

SETTLEMENT AGREEMENT AND LIMITED RELEASE

This Settlement Agreement and Limited Release (the "Agreement") is entered into by and between Stephen Sotelo (hereafter "Sotelo" or the "Class Representative"), on behalf of himself and the Class (as defined below), and DirectRevenue, LLC and The Best Offers Network, LLC (f/k/a BetterInternet, LLC) (collectively "DirectRevenue" or the "Settling Defendants").

RECITALS

WHEREAS, in early 2005, the Class Representative alleges that he had software unlawfully installed onto his computer without his consent by DirectRevenue;

WHEREAS, on March 31, 2005, the Class Representative, individually and on behalf of a putative class, filed suit against DirectRevenue in the Circuit Court of Cook County, Illinois, which action was subsequently removed to the United States District Court for the Northern District of Illinois, Eastern Division (the "Illinois District Court"), in an action styled Stephen Sotelo, et al. v. DirectRevenue, LLC, et al., Case No. 05 C 2562 (hereinafter, the "Lawsuit"). The Class Representative is represented in the Lawsuit by The Collins Law Firm, P.C. and Varga Berger Ledsky Hayes & Casey, a Professional Corporation (collectively "Class Counsel");

WHEREAS, various claims were asserted in the Lawsuit, including those for Trespass to Personal Property/Chattels, violations of the Illinois Consumer Fraud Act, Negligence, and Computer Tampering;

WHEREAS, the Settling Defendants have filed an answer in the Lawsuit, denying all wrongdoing and denying that they are liable on any of the claims asserted in the Lawsuit;

WHEREAS, the Settling Defendants have disclosed and represented the details of their current financial condition on a confidential basis to the Class Counsel, which has disclosed that

the Settling Defendants are unable to pay a judgment or settlement that would provide Class Members more than a nominal amount of compensation should damages be awarded on a class-wide basis. As a result of this information, Class Counsel has determined that it is neither feasible, nor in the interests of the Class as a whole, to attempt to resolve claims for monetary damages in the Lawsuit on a class-wide basis. Rather, Class Counsel has determined that a settlement pursuant to Rule 23(b)(2) which accomplishes significant injunctive relief and preserves the right of Class Members to assert monetary damages claims on an individual basis only as described herein, is, under these circumstances, in the best interest of the Class;

WHEREAS, the Settling Defendants deny the material allegations of Sotelo's First Amended Complaint, including any wrongdoing on their part, and disclaim any and all liability to Plaintiff or the putative class. This Agreement is not and shall not in any way be construed as an admission, or evidence of any violation, by any of the parties of any acts for which liability may attach. In the event that for any reason this Agreement does not become effective, the parties hereto reserve all substantive and procedural rights;

WHEREAS, based upon the uncertainty and expense involved in litigation, the parties hereto desire to settle the claims asserted in the Lawsuit, subject to court approval, on the terms and conditions set forth below;

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party to the other, **IT IS HEREBY STIPULATED AND AGREED**, by and between the Class Representative, individually and on behalf of each of the Class Members and their respective past, present and future parent companies, subsidiaries, affiliates, divisions, agents, employees, owners, members, officers, directors, partners, legal representatives, trustees, executors,

administrators, heirs, real or alleged alter egos, predecessors, successors, transferees and assigns, and the Settling Defendants and their respective past, present and future parent companies, subsidiaries, affiliates, divisions, agents, employees, owners, members, officers, directors, partners, legal representatives, trustees, executors, administrators, heirs, real or alleged alter egos, predecessors, successors, transferees and assigns, that the Lawsuit shall be compromised and settled, subject to court approval, on the terms and conditions set forth below.

TERMS AND CONDITIONS

1. **Purpose of Settlement.** This Agreement is being entered into solely to settle and compromise any and all disputes within the scope of this Agreement between the Class Representative and the Class, on the one hand, and the Settling Defendants, on the other hand, as described more fully herein. This Agreement and any settlement discussion shall not be admissible in any proceeding, whether by claim or defense, as evidence or an admission of any kind, except that in a proceeding to enforce the provisions of this Agreement any settlement discussions shall be admissible as evidence solely for purposes of that proceeding.

2. **Agreed Certification of an Illinois Class for Settlement:** Pursuant to Fed. R. Civ. P. 23(b)(2), the parties agree to the certification of the following defined settlement class (the "Class"): "All persons or entities who owned computers in Illinois and who had Defendants' targeted advertising software (the "Software") downloaded onto their computers in Illinois at any time after March 31, 2002." Excluded from the Class are Defendants, and all of their officers, directors, employees, agents and attorneys.

For the purposes of this Agreement, Software is defined herein to include the following DirectRevenue software files:

Bi.dll
Btgrab.dll

MultiMPP.dll
mxTarget.dll

Dlmax.dll	iehelper.dll
pynix.dll	
Host.dll	TPS108.dll
IPInsigt.dll	Twaintec.dll
LocalNRD.dll	VoiceIP.dll
VX2.dll	ZServ.dll
Ceres.dll	Speer.dll
Speer2.dll	Speeryox.dll
AHexe.dll	kz515.dll
Aurora.exe (polymorphic)	buddy.exe
Tbon.exe	Tbonsn.exe
Tbonuac.exe (polymorphic)	Tboncst.exe
Gsim.dll	systb.dll
Dinst.dll	dinst.exe
TBONcomp.dll	TBONAS.exe

DirectRevenue represents and warrants that this above list is a full and complete list of the ad client software files that it has used as its advertising software. Any client software that serves pop-up and/or pop-under advertising that DirectRevenue creates in the future shall also constitute Software, as that term is defined in this Agreement.

3. **Agreed Injunctive Relief.** The Settling Defendants agree that, as of the effective date of this Agreement and permanently thereafter, they shall employ the following business practices with respect to all users and computers in the State of Illinois, which business practices shall be incorporated into the Final Approval Order herein as injunctive relief requirements:

- a. DirectRevenue will not collect any personally identifiable information (name, address, social security number, e-mail address, bank account information, etc.) about computer users. To the extent that DirectRevenue possesses any such data, said data will be destroyed. DirectRevenue shall provide to Class Counsel an affidavit by one of its officers so certifying the destruction and non-existence of such data within fourteen (14) days of the Effective Date of this Agreement.
- b. DirectRevenue will assure that, prior to the installation of the Software, computer users are (a) provided with DirectRevenue's End User License Agreement ("EULA"), and (b) given two choices, of equal prominence within the modal box or landing page, to the effect of:

"I have read and accept the agreement" or

“I do not accept the terms of the agreement”

The “accept” option will not be a default option. If the user selects the “I do not accept” choice, the Software will not be installed.

An example of an acceptable disclosure is attached hereto as Exhibit A.

- c. In addition to providing computer operators with its EULA, DirectRevenue will also disclose, separate and apart from the EULA, that: (1) users will receive advertisements while online, along with a brief description of the types of ads that will be displayed; (2) DirectRevenue will collect information about web sites visited by users; (3) users may receive ads with adult content if and while they are visiting websites with adult content; and (4) the Software will be included in their installation of the ad-supported software. This disclosure will be independently displayed within the modal box containing the “I have read and accept” and “I do not accept” choices described above. The additional disclosures shall appear above the choices described in subparagraph b, above, but will end no more than one inch away from those choices.

See, for example, Exhibit A.

- d. DirectRevenue will not install Software via ActiveX installations, security exploits, or by any other method that does not require users’ affirmative consent.
- e. In DirectRevenue’s EULA, DirectRevenue will disclose the fact that the Software serves pop-up ads based on web sites visited by the user, and that DirectRevenue collects non-personally identifiable information, in order to serve those ads. The EULA will explain DirectRevenue’s use of the non-personally identifiable information. The EULA will also notify users as to how the Software can be uninstalled, and will provide information on how to access DirectRevenue’s website and customer support.
- f. Without charge, DirectRevenue will provide help to consumers in removing the Software via e-mail. In addition, DirectRevenue will provide a toll free telephone number that will allow consumers to call and receive a recorded message that includes: (1) detailed instructions about how to remove the Software, and (2) information directing users to locations on the Internet to learn more information about how to remove the Software.
- g. In new distribution contracts, DirectRevenue will require distributors to abide by the policies represented in this settlement. DirectRevenue will closely police its distributors. If DirectRevenue learns that a distributor is

violating these terms, DirectRevenue will take appropriate action based on the circumstances of the violation, potentially including termination of the distributor.

- h. Distributors will not be permitted to use sub-distributors unless those entities are bound by contract to adhere to the policies represented herein.
- i. DirectRevenue will not distribute the Software via web sites targeted primarily at children. The EULA will include a disclosure that the Software should only be installed by users 18 years of age and older, and instructions (or a reference link to such instructions) on how to manage the user's operating system to minimize the possibility that children will be served with ads by the Software. DirectRevenue will disclose to Net Nanny (and similar services) the IP address of any server sending adult content ads through the Software.
- j. DirectRevenue will not use the word "free" in banner ads describing the underlying program (i.e., the screen saver or video game) unless the ad also discloses that the program is ad-supported.
- k. When the Software displays a pop-up ad, the "X" button on the title bar of the ad window (used to close the ad window) will not appear off-screen, unless this effect is caused by a technical issue without DirectRevenue's knowledge or beyond DirectRevenue's control.
- l. All DirectRevenue ads will include a "?" button on the title bar, or a text link indicating that further information is available, which displays information about the Software when clicked. This information will include (1) an explanation of why the user is receiving the ad; (2) the identity of the consumer application the user downloaded with the Software (when and to the extent this is technically feasible); and (3) an instruction that, if the user so desires, the user can uninstall the Software using the Windows "Add/Remove Programs" function.
- m. The Software will not display adult content ads unless the user is viewing adult websites. DirectRevenue will disclose to Net Nanny (and similar services) the IP address of any server sending adult content ads through the Software.
- n. The Software will be listed in the Windows "Add/Remove Programs" list under the exact same name used in branding the ads. DirectRevenue will make removal of the Software easy.
- o. DirectRevenue will not modify security settings on users' computers.

- p. DirectRevenue will not reinstall its Software once a user has uninstalled it through the Windows "Add/Remove Programs" function, unless the user later opts to download and install another bundled application and the installation proceeds in accordance with the terms herein.
- q. DirectRevenue will not delete other software on the user's computer other than any underlying program (e.g. screensaver) that was bundled with the Software upon the user's removal of the Software.
- r. DirectRevenue will not materially modify the Software's functionality without providing the user with notice and an opportunity to uninstall the Software.
- s. DirectRevenue will agree to limit its advertisements to a network average of 10 or less per computer per 24-hour period.
- t. DirectRevenue agrees that its removal instructions shall continue to be posted in a form in substantial conformity with that currently found at: <http://www.bestoffersnetworks.com/uninstall/>.
- u. Upon request by e-mail identifying the user seeking assistance as visually impaired, DirectRevenue will personally assist (through live telephone support) any visually impaired person in removing the Software.
- v. DirectRevenue will limit its number of name changes used on its advertisements (*i.e.*, "Best Offers") to once per two years.
- w. DirectRevenue will agree to purchase sponsored links, if Google is willing to sell such sponsored links, that provide links to help consumers remove DirectRevenue software. At a minimum, DirectRevenue will agree to purchase links, if Google is willing to sell such sponsored links, for "Best Offers" and "Best Offers removal". By clicking on the sponsored link, the user will be taken to an Internet page with instructions on how to remove the Software. Should DirectRevenue change the name of its software, it will purchase sponsored links with the new name of the Software referenced.

4. **Limited Release by the Class.** The Class Representative and the Class Members, on behalf of themselves and their respective past, present and future parent companies, subsidiaries, affiliates, divisions, agents, employees, owners, members, officers, directors, partners, legal representatives, trustees, executors, administrators, heirs, real or alleged alter

egos, predecessors, successors, transferees and assigns (collectively, the "Releasers"), hereby release, acquit and forever discharge the Settling Defendants and their respective past, present and future parent companies, subsidiaries, affiliates, divisions, agents, employees, owners, members, officers, directors, partners, legal representatives, trustees, executors, administrators, heirs, real or alleged alter egos, predecessors, successors, transferees and assigns (collectively, the "Releasees") from all claims for injunctive relief related to the Software. The Releasers further hereby release, waive and abandon all rights to participate in, and each and every Releaser is specifically prohibited from participating in, as a class member or otherwise, any other action or proceeding against the Settling Defendants in any way relating to the Settling Defendants' Software, whether brought on a class-wide basis or on any other basis other than an individual basis.

Notwithstanding said release, the Class Representative and each Member of the Class expressly reserve their rights to pursue individual claims for monetary damages against the Settling Defendants.

5. **Notice.** Notice of the terms of the settlement and the right to object thereto will be provided to the Class in the following ways:

(a) via publication of the Summary Settlement Notice (attached hereto as Exhibit C) for two (2) days within two weeks of the entry of the Preliminary Approval Order in the:

- (1) Chicago Tribune (Chicago);
- (2) State Journal-Register (Springfield);
- (3) Journal Star (Peoria);
- (4) News-Democrat (Bellevue);

(5) Southern Illinoisan (Cardondale);

(b) via prominent posting of the Settlement Notice on DirectRevenue's website (www.direct-revenue.com) fourteen (14) days following the entry of the Preliminary Approval Order and continuing until the date of the Final Approval hearing; and

(c) via prominent posting of the Settlement Notice on Plaintiff's counsel's website (www.collinslaw.com) fourteen (14) days following the entry of the Preliminary Approval Order and continuing until the date of the Final Approval hearing.

Other than the costs associated with Paragraph 4(c) above (which shall be solely borne by Class Counsel), the Settling Defendants shall pay all costs associated with providing notice pursuant to Paragraph 4(a) and (b) above.

6. **Approval.** This Agreement requires preliminary and final court approval in the Lawsuit by the Illinois District Court. The parties agree that these necessary approvals shall be sought and sequenced as follows:

A. **Preliminary Approval in the Lawsuit.** Promptly following the complete execution of this Agreement, the parties hereto shall join in a request to the Illinois District Court for the entry in the Lawsuit of a Preliminary Approval Order, which order shall be in substantially the same form as Exhibit B hereto, that will:

- (1) Find preliminarily that this Agreement, and all of its terms and provisions, is fair, reasonable and adequate to the Class;
- (2) Approve the summary notice of settlement to be provided to the Class (the "Summary Settlement Notice"), in substantially the form attached hereto as Exhibit C, the notice of settlement to be

provided to the Class (the "Settlement Notice"), in substantially the form attached hereto as Exhibit D, the manner of publishing the Settlement Notice and the Summary Settlement Notice to the Class, and the date by which the Settlement Notice and the Summary Settlement Notice shall be published; and

- (3) Set a date for the hearing on the parties' application for a Final Approval Order and Judgment of Dismissal and a deadline for the filing of objections by any members of the Class.

B. **Final Approval in the Lawsuit.** The parties will jointly apply to the Illinois District Court for the entry in the Lawsuit of a Final Approval Order and Judgment of Dismissal, substantially in the same form as attached hereto as Exhibit E, that will:

- (1) Find that the Agreement, and all of its terms and provisions, is fair, reasonable and adequate to the Class, find that the Class Representative and each of the individual Class Members, including their respective past, present and future parent companies, subsidiaries, affiliates, divisions, agents, employees, owners, members, officers, directors, partners, legal representatives, trustees, executors, administrators, heirs, real or alleged alter egos, predecessors, successors, transferees and assigns, shall be bound by this Agreement (including the limited release contained in Paragraph 4), find that each Settling Defendant, including its past, present and future parent companies,

subsidiaries, affiliates, divisions, agents, employees, owners, members, officers, directors, partners, legal representatives, trustees, executors, administrators, heirs, real or alleged alter egos, predecessors, successors, transferees and assigns, shall be bound by its obligations under this Agreement, and conclude that this Agreement should be, and is, approved;

- (2) Find that the Class Representatives and Class Counsel have fairly and adequately represented the interests of the Class in this matter and its resolution;
- (3) Dismiss, with prejudice, all claims asserted in the Lawsuit by the Class Representative, with the exception of the Class Representative's individual claim for monetary damages;
- (4) Include each of the requirements of Paragraph 3 of this Agreement, and provide that the Settling Defendants are bound and enjoined to comply with each of these agreed injunctive relief requirements;
- (5) Retain jurisdiction of all matters relating to the modification, interpretation, administration, implementation, effectuation and enforcement of this Agreement.

C. **Event of Non-Approval/Termination.** In the event that 1) the Illinois District Court in the Lawsuit denies preliminary or final approval of this Agreement, or holds that it will not enter the Preliminary Approval Order in substantially the same form as Exhibit B to this Agreement, or the Final Approval Order and Judgment of Dismissal in substantially the same form

as Exhibit E to this Agreement, or 2) on appeal the Final Approval Order and Judgment of Dismissal is modified in any material respect or vacated or reversed, then this Agreement shall become null and void, without prejudice to any rights of any of the parties, including but not limited to the Settling Defendants' right to oppose Plaintiff's motion for class certification, and the Lawsuit will continue.

7. **Right of Objection.** Any Class Member who objects to this Agreement or the judgment to be entered thereon, may intervene and appear in person or by his or her attorney at the Final Approval Hearing and present any evidence or argument that may be proper and relevant. However, no such person shall be heard and no papers, briefs, pleadings or other documents submitted by any person shall be received and considered by the Illinois District Court (unless the court in its discretion shall thereafter otherwise direct, upon application of such person and for good cause shown), unless no later than ten (10) business days prior to the Final Approval Hearing such person shall both file with the Illinois District Court and serve upon Class Counsel a written objection which includes: (a) a notice of intention to intervene and appear, (b) proof of membership in the Class, and (c) the specific grounds for such objections and the reasons why such person desires to appear and to be heard, as well as all documents or writings which such person desires the Court to consider. Class Counsel shall provide copies of all written objections to the Settling Defendants no later than five (5) business days prior to the Final Approval Hearing. Any person who fails to object in the manner prescribed above shall be deemed to have waived his or her objections and shall be forever barred from making any such objections in the lawsuit or in any other action or proceeding.

8. **Attorneys' Fees and Expenses.** Class Counsel shall receive from the Settling Defendants attorneys' fees of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00). In addition, they shall be reimbursed by the Settling Defendants for expenses that they have reasonably incurred in connection with the Lawsuit in the amount of FIFTY THOUSAND DOLLARS (\$50,000.00). Said money shall be paid by the Settling Defendants within three business days, via wire transfer to Class Counsel, of the Effective Date.

9. **Waiver of Appeal.** In the event that this Agreement receives final approval by the Illinois District Court, the parties hereto waive any right to appeal from any of the orders entered in the Lawsuit, including the Preliminary Approval Order or the Final Approval Order and Judgment of Dismissal.

10. **Effective Date.** In the event that no person or entity intervenes to contest the final approval of this Agreement, this Agreement shall become effective on the date (the "Effective Date") that the Illinois District Court enters the Final Approval Order and Judgment of Dismissal. In the event that any person or entity does intervene to contest the final approval of this Agreement, the Effective Date of this Agreement shall be the date following the entry of the Final Approval Order and Judgment of Dismissal on which the time has expired within which to seek review or appeal of the Final Approval Order and Judgment of Dismissal without any review or appeal having been taken, or, if such review or appeal is taken, the date on which such review or appeal shall have been fully determined (subject to no further review or appeal) by the highest court before which such review or appeal is sought and allowed, and such review or appeal shall have been resolved in such manner as to permit the consummation of the settlement effected by this Agreement in accordance with all of its terms and conditions. In the event that an appeal of the Final Approval Order and Judgment of Dismissal is initiated by an

intervenor, the Class Representative, on behalf of the Class and through Class Counsel, and the Settling Defendants shall support, including by the filing of briefs in the appellate court if permitted, the affirmance of the Final Approval Order.

11. **Choice of Law.** This Agreement shall be governed and interpreted according to the laws of the State of Illinois.

12. **Entire Agreement.** This Agreement represents the entire agreement between the parties and there are no terms, representations, agreements, understandings or covenants, oral or otherwise, that are not incorporated into this Agreement. The terms of this Agreement supersede and terminate all prior oral and written agreements and communications between the parties with respect to the matters addressed by this Agreement. The Parties agree that there were no inducements or representations leading to the execution of this Agreement, except as contained herein.

13. **Capacity and Authority.** All parties entering into this Agreement have the capacity and authority to do so, and no third party has any rights that could affect the validity or legality of this Agreement.

14. **Terms of Agreement Negotiated.** This Agreement has been negotiated and drafted by all parties and their representatives. The parties to this Agreement represent and warrant that they have read and understand this Agreement and have consulted with their respective counsel concerning its legal effect. No rule of construction shall apply to this Agreement construing its provisions in favor of or against any party.

15. **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. **Retention of Jurisdiction; Attorneys' Fees for Breach.** In addition to matters of retained jurisdiction specified in Paragraph 6(B)(5) of this Agreement, the Illinois District Court will retain jurisdiction over any claim by a Class member asserting a breach of the terms of the settlement, and over any motion by the Settling Defendants to modify any term of this Agreement. In the event of a finding of such a breach by either of the Settling Defendants, the Settling Defendants shall pay all attorneys' fees and costs reasonably incurred in connection with the proceeding asserting the breach.

17. **Amendment or Modification.** This Agreement may be amended or modified only by a written instrument signed by all parties to this Agreement.

18. **Incorporation of Recitals.** The recital provisions set forth at the beginning of this Agreement are expressly incorporated into and as terms and conditions of this Agreement.

19. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective past, present and future parent companies, subsidiaries, affiliates, divisions, agents, employees, owners, members, officers, directors, partners, legal representatives, trustees, executors, administrators, heirs, real or alleged alter egos, predecessors, successors and assigns.

20. **Notices.** Any and all notices which are required by this Agreement shall be sent as follows:

If to DirectRevenue:


Neal H. Klausner, Esq.
Davis & Gilbert LLP
1740 Broadway
New York, NY 10019

If to the Class Representative, the Class or Class Counsel:

Shawn M. Collins, Esq.

David J. Fish
The Collins Law Firm, P.C.
1770 N. Park Street, Suite 200
Naperville, Illinois 60563

IN WITNESS WHEREOF, the parties have read and understood the terms and conditions of this Agreement, agree to be bound by all of its provisions, and have executed this Agreement on the dates shown by their signatures below.


Stephen Sotelo, individually
and as Class Representative on behalf of
the Class

Dated: March 9, 2006

DirectRevenue, LLC

By: _____
Authorized Representative

Dated: March ____, 2006

The Best Offers Network, LLC
(f/k/a BetterInternet, LLC)

By: _____
Authorized Representative

Dated: March ____, 2006

David J. Fish
The Collins Law Firm, P.C.
1770 N. Park Street, Suite 200
Naperville, Illinois 60563

IN WITNESS WHEREOF, the parties have read and understood the terms and conditions of this Agreement, agree to be bound by all of its provisions, and have executed this Agreement on the dates shown by their signatures below.

Stephen Sotelo, individually
and as Class Representative on behalf of
the Class

Dated: March ____, 2006

DirectRevenue, LLC

By: 

Authorized Representative

Dated: March 10, 2006

The Best Offers Network, LLC
(f/k/a BetterInternet, LLC)

By: 

Authorized Representative

Dated: March 10, 2006