COPY

JS 44 - No. CALIF (Rev. 4/97)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO)

I. (a) PLAINTIFFS
THE GATOR CORPORATION, a California corporation

DEFENDANTS
PC PITSTOP, LLC, a limited liability company

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Mateo
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
JONATHAN HANGARTNER, Cal. Bar No. 196268
501 West Broadway, 19th Floor
San Diego, CA 92101-3598
Telephone: 619-338-6500

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- [ ] 1 U.S. Government Plaintiff
- [X] 3 Federal Question (U.S. Government Not a Party)
- [ ] 2 U.S. Government Defendant
- [ ] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
(For diversity cases only)

	PTF	DEF		PTF	DEF
Citizen of This State	[ ] 1	[ ] 1	Incorporated or Principal Place of Business in This State	[ ] 4	[ ] 4
Citizen of Another State	[ ] 2	[ ] 2	Incorporated and Principal Place of Business in Another State	[ ] 5	[ ] 5
Citizen or Subject of a Foreign Country	[ ] 3	[ ] 3	Foreign Nation	[ ] 6	[ ] 6

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- [X] 1 Original Proceeding
- [ ] 2 Removed from State Court
- [ ] 3 Remanded from Appellate Court
- [ ] 4 Reinstated or Reopened
- [ ] 5 Transferred from Another district (specify)
- [ ] 6 Multidistrict Litigation
- [ ] 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT
- [ ] 110 Insurance
- [ ] 120 Marine
- [ ] 130 Miller Act
- [ ] 140 Negotiable Instrument
- [ ] 150 Recovery of Overpayment & Enforcement of Judgment
- [ ] 151 Medicare Act
- [ ] 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- [ ] 153 Recovery of Overpayment of Veteran's Benefits
- [ ] 160 Stockholders' Suits
- [ ] 190 Other Contract
- [ ] 195 Contract Product Liability

REAL PROPERTY
- [ ] 210 Land Condemnation
- [ ] 220 Foreclosure
- [ ] 230 Rent Lease & Ejectment
- [ ] 240 Torts to Land
- [ ] 245 Tort Product Liability
- [ ] 290 All Other Real Property

TORTS

PERSONAL INJURY
- [ ] 310 Airplane
- [ ] 315 Airplane Product Liability
- [ ] 320 Assault, Libel & Slander
- [ ] 330 Federal Employers Liability
- [ ] 340 Marine
- [ ] 345 Marine Product Liability
- [ ] 350 Motor Vehicle
- [ ] 355 Motor Vehicle Product Liability
- [ ] 360 Other Personal Injury

PERSONAL INJURY
- [ ] 362 Personal Injury - Med. Malpractice
- [ ] 365 Personal Injury - Product Liability
- [ ] 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- [ ] 370 Other Fraud
- [ ] 371 Truth in Lending
- [ ] 380 Other Personal Property Damage
- [ ] 385 Property Damage Product Liability

CIVIL RIGHTS
- [ ] 441 Voting
- [ ] 442 Employment
- [ ] 443 Housing
- [ ] 444 Welfare
- [ ] 440 Other Civil Rights

PRISONER PETITIONS
- [ ] 510 Motion to Vacate Sentence
- Habeas Corpus:
  - [ ] 530 General
  - [ ] 535 Death Penalty
  - [ ] 540 Mandamus & Other
  - [ ] 550 Civil Rights
  - [ ] 555 Prison Condition

FORFEITURE/PENALTY
- [ ] 610 Agriculture
- [ ] 620 Other Food & Drug
- [ ] 625 Drug Related Seizure of Property 21 USC 881
- [ ] 630 Liquor Laws
- [ ] 640 RR & Truck
- [ ] 650 Airline Regs.
- [ ] 660 Occupational Safety/Health
- [ ] 690 Other

LABOR
- [ ] 710 Fair Labor Standards Act
- [ ] 720 Labor/Mgmt. Relations
- [ ] 730 Labor/Mgmt. Reporting & Disclosure Act
- [ ] 740 Railway Labor Act
- [ ] 790 Other Labor Litigation
- [ ] 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- [ ] 422 Appeal 28 USC 158
- [ ] 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- [ ] 820 Copyrights
- [ ] 830 Patent
- [X] 840 Trademark

SOCIAL SECURITY
- [ ] 861 HIA (1395ff)
- [ ] 862 Black Lung (923)
- [ ] 863 DIWC/DIWW (405(g))
- [ ] 864 SSID Title XVI
- [ ] 865 RSI (405(g))

FEDERAL TAX SUITS
- [ ] 870 Taxes (U.S. Plaintiff or Defendant)
- [ ] 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
- [ ] 400 State Reapportionment
- [ ] 410 Antitrust
- [ ] 430 Banks and Banking
- [ ] 450 Commerce/ICC Rates/etc.
- [ ] 460 Deportation
- [ ] 470 Racketeer Influenced and Corrupt Organizations
- [ ] 810 Selective Service
- [ ] 850 Securities/Commodities/Exchange
- [ ] 875 Customer Challenge 12 USC 3410
- [ ] 891 Agricultural Acts
- [ ] 892 Economic Stabilization Act
- [ ] 893 Environmental Matters
- [ ] 894 Energy Allocation Act
- [ ] 895 Freedom of Information Act
- [ ] 900 Appeal of Fee Determination Under Equal Access to Justice
- [ ] 950 Constitutionality of State Statutes
- [ ] 890 Other Statutory Actions

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY) 15 U.S.C. Sections 1125, 1051, et seq.
Complaint alleges claims for false advertising, unfair business practices, trade libel, defamation and tortious interference.

VII. REQUESTED IN COMPLAINT: [ ] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND $

[X] CHECK YES only if demanded in complaint: JURY DEMAND: [X] YES [ ] NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AN "X" IN ONE BOX ONLY) [ ] SAN FRANCISCO/OAKLAND [X] SAN JOSE

DATE
September 11, 2003

SIGNATURE OF ATTORNEY OF RECORD
JONATHAN HANGARTNER

NDC-JS44

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44

Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference relating pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

E-filing

TGC CORPORATION
Plaintiff(s)

-v-

PC PITSTOP
Defendant(s)

C 03-04167 RS

ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE

IT IS HEREBY ORDERED that this action is assigned to the Honorable Richard Seeborg. When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this order, the handbook entitled "Dispute Resolution Procedures in the Northern District of California," the Notice of Assignment to United States Magistrate Judge for Trial, and all other documents specified in Civil Local Rule 4-2. Counsel must comply with the case schedule listed below unless the Court otherwise orders.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by ADR Local Rule 3. Counsel and clients must familiarize themselves with that rule and with the handbook entitled "Dispute Resolution Procedures in the Northern District of California."

CASE SCHEDULE [ADR MULTI-OPTION PROGRAM]

Date	Event	Governing Rule
09/11/2003	Complaint filed	
12/24/2003	Last day to meet and confer re initial disclosures, early settlement, ADR process selection, and discovery plan	FRCivP 26(f) & ADR LR 3-5
12/24/2003	Last day to file Joint ADR Certification with Stipulation to ADR process or Notice of Need for ADR Phone Conference	Civil L.R. 16-8
01/07/2004	Last day to complete initial disclosures or state objection in Rule 26(f) Report, file/serve Case Management Statement, and file/serve Rule 26(f) Report	FRCivP 26(a)(1) Civil L.R.16-9
01/14/2004	Case Management Conference in 4 at 1:30 PM	Civil L.R. 16-10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
MAGISTRATE JUDGE RICHARD SEEBORG

STANDING ORDER RE: INITIAL CASE MANAGEMENT

1. In cases that are randomly assigned to Judge Seeborg for all purposes, the parties are requested to file their written consent to the assignment of a U.S. Magistrate Judge for all purposes, or their written declination of consent, as soon as possible.

2. The civil motion calendar is heard on Wednesdays at 9:30 a.m. The criminal motion calendar is heard on Thursdays at 9:30 a.m. Motions may be noticed for hearing pursuant to Civil L.R. 7. Counsel need not reserve a hearing date in advance for civil motions. However, noticed dates may be reset as the Court's calendar requires.

3. Case Management and Pretrial Conferences are heard on Wednesdays at 1:30 p.m.

4. Parties with questions regarding scheduling of settlement conferences should contact Judge Seeborg's secretary at 408/535-5357. All other scheduling questions should be addressed to Judge Seeborg's courtroom deputy at 408/535-5346.

5. A Case Management Conference will be held on the date and time specified in the Order Setting Initial Case Management Conference in Courtroom 4, United States Courthouse, 280 South First Street, San Jose, California. This conference may be continued only by Court Order pursuant to Civil L.R. 16-2(e). Parties may not stipulate to continue a case management conference without Court approval.

6. Pursuant to Rule 26(f), F.R.Civ.P. and Civil Local Rule 16-3, no later than 21 days before the Case Management Conference, each party shall confer to consider and discuss: (1) the nature and basis of their claims and defenses; (2) possibilities for a prompt settlement or resolution of the case; (3) exchanging the initial disclosures required by Rule 26(a)(1), F.R.Civ.P.; (4) developing a proposed discovery plan with suitable limits; and (5) preparation of a joint case management statement.

7. The parties shall also consider the selection of an ADR (Alternative Dispute Resolution) process. See "Dispute Resolution Procedures in the Northern District of California" handbook. Pursuant to Civil Local Rule 16-8(b) and ADR Local Rule 3-5, no later than the date specified in the Order Setting Initial Case Management Conference, each party shall file and serve an ADR Certificate.

8. Pursuant to Civil L.R. 16-9, no later than seven (7) days before the Case Management Conference, the parties shall file a Joint Case Management Statement and Proposed Order (see sample form attached hereto). If preparation of a joint

statement would cause undue hardship, the parties may serve and file separate statements, which shall include a description of the undue hardship.

9. Discovery motions may be addressed to the Court in three ways: a motion may be noticed on not less than 35 days' notice pursuant to Civil L.R. 7-2. Alternatively, any party may seek an order shortening time under Civil L.R. 6-3 if the circumstances justify that relief. In emergencies during discovery events (such as depositions), any party may contact the Court to ask if the Judge is available to address the problem pursuant to Civil L.R. 37-1(b). In the event a discovery dispute arises, counsel for the party seeking discovery shall in good faith confer with counsel for the party failing to make the discovery in an effort to resolve the dispute without court action, as required by Fed.R.Civ.P. 37 and Civil L.R. 37-1(a). A declaration setting forth these meet and confer efforts, and the final positions of each party, shall be included in the moving papers. The Court will not consider discovery motions unless the moving party has complied with Fed.R.Civ.P. 37 and Civil L.R. 37-1(a). The parties are discouraged from attaching letters between counsel as exhibits to discovery motions.

10. Plaintiff or removing Defendant shall serve a copy of this Standing Order on all parties to this action and on all parties subsequently joined, in accordance with Fed.R.Civ.P 4 and 5. Following service, Plaintiff shall file a certificate of service, in accordance with Civil L.R. 5-6.

IT IS SO ORDERED.

Dated: September 10, 2001

Richard Seeborg
United States Magistrate Judge

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Plaintiff(s), v. Defendant(s).	Case No.: JOINT CASE MANAGEMENT STATEMENT AND PROPOSED ORDER

The parties to the above-entitled action jointly submit this Case Management Statement and Proposed Order, and request the Court to adopt it as its Case Management Order in this case.

DESCRIPTION OF THE CASE

1. A brief description of the events underlying the action:

2. The principal factual issues which the parties dispute:

3. The principal legal issues which the parties dispute:

4. The other factual issues *[e.g. service of process, personal jurisdiction, subject matter jurisdiction or venue]* which remain unresolved for the reasons stated below and how the parties propose to resolve those issues:

5. The parties who have not been served and the reasons:

6. The additional parties whom the below-specified parties intend to join and the intended time frame for such joinder:

CONSENT TO ASSIGNMENT TO MAGISTRATE JUDGE

7. The following parties consent to assignment of this case to a United States Magistrate Judge for *[court or jury]* trial:

ALTERNATIVE DISPUTE RESOLUTION

8. The parties have already been assigned *[or the parties have agreed]* to the following court ADR process *[e.g. Nonbinding Arbitration, Early Neutral Evaluation, Mediation, Early Settlement with a Magistrate Judge] [State the expected or scheduled date for the ADR session]:*

9. The ADR process to which the parties jointly request *[or a party separately requests]* referral:

DISCLOSURES

10. The parties certify that they have made the following disclosures *[list disclosures of persons, documents, damage computations and insurance agreements]:*

DISCOVERY

11. The parties agree to the following discovery plan *[Describe the plan e.g., any limitations on the number, duration or subject matter for various kinds of discovery; discovery from experts; deadlines for completing discovery]:*

TRIAL SCHEDULE

12. The parties request a trial date as follows:

13. The parties expect that the trial will last for the following number of days:

SIGNATURE AND CERTIFICATION BY PARTIES AND LEAD TRIAL COUNSEL

Pursuant to Civil L.R. 16-12, each of the undersigned certifies that he or she has read the brochure entitled "Dispute Resolution Procedures in the Northern District of California," discussed the available dispute resolution options provided by the court and private entities and has considered whether their case might benefit from any of the available dispute resolution options.

Dated:_____ _____
[Typed name and signature of each party and lead trial counsel]

Dated:_____ _____
[Typed name and signature of each party and lead trial counsel]

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition the Court orders: *[The Court may wish to make additional orders, such as:*

a. Referral of the parties to court or private ADR process;
b. Schedule a further Case Management Conference;
c. Schedule the time and content of supplemental disclosures;
d. Specially set motions;
e. Impose limitations on disclosure or discovery;
f. Set time for disclosure of identity, background and opinions of experts;
g. Set deadlines for completing fact and expert discovery;
h. Set time for parties to meet and confer regarding pretrial submissions;
i. Set deadline for hearing motions directed to the merits of the case;
j. Set deadline for submission of pretrial material;
k. Set date and time for pretrial conference;
l. Set a date and time for trial.]

Dated:

_____
United States Magistrate Judge

ORIGINAL

AO 440 (Rev. 10/93) Summons in a Civil Action

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE GATOR CORPORATION, a California corporation,

SUMMONS IN A CIVIL CASE

v. E-filing CASE NUMBER:

PC PITSTOP, LLC, a limited liability company,

C 03 4167 RS

TO: See above named Defendants

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
JONATHAN HANGARTNER, Cal. Bar No. 196268
501 West Broadway, 19th Floor
San Diego, CA 92101-3598
Telephone: 619-338-6500
Facsimile: 619-234-3815

an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

RICHARD W. WIEKING

CLERK

SEP 11 2003

DATE

(BY) DEPUTY CLERK

MARY ANN BUCKLEY

NDCAO440

AO 440 (Rev. 10/93) Summons in a Civil Action

RETURN OF SERVICE

Service of the Summons and Complaint was made by me[1] DATE 9/12/03

Name of SERVER (PRINT) Phyllis Chavez TITLE

Check one box below to indicate appropriate method of service

☐ Served Personally upon the Defendant. Place where served: _____

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left

☐ Returned unexecuted:

☒ Other *(specify)*: Certified Mail, Return Receipt Requested

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on September 12, 2003 (Phyllis Chavez)
Date *Signature of Server*

501 West Broadway, 19th Floor
San Diego, CA 92101
Address of Server

Documents served:
1. Civil Cover Sheet;
2. Summons;
3. Complaint;
4. First Amended Complaint;
5. Notice of Assignment of Case to a United States Magistrate Judge for Trial; Waiver of Service of Summons; Notice of Lawsuit and Request for Waiver of Service of Summons; Appendix A – Joint Case Management Statement and Proposed Order; Stipulation and [Proposed] Order Selecting ADR Process ADR Certification; Signature and Certification by Parties and Lead Trial Counsel; Instructions for Completion of ADR Forms Regarding Selection of an ADR Process (ADR L.R. 3-5); Signature and Certification by Parties and Lead Trial Counsel; Notice of Need for ADR Phone Conference [ADR L.R. 3-5] ADR Certification;
6. Order Setting Initial Case Management Conference; Standing Order Re Initial Case Management; Joint Case Management Statement and Proposed Order;
7. U.S. District Court Northern California ECF Registration Information Handout; and Dispute Resolution Procedures.

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT OF CASE TO A UNITED STATES MAGISTRATE JUDGE FOR TRIAL

Pursuant to General Order 44, the Assignment Plan of the United States District Court for the Northern District of California, this case has been assigned to Magistrate Judge RICHARD SEEBORG.

In accordance with Title 28 U.S.C. § 636(c), with written consent of the parties, the magistrate judges of this district have been designated to conduct any and all proceedings in a civil case, including a jury or nonjury trial and entry of a final judgment. An appeal from a judgment entered by magistrate judge may be taken directly to the United States Court of Appeals in the same manner as an appeal from any other judgment of the district court.

The plaintiff or removing party shall serve a copy of this notice upon all other parties to this action pursuant to Federal Rules of Civil Procedure 4 and 5.

FOR THE COURT
RICHARD W. WIEKING, CLERK

By: Deputy Clerk

magassn.ntc (rev. 12/98)

AO 399 (12/93)

WAIVER OF SERVICE OF SUMMONS

TO: _____
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I acknowledge receipt of your request that I waive service of a summons in the action of _____ (CAPTION OF ACTION), which is case number _____ (DOCKET NUMBER) in the United States District Court for the _____ District of _____. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after _____ (DATE REQUEST WAS SENT), or within 90 days after that date if the request was sent outside the United States.

_____
DATE

_____
SIGNATURE

Printed/Typed Name: _____

As _____ (TITLE) of _____ (CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

AO 398 (12/93)

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

TO: (A) _____

as (B) _____ of (C) _____

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed.) A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the (D) _____ District of _____ and has been assigned docket number (E) _____.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) _____ days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States.)

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this _____ day of _____, _____.

_____
Signature of Plaintiff's Attorney
or Unrepresented Plaintiff

A — Name of individual defendant (or name of officer or agent of corporate defendant)
B — Title, or other relationship of individual to corporate defendant
C — Name of corporate defendant, if any
D — District
E — Docket number of action
F — Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Plaintiff(s), v. Defendant(s).	CASE NO. JOINT CASE MANAGEMENT STATEMENT AND PROPOSED ORDER

The parties to the above-entitled action jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as its Case Management Order in this case.

DESCRIPTION OF THE CASE

1. A brief description of the events underlying the action:

2. The principal factual issues which the parties dispute:

3. The principal legal issues which the parties dispute:

4. The other factual issues *[e.g. service of process, personal jurisdiction, subject matter jurisdiction or venue]* which remain unresolved for the reason stated below and how the parties propose to resolve those issues:

5. The parties which have not been served and the reasons:

6. The additional parties which the below-specified parties intend to join and the intended time frame for such joinder:

7. The following parties consent to assignment of this case to a United States Magistrate Judge for *[court or jury]* trial:

ALTERNATIVE DISPUTE RESOLUTION

8. *[Please indicate the appropriate response(s).]*

☐ The case was automatically assigned to Nonbinding Arbitration at filing and will be ready for the hearing by *(date)*_____.

☐ The parties have filed a Stipulation and Proposed Order Selecting an ADR process *(specify process)*:_____.

☐ The parties filed a Notice of Need for ADR Phone Conference and the phone conference was held on or is scheduled for _____.

☐ The parties have not filed a Stipulation and Proposed Order Selecting an ADR process and the ADR process that the parties jointly request [or a party separately requests] is _____.

9. **Please indicate any other information regarding ADR process or deadline.**

DISCLOSURES

10. **The parties certify that they have made the following disclosures** *[list disclosures of persons, documents, damage computations and insurance agreements]*:

DISCOVERY

11. **The parties agree to the following discovery plan** *[Describe the plan e.g., any limitation on the number, duration or subjectmatter for various kinds of discovery; discovery from experts; deadlines for completing discovery]*:

TRIAL SCHEDULE

12. **The parties request a trial date as follows:**

13. **The parties expect that the trial will last for the following number of days:**

Dated: _____ _____

[Typed name and signature of counsel.]

Dated: _____ _____

[Typed name and signature of counsel.]

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition the Court orders:

[The Court may wish to make additional orders, such as:

a. Referral of the parties to court or private ADR process;
b. Schedule a further Case Management Conference;
c. Schedule the time and content of supplemental disclosures;
d. Specially set motions;
e. Impose limitations on disclosure or discovery;
f. Set time for disclosure of identity, background and opinions of experts;
g. Set deadlines for completing fact and expert discovery;
h. Set time for parties to meet and confer regarding pretrial submissions;
i. Set deadline for hearing motions directed to the merits of the case;
j. Set deadline for submission of pretrial material;
k. Set date and time for pretrial conference;
l. Set a date and time for trial.]

Dated: _____ _____

UNITED STATES DISTRICT/MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

Plaintiff,	No. C
v.	**STIPULATION AND [PROPOSED] ORDER SELECTING ADR PROCESS**
Defendant. /	**ADR CERTIFICATION**

The parties stipulate to participate in the following ADR process:

Court Processes:

☐ Arbitration ☐ ENE ☐ Mediation

(To provide additional information regarding timing of session, preferred subject matter expertise o neutral, or other issues, please attach a separate sheet.)

Private Process:

☐ Private ADR (*please identify process and provider*)

_____

Dated: _____ _____
Attorney for Plaintiff

Dated: _____ _____
Attorney for Defendant

IT IS SO ORDERED:

Dated: _____ _____
UNITED STATES DISTRICT JUDGE

SIGNATURE AND CERTIFICATION BY PARTIES AND LEAD TRIAL COUNSEL

Pursuant to Civ. L.R. 16 and ADR L.R. 3-5(b), each of the undersigned certifies that he or she has read either the handbook entitled "Dispute Resolution Procedures in the Northern District of California," or the specified portions of the ADR Unit's Internet site <www.adr.cand.uscourts.gov>, discussed the available dispute resolution options provided by the court and private entities, and considered whether this case might benefit from any of them.

(Note: This Certification must be signed by each party and its counsel.)

Dated: _____ _____
[Typed name and signature of plaintiff]

Dated: _____ _____
[Typed name and signature of counsel for plaintiff]

Dated: _____ _____
[Typed name and signature of defendant]

Dated: _____ _____
[Typed name and signature of counsel for defendant]

INSTRUCTIONS FOR COMPLETION OF ADR FORMS REGARDING SELECTION OF AN ADR PROCESS (ADR L.R. 3-5)

Under ADR L.R. 3-5, by the date set forth in the initial case management scheduling order, counsel shall meet and confer to attempt to agree on an ADR process. By that date, counsel also must file one of the two attached forms, as explained below:

- If the parties have agreed to non-binding arbitration, ENE, mediation, or private ADR, they shall file the form captioned "STIPULATION AND [PROPOSED] ORDER SELECTING ADR PROCESS / ADR CERTIFICATION."

- If the parties either have not yet reached an agreement to an ADR process or they have agreed to an early settlement conference before a magistrate judge, they shall file the form captioned "NOTICE OF NEED FOR ADR PHONE CONFERENCE [ADR L.R. 3-5] / ADR CERTIFICATION."

Please note that parties selecting an early settlement conference with a magistrate judge are required to participate in an ADR phone conference.

Under ADR L.R. 3-5(e), a copy of the applicable form must be <u>received</u> by the ADR Unit by the date set forth in the initial case management scheduling order. This copy may be provided in the form of a courtesy copy designated for the ADR Unit presented along with the filed original or may be submitted by fax directly to the ADR Unit at (415) 522-4112.

United States District Court
For the Northern District of California

SIGNATURE AND CERTIFICATION BY PARTIES AND LEAD TRIAL COUNSEL

Pursuant to Civ. L.R. 16 and ADR L.R. 3-5(b), each of the undersigned certifies that he or she has read either the handbook entitled "Dispute Resolution Procedures in the Northern District of California," or the specified portions of the ADR Unit's Internet site <www.adr.cand.uscourts.gov>, discussed the available dispute resolution options provided by the court and private entities, and considered whether this case might benefit from any of them.

(Note: This Certification must be signed by each party and its counsel.)

Dated: _____ _____
[Typed name and signature of plaintiff]

Dated: _____ _____
[Typed name and signature of counsel for plaintiff]

Dated: _____ _____
[Typed name and signature of defendant]

Dated: _____ _____
[Typed name and signature of counsel for defendant]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C

Plaintiff,

v.

Defendant.

NOTICE OF NEED FOR ADR PHONE CONFERENCE [ADR L.R. 3-5]

ADR CERTIFICATION

The parties either:

☐ have not yet reached an agreement to an ADR process, or

☐ have tentatively agreed to a settlement conference before a magistrate judge.

Accordingly, ADR L.R. 3-5 requires a telephone conference with the ADR Director or Program Counsel before the case management conference.

Last day to file Joint Case Management Statement: _____

Date of Initial Case Management Conference: _____

The following counsel will participate in the ADR phone conference:

Name	*Party Representing*	*Phone No.*	*Fax No.*

(For additional participants, please attach a separate sheet with the above information.)

The ADR Unit will notify you by return fax indicating, in the space below, the date and time of your phone conference. Plaintiff's counsel shall initiate the call using the following number: (415) 522-4603. Please consult ADR L.R. 3-5(d).

For court use only:

ADR Phone Conference Date: _____ **Time:** _____ **AM/PM**

For scheduling concerns, call 415-522-2199.

Date: _____

ADR Case Administrator

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
KENT R. RAYGOR, Cal. Bar No. 117224
333 South Hope Street, 48th Floor
Los Angeles, California 90071-1448
Telephone: 213-620-1780
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THE GATOR CORPORATION
L. SCOTT PRIMAK, Cal. Bar No. 152353
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Attorneys for Plaintiff THE GATOR CORPORATION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE GATOR CORPORATION, a California corporation, Plaintiff, v. PC PITSTOP, LLC, a limited liability company, Defendant.	CASE NO. IC 03 4167 RS **FIRST AMENDED COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff The Gator Corporation ("TGC") complains of defendant PC Pitstop, LLC ("PC Pitstop"), and alleges as follows:

1. This action arises from the Defendant's willful misrepresentations about TGC, TGC's products, and TGC's distribution of software.

JURISDICTION

2. Plaintiff TGC is a corporation duly organized and existing under the laws of the state of Delaware, with its principal place of business in Redwood City, California.

3. On information and belief, PC Pitstop is a limited liability company with its principal place of business in Sioux City, Iowa.

4. This action arises under the Lanham Act, 15 U.S.C. §§ 1051 et seq., and California law.

5. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338 and the Court's supplemental jurisdiction under 28 U.S.C. § 1367.

6. Venue in this judicial district is proper under 28 U.S.C. § 1391 as defendant is doing business in and has caused tortious injury in this judicial district.

INTRADISTRICT ASSIGNMENT

7. Assignment to the San Jose Division is proper under Civ. L.R. 3-2(e).

BACKGROUND

TGC's Products and Services

8. Founded in 1998, TGC is a leading provider of online advertising software and services.

9. TGC offers both its own software applications and third-party software applications to consumers for free by bundling such consumer applications with an advertising software application. In exchange for free use of the consumer software applications, the user agrees to receive occasional branded advertisements through TGC's GAIN® advertising network, thereby becoming or subscriber. These "pop-up" advertisements are delivered via TGC's GAIN AdServer software, which is installed on the subscriber's computer.

10. TGC's own consumer software applications include a popular application known as the TGC® eWallet®. An example of third-party software that is available for free when bundled with the GAIN AdServer software is the popular "DIVX" digital video editor. Versions of such consumer software applications that are bundled with the GAIN AdServer software will be collectively referred to as "GAIN Supported Software."

TGC's Agreement With Its Users

11. The terms of the agreement between TGC and subscribers of GAIN Supported Software are clearly described in a series of disclosures that the consumer must acknowledge before installing any GAIN Supported Software. For example, the first window that a subscriber is shown when he or she begins to download the GAIN Supported Software version of "DIVX Pro" software explains:

DivX Pro at No Cost . . How? This version of DivX Pro ™ is available to you at no cost because it is supported by advertising delivered via the TGC Advertising and Information Network(GAIN).

GAIN occasionally delivers online advertising and informational messages selected based on Web sites you view.

To continue this installation, you must read and accept both the privacy statement and license agreement for GAIN presented on the following screens.

Enjoy your DivX Pro ™ software.

12. Among these disclosures the subscriber must read and accept is TGC's Privacy Statement and End User License Agreement ("EULA"). A true and correct copy of TGC's current EULA is attached hereto as Exhibit A and incorporated herein by this reference.

13. Under the terms of the EULA, TGC agrees to provide the subscriber with a software product the subscriber desires at no charge or a reduced charge. In return the subscriber agrees to install TGC's AdServer software and allow delivery of occasional branded advertisements and promotional messages to the subscriber's computer based on the subscriber's interests as shown by the websites he or she view.

14. The EULA clearly informs subscribers that "the presence of any GAIN-Supported Software on any computer is voluntary" and that the subscriber may remove any such software and terminate his or her agreement with TGC at any time. The EULA provides detailed instructions for removal of GAIN Supported Software, and explains that soon after all GAIN Supported Software has been removed, the GAIN AdServer will remove itself automatically.

15. As explained in detail in the EULA, in order to target its advertising and serve its advertising customers TGC gathers a variety of anonymous information from its subscribers regarding their web surfing habits, responses to advertising, computer system and software, as well as only their first name, country, city, and five digit ZIP code.

16. However, all of this information is completely anonymous — TGC does not obtain any personally identifiable information such as email addresses, last name, street address or phone numbers. TGC does not even know the identity of its GAIN Supported Software users.

17. TGC also does not obtain any other sensitive personal or financial information, such as credit card numbers, login IDs, passwords or bank account numbers. Any such information entered into a GAIN Supported Software application (such as the TGC® eWallet) remains on the computer upon which it was entered, and is not sent to TGC's servers.

18. The EULA also describes in detail how TGC uses the marketing data that it gathers.

19. TGC's agreement to provide free software to its subscribers is strictly contingent on their agreement to install GAIN Adserver software and allow the display of GAIN advertisements on their computer. In entering into the license agreement with TGC for free use of GAIN Supported Software, users agree that:

> You will not use, or encourage others to use, any robot, spider, other automatic or non-automatic manual device or process intended to interfere or attempt to interfere with the proper working of any TGC Supplied Materials, or third party GAIN-Supported Software. You agree not to use any means to avoid the display of any GAIN Ads while

retaining the ability to use any GAIN-Supported Software other than purchasing a license to all GAIN Supported Software.

20. TGC provides extensive user support for both its own software applications and for subscribers of all GAIN Supported Software through its web site at www.TGC.com. This support includes both answers to frequently asked questions, and personal email support to address specific subscriber problems or concerns.

PC Pitstop's Misrepresentations

21. Defendant PC Pitstop offers its products through a web site at www.pcpitstop.com, which it purports to operate "in association with CompUSA.com."

22. Since approximately February 2003, the PC Pitstop web site has included a page entitled "A Note From Our CEO" that is attributed to PC Pitstop's chairman Rob Cheng. This web page opens with a narrative description of Mr. Cheng's recent experience of receiving a "cheesy ad for Orbitz.com discount tickets," which he states is the result of "SPYWARE." The page then goes on to state:

> Legality - It is unclear whether spyware is legal. ***Several of the media companies such as Disney and Time Warner have filed suit against TGC, one of the largest spyware companies stating, rightfully so, that they are hijacking your and my eyeballs from looking at their own advertising***. Independent on how the courts rule, the ethics of spyware are questionable at best.
>
> Sneaky - ***So how does spyware get on your computer? Some of the time, it happens when you install some shareware or freeware. For example, Kazaa will install TGC if it is installed with all the default settings***. But, and this is a big BUT, the main reason is through sneaky advertising. If you have ever seen an ad on Yahoo about your system

clock being incorrect, it then encourages you to fix the problem by downloading some software. Not only does it not fix your system clock, it installs spyware."

* * * *

System Stability ***The authors and programmers of spyware are not your typical software company. They don't have a web site to report bugs and errors, and without an adequate feedback loop, they really have no commitment to writing good software***. Even if they were, how could they get you to download the bug free version of the spyware? We believe at Pitstop that spyware could be the #1 reason for instability. If your system is acting funny, won't shut down properly, or locks up intermittently, the root cause could well be spyware.

Privacy - ***Dagnabbit, they're spying on me and I don't like it.*** I don't need BIG BROTHER telling me what ads that I need to see. Thank you very much.

(Emphasis added). A true and correct copy of the web page entitled "A Note From Our CEO" is attached hereto as Exhibit B.

23. The PC Pitstop web site also includes a group of web pages that are collectively identified as the "Spyware Information Center." Each page in this group prominently displays the title "Spyware Information Center" at the top of the page.

Spyware Information Center Prior to September 5, 2003

24. The content of some of the pages that make up the "Spyware Information Center" was slightly modified on September 5, 2003. True and correct copies of many of the pages making up the "Spyware Information Center" prior to September 5, 2003 are attached hereto as Exhibit C.

25. Prior to September 5, the home page for PC Pitstop's Spyware Information Center began with a discussion entitled "The Growing Spyware Problem." According to this page:

> Our spyware statistics indicate that more than 20% of PC's have some sort of spyware active in memory, stealing CPU cycles, using up system resources, delivering unwanted advertising, and often creating system instability. Worse yet, spyware can threaten your privacy.

26. The linked term "spyware statistics" in this statement takes the user directly to a series of charts and a table entitled "Common SpyWare Attach Rates." Five of the entries under "SpyWare Name" in this table are identified as "TGC" and refer to executable files that are part of the GAIN system.

27. The Spyware Information Center home page then stated that among "spyware companies" plaintiff "TGC is the biggest of the breed, and they are thriving."

28. The Spyware Information Center home page goes on to state that "Everyone knows that a virus is bad news, spyware can be just as bad" and that PC Pitstop has "created this site to educate both users and advertisers about spyware."

29. The Spyware Information Center home page next asks the rhetorical question: "How can you protect your PC and help eliminate the spyware threat?" By way of answer, it then refers readers to a variety of linked pages. The descriptions for these linked pages tell readers to:

Learn how spyware affects your PC--and your privacy. It's not a pretty picture; spyware can mess up your computer and compromise your personal information.

Find out how spyware sneaks onto your system. If this software is so good, why do they hide so many of its features in the fine print?

Scan for spyware using our quick test. It will quickly detect the most common spyware.

Tell advertisers you don't like spyware ads. Contact the companies that use TGC, the biggest player in the spyware field.

30. The first linked page of the Spyware Information Center began with a discussion entitled "What is spyware?" It stated that:

Over the past few years, a new class of software has emerged that's up to no good. It goes by many names: spyware, foistware, malware, eulaware, or even crapware. For simplicity we'll just call them all spyware. Here are some of the "features" you get from spyware:

Deceptive functionality. Spyware often uses a classic "trojan horse" tactic--like a virus. It offers to synchronize your PC's clock or keep track of forms, but it is also doing other hidden things while you browse.

Home page hijacking. Did you ever find that your home page was changed, or discover new sites in Favorites that you didn't add? It might be spyware.

Loss of privacy. Some spyware keeps track of the web sites you visit and sends that information back to the spyware vendor. Do you want to tell everyone?

More advertising. Did you install a popup stopper but you are still getting popups? The ads you are getting may not be from the web site you are on, but from spyware.

Stolen advertising. Instead of showing the ads that should appear on a web site, some spyware substitutes its own ads which can rob a web site of revenue.

> Broken web sites. Spyware sometimes changes the actual content on a web page, and in the process it "breaks" the page. The page may not look correct, or you may get Javascript errors.
>
> Reduced performance. Spyware uses up system resources, CPU time, memory, disk space, and Internet bandwidth, making your system slower.
>
> System instability. Most spyware isn't very well tested or debugged, and there is no way to report bugs or obtain tech support. The result can be system crashes, hangs, or other strange behavior.
>
> Security risks. Some spyware has a built-in update feature that lets the spyware maker download and install new code to your system without your knowledge or approval.

The "What is Spyware?" page then directs users to check their computer for "the most common types of spyware" using PC Pitstop's "online spyware scan." This scan identifies TGC's products as spyware.

31. The next link from the Spyware Information Center catalogs a list of "Dirty Spyware Tricks" that "spyware uses to worm its way onto your system and stay there." Among these, it states:

> 2) Use confusion to get permission. The license agreements don't just come out and say "we're going to collect information about you and screw up your browsing" since that wouldn't get them a lot of customers. Instead, the licenses are full of confusing and deceptive prose. For example, the TGC Terms and Conditions (which you are supposed to read and understand before you click "I Agree") are 14 pages and more than 6,000 words long, not even including the several additional documents they link to there!

32. The Spyware Information Center also includes links to two pages specifically devoted to TGC and its products under the heading "Spyware Resources." One of these links is entitled "TGC Boycott List" and the other is entitled "The TGC Quiz."

33. The linked page "TGC Boycott List" stated, among other things, that "Our research shows that TGC is the most common type of spyware, promoted heavily by the company and installed on tens of millions of systems." This page also urged readers to send a letter companies on a list of companies alleged to use TGC advertisements, and provided a sample letter. The sample letter itself opened as follows:

> This letter is to inform your company that some of its online advertising are being delivered by GAIN (TGC Advertising Network), a common form of spyware. Spyware (also called adware), installs itself, most often without user knowledge, and delivers advertising based on the user's browsing habits. These applications often negatively impact system performance and reliability.
>
> By advertising with TGC or TGC's marketing partner, Overture, your company is contributing to the spread of spyware, as well as slower and less reliable PC's. PC Pitstop has begun a campaign to make advertisers aware of the negative aspects of using spyware for web advertising. For more information about spyware and its effects on a user's PC and privacy, please see the PC Pitstop site: http://www.pcpitsop.com/spycheck/.

34. Yet another link from the Spyware Information Center's home page, entitled "Advertiser Info," opens with the topic "Advertisers: TGCed Through the Back Door." This page alleges that "many companies may unwittingly be advertising on TGC."

35. When a user clicks on the link to a "Quick Spyware Scan" from the Spyware Information Center's home page, PC Pitstop installs its "PC Pitstop Utility" software onto the user's personal computer. When the PC Pitstop "Spyware Scan" is performed on a computer with TGC's GAIN Adserver software installed, it returns the following results:

Spyware Found! Our analysis identified the following software running on this PC that is believed to have harmful or undesirable effects. We recommend that you remove it immediately.

File Name	Description
TGC.EXE	TGC spyware
cmesys.exe	TGC spyware
DateManager.exe	TGC adware
gmt.exe	TGC adware
PrecisionTime.exe	TGC

Note that our scan may not find all spyware, adware or other malicious software. In rare cases our scan may also identify non-spyware because it has the same name as spyware. If this happens, please let us know in our Spyware Forum.

For easy removal and complete protection against these programs we recommend Pest Patrol.

Spyware Information Center Current Statements

36. On September 3, 2003, TGC's counsel sent a letter to PC Pitstop demanding that it remove all false and misleading statements regarding TGC and its products by Friday, September 5, 2003.

37. On September 5, 2003, PC Pitstop's Chairman Mr. Cheng wrote to TGC's counsel indicating that certain changes had been made to the PC Pitstop web site in response to TGC's September 3, 2003 letter and subsequent communications. A true and correct copy of the relevant pages of the PC Pitstop web site after September 5, 2003, is attached hereto as Exhibit D.

38. The only changes apparent on the Spyware Information Center home page are: (1) the removal of one sentence that previously stated: "TGC is the biggest of the breed, and they are thriving;" and (2) the addition of the words "and adware" after the term "spyware" in two of the more than thirty (30) instances that the word "spyware" appears on this page. Other references to TGC, including the reference to "TGC, the biggest player in the spyware field," remained unchanged.

39. The opening paragraph of the "What is Spyware" page was changed to add the word "adware" to a list of synonyms for "spyware," and add a sentence at the end. It now reads:

> Over the past few years, a new class of software has emerged that's up to no good. It goes by many names: spyware, adware, foistware, malware, eulaware, or even crapware. For simplicity we'll just call them all spyware. Here are some of the "features" you get from spyware. Some spyware may only use one or two of these tactics, while others do quite a bit more

The remainder of this page was unchanged, and it still refers users to PC Pitstop's "online spyware scan" to identify "spyware" on their systems. This scan identifies TGC products as "spyware."

40. On the "Spyware Dirty Tricks" page, PC Pitstop has added the statement that "(Not all spyware uses every technique.)" to its introductory paragraph, and in its description of the licenses used by spyware companies, it changed the words "confusing and deceptive" to "vague and confusing."

41. The linked page "TGC Boycott List" was modified to, among other things, remove the statement that "Our research shows that TGC is the most common type of spyware, promoted heavily by the company and installed on tens of millions of systems." This page, however, still urges readers to send a letter

companies on a list of companies alleged to use TGC advertisements. The page containing the current sample letter provides as follows:

> TGC Awareness Letter
>
> PC Pitstop encourages anyone and everyone to send a letter to any or all of the companies doing business with TGC. Before you start your campaign, please remember the following points:
>
> Be courteous. Remember, we are enlisting these companies to help in battling spyware.
>
> Be educational. Many of these companies are unaware that they are doing business with TGC. And the ones that are, could be potentially unaware of the negative impacts of spyware.
>
> Be concise. These are busy people. Concise and to the point will get you noticed.
>
> Here is an example letter that we believe covers the most crucial points, and gives them a call to action.
>
> Dear Company,
>
> This letter is to inform your company that some of its online advertising is being delivered by GAIN (TGC Advertising Information Network), a form of adware. These applications often negatively impact system performance and reliability.
>
> By advertising with TGC or TGC's marketing partner, Overture, your company is contributing to the spread of adware, as well as slower and less reliable PC's. PC Pitstop has begun a campaign to make advertisers aware of the negative aspects of using adware for web advertising. For more information, please see the PC Pitstop site: http://www.pcpitstop.com/spycheck/.
>
> Forbes has reported that last year, TGC was a $100M company. If your company is not doing business directly with TGC, it is highly likely that one of your online marketing partners is doing so on your behalf. We encourage you to learn more about what advertisers can do to stop the spread of spyware: http://www.pcpitstop.com/spycheck/advertisers.asp.

FIRST CLAIM FOR RELIEF
False Advertising
[Lanham Act § 43(a), 15 U.S.C. § 1125(a)(1)(B)]

42. TGC realleges and incorporates by reference the allegations of paragraphs 1 through 41 inclusive, as though fully set forth herein.

43. Defendant's explicit and implicit representations, including without limitation that TGC's products: (1) are "spyware," (2) have been surreptitiously installed on users' computers without their permission or authorization, (3) are a threat to consumer privacy; (4) cause system unreliability due to their poor quality; and (5) display advertisements without the knowledge or consent of the advertiser, constitute willful, false and misleading descriptions and representations of fact which misrepresent the nature, characteristics and qualities of TGC's goods, services, or commercial activities in commercial advertising or promotion in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

44. Defendant's false and misleading statements are material and have caused, and are likely to continue to cause, competitive injury to a commercial interest.

45. Defendant's false and misleading statements were published in interstate commerce.

46. Defendant's conduct has caused damage to TGC in an amount to be proven at trial, and as a result of defendant's willfulness TGC is entitled to an award of three times its actual damages and defendant's profit, and its attorneys' fees.

47. TGC's remedy at law is not adequate and TGC is entitled to injunctive relief, as well as other available remedies.

SECOND CLAIM FOR RELIEF
Unfair Business Practices
(Cal. Bus. & Prof. Code § 17200)

48. TGC realleges and incorporates by reference the allegations of paragraphs 1 through 47, inclusive, as though fully set forth herein.

49. As described above, Defendant has engaged in unlawful and unfair business practices and has conducted untrue, unfair, deceptive and misleading advertising which has injured and threatens to continue to injure TGC in its business and property. Defendant's conduct constitutes unfair business practices under California Business and Professions Code §§ 17200 et seq.

50. Pursuant to California Business and Professions Code §§ 17202 and 17203, TGC is entitled to injunctive relief.

THIRD CLAIM FOR RELIEF
Trade Libel

51. TGC realleges and incorporates by reference the allegations of paragraphs 1 through 50, inclusive, as though fully set forth herein.

52. Defendant has published false factual statements on its web site concerning the quality of TGC's services and products, including but not limited to: (1) TGC is a "spyware company"; (2) TGC's products are "spyware," (3) TGC's products are of poor quality and cause system instability on user's personal computers; (4) TGC has been sued by "Disney and Time Warner" as a result of its questionable legality; and (5) TGC's products "spy" on users and violate their privacy.

53. Defendants false statements were made with actual malice and were intended to cause TGC financial harm.

54. As a result of defendant's acts as alleged above, TGC has incurred specific pecuniary damages in an amount to be proven at trial.

55. Defendant's acts as alleged above, if not enjoined, will continue. TGC's remedy at law is not adequate and TGC is entitled to injunctive relief.

FOURTH CLAIM FOR RELIEF
Defamation

56. TGC realleges and incorporates by reference the allegations of paragraphs 1 through 55, inclusive, as though fully set forth herein.

57. Defendant has published false factual statements about TGC on its web site, including but not limited to: (1) TGC is a "spyware company"; (2) TGC makes products that are of poor quality; (3) TGC deceives the public and sneaks its products onto user's computers; (4) TGC does not provide support for users of its software; and (5) TGC violates its user's privacy.

58. Defendants false statements about TGC were made with actual malice and were intended to cause TGC harm.

59. As a result of defendant's acts as alleged above, TGC has incurred damages to its reputation, as well as monetary damages in an amount to be proven at trial.

60. Defendant's acts as alleged above, if not enjoined, will continue. TGC's remedy at law is not adequate and TGC is entitled to injunctive relief.

FIFTH CLAIM FOR RELIEF
Interference with Contract

61. TGC realleges and incorporates by reference the allegations of paragraphs 1 through 60, inclusive, as though fully set forth herein.

62. At all material times, Defendant has been aware that TGC has a contractual relationship with subscribers of GAIN Supported Software in accordance with the terms of EULA.

63. By its actions described above, including but not limited to its unfair business practices, false advertising, defamation and trade libel, Defendant has intended to interfere with and has interfered with TGC's valid contractual relationships with subscribers of GAIN Supported Software. Absent such interference these contractual relationships would have continued to have been performed.

64. As a proximate result of Defendant's tortious conduct, TGC has suffered significant damages in an amount to be proven at trial.

SIXTH CLAIM FOR RELIEF
Interference with Prospective Economic Advantage

65. TGC realleges and incorporates by reference the allegations of paragraphs 1 through 64, inclusive, as though fully set forth herein.

66. TGC generates advertising and promotional revenue by offering advertisers the ability to target their advertisements to subscribers of GAIN Supported Software based upon specific information about those subscribers' interests, which information is provided via TGC's GAIN AdServer software. This revenue allows TGC to pay its distribution partners, who can then offer their software to end-users free of charge.

67. At all material times, defendant has been aware that prospective advertisers are attracted to TGC because of its ability to provide targeting information, and that prospective distribution partners are attracted to TGC because of the revenue provided as a result of the advertising revenue generated by the GAIN AdServer software.

68. By its actions described above, including but not limited to its unfair business practices, false advertising, defamation and trade libel, Defendant has intended to interfere with and has interfered wrongfully with TGC's business relationships and prospective business relationships with its customers and distributors.

69. Defendant's actions have directly and proximately caused damage to TGC's prospective economic advantage in that subscribers who would have installed GAIN Supported Software have instead avoided GAIN Supported Software or have removed previously installed GAIN Supported Software based on

Defendant's tortious conduct. Similarly, software developers who would have agreed to distribute GAIN Supported Software have not done so as a result of Defendant's tortious conduct.

70. As a proximate result of Defendant's conduct, TGC has suffered significant damages in an amount to be proven at trial.

71. Defendant threatens to continue to disrupt TGC's prospective economic relations in this way, causing further irreparable injury, for which only injunctive relief would provide an adequate remedy

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays:

1. That this Court grant injunctive relief enjoining defendant and all others in privity with or acting in concert with Defendant from:

   (a) making false or misleading statements about TGC and/or its products;

   (b) mischaracterizing or disparaging TGC and/or its products;

   (c) inducing subscribers of GAIN Supported Software to remove such software based on false or misleading information about TGC or its products;

2. That this Court grant an award of actual damages and an award of three times the amount of actual damages, in an amount to be proven at trial and not less than $500,000.00;

3. That this Court award plaintiff the costs of this action and reasonable attorney's fees and expenses;

4. That this Court grant such other and further relief as it should deem just.

DATED: September 11, 2003

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By _____

JONATHAN HANGARTNER

Attorneys for Plaintiff THE TGC CORPORATION

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

DATED: September 11, 2003

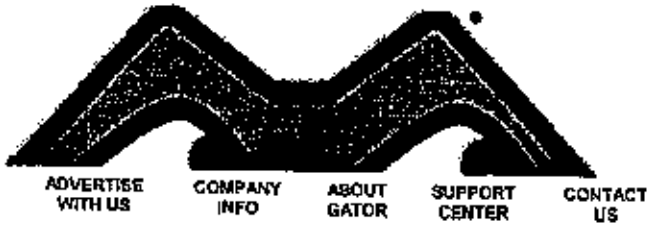
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By _____

JONATHAN HANGARTNER

Attorneys for Plaintiff THE TGC CORPORATION

EXHIBIT A



"I LOVE GATOR!
It is the GREATEST!
I love how it remembers and fills in all of my passwords at the various websites that I visit. And of course I also love how it fills in the forms for me. I also love GATOR because it is very easy to use. I learned how to use it in seconds. GATOR RULES!"

Thanks,
S. Rubin

Las Vegas, Nevada

EXHIBIT A

PLEASE READ THE GATOR CORPORATION PRIVACY STATEMENT AND END USER LICENSE AGREEMENT (COLLECTIVELY "Terms and Conditions") CAREFULLY AND MAKE SURE YOU UNDERSTAND THEM. THEY CONTAIN IMPORTANT INFORMATION THAT YOU SHOULD KNOW BEFORE ACCEPTING ANY GAIN-Supported Software (DEFINED BELOW).

The Gator Corporation ("TGC") Terms and Conditions describe the operation of the GAIN-Supported Software you are about to download and the terms and conditions that govern your use of this software. TGC provides you the opportunity to download a software product you desire at no charge or a reduced charge in return for your agreement to also download TGC's software product which will periodically deliver advertisements and promotional messages to your computer based on your interests as shown by the websites you view.Before you may download and install these software products, you must agree to the terms and conditions described below.

You may terminate these Terms and Conditions at any time by removing all GAIN-Supported Software from your computer using the Add/Remove Programs menu in the Microsoft Windows Control Panel and destroying any other copies of GAIN-Supported Software that may have been made.Soon after all GAIN-Supported Software has been removed the GAIN AdServer (defined below) will remove itself automatically.Using the Add/Remove Programs menu is the only authorized means to uninstall GAIN-Supported Software and the use of any other means may not result in the proper un-installation of GAIN-Supported Software. http://webpdp.gator.com/gain/32/about-gain-01.html, incorporated herein by reference, generates a list of GAIN-Supported Software that resides on the computer that is used to access the link.

Privacy Statement and End User License Agreement
('Terms and Conditions')

The Gator Corporation ('TGC') provides personal computer users with a winning

proposition: the ability to obtain popular software applications (often valued at up to $30) free-of-charge or at a reduced cost in exchange for users' agreement to accept advertising and other promotional messages delivered by TGC to users' personal computers. Downloading or installing these ad-supported software applications requires acceptance of these Terms and Conditions which allows TGC to download and install the 'GAIN™ AdServer' software, which delivers 'GAIN' branded advertising, software, and various informational or promotional messages to computer screens while users view Internet Web pages ('GAIN Ads').When available, users may obtain ad-free versions of TGC's software applications by purchasing a license to such versions in which case the user will not receive advertising, but TGC will collect and use the information described in these Terms and Conditions for all the other purposes described herein.Direct a browser to http://www.gatorcorporation.com/ourproducts/ to purchase licenses to ad-free versions of TGC's software applications.

EXHIBIT A

The GAIN AdServer is patent-pending technology that identifies the interests of anonymous computer users based on their computer usage and web surfing behavior, including the URLs of Web pages viewed by users and other criteria but which does not collect ANY personally identifying information. The GAIN AdServer displays GAIN Ads on computer screens on behalf of TGC's advertising clients and not on behalf of the Web site the user may be viewing when the ad appears. TGC's advertising clients may be competitors of the publishers whose Web pages users may be viewing, or may have recently viewed. GAIN Ads are distinguishable from other ads or messages because all GAIN Ads contain the trademark "GAIN" in the title bar and/or the GAIN logo in the ad.

GAIN-Supported Software includes both software applications published by TGC (TGC GAIN-Supported Software), as well as software applications developed by other companies (Third Party GAIN-Supported Software). For a list of GAIN-Supported Software published by TGC, view the Web page at: http://www.gatorcorporation.com/ourproducts/. At any time, you can see a list of all GAIN-Supported Software residing on a computer by directing that computer's Internet browser to http://webpdp.gator.com/gain/32/about-gain-01.html.

Unless otherwise specified, these Terms and Conditions apply to TGC GAIN-Supported Software but do not apply to Third Party GAIN-Supported Software. Third-party GAIN-Supported Software is governed by that third-party's legal agreements.

These Terms and Conditions shall control in the event of any inconsistency between these Terms and Conditions and any prior Gator Corporation terms and conditions agreed to.

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Privacy Statement

We don't know who our users are...
TGC does not know the identity of GAIN-Supported Software users. We do not transmit to our servers personally identifiable information like email addresses, last name, street addresses, or phone numbers. Nor do we have any other sensitive or personal financial information, such as credit card numbers, login IDs, passwords or bank account numbers. Any such information entered into any TGC GAIN-Supported Software application (such as the Gator™ eWallet) will remain on the personal computer upon which it was entered, and will not be sent to our servers.

Here's what we do know...
While we don't know the identity of GAIN-Supported Software users, the GAIN AdServer and TGC collect and use the following kinds of anonymous information:

- Some of the Web pages viewed
- The amount of time spent at some Web sites
- Response to GAIN Ads
- Standard web log information (excluding IP Addresses) and system settings
- What software is on the personal computer
- First name, country, city, and five digit ZIP code
- Non-personally identifiable information on Web pages and forms
- Software usage characteristics and preferences

For more information, http://www.gatorcorporation.com/help/psdocs/datause50.html, incorporated herein by reference, provides a more detailed description of the information collected by TGC and how it is used.

Here's what we do with it
We associate the anonymous information we collect with a particular computer through a randomly generated Anonymous ID number to accomplish the following:

Enable the functionality provided in TGC GAIN-Supported Software applications (for example, when to offer help filling in a form or when to reset the personal computer's clock to the accurate time)

Select and deliver installation files for optional new software applications; and,

Create an anonymous profile of the categories of products or services in which GAIN-

Support Software users appear to be interested in order to select GAIN Ads to display to GAIN-Supported Software users' computer screens EXCEPT, when available, if the user has purchased licenses to all GAIN-Supported Software applications on the user's computer, such user will not receive GAIN Ads but TGC will continue to collect and use all other information described in this Privacy Statement. GAIN Ads may be displayed on behalf of advertisers who may be competitors of the publishers of the Web pages you are viewing or have recently viewed.

Any information provided to any TGC employees or contractors, such as our technical support department, may be stored on our servers in archives of our support and customer service department. This information, however, will not be associated with the information we may store and use listed above.

We share anonymous aggregate information about what Web pages users view on the Internet. For example, we might tell a merchant that we have 50,000 users who buy books. We do not disclose information associated with any individual user to that merchant.

We sometimes use third party contractors who may be given access to any information we have so they may perform tasks that might otherwise be done by our employees. These contractors, however, have no rights to use such information for purposes other than those described herein; and they are subject to the same restrictions as our employees. In the event that TGC merges with another company, transfers or sells substantially all of its assets or capital stock to a third party, all collected information would be included in the merger, transfer or sale and that company would be bound by these Terms and Conditions just as we are bound today.

If legally required to do so, we will disclose to a third party any information we have.

How we distribute GAIN-Supported Software and the GAIN AdServer...
All GAIN-Supported Software comes with the GAIN AdServer. The distribution of GAIN-Supported Software may occur in several different ways including: a) by downloading software from a Web site; b) by clicking to download software from online advertising (patent-pending); and c) through trial programs in which GAIN-Supported Software are included as an "opt-out" option with other software products one might choose to download.

http://www.gatorcorporation.com/help/psdocs/distribution.html, incorporated herein by reference, provides more detail about the distribution of GAIN-Supported Software and the GAIN AdServer.

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GAIN Ads contain the GAIN name and/or logo...
GAIN Ads contain the name 'GAIN' in the title bar and/or the GAIN logo in the advertisement.The GAIN brand is displayed to inform users that GAIN Ads come from TGC and *are not* associated, sponsored, or affiliated in any way with any other Web pages being viewed by users. The logo and/or GAIN name distinguishes GAIN Ads from all other advertisements.

How we display GAIN Ads
GAIN Ads will only be displayed on a computer's screen or storage media if one or more GAIN-Supported Software programs reside on that computer. Many GAIN Ads are displayed on computer screens on behalf of advertisers who compete with the company whose Web pages the GAIN-Supported Software user may be viewing or may have recently viewed.

TGC displays GAIN Ads on computer screens in a variety of ways. The GAIN Ad formats we may use include, among others, the following:

- **Pop-Up Windows** appear as windows on top of or beneath other windows on the computer screen.
- **Pop-Up Slider Windows** appear as floating images on top other windows on the computer screen.
- **Embedded Ads** are displayed within some GAIN-Supported Software applications.
- **Desktop Icons and Installation files** may be placed on the computer that link to products and services.

http://www.gatorcorporation.com/help/psdocs/advehicles.html, incorporated herein by reference, more fully describes some of these GAIN Ad formats.

How to Control the Display of GAIN Ads'
Some GAIN ad formats offer user preference settings that allow users to control some aspects of the display of GAIN Ads. These user preference settings may be found by clicking on the question (?) box at the top right of the title bar of certain GAIN Ads.

How to Stop the Display of GAIN Ads
To stop GAIN Ads from being displayed one must remove all of the GAIN-Supported Software applications residing on the computer using the Add/Remove Programs menu in the Microsoft Windows control panel. Users can view a list of all GAIN-Supported Software on their computer, along with removal instructions, in a variety of locations including: (i) through the start, programs, GAIN, About GAIN menu entry (via a hypertext link). (ii) by clicking on the question (?) box at the top right of the title bar of certain GAIN

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Ads, and (iii) via TGC's web site at http://webpdp.gator.com/gain/32/about-gain-01.html.

How TGC GAIN-Supported Software and the GAIN AdServer Work
When running on a computer, TGC GAIN-Supported Software and/or the GAIN AdServer regularly communicate with TGC servers, and in some cases, third party servers, among other reasons, to:

1. maintain/update the GAIN-Supported Software or the GAIN AdServer;
2. facilitate installing and removing the GAIN-Supported Software or the GAIN AdServer;
3. retrieve content and ads for display;
4. facilitate various TGC GAIN-Supported Software or GAIN AdServer features;
5. collect anonymous computer user usage information; and/or
6. update user information.

http://www.gatorcorporation.com/help/psdocs/communications50.html, incorporated herein by reference, provides more detail regarding communications between a computer and other computers arising from use of TGC GAIN-Supported Software and the GAIN AdServer.

To introduce new GAIN-Supported Software applications and services to computers' with existing GAIN-Supported Software, we will display a message to the computer screen asking whether the new software is desired. If a user chooses to receive the new software by clicking on the message, we will download the software to that computer. In some cases we will install/setup the software automatically. In other cases the installation/setup of the software is designed to be handled by the user of that computer. In either case, we will provide notification when the download is complete and provide instructions on how to proceed.

To improve the features or functions of the GAIN AdServer and/or TGC and/or third-party GAIN-Supported Software, we may occasionally install and/or update software components, such as certain rich media player applications, browser plugins, virtual machines, and runtime environments (such as Mircosoft's .NET software or Java). These are collectively referred to herein as "Enhancement Technologies". For example, these Enhancement Technologies may be used to deliver audio and visual effects such as animation, video and sound, or to provide enhanced services such as secure coupon printing. In the event that we install on a computer Enhancement Technologies developed by a third party, that third party's privacy statement for those Enhancement Technologies will be at least as protective of privacy as TGC's Privacy Statement; otherwise we will display to the computer screen a notification message describing the

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technology we installed with a link or reference to the applicable privacy statement, or utilize a click-through agreement to obtain user consent, as appropriate.

http://www.gatorcorporation.com/help/psdocs/enhancementtechnologies.html, incorporated herein by reference, contains a list of current Enhancement Technologies distributed by TGC and links to their respective policies. Note that soon after all GAIN-Supported Software has been removed from a computer, the GAIN AdServer removes itself automatically. Any Enhancement Technologies that were previously installed (such as browser plug-ins and audio/video players) will remain on the computer because other programs may rely on these Enhancement Technologies to function correctly.

How we use cookies and web beacons?
TGC GAIN-Supported Software and/or the GAIN AdServer uses cookies for the following purposes:

- To identify the business associate that was responsible for introducing GAIN-Supported Software so that we can pay that business associate a fee;
- To assist us in identifying users who have purchased a license to GAIN-Supported Software;
- To identify the GAIN-Supported Software on the computer;
- To limit how often we display GAIN Ads; and/or

In order to enable certain third parties to display targeted ads and informational messages on our behalf, the GAIN AdServer or TGC GAIN-Supported Software may read cookie information that those third parties stored on the computer. That information may be sent to our servers so that we can include it in advertisement display requests that we send to those third parties. Please note that when any third party service providers, such as ad serving companies, set and access cookies at our request, they do so in accordance with their own privacy statements.

http://www.gatorcorporation.com/help/psdocs/thirdparties.html, incorporated herein by reference, provides a list of any third parties who set and access cookies on the computer in order to facilitate a feature or service associated with GAIN-Supported Software. This list also includes links to their privacy statements.

Third party service providers that serve ads to Internet users, at our request, may use web beacons. Some GAIN Ads include "web beacons," which allow third party service providers to access cookies on a computer to target ads and provide campaign analysis for their clients who use our services. Some third party service providers who access cookies in this way allow Internet users to opt-out of their use of these cookies.

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http://www.gatorcorporation.com/help/psdocs/nalsite.html , is a third party Web site that allows Internet users to inform some advertisers they wish to revoke the right of those advertisers to access cookies on a computer.

Some third parties offer visitors the opportunity to download TGC GAIN-Supported Software from their Web sites. TGC hosts some of the Web pages for these third parties. We use web beacons on these pages to count the number of people who have viewed these pages so that we can pay the third parties for any downloads of TGC GAIN-Supported Software that originate from their Web sites.

How we use optional surveys?
Users who remove TGC GAIN-Supported Software from their computers may be asked why the software is being removed. Responding to such survey, however, is entirely optional and will not affect users' ability to remove any TGC GAIN-Supported Software. Also, from time to time, we may display a GAIN branded pop-up advertisement from Feedback Research, a division of TGC, inviting users to join a survey panel or participate in a survey.A survey panel is a group of people that meet a certain criteria that are periodically asked for their opinions. Participation in a survey panel is completely voluntary and optional.

Eligibility for joining a panel or taking a survey may require a person to answer demographic 'screening' questions such as gender, age, employment status, income range, educational level, head of household, the number of people in their family, and/or whether they own or rent their home.Answers to these screening questions and/or to the Feedback Research survey questions are often stored on Feedback Research servers, and anonymous individual responses to these questions may be provided to our clients. Answers to both screening questions and survey questions may be associated with an Anonymous ID, but not with a user's identity which remains unknown to Feedback Research and TGC.

Finally, Feedback Research may offer users the opportunity to provide an email address in order to enter a sweepstakes.The sole purpose of collecting this email is to contact them if they win. To ensure their privacy, any email address provided to Feedback Research for this reason are sent directly to a third party contractors' servers to ensure they are stored separate from, and cannot be associated in any way with, Anonymous IDs or the answers to Feedback Research screening or survey questions.

Changes to our Privacy Statement and End User License Agreement
If these Terms and Conditions change in the future, we will not, collect, use, or store any personally identifiable information without first obtaining permission.As we issue

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subsequent revisions to these Terms and Conditions that do not involve personally identifiable information, we will provide notice by displaying an online pop-up message. We will also continue to publish the current Terms and Conditions on our web site.

For support questions contact us at support@gatorcorporation.com .For specific questions regarding the specific terms of these Terms and Conditions, contact us at privacy@gatorcorporation.com .

End User License Agreement ("Agreement")

Terms defined in the TGC Privacy Statement used in this Agreement will retain the definition provided in the TGC Privacy Statement. The GAIN AdServer and TGC GAIN-Supported Software shall be collectively referred to as Licensed Materials.? Licensed Materials, any Web sites owned and operated by us, and any content available therefore shall be collectively referred to as "Gator Supplied Materials."

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Ownership; All Users of This Computer Bound. You represent and warrant that you are the owner of the computer and that you have authorized the download and installation of the GAIN AdServer and GAIN-Supported Software, or that the owner of the computer has authorized you to do so. You agree, with respect to all other users of the computer that you have caused the GAIN AdServer and GAIN-Supported Software to reside, to (i) provide a copy of the TGC Privacy Statement and End User License Agreement; and (ii) to obtain their consent to same before allowing them to use the computer to view Web sites on the Internet. Alternatively, if you have the legal right to accept this Agreement on behalf of one or more users of the computer that you have caused the GAIN AdServer and GAIN-Supported Software to reside, then you hereby accept this Agreement on behalf of all such other users. Also, you agree not to use the GAIN AdServer, or GAIN-Supported Software, in a manner prohibited by law, or in violation of any contractual provision by which you are bound. You agree to comply with all applicable laws, rules and regulations in your use of the GAIN AdServer and GAIN-Supported Software.

Access and Interference. You agree that you will not use, or encourage others to use, any unauthorized means for the removal of the GAIN AdServer, or any GAIN-Supported Software from a computer.For a list of authorized means for the removal of GAIN-Supported Software, view http://webpdp.gator.com/gain/32/about-gain-01.html.You also agree that you will not use, or encourage others to use, any robot, spider, other automatic or non-automatic manual device or process intended to interfere or attempt to interfere with the proper working of any Gator Supplied Materials, or third party GAIN-Supported

Software. You agree not to use any means to avoid the display of any GAIN Ads while retaining the ability to use any GAIN-Supported Software other than purchasing a license to all GAIN Supported Software.

Voluntary Software and Right to Remove. You understand and agree that the presence of any GAIN-Supported Software on any computer is voluntary and that you may remove any of them from your computer at any time. To stop receiving GAIN Ads every GAIN-Supported Software program residing on the computer must be removed or, alternatively, replaced with a paid version of that GAIN-Supported Software program. Users can view a list of all GAIN-Supported Software on their computer, along with instructions for its removal, in a variety of locations including: (i) through the start, programs, GAIN, About GAIN menu entry (via a hypertext link), (ii) by clicking on the question (?) box at the top right of the title bar of certain GAIN Ads, and (iii) via TGC's web site at http://webpdp.gator.com/gain/32/about-gain-01.html, incorporated herein by reference. You can purchase versions of TGC published GAIN-Supported Software programs that do not display advertising at the following TGC web site: http://www.gatorcorporation.com/ourproducts/. To remove a GAIN-Supported Software program from a computer, you must use the Microsoft Windows Add/Remove Programs menu in the Microsoft Windows Control Panel. Shortly after every GAIN Supported software program is removed, the GAIN AdServer will remove itself automatically. Please note that removing all GAIN-Supported Software does not necessarily cause the removal of any Enhancement Technologies (as described above).

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Termination. These Terms and Conditions may be terminated at any time, by any user, by removing all GAIN-Supported Software from the computer using one or more of the above described removal methods and destroying any other copies of the GAIN AdServer and GAIN-Supported Software you may have made.

Security. Users of the Gator℠ eWallet, are solely responsible for maintaining the confidentiality of their Gator eWallet master password. They are also responsible for all uses of their Gator eWallet master password and any and all related uses of their information stored in any TGC GAIN-Supported Software, whether or not authorized by them.

Links. Gator Supplied Materials and GAIN Ads that are displayed on a computer screen may contain links to web sites operated by other parties. These linked web sites are not under the control of TGC, and TGC is not responsible for the content available on any other Internet sites so linked. Unless otherwise stated, such links do not imply TGC's endorsement of material on any other web site. Access to any other Internet sites linked as herein described is at the users own risk.

Unless otherwise set forth in a written agreement between you and TGC, in order to link to one or more of TGC's Web Site(s) you must adhere to TGC's linking statement as follows: (i) any link to TGC's Web Site must be a text only link clearly marked "TGC Web Site," (ii) the appearance, position and other aspects of the link may not be such as to damage or dilute the goodwill associated with TGC's names and trademarks, (iii) the link must "point" to the URL http://www.gatorcorporation.com/ and not to other pages within TGC Web Site, (iv) the appearance, position and other attributes of the link may not create the false appearance that your organization or entity is sponsored by, affiliated with, or associated with TGC, Inc., (v) when selected by a user, the link must display TGC Web Site on full-screen and not within a "frame" on the linking web site, and (vi) TGC reserves the right to revoke its consent to the link at any time and in its sole discretion.

Scope of License. TGC grants you a non-exclusive, limited license, pursuant to the terms hereof, to only (a) install and use the most current versions of Licensed Materials solely for the purpose of accessing and using GAIN-Supported Software available through our Web site or servers, or the Web sites and servers of our business associates, and (b) use Licensed Materials in the ordinary manner for which the products were designed as provided in the user 'Help' screens, frequently asked questions, on TGC's Web sites, or in other TGC supplied product usage documentation and only for your personal, non-commercial purposes.

License Restrictions. TGC may from time to time, either automatically or through other means, distribute an update to the Licensed Materials and/or may replace Licensed Materials with newer versions thereof and/or otherwise modify or add to the Licensed Materials.Your license to an existing version of Licensed Materials may, at TGC's discretion, expire when new versions of Licensed Materials are released. When installed on your computer, all Licensed Materials that communicate with TGC or third party servers do so as described in TGC Privacy Statement. Additionally, TGC may require the update or automatic distribution of Licensed Materials on your computer when a new version of the Licensed Materials is released to the general public, when new features are available, to display promotional offers, and/or to add new applications to the applications that comprise Licensed Materials. This update or new download may occur automatically or through other means. You understand that TGC and/or one of our business associates may require your review and acceptance of TGC's or their then current privacy statement and/or license agreement before you will be permitted a limited license to any subsequent versions of Licensed Materials. Notwithstanding the foregoing, TGC and its business associates have no obligation to make available to you any subsequent versions of Licensed Materials.

You may not access or use Licensed Materials other than through the graphical user

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interface provided with the Licensed Products and you are prohibited to access or cause the operation of the Licensed Materials through the use of any type of high-volume, automated, or electronic processes. You may not distribute or copy (other than for backup purposes) the Licensed Materials. You may not, and you agree not to attempt or allow others to attempt to, modify, reverse-engineer, decompile, disassemble, or otherwise discover the Licensed Materials or equivalents of Licensed Materials including but not limited to TGC's technology and methodology for delivery of advertisements and the content of any and all of TGC's communications and content stored on TGC's servers, or to access or modify the Licensed Materials' source code in any way. You do not have the right to create derivative works of Licensed Materials and any and all such modifications or enhancements to the Licensed Materials are the sole property of TGC or its business associates. You further agree not to access TGC or TGC business associate services or software application by any means other than the interface provided by TGC or such business associate to access the relevant service. You acknowledge and agree that any and all communications between TGC and the Licensed Materials and the content stored on TGC's computer servers and in its software includes confidential information of TGC and you may not access, publish, transmit, display, create derivative works of, store, or otherwise exploit any such confidential information except as such functions are performed by the Licensed Materials in the ordinary course of operation. Any use of a packet sniffer or other device to intercept or access communications between TGC and the Licensed Materials is strictly prohibited. Without limiting TGC's rights, you understand that TGC, in its discretion, may modify, discontinue, or suspend your right to access any of the Licensed Materials at any time; provided, however, in the event that TGC makes such modification, discontinuance, or suspension of your right to access any of the Licensed Materials, you may terminate your obligation to receive GAIN Ads, and this Agreement, by removing all GAIN Supported Software as provided hereunder.

TGC reserves all rights in Licensed Materials not expressly granted to you in this Agreement.

Other Restrictions. You may not rent, lend, assign, or lease Licensed Materials, but you may transfer your rights under these Terms and Conditions on a permanent basis provided (i) you transfer all copies of the Licensed Materials and these Terms and Conditions; and (ii) the recipient agrees to be bound to these Terms and Conditions. Any transfer must include the most recent product upgrade. Prior to transferring Licensed Materials you must remove the Licensed Materials to be transferred from your machine.

Ownership. You agree that all Licensed Materials are licensed, not sold to you. You agree that Licensed Materials belong to TGC, including all intellectual and proprietary

EXHIBIT A

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Applicable Law. The laws of the State of California will govern this Agreement, without reference to conflicts of law principles. The parties hereby submit to the jurisdiction of,

Exhibit A 34

and waive any venue objections against, the state and federal courts in Santa Clara or San Mateo County, California. The United Nations Convention on Contracts for the Sale of Goods does not apply to this Agreement.

Arbitration. Any claim or controversy arising out of or related to these Terms and Conditions, Licensed Materials, Gator Supplied Materials, or any GAIN-Supported Software shall be settled by binding arbitration in accordance with the rules of the American Arbitration Association. Any such claim or controversy shall be arbitrated on an individual basis and shall not be consolidated with a claim of any other party. The foregoing shall not preclude TGC from seeking any injunctive relief in State or Federal courts for protection of TGC's intellectual property rights.

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In most cases, TGC will provide you with an on-line pop-up window notice informing you that changes have been made to the documents and will provide you either with an active link, or inactive URL address, that you can use to view a web page containing the revised documents (or leading you to the appropriate documents). TGC will always post its most recent Privacy Statement and End User License Agreement on TGC's web site that can be accessed at http://www.gatorcorporation.com/help/psdocs/privacy-help.html .

You agree that after receipt of such change notice, you consent to TGC's revised Terms and Conditions unless you remove all GAIN-Supported Software from your computer, and destroy all copies of same you may have created. Failure to remove and destroy all GAIN-Supported Software from your computer will be deemed an acceptance of the terms of TGC's most current Terms and Conditions for which you have given your consent, or for which you have been given notice, as appropriate. Except as provided in this section, these Terms and Conditions may not be revised except in writing signed by all relevant parties.

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EXHIBIT A 35

above, and including the policies incorporated by reference, sets forth the entire understanding and agreement between you and TGC with respect to the subject matter hereof. If any provision or provisions hereof shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be in any way affected or impaired thereby. TGC shall not be liable for any delay or failure in performance under this Agreement or interruption of service resulting from acts of God, civil or military authority, war, labor disputes, materials provided by third parties, or any cause beyond the reasonable control of TGC. Except as described herein, you may not assign this Agreement without our explicit consent.

Effective: August 2003

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EXHIBIT B

September 10, 2003

Test My PC
Home Page
Full Tests
Spyware Info
AntiVirus
Disk Health
Internet Connection
Check ActiveX
TechExpress
XP Readiness Test

Tech Support
Free Online Help
Live Support NEW
Frequent Questions
Mechanics Lesson

PC Pitstop Forums
Forums Home
User to User Help
I Can't Test
Discuss Your Score
Internet Tests
Viruses and Spyware
Site Feedback

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Our Technology
Statistics
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Support Us
Privacy Policy
Testimonials
Pitstop Store

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A Note From Our CEO

February 2003

I'm back after two great weeks on vacation in Rio de Janeiro. I love travelling internationally, but there is nothing like home. I honestly don't think that I could travel for two weeks out of the country without the internet. Internet has definitely made the world a smaller and more easily accessable place.

Every morning, I wake up and get my internet fix for the day at the local internet cafe. Yesterday, I went to Delta.com to change my seat assignments so hopefully I wouldn't have anyone next to me for the long trip home. As soon as the first page of Delta's web site came up, BOOM. A cheesy ad for Orbitz.com discount tickets popped over the Delta screen. And that is SPYWARE. Spyware had made it all the way down to my hidden little internet cafe in Rio de Janeiro.

Spyware is software that runs on your computer that tracks your activity on your PC. In my case, the spyware saw that I was on an airline site, and then displayed the pop up ad from their servers for cheap airline tickets. We've been tracking spyware for a while, and I am amazed at the number of PC's that have spyware, and the numbers seem to be growing. Here's why Spyware is bad for you and your PC.

Legality - It is unclear whether spyware is legal. Several of the media companies such as Disney and Time Warner have filed suit against Gator, one of the largest spyware companies stating, rightfully so, that they are

Rob's Messages
Current Message
Happy New Year! (12/02)
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Pitstop's 2nd B-Day (03/02)
New Partnerships (11/01)
Still Standing (07/01)
Happy Birthday, PC Pitstop! (3/01)
Welcome to the Future (2/01)
Supporting PC Pitstop (12/00)
Internet Tools (11/00)
Internet Connection (9/00)
Store & Stats (8/00)
AntiVirus (6/00)
Thank You! (4/00)
Launch (3/00)

hijacking your and my eyeballs from looking at their own advertising. Independent on how the courts rule, the ethics of spyware are questionable at best.

Sneaky - So how does spyware get on your computer? Some of the time, it happens when you install some shareware or freeware. For example, Kazaa will install Gator if it is installed with all the default settings. But, and this is a big BUT, the main reason is through sneaky advertising. If you have ever seen an ad on Yahoo about your system clock being incorrect, it then encourages you to fix the problem by downloading some software. Not only does it not fix your system clock, it installs spyware.

System Performance - If you think about it, if you have a little program running on your computer tracking your activity, it will slow down your PC. Sometimes a little bit, and sometimes a lot depending on your PC. At PC Pitstop, we are committed to get each and every PC running at peak performance. That means, NO SPYWARE.

System Stability The authors and programmers of spyware are not your typical software company. They don't have a web site to report bugs and errors, and without an adequate feedback loop, they really have no commitment to writing good software. Even if they were, how could they get you to download the bug free version of the spyware? We believe at Pitstop that spyware could be the #1 reason for instability. If your system is acting funny, won't shut down properly, or locks up intermittently, the root cause could well be spyware.

Privacy - Dagnabbit, they're spying on me and I don't like it. I don't need BIG BROTHER telling me what ads that I need to see. Thank you very much.

Our research shows that spyware is on as much as 50% of the PC's that visit Pitstop. That's right half. And the problem seems to be growing. Here's what we are doing at Pitstop.

- **Spyware detection** - We have built a database of close to a hundred of the most common spywares which are automatically detected and alerted when running the Pitstop tests.
- **Spyware research** - We are tracking the most common spyware and their trends to see which ones are a growing or declining problem.
- **Pest Patrol** - We have partnered with the premier spyware software company. Together we are building the databases and developing the software to identify and eradicate spyware from your computer, and hopefully from the universe of computers that visit Pitstop.
- **Anti Spyware Brigade** - Independent of PC Pitstop, a group of Pitstop users have created a separate forum to discuss spyware issues called the Anti Spyware Brigade. Come join forces with them.

EXHIBIT B 2/4

Well, I'm rested and back from vacation but there's lots of work to do! But I'm re-energized and excited.

Happy and Safe Computing.,

Rob Cheng
CEO PC Pitstop LLC

EXHIBIT B 34

EXHIBIT C

Tune Up Recommended
To improve your PC Performance, click Start
1. Automatic Tune Up Start More Info

September 3, 2003

Test My PC
Home Page
Full Tests
Spyware Info
AntiVirus
Disk Health
Internet Connection
Check ActiveX
TechExpress
XP Readiness Test

Tech Support
Free Online Help
Live Support
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Discuss Your Score
Internet Tests
Viruses and Spyware
Site Feedback

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Our Technology
Statistics
Behind the Wheel
Support Us
Privacy Policy
Testimonials
Pitstop Store

EXHIBIT C

Spyware Information Center

The Growing Spyware Problem

Since PC Pitstop opened in March 2000, we've tested and optimized millions and millions of computers. During that time, spyware has become a growing problem that threatens the stability and performance of your PC. Our spyware statistics indicate that more than 20% of PC's have some sort of spyware active in memory, stealing CPU cycles, delivering unwanted advertising, and often creating system instability. Worse yet, spyware can threaten your privacy.

Spyware Resources
Spyware Home
What Is Spyware?
Dirty Spyware Tricks
Our Spyware Forum
Rob's Spyware Article
Gator Boycott List
Gator Quiz
Advertiser Info
Quick Spyware Scan

Why do spyware companies make this software? Because it makes them money. Gator is the biggest of the breed, and they are thriving. Forbes Magazine reported that Gator Corporation made $100 million last year. This is the worst news of all. If spyware is profitable then it won't be going away any time soon.

The list of new spyware companies is increasing at an alarming rate. Together with our partner, Pest Patrol, we are continuously updating our databases to find the latest spyware. Finding and avoiding spyware is getting tougher as spyware makers adapt their tactics to avoid detection and hide their true intent.

Fighting Spyware

PC Pitstop believes that just about everyone will avoid spyware once they know the full story about what it does and the effects it has on a PC. Everyone knows that a virus is bad news, spyware can be just as bad. And it's not just computer users who are affected by spyware. Many advertisers are not fully aware of the tactics that spyware makers use to lure users into installing the software, and they don't realize their ad money is encouraging even more aggressive tactics. So we've created this site to educate both users and advertisers about spyware.

How can you protect your PC and help eliminate the spyware threat?

- **Learn how spyware affects your PC--and your privacy.** It's not a pretty picture; spyware can mess up your computer and compromise your personal information.
- **Find out how spyware sneaks onto your system.** If this software is so good, why do they hide so many of its features in the fine print?
- **Scan for spyware using our quick test.** It will quickly detect the most common spyware. For a complete picture, use our full test.
- **Tell advertisers you don't like spyware ads.** Contact the companies that use Gator, the biggest player in the spyware field.
- **Spread the word about spyware and its cure.** Tell your friends, neighbors, business colleagues, and tell your family. Let them know about spyware, how to detect it, avoid it, and eliminate it.

Do you have questions, or want to share some experiences about spyware? Join in our forum!

EXHIBIT C

September 3, 2003

Spyware Information Center

What is spyware?

Over the past few years, a new class of software has emerged that's up to no good. It goes by many names: spyware, foistware, malware, eulaware, or even crapware. For simplicity we'll just call them all ***spyware***. Here are some of the "features" you get from spyware:

- **Deceptive functionality.** Spyware often uses a classic "trojan horse" tactic--like a virus. It offers to synchronize your PC's clock or keep track of forms, but it is also doing other hidden things while you browse.
- **Home page hijacking.** Did you ever find that your home page was changed, or discover new sites in Favorites that you didn't add? It might be spyware.
- **Loss of privacy.** Some spyware keeps track of the web sites you visit and sends that information back to the spyware vendor. Do you want to tell everyone?
- ***More* advertising.** Did you install a popup stopper but you are still getting popups? The ads you are getting may not be from the web site you are on, but from spyware.
- ***Stolen* advertising.** Instead of showing the ads that should appear on a web site, some spyware substitutes its own ads which can rob a web site of revenue.
- **Broken web sites.** Spyware sometimes changes the actual content on a web page, and in the process it "breaks" the page. The page may not look correct, or you may get Javascript errors.
- **Reduced performance.** Spyware uses up system resources, CPU

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time, memory, disk space, and Internet bandwidth, making your system slower.

- **System instability.** Most spyware isn't very well tested or debugged, and there is no way to report bugs or obtain tech support. The result can be system crashes, hangs, or other strange behavior.
- **Security risks.** Some spyware has a built-in update feature that lets the spyware maker download and install new code to your system without your knowledge or approval.

Why don't antivirus utilities block spyware?

The short answer is *"spyware is not a virus."* Webopedia defines a virus as "A program or piece of code that is loaded onto your computer without your knowledge and runs against your wishes." Spyware takes advantage of the fact that people click *I Agree* to most software licenses without actually reading them. So *technically*, spyware is loaded with your knowledge and permission if you read the license, so it's not a virus. Of course, if your teenager uses the computer and installs spyware without *your* permission, that's *your* problem too. Here are some examples of spyware tricks.

This tricky use of software agreements puts the antivirus companies in a tough situation. It is possible that you really did agree for some of this software to be on your system. If antivirus utilities flag these borderline programs as viruses and remove them, the antivirus companies could find themselves in a legal battle with spyware makers who claim they were given permission to install.

How do I get rid of spyware?

You can either remove each program manually, or use a utility to automatically remove all spyware. For the automatic route we recommend Pest Patrol because it does the best job of finding and removing all spyware.

To use a manual removal method, you first need to determine what types of spyware have infested your system. Our online spyware scan can find some of the most common spyware (but see below for an important note). Each piece of spyware requires different removal procedures. Sometimes the spyware maker has an uninstaller at their site, but usually there will be some additional steps required before you have completely eliminated it. (This can include editing the Windows registry and/or deleting files, so it is *not* something that we recommend for novice users!) In some cases we provide links to manual removal procedures in your spyware scan results. If not, you can ask in the Spyware section of the PC Pitstop Forums or use Google to search for removal instructions using the name of the spyware.

Please note: Although our online spyware scan will find the most common types of

spyware, it's not meant to be a replacement for a commercial product to defend you against spyware and viruses. We've kept this test small and simple so that we can quickly find the most common spyware threats. If our scan detects several different types of spyware on your system, it's possible that there is even more spyware that we did not detect.

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September 3, 2003

Spyware Information Center

Dirty Spyware Tricks

If you had a complete knowledge of what most spyware was doing to your system, you would never agree to install it. So how does it end up installed on so many PCs? Here are some of the dirty tricks that spyware uses to worm its way onto your system and stay there.

1) Hide inside another program's installer.

Hundreds of freeware programs install some form of spyware along with the main application. In some cases the spyware is relatively innocuous, but in others it can crash your system or invade your privacy. The only hint you may see is a short sentence or two in the end user license agreement (EULA) to the effect of "third party software may be installed along with the application."

2) Use confusion to get permission.

The license agreements don't just come out and say "we're going to collect information about you and screw up your browsing" since that wouldn't get them a lot of customers. Instead, the licenses are full of confusing and deceptive prose. The Gator Terms and Conditions (which you are supposed to read and understand before you click "I Agree") are *14 pages and more than 6,000 words long*, not even including the several additional documents they link to there!

3) Keep asking until you say *Yes*.

Some spyware is delivered by an ActiveX control that tries to load each time you visit a web page where the spyware is present. As a security measure, the browser will ask if you want to install. If you say *No* it's only good until the next web page you load, where you'll again be asked the question. After a few pages of this, some people will give up and say *Yes*. (A better move would be to give up and leave that site.)

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4) Create a false pretense for needing the software.

You get this email message from a friend: "I've just sent you a greeting card, go to this web site to read it!" When you get to the web site it asks you to install a "greeting card viewer" that turns out to be spyware, and it sends a similar card to everyone in your address book. In the license agreement you didn't read but agreed to, you gave it permission to do that!

5) Look essential, or be invisible.

Some spyware will use an official-sounding name like "winstartup" so that you'll be less likely to disable it if you see it running. Others maintain a low profile by using dozens of different file names and locations, or even generating a random file name to escape detection. To further mask its existence and reduce your awareness of it, many spyware packages will even install software updates without your knowledge.

6) Don't uninstall, even when asked.

Whether by design or mistake, a lot of spyware does not remove itself when you uninstall the application that originally installed the spyware. In many cases the only way to completely remove spyware is with a utility like Pest Patrol.

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September 3, 2003

Test My PC
Home Page
Full Tests
Spyware Info
AntiVirus
Disk Health
Internet Connection
Check ActiveX
TechExpress
XP Readiness Test

Tech Support
Free Online Help
Live Support
Frequent Questions
Mechanics Lesson

PC Pitstop Forums
Forums Home
User to User Help
I Can't Test
Discuss Your Score
Internet Tests
Viruses and Spyware
Site Feedback

About PC Pitstop
Our Technology
Statistics
Behind the Wheel
Support Us
Privacy Policy
Testimonials
Pitstop Store

A Note From Our CEO

February 2003

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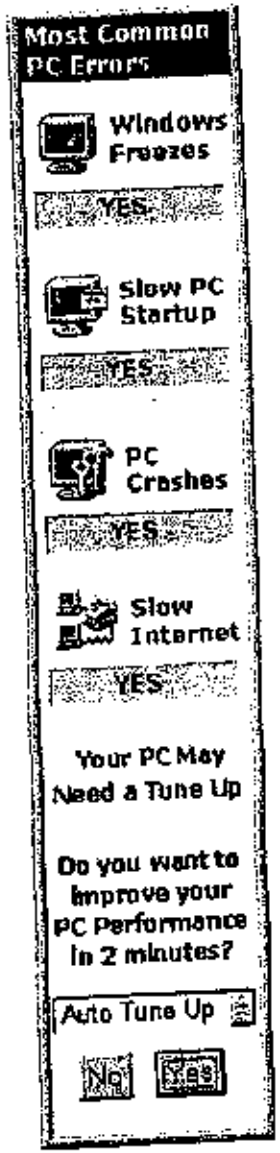

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Happy and Safe Computing.,

Rob Cheng
CEO PC Pitstop LLC

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September 3, 2003

Spyware Information Center

Gator Boycott List

Spyware Resources
Spyware Home
What is Spyware?
Dirty Spyware Tricks
Our Spyware Forum
Rob's Spyware Article
Gator Boycott List
Gator Quiz
Advertiser Info
Quick Spyware Scan

There is something each of us can do to fight the growth of spyware. Spyware is all about advertising and reaching you, the consumer. So we can hit them where it hurts them the most, and boycott the companies that do business with spyware makers.

For our first boycott we chose Gator advertisers. Our research shows that Gator is the most common type of spyware, promoted heavily by the company and installed on tens of millions of systems. Despite our clearly anti-Gator stance, Gator even has advertised its software on the PC Pitstop site through Google AdWords. (We have contacted them to have the ads removed.) Although Gator Corporation likes to make a distinction and call their products "adware", independent research has shown that they collect extensive information and have not clearly explained how the information is used once it reaches the Gator servers. Gator also has stated that more than 80 percent of its users are aware they have installed the product, but feedback in our spyware forum indicates that many Gator users are not aware of all the actions Gator is taking without their knowledge. It's not just users who are in the dark about Gator, many advertisers are not aware their ads are being shown by Gator's ad network through their connection with Overture.

The following list was obtained by one of the members of the Anti-Spyware Brigade in April 2003. He took a PC, intentionally loaded Gator, and just started surfing. In short order, we had over a 100 companies for our boycott list. This is not meant to be comprehensive list, and we welcome submissions to update, modify or augment the list. Just post the information on our forums.

We invite you to politely contact the companies below and let them know you do not approve of their use of Gator advertisements. Remember that many--perhaps most--of these advertisers are not aware of the issues surrounding spyware, so tell them to visit this Spyware Center for more information.

Please use this sample letter as a guide for your correspondence. Use our email list to minimize copying and pasting too many times.

Check out the responses from some of the companies on the boycott list.

Note: Companies with a ~~strikeout~~ have indicated that they have stopped doing business with Gator and/or Overture.

Company	Email	Address	Phone
100 Best Lenders.com	customercare@lendingtree.com	11115 Rushmore Dr., Charlotte, NC 28277	888-526-7172
1800inkjets.com	info@1800inkjets.com	1112 Weston Rd. #113 Weston FL 33326	800.465.5387
1-800-FLOWERS	invest@1800flowers.com	1112 Weston Rd. #113 Weston FL 33326	800.465.5387
247 Malls	webmaster@247malls.com	Dorfstrasse 33 A-2284 Untersiebenbrunn Austria	na
4 All Memory	support@4allmemory.com	911 Forest Ave. Suite C Valley Park MO 63088	800.566.3727
Ahlawasahla.com	sales@ahlawasahla.com	Hotel Dieu Hospital Street, Pasteur Bldg, 7th Fl Ashrafieh Lebanon	961 3 983700
AllCheapFares	Tours@dantravel.com	7720 Wisconsin Ave #210 Bethesda MD 20814	1.800.775.4922
All State Insurance	ranga@allstate.com	2775 Sanders Rd., Northbrook IL 60062-6127	800-574-3553
AM Shipping Supplies	amship@msn.com	7736 Reinhold Dr. Cincinnati OH 45237	513.542.0215
Apple	eddingsk@APPLE.COM	1 Infinite Loop Cupertiono CA 95014	408.996.1010
Area PC	atencionaldiente@areapc.com	In Spanish	In Spanish
Asheville Convention and Visitors Bureau	avelasquez@exploreasheville.com	PO Box 1010, Asheville NC 28802	828-157-4959
Autobytel.Inc	melanlew@autobytel.com	18872 MacArthur Boulevard, Irvine CA 92612	949.862.3023
Avon.com	ncc@AVON.COM	1345 Avenue of the Americas, New York NY 10105-0196	800.500.AVON
~~Berticby.com~~	~~webmaster@berticby-inc.com~~	~~P.O. Box 13, NYC NY 10034~~	
Be InCharge, Inc.	info@beinchargeonline.com	1768 Park Center Drive, Ste 400, Orlando FL 32835	877.677.0604
Best Ski Value.com	adwork@NORTHNET.ORG	PO BOX 645, LAKE PLACID, NY 12946-0645<	(518) 523-3359
~~BPVN Technologies Corp.~~	~~support@bpvn.com~~		~~917.723.0306~~
Buying Advice.com	webmaster@buyingadvice.com	373 Park Ave, Arcata CA 95521	Tours and Vacations: (240) 632-2999
Cables to Go	customer-service@cablestogo.com	1501 Webster Street, Dayton OH 45404	937-224-8646

EXHIBIT C

Canada North Lodge	info@canada-north.com	PO Box 279, Ear Falls, Ontario Canada POV1TO	800.890.7903
Capital One Mastercard	webinfo@capitalone.com	PO Box 85015, Richmond VA 23285	1-800-955-7070
CarBuyingTips.com	jostroff@bellsouth.net	na	na
CareOne Service	cesisupport@careonecredit.com	8930 Stanford Blvd, Columbia MD 21045	1-800-851-9032
CD ROM 2 GO	support@usdigitalmedia.com	21430 North 20th Avenue, Phoenix AZ 85027	877 99 CDROM
CDW Corporation	cdwsales@web.cdw.com	200 N. Milwaukee Avenue, Vernon Hills Il 60061	800.838.4239
Chrysler Corporation	tsk@daimlerchrysler.com	Auburn Hills MI 48326	1-800-CHRYSLER
~~Coca-Cola~~	~~pressinquiries@na.ko.com~~	~~PO Box 1734, Atlanta GA 30301~~	~~800-GET-COKE~~
~~Cokemadness.com~~	~~cokemadness@dnastudio.com~~	~~PO Box 1734, Atlanta GA 30301~~	~~800-GET-COKE~~
Columbia House	webadmin@columbiahouse.com	1221 Avenue of the Americas, NYC NY 10020	310-274-7800
Corbin Brothers, Inc	corbinbrothers@comcast.net	5309 Heather Brook Lane, Glen Allen VA 23059	866-549-1579
Costal Contacts	info@coastalcontacts.com	1115 Fir Ave, Blaine WA 98230	1-866-333-6888
DealTime, Inc	customersupport@dealtime.com	475 Fifth Ave, NYC NY 10017	650.616.6577
Diamond 88 Buffalo Ranch Store	diamond88buffalo@hotmail.com	1210 Sheridan Avenue, Cody WY 82414	(866)754-7277
Dick Glick Art Materials	info@dickblick.com	PO Box 1267, Galesburg IL 61402	800.828.4548
Disneyland Resorts	ms_support@help.go.com	PO Box 3232, 1313 S. Harbor Blvd., Anaheim CA 92803-3232	714.520.5060
Dollar Rent a Car	cservice@dollar.com	PO Box 33167 Tulsa OK 74153	800.800-3665
Discover Card	domains@leapfrogonline.com	PO Box 15192, Wilmington DE 19886	na
doctortext.com	webmaster@wmn.net	n/a	n/a
Feedback Research	support@feedbackresearch.com	2000 Bridge Parkway, Ste 100, Redwood City CA 94065	na
First Essentials	mail@firstessentials.net	9121 Atlanta Ave #115, Huntington Beach CA 92646	n/a
First Premier Bank	danthony@premierbankcard.com	PO Box 1348, Sioux Falls SD 57101	800-716-2236
FootSmart	customerservice@footsmart.com	PO Box 922908, Norcross GA 30010	800.230.4077
Forddirect.com		PO Box 6248, Dearborn MI 48126	(800) 392-3673
Free Debt	info@freedebtconsolidation.com	PO Box 1804, North Massapequa	866.687.1564

EXHIBIT C 22

		NY 11758	
FTD Florists	lwitek@ftdi.com	3113 Woodcreek Dr., Downers Grove IL 60515	800.788.9000
Gateway	corporate.communications@gateway.com	14303 Gateway Place, Poway CA 92064	605.232.2000
Gateway Inc.	corporate.communications@gateway.com	14303 Gateway Place, Poway CA 92064	605.232.2000
Goldenage Lighting	sales@goldenagelighting.com	5483 NW 72nd Avd, Miami FL 33166	305.883.0688
GoToMyPC	pr@expertcity.com	5385 Hollister Ave, Santa Barbara CA 93111	(888) 646-0016
Grand Central Communications	info@grandcentral.com	50 Fremont St., San Francisco CA 94105	415.344.3200
homestore.com	corporateinfo@homestore.com	30700 Russell Ranch Rd., Westlake Village CA 91362	805.557.2300
Hooked on Phonics	customerservice@hop.com	2900 South Harbor Blvd, Ste 202, Santa Ana CA 92704	800-534-3607 dept 59
Hoover's Inc.	salesteam@hoovers.com	5800 Airport Blvd., Austin TX 78752	800.486.8666
Hot Stix, Inc.	support@hotstix.com	6230 Wilshire Blvd. #49, Los Angeles CA 90048	866-227-9224
Hotwire	abohutinsky@hotwire.com	333 Market Street, Suite 100,San Francisco CA 94105	1-866-HOTWIRE (468-9473).
Household	HouseholdLoan@household.com	na	877-885-6380
hypnotictapes.com	jhs@hypnotictapes.com	786 Bush St. #16, San Francisco CA 94108	877.399.0575
~~ICEsoft~~	~~corporate@icesoft.com~~	~~Ste 300,1717 10th St. NW Calgary Alberta, Canada T2M4G2~~	~~877.263.3822~~
auctionsourcesexposed.com	info@auctionsourcesexposed.com	11901 Santa Monica Blvd, Ste 602, Los Angeles CA 90025	310.258-2747
ING Direct	sales@ingdirect.com	P.O. Box 60, St. Cloud MN 56302-0060	800-ING-DIRECT
InkSell.com	sales@inksell.com	435 Isom Road Suite 202, San Antonio TX 78216	800-155-0483
InPhonic	enterprise@inphonic.com	1010 Wisconsin Ave. Ste 150, Washington DC 20007	202.333.0001
Interstate Products, Inc.	indsales@interstateproducts.com	511 Interstate Crt., Sarasota FL 34240	800.474.7294
Iverson Software Co.	j5rson@iversonsoftware.com	506 Genesis Ave., Marshall MN 56158	507.929.0459
iWon	jb@staff.iwon.com	One Bridge St., Ste 42, Irvington NY 10533	914.591.2000
		several locations - see website	1-800-

EXHIBIT 5

Just Tires	customer_service@justtires.com		TIRESFAST
Kalon, Inc.	sales@kahlon.com	22415 La Palma Ave., Yorba Linda CA 92887	800.217.9989
KI4U, Inc	webmaster@radmeters4u.com	212 Oil Patch Lane, Gonzales TX 78629	(830) 672-8734
Lloyds TSB Bank plc	customerservices@createcard.co.uk	15 Gresham Street, London England EC2V 7HN	0870 600 6650
Lojack	pmcmahon@lojack.com	Westwood Exec. Ctr, 200 Lowder Brook Dr., Ste 1000, Westwood MA 02090	800-456-5225
Long Life Food Depot	jwilson@longlifefood.com	P.O. Box 8081, Richmond IN 47374	765-939-0110
MasterCard	sgamsin@mastercard.com	2000 Purchase Street, Purchase NY 10577	914-249-5622
Mealtime	canfood@mealtime.org	Canned Food Alliance, 7035 Bloomsburgy Ct. SW, Ocean Isle Beach NC	910.575.0826
Meritline.com	order@meritline.com	16666 East Johnson Dr., City of Industry CA 91745	626-369-8832
Michelin	Robert.Hiebel@FR.MICHELIN.COM	PO Box 19001, Greenville SC 29602	800.847.3435
Micro Pro, Inc.	info@micropro.com	5700 Brookpark Rd., Cleveland OH 44129	888.441.0321
Mission Liquor & Tobacco	info@missionliquor.com	1801 E. Washington Blvd, Pasadena CA 91104	626.797.0600
Movie Link	press@movielink.com	2120 Colorado Ave, Santa Monica, CA	
NetFlix Inc.	jbrinton@netflix.com	970 University Avenue, Los Gatos CA 95032	800-585-8131
NetWorkSolutioins	privacy@networksolutions.com	487 E. Middlefield Rd., Mountain View CA 94043	888.642.9675
New Balance Web Express	service@nbwebexpress.com	538 Axminister Dr. Fenton MO 63026	800-595-9138
Virtual Museums	vmc@virtualmuseum.ca	15 Eddy St. 15-4-A, Gatineau Quebec, CANADA K1A 0M5	800.520.2446
Office Depot	communityrelations@officedepot.com	2200 Old Germantown Rd., Delray Beach FL 33445	800.463.3768
Office Max	webadmin@OFFICEMAX.COM	3605 Warrensville Center Rd., Shaker Heights OH 44122	216.921.6900
Online Auto Loan	Help us get this info	na	na
Orbitz	corpcom@orbitz.com	200 South Wacker Drive, 19th Floor, Chicago IL 60606	212.894.5000
Orchard Bank	kathleen.rizzo.young@us.hsbc.com	na	877-277-0948
Organica	customerservice@organica-pet.com	PO Box 18593, Boulder CO 80308	866-ORG-FOOD

EXHIBIT C

Overture	investorrelations@overture.com	74 North Pasadena Avenue, Pasadena, California 91103	1 (626) 685-5600
Palm, Inc.	webmaster@palm.com	400 N. McCarthy Blvd, Milpitas CA 95035	408.503.7000
PaymentShopper.com	customerservice@paymentshopper.com	na	800-861-8380
PC Factory Outlet	marketing@alorica.com	14726 Ramona Ave, Ste 300, Chino CA 91710	800.733.5858
Priceline	advertising@priceline.com	800 Connecticut Avenue, Norwalk, CT 06854	1-800-340-0575
Printpal.com	support@printpal.com	PO Box 5655, Central Point OR 97502	888.772.1361
Quality-Work-Clothes.com	fisherfuel@msn.com	3170 Walnut Lake Ct, Walled Lake MI 48390	866-929-1234
Radisson	Radisson.Hotels@radisson.com	11340 Blondo St. Omaha NE 68164	800.333.3333
Rail Europe	webmaster@raileurope.com	White Plains NY	1-877-257-2887
RunningShoes.com	info@runningshoes.com	1317 N. State St., Bellingham WA 98215	800-390-1156
Sophisticated Shirts	carl@indy.net	427 South Illinois St., Indianapolis IN 46225	1-800-159-SAVE
Sun Microsystems	business.conduct@sun.com	1230 Avenue of the Americas, 7th Fl., NYC NY 10020	917.639.4055
SunSetter	contactus@sunsetter.com	184 Charles St., Malden MA 02148	800.876.2340
Sylvan Learning Centers	mike.altman@EDUCATE.COM	1001 Fleet St, Baltimore MD 21202	888-EDUCATE
Terra Universal, Inc.	info@terrauniversal.com	700 N. Harbor Blvd., Anaheim CA 92805	714-526-0100
Thrifty Rental Car	corpcomm@thrify.com	CIMS 1079, PO B 35250, Tulsa OK 74153-0250	800.334.1705
Time Life	tlcsmall@timelifecs.com	PO Box 85060, Richmond VA 23285-5060	800.950.7887
Tire Rack	custsvc@tirerack.com	7101 Vorden Parkway, South Bend IN 46628	Hotel and Car: (301) 907-8977
TotalVac.com	privacy@totalvac.com		na
TravelInterface.com	Info@travelinterface.com	1 Penn Plaza, 36th Fl, Greeley Square Station NYC NY	800.551.9160
Travelocity	travelocity@travelocity.com	15100 Trinity Blvd., Ft. Worth TX 76155	(888) 709-5983
Trophies2Go	order@trophies2go.com	1065 12th Ave. NW Ste E-8, Issaquah WA 98027	877.926.4700
uBid, Inc.	pr@ubid.com	8550 West Bryn Mawr Avenue, Ste. 200, Chicago IL 60631	1-800-317-7995

EXHIBIT C 55

United States School of Golf	ussg1@aol.com	Multiple addresses	800.354.7415
University of Phoenix Online	oniweb@phoenix.edu	4615 East Elwood St., Phoenix AZ 85040	800.MY-SUCCESS
Verizon	privacy@verizon.com	1095 Ave of the Americas, NYC NY 10036	800.621.9900
VisaPrint	domainadmin@VISTAPRINT.COM	100 Hayden Ave, Lexington MA 2421	781.890.8434
WeatherTools.com	sales@weathertools.com	5911 Broadway, San Antonio TX 78209	800.826.5708
Western Union Bid Pay	customerservice@westernunion.com	13022 Hollenberg Dr., Bridgeton MO 63044	800.325.6000
Westwood College of Technology	information@westwood.edu	2000 S. Colorado Blvd. #2-990, Denver CO 80222	303.691.5700
Wincelerator Corporation	support@wincelerator.com	120 Hana Hwy #9-195, Paia HI 96779	888.471.2749
Yahoo!	nissa@yahoo-inc.com (PR contact)	701 First Ave., Sunnyvale CA 94089	1-888-342-5878
Zacks	lzacks@ZACKS.COM	155 North Wacker Drive, Suite 300, Chicago IL 60806	312.630.9880

EXHIBIT G Sh. 4

September 3, 2003

Test My PC
Home Page
Full Tests
Spyware Info
AntiVirus
Disk Health
Internet Connection
Check ActiveX
TechExpress
XP Readiness Test

Tech Support
Free Online Help
Live Support NEW
Frequent Questions
Mechanics Lesson

PC Pitstop Forums
Forums Home
User to User Help
I Can't Test
Discuss Your Score
Internet Tests
Viruses and Spyware
Site Feedback

About PC Pitstop
Our Technology
Statistics
Behind the Wheel
Support Us
Privacy Policy
Testimonials
Pitstop Store

Spyware Information Center

The Gator Quiz

Do you think you know Gator? Take our quiz and find out! We've put together a simple quiz based on the Gator Terms and Conditions for the Gator Advertising Information Network (GAIN). Since that document and its related links are more than 7,000 words and 15 pages long, you may not be completely aware of what Gator/GAIN does even if you have taken the time to read up about it.

1) Users can get versions of Gator applications that do not show advertising.
○ True ○ False

2) Gator ads are always identified as belonging to Gator.
○ True ○ False

3) Gator can collect a list of software on your computer and track how often you use it.
○ True ○ False

4) Gator can install software without your approval.
○ True ○ False

Show Answers

[Spyware Center Home]

Spyware Resources
Spyware Home
What is Spyware?
Dirty Spyware Tricks
Our Spyware Forum
Rob's Spyware Article
Gator Boycott List
Gator Quiz
Advertiser Info
Quick Spyware Scan

EXHIBIT C 57


PC Advisor
Computer Report
Wed, Sep 3, 2003
4:46 PM
Your computer may have the following symptoms:
PC Crashes
Click Start to Tune Up your PC Performance
Auto Tune Up
Start

EXHIBIT C

September 3, 2003

Test My PC
Home Page
Full Tests
Spyware Info
AntiVirus
Disk Health
Internet Connection
Check ActiveX
TechExpress
XP Readiness Test

Tech Support
Free Online Help
Live Support new
Frequent Questions
Mechanics Lesson

PC Pitstop Forums
Forums Home
User to User Help
I Can't Test
Discuss Your Score
Internet Tests
Viruses and Spyware
Site Feedback

About PC Pitstop
Our Technology
Statistics
Behind the Wheel
Support Us
Privacy Policy
Testimonials
Pitstop Store

Spyware Information Center

Advertisers: Gatored Through the Back Door?

Several companies that have contacted PC Pitstop are puzzled how they could be associated with Gator when they honestly don't believe their company does business with Gator Corporation. Our first thought was that there was simply someone else in the organization responsible for advertising through the Gator Advertising Information Network (GAIN), or perhaps that a third-party ad agency they hired was responsible for placing Gator advertising. However, we have found another way that many companies may unwittingly be advertising on Gator through its partnership with Overture and the Search Scout feature.

Spyware Resources
Spyware Home
What is Spyware?
Dirty Spyware Tricks
Our Spyware Forum
Rob's Spyware Article
Gator Boycott List
Gator Quiz
Advertiser Info
Quick Spyware Scan

Overture's service allows businesses to "purchase keywords" so that an ad will show up when users search for that word. Several large sites such as MSN and Yahoo use Overture to show these text-based ads. Google has a similar program on its own search site called AdWords. On their own, these keyword-based ads can be a useful and beneficial way for businesses to reach potential customers, and for consumers to find products and services. However, Overture's recent use of Gator has changed the equation.

In April 2003, Gator and Overture announced a three-year partnership for Gator to show Overture ads. Gator's software monitors the user's activity on web search pages (even sites such as Google that are not affiliated with Overture) and grabs the search keywords for use in its own search engine. As a result, advertisers who have paid for listings in Overture may find their products advertised in a pop-under window through Gator's Search Scout, even if they want nothing to do with Gator. A web search shows that the outcome isn't always a happy customer:

> *"I got an email from a woman yesterday who had one of our ads pop up on her*

desktop. She was pretty upset and wanted me to tell her how to uninstall our software on her machine. Well, we don't have software and have never authorized anyone to advertise for us in such a way. There is so much bad "karma" associated with Gator and similar sneaky software that she not only didn't believe me, but went on to say that she would NEVER purchase anything from us and was going to tell everyone she knew do do the same."

Still, big money can be involved so some companies prefer to hold their nose and take the medicine. The same person followed up on their post a few days later:

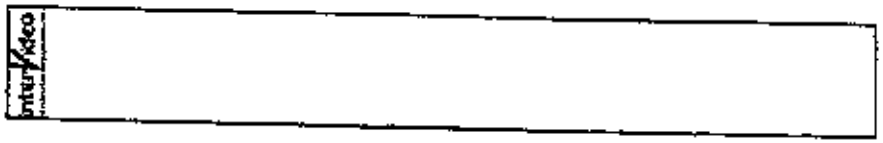
"I got a call yesterday from a couple of Overture representatives talking to me over a speaker phone. They were telling me about the potential qualified traffic that will come from the G.A.I.N. Network advertising. ... If you are unfortunate enough to have Gator installed on your system, and do a search that matches something in the GAIN system, then a new window opens behind the current one with a search engine results page. ... I still don't feel comfortable being affiliated with GAIN, but with over 40% of our traffic/sales coming from Overture, we are not going to let them go. If ever an effective alternative should present itself, then I would have to reconsider."

PC Pitstop's boycott list includes all companies whose ads pop up in Gator windows, regardless of how they got there. Companies that do not wish to have their products or services associated with Gator should be sure that all their advertising partners honor those wishes as well.

In particular, Overture customers that do not want to be associated with Gator should let Overture know that they do not want to be included in Gator Search Scout. (Concerned about losing sales leads? You can reach Google users directly, for example, through the Google AdWords program.)

[Back]

EXHIBIT C/c



September 3, 2003

Test My PC
Home Page
Full Tests
Spyware Info
AntiVirus
Disk Health
Internet Connection
Check ActiveX
TechExpress
XP Readiness Test

Tech Support
Free Online Help
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PC Pitstop Forums
Forums Home
User to User Help
I Can't Test
Discuss Your Score
Internet Tests
Viruses and Spyware
Site Feedback

About PC Pitstop
Our Technology
Statistics
Behind the Wheel
Support Us
Privacy Policy
Testimonials
Pitstop Store

Email Addresses

We are trying to provide all the tools for a successful email campaigns. Please use our letter as a guide line for your correspondence with these companies. Below please find a text list of all the email addresses of the companies on the boycott list. Just cut and paste this list into your email client.

Spyware Resources
Spyware Home
What Is Spyware?
Dirty Spyware Tricks
Our Spyware Forum
Rob's Spyware Article
Gator Boycott List
Gator Quiz
Advertiser Info
Quick Spyware Scan

why
you
hav
to.

Gator advertiser email list

customercare@lendingtree.com,info@1800inkjets.com,invest@1800flowers.com,
webmaster@247malls.com,support@4allmemory.com,sales@ahlawasahla.com,marketing@dantravel.com,
ranga@allstate.com,amship@msn.com,eddingsk@APPLE.COM,atencionalcliente@areapc.com,
avelasquez@exploreasheville.com,melaniew@autobytel.com,ncc@AVON.COM,
info@beinchargeonline.com,adwork@NORTHNET.ORG, webmaster@buyingadvice.com,info@canada-north.com,webinfo@capitalone.com,jostroff@bellsouth.net,
cesisupport@careonecredit.com,support@usdigitalmedia.com,cdwsales@web.cdw.com,
tsk@daimlerchrysler.com,
webadmin@columbiahouse.com,corbinbrothers@comcast.net,info@coastalcontacts.com,
customersupport@dealtime.com,diamond88buffalo@hotmail.com,info@dickblick.com,
ms_support@help.go.com,cservice@dollar.com,domains@leapfrogonline.com,webmaster@wmn.net,
support@feedbackresearch.com,mail@firstessentials.net,danthony@premierbankcard.com,
customerservice@footsmart.com,info@freedebtconsolidation.com,lwitek@ftdi.com,
corporate.communications@gateway.com,sales@goldenagelighting.com,pr@expertcity.com,
info@grandcentral.com,corporateinfo@homestore.com,customerservice@hop.com,
salesteam@hoovers.com,support@hotstix.com,abohutinsky@hotwire.com,HouseholdLoan@household.com,
jhs@hypnotictapes.com,corporate@icesoft.com,info@auctionsourcesexposed.com,

EXHIBIT C

sales@ingdirect.com,sales@inkseli.com,enterprise@inphonic.com,indsales@interstateproducts.com, j5rson@iversonsoftware.com,jb@staff.iwon.com,customer_service@justtires.com, webmaster@radmeters4u.com,customerservices@createcard.co.uk,pmcmahon@lojack.com, jwilson@longlifefood.com,sgamsin@mastercard.com,canfood@mealtime.org,order@meritline.com, Robert.Hiebel@FR.MICHELIN.COM,info@micropro.com,info@missionliquor.com,press@movielink.com, lbrinton@netflix.com,privacy@networksolutions.com,service@nbwebexpress.com, vmc@virtualmuseum.ca,communityrelations@officedepot.com,webadmin@OFFICEMAX.COM, jk1800@aol.com,corpcom@orbitz.com,kathleen.rizzo.young@us.hsbc.com, customerservice@organica-pet.com,webmaster@palm.com,customerservice@paymentshopper.com, marketing@alorica.com,advertising@priceline.com,support@printpal.com,fisherfuel@msn.com, Radisson.Hotels@radisson.com,webmaster@raileurope.com,info@runningshoes.com,carl@indy.net, business.conduct@sun.com,contactus@sunsetter.com,mike.altman@EDUCATE.COM, info@terrauniversal.com,tlcsmail@timelifecs.com,custsvc@tirerack.com,privacy@totalvac.com, Info@travelinterface.com,travelocity@travelocity.com,order@trophies2go.com,pr@ubid.com, ussg1@aol.com,oniweb@phoenix.edu,privacy@verizon.com,domainadmin@VISTAPRINT.COM, sales@weathertools.com,customerservice@westernunion.com,information@westwood.edu, support@wincelerator.com,nissa@yahoo-inc.com,izacks@ZACKS.COM,corpcomm@thrifty.com, sales@kahlon.com,customer-service@cablestogo.com

EXHIBIT C

September 3, 2003

Test My PC
Home Page
Full Tests
Spyware Info
AntiVirus
Disk Health
Internet Connection
Check ActiveX
TechExpress
XP Readiness Test

Tech Support
Free Online Help
Live Support
Frequent Questions
Mechanics Lesson

PC Pitstop Forums
Forums Home
User to User Help
I Can't Test
Discuss Your Score
Internet Tests
Viruses and Spyware
Site Feedback

About PC Pitstop
Our Technology
Statistics
Behind the Wheel
Support Us
Privacy Policy
Testimonials
Pitstop Store

Spyware Information Center

Boycott List Responses

The boycott list appears to be working. Companies are responding to our inquiries. On this page, we'll be tracking the responses from the companies on the boycott list.

Spyware Resources
Spyware Home
What Is Spyware?
Dirty Spyware Tricks
Our Spyware Forum
Rob's Spyware Article
Gator Boycott List
Gator Quiz
Advertiser Info
Quick Spyware Scan

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from Coca Cola
Sep 2, 2003
Thanks again for helping us sort out how our brand name became affiliated with this type of advertising. After speaking with our Legal department, we do not have a formal agreement to advertise on the Gator or Overture network at this time. We believe our use of search engine optimization techniques may have caused us to become inadvertently associated with this form of online advertising. We have contacted Gator and requested that advertisements related to our brands be terminated immediately. Our online advertising abides by the Company's Privacy Policy which you can find on www.coca-cola.com.

I would request again that you please remove The Coca-Cola Company from your list of companies to boycott. We do not have a connection to this form of advertising. I appreciate your patience in helping us understand the issue. It has been very helpful.

---

from IceSoft
Sep 2, 2003
Further to my previous message to you, please be advised that we have had confirmation from Overture that they do indeed use Gator to push pay-per-click keywords which we subscribed to. They also confirmed that we cannot opt out of specific affiliate marketing, so it is all or nothing. We have therefore opted to suspend our Overture advertising until

EXHIBIT C 67

such time as they are no longer affiliated with GAIN.

I would appreciate it if you would remove our company from your boycott page.

From BPVN Technologies
Aug 28, 2003
We stopped using them because the returns dropped significantly. Now I am thinking this might be because of Gator. I appreciate you bringing this to our attention, but I still think that the boycott list is too harsh since the companies whose ads make it into Gator really do not know anything about it.

EXHIBIT C

September 2, 2003

Spyware Information Center

Gator Awareness Letter

PC Pitstop encourages anyone and everyone to send a letter to any or all of the companies doing business with Gator. Before you start your campaign, please remember the following points:

- **Be courteous.** Remember, we are enlisting these companies to help in battling spyware.
- **Be educational.** Many of these companies are unaware that they are doing business with Gator. And the ones that are, could be potentially unaware of the negative impacts of spyware.
- **Be concise.** These are busy people. Concise and to the point will get you noticed.

Spyware Resources
Spyware Home
What Is Spyware?
Dirty Spyware Tricks
Our Spyware Forum
Bob's Spyware Article
Gator Boycott List
Gator Quiz
Advertiser Info
Quick Spyware Scan

Here is an example letter that we believe covers the most crucial points, and gives them a call to action.

<Date>

Dear Company,

This letter is to inform your company that some of its online advertising are being delivered by GAIN (Gator Advertising Network),a common form of spyware. Spyware (also called adware), Installs itself, most often without user knowledge, and delivers advertising based on the user's browsing habits. These applications often negatively impact system performance and reliability.

By advertising with Gator or Gator's marketing partner, Overture, your company is contributing to the spread of spyware, as well as slower and less reliable PC's. PC Pitstop has begun a campaign to make advertisers aware of the negative aspects of using spyware for web advertising. For more information about spyware and its effects on a user's PC and privacy, please see the PC Pitstop site: http://www.pcpitstop.com/spycheck/.

EXHIBIT C-5-1

Forbes has reported that last year, Gator was a $100M company. If your company is not doing business directly with Gator, it is highly likely that one of your online marketing partners is doing so on your behalf. We encourage you to learn more about what advertisers can do to stop the spread of spyware:
http://www.pcpitstop.com/spycheck/advertisers.asp.

Sincerely,

(PC Pitstop user)

EXHIBIT C

EXHIBIT D

PC Pitstop
In Association With
COMPUSA.com

September 5, 2003

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EXHIBIT D

Spyware Information Center

The Growing Spyware Problem

Since PC Pitstop opened in March 2000, we've tested and optimized millions and millions of computers. During that time, spyware has become a growing problem that threatens the stability and performance of your PC. Our spyware statistics indicate that more than 20% of PC's have some sort of spyware active in memory, stealing CPU cycles, using up system resources, delivering unwanted advertising, and often creating system instability. Worse yet, spyware can threaten your privacy.

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Why do spyware and adware companies make this software? Because it makes them money. Forbes Magazine reported that Gator Corporation made $100 million last year. This is the worst news of all. If spyware and adware is profitable then it won't be going away any time soon.

More and more companies are entering the market to exploit this alarming trend. Together with our partner, Pest Patrol, we are continuously updating our databases to find the latest spyware. Finding and avoiding spyware is getting tougher as spyware makers adapt their tactics to avoid detection and hide their true intent.

Fighting Spyware

PC Pitstop believes that just about everyone will avoid spyware once they know the full story about what it does and the effects it has on a PC. Everyone knows that a virus is bad news, spyware can be just as bad. And it's not just computer users who are affected by spyware. Many advertisers are not fully aware of the tactics that spyware makers use to lure users into installing the software, and they don't realize their ad money is encouraging even more aggressive tactics. So we've created this site to educate both users and advertisers about spyware.

How can you protect your PC and help eliminate the spyware threat?

- **Learn how spyware affects your PC--and your privacy.** It's not a pretty picture; spyware can mess up your computer and compromise your personal information.
- **Find out how spyware sneaks onto your system.** If this software is so good, why do they hide so many of its features in the fine print?
- **Scan for spyware using our quick test.** It will quickly detect the most common spyware. For a complete picture, use our full test.
- **Tell advertisers you don't like spyware ads.** Contact the companies that use Gator, the biggest player in the spyware field.
- **Spread the word about spyware and its cure.** Tell your friends, neighbors, business colleagues, and tell your family. Let them know about spyware, how to detect it, avoid it, and eliminate it.

Do you have questions, or want to share some experiences about spyware? Join in our forum!

PC Performance Advisory

Tune Up Recommended

To improve your PC Performance click Start.

Auto Tune-Up

Start

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September 8, 2003

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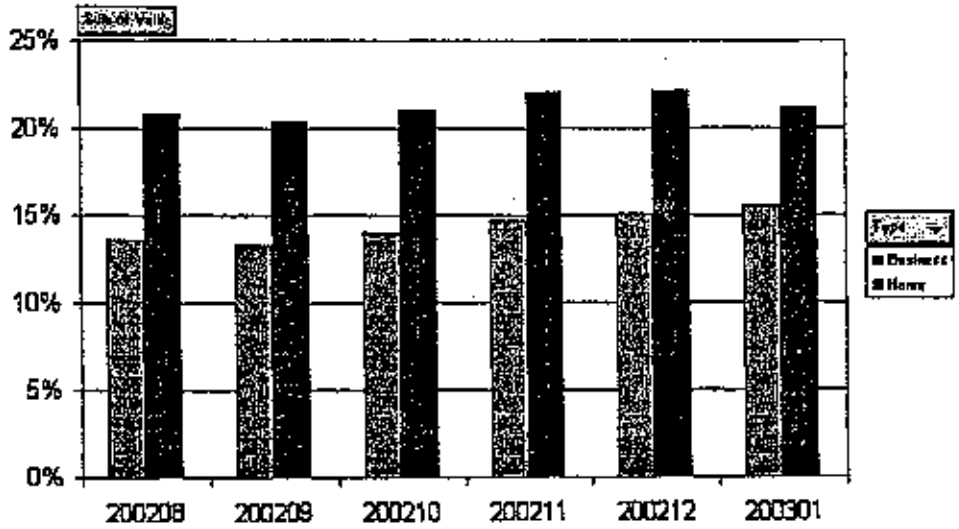
PC Pitstop SpyWare Statistics

Welcome to the PC Pitstop Statistics Center. We will be tracking the progress of SpyWare every two months along with all of our other research statistics. Please note that we implemented our SpyWare detection logic in our tests in mid January 2003, so we can also track Pitstop's ongoing effort to reduce SpyWare.

SpyWare by Location



SpyWare by User Expertise

General PC Stats Index

CPU
Intel vs. AMD
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CDRW
DVD
Operating System
Memory
Memory Range
Video Resolution
Home/Business
Desktop/Portable
Broadband/Dialup
User Expertise
SpyWare
Stats Home

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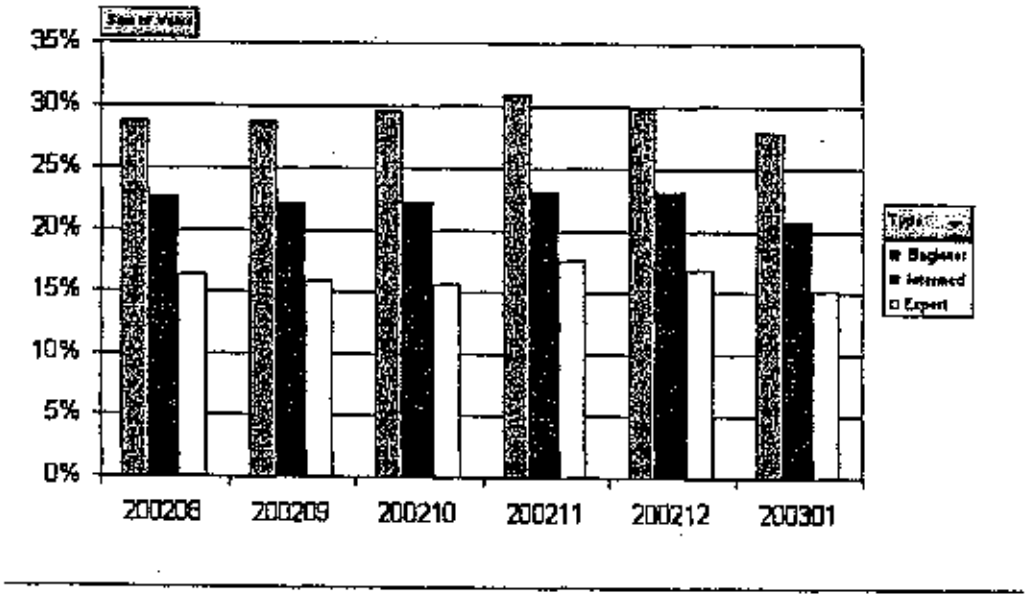
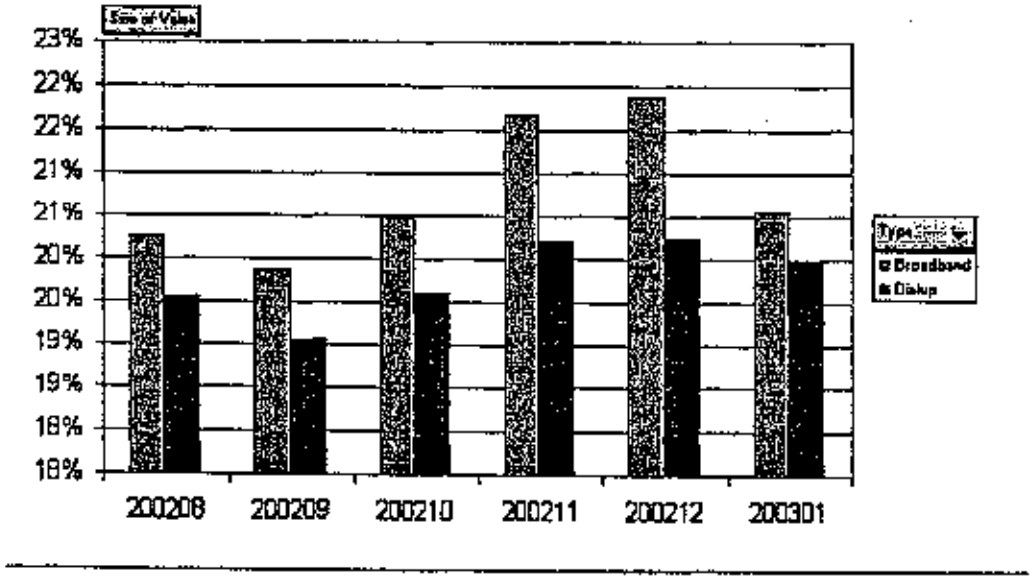


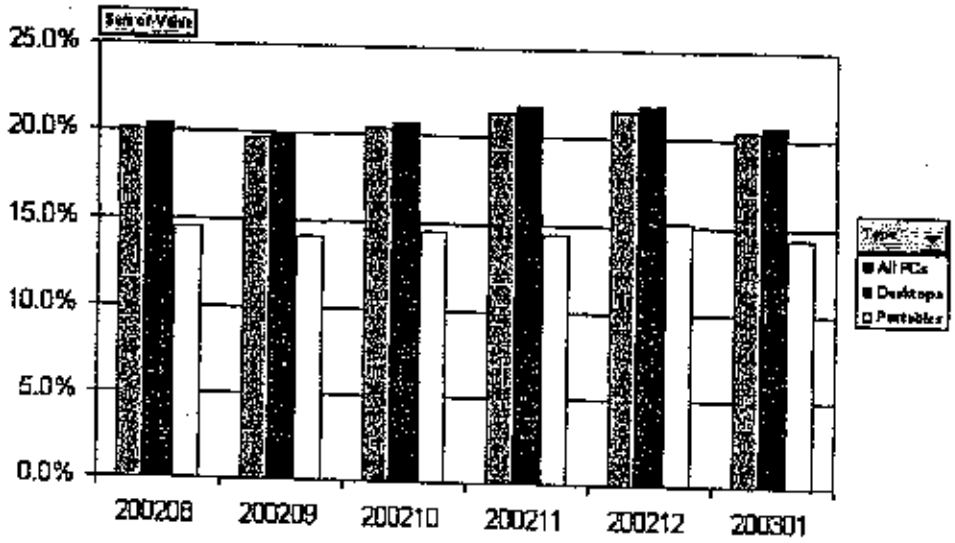
SpyWare by Bandwidth Speed

EXHIBIT D



SpyWare by PC Type

EXHIBIT D



Common SpyWare Attach Rates

Executable Name	SpyWare Name	08/02	09/02	10/02	11/02	12/02	01/03
gmt.exe	Gator	7.8%	7.5%	7.5%	8.0%	8.4%	7.9%
cmesys.exe	Gator	7.8%	7.5%	7.5%	8.0%	8.4%	7.8%
dw.exe	Downloadware	4.6%	4.8%	5.0%	5.5%	5.5%	5.1%
savenow.exe	Save Now	5.8%	5.0%	4.9%	5.1%	5.0%	3.9%
pgmonitr.exe	Promulgate	2.1%	2.9%	3.7%	4.1%	4.1%	4.0%
precis~1.exe	Gator	3.2%	3.1%	3.3%	3.7%	4.1%	3.9%
datema~1.exe	Gator	1.4%	1.1%	1.1%	1.0%	0.9%	0.8%
hbsrv.exe	Hot Bar	1.4%	1.5%	1.7%	1.8%	1.7%	1.6%
hbinst.exe	Hot Bar	1.5%	1.4%	1.6%	1.8%	1.7%	1.5%
save.exe	Save Now	0.1%	0.9%	1.2%	1.5%	1.7%	1.8%

EXHIBIT 10-11

gator.exe	Gator	1.4%	1.1%	1.1%	1.0%	0.9%	0.8%
msbb.exe	Web 3000	0.6%	0.8%	0.9%	1.0%	1.0%	1.1%

Want to see more? **Contact us** for information about our customized research services.

EXHIBIT U 11 A

Tune Up Strongly Recommended

September 5, 2003

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EXHIBIT D

Spyware Information Center

What is spyware?

Over the past few years, a new class of software has emerged that's up to no good. It goes by many names: spyware, adware, foistware, malware, eulaware, or even crapware. For simplicity we'll just call them all ***spyware***. Here are some of the "features" you get from spyware. Some spyware may only use one or two of these tactics, while others do quite a bit more:

- **Deceptive functionality.** Spyware often uses a classic "trojan horse" tactic--like a virus. It offers to synchronize your PC's clock or keep track of forms, but it is also doing other hidden things while you browse.
- **Home page hijacking.** Did you ever find that your home page was changed, or discover new sites in Favorites that you didn't add? It might be spyware.
- **Loss of privacy.** Some spyware keeps track of the web sites you visit and sends that information back to the spyware vendor. Do you want to tell everyone?
- ***More* advertising.** Did you install a popup stopper but you are still getting popups? The ads you are getting may not be from the web site you are on, but from spyware.
- ***Stolen* advertising.** Instead of showing the ads that should appear on a web site, some spyware substitutes its own ads which can rob a web site of revenue.
- **Broken web sites.** Spyware sometimes changes the actual content on a web page, and in the process it "breaks" the page. The page may not look correct, or you may get Javascript errors.

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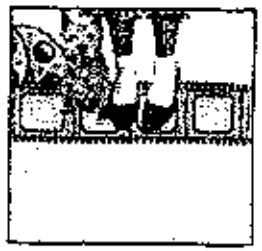

- **Reduced performance.** Spyware uses up system resources, CPU time, memory, disk space, and Internet bandwidth, making your system slower.
- **System instability.** Most spyware isn't very well tested or debugged, and there is no way to report bugs or obtain tech support. The result can be system crashes, hangs, or other strange behavior.
- **Security risks.** Some spyware has a built-in update feature that lets the spyware maker download and install new code to your system without your knowledge or approval.

Why don't antivirus utilities block spyware?

The short answer is *"spyware is not a virus."* Webopedia defines a virus as "A program or piece of code that is loaded onto your computer without your knowledge and runs against your wishes." Spyware takes advantage of the fact that people click *I Agree* to most software licenses without actually reading them. So *technically*, spyware is loaded with your knowledge and permission if you read the license, so it's not a virus. Of course, if your teenager uses the computer and installs spyware without *your* permission, that's *your* problem too. Here are some examples of spyware tricks.

This tricky use of software agreements puts the antivirus companies in a tough situation. It is possible that you really did agree for some of this software to be on your system. If antivirus utilities flag these borderline programs as viruses and remove them, the antivirus companies could find themselves in a legal battle with spyware makers who claim they were given permission to install.

How do I get rid of spyware?

You can either remove each program manually, or use a utility to automatically remove all spyware. For the automatic route we recommend Pest Patrol because it does the best job of finding and removing all spyware.

To use a manual removal method, you first need to determine what types of spyware have infested your system. Our online spyware scan can find some of the most common spyware (but see below for an important note). Each piece of spyware requires different removal procedures. Sometimes the spyware maker has an uninstaller at their site, but usually there will be some additional steps required before you have completely eliminated it. (This can include editing the Windows registry and/or deleting files, so it is *not* something that we recommend for novice users!) In some cases we provide links to manual removal procedures in your spyware scan results. If not, you can ask in the Spyware section of the PC Pitstop Forums or use Google to search for removal instructions using the name of the spyware.

Please note: Although our online spyware scan will find the most common types of spyware, it's not meant to be a replacement for a commercial product to defend you against spyware and viruses. We've kept this test small and simple so that we can quickly find the most common spyware threats. If our scan detects several different types of spyware on your system, it's possible that there is even more spyware that we did not detect.

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EXHIBIT D

Spyware Information Center

Dirty Spyware Tricks

If you had a complete knowledge of what most spyware was doing to your system, you would never agree to install it. So how does it end up installed on so many PCs? Here are some of the dirty tricks that spyware uses to worm its way onto your system and stay there. (Not all spyware uses every technique.)

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1) Hide inside another program's installer.

You will often see this technique in peer-to-peer programs like Kazaa. Hundreds of "freeware" programs install some form of spyware along with the main application. In some cases the spyware is relatively innocuous, but in others it can crash your system or invade your privacy. The only hint you may see is a short sentence or two in the end user license agreement (EULA) to the effect of "third party software may be installed along with the application."

2) Use confusion to get permission.

The license agreements don't just come out and say "we're going to collect information about you and screw up your browsing" since that wouldn't get them a lot of customers. Instead, the licenses are full of vague and confusing prose. For example, the Gator Terms and Conditions (which you are supposed to read and understand before you click "I Agree") are *14 pages and more than 6,000 words long*, not even including the several additional documents they link to there!

3) Keep asking until you say *Yes*.

This is particularly common with drive-by downloads such as Comet Cursor. Some spyware is delivered by an ActiveX control that tries to load each time you visit a web page where the spyware is present. As a security measure, the browser will ask if you

want to install. If you say *No* it's only good until the next web page you load, where you'll again be asked the question. After a few pages of this, some people will give up and say *Yes*. (A better move would be to give up and leave that site.)

4) Create a false pretense for needing the software.

You get this email message from a friend: "I've just sent you a greeting card, go to this web site to read it!" When you get to the web site it asks you to install a "greeting card viewer" that turns out to be spyware, and it sends a similar card to everyone in your address book. In the license agreement you didn't read but agreed to, you gave it permission to do that!

5) Look essential, or be invisible.

Some spyware will use an official-sounding name like "winstartup" so that you'll be less likely to disable it if you see it running. Others maintain a low profile by using dozens of different file names and locations, or even generating a random file name to escape detection. To further mask its existence and reduce your awareness of it, many spyware packages will even install software updates without your knowledge.

6) Don't uninstall, even when asked.

Whether by design or mistake, a lot of spyware does not remove itself when you uninstall the application that originally installed the spyware. In many cases the only way to completely remove spyware is with a utility like Pest Patrol. Some, like Gator, have cleaned up their act and have provided uninstallers.

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September 5, 2003

Spyware Information Center

Is Gator Spyware?

Gator Corporation is very sensitive about their products being called "spyware" because the company asserts it does not fit any common definition of that word. Since it is possible that some things implied by the term may not fit Gator's applications, it is worth looking at a definition of the word "spyware" to see how well the term fits. We chose the Webopedia.com definition of spyware for our analysis since it is easily available from the web:

Also called adware, spyware is any software that covertly gathers user information through the user's Internet connection without his or her knowledge, usually for advertising purposes.

Right off the bat, this definition equates spyware and adware. If Gator calls itself adware then by this definition it is also spyware. The part about "covertly" and "without knowledge" can be argued, but it is probably safe to say that most users are not *aware* of all the actions Gator is performing because they do not read the 20-page Gator Terms and Conditions before installing the software.

Spyware applications are typically bundled as a hidden component of freeware or shareware programs that can be downloaded from the Internet.

This fits Gator, although you could again argue that it wasn't "hidden" since it was revealed in the license agreements or other materials. AudioGalaxy, DivX Video Bundle, and GoZilla have all bundled Gator, for example. More often, though, Gator applications are installed using "drive-by downloads" that pop up while users are browsing.

Once installed, the spyware monitors user activity on the Internet and transmits that information in the background to someone else.

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Yes, this fits Gator/GAIN. Details of this communication are described in the Gator Terms and Conditions. Note that this definition does not require that personally identifiable information be revealed.

Spyware can also gather information about e-mail addresses and even passwords and credit card numbers.

Gator's privacy policy indicates the company's applications do not collect this, or any other personally identifiable information, so this is the only part of the definition that can definitely be excluded so far.

Spyware is similar to a Trojan horse in that users unwittingly install the product when they install something else. A common way to become a victim of spyware is to download certain peer-to-peer file swapping products that are available today.

The Trojan horse definition could be apropos when you consider that very few (if any) users would want to install GAIN by itself. If the "something else" is the Gator application to remember form entries, synchronize the PC clock, or show local weather, then "the product" would be GAIN.

Aside from the questions of ethics and privacy, spyware steals from the user by using the computer's memory resources and also by eating bandwidth as it sends information back to the spyware's home base via the user's Internet connection. Because spyware is using memory and system resources, the applications running in the background can lead to system crashes or general system instability.

Yes, this fits Gator applications very well. The weather applet and its associated GAIN ad delivery system uses 14MB of memory, for example, much more than the weather applet would need by itself.

Because spyware exists as independent executable programs, they have the ability to monitor keystrokes, scan files on the hard drive, snoop other applications, such as chat programs or word processors, install other spyware programs, read cookies, change the default home page on the Web browser, consistently relaying this information back to the spyware author who will either use it for advertising/marketing purposes or sell the information to another party.

Gator does several (but not all) of these things according to its own Terms and Conditions. Their privacy policy protects your anonymity, but this definition does not require that the software reveal your identity in the information it sends back before it is considered spyware.

Licensing agreements that accompany software downloads sometimes warn the user that a spyware program will be installed along with the requested software, but the licensing

EXHIBIT D

agreements may not always be read completely because the notice of a spyware installation is often couched in obtuse, hard-to-read legal disclaimers.

Considering that the full Gator Terms and Conditions document is a 20-page PDF, it seems that this part of the definition fits Gator as well.

What's In A Name?

By the Webopedia definition of "spyware" it appears to us that Gator applications do fit the term well. We are not alone in this interpretation. For example, (a product of Consumer's Union, publisher of Consumer Reports) includes Gator in its spyware taxonomy.

Ultimately, however, users should look past a single-word label and decide whether the product offers any real value given its true costs, financial or otherwise. Regardless of the term used to describe Gator applications, PC Pitstop advises that users uninstall them and take advantage of better alternatives that are available.

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Tune Up Recommended
To improve your PC Performance, click Start
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PC Pitstop believes that Gator products degrade the quality of a user's PC experience. This belief is based on our hands-on use of Gator products and experience with hundreds of systems in our forums. Gator's marketing strength is pushing their ad-delivery software onto systems without providing any significant value for the user. Many Gator users are not aware of what Gator is doing on their PC behind the scenes, and many advertisers are not aware their ads are being shown by Gator's ad network through its connection with Overture.

Although Gator Corporation likes to make a distinction and call their products "adware", other sources make no such distinction. Independent research has shown that they collect extensive information and have not clearly explained how the information is used once it reaches the Gator servers. No matter what term you may use to refer to Gator and GAIN software, most software cleanup programs (including our partner Pest Patrol) consider it undesirable software that should be removed. We agree.

The following list was obtained by one of the members of the Anti-Spyware Brigade in April 2003. He took a PC, intentionally loaded Gator, and just started surfing. In short order, we had over a 100 companies for our boycott list. This is not meant to be comprehensive list, and we welcome submissions to update, modify or augment the list. Just post the information on our forums.

We invite you to politely contact the companies below and let them know you do not approve of their use of Gator advertisements. Remember that many--perhaps most--of these advertisers are not aware of the issues surrounding spyware, so tell them to visit this Spyware Center for more information.
Please use this sample letter as a guide for your correspondence. Use our email list to minimize copying and pasting too many times.

Check out the responses from some of the companies on the boycott list.

Note: Companies with a ~~strikeout~~ have indicated that they have stopped doing business with Gator and/or Overture.

Company	Email	Address	Phone
100 Best Lenders.com	customercare@lendingtree.com	11115 Rushmore Dr., Charlotte, NC 28277	888-526-7172
1800inkjets.com	info@1800inkjets.com	1112 Weston Rd. #113 Weston FL 33326	800.465.5387
1-800-FLOWERS	invest@1800flowers.com	1600 Stewart Ave, Westbury, NY 11590	516.237.6000
247 Malls	webmaster@247malls.com	Dorfstrasse 33 A-2284 Untersiebenbrunn Austria	na
4 All Memory	support@4allmemory.com	911 Forest Ave. Suite C Valley Park MO 63088	800.566.3727
Ahlawasahla.com	sales@ahlawasahla.com	Hotel Dieu Hospital Street, Pasteur Bldg, 7th Fl Ashrafieh Lebanon	961 3 983700
AllCheapFares	Tours@dantravel.com	7720 Wisconsin Ave #210 Bethesda MD 20814	1.800.775.4922
All State Insurance	ranga@allstate.com	2775 Sanders Rd., Northbrook IL 60062-6127	800-574-3553
AM Shipping Supplies	amship@msn.com	7736 Reinhold Dr. Cincinnati OH 45237	513.542.0215
Apple	eddingsk@APPLE.COM	1 Infinite Loop Cupertiono CA 95014	408.996.1010
Area PC	atencionalcliente@areapc.com	In Spanish	In Spanish
Asheville Convention and Visitors Bureau	avelasquez@exploreasheville.com	PO Box 1010, Asheville NC 28802	828-157-4959
Autobytel.Inc	melantew@autobytel.com	18872 MacArthur Boulevard, Irvine CA 92612	949.862.3023
Avon.com	ncc@AVON.COM	1345 Avenue of the Americas, New York NY 10105-0196	800.500.AVON
~~Bartleby.com~~	~~webmaster@bartleby-inc.com~~	~~P.O. Box 13, NYC NY 10034~~	
Be InCharge, Inc.	info@beinchargeonline.com	1768 Park Center Drive, Ste 400, Orlando FL 32835	877.677.0604
Best Ski Value.com	adwork@NORTHNET.ORG	PO BOX 645, LAKE PLACID, NY 12946-0645<	(518) 523-3359
~~BPVN Technologies Corp.~~	~~support@bpvn.com~~		~~917.723.0306~~
Buying Advice.com	webmaster@buyingadvice.com	373 Park Ave, Arcata CA 95521	Tours and Vacations: (240) 632-2999
Cables to Go	customer-service@cablestogo.com	1501 Webster Street, Dayton OH 45404	937-224-8646
		~~PO Box 279, Ear Falls, Ontario~~	

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~~Canada North Lodge~~	~~info@canada-north.com~~	~~Canada POVITO~~	~~800.890.7903~~
Capital One Mastercard	webinfo@capitalone.com	PO Box 85015, Richmond VA 23285	1-800-955-7070
~~CarBuyingTips.com~~	~~jostroff@bellsouth.net~~	~~na~~	~~na~~
CareOne Service	cesisupport@careonecredit.com	8930 Stanford Blvd, Columbia MD 21045	1-800-851-9032
CD ROM 2 GO	support@usdigitalmedia.com	21430 North 20th Avenue, Phoenix AZ 85027	877 99 CDROM
CDW Corporation	cdwsales@web.cdw.com	200 N. Milwaukee Avenue, Vernon Hills Il 60061	800.838.4239
Chrysler Corporation	tsk@daimlerchrysler.com	Auburn Hills MI 48326	1-800-CHRYSLER
~~Coca-Cola~~	~~pressinquiries@na.ko.com~~	~~PO Box 1734, Atlanta GA 30301~~	~~800-GET-COKE~~
~~Cokemadness.com~~	~~cokemadness@dnastudio.com~~	~~PO Box 1734, Atlanta GA 30301~~	~~800-GET-COKE~~
Columbia House	webadmin@columbiahouse.com	1221 Avenue of the Americas, NYC NY 10020	310-274-7800
Corbin Brothers, Inc	corbinbrothers@comcast.net	5309 Heather Brook Lane, Glen Allen VA 23059	866-549-1579
Costal Contacts	info@coastalcontacts.com	1115 Fir Ave, Blaine WA 98230	1-866-333-6888
DealTime, Inc	customersupport@dealtime.com	475 Fifth Ave, NYC NY 10017	650.616.6577
Diamond 88 Buffalo Ranch Store	diamond88buffalo@hotmail.com	1210 Sheridan Avenue, Cody WY 82414	(866)754-7277
Dick Glick Art Materials	info@dickblick.com	PO Box 1267, Galesburg IL 61402	800.828.4548
Disneyland Resorts	ms_support@help.go.com	PO Box 3232, 1313 S. Harbor Blvd., Anaheim CA 92803-3232	714.520.5060
Dollar Rent a Car	cservice@dollar.com	PO Box 33167 Tulsa OK 74153	800.800-3665
Discover Card	domains@leapfrogonline.com	PO Box 15192, Wilmington DE 19886	na
doctortext.com	webmaster@wmn.net	n/a	n/a
Feedback Research	support@feedbackresearch.com	2000 Bridge Parkway, Ste 100, Redwood City CA 94065	na
First Essentials	mail@firstessentials.net	9121 Atlanta Ave #115, Huntington Beach CA 92646	n/a
First Premier Bank	danthony@premierbankcard.com	PO Box 1348, Sioux Falls SD 57101	800-716-2236
FootSmart	customerservice@footsmart.com	PO Box 922908, Norcross GA 30010	800.230.4077
Forddirect.com		PO Box 6248, Dearborn MI 48126	(800) 392-3673
Free Debt	info@freedebtconsolidation.com	PO Box 1804, North Massapequa NY 11758	866.687.1564

EXHIBIT D 8 of 4

FTD Florists	lwitek@ftdi.com	3113 Woodcreek Dr., Downers Grove IL 60515	800.788.9000
Gateway	corporate.communications@gateway.com	14303 Gateway Place, Poway CA 92064	605.232.2000
Gateway Inc.	corporate.communications@gateway.com	14303 Gateway Place, Poway CA 92064	605.232.2000
Goldenage Lighting	sales@goldenagelighting.com	5483 NW 72nd Avd, Miami FL 33166	305.883.0688
GoToMyPC	pr@expertcity.com	5385 Hollister Ave, Santa Barbara CA 93111	(888) 646-0016
Grand Central Communications	info@grandcentral.com	50 Fremont St., San Francisco CA 94105	415.344.3200
homestore.com	corporateinfo@homestore.com	30700 Russell Ranch Rd., Westlake Village CA 91362	805.557.2300
Hooked on Phonics	customerservice@hop.com	2900 South Harbor Blvd, Ste 202, Santa Ana CA 92704	800-534-3607 dept 59
Hoover's Inc.	salesteam@hoovers.com	5800 Airport Blvd., Austin TX 78752	800.486.8666
Hot Stix, Inc.	support@hotstix.com	6230 Wilshire Blvd. #49, Los Angeles CA 90048	866-227-9224
Hotwire	abohutinsky@hotwire.com	333 Market Street, Suite 100,San Francisco CA 94105	1-866-HOTWIRE (468-9473).
Household	HouseholdLoan@household.com	na	877-885-6380
hypnotictapes.com	jhs@hypnotictapes.com	786 Bush St. #16, San Francisco CA 94108	877.399.0575
~~ICEsoft~~	~~corporate@icesoft.com~~	~~Ste 300, 1717 10th St. NW Calgary Alberta, Canada T2M4E2~~	~~877.263.3822~~
auctionsourcesexposed.com	info@auctionsourcesexposed.com	11901 Santa Monica Blvd, Ste 602, Los Angeles CA 90025	310.258-2747
ING Direct	sales@ingdirect.com	P.O. Box 60, St. Cloud MN 56302-0060	800-ING-DIRECT
InkSell.com	sales@inksell.com	435 Isom Road Suite 202, San Antonio TX 78216	800-155-0483
InPhonic	enterprise@inphonic.com	1010 Wisconsin Ave. Ste 150, Washington DC 20007	202.333.0001
Interstate Products, Inc.	indsales@interstateproducts.com	511 Interstate Crt., Sarasota FL 34240	800.474.7294
Iverson Software Co.	j5rson@iversonsoftware.com	506 Genesis Ave., Marshall MN 56158	507.929.0459
IWon	jb@staff.iwon.com	One Bridge St., Ste 42, Irvington NY 10533	914.591.2000
Just Tires	customer_service@justtires.com	several locations - see website	1-800-TIRESFAST

Kalon, Inc.	sales@kalion.com	22415 La Palma Ave., Yorba Linda CA 92887	800.217.9989
KI4U, Inc	webmaster@radmeters4u.com	212 Oil Patch Lane, Gonzales TX 78629	(830) 672-8734
Lloyds TSB Bank plc	customerservices@createcard.co.uk	15 Gresham Street, London England EC2V 7HN	0870 600 6650
Lojack	pmcmahon@lojack.com	Westwood Exec. Ctr, 200 Lowder Brook Dr., Ste 1000, Westwood MA 02090	800-456-5225
Long Life Food Depot	jwilson@longlifefood.com	P.O. Box 8081, Richmond IN 47374	765-939-0110
MasterCard	sgamsin@mastercard.com	2000 Purchase Street, Purchase NY 10577	914-249-5622
Mealtime	canfood@mealtime.org	Canned Food Alliance, 7035 Bloomsburgy Ct. SW, Ocean Isle Beach NC	910.575.0826
Meritline.com	order@meritline.com	16666 East Johnson Dr., City of Industry CA 91745	626-369-8832
Michelin	Robert.Hiebel@FR.MICHELIN.COM	PO Box 19001, Greenville SC 29602	800.847.3435
Micro Pro, Inc.	info@micropro.com	5700 Brookpark Rd., Cleveland OH 44129	888.441.0321
Mission Liquor & Tobacco	info@missionliquor.com	1801 E. Washington Blvd, Pasadena CA 91104	626.797.0600
Movie Link	press@movielink.com	2120 Colorado Ave, Santa Monica, CA	
NetFlix Inc.	lbrinton@netflix.com	970 University Avenue, Los Gatos CA 95032	800-585-8131
NetWorkSolutiplns	privacy@networksolutions.com	487 E. Middlefield Rd., Mountain View CA 94043	888.642.9675
New Balance Web Express	service@nbwebexpress.com	538 Axminister Dr. Fenton MO 63026	800-595-9138
Virtual Museums	vmc@virtualmuseum.ca	15 Eddy St. 15-4-A, Gatineau Quebec, CANADA K1A 0M5	800.520.2446
Office Depot	communityrelations@officedepot.com	2200 Old Germantown Rd., Delray Beach FL 33445	800.463.3768
Office Max	webadmin@OFFICEMAX.COM	3605 Warrensville Center Rd., Shaker Heights OH 44122	216.921.6900
Online Auto Loan	Help us get this info	na	na
Orbitz	corpcom@orbitz.com	200 South Wacker Drive, 19th Floor, Chicago IL 50505	212.894.5000
Orchard Bank	kathleen.rizzo.young@us.hsbc.com	na	877-277-0948
Organica	customerservice@organica-pet.com	PO Box 18593, Boulder CO 80308	866-ORG-FOOD
Overture	investorrelations@overture.com	74 North Pasadena Avenue,	1 (626) 685-

		Pasadena, California 91103	5600
Palm, Inc.	webmaster@palm.com	400 N. McCarthy Blvd, Milpitas CA 95035	408.503.7000
PaymentShopper.com	customerservice@paymentshopper.com	na	800-861-8380
PC Factory Outlet	marketing@alorica.com	14726 Ramona Ave, Ste 300, Chino CA 91710	800.733.5858
Priceline	advertising@priceline.com	800 Connecticut Avenue, Norwalk, CT 06854	1-800-340-0575
Printpal.com	support@printpal.com	PO Box 5655, Central Point OR 97502	888.772.1361
Quality-Work-Clothes.com	fisherfuel@msn.com	3170 Walnut Lake Ct, Walled Lake MI 48390	866-929-1234
Radisson	Radisson.Hotels@radisson.com	11340 Blondo St. Omaha NE 68164	800.333.3333
Rail Europe	webmaster@raileurope.com	White Plains NY	1-877-257-2887
RunningShoes.com	info@runningshoes.com	1317 N. State St., Bellingham WA 98215	800-390-1156
Sophisticated Shirts	carl@indy.net	427 South Illinois St., Indianapolis IN 46225	1-800-159-SAVE
Sun Microsystems	business.conduct@sun.com	1230 Avenue of the Americas, 7th Fl., NYC NY 10020	917.639.4055
SunSetter	contactus@sunsetter.com	184 Charles St., Malden MA 02148	800.876.2340
Sylvan Learning Centers	mike.altman@EDUCATE.COM	1001 Fleet St, Baltimore MD 21202	888-EDUCATE
Terra Universal, Inc.	info@terrauniversal.com	700 N. Harbor Blvd., Anaheim CA 92805	714-526-0100
Thrifty Rental Car	corpcomm@thrify.com	CIMS 1079, PO B 35250, Tulsa OK 74153-0250	800.334.1705
Time Life	tlcsmall@timelifecs.com	PO Box 85060, Richmond VA 23285-5060	800.950.7887
Tire Rack	custsvc@tirerack.com	7101 Vorden Parkway, South Bend IN 46628	Hotel and Car: (301) 907-8977
TotalVac.com	privacy@totalvac.com		na
Travelinterface.com	Info@travelinterface.com	1 Penn Plaza, 36th Fl, Greeley Square Station NYC NY	800.551.9160
Travelocity	travelocity@travelocity.com	15100 Trinity Blvd., Ft. Worth TX 76155	(888) 709-5983
Trophies2Go	order@trophies2go.com	1065 12th Ave. NW Ste E-8, Issaquah WA 98027	877.926.4700
uBid, Inc.	pr@ubid.com	8550 West Bryn Mawr Avenue, Ste. 200, Chicago IL 60631	1-800-317-7995
United States School of	ussg1@aol.com	Multiple addresses	800.354.7415

EXHIBIT D

Golf			
University of Phoenix Online	onlweb@phoenix.edu	4615 East Elwood St., Phoenix AZ 85040	800.MY-SUCCESS
Verizon	privacy@verizon.com	1095 Ave of the Americas, NYC NY 10036	800.621.9900
VistaPrint	domainadmin@VISTAPRINT.COM	100 Hayden Ave, Lexington MA 2421	781.890.8434
WeatherTools.com	sales@weathertools.com	5911 Broadway, San Antonio TX 78209	800.826.5708
Western Union Bid Pay	customerservice@westernunion.com	13022 Hollenberg Dr., Bridgeton MO 63044	800.325.6000
Westwood College of Technology	information@westwood.edu	2000 S. Colorado Blvd. #2-990, Denver CO 80222	303.691.5700
Wincelerator Corporation	support@wincelerator.com	120 Hana Hwy #9-195, Paia HI 96779	888.471.2749
Yahoo!	nissa@yahoo-inc.com (PR contact)	701 First Ave., Sunnyvale CA 94089	1-888-342-5878
Zacks	lzacks@ZACKS.COM	155 North Wacker Drive, Suite 300, Chicago IL 60606	312.630.9880

Exhibit B 87

September 8, 2003

Test My PC
Home Page
Full Tests
Spyware Info
AntiVirus
Disk Health
Internet Connection
Check ActiveX
TechExpress
XP Readiness Test

Tech Support
Free Online Help
Live Support
Frequent Questions
Mechanics Lesson

PC Pitstop Forums
Forums Home
User to User Help
I Can't Test
Discuss Your Score
Internet Tests
Viruses and Spyware
Site Feedback

About PC Pitstop
Our Technology
Statistics
Behind the Wheel
Support Us
Privacy Policy
Testimonials
Pitstop Store

EXHIBIT D 34

Spyware Information Center

The Gator Quiz

You had no correct answers. For more information about Gator, see the Terms and Conditions on the Gator Corporation web site.

1) Users can get versions of Gator applications that do not show advertising.

True. You can purchase each Gator Corporation application for $30, and those versions will not show ads. Incredibly, though, **even the paid versions will continue to collect information** about your browsing habits, installed software, and other data! *"...If the user has purchased licenses to all GAIN-Supported Software applications on the user's computer, such user will not receive GAIN Ads but TGC will continue to collect and use all other information described in this Privacy Statement."*

2) Gator ads are always identified as belonging to Gator.

False. It's not Gator, it's **GAIN.** *"GAIN Ads contain the name 'GAIN' in the title bar and/or the GAIN logo in the advertisement.The GAIN brand is displayed to inform users that GAIN Ads come from TGC and are not associated, sponsored, or affiliated in any way with any other Web pages being viewed by users."* Users are often confused by this because (as far as they recall) they never installed an application named GAIN and may not associate the ad with the eWallet, Precision Time, Date Manager, or other GAIN-paired application they did install. The Gator site has a page that helps you to identify GAIN ad windows.

3) Gator can collect a list of software on your computer and track how often you use it.

True. Although Gator Corporation says it does not collect personal information, it does

Spyware Resources
Spyware Home
What is Spyware?
Dirty Spyware Tricks
Our Spyware Forum
Is Gator Spyware?
Gator Boycott List
Gator Quiz
Gator's Position
Advertiser Info
Quick Spyware Scan

gather extensive details about your computer setup and browsing habits. *"While we don't know the identity of GAIN-Supported Software users, the GAIN AdServer and TGC collect and use the following kinds of anonymous information: Some of the Web pages viewed; The amount of time spent at some Web sites; Response to GAIN Ads; Standard web log information (excluding IP Addresses) and system settings; What software is on the personal computer; First name, country, city, and five digit ZIP code; Non-personally identifiable information on Web pages and forms; Software usage characteristics and preferences."*

4) Gator can install software without your approval.

True. GAIN can **automatically download and install updates without asking you**: *"TGC may require the update or automatic distribution of Licensed Materials on your computer when a new version of the Licensed Materials is released to the general public, when new features are available, to display promotional offers, and/or to add new applications to the applications that comprise Licensed Materials. This update or new download may occur automatically or through other means."* It may even automatically install another company's software in some cases, and perhaps notify you after the fact: *"In the event that we install on a computer Enhancement Technologies developed by a third party, that third party's privacy statement for those Enhancement Technologies will be at least as protective of privacy as TGC's Privacy Statement; otherwise we will display to the computer screen a notification message describing the technology we installed with a link or reference to the applicable privacy statement, or utilize a click-through agreement to obtain user consent, as appropriate."*

[Spyware Center Home]

EXHIBIT D

Tune Up Recommended
To improve your PC Performance, click Start
1. Automatic Tune Up Start More Info

September 5, 2003

Test My PC
Home Page
Full Tests
Spyware Info
AntiVirus
Disk Health
Internet Connection
Check ActiveX
TechExpress
XP Readiness Test

Tech Support
Free Online Help
Live Support NEW
Frequent Questions
Mechanics Lesson

PC Pitstop Forums
Forums Home
User to User Help
I Can't Test
Discuss Your Score
Internet Tests
Viruses and Spyware
Site Feedback

About PC Pitstop
Our Technology
Statistics
Behind the Wheel
Support Us
Privacy Policy
Testimonials
Pitstop Store

Spyware Information Center

Gator Response Letter

Gator has responded to our email campaign. The unaltered text, except for typos and formatting, follows below. We've also prepared an alternate view on the Spyware semantics debate.

Spyware Resources
Spyware Home
What is Spyware?
Dirty Spyware Tricks
Our Spyware Forum
Is Gator Spyware?
Gator Boycott List
Gator Quiz
Gator's Position
Advertiser Info
Quick Spyware Scan

Thank you for your feedback. The Gator Corporation programs are not Spyware because The Gator Corporation's Privacy Policy specifically and clearly states how and why our programs must contact the server, what information is collected, and how it is used and users must review and accept The Gator Corporation's Privacy Policy and End User License Agreement before our programs are downloaded to the users computer (i.e. explicit, informed, consent is received by The Gator Corporation; please refer to The Gator Corporation's Privacy Policy for more information).

The Gator Corporation believes it does not meet any reasonable Spyware definition because of the following factors:

Up front, full, plain language disclosure: The Gator Corporation clearly states what will be collected from the user and why this must happen in the privacy policy.

No Unnecessary Information Gathering: as per the privacy policy, we do not know who you are and we know nothing about you personally. We do not store personally identifiable information or use it in any way. The information that is collected is clearly spelled out in the policy.

Formal Online Privacy Statement

Preemptive Request for Consent: The installation of any GAIN supported application(s)

EXHIBIT D 40

is disclosed prior to the installation, at which time a user may simply opt not to install the application(s).

Uninstallation: All GAIN supported applications are easily removable via the application's uninstaller and or the Windows Add/Remove Programs Control Panel. A few minutes after all GAIN applications have been uninstalled, the GAIN software is designed to self uninstall.

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September 5, 2003

EXHIBIT D

Spyware Information Center

Advertisers: Gatored Through the Back Door?

Several companies that have contacted PC Pitstop are puzzled how they could be associated with Gator when they honestly don't believe their company does business with Gator Corporation. Our first thought was that there was simply someone else in the organization responsible for advertising through the Gator Advertising Information Network (GAIN), or perhaps that a third-party ad agency they hired was responsible for placing Gator advertising. However, we have found another way that many companies may unwittingly be advertising on Gator through its partnership with Overture and the Search Scout feature.

Spyware Resources
Spyware Home
What is Spyware?
Dirty Spyware Tricks
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Gator Boycott List
Gator Quiz
Gator's Position
Advertiser Info
Quick Spyware Scan

Overture's service allows businesses to "purchase keywords" so that an ad will show up when users search for that word. Several large sites such as MSN and Yahoo use Overture to show these text-based ads. Google has a similar program on its own search site called AdWords. On their own, these keyword-based ads can be a useful and beneficial way for businesses to reach potential customers, and for consumers to find products and services. However, Overture's recent use of Gator has changed the equation.

In April 2003, Gator and Overture announced a three-year partnership for Gator to show Overture ads. Gator's software monitors the user's activity on web search pages (even sites such as Google that are not affiliated with Overture) and grabs the search keywords for use in its own search engine. As a result, advertisers who have paid for listings in Overture may find their products advertised in a pop-under window through Gator's Search Scout, even if they want nothing to do with Gator.

Here are several other pages where others express their concern for the partnership between Gator and Overture and the effect it is having on advertisers:

- Overture joins scumware company - *"That's right - now thousands of blissfully ignorant Overture advertisers will have their ads appear in annoying pop-ups and pop-unders, courtesy of Gator's obnoxious Search Scout software - software that preys on unsuspecting Internet surfers by installing itself onto their computers, usually without their knowledge."*
- Overture To Partner With "ScumWare" - *It's not just webmasters who dislike Gator either. If you "Google" Gator, you see it has its very own category in the Google Web Directory with a whole collection of web pages about it under the heading* ***Allegedly Unethical Firms***.
- Scumbag of the Week - *"As most of you probably have heard by now, Overture, the leader in the Pay-Per-Click search engine world, has partnered with one of the more notorious Scumware merchants: Gator. Yes, your hard-fought for keyword positions are no longer simply being shown as part of search results on most of the major search engines as supplement to a relevant search. They're now being injected and forced into the face of unsuspecting Gator users."*
- Overture PPC Review - *"Informal research indicates that Overture advertising offers a ROI almost as good as Google's AdWords. However, Overture has partnered with Gator Corp. There is no effective measure of the risk of alienating web savvy visitors for doing business with a scumware provider."*
- Overture: Greedy 2 Ways - *"I got an email from a woman yesterday who had one of our ads pop up on her desktop. ... There is so much bad "karma" associated with Gator and similar sneaky software that she not only didn't believe me, but went on to say that she would NEVER purchase anything from us and was going to tell everyone she knew do do the same."*

PC Pitstop's boycott list includes all companies whose ads pop up in Gator/GAIN windows, regardless of how they got there. Companies that do not wish to have their products or services associated with Gator should be sure that all their advertising partners honor those wishes as well.

In particular, Overture customers that do not want to be associated with Gator should let Overture know that they do not want to be included in Gator Search Scout results.

[Back]

EXHIBIT D

FAX TRANSMITTAL
COVER SHEET

From

K. THOMAS LESTER
6554 Manana Place
La Jolla, CA 92037

Tel No. 619-454-7814
Fax No. 619-454-7814

To

Name: Bill Steen

Company William A. Steen & Assoc

FAX No. 460-9005

Date 11/10/99 No. of pages including transmittal cover sheet 2

Message

cc of a letter I am sending to John Crayton just to try & keep the process moving along - if you think I should NOT send it call me right away Thanks

Tom

Letter OK
Good
Go ahead

La Jolla United Methodist Church
6063 La Jolla Boulevard
La Jolla, CA 92037

November 10, 1999

Mr. John B. Crayton,
Property Agent
City of San Diego
Real Estate Assets
1200 Third Avenue
Suite 1700, MS 51A
San Diego, CA 92101-9005

Dear John,

Thank you for your letter of September 23, 1999, to Rev. Ritter, acknowledging receipt of the appraisal for the property involved in the proposed land exchange. We have just completed our stewardship campaign for the support of our operating budget for 1999 and the Administrative Board is anxious to get started on some architectural renderings of proposed improvements to these properties in support of a Capital Funds campaign which we would like to conduct in the Spring. Our church calendar is such that if we can't get started this Spring we would have to wait until the Spring of 2001. These improvements will be a great asset to the area and the community and we are anxious to get started as soon a possible.

Anything you and your staff can do to move the process along would be greatly appreciated. If there is anything more we need to do please let us know.

Thank you very much.

Sincerely,

Tom Lester

Tom Lester,
Co-chair, Facilities Planning Committee

cc. Rev. Ritter
Bill Steen
Gene Blickenstaff