web.

20 13. Defendant **Binary Source, Inc.** (hereinafter "Binary
21 Source") is a California corporation incorporated in 2004 that
22 also does business as Moviepass.tv. Binary Source transacts or
23 has transacted business within the Central District of California.
24 It transacts or has transacted business through a mail drop
25 address at 4804 Laurel Canyon Blvd. #536, Valley Village, CA
26 91607. During some or all of the time period material to this
27 complaint, the moviepass.tv website has instructed consumers that
28 checks written to satisfy consumers' purported contractual

1 obligations to moviepass.tv should be made payable to Binary
2 Source.

3 14. Defendant **Mediacaster, Inc.** (hereinafter "Mediacaster")
4 is a Delaware corporation that also does business as
5 www.mediacaster.net. Mediacaster transacts or has transacted
6 business within the Central District of California. During some
7 or all of the time period material to this complaint,
8 "www.mediacaster.net" has appeared as the merchant on consumers'
9 credit cards statements when consumers have used credit cards to
10 make payments to movieland.com or moviepass.tv.

11 15. Defendant **CS Hotline, Inc.** (hereinafter "CS Hotline"),
12 is a California corporation incorporated in 2003. CS Hotline
13 transacts or has transacted business within the Central District
14 of California. It transacts or has transacted business through a
15 mail drop address at 3940 Laurel Canyon Blvd., #859, Studio City,
16 CA 91604. During most or all of the time period material to this
17 complaint, CS Hotline has provided customer support services for
18 moviepass.tv.

19 16. Defendant **Easton Herd** is the sole officer and director
20 of Defendants Digital Enterprises and Triumphant Videos. He
21 resides in the Central District of California and transacts
22 business there. At all times material to this complaint, acting
23 alone or in concert with others, he has formulated, directed,
24 controlled, or participated in the acts and practices set forth in
25 this complaint.

26 17. Defendant **Andrew Garroni** is an officer or director of
27 Defendants Pacificon, Alchemy, Film Web, and Binary Source. He
28 resides in the Central District of California and transacts

1 business there. At all times material to this complaint, acting
2 alone or in concert with others, he has formulated, directed,
3 controlled, or participated in the acts and practices set forth in
4 this complaint.

5 18. The foregoing entities, Digital Enterprises, Triumphant
6 Videos, Pacificon, Alchemy, AccessMedia, Innovative Networks, Film
7 Web, Binary Source, Mediacaster, and CS Hotline operate as a
8 common enterprise throughout the United States under the names
9 Movieland.com, Moviepass.tv, and Popcorn.net.

10 **COMMERCE**

11 19. The acts and practices of Digital Enterprises,
12 Triumphant Videos, Pacificon, Alchemy, AccessMedia Networks,
13 Innovative Networks, Film Web, Binary Source, Mediacaster, CS
14 Hotline, Easton Herd, and Andrew Garroni (collectively,
15 "Defendants") alleged in this Complaint are or have been in or
16 affecting commerce, as "commerce" is defined in Section 4 of the
17 FTC Act, 15 U.S.C. § 44.

18 **DEFENDANTS' UNLAWFUL BUSINESS PRACTICES**

19 20. Since at least the Fall of 2005, Defendants,
20 individually and in concert, and through the mutual assistance of
21 one another, have engaged in a nationwide scheme to use deception
22 and coercion to extract payments from consumers. Defendants'
23 putative business offers consumers membership to an Internet
24 download service with content such as news, sports, games, and
25 adult entertainment. This service supposedly uses software called
26 a "download manager" that, once installed on a computer, will
27 allow access to Defendants' download service. Defendants purport
28 to market the software and download service with a 3-day free

1 trial offer.

2 21. Installation of Defendants' download manager is merely a
3 smokescreen concealing Defendants' true purpose: to install
4 software and other files onto consumers' computers that enable
5 Defendants to launch pop-up windows on consumers' computers
6 demanding payments to Defendants. These pop-up windows, which
7 display both textual and audiovisual payment demands,
8 significantly disrupt consumers' use of their computers. After
9 Defendants cause these pop-up payment demands to display on a
10 particular computer for the first time, they cause them to
11 redisplay again and again with ever-increasing frequency. To get
12 these pop-ups to stop appearing, many consumers give in to
13 Defendants' extortionate tactics and pay the Defendants.

14 22. Defendants have carried out their scheme on the Internet
15 using at least three names: "Movieland.com," at the URL
16 movieland.com, since the Fall of 2005 or earlier; "Moviepass.tv,"
17 at the URL moviepass.tv, since early 2006; and "Popcorn.net," at
18 the URL popcorn.net, since in or around June 2006.

19 23. Defendants have identified their download manager (the
20 software that supposedly facilitates consumers' access to
21 Defendants' Internet download service) as "MediaPipe",
22 "FileGrabber", and "Media Assistant." Defendants' Movieland.com
23 site identifies its download manager as "MediaPipe." Defendants'
24 Moviepass.tv site generally calls the download manager
25 "FileGrabber" but also refers to it as "MediaPipe." Defendants'
26 Popcorn.net site generally identifies the download manager as
27 "Media Assistant" but also refers to it as "FileGrabber."

28 24. To ensure that consumers cannot free their computers

1 from the pop-up payment demands, Defendants install programs and
2 computer code that prevent consumers from using reasonable means
3 to uninstall Defendants' software.

4 Defendants use textual and audiovisual pop-up
5 messages to demand payments from consumers

6 25. Many consumers report that their first encounter with
7 the Defendants is a demand for payment that Defendants cause to
8 appear on consumers' computer screens in a pop-up window on top of
9 a large, dark background. The pop-up window and the text
10 contained within it stream onto consumers' computer screens while
11 music plays. The header line on the pop-up window reads
12 "Movieland.com, ""Moviepass.tv," or "Popcorn.net" and "3 DAY TRIAL
13 EXPIRED." A graphic on the left of the pop-up reads "STOP THESE
14 REMINDERS NOW" and "CLICK CONTINUE." The text inside the pop-up
15 reads substantially the same as follows:

16 On 2006-02-18 at 13:35:44 PST our content
17 access software was installed on your system
18 and your 3 day free trial began.

19
20 Your I.P. address at the time was
21 71.192.119.243. Your customer ID is 65416640.

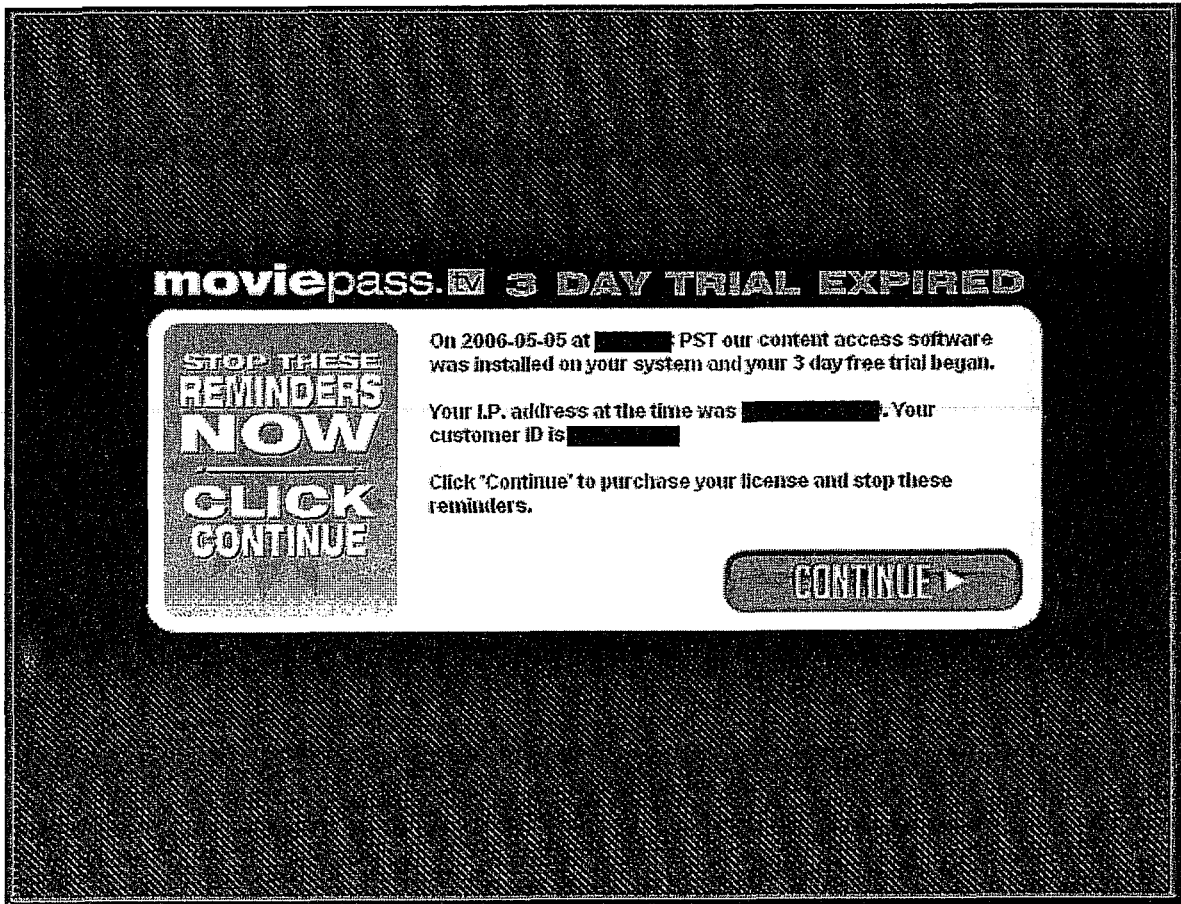
22
23 Click 'Continue' to purchase your license and
24 stop these reminders.

25 The date, time, IP address and customer ID listed in the pop-up
26 window varies from consumer to consumer. Although the Defendants
27 have made some minor modifications to the pop-up window's text
28 during the course of their scheme, the text has remained

1 substantially the same.

2 26. The pop-up "reminder" (reproduced below as Figure 1)
3 takes up much of the computer screen, obstructs consumers from
4 working in other windows, and lacks any obvious way to permit
5 consumers to minimize or close it, as it lacks the familiar "X" or
6 "_ " symbols that often appear on pop-up windows. The only option
7 this first pop-up offers to consumers is a button marked
8 "Continue."

9 **Figure 1**



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26 27. Consumers who click on the "Continue" button find their
27 computers launching an audiovisual file that features a woman
28 speaking over background music in front of a display of the words

1 "Movieland.com," "Moviepass.tv," or "Popcorn.net." The woman who
2 speaks about "Movieland.com" or "Moviepass.tv" states the
3 following:

4 Hello, I'm Kate, your personal customer
5 service representative. I'm glad you enjoyed
6 your free trial and had a chance to experience
7 all that our service has to offer, including
8 full length movies, music, news, sports
9 scores, mature content, and our award-winning
10 entertainment section. Because you did not
11 cancel during your trial period, you are now
12 legally obligated to make your payment as per
13 the terms and conditions you agreed to when
14 you installed our content delivery software.
15 Just choose the payment option that's right
16 for you and continue to enjoy the service as
17 one of our valued customers.

18 The woman who speaks about "Popcorn.net" makes the same speech,
19 except she identifies herself as "Maria" rather than "Kate" and
20 mentions "mature content" before she mentions "sports scores."

21 28. As the video clip nears its conclusion (approximately 40
22 seconds after it begins playing), a dialog box entitled "PAYMENT
23 OPTIONS" appears next to it. A picture of the video clip and the
24 dialog box is reproduced below as Figure 2. The dialog box
25 includes payment options for "monthly licenses" or "annual
26 licenses," an option labeled "Close this window," and a button
27 labeled "Continue." A button labeled "Frequently Asked Questions"
28 also appears above the dialog box.

1 Figure 2



21 29. Consumers who choose a payment option and press the

22 "Continue" button are linked to a web page that provides

23 instructions for the particular payment method, including: credit

24 card, online check (electronic bank debit), or check or money

25 order via mail.

26 30. Consumers who choose the "Close this window" option are

27 freed from pop-ups temporarily; however, the sequence of pop-up

28 payment demands soon repeats itself. In fact, as time passes, the

1 pop-up payment demands appear more and more frequently, and they
2 remain impervious to being closed or minimized each time.

3 31. Defendants reinforce their repeated demands for payments
4 and false statements about consumers' responsibility to pay them
5 on the "Customer Service" and "Frequently Asked Questions"
6 sections of their websites. For example, under the heading "I
7 never signed up for this service, I would like to cancel," the
8 Customer Service section of Defendants' movieland.com website
9 states:

10 It is impossible for this software to exist on
11 your system without a user actively following
12 a four step installation process.

13 We understand that multiple users may access a
14 single computer. However, the machine's owner
15 is solely responsible for regulating access to
16 the computer. As such, it is your
17 responsibility to satisfy the contract entered
18 into by way of your machine and your IP
19 address.

20 Failure to satisfy your payment obligation may
21 result in an escalation of collection
22 proceedings that could have an adverse effect
23 on your credit status.

24 There are two (2) ways you may resolve this
25 issue.

26 1. Purchase the license that was agreed to
27 upon installation of the software and have
28 continued access to the product.

2. Purchase a 30 day license to the software.

The corresponding text on the customer service sections of the popcorn.net website and the moviepass.tv website (reproduced below as Figure 3) are almost identical.

Figure 3

Your ticket to Unlimited Entertainment! Home | What is MoviePass.tv? | Customer Service | FAQ | Download Manager

Search: Videos | Web | Music Info | Movie Info | Images

ALL MPDb Search Videos Search

All Words Any Words

Premium Channels Choose a theme:

Home

Movies

Music

Television

News

Games

Ward

Mobile Media News

Upload Community News

Late Night

Download Manager

Parental Lock Controls

Parental Lock Off

Customer Service

Date of software installation: 05 / 05 / 2006
Time of software installation: [REDACTED]
Your computer's IP address: [REDACTED]
Terms and conditions that were agreed to at the time of installation: <http://www.moviepass.tv/terms.html>

I never signed up for this service, I would like to cancel.

It is impossible for this software to exist on your system without a user actively following a four step installation process.

We understand that multiple users may access a single computer. However, the machine's owner is solely responsible for regulating access to the computer. As such, it is your responsibility to satisfy the contract entered into by way of your machine and your IP address.

Failure to satisfy your payment obligation may result in an escalation of collection proceedings that could have an adverse effect on your credit status.

There are two (2) ways you may resolve this issue.

1. Purchase the license that was agreed to upon installation of the software and have continued access to the product.
2. Purchase a one-time 30 day license to the software for \$29.95. This will give you access to to the product for 30 days.

BUY ANNUAL LICENSE BUY 30-DAY LICENSE

BUY ANNUAL LICENSE BUY 30-DAY LICENSE

32. Consumers who attempt to complain about the hijacking of their computers are rarely able to communicate with Defendants'

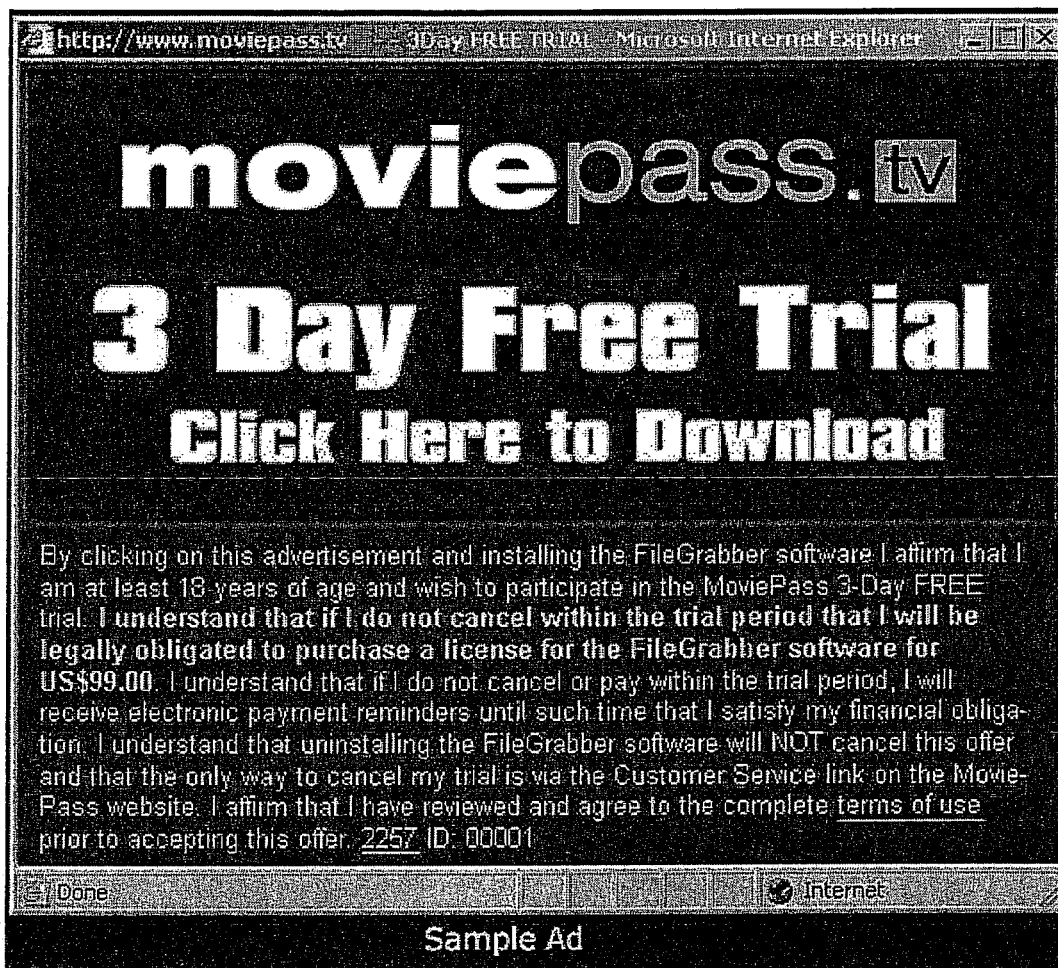
1 "customer service" representatives. Defendants provide scant
2 contact information on their websites. Consumers frequently get
3 error messages when trying to use Defendants' websites to send
4 text messages to Defendants. Moreover, Defendants seldom respond
5 to any text messages that consumers send to them.

6 33. Defendants do not include customer service telephone
7 numbers on their websites. The only telephone number that
8 Defendants provide is a (900) number. When consumers call that
9 telephone number, a recorded greeting tells consumers that they
10 will incur a \$34.95 charge if they do not hang up within 3
11 seconds.

12 **Defendants' purported disclosures are inadequate and deceptive**

13 34. Some consumers who have received Defendants' pop-up
14 payment reminders did accept a free trial of Defendants' download
15 services after seeing an advertisement on their computers.
16 According to Defendants' websites, the advertisements consumers
17 responded to are similar to the following sample advertisement
18 (reproduced below as Figure 4):
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1 Figure 4



35. The sample advertisements that Defendants claim that consumers clicked on only mention "electronic payment reminders." The sample advertisements contain a hypertext link to "terms of use," but Defendants do not require consumers to view the terms of use before Defendants' software is loaded onto consumers' computers. Even if consumers do view the terms of use and read them in their entirety, consumers are warned only that pop-up payment reminders will appear more frequently until consumers pay Defendants. Nowhere do Defendants disclose that "electronic payment reminders" means a sequence of textual and audiovisual

1 pop-ups that will play on consumers' computers at frequent
2 intervals for more than 40 seconds at a time, effectively causing
3 consumers to lose control of their computers. Nor do they
4 disclose that consumers will be unable to use commonly known means
5 to close the pop-up payment reminders.

6 36. Furthermore, neither in Defendants' purported terms of
7 use nor on their websites do Defendants disclose that they will be
8 making changes to consumers' computers that will make it difficult
9 or impossible for consumers to prevent Defendants' pop-up payment
10 reminders from appearing.

11 **Consumers pay Defendant to stop the pop-up payment demands**

12 37. Defendants demand at least \$29.95 to stop the pop-up
13 payment demands from appearing on consumers' computers. Faced
14 with the onslaught of pop-up payment demands, many consumers
15 ultimately give in and pay Defendants.

16 38. Some consumers who paid Defendants stopped receiving the
17 pop-up payment demands almost immediately.

18 39. Other consumers found that paying Defendants was not
19 enough to stop the pop-up payment reminders from appearing for
20 some time after consumers paid the fee.

21 **Defendants' software cannot be uninstalled**
22 **through reasonable means**

23 40. The software and code that Defendants have placed on
24 consumers' computers go far beyond the download manager described
25 on Defendants' websites or in the advertisements that Defendants
26 themselves claim enticed consumers to accept trial offers.

27 41. Much of the software and code, including programs that
28 are required to launch the pop-up payment demands, remains

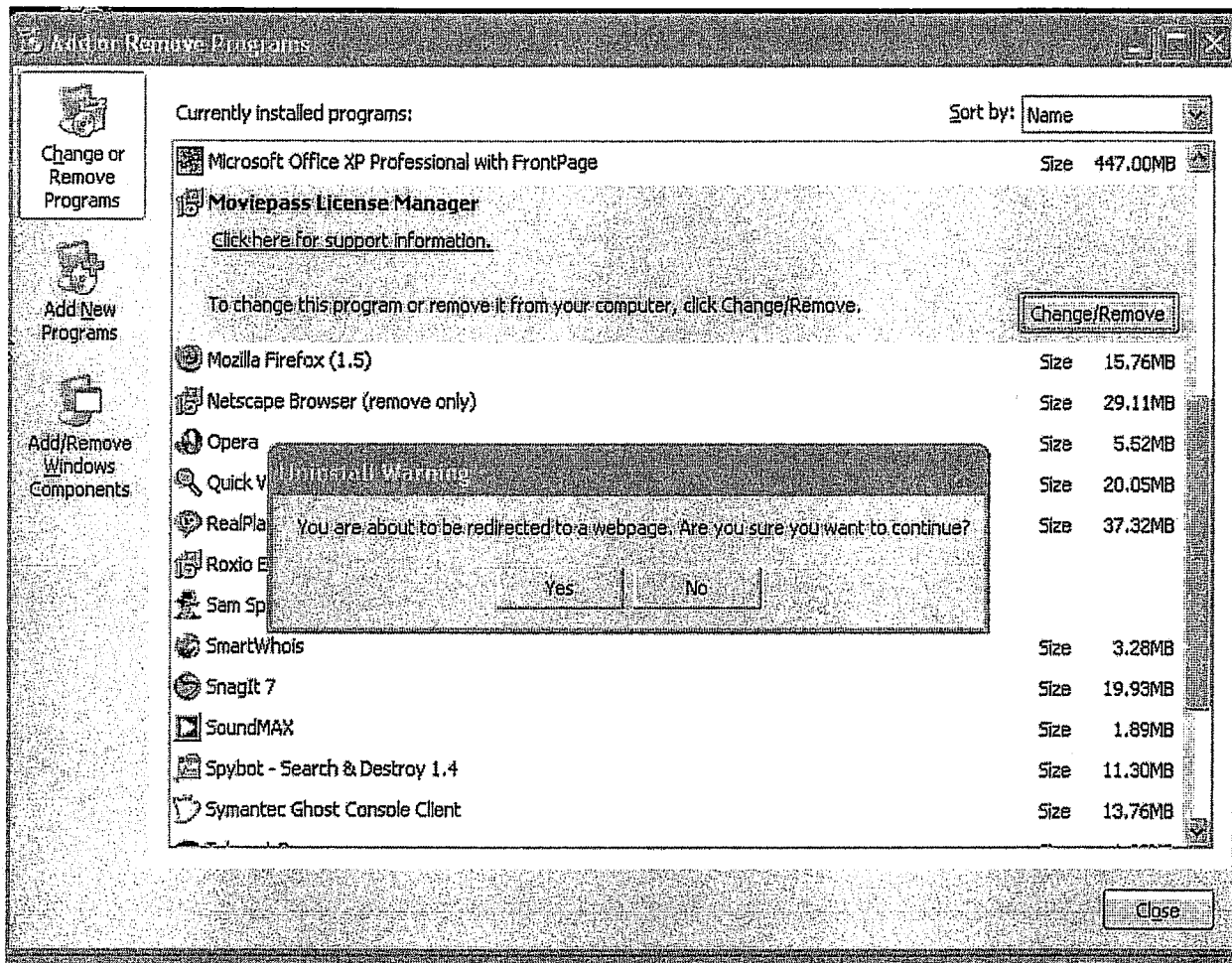
1 resident on consumers' computers even after Defendants have
2 stopped causing the pop-up payment demands to appear.

3 42. When Defendants install their software on consumers'
4 computers, they also make changes to consumers' Windows operating
5 system registry and prevent consumers from using the Windows
6 Control Panel to uninstall Defendants' software.

7 43. At least since Spring 2006, consumers who try to use the
8 Windows Control Panel to uninstall one of Defendants' programs,
9 called "license manager," receive a dialog box that reads
10 "Uninstall Warning: You are about to be redirected to a webpage.
11 Are you sure you want to continue? Yes/No." The dialog box is
12 reproduced below as Figure 5.

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1 Figure 5



19 44. Selecting "No" terminates the uninstall process

20 immediately. Selecting "Yes" launches an Internet browser window

21 that presents the same payment options that Defendants' pop-up

22 payment demands present to consumers. If the consumer chooses not

23 to pay, the uninstall process cannot continue.

24 45. Because Defendants' software appears to allow Defendants

25 to access and make changes to consumers' computers, even those

26 consumers who have ceased receiving Defendants' pop-up payment

27 demands often feel compelled to restore their hard drives to the

28 condition they were in before they encountered Defendants.

1 46. For consumers with advanced computer skills, finding and
2 removing all of Defendants' software components costs significant
3 time. For other consumers, this process instead requires
4 assistance from a service technician.

5 **VIOLATIONS OF THE FTC ACT**

6 47. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a),
7 prohibits unfair or deceptive acts or practices in or affecting
8 commerce. Misrepresentations or omissions of material fact
9 constitute deceptive acts or practices pursuant to Section 5(a) of
10 the FTC Act. Acts or practices are unfair under Section 5(a) of
11 the FTC Act if they cause substantial injury that consumers cannot
12 reasonably avoid and that is not outweighed by countervailing
13 benefits to consumers or competition.

14 **COUNT I**

15 **Defendants misrepresent that consumers are obligated to pay them**

16 48. In numerous instances, Defendants represent, expressly
17 or by implication, that if a computer is receiving Defendants'
18 pop-up payment demands:

19 (a) the computer owner or someone else who used the
20 computer knowingly consented to the installation of
21 software that would repeatedly launch Defendants'
22 lengthy pop-up payment demands;

23 (b) the computer owner is obligated to pay the
24 Defendants at least \$29.95; and

25 (c) the computer owner is responsible to satisfy any
26 contract that any other person entered into while
27 using the computer.

28 49. In truth and in fact, in numerous instances:

- 1 (a) neither the computer owner nor anyone else provided
2 knowing consent to the installation of software
3 that would launch Defendants' lengthy pop-up
4 payment demands;
- 5 (b) the computer owner is not legally obligated to pay
6 the Defendants at least \$29.95; or
- 7 (c) the computer owner is not responsible to satisfy
8 contracts that other people entered into while they
9 were using the computer.

10 50. Therefore, Defendants' representations as set forth in
11 Paragraph 48 above constitute deceptive acts or practices, in or
12 affecting commerce, in violation of Section 5(a) of the FTC Act,
13 15 U.S.C. §§ 45(a).

14 COUNT II

15 Defendants unfairly take control of consumers'
16 computers to extort payments

17 51. In numerous instances, Defendants have caused software
18 to be installed onto consumers' computers that enables Defendants
19 repeatedly to launch textual and audiovisual pop-up payment
20 demands on the computers. Consumers cannot use reasonable means
21 to close or minimize the textual pop-up payment demands and must
22 wait approximately 40 seconds for the audiovisual pop-up payment
23 demand to play to completion before they can close or minimize it.
24 The pop-up payment demands reappear after they initially appear on
25 consumers' computers. They reappear more and more often as time
26 passes. Defendants demand that consumers pay the Defendants at
27 least \$29.95 to stop the pop-ups from appearing.

28 52. Defendants' course of conduct causes substantial

1 consumer injury by causing consumers to pay Defendants to stop the
2 pop-up payment demands from appearing. Consumers cannot
3 reasonably avoid this injury because Defendants do not permit
4 consumers readily to cancel or to minimize the pop-up payment
5 demands and have taken steps to prevent consumers from using their
6 Windows Control Panels to remove software that enables the pop-up
7 demands to appear. Thus, Defendants' practices cause or are
8 likely to cause substantial injury that consumers cannot
9 reasonably avoid, and this injury is not outweighed by
10 countervailing benefits to consumers or competition.

11 53. Therefore, Defendants' practices, as described in
12 Paragraphs 51-52 above, constitute an unfair practice in violation
13 of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

14 COUNT III

15 Defendants unfairly install software onto consumers' computers
16 that consumers cannot remove

17 54. In numerous instances, Defendants have caused to be
18 installed onto consumers' computers software that enables
19 Defendants to launch pop-up payment demands repeatedly on the
20 computers. Consumers cannot locate this software and remove it
21 through the use of reasonable efforts. Furthermore, Defendants'
22 software makes changes to consumers' computers that actively
23 prevent consumers from using the Windows Control Panel to
24 uninstall the software.

25 55. Defendants' course of conduct in installing software
26 that is described in Paragraph 54 above, causes substantial
27 consumer injury by requiring consumers to spend substantial time
28 or money to remove this software from their computers and to stop

1 its effects on them. Consumers cannot reasonably avoid this
2 injury because Defendants do not provide an effective means for
3 consumers to locate the software and remove it from their
4 computers. Thus, Defendants' practices cause or are likely to
5 cause substantial injury that consumers cannot reasonably avoid,
6 and this injury is not outweighed by countervailing benefits to
7 consumers or competition.

8 56. Therefore, Defendants practices, as described in
9 Paragraphs 54-55 above, constitute an unfair practice in violation
10 of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

11 CONSUMER INJURY

12 57. Consumers throughout the United States have suffered and
13 continue to suffer substantial injury, including monetary loss, as
14 a result of Defendants' unlawful acts or practices. In addition,
15 Defendants have been unjustly enriched as a result of their
16 unlawful practices. Absent injunctive relief by this Court,
17 Defendants are likely to continue to injure consumers, reap unjust
18 enrichment, and harm the public interest.

19 THIS COURT'S POWER TO GRANT RELIEF

20 58. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),
21 empowers this Court to grant injunctive and such other relief as
22 the Court may deem appropriate to halt and redress violations of
23 the FTC Act. The Court, in the exercise of its equitable
24 jurisdiction, may award other ancillary relief, including but not
25 limited to, rescission of contracts and restitution, and the
26 disgorgement of ill-gotten gains, to prevent and remedy injury
27 caused by Defendants' law violations.

1 PRAYER FOR RELIEF

2 59. Wherefore, Plaintiff Federal Trade Commission, pursuant
3 to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the
4 Court's own equitable powers, requests that this Court:

5 (a) award Plaintiff such preliminary injunctive and
6 ancillary relief as may be necessary to avert the
7 likelihood of consumer injury during the pendency
8 of this action, and to preserve the possibility of
9 effective final relief;

10 (b) permanently enjoin Defendants from violating the
11 FTC Act as alleged herein;

12 (c) award such equitable relief as the Court finds
13 necessary to redress injury to consumers resulting
14 from Defendants' violations of Section 5(a) of the
15 FTC Act, including but not limited to rescission of
16 contracts and restitution, and the disgorgement of
17 ill-gotten gains by the Defendants; and

18 (d) award Plaintiff such other equitable relief as the
19 Court determines to be just and proper.
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1 Dated: August 8, 2006

Respectfully submitted,

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