

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FEDERAL TRADE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil No. _____
CONTROLSCAN, INC.,)	
a corporation,)	
)	
Defendant.)	
)	

**COMPLAINT FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain permanent injunctive relief, disgorgement of ill-gotten monies, and other equitable relief for Defendant’s acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C.

§§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 53(b).

3. Venue is proper in this district court pursuant to 28 U.S.C. § 1391(b)-(c), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair and deceptive acts or practices in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b), 56(a)(2)(A).

DEFENDANT

6. Defendant ControlScan, Inc. (“ControlScan”) is a privately-owned Delaware corporation with its principal office or place of business at 340 Interstate North, Suite 347, Atlanta, Georgia 30339. At all times material to this Complaint, ControlScan has transacted business in this district and throughout the United

States by, among other things, offering a variety of online seal certification marks (“website seals” or “seals”) for companies to display on their websites.

COMMERCE

7. At all times material to this Complaint, Defendant has maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANT’S BUSINESS ACTIVITIES

DEFENDANT’S SEALS

8. Since approximately October 2005, ControlScan has offered a variety of privacy and data security seals for online companies to post on their websites, including, but not limited to, the Business Background Reviewed, Verified Secure (initially offered as Hacker Defended and/or Trusted Secure), and Privacy Protected seals. Beginning in approximately July 2007, ControlScan provided the Registered Member (initially Security Reviewed) and Privacy Reviewed seals for display, as substitute seals, by a company that failed to qualify for its Verified Secure and Privacy Protected seals, respectively (*see* Exhibits 1-10).

9. Each ControlScan seal has included:

a. a graphic icon next to the seal’s trade name, including, but not

limited to: for Business Background Reviewed, a check mark; for Verified Secure, a padlock; for Registered Member, a prize ribbon; and for Privacy Protected and Privacy Reviewed, a shield; and

b. a stamp that displays the current date (a “date stamp”), which (except with regard to the Registered Member seal) appears beside the word “verified,” *e.g.*,



10. During the relevant time period, ControlScan also offered a “joint seal design” that a company could elect to use in order to display the Verified Secure or Registered Member seal in combination with the Business Background Reviewed seal (*see* Exhibit 6). In addition to the date stamp and applicable graphic icons, this joint seal design displayed the words “Internet Security by ControlScan,” *e.g.*,



11. For each seal, ControlScan has designed a window that “pops up” onscreen when a consumer clicks on the seal and remains visible until the consumer clicks to close it (a “pop-up”). Each pop-up has included the name of the website displaying the seal and has described ControlScan’s verification of that website’s privacy and/or security protections.

12. At all times material to this Complaint, ControlScan has controlled the design, content, and format of its seals and their pop-ups.

DEFENDANT’S STATEMENTS

13. Since it began offering seals in approximately October 2005, ControlScan has made statements to consumers regarding its verification of the privacy and/or security protections that companies displaying its seals provide for consumer information. At various times, such statements have included, but not been limited to:

a. for the Business Background Reviewed seal, a statement in the pop-up that “You can shop in confidence knowing your personal information is safe with [the website displaying the seal]”; and a pop-up heading that displayed the words “ControlScan Verified Site” beside a padlock icon (*see* Exhibit 2).

b. for the Registered Member seal, a seal design that displayed a prize ribbon icon and the pop-up quoted below (*see* Exhibits 4-5):

The [website] is currently working towards meeting the Payment Card Industry Data Security Standards. They are employing ControlScan's PCI Compliance tool to help meet the PCI DSS guidelines. The ControlScan PCI Compliance scanning tool actively searches this website for thousands of known vulnerabilities.

The ControlScan approved PCI compliance scanning tool includes:

- Comprehensive vulnerability assessment scans looking for thousands of vulnerabilities.
- Network mapping that rapidly detects and identifies servers, desktops, routers, wireless access points and other network devices.
- Automated daily updates to the ControlScan vulnerability Knowledge Base.
- Both scheduled and automated network discovery and vulnerability scan tasks that can be executed on a daily, weekly or monthly basis.

The [website's] ControlScan Member seal has been validated and is authentic. Visit www.ControlScan.com for more details.

For more information please visit ControlScan.com.

>> [Verify Seal using ControlScan verification database](#)

c. for both the Business Background Reviewed and Registered Member seals, the joint seal design, which displayed the words "Internet Security

by ControlScan” on the seal’s face (*see* Exhibit 6).

d. for the Privacy Protected seal, a seal design that displayed the trade name “Privacy Protected” with a shield icon on the seal’s face and the pop-up quoted below, which displayed the heading “ControlScan Verified Site” beside a padlock icon (*see* Exhibits 7-8):

ControlScan certifies [website] as Privacy Protected. The privacy statement and practices of [website] have been reviewed by ControlScan for compliance with our strict program requirements.

You can shop in confidence knowing your personal information is safe with [website]. The [website] ControlScan Certification seals have been validated and are authentic. Visit [website] for more details.

About ControlScan

ControlScan is a market leader in e-commerce security, enabling businesses and consumers to have confidence in a connected world. ControlScan helps its customers protect their infrastructure, information, and interactions by delivering services that address risks to security compliance.

e. for the Privacy Reviewed seal, a seal design that displayed the trade name “Privacy Reviewed” with a shield icon on the seal’s face and the pop-up quoted below, which displayed the heading “ControlScan Security Reviewed” beside a padlock icon (Exhibits 9-10):

[Website] is enrolled in ControlScan's Privacy Reviewed certification program. Companies that participate in this program have their privacy policy [*sic*] reviewed by ControlScan. [Website] is currently working towards meeting the strict ControlScan Privacy Protected program requirements.

In addition to the privacy review [website] has completed a detailed Business Background Verification which includes verifying [website] through business licenses and Secretary of State information.

About ControlScan.

ControlScan is a market leader in e-commerce security, enabling businesses and consumers to have confidence in a connected world. ControlScan helps its customers protect their infrastructure, information, and interactions by delivering services that address risks to security compliance.

f. for the Business Background Reviewed, Verified Secure, Registered Member, Privacy Protected, and Privacy Reviewed seals, as described in paragraph 9.b. and 10, a date stamp that displayed the current date, which was updated on a daily basis (*see* Exhibits 1, 3, 4, 6, 7, 9).

DEFENDANT'S VERIFICATION

14. Contrary to the statements described in paragraph 13, ControlScan, in many instances, conducted little or no verification of the privacy and/or security protections for consumer information provided by companies displaying its Business Background Reviewed, Registered Member, Privacy Protected, and

Privacy Reviewed seals. Instead, in many instances, ControlScan:

a. provided the Business Background Reviewed seal to a company after verifying certain information, unrelated to information security, regarding the company's business address, ownership, and domain registration;

b. provided the Registered Member seal to a company that failed to qualify for the Verified Secure seal because an electronic scan of its website ("website scan") identified an actual or potential severe vulnerability on the website, and permitted the company to display the seal indefinitely while taking no action to assess whether the company was working to resolve any vulnerability identified by the website scan;

c. provided the Privacy Protected seal to a company that posted a privacy policy on its website, with no review of the company's underlying privacy or information security practices; and

d. provided the Privacy Reviewed seal to a company that failed to qualify for the Privacy Protected seal because it failed to post a privacy policy on its website.

15. Contrary to the current date displayed in each seal's date stamp, ControlScan did not review a company's practices on a daily basis. Instead, in

many instances, ControlScan:

a. for a company displaying the Business Background Reviewed, Privacy Protected, and Privacy Reviewed seals, conducted no ongoing review of the company's fitness to display the seals;

b. for a company displaying the Verified Secure seal, conducted only a weekly website scan of the company's website; and

c. for a company displaying the Registered Member seal, conducted a weekly website scan but imposed no requirement that the company take steps to resolve any actual or potential severe vulnerability identified by the scan.

VIOLATIONS OF THE FTC ACT

16. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits "unfair or deceptive acts or practices in or affecting commerce."

17. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

Count 1

18. As described in paragraph 13, Defendant has represented, expressly or by implication, that ControlScan has taken reasonable steps to verify that a

company displaying the Business Background Reviewed, Registered Member, Privacy Protected, or Privacy Reviewed seals provided appropriate protection for the privacy and/or security of consumer information.

19. In truth and in fact, as described in paragraph 14, in many instances, ControlScan has not taken reasonable steps to verify that a company displaying the Business Background Reviewed, Registered Member, Privacy Protected, or Privacy Reviewed seals has provided appropriate protection for the privacy and/or security of consumer information. Therefore, the representation set forth in paragraph 18 was, and is, false or misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count 2

20. As described in paragraph 13.b., Defendant has represented, expressly or by implication, that ControlScan has taken reasonable steps to verify that a company that displays the Registered Member seal “is currently working towards meeting the Payment Card Industry Data Security Standards.”

21. In truth and in fact, as described in paragraph 14.b., in many instances Defendant has not taken any steps to verify that a company that displays the Registered Member seal “is currently working towards meeting the Payment Card

Industry Data Security Standards.” Therefore, the representation set forth in paragraph 20 was, and is, false or misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

Count 3

22. As described in paragraph 13.f., Defendant has represented, expressly or by implication, that ControlScan has taken reasonable steps to review a company’s fitness to display the Business Background Reviewed, Verified Secure, Registered Member, Privacy Protected, and Privacy Reviewed seal on a daily basis.

23. In truth and in fact, as described in paragraph 15, in many instances ControlScan has not taken reasonable steps to review a company’s fitness to display the Business Background Reviewed, Verified Secure, Registered Member, Privacy Protected, or Privacy Reviewed seal on a daily basis. Therefore, the representation set forth in paragraph 22 was, and is, false or misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

CONSUMER INJURY

24. Consumers have suffered and will continue to suffer injury as a result of Defendant's violations of the FTC Act. Defendant has been unjustly enriched as a result of its unlawful acts or practices. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

25. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, the FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b) and the Court's own equitable powers, requests that the Court:

A. Enter a permanent injunction to prevent future violations of the FTC Act by Defendant;

B. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendant's violations of the FTC Act, including but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

C. Award the FTC the costs of bringing this action, as well as such other additional relief as the Court may determine to be just and proper.

Dated _____

Respectfully submitted,

Willard K. Tom
General Counsel

Maneesha Mithal
Associate Director,
Division of Privacy and Identity Protection

Local Counsel:

Chris M. Couillou
Georgia Bar No. 190062
(404) 656-1353 (direct)

Laura Berger
Florida Bar No. 0011762
(202) 326-2471 (direct)

Southeast Region
Federal Trade Commission
225 Peachtree Street, NE
Suite 1500
Atlanta, GA 30303
(404) 656-1390 (general)
(404) 656-1379 (facsimile)

Katherine Race Brin
New York Bar No. 4163929
District of Columbia Bar No. 490978
(202) 326-2106 (direct)

Kristin Krause Cohen
District of Columbia Bar No. 485946
(202) 326-2276 (direct)

Attorneys for Plaintiff
Federal Trade Commission
600 Pennsylvania Avenue, NW
Mail Stop NJ-8122
Washington, DC 20580
(202) 326-3224 (general)
(202) 326-3768 (facsimile)