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04-CV-02371-DISCL

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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

AVENUE MEDIA, N.V.,
Plaintiff,
v.
DIRECTREVENUE, LLC;
DIRECTREVENUE HOLDINGS, LLC;
BETTERINTERNET, LLC,
Defendants.

CV4 2371C
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

1 exchange for watching free videos. Internet Optimizer provides a new search engine
2 for users during a search on the Internet. The software also displays advertising on the
3 user's computer. The program is installed on millions of computers. Avenue Media is
4 compensated based upon the number of searches or hits and the sale of targeted
5 contextual advertising.
6

7 3. Internet Optimizer is a revenue driven Internet browser. Unlike the more
8 conventional browser such as MSN.com, the search results on Internet Optimizer are
9 often given priority based upon payments; that is, the search engine has "paid-for"
10 links. Internet Optimizer is initiated with a search, including when the user conducts a
11 search through the URL bar that results in a notice that the page does not exist ("This
12 page cannot be displayed.") The Internet Optimizer user will be sent to a search
13 engine, such as Yoogee.
14
15

16 4. This type of Internet advertising is called targeted contextual advertising
17 and is about 3 or 4 years old. Competition among the top ten companies in this
18 industry is fierce.
19

20 5. Internet advertising software such as Internet Optimizer is installed in the
21 user's computer. The software communicates with the Server daily. The conventional
22 reasons for communication include adding updates or new advertising.
23

24 6. On Monday, November 15, 2004, Avenue Media noted that the number
25 of user "hits" on the Internet Optimizer dramatically decreased by half, from two
26 million to one million per day. The next day I ruled out software error as the cause and
27 began to consider whether a competitor was diverting our traffic. I read the log on an
28

1 office computer and noticed that an office computer was instructed to "uninstall"
2 Internet Optimizer. I recorded all the network traffic between the office computer in
3 question and the Internet as a whole. I downloaded the human readable instructions
4 which contained commands to uninstall Internet Optimizer from the hard drive of the
5 computer. The words for the instructions appear in the attachment to this declaration
6 referred to as Exhibit I and reads as:
7

8 Kill process Optimizer.exe
9 Remove registry keys

10 "Registry keys" store configuration data on the hard drive and tells how the program
11 performs.
12

13 7. I decided to attempt to recreate the circumstances under which the
14 uninstall occurred. I did a fresh install of our Internet Optimizer on an office computer.
15 I logged the Internet traffic out of that machine onto the Internet. I then went to
16 www.shopnav.com, where I began a download of DirectRevenue's software (from
17 thinstall.abetterinternet.com). I never had to click to accept an End User License
18 Agreement, either from Shopnav or from DirectRevenue. After the installation of
19 DirectRevenue's thinstall was completed, our Internet Optimizer software was removed
20 from an office computer. I read the log of the Internet traffic which showed that Direct
21 Revenue's thinstall software directed the removal of Avenue Media's Internet
22 Optimizer from an office computer. See Exhibit 1, a true copy of the log commanding
23 the removal of Internet Optimizer.
24
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1 8. The domain name appears on the log as thinstall.abetterinternet.com
2 which is operated by Direct Revenue. The IP addresses for the commands sent to
3 millions of computer users to uninstall Internet Optimizer were:
4

5 64.124.153.141

6 64.192.114.141

7 64.192.114.151

8 72.5.128.141
9

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


12 9. A review of the log of our computer shows how the "uninstall" process
13 was carried out by DirectRevenue, LLC. The first section of the log shows that after
14 thinstall was installed, it used an HTTP POST (method for communicating with the
15 Web Server) to send data about currently installed programs including a full process
16 list (list of all programs running on the computer) to a central server.
17

18 10. DirectRevenue's thinstall instructions replaced specific URLs associated
19 with Avenue Media with DirectRevenue's thinstall URLs in order to take traffic or
20 business from Avenue Media. I have saved a copy of the page of these commands as
21 well as a screenshot of the page in a browser. See Exhibit 1 which documents that
22 Avenue Media's Internet Optimizer's URL was replaced with thinstall's URL as part of
23 the thinstall install.
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1 11. Using the technique described above and shown on the log, thinstall
2 specifically targeted Internet Optimizer and removed the program from the computer,
3 including removing all registry keys associated with Internet Optimizer.
4

5 ///

6 SIGNED UNDER PENALTY OF PERJURY of the laws of the State of
7 Washington at Scattle on 11/24/2004.
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11 _____
12 Moses Leslie

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11/24/04 12:42 PM Q