UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

AVENUE MEDIA, N.V.,

v.

DIRECTREVENUE, LLC;
DIRECTREVENUE HOLDINGS, LLC;
BETTERINTERNET, LLC,

Defendants.

CV4 2371

Plaintiff,

Civil Action No.: DECLARATION OF MOSES LESLIE

1. Moses Leslie, under penalty of perjury of the laws of the State of
Washington, makes the following certified statement. I have personal knowledge of the
facts herein and am competent to testify to same.

2. I am the lead systems administrator for the company which provides
hosting and technical support for Avenue Media, N.V. We manage the server and
services such as making sure its web server is running properly. Avenue Media is a
company that manages advertising on the Internet. Its main product is “Internet
Optimizer” which is a free software that a user downloads from the Internet. Users will
download the program as part of a bundle of programs or individually, sometimes in

DECLARATION OF MOSES LESLIE
exchange for watching free videos. Internet Optimizer provides a new search engine for users during a search on the Internet. The software also displays advertising on the user’s computer. The program is installed on millions of computers. Avenue Media is compensated based upon the number of searches or hits and the sale of targeted contextual advertising.

3. Internet Optimizer is a revenue driven Internet browser. Unlike the more conventional browser such as MSN.com, the search results on Internet Optimizer are often given priority based upon payments; that is, the search engine has “paid-for” links. Internet Optimizer is initiated with a search, including when the user conducts a search through the URL bar that results in a notice that the page does not exist (“This page cannot be displayed.”) The Internet Optimizer user will be sent to a search engine, such as Yooge.

4. This type of Internet advertising is called targeted contextual advertising and is about 3 or 4 years old. Competition among the top ten companies in this industry is fierce.

5. Internet advertising software such as Internet Optimizer is installed in the user’s computer. The software communicates with the Server daily. The conventional reasons for communication include adding updates or new advertising.

6. On Monday, November 15, 2004, Avenue Media noted that the number of user “hits” on the Internet Optimizer dramatically decreased by half, from two million to one million per day. The next day I ruled out software error as the cause and began to consider whether a competitor was diverting our traffic. I read the log on an
office computer and noticed that an office computer was instructed to “uninstall”
Internet Optimizer. I recorded all the network traffic between the office computer in
question and the Internet as a whole. I downloaded the human readable instructions
which contained commands to uninstall Internet Optimizer from the hard drive of the
computer. The words for the instructions appear in the attachment to this declaration
referred to as Exhibit 1 and reads as:

    Kill process Optimizer.exe
    Remove registry keys

"Registry keys" store configuration data on the hard drive and tells how the program
performs.

7. I decided to attempt to recreate the circumstances under which the
uninstall occurred. I did a fresh install of our Internet Optimizer on an office computer.
I logged the Internet traffic out of that machine onto the Internet. I then went to
www.shopnav.com, where I began a download of DirectRevenue’s software (from
thinstall.abetterinternet.com). I never had to click to accept an End User License
Agreement, either from Shopnav or from DirectRevenue. After the installation of
DirectRevenue’s thinstall was completed, our Internet Optimizer software was removed
from an office computer. I read the log of the Internet traffic which showed that Direct
Revenue’s thinstall software directed the removal of Avenue Media’s Internet
Optimizer from an office computer. See Exhibit 1, a true copy of the log commanding
the removal of Internet Optimizer.
8. The domain name appears on the log as thinstall.abetterinternet.com which is operated by Direct Revenue. The IP addresses for the commands sent to millions of computer users to uninstall Internet Optimizer were:

64.124.153.141
64.192.114.141
64.192.114.151
72.5.128.141

According to the domain name registry, ARIN WHOIS, the IP addresses listed above are owned by DirectRevenue, LLC. See Exhibits 2-5.

9. A review of the log of our computer shows how the “uninstall” process was carried out by DirectRevenue, LLC. The first section of the log shows that after thinstall was installed, it used an HTTP POST (method for communicating with the Web Server) to send data about currently installed programs including a full process list (list of all programs running on the computer) to a central server.

10. DirectRevenue’s thinstall instructions replaced specific URLs associated with Avenue Media with DirectRevenue’s thinstall URLs in order to take traffic or business from Avenue Media. I have saved a copy of the page of these commands as well as a screenshot of the page in a browser. See Exhibit 1 which documents that Avenue Media’s Internet Optimizer’s URL was replaced with thinstall’s URL as part of the thinstall install.
11. Using the technique described above and shown on the log, thinstall
specifically targeted Internet Optimizer and removed the program from the computer.
including removing all registry keys associated with Internet Optimizer.

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SIGNED UNDER PENALTY OF PERJURY of the laws of the State of
Washington at Seattle on \11/24/04\ 2004.

Moses Leslie

11/24/04 12:42 PM ()