

THE HONORABLE JOHN. C. COUGHENOUR

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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 AVENUE MEDIA, N.V.,

11 Plaintiff,

12 v.

13 DIRECTREVENUE, LLC;  
14 DIRECTREVENUE HOLDINGS, LLC;  
15 BETTER INTERNET, LLC,,

16 Defendants.

No. 04-CV-2371 JCC

**DECLARATION OF JOSHUA ABRAM  
IN SUPPORT OF DEFENDANT'S  
OPPOSITION TO TEMPORARY  
RESTRAINING ORDER**

17 I, Joshua Abram, declare as follows:

18 **The Defendants**

19 1. I am the CEO of Defendants DirectRevenue LLC ("DR") and DirectRevenue  
20 Holdings, LLC ("DR Holdings"). Defendant DR is the sole member and manager of Defendant  
21 BetterInternet, LLC ("BetterInternet").

22 2. DirectRevenue, LLC, DirectRevenue Holdings, LLC and BetterInternet, LLC  
23 operate leading Internet businesses, headquartered in New York. Defendants' operations include  
24 Offeroptimizer.com, which, as of December 4, 2004, ranks 7th among the top 100 most-trafficked  
25 websites on the Internet, behind Yahoo (1st), Google (3rd) and eBay (6th) and ahead of AOL (8th)  
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1 and Amazon (10th). See [http://www.alexa.com/site/ds/top\\_500](http://www.alexa.com/site/ds/top_500).

2 **BetterInternet**

3 3. BetterInternet develops and distributes a software product, BI, which enables it to  
4 provide contextual advertising services over the Internet. Contextual advertising is a form of  
5 targeted advertising which enables advertisers to direct advertisements and promotional offers to  
6 particular individuals based on that individual's interests. Using no personally identifiable  
7 information, (BetterInternet has no information regarding the name, address, email or identity of  
8 its users) BetterInternet looks at URLs visited by a given computer to ascertain relevant  
9 advertising. Just as commercials subsidize free television programming and reduce the price of  
10 print media, contextual advertising has promoted the unparalleled production and distribution of  
11 free substantive content on the internet.

12 4. BetterInternet's software product, "BI," is typically offered to end users in  
13 connection with free access to other software (e.g., games), services, and other content available  
14 on the Internet. In exchange, end users agree to receive advertisements targeted to a particular  
15 consumer's interests.

16 5. End users are required to consent to the terms and conditions of the BI End User  
17 License Agreement ("EULA") prior to downloading and installing BI. A true and correct copy  
18 the BI EULA is attached as Exhibit A.

19 6. By accepting the BI EULA, the end user expressly authorizes BetterInternet to  
20 disable other adware resident on the end user's computer:

21 you further understand and agree, by installing the Software, that  
22 BetterInternet and/or the Software may, without any further prior  
23 notice to you, remove, disable or render inoperative other adware  
programs resident on your computer . . . .

24 Exhibit A at § 2.2.

25 7. Making BI the exclusive adware on an end user's computer is favorable to the end  
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1 user. Running multiple adware products on a single computer can create an unfavorable end user  
2 experience. Adware clients deliver targeted advertising and promotions to the end user based on  
3 the end user's Internet browsing behavior. If more than one adware client is operating on an end  
4 user's computer, the end user may receive duplicative and a high volume of advertising.  
5 Running multiple adware clients may also affect system performance from compatibility and  
6 capacity perspectives.

7 **The Plaintiff**

8 8. Plaintiff and its principal, Shawn Boday, are affiliated with Flying Crocodile, Inc.,  
9 which describes its "flagship product" as the "SexTracker." See [www.sextracker.com](http://www.sextracker.com).

10 **The Parties' Business Relationship**

11 9. BetterInternet relies primarily on third parties, including plaintiff, to distribute BI.  
12 In March 2004 and June 2004, plaintiff (through its managing director) signed Insertion Orders  
13 which incorporated, by reference, a document called the Standard Distribution Agreement  
14 ("Distribution Agreement"). Each Insertion Order states:

15 Company understands, acknowledges, and agrees to the  
16 STANDARD DISTRIBUTION AGREEMENT TERMS posted at  
17 <http://www.abetterinternet.com/terms>, which are incorporated into  
18 this Insertion Order by this reference and will be deemed a part of  
19 this Insertion Order.

19 True and correct copies of (1) the Insertion Orders and (2) the Distribution Agreement are  
20 attached as Exhibits B & C, respectively (the Insertion Orders have been redacted to protect  
21 confidential pricing information that is not relevant to the subject matter of this litigation).

22 10. Pursuant to the Distribution Agreement, Plaintiff distributes Better Internet's BI  
23 software to Internet end users. Plaintiff distributes BI as part of free software "bundles" that are  
24 available for download on the Internet.

25 11. BetterInternet pays plaintiff a commission on each new copy of BI it distributes  
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