



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

March 7, 2007

Mr. Eric Howes  
Director of Malware Research  
Sunbelt Software  
33 N. Garden Avenue  
Suite 1200  
Clearwater, FL 33755

**Re: Zango, Inc., f/k/a 180solutions, Inc., Keith Smith, and Daniel Todd  
FTC Matter No. 0523130**

Dear Mr. Howes:

Thank you for the comments you submitted on behalf of yourself and Ben Edelman, dated November 22 and December 4, 2006, regarding the above-referenced matter. Your comments were placed on the public record pursuant to Section 2.34 of the Commission's Rules of Practice, 16 C.F.R. § 2.34, and were given serious consideration by the Commission.

**The November 22, 2006 Comments**

In your November 22 comments, you commend the proposed settlement's "core terms," but raise concerns regarding future enforcement based on recent examples of conduct that purportedly would violate the settlement. Accordingly, you assert that "intensive ongoing monitoring will be required to assure that Zango actually complies with the settlement." In addition, you contend that Zango's profits were greater than \$3 million, and suggest that the settlement payment is insufficient.

The Commission recognizes that it must be vigilant regarding Zango's conduct once the proposed order becomes final. Indeed, the proposed order itself requires Zango to promptly and completely investigate consumer complaints. The Commission encourages both you and Mr. Edelman to keep the staff apprised of any possible order violations.

Your characterization of the \$3 million disgorgement as insufficient is based primarily on speculation regarding Zango's gross revenues and the purported profit margins of unrelated adware companies. While the Commission is not at liberty to disclose the specifics of the analysis because it was based on confidential financial information provided to the staff, the Commission has determined that the \$3 million disgorgement amount is appropriate based on all of the information before it.

### **The December 4, 2006 Additional Comments**

You submitted your December 4 “additional comments” because “other disturbing Zango installations have come to light.” Specifically, the additional comment refers to a recent incident where a worm exploit caused a phishing attack on the MySpace.com website that directed users to a website containing pornographic videos – some of which required an installation of Zango adware to view.

Your additional comments recognize that consumers were provided proper notice and consent before Zango’s adware was installed, but contend that the proposed order is insufficient because the conduct of unrelated third parties – regardless of whether Zango had knowledge or control of the conduct – is not covered by the proposed order. Accordingly, your comments propose that the consent order should be revised to address any materially deceptive conduct that leads to a Zango installation.

As you have characterized it, the third-party conduct that ultimately led to the above-referenced installations is potentially unfair or deceptive. The proposed consent order with Zango, however, remedies the Commission’s allegations that Zango caused its software to be downloaded on consumers’ computers without adequate notice and consent and remedies Zango’s previous unfair uninstallation practices, which are the principal problems the staff identified in its investigation. Accordingly, the proposed order appropriately addresses the conduct the Commission challenged and fences in reasonably related conduct. It is not intended to cover every *potential* violation of Section 5 by Zango. The Commission retains the ability to bring a *de novo* Section 5 action, for example, if it determines that Zango is engaging or participating with its distributors in conduct that deceives consumers into downloading Zango’s software notwithstanding the notice and consent required by this Order.

After considering your comments, the Commission has determined that the public interest would best be served by issuing the Decision and Order in final form without modification. Respondents will be required to file compliance reports with the Commission, and will be subject to potentially large civil penalties if they violate the Order.

Thank you again for your comments. The Commission is aided in its analysis by hearing from a variety of sources in its work, and we appreciate your interest in this matter.

By direction of the Commission.

Donald S. Clark  
Secretary