

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Civil No. 04-377-JD

SEISMIC ENTERTAINMENT
PRODUCTIONS, INC., et al.

Defendants.

**ORDER OF DEFAULT JUDGMENT, PERMANENT INJUNCTION, AND OTHER
EQUITABLE RELIEF AGAINST SANFORD WALLACE AND SMARTBOT.NET, INC.**

Plaintiff, Federal Trade Commission (“FTC” or “Commission”), filed a Complaint and Amended Complaint for Permanent Injunction and Other Equitable Relief (“Amended Complaint”) pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), alleging that Sanford Wallace (“Wallace”) and SmartBot.Net, Inc. (“SmartBot”) (collectively, “Defendants”) engaged in unfair acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. §§ 45(a) in connection with their marketing and distribution of software to consumers.

The Clerk of the Court entered default as to Wallace and SmartBot, and Wallace and SmartBot have failed to contest or otherwise respond to the entry of default against them in this matter. The Commission filed a Motion for Default Judgment, Permanent Injunction and Other Equitable Relief Against Sanford Wallace and SmartBot.Net, Inc. Wallace and SmartBot were properly served with that motion.

Therefore, the Court having considered the Commission's motions and evidence in this matter, it is hereby ordered that the Commission is granted default Judgment against Wallace and SmartBot. It is further ORDERED, ADJUDGED, and DECREED as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and over the Defendants.
2. Venue as to the Defendants in the District of New Hampshire is proper.
3. The Commission has authority to seek the relief it has requested.
4. The acts and practices of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. The Amended Complaint states a claim upon which relief may be granted against Defendants under Sections 5(a)(1) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).
6. Wallace and SmartBot were served with the summons and Complaint and subsequently with the summons and Amended Complaint pursuant to Federal Rule of Civil Procedure 4. (Dk. Nos. 15, 16, and 35).
7. Wallace and SmartBot filed an answer to the Amended Complaint on May 9, 2005 (Dk. No. 44).
8. On October 11, 2005, this Court granted the motion of counsel for Wallace and SmartBot to withdraw from this matter. This Court also ordered SmartBot to have new counsel file an appearance and Wallace to either have new counsel file an appearance or file a pro se appearance within 20 days from the date of this Court's order granting their counsel's motion to withdraw (Dk No. 80).

9. Wallace and SmartBot failed to file appearances within the time provided.

10. On November 2, 2005, the Clerk of the Court, pursuant to this Court's Order dated October 11, 2005, entered default against Wallace and SmartBot (Dk. No. 86). Wallace and SmartBot were served with the entry of default (Dk. No. 87) and have not contested the entry, as provided for in Federal Rule of Civil Procedure 55(c).

11. SmartBot is a corporation, and therefore is neither an infant or incompetent.

12. SmartBot is a Pennsylvania corporation with its corporate address at 3 Cobblestone Court, Richboro, Pennsylvania 18954, and its principal place of business at 495 Route 9, Barrington, New Hampshire 03825. *See* Amended Answer of Sanford Wallace and SmartBot.Net, Inc. to Commission's First Amended Complaint at ¶ 6 ("Wallace Answer") (Dk. No. 44).

13. Co-Defendant Seismic Entertainment Productions, Inc. ("Seismic") is a New Hampshire corporation with its principal place of business at 11 Farmington Road, Rochester, New Hampshire 03867. *See* Wallace Answer ¶ 5 (Dk. No. 44).

14. Wallace is or has been President and owner of SmartBot and Seismic at all times material to the acts and practices in question. *See* Declaration of Sallie S. Schools at ¶¶ 46, 48, Atts. M and O, attached as Exhibit 2 to Federal Trade Commission's Memorandum in Support of Motion For Temporary Restraining Order ("S. Schools Dec. TRO") (Dk. No. 3, #21).

15. Acting individually or in concert with others, Wallace has formulated, directed, controlled, or participated in the acts and practices of SmartBot and Seismic, including the acts and practices that are the basis of the Amended Complaint. *See* Wallace Answer ¶ 7 (Dk. No. 44) and Declaration of Sallie S. Schools at ¶ 27, Att. 37, attached as Exhibit 1 to Federal Trade

Commission's Memorandum in Support of Motion for Default Judgment, Permanent Injunction, and Other Monetary Relief against Sanford Wallace and SmartBot.Net, Inc. ("S. Schools Dec. Default.")

16. Collectively, Wallace, SmartBot, and Co-Defendant Seismic operated a common enterprise while engaging in the unfair acts and practices that are the basis of the Amended Complaint, and therefore are jointly and severally liable for said acts and practices.

17. Since at least September 2003, Defendants downloaded software to consumers' computers and marketed products, including purported "anti-spyware" software named "Spy Wiper" and "Spy Deleter" on behalf of others. *See* Wallace Answer ¶ 24 (Dk. No. 44); S. Schools Dec. TRO ¶ 6; Declaration of Sallie S. Schools at ¶ 8, Atts. 7-15, Filed In Connection With Federal Trade Commission's Memorandum in Support of Motion for an Order of Judgment Against John Robert Martinson, Mailwiper, Inc., and Spy Deleter, Inc. ("S. Schools Dec. Proposed Judgment Order") (Dk. Nos. 96-97, #7-15); and S. Schools Dec. Default ¶ 34, Atts. 51-58.

18. At all times material to the acts and practices that are the basis of the Commission's Amended Complaint, Defendants controlled and operated a network of Internet web sites, including, but not limited to, www.default-homepage-network.com, downloads.default-homepage-network.com, www.passthison.com, and www.smartbotpro.net. *See* Wallace Answer ¶ 18 (Dk. No. 44) and S. Schools Dec. TRO ¶ 31-32, 35, Atts. B-H..

19. Defendants used this network of web sites to download software code to consumers' computers that exploited vulnerabilities in the Internet Explorer ("IE") web browser. *See* Expert Report of Steven D. Gribble, Ph.D., attached as Exhibit 3 to Federal Trade

Commission's Memorandum in Support of Motion for Default Judgment, Permanent Injunction, and Other Monetary Relief against Sanford Wallace and SmartBot.Net, Inc. ("Dr. Gribble Rep.").

20. Defendants caused unsuspecting consumers to visit their network of web sites by disseminating banner, pop-up, and other online advertisements that automatically re-directed computers viewing these advertisements. Defendants retained others, including Co-Defendants Jared Lansky ("Lansky") and OptinTrade, Inc. ("Optin Trade"), to disseminate these malicious advertisements on their behalf. *See* Declaration of Sallie S. Schools at ¶10, Atts. E-M, attached as Exhibit 2 to Federal Trade Commission's First Motion for Leave to File Motion For Leave to Name Additional Defendants and to File First Amended Complaint ("S. Schools Dec. Mot. For Leave) (Dk. No. 35, #2); S. Schools Dec. Default ¶¶ 5, 11, Atts.2, 21; and Declaration of Jared Lansky at ¶¶5-7, attached as Exhibit 4 to Federal Trade Commission's Memorandum in Support of Motion for Default Judgment, Permanent Injunction, and Other Monetary Relief Against Sanford Wallace and SmartBot.Net, Inc. ("J. Lansky Dec.").

21. Defendants exploited vulnerabilities in the IE web browser to, among other things, replace the IE web browser home pages on consumers' computers with different web pages controlled by Defendants without consumers' authorization. *See* Dr. Gribble Rep. ¶¶ 6,7, 9, 22-26, and 36-39, Att. F (Dk. No. 3, #7) and S. Schools Dec. Default ¶¶ 6, 28, Atts. 4-5, 38-41.

22. When affected consumers opened their IE web browsers they automatically were sent to Defendants' web pages. At these web pages, Defendants launched a series of pop-up advertisements, including full-page advertisements, and other web pages, which prevented consumers from visiting their intended web sites. To regain control over their IE web browser

consumers were compelled to exit the IE web browser, return the IE setting to their original home pages, and reinitiate their Internet connections. Consumers often had to repeat this process multiple times. *See* Dr. Gribble Rep. ¶¶ 6, 14, 33-36, Atts.C-F and S. Schools Dec. TRO ¶¶ 3-32, Att. A (Dk. No. 3, #21); *See also* Declaration of James Alexander Beuhring at ¶¶ 3-7, attached as Exhibit 5 to the Federal Trade Commission's Memorandum in Support of Its Motion for a Temporary Restraining Order (J. Beuhring Dec.) (Dk. No. 3, #60); Declaration of Paul Mancine at ¶¶ 3-6,8, attached as Exhibit 9 to the Federal Trade Commission's Memorandum in Support of Its Motion for a Temporary Restraining Order ("P. Mancine Dec.") (Dk. No. 3, #71); Declaration of Bridget Pansano at ¶¶ 2-8, attached as Exhibit 12 to the Federal Trade Commission's Memorandum in Support of Its Motion for a Temporary Restraining Order (B. Pansano Dec.) (Dk. No. 3, #75).

23. Defendants also exploited vulnerabilities in the IE web browser to replace, without consumers' authorization, the IE default search engine with a different search engine. *See* Dr. Gribble Rep. ¶¶ 6-7, 14, 36(b) and S. Schools Dec. TRO (Dk. No. 3, #21).

24. Consumers whose computers were exploited received a stream of pop-up advertisements, had their IE web browser home page changed to a different web page controlled by Wallace, had their Internet searches hijacked, had their web browsers redirected to web pages different than those that they selected, and had their computers' memory and resources depleted. *See* Dr. Gribble Rep. ¶¶ 6-7, 15, 9-10, 33-39; *See also* J. Beuhring Dec. ¶¶ 3-7 (Dk. No. 3, #60); P. Mancine Dec. ¶¶ 3-6,8 (Dk. No. 3, #71); B. Pansano Dec. ¶¶ 2-8; 12-13 (Dk. No. 3, #75).

25. In addition, Defendants exploited vulnerabilities in the IE web browser to download and install spyware, advertising, and other software programs to consumers'

computers without authorization. *See* Dr. Gribble Rep. ¶¶ 6, 14, and S. Schools Dec. Default ¶¶ 6, 28-30, Atts. 4-5, 38-48.

26. These software programs displayed a stream of pop-up advertisements, created security holes through which other software programs and malicious code could be downloaded, hijacked Internet searches for information, and depleted the computers' memory and other resources. *See* Dr. Gribble Rep. ¶¶ 6, 7, 9, 14, 15, 33-39 Atts. C-H and S. Schools Dec. Default ¶¶ 6, 28-30, Atts.4-5, 38-48.

27. For many consumers, Defendants' practices have caused their computers to malfunction, lose important information, operate more slowly, and in some cases, cease working completely. *See* Dr. Gribble Rep. ¶ 15; *see also* J. Beuhring Dec. at ¶¶ 3,5,7 (Dk. No. 3, #60); P. Mancine Dec. ¶ 3 (Dk. No. 3, #71); B. Pansano Dec. ¶¶ 12-13 (Dk. No. 3, #75).

28. To resolve the problems with their computers that Defendants have caused, consumers are required to spend substantial time or money.

29. Consumers can not reasonably avoid this substantial injury because Defendants exploited vulnerabilities in their computers' IE web browsers to download and install software code that leads to the injury.

30. Defendants' practices do not benefit consumers or competition.

31. Therefore, Defendants' practices described above in Paragraphs 17 to 27 are unfair and violate Section 5 of the FTC Act, 15 U.S.C. § 45(a).

32. Advertisements for purported "anti-spyware" software named Spy Wiper and Spy Deleter were among the advertisements that Defendants disseminated to consumers whose computers they exploited. *See* Martinson Answer ¶ 9 (Dk. No. 82); Wallace Answer ¶ 24 (Dk.

No. 44); S. Schools Dec. Mot. For Leave ¶¶ 16(a), 18, Att. R (Dk. No. 35, #2); Dr. Gribble Rep. ¶¶ 13, 34(a), 37(a)-(b) Atts. D-G; and S. Schools Dec. Proposed Judgment Order ¶ 8, Atts. 7-15 (Dk. Nos. 96-97, #7-15).

33. To induce the purchase of Spy Wiper and Spy Deleter, Defendants disseminated advertisements marketing Spy Wiper and Spy Deleter to consumers whose computers they exploited. *See* Wallace Answer ¶ 24 (Dk. No. 44); S. Schools Dec. Proposed Judgment Order ¶ 8, Atts. 7-15 (Dk. Nos. 96-97, #7-15); and S. Schools Dec. Default ¶¶ 33-35, Atts.49-57. *See also, e.g.*, Dr. Gribble Rep. ¶ 37(a)-(b), Att. G; P. Mancine Dec. ¶¶ 3 and 8, Att. A (Dk. No. 3, #71).

34. These advertisements warned consumers that they must purchase the advertised products immediately to resolve the computer problems that Wallace caused. *See, e.g.*, Dr. Gribble Rep. ¶¶ 37(a)-(b), Att. G; P. Mancine Dec. at ¶¶ 3 and 8, Att. A (Dk. No. 3, #71).

35. The cost to consumers for Spy Wiper and Spy Deleter respectively was approximately \$30 for a one-year license. *See* Declaration of Rupinder Kaur at ¶ 10, Att. A, attached as Exhibit 7 to the Federal Trade Commission's Memorandum in Support of Its Motion for a Temporary Restraining Order (Dk. No. 3, #66) and Declaration of Colby Gordan at ¶ 4, attached as Exhibit 6 to the Federal Trade Commission's Memorandum in Support of Its Motion for a Temporary Restraining Order (Dk. No. 3, #65).

36. Through their course of conduct in marketing Spy Wiper and Spy Deleter, Defendants compelled consumers to either spend \$30 to purchase their advertised products or otherwise spend substantial time and money to resolve the problems with their computers that Defendants caused.

37. Consumers could not reasonably avoid this substantial injury because Defendants exploited vulnerabilities in their computers' IE web browsers to download and install without their knowledge and authorization software that negatively affected their computers' functionality.

38. Defendants' course of conduct in marketing Spy Wiper and Spy Deleter has no benefits to consumers or competition.

39. Therefore, Defendants' practices in marketing Spy Wiper and Spy Deleter described above are unfair and violate Section 5 of the FTC Act, 15 U.S.C. § 45(a).

40. Defendants generated revenues through exploiting vulnerabilities in the IE web browser to download and install software programs and distribute advertising on behalf of others, including, but not limited to, CDT, Inc.; Friendfinder Network/Friendfinder, Inc.; Internet Traffic Pros. Inc.; Mindset Interactive, Inc. (Broadspring); Odysseus Marketing, Inc.; PKW Interactive, LLC; Quadrogram LLC; RK NetMedia, Inc., SI National, LLC, Web Entertainment Group, Inc., Wild Media, LLC (Overpro), and numerous other companies managed by Co-Defendants OptinTrade and Lansky. *See* S. Schools Dec. Default ¶¶ 16-18; J. Lansky Dec. ¶¶ 5-7; and Declaration of Kenneth Kelly, attached as Exhibit 2 to the Federal Trade Commission's Memorandum In Support of the Motion for Judgment By Default, Entry of Permanent Injunction and Order for Disgorgement Against Defendants Sanford Wallace and SmartBot.Net, Inc. (K. Kelly Dec.)

41. These third-parties paid Defendants directly a total of at least \$1,669,474.33 to download and install their software programs. *See* K. Kelly Dec. ¶ 4. *See also* S. Schools Dec. Default ¶¶ 16-18.

42. In addition, Co-Defendants OptinTrade and Lansky collected payments from third parties on behalf of Defendants for their software downloads. OptinTrade paid Defendants a total of \$1,468,941.15 in such payments. *See* J. Lansky Dec. ¶ 7.

43. Defendants also generated revenues through exploiting vulnerabilities in the IE web browser to market products on behalf of others, including, but not limited to, Co-Defendants John Robert Martinson (“Martinson”), Spy Wiper, Inc. (“Spy Wiper”), and Spy Deleter, Inc. (“Spy Deleter”). *See* S. Schools Dec. Mot. for Leave ¶¶ 15, 16(a), and 18, Atts. Q-R (Dk. No. 35, #2); S. Schools Dec. Proposed Judgment Order ¶ 8, Exh. 13 (Dk. No. 96); and S. Schools Dec. Default ¶ 34, Atts. 51-58.

44. Co-Defendants Martinson, Mailwiper, and Spy Deleter retained Defendant Wallace as their affiliate to promote, advertise, and market Spy Wiper and Spy Deleter on their behalf. *See* Martinson Answer ¶¶ 9-10 (Dk. No. 82); Wallace Answer ¶ 24 (Dk. No. 44); S. Schools Dec. Mot. For Leave ¶¶ 15, 16(a), and 18, Atts. Q-R (Dk. No. 35, #2); and S. Schools Dec. Proposed Judgment Order ¶ 8, Exhs. 11-14 (Dk. No. 96). Defendants paid Wallace a commission on any sales of Spy Wiper or Spy Deleter that he generated. *See* S. Schools Dec. Motion for Leave ¶ 15-16(a) and 18, Atts. Q-R (Dk. No. 35, #2).

45. Consumers paid Co-Defendants Martinson, Mailwiper, and Spy Deleter \$2,113,633.53 to purchase Spy Wiper and Spy Deleter as a result of Defendants’ unlawful practices. *See* S. Schools Dec. Amend Complaint ¶¶ 17(a) and 18 (Dk. No. 35, #2).

46. Co-Defendants Mr. Martinson, Spy Wiper, and Spy Deleter paid Wallace at least \$951,135.09 for Spy Wiper and Spy Deleter sales that he generated.

47. Accordingly, Defendants earned at least \$4,089,550.48 in revenues from their unlawful conduct.

48. Therefore, Defendants are jointly and severally liable for the disgorgement amount of \$ 4,089,550.48.

49. There is a reasonable likelihood that Defendants would continue to engage in the acts and practices alleged in the Amended Complaint unless permanently enjoined from such acts and practices.

50. The Entry of this Judgment and Default Judgment is in the public interest.

51. Pursuant to Federal Rule of Civil Procedure 65(d), the provisions of this Judgment and Default Judgment are binding upon the Defendants Wallace and SmartBot.Net, Inc., and their officers, agents, servants, representatives, employees, and all other persons or entities in active concern or participation with them, who receive actual notice of this Order by personal service or otherwise.

52. This action and the relief entered herein are in addition to, and not in lieu of, any other remedies, civil or criminal, that may be provided by law, including any proceedings the Commission may initiate to enforce this Judgment, Default Judgment, and Permanent Injunction.

DEFINITIONS

For the purpose of this Order, the following definitions shall apply:

A. "Assisting others" means knowingly providing any of the following services to any person or entity: (a) developing, supplying, distributing, or publishing any software program, product, or service; or (b) formulating, developing, or providing, or arranging for the formulation, development, or provision of, any Internet advertising or marketing content for any

person or entity; or (c) performing advertising or marketing services of any kind for any person or entity.

B. “Commerce” means as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

C. The “World Wide Web” or the “Web” is a system used on the Internet for cross-referencing and retrieving information. Documents (“pages” or “sites”) on the World Wide Web are most frequently formatted in a language called HTML or HyperText Markup Language, that supports links to other documents on the World Wide Web.

D. A “web site” is a set of electronic files or documents, usually a home page and subordinate pages, readily viewable on a computer by anyone with access to the Web and standard Internet browser software.

E. A “web browser” is a software application used to view, download, upload, surf or otherwise access documents (“pages” or “sites”) on the World Wide Web. Web browsers read coded documents that reside on servers, and interpret the coding into what users see rendered as a web page or web site. A user may retrieve and view a web page or site by entering the Uniform Resource Locator (“URL”) or domain name of the web page in the address bar of the web browser.

F. A “security vulnerability” means a weakness, flaw, or bug in a software program or application that can be used to increase access privileges to a computer system, compromise data stored on it, or control its operation.

G. “Express consent” means that, prior to installing any software program or application to consumers’ computers:

(1) Defendants clearly and prominently disclose the material terms of such

software program or application; and

- (2) Consumers install or download such software program or application by clicking on a button that is labeled to convey that it will activate the installation or download, or by taking a substantially similar action.

H. “Clearly and prominently” shall mean that, in the case of advertisements communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and visual portions of the advertisement. Provided, however, that in any advertisement presented solely through visual or audio means, the disclosure may be made through the same means in which the advertisement is presented. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The visual disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer installing or downloading any software code, program, or content and prior to the consumer incurring any financial obligation.

I. Unless otherwise specified, “Defendants” means:

- (1) Sanford Wallace (“Wallace”) individually and in his capacity as an officer of SmartBot.Net, Inc. and Seismic Entertainment Productions, Inc. ; and
- (2) SmartBot.Net, Inc. (“SmartBot”), a corporation, its divisions and subsidiaries, its successors and assigns, and its officers, agents, representatives, and employees;

J. “FTC” or “Commission” means the Federal Trade Commission.

K. A requirement that any Defendant “notify,” “furnish,” “provide,” or “submit” to the Commission means that the Defendant shall send the necessary information via first class mail, costs prepaid, or via overnight carrier, to:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington D.C. 20580
Attn: *FTC v. Seismic Entertainment Productions, Inc. et al.* (D.N.H.)

L. The terms “and” and “or” in this Order shall be construed conjunctively or disjunctively as necessary, to make the applicable sentence or phrase inclusive rather than exclusive.

M. The term “including” in this Order means “including without limitation.”

PROHIBITED BUSINESS ACTIVITIES

I.

IT IS THEREFORE ORDERED that Defendant Wallace and Defendant SmartBot.Net, Inc., and its officers, agents, directors, employees, salespersons, independent contractors, subsidiaries, affiliates, successors, assigns and all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, corporation, subsidiary, division, or other device, are hereby enjoined from, or assisting others in, publishing, disseminating, or distributing on or through the Internet, the World Wide Web, any bulletin board system, File Transfer Protocol (“FTP”), electronic-mail, instant message, web page, or web site, any software

script, code, or other content that exploits a security vulnerability of any computer operating system, web browser, or other application to download or install onto any computer any software code, program, script, or content.

II.

IT IS FURTHER ORDERED that Defendant Wallace and Defendant SmartBot.Net, Inc., and its officers, agents, directors, employees, salespersons, independent contractors, subsidiaries, affiliates, successors, assigns and all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any person, corporation, subsidiary, division, or other device, in connection with the advertising, promotion, marketing, offering for sale, sale, or provision of any goods or services on or through the Internet, the World Wide Web, or any web page or web site, are enjoined from, or assisting others in:

- A. installing or downloading any software program or application without express consent;
- B. redirecting computers connected to the Internet or World Wide Web to different web sites, web pages, FTP servers, or other Internet servers than those that the consumer selects to visit;
- C. changing or causing to change any web browser's default home page to a different web page; and
- D. modifying or replacing any search engine's or other application's search features or functions.

MONETARY RELIEF

III.

IT IS FURTHER ORDERED that

A. Judgment for disgorgement is hereby entered in favor of the Commission and against the Defendants, jointly and severally, in the amount of four million eight-nine thousand five hundred fifty dollars and forty-eight cents (\$4,089,550.48.) Defendant shall disgorge funds in full within thirty (30) days of entry of this Order by the Court.

B. All payments shall be made by certified check or other guaranteed funds payable to and delivered to the Commission, or by wire transfer in accord with instructions provided by the Commission.

C. All funds paid pursuant to this Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress, and any attendant expenses for the administration of such equitable relief.

D. In the event that the Commission in its sole discretion determines that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to the Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. The Defendants shall have no right to challenge the Commission's choice of remedies under this Paragraph or the manner of distribution chosen by the Commission. No portion of any payments under the judgment herein shall be deemed a payment of any fine, penalty, or punitive assessment.

DISTRIBUTION OF ORDER

IV.

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendants shall deliver copies of the Order as directed below:

A. Defendant SmartBot.Net, Inc. must deliver a copy of this Order to all of its principals, officers, directors, and managers. Defendant SmartBot.Net, Inc. also must deliver copies of this Order to all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendants. For new personnel, delivery shall occur prior to them assuming their responsibilities.

B. For any business that Defendant Wallace controls, directly or indirectly, or in which Wallace has a majority ownership interest, Defendant Wallace must deliver a copy of this Order to all principals, officers, directors, and managers of that business. Defendant Wallace must also deliver copies of this Order to all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities.

C. For any business where Defendant Wallace is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Defendant Wallace must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

D. Defendants Wallace and SmartBot.Net, Inc. must secure signed and dated statement acknowledging receipt of the Order, within thirty days of delivery, from all persons

receiving a copy of the Order pursuant to this Part.

COMMISSION'S AUTHORITY TO MONITOR COMPLIANCE

V.

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order,

A. Commission is authorized to monitor Defendants' compliance with this Order by all lawful means, including but not limited to the following means:

1. Obtaining discovery from any person, without further leave of court, using the procedures proscribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45;
2. Posing as customers and clients to Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice;

B. Defendants shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct that is subject to this Order. The person interviewed may have counsel present;

C. Within ten (ten) days of receipt of written notice from a representative of the Commission, Defendants each shall provide entry during normal business hours to any business location in Defendants' possession or direct or indirect control to inspect the business operation;

D. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive

acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1).)

COMPLIANCE REPORTING

VI.

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. Defendant Wallace, within ten (10) business days of service of this Order, shall notify the Commission in writing of (1) his residence address and mailing address; (2) his home telephone number; (3) the name, address, and telephone number of his employer; (4) if applicable, the names of his supervisors; (5) a description of his employer's activities; and (6) a description of his duties and responsibilities.

B. For a period of five (5) years from the date of service of this Order,

(1) Defendant Wallace shall notify the Commission of the following:

(a) Any changes in Defendant Wallace's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

(b) Any changes in Defendant Wallace's employment status (including self-employment) within ten (10) days of the date of such change.

Such notice shall include the name and address of each business that Defendant Wallace is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of Defendant Wallace's duties and responsibilities in connection with the business; and

(c) Any changes in Defendant Wallace's name or use of any aliases or fictitious names.

(2) Defendant SmartBot.Net, Inc. shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any proposed change in the corporation about which Defendant SmartBot.Net, Inc. learn less than thirty (30) days prior to the date such action is to take place, that Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

C. Sixty (60) days after the date of service of this Order, Defendants each shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Order. This report shall include, but not be limited to any changes required to be reported pursuant to subparagraph (B) above; a copy of each acknowledgment of receipt of this Order obtained by each of Defendants pursuant to Paragraph V of this Order. Upon written request by a representative of the Commission, Defendants shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days notice with respect to any conduct subject to this Order.

D. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with Defendants.

RECORD KEEPING PROVISIONS

VII.

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of service of this Order, Defendant SmartBot.Net, Inc., if engaging or assisting others engaged in advertising, marketing, and promotion on or through the Internet, in or affecting commerce, and any business where (1) Defendant Wallace is a majority owner or an officer or director of the business, or directly or indirectly manages or controls the business and where (2) the business engages, or assists others engaged in, advertising, marketing, and promotion on or through the Internet, in or affecting commerce, and their agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services

purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly, indirectly or through any third party), and any response to those complaints or requests; and

E. Copies of advertisements, promotional materials, or other marketing materials prepared or distributed in connection with any affiliate program.

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including, but not limited to, copies of acknowledgments of receipt of this Order, required by Part V(D), and all reports submitted to the FTC pursuant to Part VII.

SCOPE OF ORDER

VIII.

IT IS FURTHER ORDERED that this Order resolves only claims against Defendants SmartBot.Net, Inc. and Wallace as alleged in the Complaint. This Order does not preclude the Commission from initiating further action or seeking any remedy against any other persons or entities, including without limitation persons or entities who may be subject to portions of this Order by virtue of actions taken in concert or participation with Defendants Wallace and SmartBot.Net, Inc., and persons or entities in any type of indemnification or contractual relationship with Defendants.

RETENTION OF JURISDICTION

IX.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED, this 22nd day of March, 2006.

/s/ Joseph A. DiClerico, Jr.

UNITED STATES DISTRICT JUDGE
JOSEPH A. DICLERICO, JR.

Presented by:

WILLIAM BLUMENTHAL
General Counsel

/s/ Laura Sullivan

LAURA M. SULLIVAN (New York Bar No. 2919660)

CHARULATA PAGAR (Illinois Bar No. 6209680)

STACEY FERGUSON (DC Bar No. 471478)

Federal Trade Commission

600 Pennsylvania Avenue, NW

NJ-3204

Washington, DC 20580

(202) 326-3327, -2791, -2361 (voice)

(202) 326-3259 (fax)

lsullivan@ftc.gov

cypagar@ftc.gov

sferguson@ftc.gov

ATTORNEYS FOR PLAINTIFF