January 2006

FTC v. Seismic Entertainment Productions, Inc.

Berkeley Technology Law Journal

FTC V. SEISMIC ENTERTAINMENT PRODUCTIONS, INC.
2004 U.S. Dist. LEXIS 22788 (D.N.H. Oct. 21, 2004)

The FTC sued several companies that developed and distributed advertising spyware for unfair trade practices under the FTC Act, 15 U.S.C. § 45(a).

Seismic Entertainment is a distributor of software that the FTC alleged "reconfigured consumers' computers by installing a software code, without the consumers' knowledge or authorization, that gives the defendants access to those computers for purposes of advertising." Through the use of mass e-mails, Seismic directed users to a webpage where, if allowed by the users' security settings, a piece of software was installed onto their machines without their knowledge. This software would then monitor web traffic, increase pop-up and pop-under ads, and often slow browser performance. Many of these pop-up ads touted the benefits of defendant's own "anti-spyware" programs.

In response, the Federal Trade Commission brought suit under 15 U.S.C. § 45(a) and sought temporary injunctive relief requiring defendants "to remove software script that exploits the web browser security vulnerabilities . . . or any other web browser security vulnerabilities that allow the defendants to install, download, or deposit any software code, program, or content onto a computer without the computer user's knowledge or authorization." The court, in light of the FTC's likelihood of success in securing a permanent injunction and "the public's interest in avoiding the problems" created by defendants' software, granted the FTC's request for a temporary restraining order.